EUROPEAN
COMMISSION

Brussels, 28.11.2023
COM(2023) 764 final

# REPORT FROM THE COMMISSION TO THE COUNCIL

## on the review of Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy

## I. Introduction

This report reviews Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy[1] (the Council Regulation).

The Council Regulation is one of the emergency measures adopted by the Council in 2022 to respond to the energy crisis following Russia's invasion of Ukraine. It is based on Article 122(1) of the Treaty on the Functioning of the European Union, according to which the Council, on a proposal from the Commission, may decide upon measures appropriate to the economic situation, in particular, if severe difficulties arise in the supply of certain products, notably in the area of energy.

At the time of the adoption of the Council Regulation in December 2022, the overall geopolitical context and very high energy prices called for urgent acceleration of the deployment of renewable energy in the Union in order to mitigate the effects of the energy crisis by strengthening the Union's security of supply, reducing volatility in the market and lowering energy prices. As lengthy and complex permitting formed a key obstacle hampering the speed and scale of investments in renewables and related infrastructure, the Council Regulation aimed to achieve an immediate acceleration of permit-granting procedures applicable to certain renewable energy projects and technologies with the highest potential for quick deployment to mitigate the effects of the energy crisis. To this end, the Regulation introduced exceptional, targeted and time-limited measures across the EU.

This Council Regulation applies to all permit-granting processes that have a starting date within the period of its application. Member States may also apply the Council Regulation to ongoing permit-granting processes which had not resulted in a final decision before 30 December 2022, provided that this shortens the permit-granting process and that pre-existing third party legal rights are preserved.

Importantly, on 9 October 2023, Directive (EU) 2023/2413[2] amending the Renewable Energy Directive (EU) 2018/2001 ("the amending Directive" and "revised RED", respectively) was adopted, increasing substantially the level of renewable energy ambition that the Union must collectively achieve by 2030: from the previous 32% target to a 42.5% target with an aspiration to reach 45%. This amending Directive, which entered into force on 20 November 2023, includes extensive provisions to streamline permitting procedures applicable to renewable energy projects in a comprehensive manner through spatial planning, simplification and shortening of procedures. The amending Directive includes provisions covering the same topics as the Council Regulation. Some are very similar, while others include significant differences (see

[1] Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy. OJ L 335, 29.12.2022, p. 36–44.
[2] EUR-Lex - 32023L2413 - EN - EUR-Lex (europa.eu).

section IV). Moreover, the Directive did not mirror some of the more exceptional measures contained in Regulation (EU) 2022/2577, thus delimiting their exceptional and temporary nature. Instead, the Directive introduced a stable and long-term permanent regime to accelerate permit-granting procedures which establishes dedicated steps and procedures which require a longer implementation time. Several of the permitting rules of the revised directive, i.e. all permitting rules except those related to renewables acceleration areas, have to be transposed by 1 July 2024 - immediately after the expiry of the validity of the Council Regulation.

Pursuant to Article 9 of the Council Regulation, the Commission shall carry out a review of this Regulation by 31 December 2023 at the latest, in view of the development of the security of supply and energy prices and the need to further accelerate the deployment of renewable energy, and submit a report on the main findings of that review to the Council. Article 9 of this Council Regulation also provides that, based on that report, the Commission may propose its prolongation.

In order to decide whether a prolongation of this Council Regulation is necessary, the conditions for such prolongation must be met. In this context, the Commission must assess (i) the recent evolution of the Union's security of supply and energy prices, including the contribution that the deployment of renewable energy sources has made in this regard; (ii) the need to further accelerate renewable energy sources and (iii) the specific effects of this Council Regulation to promote such acceleration. Moreover, given the entry into force of the amending Directive, it is appropriate to assess the relationship between the provisions included in this Council Regulation and the permitting provisions included in the revised RED.[3]

To this end, this report describes the recent developments on security of supply, energy prices and the contribution of renewable energy sources as well as examines the need to further accelerate renewables deployment (section II) and the effect that this Council Regulation had in this context (section III). Finally, the review looks at the scope of the Council Regulation and the new permitting provisions in the revised RED (section IV) before providing conclusions and a recommendation for further action (section V).

## II. Developments on security of energy supply and energy prices; need to accelerate deployment of renewable energy

As regards developments on security of supply in the Union, there has been an overall improvement regarding the security of energy supply in the Union. However, significant risks still remain.

As regards gas supply, imports of Russian gas have decreased in line with the REPowerEU objectives, thanks to diversification efforts and savings. EU underground

[3] Directive (EU) 2018/2001 as amended by Directive (EU) 2023/2413

storage facilities are filled at well over 90% of their capacity as the heating season starts. Nevertheless, Russia's war on Ukraine continues and presents serious threats to the Union's security of energy supply. Due to the significant decrease in Russian pipeline gas imports over the past year, availability of gas supplies to the Union is considerably reduced compared to the pre-crisis situation. With the current level of gas imports, the Union is expected to receive approximately 20 bcm of Russian pipeline imports in 2023, approximately 110 bcm less than in 2021.

