



# CAN EUROPE POSITION ON THE REVISED RENEWABLE ENERGY DIRECTIVE AND ELECTRICITY MARKET DESIGN

February 2017

*Climate Action Network (CAN) Europe is Europe's largest coalition working on climate and energy issues. With over 130 member organisations in more than 30 European countries - representing over 44 million citizens - CAN Europe works to prevent dangerous climate change and promote sustainable climate and energy policy in Europe.*

## INTRODUCTION

The 2009 renewable energy directive has had a critical impact on increasing the share of renewable energy and therefore also on cost reductions of renewable energy in the European Union<sup>1</sup>. Among the determining success factors were the establishment and implementation of **national binding targets**, as well as the provision of a **stable, reliable and predictable overall framework** for renewable energy development.

At the moment, rules governing the electricity market are out-dated and fit large, old-fashioned, fossil fuel and nuclear power stations. They do not reflect the fact that variable renewable energy generation plays an increasing role and that rules need to enable customers to self-generate, self-consume, and receive full and fair payment for excess electricity fed into the grid, store energy and engage in demand-side management. Therefore, next to the provisions of the revised renewable energy directive itself, what will also 'make or break' the development of renewable energy in the European Union for the decade(s) to come will be the design of the (electricity) market, which should be **'fit for renewables'** – *not the other way round*.

The European Commission's proposals for a revised renewable energy directive and for a revised electricity market design (both a revised electricity directive and regulation), like the rest of the legislative proposals included in the 'Clean Energy for All' package published on 30 November 2016, are **not consistent with the Paris Agreement**, which requires the immediate overhaul of EU climate and energy policies.

---

1 Key lessons from the 2009 renewable energy directive are included in the NGO report *'Effective Governance for the EU 2030 Renewable Energy Target'* (available at <http://www.caneurope.org/docman/position-papers-and-research/renewable-energy-1/2643-effective-governance-for-the-eu-2030-renewable-energy-target-ngo-policy-recommendations?path=position-papers-and-research/renewable-energy-1>).

In summary, CAN Europe calls on the European Parliament and Council to improve the proposed legislation by taking into account the following key political demands:

- Increase the overall EU-level target for 2030 to at least 45% renewable energy by 2030, which is the minimum that would be consistent with the Paris Agreement (article 3 of the revised renewable energy directive)
- Re-introduce binding national targets (article 3 of the revised renewable energy directive)
- Compel Member States to adopt national support schemes for renewable energy or at least maintain the possibility for Member States to enact such schemes (article 4 of the revised renewable energy directive)
- Secure priority dispatch for *new* renewable energy installations beyond 2020 without capping their deployment (article 11 of the proposal for a revised electricity regulation)
- As far as capacity mechanisms are concerned, improve the proposal by compelling Member States to *prioritise* the most sustainable options, by lowering the proposed emissions performance standard to 350gCO<sub>2</sub>/kWh and having it *immediately* apply not only to *new* power plants, but also to *existing* ones; by requiring power plants participating in capacity mechanisms to comply with the European air quality standards including the Industrial Emissions Directive's (IED) Best available techniques Reference documents (BREFs) and to have a minimum technical flexibility; by granting support only to the most energy efficient installations, with minimum efficiency thresholds (articles 18-23 of the proposal for a revised electricity regulation)
- Better take into account the specificities of renewable energy communities, namely by increasing the threshold for the size of projects that energy communities can benefit from (article 22(e) of the revised renewable energy directive)
- Radically improve the Commission proposal to ensure the sustainable use of bioenergy (article 26-28 of the revised renewable energy directive) – at the very least, the use of roundwood and whole trees, as well as food and feed crops for electricity and heating should not be supported

## KEY POLITICAL DEMANDS

- **Overall EU-level target for 2030**

The 'at least 27%' EU-level target by 2030 included in article 3 of the proposal for a revised renewable energy directive (RED) is based on the target put forward by the European Council *before* the successful outcome of the Paris climate summit and should therefore be increased. It is also made easier by the (welcome) decision to increase the energy efficiency target to 30%.

Moreover, 27% is barely above what would happen under a business as usual scenario<sup>2</sup> and would imply a halving in the rate of deployment (and hence the jobs in supply chains). The proposed target lies below the 30% target called for by the European Parliament and falls clearly short of the potential contribution of at least 45% renewable energy by 2030<sup>3</sup>, which CAN Europe believes is the minimum that would be consistent with the Paris Agreement.

