

## ClientEarth's feedback to the Renewable Energy Directive revision Inception Impact Assessment

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ClientEarth welcomes the European Commission's initiative to revise Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources<sup>1</sup> ("REDII"). We acknowledge the importance of the main objective of the revision initiative: to ensure that renewable energy contributes sufficiently to achieving a higher EU climate ambition.

However, as stated in the Inception Impact Assessment, the revision initiative should also serve for translating into legal measures some actions proposed in the European Green Deal and the Strategies adopted pursuant to it (such as the Energy System Integration Strategy, the Hydrogen Strategy or the Renovation Wave). This initiative is also an opportunity to review other parts of the REDII and to introduce new measures as appropriate to reflect the European Green Deal objectives.

The Inception Impact Assessment of the revision initiative lists 5 possible options for fulfilling the objectives above: (1) No policy changes, (2) Adoption of non-regulatory measures, (3) Raising

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<sup>1</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (EU OJ L 328/82, 21.12.2018).

the ambition level of the REDII targets, (4) Amending the REDII to translate into legal measures the actions proposed in the European Green Deal; and (5) A combination of options 2, 3 and 4.

ClientEarth considers that **Option 5** should be followed, with the actions presented below. In taking this position, we emphasise the importance of proper and continuing transposition of the provisions of the REDII.

## Renewable energy target

As stated in the Inception Impact Assessment, the main reason for this revision is updating the binding overall Union target for 2030 of share of energy from renewable sources in the gross final consumption.

The modification of Article 3(1) of the REDII to **revise such target should be made in line with the increased climate** ambition that will be adopted by the European Union. The European Commission has recently proposed a reduction of greenhouse gas emissions of at least 55% for 2030 compared to 1990 levels,<sup>2</sup> which we deem insufficient but consider a step in the right direction. **ClientEarth advocates for a 2030 emissions reduction target of at least 65%, without including offsetting by carbon sinks in the land use sector.**<sup>3</sup>

The new target in the revised version of the REDII must ensure the maximisation of the contribution of renewable energy sources to the achievement of the Union's new climate targets.

## Offshore renewable energy

An Offshore Renewable Energy Strategy for the European Union is currently also under consultation and expected to be approved during the fourth quarter of 2020. Given the closely related scope of the Strategy and the REDII, the revision of the REDII could serve for paving the way for the implementation of some of the actions that will follow the Strategy.

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<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Stepping up Europe's 2030 climate ambition - Investing in a climate-neutral future for the benefit of our people, COM(2020) 562 final, Brussels, 17.9.2020.

<sup>3</sup> Such a target is not only technologically and economically feasible, but would generate multiple other environmental and socio-economic benefits. For example see the findings of the [Paris Agreement Compatible \(PAC\) energy scenario](#), the [study by Climact](#) for the European Climate Foundation, or the [recent study by the German Institute for Economic Research \(DIW\) and the Technical University of Berlin](#).

The Roadmap of the Offshore Renewable Energy Strategy recognises how cooperation between Member States will be crucial for the swift and efficient deployment of offshore renewable energy that we need. Indeed, technical experts<sup>4</sup> have already pointed out the importance of shared infrastructure and started exploring options for improved regional governance in this respect. In particular, dedicated transmission infrastructure for offshore renewable energy facilities, or even hybrid infrastructure suitable to act both as interconnector and as transmission line,<sup>5</sup> will be pivotal for the timely and cost-effective development of offshore renewable energies. The relevance of these types of shared infrastructure for a cost-effective deployment will only increase as the volume of installed offshore renewable generation capacity grows.

In this respect, the provisions of the REDII on joint projects between Member States (Art. 9) and on joint support schemes (Art. 13) should be revised to **provide a clearer framework for cooperation**. The current language of such provisions focuses mainly on allocating the renewable energy produced between the Member States cooperating for the purposes of calculating their national share of renewable energy, rather than on the promotion of regional cooperation among Member States.