Global gas markets remain very tight and are expected to remain as such for some time. As noted by the IEA,[1] global LNG supply grew only modestly in 2022 (4%) and in 2023 (3%) because of "limited liquefaction capacity additions, outages at major export facilities and declining feedgas supply at LNG plants fed by ageing fields". Significant new LNG liquefaction capacity globally (especially in the US and Qatar) is set to come online as of 2025 but "market balances remain precarious in the immediate future".[2] This situation is having negative consequences on gas prices which, despite being much lower than the peak experienced in summer 2022 (when prices spiked above 300 €/MWh) ) remain more than twice as high as pre-crisis levels (ranging between EUR 40/MWh and EUR 50/MWh in early Autumn 2023) with inevitable repercussions on the EU citizens' purchasing power and the competitiveness of European businesses. Market volatility is also a consequence of the market tightness and represents an additional risk for the EU economy. Summer and autumn 2023 saw a number of episodes of significant volatility which show that gas markets are still fragile and may overreact to any unexpected and sudden shock to supply and demand, as was the case following the strike in Australian LNG facilities, the Middle East crisis and the disruption of the Balticconnector. Under these conditions, the fear of scarcity may trigger large reactions with serious repercussions on prices across the EU.

These severe difficulties are exacerbated by a number of additional risks which, if they materialised, would considerably worsen the situation. These risks include: a rebound in Asian LNG demand that reduces the availability of gas on the global gas market,[3][4] extreme weather conditions potentially affecting hydropower storage or nuclear production which would require higher recourse to gas-fired power generation, and further possible gas supply disruptions, including a complete halt of gas imports from Russia, or a disruption of existing critical gas infrastructure. Moreover, armed conflicts affect several regions relevant for EU energy supply, such as Ukraine, Azerbaijan, or Middle East.

Recent examples illustrate the relevance of the risks related to the disruption of energy infrastructure. In September 2022, the NordStream 1 pipeline was damaged by acts of sabotage to such a degree that it currently cannot transport any gas and will not be able to do so in the foreseeable future. In October 2023, the Balticconnector, an important pipeline connecting Finland to Estonia, was disrupted. Following the incident, the Finnish authorities declared an alert level which indicates a significant deterioration of the gas supply situation.[5]

As regards electricity, the level of preparedness ahead of next winter, and thus our security of supply in this sector, is generally considered to be better than last year. Next to more availability of nuclear generation for next winter and higher hydropower storage levels, the addition of new renewable capacities have improved the outlook. Yet, caution is still called for. As a result, those Member States with emergency measures in place will maintain them at least until the end of the winter. Moreover, many Member States have planned to maintain or reinstall energy savings measures as well.

The improved security of supply situation is also reflected in gas and electricity prices. At the peak of the crisis in summer 2022, gas prices reached unprecedented levels above 300 €/MWh, and this had immediate repercussions on electricity prices which spiked well above 400 €/MWh. Since then, gas and electricity prices have fallen significantly, currently fluctuating around 50 €/MWh and 100 €/MWh, respectively, although they remain more than twice as high as pre-crisis level.

The need to achieve Union's energy and climate targets for 2030 and the long-term objective of climate neutrality will require a massive increase in renewable energy capacities across the EU. The Union's response to the energy crisis under the REPowerEU initiative calls for a large speed-up and scale-up in renewable energy in order to accelerate the Union's phasing out of Russian fossil fuels. Therefore, the acceleration in the deployment of renewable capacity plays a fundamental role both in the long-term EU strategy for decarbonisation and in the short-term strategy to address the energy crisis. Renewables have been instrumental in increasing security of supply and keeping energy prices in check during the energy crisis. The main reason was the replacement of natural gas by renewable energy, especially in the power sector, which then impacted overall gas demand. The additional power generation from renewable energy sources in this year replaced ca. 107 TWh of fossil-based electricity generation - equivalent to ca. 10 bcm of gas.

Considering that the Dutch Title Transfer Facility (TTF) price averaged around 120 €/MWh in 2022, the Commission estimates the saving achieved thanks to the deployment of additional renewable capacity at more than EUR 10 billion. Also the International Energy Agency estimated substantial positive impacts of new renewables deployment on energy prices: according to their calculations, the average wholesale electricity prices would have been 8% higher in all European markets in 2022 without the additional installed capacity. Thanks to additional photovoltaic and wind capacity installed, European consumers are expected to save ca. EUR 100 billion from 2021-2023. Low-cost new wind and solar PV installations have displaced an estimated 230 TWh of fossil fuel generation since Russia's invasion of Ukraine[4]. With 70 GW of new renewable capacity projected to come online in 2023, additional savings could be achieved driving further the reduction of Russian gas imports.

[4] How much money are European consumers saving thanks to renewables? – Renewable Energy Market Update - June 2023 – Analysis - IEA

In the renewable heating sector, the sale of heat pumps rose by 39% in 2022[5] compared to 2021, while the solar heat market grew by 12% for a total installed capacity of 40.5 GW.[6] Some of these newly installed appliances will have led to a replacement of gas, coal and oil boilers, however, there is no data available allowing to draw conclusions as regards the extent to which this occurred.

In conclusion, the accelerated rollout of renewables has proven its ability to reduce risks for the Union's security of supply, especially for gas and electricity and has contributed to reduce energy prices for EU citizens and businesses.

Having in mind that significant risks remain, further rapid deployment of renewable energy is necessary to strengthen the Union's resilience even further. New renewable installations are needed to phase out rapidly the remaining Russian gas imports. The quicker the rollout of renewables is carried out, the higher its positive impact on the Union's security of energy supply, energy prices and independence from Russian fossil fuels.

## III. Effects of the Council Regulation

Given the limited period of application of the Council Regulation, the quantification of its effects in terms of acceleration of deployment of renewables is challenging. This is mainly due to the fact that there are no official statistics available on renewable energy deployment for the period since its entry into force since such statistics for 2023 will only be available by the end of 2024. However, some positive developments have been observed.

