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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	DE proposals on Art. 15 of the revision of the Renewable Energy Directive

Delegations will find in the annex the DE proposals on Art. 15 of the revision of the Renewable Energy Directive following Coreper on 13 April.

Revision of the Renewable Energy Directive: Accelerating the planning and permit-granting process

Non-paper by Germany (update from Coreper 13/4/22)

The deployment of renewable energy plays an important role in realising the European Green Deal to achieve climate neutrality by 2050. A significantly higher share of renewable energy sources is already required to achieve the objective of reducing greenhouse gas emissions by 55% in 2030. Accelerated deployment of renewables is also key in light of the current high energy prices. High and volatile gas prices as well as increasing geopolitical tensions drive up electricity prices significantly. However, recent geopolitical events have also made clear that it is of utmost importance to reduce our dependency on gas and fossil fuels as soon as possible.

Today's situation requires additional specific measures to speed up the transformation of our energy system. One major roadblock is accelerating the deployment of renewables and the related grid infrastructure as this would significantly contribute to reducing gas dependency, stabilising energy prices and achieving climate neutrality by 2050.

Since complex and lengthy planning and permitting procedures remain a barrier for the deployment of renewables and the related grid infrastructure it is crucial to adjust regulatory barriers in the planning and permit granting processes. This applies in particular to the deployment of onshore wind. There are a number of measures that contribute to accelerate planning and permit-granting processes of renewables and related grid infrastructure. Whereas some of these barriers can be addressed at national level, adjustments in EU law are urgently needed.

These include the following key measures:

- 1) facilitating the use of existing derogations in various areas of public law, particularly under environmental law and
- 2) more specifically, facilitating the use of derogations under species protection law under the conditions below.

The current revision of the Renewable Energy Directive provides an important “window of opportunity” which should be used in the light of the pressing needs for accelerating renewables deployment in order to become independent of gas and fossil fuels as soon as possible.

1. Overriding public interest and public safety

We need to ensure that the fact that the deployment of renewables is in the overriding public interest and is serving public safety are considered when balancing legal interests. This allows to make effective use of existing exemptions in various areas of public law, including environmental law and thus simplify administrative procedures significantly. Unfortunately, the current wording in Rev-1 is an empty box. The wording “without prejudice to” needs to be replaced by “in accordance with” in order to underline that the legal value granted to the deployment of renewables and the related grid reinforcement is without subject to further conditions and to underline that this is in accordance with existing Union law. Beyond that, an explanation needs to be included in a recital 10a.

Commission proposal	Drafting suggestion based on REV-3
(5) Article 15 is amended as follows	
(c) Paragraph 8 is replaced by the following	
8a new	<u>Until climate neutrality is achieved, Member States shall ensure that in the planning and permit-granting process, the deployment of energy from renewable sources and the related grid infrastructure is considered as being in the overriding public interest and serving public safety when balancing legal interests in the individual case without prejudice to Union and national laws on environmental protection in accordance with relevant Union law. Member States may exclude hydropower from this provision.</u>

Recital 10a new	<p>recital 10a new</p> <p><u>Due to the need to transform our energy systems towards a sustainable, secure and affordable energy supply in the light of the Union’s climate neutrality objective, the deployment of energy from renewable sources and the related grid infrastructure is in the overriding public interest and serves public safety. In the planning and permit-granting process, in particular in the area of onshore wind energy, Member States should – for a temporary period of time until climate neutrality is achieved and in accordance with relevant Union law – ensure this overriding public interest and the benefits for public safety are considered when balancing legal interests in the individual case. Member States may exclude hydropower from this provision. This provision is intended to improve the legal certainty of planning and permit-granting procedures, in particular in the case of onshore wind power plants, and to accelerate the deployment of energy from renewable sources.</u></p>
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2. Facilitating derogations in species protection law

In order to facilitate the effective use of existing derogations under species protection law, Article 15 should provide that the deployment of wind energy and the related grid infrastructure is given priority when balancing legal interests regarding species protection. At the same time, appropriate species conservation measures have to be undertaken and sufficient financial resources as well as areas to protect potentially affected populations have to be made available. This allows to put a stronger focus on population protection by facilitating derogations from species protection provisions that are currently geared towards the protection of "single specimens". More specifically, it means that the requirements

for such a derogation can be more easily met so that the wind power project may be implemented despite an impact regarding the individual specimen, if adequate species conservation measures are adopted to ensure the protection of the population. This privileged derogation should apply until climate neutrality is achieved.

Commission proposal	Drafting suggestion
(5) Article 15 is amended as follows	
(c) Paragraph 8 is replaced by the following	
8b new	<u>Until climate neutrality is achieved, Member States shall ensure that, in the planning and permit-granting process, the construction and operation of wind power plants and the related grid infrastructure is given priority within the legal balancing process regarding species protection. The preceding sentence shall only apply if and to the extent that appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken and sufficient financial resources as well as areas are made available for this purpose.</u>

Recital 10b new	<u>Further steps are necessary to accelerate the development of energy from renewable energy sources. For this reason, it is important that for a temporary period of time until climate neutrality is achieved, the construction and operation of wind power plants and the related grid infrastructure are given priority when balancing legal interests regarding species protection. In combination with applying appropriate species conservation measures, this should allow to put a stronger focus on population protection by facilitating derogations from “individual specimen” focused species protection provisions by means of fulfilling the respective preconditions.</u>
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