Finally, it is of paramount importance that revision provisions are introduced in all legislative files of the 2030 climate and energy framework, including the legislation related to renewable energy. The revision clauses should foresee the need for adjusting the EU's 2030 policy framework as a result of the UNFCCC's facilitative dialogue in 2018 and following the submission of the EU's revised Nationally Determined Contribution (NDC) under the Paris Agreement, ensuring that the target(s) and measures reflect the progression contained in the revised NDC.

---

<sup>2</sup> If no new policies are put in place, projections indicate a renewable share of 24.3% of energy consumption in 2030.

<sup>3</sup> European Renewable Energy Council, 45% by 2030 - Towards a truly sustainable energy system in the EU, (2011).

- **Binding national targets**

For delivering on the 2030 EU-level target, overall binding national targets should be the preferred option. Indeed, given the importance of capital costs for renewable energy, clear and binding targets and trajectories will provide better visibility and certainty for investors. Binding national targets thus act as a de-risking lever and will make the overall energy transition cheaper. Binding national targets should therefore be re-introduced in article 3 of the revised RED. A basis for setting the level of those targets for each Member State can be found in table 14, page 172 of the Impact Assessment accompanying the proposal for a revised RED.

In the possible absence of binding national targets, Member States should only be allowed to include, in the integrated National Energy and Climate Plans (NECPs) foreseen by the proposed regulation on the Governance of the Energy Union, a contribution to the overall renewable energy target that is *at least equal to the share provided by the aforementioned table*.

The achievement of the existing 2020 national renewable energy targets should be taken into account when setting Member States' targets for 2030. Therefore, CAN Europe fully supports the Commission's proposal which foresees that the existing 2020 national targets should be seen as a 'baseline' below which Member States cannot go from 2021 onwards (article 3(3) of the proposal for a revised RED). To make this provision meaningful, the option for Member States, if they do not maintain this baseline share, to make a financial contribution to a fund managed by the Commission for investments into renewable energy capacity in order to cover the gap, should be deleted (article 27(4) of the proposed governance regulation).

The proposal for a regulation on the Governance of the Energy Union contains provisions on the 'gap-avoider/filler' issue. Next to reinforcing such provisions (see the CAN Europe position paper on the governance of the Energy Union), it will be important to ensure that the negotiations on the revised RED and governance are conducted in parallel and consistent with each other.

- **National support schemes**

National support schemes adopted by Member States have been instrumental in the substantial deployment of renewable energy in recent years. Such schemes will continue to play an important role for a long time, to ensure the required investments for the transition to a fully renewable and efficient energy system, especially in the absence of a meaningful carbon price and with continuous subsidising of fossil fuels and nuclear power.

Article 4 of the proposal for a revised RED lays down only some very basic provisions for designing national support schemes. In particular, the reference to the 'state aid rules' is a step back from the current directive. This provision will make it more difficult than at present for Member States to support renewable energy. They will also increase uncertainty amongst investors as to whether DG Competition will judge support schemes acceptable or not, based on its interpretation of its state aid guidelines and various treaty articles. There should be clear and explicit rules on what constitutes acceptable support schemes in the RED itself. This would give the Commission less discretionary powers and make it less sensitive to political pressure from Member States in individual cases.

The revised RED should not only maintain the *possibility* for Member States to enact national support schemes, but also actually *compel* Member States to adopt such schemes. Indeed, renewable energy development should continue to receive support, in ways that are tailored to local conditions and needs - including differentiation between different renewable energy at varying maturity levels, cost structures and functionalities in the energy system. Referring to 'technology neutrality' without the necessary nuances should therefore be avoided.

Article 5 of the proposal for a revised RED establishes a gradual and partial opening of support schemes to cross-border participation in the electricity sector. While it could be an incentive to increase renewable energy capacity at home or lead to lower costs, this provision will in some cases lead to a permanent flow of support from one Member State to another one, where the paying Member States has no benefits in the form of employment, technical development or income.

This unbalanced situation risks leading to local opposition against renewable energy, and against authorities dictating this outflow of money from the paying Member State. We therefore call for this article to be deleted, thus allowing the full benefits of the renewable energy potential to remain local, which is important to foster public support for renewable energy.

It would also be crucial to articulate the different forms of regional cooperation and include particularly micro-level cooperation. While regional cooperation is currently limited to cooperation between two or more Member States, the revised RED must enable neighbouring regions to develop efficient and smart regional infrastructure across national borders.