According to Solar Power Europe, in the three quarters of 2023 following the entry into force of the Regulation, more new solar PV capacities (over 45 GW) have been added across the EU than in the whole 2022. In the first six months of the year Germany added 6.5 GW (+10%) of new solar capacity, while Poland added over 2 GW (+17%) and Belgium added at least 1.2 GW (+19%). Italy installed 2.5 GW of solar in the first six months of 2023 compared to a total of 3 GW for the whole of 2022. Spain is expected to increase its deployment from 4.5 GW in 2022 to 7 GW in 2023[7].

As concerns permitting, available data signals that several Member States have experienced double-digit increases in the volume of permits issued for onshore wind since the entry into force of the Regulation. Wind Europe's overview of the evolution of the capacity showed positive developments in France, which in the first three quarters of 2023 significantly increased the amount of wind capacity that received a permit. Belgium's Flemish Region permitted 300 MW of additional wind capacity in the first eight months of 2023, surpassing thereby the amount of capacity permitted in the whole year of 2022. A record 5.2 GW of new permits for onshore wind were issued in Germany

[5] Market data – European Heat Pump Association (ehpa.org).
[6] Solar Heat Europe – Decarbonising heat with Solar thermal, Market Outlook 2022/2023.
[7] EU fossil generation hits record low as demand falls | Ember (ember-climate.org)

in the first nine months of 2023 and 2.44 GW of new capacity was added.[8] In this regard, Germany has indicated that the volume of permitted wind onshore projects this year is expected to grow by 75% compared to last year.

In terms of renewable power production, not less than 17 Member States saw new record shares over the first six months of the year with Greece and Romania passing 50% for the first time and Denmark and Portugal both breaking 75%. In Portugal, wind and solar accounted for more than half of total generation in both April and May. The Netherlands hit 50% wind and solar for the first time in July, while Germany came close with a record 49% share in the same month[9]. The repowering rate for wind energy in Germany rose to 34%[10].

Additionally, at least in one Member State, grid projects important for increased penetration for renewables and amounting to over 2000 km in total are also benefitting from accelerated permitting.

However, as also signalled by stakeholders, it is difficult to isolate the extent to which the increase observed in renewables deployment and production in this period can be attributed to the effects of the Council Regulation. Other factors, such as the high energy prices, weather or other policies and measures applied by Member States such as support schemes or other type of incentives, have contributed to such increase as well.

Therefore, to get better insights on the effects of this Regulation, the Commission has sought input from the Member States and stakeholders such as representatives of the renewable energy sector as well as environmental associations.

As regards Member States, the Commission sent a letter to all Member States on 14 September 2023 asking to receive written feedback regarding the application of the Regulation. As of, 15 November 2023, 15 Member States had replied to the questionnaire and provided written input. The application of the Council Regulation was also discussed at the last meeting of the Concerted Action on the Renewable Energy Directive (CA-RES) which took place on 18 October 2023, where five Member States provided input on their experience regarding the application of the Council Regulation.

In addition to individual replies, on 17 October of 2023, a joint letter by the 'Friends of Renewables', signed by the Ministers of 11 Member States (Austria, Belgium, Denmark, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal) called for a prolongation of the Council Regulation. The signatories recalled that renewable energy enhances the Union's independence from external energy sources and reduces its vulnerability to geopolitical disruptions and external price shocks, while contributing to the EU's technological and industrial leadership and the creation of jobs. The letter stressed in this context the importance of the Council Regulation to mitigate the impact of

[8] https://www.fachagentur-windenergie.de/aktuelles/detail/kraeftiger-aufwind-in-den-ersten-neun-monaten-2023
[9] EU fossil generation hits record low as demand falls | Ember (ember-climate.org)

Russia's war of aggression against Ukraine on the energy market and called for the prolongation of the Council Regulation beyond 2024 and as long as necessary to further reduce barriers for permitting for renewable energies.

On 26 October, the Commission organised an exchange of views with key stakeholders, including renewable energy industry associations, the transmission network ENTSO-E and environmental NGOs. Furthermore, it received position papers from several stakeholders.

The following sub-sections summarise the input received on the different provisions of the Regulation.

### 1. Article 1: Subject matter and scope

One Member State suggested that the scope of application should be modified to allow Member States to continue to apply the Council Regulation's framework for environmental impact assessments beyond 30 June 2024. It deemed this necessary to provide clarity to projects that had not been completed at the time of the expiration of the Regulation. Furthermore, it proposed to specify the 'third party rights' mentioned in Article 1 as 'third party rights to judicial review'.

Another Member State also provided feedback on this article indicating that this provision had been essential to ensure certainty for the deployment of renewable energy projects. More specifically, it considered it of key importance that renewable energy projects did not have to be concluded within the period of application of this Council Regulation to benefit from the measures regulated therein. This Member State also considered that the period of application of the Regulation was too short because the permitting starting point for many projects would not occur within its time frame, in particular the projects for the development of grid infrastructure required to integrate renewables into the electricity system.

### 2. Article 2: Definitions

The Commission has received very limited feedback regarding the definitions. One stakeholder (Solar Heat Europe) criticised that in several cases the definition of solar energy equipment had been interpreted as referring to solar photovoltaics only, while in fact it expressly refers to both solar thermal and solar photovoltaic equipment.

