

## ClientEarth's feedback to the Offshore Renewable Energy Strategy Roadmap

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ClientEarth welcomes the initiative of the European Commission to develop an Offshore Renewable Energy Strategy in the context of the European Green Deal<sup>1</sup>.

Offshore renewable energies have an immense potential in Europe: over 250GW of offshore wind capacity are expected to be deployed by 2050<sup>2</sup>. It has also been estimated that the rest of ocean energies (including wave, tidal, salinity gradient and ocean thermal energy conversion) could provide up to 10% of the electricity needs of the European Union by 2050<sup>3</sup>. However, offshore renewable energies have not received enough support to become predominant in our energy system: to this date, their development in Europe is mostly limited to offshore wind generation facilities<sup>4</sup> in shallow waters, prominently in the North Sea<sup>5</sup>.

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<sup>1</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM/2019/640 final.

<sup>2</sup> According to the Offshore Strategy Roadmap. The International Energy Agency has estimated that under a stated policies scenario, offshore wind capacity in the European Union will reach 127GW by 2040 (<https://www.iea.org/reports/offshore-wind-outlook-2019>).

<sup>3</sup> Ocean Energy Europe, Ocean Energy – the Next Big Thing in Energy. Available at: <https://www.oceanenergy-europe.eu/ocean-energy/>

<sup>4</sup> According to Eurostat, at the end of 2018 ocean energies were “negligible”, totaling only 223MW in the EU. Eurostat, Electricity and heat statistics, Jul 2020. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Electricity\\_and\\_heat\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Electricity_and_heat_statistics)

<sup>5</sup> According to Wind Europe, a total of 22.1GW of offshore wind capacity had been installed in Europe by the end of 2019, most of it in the United Kingdom, Germany, Denmark, the Netherlands and Belgium.

If successfully deployed, offshore renewable energy will play a crucial role in the decarbonisation of the European Union's energy systems, increasing security of supply, diversifying energy sources, and contributing to the 2030 European Union's and national climate and energy targets, as well as to the 2050 climate neutrality commitment.

The Offshore Renewable Energy Strategy (the "Offshore Strategy") should aim at integrating renewable offshore generation capacity in the energy system in an efficient way while respecting high standards of environmental protection, public involvement and cooperation among Member States.

To ensure its effectiveness and sustainability, the Offshore Strategy must also be aligned with other strategies and initiatives developed or adopted pursuant to the European Green Deal, including the Strategy for Energy System Integration<sup>6</sup>, the Hydrogen Strategy<sup>7</sup>, the Industry Strategy<sup>8</sup>, the Biodiversity Strategy<sup>9</sup> and the Circular Economy Action Plan<sup>10</sup>. Moreover, the Offshore Strategy must also ensure compliance and consistency with numerous rules, including those that govern energy systems, as well as the different EU and international rules affecting the uses of the marine space.

## OBJECTIVES AND PRINCIPLES

The primary law of the European Union contains a series of dispositions and principles that must be respected and promoted by the Offshore Strategy and the legislative and non-legislative actions that will follow it:

- According to article 11 of the Treaty of the Functioning of the European Union<sup>11</sup> ("TFEU"), **combating climate change is an explicit objective of the policies of the European Union**. In particular, article 11 establishes that environmental protection requirements

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Wind Europe, *Offshore Wind in Europe - Key trends and statistics 2019*, February 2020. (P. 12). Available at: <https://windeurope.org/wp-content/uploads/files/about-wind/statistics/WindEurope-Annual-Offshore-Statistics-2019.pdf>

<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Powering a climate-neutral economy: an EU Strategy for Energy System Integration, COM/2020/299 final.

<sup>7</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Hydrogen Strategy for a Climate-neutral Europe, COM/2020/301/final.

<sup>8</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Industrial Strategy for Europe, COM/2020/102 final.

<sup>9</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives, COM/2020/380 final.

<sup>10</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final.