## Renewable hydrogen

The Hydrogen Strategy<sup>6</sup> recently published by European Commission mentions several times the possibility of building on the provisions of REDII to further regulate different aspects of this energy carrier and promote its development. For example, for defining a comprehensive terminology for the different types of hydrogen;<sup>7</sup> for establishing the certification criteria of renewable hydrogen and low-carbon hydrogen;<sup>8</sup> and for the adoption of support measures, including demand-side policies in end-use sectors.<sup>9</sup>

We recognise that renewable hydrogen is a promising solution for sectors and activities that are not easy to decarbonise, such as some heavy industry processes, or shipping and aviation. However, the exact role of renewable hydrogen in the energy system of the future remains unclear; it is still linked to notable inefficiencies and high costs when compared to direct

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<sup>4</sup> J. Gorenstein et al., The integrated offshore grid in Europe: Exploring challenges for regional energy governance, Energy Research & Social Science, Volume 52, June 2019.

<sup>5</sup> "Offshore hybrid assets", as mentioned in recital 66 of Regulation (EU) 2019/943 of the European Parliament and the Council of 5 June 2019 on the internal market for electricity (OJEU L 158, 14.6.2019).

<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, A hydrogen strategy for a climate-neutral Europe, COM(2020) 301 final, Brussels, 8.7.2020.

<sup>7</sup> Ibid., p. 12.

<sup>8</sup> Ibid., p. 12.

<sup>9</sup> Ibid., p. 22.

electrification. Moreover, overestimating the future available volume of renewable hydrogen may lead to the lock-in of gas infrastructure and increased use of fossil gas in the future.

We request that any amendments to REDII to support hydrogen **exclude any direct or indirect support to hydrogen that is not completely renewable**, in line with the subject matter of REDII of promoting renewable energies<sup>10</sup>. Using the terminology of the Hydrogen Strategy<sup>11</sup>, this would entail excluding any support to “electricity-based hydrogen”, “fossil-based hydrogen”, “fossil-based hydrogen with carbon capture”, “low carbon hydrogen” and “hydrogen-derived synthetic fuels”.

**Support to hydrogen infrastructure should be conditioned and dimensioned according to realistic and credible estimations of the future volumes** of available renewable hydrogen. Support to the retrofitting of gas infrastructure to enable higher blending rates for hydrogen with fossil gas should be excluded from support, even if the blending is made with renewable hydrogen, since it entails the continued use of fossil gas and the cost efficiency of this solution is highly questioned.

## Renewable energy communities

Citizen and community ownership should be at the centre of the energy transition. Research demonstrates that half of all European Union citizens could be producing their own electricity by 2050, and meeting 45% of the EU's energy demand.<sup>12</sup> To ensure that the switch to a fully renewable system can happen at the pace required, communities and local governments must be involved. Community energy projects or renewable energy communities increase the popularity and support for the energy transition and prevent local opposition.<sup>13</sup>

To support the achievement of the revised renewables target **it is essential that full, accurate and timely transposition of Articles 21 and 22 of REDII takes place and that an enabling legal framework removes the obstacles** for renewable energy communities.

We note that the Inception Impact Assessment does not propose changes to articles 21 and 22 of REDII. Indeed, it is imperative that Member States proceed with putting the enabling framework into place as soon as possible; reopening these articles may result in slowing down

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<sup>10</sup> Art. 1, REDII.

<sup>11</sup> Hydrogen Strategy, p. 3.

<sup>12</sup> <https://www.foeeurope.org/potential-energy-citizens-european-union-260916>

<sup>13</sup> [https://wwindea.org/wp-content/uploads/2018/06/Denmark\\_full.pdf](https://wwindea.org/wp-content/uploads/2018/06/Denmark_full.pdf); <https://link.springer.com/article/10.1007/s10098-019-01734-9>

their transposition. More than being revisited, the REDII **articles related to community involvement in the energy transition need to be correctly transposed.**

We note that some Member States are transposing only the definition of renewable energy communities, rather than the full enabling framework. This approach is not sufficient and undermines the implementation of the directive. Member States should ensure that the put in place a sufficient and fully enabling framework for renewable energy communities.