### 3. Article 3: Overriding Public Interest

From the feedback received regarding the application of this article, the Commission notes that there is some confusion among Member States regarding the scope and functioning of the overriding public interest presumption included in Article 3, although the Council Regulation is directly applicable and, therefore, this presumption can be

relied upon by project developers in national permitting procedures and court litigation without the need for further national legislation. Article 3 however allows Member States to adopt national legislation to restrict the application of this presumption to certain types of technology or certain areas of their territory, in accordance with the priorities set in their integrated national energy and climate plans. If Member States make use of these exceptions, this presumption will only be applicable for certain technologies or territories.

14 Member States gave feedback regarding Article 3. Regarding the scope of the presumption, the Commission observes a tendency by Member States to limit the application of this presumption to certain technologies (namely wind and solar, but also infrastructure projects), and to a more limited extent to specific areas. Solar Power Europe reported that one Member State had restricted the application of the overriding public interest presumption to public projects only, while another one left potential exemptions to be defined by decree. On the other hand, one Member State has expanded the scope of this presumption so that renewable projects are in the overriding public interest in relation to architectural heritage.

Member States applying this presumption generally reported positive results, considering it a useful tool for accelerating the deployment of renewable energy sources or infrastructure or a risk reduction factor.

One Member State reported positive effects in individual cases (namely for wind, solar PV, and grid projects), resulting from the application of this presumption both by permitting authorities and courts. Another Member State highlighted the added value of the provision, which helped to make the relationship between different public entities in the planning process more efficient. Two other Member States indicated that they did not need to apply this presumption to any specific project yet (among other reasons due to the fact that many projects had not yet reached the permitting stage) but welcomed its potential to accelerate permitting for specific projects and expressed interest to benefit from it in the near future. On the other hand, one Member State believed that their current wind and solar projects were moving forward sufficiently fast and therefore this provision was not needed.

However, two Member States indicated challenges to unfold the full potential of the overriding public interest presumption. In particular, the fulfilment of another condition in the Habitats and Birds Directives, requiring the absence of other alternative solutions, is perceived as a challenge which limits the practical usefulness of the overriding public interest presumption One Member State therefore called for the introduction of targeted modifications to Article 3 to provide for flexibility to comply with the other conditions for the derogation criteria in the relevant environmental Directive, in particular the obligation to show that there are no other alternative solutions. The requirement to outline compensatory measures was also perceived by one Member States as a limiting factor of the usefulness of the overriding public interest provision.

Wind Europe, Solar Power Europe and EREF provided feedback regarding the application of the overriding public interest presumption. These stakeholders expressed concerns that most Member States did not apply or only partially applied an overriding public interest status for renewable projects or that permitting authorities sometimes disregard the presumption and prioritised other interests. However, they also provided positive examples where this had been used to some extent and specific cases where it had helped to move some projects forward. Wind Europe indicated that there was generally appetite to make more use of this provision, but that there was uncertainty as regards its scope and how it should be implemented in practice.

EU DSO Entity referred to the high potential of the overriding public interest presumption to help alleviate bottlenecks faced by distribution projects and also highlighted the symbolic value of Article 3. They stated, however, that in practice the Council Regulation had hardly had practical impact on distribution grid projects. EU DSO Entity recommended prolonging the Regulation and called upon the Commission to ensure actual implementation.

Two environmental stakeholders (BirdLife and Climate Active Network, "CAN Europe") shared their general remarks about this provision. They expressed caution about the use of the overriding public interest narrative, which in practice may loosen the standard for environmental protection by facilitating the permitting for highly problematic projects while not bringing any additional value for renewable projects which already took appropriate measures and safeguards. CAN Europe claimed that in one Member State, the provision on the presumption of overriding public interest had inspired the legislator to exempt nine hydropower plants from the requirement to carry out an environmental impact assessment, despite their significant environmental impacts while also declaring them as being of overriding public interest.

Overall, it can be concluded that the presumption contained in Article 3 is generally perceived as a useful tool to accelerate the deployment of renewable energy sources (mainly wind and solar) and infrastructure projects in the Member States where it has been applied. This relates not only to positive impacts observed on the ground for specific projects, but also to the importance that this presumption attributes to renewable energy deployment more generally, also for other purposes beyond the specific derogations foreseen in the environmental directives referred to in Article 3. Regarding the concerns expressed about an expansive application of this provision and the impact this may have on a high level of environmental protection, the Commission recalls that the overriding public interest presumption in favour of renewables is rebuttable, which means that permitting authorities and courts can disapply it where there is clear evidence that those projects have major adverse effects on the environment which cannot be mitigated or compensated for. Moreover, Member States may limit its application to specific technologies and areas.

In addition, there could be scope for an increased application of Article 3 in the near future when more renewable energy projects reach the permitting phase after the expiry of the Regulation. Moreover, the usefulness of this provision seems to be limited by

factors such as a restrictive interpretation of other conditions to benefit from the derogations, e.g. the assessment whether alternative solutions exist.

## 4. Article 4: Acceleration of the permit-granting process for the installation of solar energy equipment

12 Member States provided specific feedback regarding the application of Article 4 or the installation of small solar equipment more generally. Several of those Member States reported a strong increase in solar installations in recent times, although without specifically attributing such increase to the Council Regulation but rather to different factors such as popular national support schemes or the evolution of energy price.

Most of the Member States reacting to this point indicated that they applied even more ambitious permitting rules to small solar installations than those included in Article 4. More particularly, seven Member States indicated that their national legislation did not require specific permits for small solar installations on artificial structures under certain conditions or for solar equipment below a certain capacity threshold or even in general. Two Member States indicated that their national legislation prior to the entry into force of the Regulation already did not require an environmental impact assessment for solar energy equipment projects. Consequently, the positive effects of Article 4 appear rather limited in these Member States which have adopted more ambitious national legislation.