<sup>11</sup> Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

must be integrated into the definition and implementation of the policies and activities of the European Union, especially with a view to promoting sustainable development.

- Article 3 of the Treaty of the European Union<sup>12</sup> (“TEU”) establishes that the European Union shall aim at a **high level of protection** and improvement of the quality of the environment. The General Court has declared that for reaching a high level of protection, the institutions of the European Union shall “*ensure that their decisions are taken in the light of the best scientific information available and that they are based on the most recent results of international research*”<sup>13</sup>. The obligation to aim at a high level of environmental protection is also mentioned in article 191(1) TFEU.
- The **precautionary principle** enshrined in article 191(2) TFEU. The Court of Justice of the European Union has defined the precautionary principle as a general principle in European Union law requiring the authorities to take appropriate measures to prevent specific potential risks to public health, safety and the environment, by giving precedence over the requirements related to the protection of those interests over economic interests<sup>14</sup>.
- Article 194 of TFEU is not only, as mentioned in the Roadmap, the legal basis for the adoption of the Offshore Strategy by the Commission, it also establishes that the policy of the European Union on energy shall aim at, *inter alia*, the **development of new and renewable forms of energy**.
- The Offshore Strategy must also abide by the ‘**do no harm**’ principle introduced by the European Green Deal<sup>15</sup>. The actions derived from the Offshore Strategy must not only contribute to the decarbonisation of the Union’s energy system, but also minimise any environmental impacts and promote a just transition that leaves no one behind.
- Solidarity is explicitly mentioned in article 2 of the TEU as one of the founding values of the European Union. Building on that, article 194(1) TFEU establishes the **energy solidarity principle**, providing the energy policy of the European Union shall be developed in “*a spirit of solidarity between Member States*”<sup>16</sup>. To be aligned with the energy solidarity principle and avoid potential conflicts, the Offshore Strategy must be drafted duly considering the different energy interests of all Member States.

The commitments of the European Union under **international environmental law** are also relevant. Most importantly: the Paris Agreement. Besides establishing the need to hold the increase in average temperatures to well below 2°C, the Paris Agreement also recognises the importance of making financial flows consistent with a pathway towards low green house gas emissions and climate-resilient development<sup>17</sup>. Hence, the Offshore Strategy should envisage

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<sup>12</sup> Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012.

<sup>13</sup> Case T- 13/ 99 Pfizer Animal Health, para 158.

<sup>14</sup> Case T-74/00 Artogodan v. Commission, para 184.

<sup>15</sup> Section 2.2.5., European Green Deal (COM/2019/640 final).

<sup>16</sup> The principle of energy solidarity has been recently interpreted in a judgement of the General Court of 10 September 2019, Case T-883/16, known as the OPAL judgement. The General Court annulled a decision from the European Commission based on a breach of this principle: the Commission did not carry out an examination of the impact of the decision on the interests of a Member State prior to its adoption. See para 72 & 73.

<sup>17</sup> Paris Agreement, Art. 2.1(c).

actions to ensure that financial flows efficiently contribute to the sustainable deployment of offshore renewable energies.

## SUSTAINABILITY AND ENVIRONMENTAL ASPECTS

- The environmental impacts of offshore renewable energy projects must be duly assessed in accordance with existing rules, including:
  - Espoo Convention on environmental impact assessment in a transboundary context<sup>18</sup>
  - Directive 2001/42/EC on Strategic Environmental Assessments<sup>19</sup>.
  - Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment<sup>20</sup>.
  - Habitats Directive 92/43/EEC<sup>21</sup>.
  - Directive 2009/147/EC on the conservation of wild birds<sup>22</sup>.
- The design, construction, operation and maintenance, decommission and recycling of the offshore renewable energy projects must be planned and executed in alignment with the Circular economy Action Plan to ensure the overall sustainability of their whole lifecycle.