Article 6 on the stability of financial support contains provisions preventing negative retroactive changes, which are very welcome. Indeed, the fact that recently investments in renewable energy have been shrinking in the European Union is largely due to retroactive changes to support schemes introduced by some Member States.

- **Priority access and dispatch**

Article 16 of the current RED, which guarantees priority access and dispatch for renewable energy sources, is repealed and replaced by article 11 of the proposal for a revised electricity regulation. This highly controversial proposal essentially removes the right for Member States to grant priority dispatch for *new* renewable energy projects from 2021, with very limited exemptions (for very small installations and with a limit of total capacity of generating installations subject to priority dispatch of 15 % of the total installed generating capacity in any Member State). As priority dispatch (and access) is of particular importance to smaller installations and thus community energy, eliminating this provision could seriously undermine public acceptance for the energy transition.

Even though renewable energy is in many cases already competitive compared to new fossil fuel generation and nuclear, there is still no level-playing field because the real environmental and health costs of fossil fuels are not sufficiently reflected in the market price, which is further distorted by significant public fossil fuel subsidies, and because much of the existing fossil fuel capacity has long been depreciated.

As long as there are no binding targets to phase out fossil power plants, renewable energy needs clear and long-term investment security. Otherwise, during sunny or windy days with relatively low electricity demand, renewable units would be taken offline first – due to the relative ease of switching off a wind turbine compared to a coal or nuclear plant – while polluting plants would be left running. This would lead to an absurd situation where renewable installations get paid to be curtailed – in other words, their output gets reduced from what they could otherwise produce - while old fossil power plants are kept going through capacity mechanisms (see below). Even with renewable energy producers getting proper financial compensation for curtailment, this would not make any sense in the context of the commitments made under the Paris Agreement. This would also be a step back on the European Union's proclaimed leadership in renewable energy and undermine the transition to a fully renewable energy system.

These provisions should therefore be amended to secure priority dispatch for *new* renewable energy installations beyond 2020, without capping their deployment. Furthermore, the proposal on priority dispatch and curtailment rules is treating gas (or coal) in high-efficient cogeneration equally to renewable energy, which is also unacceptable.

On the other hand, article 11(4) of the proposal for a revised electricity regulation confirms priority dispatch for *existing* renewable energy installations which is a key positive provision to be kept as past investments have been made with priority dispatch factored in.

Priority dispatch should however not be provided to *new* bioenergy plants and priority dispatch should be removed for *existing* bioenergy plants - unless these installations apply high-efficient cogeneration.

- **Capacity mechanisms<sup>4</sup>**

Chapter IV (article 18-23) of the proposal for a revised electricity regulation outlines detailed rules on capacity mechanisms considered or set up by Member States<sup>5</sup>. Capacity mechanisms create a serious risk of making European citizens (unnecessarily) pay to keep old, polluting, inflexible power plants on the European energy system long after they should have been retired, thereby perpetuating the overcapacity issue in the European market. On the opposite, a smart retirement process for polluting power production sources is needed in order to avoid fossil fuel dependency and to provide space for renewable energy and energy efficiency measures in power markets with overcapacity.

Unfortunately, the European Commission failed to block capacity mechanisms in the first place<sup>6</sup> and so is now trying to introduce conditions for their approval. The proposal for a revised electricity regulation includes some positive provisions, which should at the very least be maintained:

- The fact that Member States shall justify the need for capacity mechanisms based on a European resource adequacy assessment (article 23(5));
- The fact that when addressing resource adequacy concerns, Member States shall take into account energy efficiency and consider all resources, including storage and demand side management (article 19(4)), as well as the fact that foreign capacity should also be allowed to participate in the bidding process (article 21);
- The fact that a Member State shall consult on the introduction of such a mechanism at least with its electrically connected neighbouring Member States (article 23(2));
- The fact that existing capacity mechanisms shall be adapted to comply with the new provisions.

But the proposal should also be much improved:

- By including a provision compelling Member States to *prioritise* the most sustainable options as beneficiaries of capacity mechanisms;
- By lowering from the start the proposed emissions performance standard to 350gCO<sub>2</sub>/kWh (and having this level decrease over time), thereby ensuring that only the lowest emitting fossil power stations get supported, and having it *immediately* apply not only to *new* power plants, but also to *existing* ones. In the proposal as it stands, existing plants would only be covered five years after entry into force (i.e. approximately in a decade from now), with power plants for which an 'investment decision' has already been made considered as 'existing plants', which would open the gate for more money into old coal and nuclear power plants;
- By also requiring power plants participating in capacity mechanisms to comply with the European air quality standards including the Industrial Emissions Directive's (IED) Best available techniques Reference documents (BREFs);
- By also requiring power plants participating in capacity mechanisms to have a minimum technical flexibility and be granted only to the most energy efficient installations, with minimum efficiency thresholds promoting combined production of heat and power over electricity-only installations.