One Member State stated that it introduced changes in its national permitting system as a result of the Council Regulation. In particular, it introduced tacit approval within one month following the submission of an application for the issuance of a building permit for the installation of solar facilities for the production of electricity from solar energy for self-consumption purposes with a total installed capacity of 20-50 kW on structured buildings and structures in urbanised areas, including the roof and facade structures and their adjacent land properties.

Solar Power Europe and Solar Heat Europe provided feedback regarding the effects of Article 4. Solar Power Europe indicated that Article 4 was generally well implemented although some restrictions were observed. For instance, in some cases, Member States interpreted the notion of artificial structures too narrowly (limiting it to rooftops only), which calls for a clarification of the notion of "artificial structures". Similarly, most Member States were not ambitious enough regarding simplification of grid connections (since they applied the lower threshold of 10.8 kW and not 50 kW). However, they provided some positive examples such as the case of one Member State where the use of a simplified model was envisaged for the installation of rooftop photovoltaics up to 200kW capacity. Solar Heat Europe indicated that its members had not experienced any noticeable change in the permitting procedures for solar heat installations during the last year.

From the above, the Commission observes that, while the installation of solar equipment is increasing, it is difficult to attribute the effects of such increase specifically to the Council Regulation since other factors (such as support schemes or high energy prices)

played an important role. The Commission welcomes that at least one Member State reported to have recently introduced changes to streamline the permitting of solar installations and that several Member States have introduced in their national legislation provisions that are even more ambitious than those of Article 4, such as no permit requirement for small solar installations under certain conditions and that they can apply directly for grid connection. Article 4 is still relevant for these Member States since it introduces maximum deadlines also for the connection to the grid of these installations (i.e. the maximum deadlines of one or three months also cover the grid connection and provides certainty to applicants by virtue of tacit approval provision for some installations). The Commission notes the issue of grid connections as an area for further improvement.

## 5. Article 5: Repowering of renewable energy power plants

11 Member States provided feedback regarding the application of Article 5 and the permit-granting process for repowering of renewable energy plants more generally.

Several Member States indicated that they did not yet have significant experience with repowering due to the relatively recent installation of most renewable energy plants, or that they did not have relevant data on this. Only one Member State reported an increase in applications mostly for the repowering of solar installations, while other Member States indicated that they could not detect an increase in repowering under the Council Regulation. Several Member States explained that they had introduced similar permitting procedures as those laid down in Article 5.

One Member State indicated that, usually, the permit granting process for repowering with increase in capacity did not exceed six months for solar projects, although in cases where an environmental impact assessment should be carried out (this may be necessary for wind power plants), the procedure might be longer. The deadline laid down in Article 5(1) covers all relevant permits and steps of the permit-granting process, including environmental impacts assessments. Therefore, this deadline seems to be fulfilled in this Member State for those technologies that do not require an environmental impact assessment, although further adaptations may be required to comply with such deadline when an environmental impact assessment is required. Moreover, in this Member State a permit from the relevant Ministry is not required for the repowering of renewable energy power plants if the type of electricity generation and the total permitted electricity generation capacity do not change as a result of the repowering.

A few Member States reported ambitious permitting rules for the repowering of renewable energy projects. One of them has adopted a national law in September 2023 with measures dealing with the same topics covered in Article 5 but with an even more ambitious scope. In particular, such law introduces a one-month deadline for issuing an opinion on grid connection in the case of modernisation of a site when the total installed capacity is expected to increase up to 50% compared to the existing capacity, which is more ambitious than Article 5(3) both in terms of deadline and increase in capacity.

Moreover, in line with Article 5(4), this law does not require to apply the environmental procedures when the modernisation of the site does not lead to the use of additional land and such modernisation complies with the environmental protection measures imposed to the original site.

Another Member State also applies ambitious permitting rules for the repowering of renewable energy projects. For instance, with regard to grid connection, the installed power of the repowered installation may be increased by up to a limit of 20% of the connection power, without requiring an increase in the capacity of the connection.

Wind Europe expressed concerns that very few Member States applied a fast-track procedure for the repowering of projects. It claimed that there was only one exception having the most ambitious regime in place, with a few other Member States also having rules to this aim to some extent in place. Wind Europe indicated that, overall, the Regulation had had so far limited effects to accelerate the repowering of projects. Wind Europe noted that the rules included in Article 5 could be even more ambitious. For instance, the 15% threshold foreseen in Article 5(3) was perceived as too low compared to the higher output of new wind turbines.

From the above, the Commission observes that the situation concerning the repowering of renewable energy projects is quite mixed. While in several Member States there is limited scope for repowering of projects given the recent installation of renewable energy projects, in others there is much more significant and growing unused potential to achieve bigger volumes of renewables deployment by promoting and facilitating the repowering of existing plants. The repowering of renewable energy power plants presents multiple benefits as it enables the continued use of sites with significant renewable energy potential, it benefits from the existing grid connection, a likely higher degree of public acceptance and knowledge of environmental impacts.

The Commission welcomes that some Member States with a high potential for repowering of renewable energy projects have introduced measures to simplify their permitting rules, and that other Member States have adopted simplification measures as a result of this Council Regulation, to some extent even more ambitious than those included in Article 5. However, the Commission shares the concerns that the Member States with the biggest repowering potential should accelerate efforts to further shorten and simplify the related permitting procedures.