## PUBLIC INFORMATION AND PARTICIPATION

The dissemination of information and the creation of sufficient opportunities for public consultation will be key for guaranteeing environmental protection when developing and building offshore renewable energy facilities, for strengthening public acceptance, and for avoiding potential conflicts and litigation that may delay the deployment of offshore renewable energies and deter investors.

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<sup>18</sup> Convention on Environmental Impact Assessment in a Transboundary Context, made in Spoo, Finland in 1991.

<sup>19</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001).

<sup>20</sup> Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012).

<sup>21</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992).

<sup>22</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010).

The Aarhus Convention<sup>23</sup>, to which the European Union and all Member States are parties, lays down basic rules on access to information, public participation and access to justice in environmental matters<sup>24</sup>.

The Offshore Strategy must consider the obligations under the Aarhus Convention and its developing rules to ensure that timely and meaningful public participation procedures and information dissemination take place in connection with any of its derived legislative or non-legislative actions. Especially, any procedures that may be designed for speeding up the deployment of offshore renewable energies must comply with the transparency and openness criteria laid down in the Aarhus convention and the Directives on public participation and public access to information.

Transparency is a well-established principle of the European Union<sup>25</sup> that is also repeatedly cited by energy market rules<sup>26</sup>. Hence, the need for disseminating information should not be circumscribed to environmental matters, but also be extended to encompass wider energy market issues.

## ENERGY GRID, MARKETS AND RENEWABLE POLICY

EU rules and policies on energy grid development, market design and renewable energy support schemes may need to be revised or developed in order to better foster the development of offshore renewable energies. Among the aspects that should be considered, we note the following:

- Foster the common development of offshore grids through a regional approach that involves different countries and allows synergies with existing or planned interconnectors, or the connection of national offshore grids.
- The granting of public financial support to offshore renewable energy projects should take into account the evolution in costs of each technology. Thanks to the swift decline in costs that make them market competitive in some geographies, offshore wind projects

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<sup>23</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998.

<sup>24</sup> The application of the Aarhus convention in the European Union is implemented through Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006) and has been further developed by Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

<sup>25</sup> Vid., for example, art. 15.3 TFEU.

<sup>26</sup> For example: arts. 1(d), 3(q), 7.2(f) and 12.1 of Regulation 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity; and arts. 1, 3.4, 8.1 and 59.1(n) of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

have recently begun to be developed in the North Sea without the need of public support<sup>27</sup>.

- Parameters related to the social impact of offshore renewable energy projects (such as openness to investment from local communities) should be considered when designing the mechanisms for awarding public financial support.

## FUNDING AND FINANCING

Funding and financing for offshore renewable energies from the European Union should be designed to maximise the mobilisation of private funds and be targeted at strategic aspects of the development of offshore renewable energies. In particular, the Offshore Strategy should consider:

- The positive effect on attracting private investors of establishing and maintaining clear and stable regulatory frameworks at Union and national levels.
- Favouring the inclusion of offshore renewable energy projects and offshore transmission grid expansion in the list of Projects of Common Interest, so that they can benefit from support from the Connecting Europe Facility.
- Ensuring that public financial support takes in special consideration those offshore renewable energy technologies that have not reached grid parity, such as wave energy or floating offshore wind energy.
- Promoting investment in technology research and innovation that is not only focused on cost reduction, but also on limiting the adverse effects that offshore renewable energies may have on the public or the environment (e.g. noise pollution, impact on landscape, biodiversity preservation or impacts on professional and leisure maritime activities).