- **Prosumers and energy communities**

Articles 21 and 22 of the proposal for a revised RED empower consumers by enabling them to self-consume without undue restrictions and be remunerated for the electricity they feed into the grid. They also set forth new provisions on 'energy communities' to empower them to participate in the market. These provisions are commendable.

---

<sup>4</sup> See also the more detailed CAN Europe position paper on capacity mechanisms of March 2017.

<sup>5</sup> Capacity mechanisms are defined in the Commission proposal as '*measures taken by Member States to ensure that electricity supply can match demand in the medium and long term, by remunerating power plants for their availability*'.

<sup>6</sup> There are already a number of capacity mechanisms in operation in several Member States.

Yet, the proposal risks over exaggerating the costs related to consumers participating in the energy market and does not reference the many benefits that self-generation can provide the system (e.g. reduced transmission line loss, lower wear and tear on the grid, greater resiliency, greater responsiveness and flexibility etc.). These benefits should be explicitly mentioned in article 21(1a) of the proposal for a revised RED and article 15(1a) in the proposal for a revised electricity directive. In addition, the proposal risks limiting the right of energy citizens of receiving a fair price for electricity fed into the grid, through innovative financing models such as net metering, virtual net metering or a 'value of solar' approach. Therefore, article 21(1d) of the renewable energy directive should include a provision that acknowledges the right of Member States to establish or continue such approaches.

Article 22 of the revised RED calls on Member States to take the specificities of renewable energy communities when designing support schemes into account. Whilst the Commission seems to have recognised the specificities of cooperatives, this provision is weak and unenforceable. The provision must be strengthened to require member states to allow exemptions for state aid to renewable energy community projects regardless of size.

The very definition of a 'renewable energy community' in article 22(e), which includes an 18-MW limit on the capacity installed on average by the community in the last 5 years, risks capping the potential of such 'communities'. The Directive should aim to increase the size of projects that communities can benefit from, not limit it. This threshold should therefore be substantially increased.

Articles 13-17 of the proposal for a revised electricity directive also pave the way for a growing role for aggregators (companies that allow users to moderate power consumption in return for a fee), local energy communities and demand-side response, which are all steps in the right direction, but the proposal could be further improved by foreseeing a template or standard contract to be provided to consumers engaging with aggregators.

- **Heating and cooling**

Article 23 of the proposal for a revised RED relates to the renewable energy potential in the heating and cooling (H&C) sector. Increasing the share of renewable energy in H&C is of course very much needed, but to make the article meaningful, the language of article 23(1) (Members States '*shall endeavour*' to increase the share of renewable energy supplied for H&C) should be reinforced.

This being said, in the absence of comprehensive sustainability criteria for bioenergy (see below), such a provision risks opening the door to larger quantities of unsustainable bioenergy. Therefore, and also because over 60% of renewable energy in the European Union already comes from bioenergy, unless the sustainability of bioenergy can be ensured by strongly improving the approach towards bioenergy sustainability in articles 26-28 in the way suggested below, the provisions of article 23 should be limited to the non-bioenergy renewable energy options for H&C.

In addition, the relationship of the obligation set in article 23 with the obligation set in article 7 of the proposal for a revised energy efficiency directive should be defined, as to avoid double-counting.

- **Bioenergy sustainability**

The Commission proposals are far from ensuring the sustainable use of bioenergy, which currently provides over 60% of the European Union's renewable energy.

Article 7 of the proposal for a revised RED, which regulates how to calculate the share of energy from renewable sources, includes a decreasing maximum share of (1<sup>st</sup> generation) biofuels and bioliquids produced from food or feed crops, starting from 2021 and going down to 3.8% in 2030. This equals a mere reduction of 0.1% (percentage point) per year. CAN Europe believes that the share of (1<sup>st</sup> generation) biofuels and bioliquids produced from food or feed crops should fall down to zero by 2030 at the very latest.