## 6. Article 6: Acceleration of the permit-granting process of renewable energy projects and for related grid infrastructure which is necessary to integrate renewables into the system

The application of this provision is optional for Member States. 14 Member States provided feedback regarding this article. Of these, three reported to have applied the provision.

Two Member States stated that they were currently applying Article 6 to identify specific renewables or grid infrastructure areas where projects can be exempted from dedicated environmental impact assessment and species protection assessments.

One Member State indicated that it had implemented this provision to identify specific areas for wind energy onshore and offshore areas as well as for electricity grids above 110 kW. It reported very positive impacts so far on the acceleration of grid and renewables deployment. In particular, it already observed that the first permits for wind power plants had been granted under the Council Regulation and that the number of successful wind power projects was rising. It expects that the Council Regulation and in particular Article 6 would help to achieve its ambitious expansion objective of around 10 GW onshore wind per year. Not prolonging the Council Regulation would, according to this Member State, risk resulting in major disruptions in the pace of deployment of renewables, claiming that the installation of around 41 GW of wind power onshore could be delayed and take approximately two years longer or could even be halted altogether without a prolongation of the Regulation.

Regarding grids, four German transmission operators indicated that the Council Regulation had been a substantial accelerating factor of formal planning and authorisation processes for upgrading and extending electricity grids in Germany and advocated for a prolongation of the Regulation until spring 2025 to ensure a smooth transition until the relevant provisions of the amending Directive were transposed into national law. Also, ENTSO-E provided positive feedback regarding the application of Article 6 in Germany and reported an acceleration potential of 7 months on average for the majority of grid projects benefiting from Article 6 (i.e. those submitted after the entry into force of Regulation). Regarding offshore projects, ENTSO-E expects an even greater acceleration potential of up to three years. ENTSO-E indicated that TSOs are in regular contact with national ministries regarding the implementation of the new Article 15e of the revised RED related to infrastructure areas. However, they have serious doubts whether a transposition of this provision was feasible by July 2024 and consequently called for a prolongation of the Council Regulation to ensure a smooth transition until Article 15e of the revised RED would be fully transposed. Germany stated that a prolongation of Article 6 would allow to shorten the permitting process of many grid projects by approximately 12 months, for some projects even by up to 36 months.

Another Member State also decided to make use of Article 6, although renewable energy projects were still at the planning and not yet at the permitting phase. Thus, it considered that Article 6 had not yet reached its full effect but had the potential to do in the near future.

Most Member States that provided feedback reported that they did not make use of the option included in Article 6. One of them indicated that it was still considering its application given that national legislation was necessary to further develop this provision. Another Member State stated that its national legislation already included ambitious measures with clear rules and criteria to delimit which renewable energy projects had to undergo a screening or an environmental impact assessment. Two other Member States

indicated that, while they had not applied Article 6, they were currently working on ways to further streamline the environmental assessments related to renewables permitting. Another Member State stated that they had not applied Article 6 due to their national legislative procedure for implementing "may clauses" included in EU Regulations, which required the adoption of national legislation to develop such provisions. Moreover, this Member State underlined that the exemptions and new conditions foreseen in Article 6 mainly focused on species protection, whereas the delays in the permitting process of renewables installations (especially wind large power plants) and grid developments were mostly related to habitat protection. Nevertheless, it acknowledged Article 6 as a positive symbolic measure for speeding up permitting procedures for renewables and a signal to solve gridlocks. ENTSO-E stated in this regard that there would be a political push to apply this provision in relation to two offshore infrastructure projects.

Some stakeholders (CAN Europe, BirdLife) expressed general concerns regarding the application of exemptions from certain assessments under EU environmental legislation and about potential biodiversity impacts due to acceleration of renewable energy deployment. CAN Europe mentioned that the depth and quality of Strategic Environmental Assessments varied across different regions and might not be sufficiently detailed in order to ensure a comparable standard of protection. Nevertheless, CAN Europe noted that in one Member State, the application of Article 6 had provided a solution for a population-based approach to species protection by establishing a species protection fund whose resources were entrusted for specific purposes. BirdLife raised concerns with regards to the diminished transparency for NGOs and the reduced engagement of the local community in the planning process.

From the above, it can be concluded that Article 6 has been a useful tool to accelerate the deployment of renewable energy and related infrastructure projects in the Member States that have opted to make use of this provision. In the specific case of Germany, which has made use of this provision, there appear to be tangible positive results both in terms of number of successful renewable and grid projects going ahead and acceleration potential and shortening of permitting time. The Commission observes that this provision is also positively perceived among those Member States that have not made use of this provision or that have decided to do so but are at an earlier stage due to its symbolic value and as a risk reduction factor.

As regards the concerns expressed about the exemptions from assessments under EU environmental legislation and the impact on biodiversity protection, the Commission recalls that Article 6 imposes specific conditions to exempt projects from environmental assessments, aiming to ensure a balance between the need to deploy renewable energy projects at a much faster speed and the need to ensure protection of environmentally sensitive areas.

## 7. Article 7: Acceleration of the deployment of heat pumps

12 Member States provided feedback regarding the application of this article and the permit-granting process for the installation of heat pumps more generally. Two Member States stated that they did not have recent data regarding heat pumps, so it was not possible to evaluate the impact of the Regulation on this technology.

Similarly as for small solar installations, a few Member States indicated that they did not require permits for heat pumps under certain conditions (usually for small heat pumps, such as up to 1 $m^3$, 500 kW or up to 30 kW in private houses). One Member State stated that air source heat pumps did not generally require an application, with very few exceptions. Therefore, the legislation in these countries is more ambitious than Article 7 of the Council Regulation. Other Member States mentioned that their national legislation provided planning exemptions for the installation of heat pumps or exemption from environmental impact assessment.