## REGIONAL COOPERATION

The Roadmap refers several times to the need for increased regional cooperation in the Offshore Strategy. Indeed, given the special characteristics of marine energy sources, reinforced regional cooperation will be key for unleashing their whole potential and achieving the objective of the Offshore Strategy. When proposing actions in order to foster regional cooperation, the Offshore strategy should take into account:

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<sup>27</sup> Such is the case of the projects Hollandse Kust (Zuid) I and II, which will be built in the Dutch North Sea. <https://windeurope.org/newsroom/press-releases/worlds-first-offshore-wind-farm-without-subsidies-to-be-built-in-the-netherlands/>

- **Existing initiatives** and platforms already coordinating the deployment of offshore renewable energies and development of offshore grid, such as the North Seas Energy Cooperation (NSEC).
- Other **energy-related regional platforms**, such as the Baltic Energy Interconnection Plan (BEMIP), whose purposes may be extended to act as regional cooperation platforms for the promotion of offshore renewable energies.
- The **Regional Sea Conventions** applicable in the European seas, that aim to protect the marine environment and bring together Member States and neighbouring countries that share marine waters:
  - ↳ The Barcelona Convention, applicable to the Mediterranean region<sup>28</sup>.
  - ↳ The Bucharest Convention, applicable to the Black Sea region<sup>29</sup>.
  - ↳ HELCOM, applicable to the Baltic region<sup>30</sup>.
  - ↳ OSPAR, applicable to the North-East Atlantic region<sup>31</sup>.
- The **different cooperation options** that may be available, such as the development of hybrid projects where generation hubs are combined with interconnectors between different countries, or the creation of specific price zones for offshore generation hubs.
- **Regional Coordination Centres** that are to be established pursuant to article 35 of the Electricity Market Regulation<sup>32</sup>. These new entities must be proposed by Transmission System Operators (TSOs) to complement the role of TSOs by performing different tasks of regional relevance, including carrying out coordinated security analysis, or facilitating the regional procurement of balancing capacity<sup>33</sup>. Regional Coordination Centres shall act independently of individual national interests and of the interests of transmission system operators<sup>34</sup>. Those Regional Coordination Centres located in coastal areas could be of especial help in supporting the technical integration of offshore renewable energies.
- The need to **assess available offshore renewable energy resources** taking into account both completed and planned projects. A study considering the offshore wind generation capacity to be installed in the German North Sea<sup>35</sup> estimates that large-scale

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<sup>28</sup> Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, made in Barcelona in 1975.

<sup>29</sup> Bucharest Convention on the Protection of the Black Sea against Pollution, made in Bucharest in 1992.

<sup>30</sup> Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, made in Helsinki in 1974.

<sup>31</sup> The Convention for the Protection of the marine Environment of the North-East Atlantic, made in Paris in 1992.

<sup>32</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.06.2019).

<sup>33</sup> Art. 37.1, *Ibid*.

<sup>34</sup> Art. 35.4, *Ibid*.

<sup>35</sup> Agora Energiewende, Agora Verkehrswende, Technical University of Denmark and Max-Planck-Institute for Biogeochemistry (2020): *Making the Most of Offshore Wind: Re-Evaluating the Potential of Offshore Wind in the German North Sea*.

deployment of offshore wind farms will likely slow down wind speeds and lead to reduced turbine performance if the production facilities are too concentrated. States should coordinate to rationalise the layout for deployment of offshore renewable energies to optimise their performance while limiting its impacts.

Guillermo Ramo

Lawyer, Energy

gramo@clientearth.org

www.clientearth.org

Laurène Provost

Lawyer, Energy

lprovost@clientearth.org

www.clientearth.org



**Brussels**

60 Rue du Trône (3ème étage)  
Box 11, Ixelles, 1050 Bruxelles  
Belgique

**Berlin**

Albrechtstraße 22  
10117 Berlin  
Germany

**Warsaw**

ul. Mokotowska 33/35  
00-560 Warszawa  
Polska

**Beijing**

1950 Sunflower Tower  
No. 37 Maizidianjie  
Chaoyang District  
Beijing 100026  
China

**London**

Fieldworks  
274 Richmond Road  
Martello St. Entrance  
E8 3QW  
United Kingdom

**Madrid**

García de Paredes  
76 duplicado  
1º Dcha  
28010 Madrid  
Spain