To help with achieving a successful transposition of renewable energy communities and their enabling framework, members of the Community Power Coalition, which includes ClientEarth, have produced several **guidance documents for transposition**, including a concise briefing for national governments<sup>14</sup> and a more comprehensive legal report with in-depth explanations<sup>15</sup>.

**Enabling legal frameworks** for renewable energy communities need to include financial support, a clear pathway for grid access, a one-stop-shop for advice and permitting, and clear roles and responsibilities for national or local authorities. Lastly, it is vital that Member States carry out an assessment of the barriers and potential of renewable energy communities in their territories. In this respect, we draw attention to paragraph 3 of Article 22<sup>16</sup> and the lack of progress from Member States on this. We call the **Commission to urge Member States to carry out and publish their assessments on barriers and potentials** as soon as possible.

## Biomass

ClientEarth requests the Commission to **reconsider the provisions related to biomass** in REDII, due to the serious impacts that biomass has on climate, biodiversity, air quality, health and Human Rights.

Biomass is the **main source of renewable energy** in the EU, with a share of around 60%.<sup>17</sup> This high share is partly driven by public subsidies, which incentivise private investments for large-scale power plants burning biomass. Consequently, the EU has become one of the major consumers of imported wood pellets in the world, increasing the global demand for this material.

Scientific evidence has shown that **burning wood for energy will actually contribute to increasing global temperature**, as newly planted trees need dozens or even hundreds of years

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<sup>14</sup> <https://foeeurope.org/transposition-guidance-citizen-energy-policies>

<sup>15</sup> <https://www.rescoop.eu/blog/how-can-eu-member-states-support-energy-communities>

<sup>16</sup> "Member States shall carry out an assessment of the existing barriers and potential of development of renewable energy communities in their territories."

<sup>17</sup> [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC109354/biomass\\_4\\_energy\\_brief\\_online\\_1.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC109354/biomass_4_energy_brief_online_1.pdf)

to reabsorb the carbon released by burning the old ones.<sup>18</sup> Therefore, the EU has to develop a science-based approach to biomass energy and to take a clear position on its climate and forests impacts. Classifying biomass as a renewable source of energy is a loophole that allows Member States to achieve climate and energy targets without reducing their real impact on climate.<sup>19</sup>

Biomass combustion is also closely linked with **harmful air pollution**. Smoke arising from the domestic combustion of wood and wood processing wastes (like wood pellets, wood chips or sawdust) is a significant contributor to atmospheric concentrations of particulate matter (PM2.5). The main products of combustion of wood and wood waste are elemental (black) carbon and organic matter. This problem is related to open fires, popular wood burners, stoves and open fires at home, and to the use of older biomass combustion installations. Wood combustion in fireplaces causes on average comparable, and sometimes higher, particulate matter emissions than solid fuel combustion in coal-fired boilers<sup>20</sup>.

Particulate matter (PM2.5) is now generally recognised as one of the pollutants that most significantly affects **human health**. Long-term and peak exposures to it range in severity, from impairing the respiratory system to premature death. Fine particulate matter in the air has been estimated to reduce life expectancy in the EU by more than eight months. In the recent report No 21/2019 of the European Environment Agency published in September 2020<sup>21</sup> it was estimated that, in 2018, there were about 379 000 premature deaths in the 28 Member States of the EU attributable to PM2.5. A study on the health co-benefits of climate change mitigation actions in the UK<sup>22</sup> also found that the health co-benefits are reduced if biomass is not properly controlled.