One Member State raised concerns about the requirement to grant permits for heat pumps up to 50 MW within one month, explaining that such short deadline may raise technical and safety concerns for the electricity grid. The Commission notes in this regard that the Council Regulation introduces flexibility for Member States regarding the application of this deadline. Member States may exclude certain areas or structures from the provisions of this article, including for safety reasons.

A few Member States reported a recent increase in installations of heat pumps but were not certain if this increase was due to the effects of the Council Regulation. Instead, they attributed it to other factors such as the Russian war on Ukraine or national subsidies. Several Member States specified that the Council Regulation did not affect the development due to lacking national permitting requirements for certain heat pumps.

The European Heat Pump association (EHPA) provided detailed feedback regarding the status of permitting procedures applicable to heat pumps and the effects of Article 7. For most heat pumps (excluding geothermal) permits were usually not required, while for geothermal heat pumps, permits were usually necessary. However, for heat pumps up to 25 kW thermal capacity, it was possible to grant permits within one month.

Given that for most small-scale heat pumps a permit is usually not required (with the exception of geothermal), the impact of Article 7 appears to be limited. However, EHPA still viewed this provision positively since the introduction of maximum deadline served to provide legal certainty. In order to increase the usefulness of this provision, EHPA proposed some targeted modifications, i.e. to reduce the permitting time to one month for residential geothermal heat pumps up to 25 kW thermal capacity, coupled with tacit approval and to use thermal capacity instead of electrical capacity (except when specifically referring to grid connection, where electrical capacity might be more appropriate).

From the above, it can be concluded that, while permitting does not seem to be the main bottleneck for the installation of heat pumps, the Council Regulation and more particularly the introduction of clear maximum deadlines has positively contributed to ensure legal certainty for the installation of this type of equipment, in particular for

geothermal and larger heat pumps. The Commission welcomes that in several Member States the national legislation in place seems to be even more ambitious than the content of Article 7 since no permits are required for small heat pumps.

### 8. Article 8: Timelines for the permit-granting process for the installation of solar energy equipment, the repowering of renewable energy power plants and for the deployment of heat pump

No feedback was received from Member States or stakeholders on this article, which stipulates that the time to build or repower related necessary grid infrastructure and the time for certain administrative stages necessary for significant upgrades to the grid are not included in the timelines for permit granting.

## IV. Scope of the Emergency Regulation and of the new permitting provisions in the revised RED

As mentioned above, the revised RED includes provisions to streamline permitting procedures applicable to renewable energy projects, including rules on the same or similar topics as those covered by the Council Regulation. While several of these rules cover the same topics as those included in the Regulation, there are some important differences between the two texts:

- **Article 16f** regulates the overriding public interest presumption, which is also regulated in Article 3 of the Regulation. However, **Article 3** of the Regulation contains a second paragraph which calls to give priority to the projects that are recognised as being of overriding public interest whenever a balancing of legal interests is required in the individual case.

- **Article 16d** contains specific rules for the permit-granting process for the installation of solar energy equipment, which are also covered in **Article 4** of the Council Regulation. The wording of the two provisions is very similar although Article 16d, paragraph 2 of the revised RED includes a higher threshold of 100 kW (as opposed to 50 kW), which allows to increase the number of installations that fall under the very short permitting procedure of one month.

- **Article 16c (and also Article 16b)** contain rules applicable to the permit-granting process for the repowering of renewable energy plants outside renewable acceleration areas, which is also covered by **Article 5** of the Regulation. The main difference between the texts is that Article 5 of the Regulation contains a short six-months deadline for all permits applicable to the repowering of renewable energy projects, while the revised RED contains a deadline of one year for projects outside renewable acceleration areas (in renewable acceleration areas, Article 16a also foresees a six-month deadline, but the designation of those areas have a longer implementation deadline of 27 months).
- **Article 16e** contains rules on the permit-granting process for heat pumps which are also covered in **Article 7** of the Regulation. The wording of the two provisions is very

similar although the revised RED contains additional precisions regarding deadlines for grid connections (two-weeks-deadline for connections to the transmission or distribution grid).

- **Article 15c** imposes an obligation on Member States to designate renewable acceleration areas for at least one renewable technology. **Article 15e** introduces the possibility for Member States to designate areas for grid and storage infrastructure necessary to integrate renewable energy into the electricity system. In these areas, targeted exemptions to environmental assessment may apply, subject to conditions. **Article 6** of the Regulation introduces an optional provision which allows Member States to identify specific areas where they can exempt projects from environmental impact assessment and species protection assessments. While the provisions in the revised RED and Article 6 of the Regulation relate to the identification of specific areas for a faster deployment of renewables, the content of those provisions differ significantly:
    - One of the main differences is that the revised RED foresees a "screening" procedure which could result in the need to carry out a dedicated environmental impact assessment, while Article 6 of the Regulation directly foresees the application of mitigation or compensation measures.
    - Under Article 6 of the Regulation, projects can also be exempted from the species protection assessments under Article 12(1) of Directive 92/43/EEC and under Article 5 of Directive 2009/147/EC. In the revised RED, these exemptions are only foreseen for grid and storage projects in dedicated areas, not for renewable energy projects.
    - Article 6 of the Regulation does not foresee an exemption from Article 6(3) of Directive 92/43/EEC. Such an exemption is possible in the revised RED for all projects (for renewable energy installations, grid and storage).
- **Article 16(8)** clarifies which steps are not included in the deadlines of the permit-granting process, i.e. that the steps do not count as part of the timelines set in the directive. This is similar to **Article 8** of the Regulation. The main difference is that Article 16(8) of the revised RED contains an additional point to clarify that the time for any judicial appeals and remedies, other proceedings before a court or tribunal, and alternative dispute resolution mechanisms, including complaint procedures and non-judicial appeals and remedies are not included in the duration of the permit-granting procedure, except if it coincides with other administrative stages of the permit-granting procedure.