Articles 26-28 of the proposal for a revised RED relate to sustainability and greenhouse gas savings criteria for biofuels, bioliquids and biomass fuels from agriculture and forestry. Unfortunately, the criteria proposed fail to ensure that most harmful bioenergy uses from an environmental, and particularly from a climate perspective are brought to an end as they would still allow unlimited use of even roundwood and whole trees, as well as food and feed crops for electricity and heating. The use of these most harmful sources should not be supported.

An obligation is established in article 25 on transport for fuel suppliers to provide a certain share (1.5% in 2021, increasing up to at least 6.8% in 2030) of so-called 'low-emission' and renewable fuels (including renewable electricity, waste-based fossil fuels and advanced biofuels). It also includes a specific (blending) sub-target for advanced biofuels (at least 0.5% in 2021, increasing up to at least 3.6% by 2030). On the positive side, food and feed crops are excluded from this blending target and can only be counted towards the overall RED target. But this blending obligation, which only focuses on the volumes of fuels rather than their GHG performance, without appropriate sustainability criteria, is prone to repeat the earlier mistakes with targets that drove the use of harmful biofuels. This separate target for biofuels in transport should therefore be discontinued.

The one positive provision that foresees that Member States shall not give public support to installations converting biomass into electricity unless these installations apply highly efficient cogeneration technology (article 26 (8)) will only apply to installations starting operation three years after the adoption of the directive and exceptions can be sought by Member States based on the risks for the security of supply of electricity. This provision should therefore be improved by *immediately* applying also to *existing* installations and strictly restricting the use of exceptions by Member States.

- **Environmental safeguards**

Cross compliance between the Renewable Energy and the Birds & Habitats directives should be ensured by including in article 15 of the proposal for a revised RED, which deals with administrative procedures, regulations and codes, a requirement to carry out a strategic environmental assessment to spatially map low ecological risk potential for renewable energy sources. There is indeed sufficient potential to have clean and green renewable energy without damaging Europe's most important wildlife areas and species.

The new paragraph 8 of Article 15 relating to renewable heat should also specifically require the assessment to take into consideration ecological risk. A corresponding requirement should also be included in the Governance of the Energy Union regulation proposal to ensure overall energy plans achieve optimal sustainability.

Finally, while we appreciate the provisions for a short approval procedure for replacing old renewable energy plants with new plants in article 16.5 (on repowering) of the proposal for a revised RED, if the new plants are considerably larger or have larger impacts on the surroundings than the old ones, the approval procedure must include the same requirements for environmental impact assessment (EIA) and consultation of neighbours as for new plants.

- **Guarantees of Origin**

In article 19.2 of the proposal for a revised RED, the Commission foresees that Guarantees of Origin (GOs) should not be issued to producers that receive financial support from a support scheme. CAN Europe believes that this provision must be deleted. Otherwise, companies that have invested in their own renewable energy production capacity with public support would not anymore be able to claim their electricity is 'green' unless they buy GOs on the market.

Also, we do not think it is helpful for the transition to renewable energy to allow for certificates of origin from high-efficiency cogeneration plants that do not run on renewable energy. Article 19 should be amended accordingly.

- **Establishment of a EU distribution system operator entity**

Article 50 of the proposal for a revised electricity regulation foresees the creation of a new EU-level entity for distribution system operators (DSOs). The creation of such a body presents a number of risks<sup>7</sup>, in particular for new entrants such as prosumers and renewable energy communities.

The creation of a DSO body presents a conflict of interest issue. The DSO body would not be an independent entity, instead it would serve as a lobby body for its members, as well as be given powers over grid planning, the writing of so-called 'network codes', data management and privacy. The problem is further exacerbated by the fact that DSOs are only required to comply with limited unbundling. The lack of regulatory oversight of this body further adds to our worries.

The EU body should not be in charge of writing network codes, it should be an independent body, include founding principles to ensure representation of smaller DSOs and ensure it has proper regulatory oversight. The EU must also tackle DSO unbundling and ensure independence, neutrality and a level playing field for all actors. Indeed, as we move towards a more decentralised energy system, the independence and neutrality of DSOs will be key to manage the system and ensure a level playing field.

- ENDS

Contact:

Jean-François Fauconnier, Renewables Policy Coordinator, CAN Europe, [jean.francois@caneurope.org](mailto:jean.francois@caneurope.org)  
+32 2 894 46 72

---

<sup>7</sup> Client Earth. The proposed EU DSO entity: what is it and what's at stake?  
<http://www.documents.clientearth.org/wp-content/uploads/library/2016-12-12-the-proposed-eu-dso-entity-what-is-it-and-what039s-at-stake-ce-en.pdf>.