Apart from a health hazard, **air pollution is also a Human Rights issue**. The European Court of Human Rights has clarified in its case law that air pollution is a type of issue that raises concern under the right to private and family life<sup>23</sup>. It is irrelevant whether the pollution is directly caused by the State or if the latter is responsible of the absence of appropriate regulations (so called State positive obligations)<sup>24</sup>. In the case C-723/17 Creynest and others before the Court of Justice of the European Union, Advocate General Kokott stated in her opinion that "*the rules*

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<sup>18</sup> <https://www.businessgreen.com/opinion/3031766/when-will-the-biomass-bubble-burst>

<sup>19</sup> <https://www.clientearth.org/new-report-highlights-climate-risk-from-burning-trees-for-energy/>

<sup>20</sup> According to the European Environment Agency's technical report on the emission inventory guidebook 2013 ("[EMEP / EEA emission inventory guidebook 2013](#)"), the average PM10 emission from biomass combustion in energy-efficient furnaces and fireplaces (380 g/GJ) is 70% higher than from coal combustion in boilers up to 50 kW (225 g/GJ). Open fireplaces emit almost 4 times more PM10 dust than coal boilers (840 g/GJ).

<sup>21</sup> <https://www.eea.europa.eu/publications/healthy-environment-healthy-lives>

<sup>22</sup> [https://www.thelancet.com/pdfs/journals/lanplh/PIIS2542-5196\(18\)30067-6.pdf](https://www.thelancet.com/pdfs/journals/lanplh/PIIS2542-5196(18)30067-6.pdf)

<sup>23</sup> Article 8 of the European Convention of Human Rights.

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[http://curia.europa.eu/juris/document/document\\_print.jsf?docid=226323&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=518781#Footnote1](http://curia.europa.eu/juris/document/document_print.jsf?docid=226323&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=518781#Footnote1)

*on ambient air quality [...] are based on the assumption that exceedance of the limit values leads to a large number of premature deaths. [...] therefore [they] put in concrete terms the Union's obligations to provide protection following from the fundamental right to life under Article 2(1) of the Charter and the high level of environmental protection required under Article 3(3) TEU, Article 37 of the Charter and Article 191(2) TFEU<sup>25</sup>.*

Moreover, the **EU's regulatory position on biomass may significantly influence other jurisdictions, which would intensify the use of biomass** in energy production across the globe. The increased demand for biomass for large-scale energy production puts the world's forests at risk and exacerbates climate change and biodiversity loss. The majority of feedstock for the increasing wood pellet market is likely to come directly from the tropical, temperate and boreal forests of North America, Australia, South America, South-East Asia and Africa alike. This goes directly against the EU's climate commitments and jeopardises the efforts of tackling greenhouse gas emissions.

For these reasons, the **EU should vocally oppose the myth that burning wood is carbon neutral** and could be the key of sustainable energy transformation. Specifically, the EU should distinguish biomass from the sources of energy that are actually renewable, such as wind or solar. However, considering that the largest share of renewable energy demand in the EU is currently covered by biomass, **we call the EU to introduce emergency measures** that would strengthen the rules on biomass until it is excluded from renewable sources of energy:

- The EU should **rethink subsidising biomass** projects as solid green investments<sup>26</sup>.
- The **planned review of the National Energy and Climate Plans should focus on the national approaches to biomass** energy as a major element of the shift towards renewables. Biomass cannot remain the largest contributor to the mix of renewable energy sources.
- The revision of REDII should also tighten the rules on **biomass sourcing**. The EU Commission has already raised such a need in the 2030 Biodiversity Strategy, calling for new sustainability criteria on forest biomass for energy<sup>27</sup>. The current safeguards for biomass do not guarantee that it comes from sustainable forestry practices.
- The revision of REDII should also serve to align it with the new EU goals and ambition related to the **Zero-pollution Strategy** and the European Green Deal. The Zero-pollution Strategy needs to act horizontally throughout all relevant sectors. The Union's air quality policy will not be effective if biomass burning is not properly addressed.

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<sup>25</sup> Para 53 of the Opinion of Advocate General Kokott delivered on 28 February 2019 in Case C-723/17, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=211190&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=279788>

<sup>26</sup> <https://www.businessgreen.com/opinion/3031766/when-will-the-biomass-bubble-burst>

<sup>27</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590574123338&uri=CELEX%3A52020DC0380>