Several of these permitting-related rules from the revised RED (i.e. all permitting rules except those related to renewables acceleration areas) have to be transposed by 1 July 2024, immediately after the expiry of the validity of the Regulation. This is in particular the case of Articles 15e (optional), 16(8), 16c, 16d, 16f. The remaining permitting provisions (i.e. those related to renewable acceleration areas) have a transposition date 18 months after entry into force of the revised RED. Moreover, article 15c, which introduces

the obligation to designate renewable acceleration areas, has an implementation deadline of 27 months after the entry into force of the Council Regulation.

Therefore, some of the measures introduced by the Regulation were included by the revised RED. However, the Directive did not mirror some of the more exceptional measures contained in Regulation (EU) 2022/2577, thus delimiting their exceptional and temporary nature.

Overall, the biggest substantive differences between the provisions included in the revised RED and the Council Regulation are those included in Article 3(2) on overriding public interest, the maximum deadline for repowering included in Article 5(1) and Article 6 of the Council Regulation. From the feedback received from Member States and stakeholders, these provisions appear to bring about a substantial acceleration to the permitting of renewable energy and related grid projects in those Member States that have applied these provisions. It is appropriate to prolong these selected emergency measures which have the greatest potential for renewables acceleration, are immediately and directly applicable across the Union and are different from the ones included in the revised RED and can therefore complement it. However, to ensure consistency with the rules laid down in the revised RED, the short deadline of six months for permitting for repowering should, after 30 June 2024 only, apply to repowering of renewable energy projects located in a dedicated renewable area pursuant to Article 6 of this Regulation.

## V. Conclusion on prolongation of the measure and recommendation

In view of the above, the Commission considers that the conditions for a prolongation of this Council Regulation are met.

As explained in section II, the Union's security of supply has substantially improved compared to last winter and prices for gas and electricity have dropped. This results to a very large extent from the swift actions adopted at Union level, notably the emergency measures adopted on the basis of Article 122 TFEU, including this Council Regulation and the higher penetration of renewables resulting from it. However, serious risks still exist and in such a context of continuous volatility of energy prices and security of supply concerns, significant additional efforts are still needed in terms of renewable energy deployment in order to further stabilise the situation.

While it is difficult to precisely quantify the impact of this Council Regulation given its limited period of application and lack of official statistics, section III shows that the targeted measures included in this Council Regulation have positively contributed to accelerate the pace of deployment of renewable energy sources. They have done so in two main ways: (i) by streamlining the procedures applicable to specific permit-granting processes, and (ii) by raising political awareness regarding the importance of accelerating permitting for renewables, as confirmed by several Member States and stakeholders.

The Commission observes a positive impact regarding all areas covered by the Council Regulation, although sometimes it is difficult to attribute specific effects to the Regulation. Some measures of the Regulation (i.e. Articles 4 and 7) have had a more

limited impact partially because Member States already apply more ambitious permitting rules for the installation of small solar installations and heat pumps, while others (in particular Articles 3 and 6) have led to significant concrete and tangible simplification effects in the Member States which have applied them.

Many Member States and five consulted stakeholders (ENTSO-E, European Renewable Energy Federation, Solar Heat Europe, Solar Power Europe, and Wind Europe) have voiced strong calls for a prolongation of the Regulation or specific articles. Some also requested the introduction of targeted modifications.

An important aspect to take into account for the decision on a prolongation of the Council Regulation is the fact that the revised RED contains several measures to streamline permitting procedures which to some extent overlap with those included in the Council Regulation. More specifically, Articles 3(1), 4, 5(2), 5(3) and 5(4) and 7 of the Council Regulation are almost identically replicated in Articles 16c, 16d and 16e of the revised RED, with some small modifications, explained in section IV. Moreover, the upcoming end of the mandate of the European Parliament and the time usually required to adopt legislation under the ordinary legislative procedure resulted in such procedure not being an appropriate option to have the temporary measures in place in time.

As mentioned above, the biggest substantive differences between the provisions included in the revised RED and the Council Regulation are those included in Articles 3(2), 5(1) and 6 of the Council Regulation. From the feedback received from Member States and stakeholders, these provisions appear to bring about an important acceleration to the permitting of renewable energy and related grid projects in those Member States that have applied these provisions or have a significant potential to do so in the near future. It is therefore appropriate to prolong these specific provisions in a targeted manner. In view of the challenges raised by some Member States regarding the practical application of Article 3, additional measures may be justified to exploit the full benefits of this prolonged provision.

The prolongation of Articles 3 (2), 5(1) and 6 of the Council Regulation would require the prolongation of Article 1, which defines its subject matter and scope of the Regulation, and Article 2(1), which defines ‘permit-granting process’, a term that is used in Article 3(2).

The Commission therefore propose a targeted prolongation of Articles 1, 2(1), 3(2), 5(1) and 6 of the Council Regulation, including targeted modifications to these provisions where appropriate.