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<Commission>{PETI}Committee on Petitions</Commission>

<Date>{06/10/2023}6.10.2023</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0242/2023 by J. L. J. M (Spanish), on behalf of Asociación Nacional Arca Ibérica, on European legislation on renewable energy projects</TITRE>

1. Summary of petition

The petitioner criticises Regulation (EU) 2022/2577 and Royal Decree-Law 6/2022 as he says that they run counter to the European environmental protection directives themselves by exempting renewable energy projects from environmental impact assessments in order to speed up their deployment. He criticises the fact that renewable energy projects are presumed to be in the public interest and can therefore be exempted from the impact assessment. According to the petitioner, this strikes a huge blow to citizen participation and will lead to highly environmentally damaging mega-projects for wind farms, photovoltaic fields and high-voltage power lines.

2. Admissibility

Declared admissible on 4 July 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 6 October 2023

The Commission's observations

Please note that petition 1076/2022 deals with similar a complaint against Council Regulation to accelerate the deployment of renewable energy (“the Regulation” or “Council Regulation 2022/2577)[[1]](#footnote-1). Petition 0242/2023 additionally expresses concerns about the Spanish legislation, in particular, Royal Decree-Law 6/2022.

The Commission considers important to make some clarifications regarding the scope of Council Regulation 2022/2577 and its interplay with the Union environmental legislation and the revised Renewable Energy Directive.

Spanish legislation

The complainant expressed concerns about the compatibility of Spanish legislation, in particular Royal Decree-Law 6/2022, with Union environmental legislation. In this regard, it is primarily the responsibility of the national authorities to ensure that renewable energy projects are developed and executed in full compliance with EU legislation, including the Renewable Energy Directive[[2]](#footnote-2), the Environment Impact Assessment (EIA) Directive[[3]](#footnote-3), the Habitats, Birds and Water Framework Directives, the Council Regulation to accelerate the deployment of renewable energy[[4]](#footnote-4) and respective international treaties, such as the Aarhus Convention[[5]](#footnote-5).

The Commission notes that the Spanish authorities consulted with the Commission prior to the adoption of Royal Decree-Law 6/2022, aiming to set up a swifter screening procedure, for a limited period of time and for certain wind and solar projects with likely lower environmental impact, in order to decide if an EIA would be required. The assessment carried out by the services of the Commission did not identify that the proposed legislation would infringe the above acts of environmental EU law.

In any case, the Commission insisted in the need that, once adopted, the proposed legislation would be implemented fully in line with the principles and objectives of the EIA Directive, so that projects with significant effects would be made subject to an assessment of the environmental effects in spite of the swifter administrative procedures to be applied. This of course also concerns the projects that fall within the remit of the regional environmental authorities in case they would also decide to apply the new temporary scheme.

Council Regulation 2022/2577

Council Regulation 2022/2577 aims at accelerating the permit granting procedures for projects and technologies that have the highest potential for quick deployment, while at the same time ensuring a high level of environmental protection. The Regulation aims to do so by introducing several measures.

First, it sets maximum deadlines for the permit-granting procedures applied to the following projects and technologies: the installation of solar equipment (on artificial structures and equipment of a certain capacity), the installation of heat pumps below a specific capacity and the repowering of existing projects. The Commission believes that such measures introduced by the Regulation strike a balance between the need for frontloaded deployment of renewables, which will contribute to addressing the ongoing crisis, on the one hand, and the need for environmental protection, on the other hand.

Second, the Regulation introduces targeted exemptions from environmental impacts assessments, limited to specific technologies with a comparatively low impact on environment. This concerns in particular the installation of solar equipment on artificial structures and the specific case of the repowering of solar installations that does not require the use of additional space and complies with the mitigation measures established for the original project. Both types of projects ensure synergies with existing projects or artificial structures and allow the relevant authorities to focus on the projects that merit a closer assessment. Such targeted derogations aim to accelerate the deployment of certain projects with a minimum impact on the environment.

Third, Member States may also (optionally) exempt certain additional renewable energy, grid and storage projects from the environmental impact assessment that may be required under the Environmental Impact Assessment Directive and from the species protection assessments they may have prescribed to comply with Article 5 of the Birds Directive and Article 12 of the Habitats Directive, which remain fully applicable.

In order to exercise this possibility, Member States must comply with important conditions to ensure environmental protection: the project must be located in specific dedicated renewable or grid areas identified by the Member States and the Member States must have conducted a strategic environmental assessment for the designation of the area. Only if these conditions are met, Member States may exempt projects located in those areas from the requirement to carry out a specific environmental impact assessment. Moreover, Member States shall ensure compliance with Article 12(1) of Directive 92/43/EEC and Article 5 of Directive 2009/147/EC by means of appropriate and proportionate mitigation measures or appropriate monetary compensation if those are not available. The projects installed in those areas must adopt such measures in order to ensure environmental protection.

Fourth, regarding the presumption that renewable projects are of overriding public interest, it is important to clarify that Directive 92/43/EEC[[6]](#footnote-6) and Directive 2000/60/EC[[7]](#footnote-7) contain exceptions in cases of overriding public interest and Directive 2009/147/EC[[8]](#footnote-8) allows for derogations in the interests of public health and safety. The Regulation mainly introduces a rebuttable presumption that, during its period of application, renewable energy projects should be considered as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases, for the purposes of the application of the derogations foreseen in those three directives. This provision does not modify the content of these Directives but mainly shifts the burden of the proof for the purposes of demonstrating compliance with one of the conditions set therein to benefit from the relevant derogations.

It is important to note that the presumption is rebuttable and therefore it may be disregard in specific cases if the specific circumstances of a project so require (in particular if a project has major adverse effects that cannot be mitigated or compensated). Moreover, it should be clarified that this presumption does not entail any derogation from the obligation to carry out an environmental impact assessment under the EIA Directive or an appropriate assessment under the Habitats Directive, if these are required.

Revised Renewable Energy Directive

The complaint also expressed concerns about the proposal to streamline permitting procedures included in the REPowerEU proposal adopted in May 2022 to amend the Renewable Energy Directive. Please note that a provisional agreement was found between co-legislators in March 2023. The agreement takes a significant step to address the permitting bottleneck by addressing the issue in a comprehensive manner through spatial planning, simplification and shortening of procedures. In particular, the revised Directive calls for the creation of specific “renewables acceleration areas” where the deployment of renewable energy projects would have lower environmental impacts and hence where the individual environmental impact assessment can be streamlined or exempted in certain circumstances. The designation of those areas must comply with strict conditions. Moreover, outside those areas, the current Union environmental rules remain fully applicable.

The Commission agrees that citizens and local stakeholder acceptance of renewable energy projects is crucial to align the speed of renewable energy deployment with the Union’s renewable energy goals. While the deployment of renewable energy brings multiple environmental, economic and social benefits, balancing of other interests needs to be assessed and managed during the planning and permit-granting processes. As clarified by recital 20 of Council Regulation 2022/2577, the provisions of the Aarhus Convention regarding access to information, public participation in decision-making, and access to justice in environmental matters, and in particular, the obligations of Member States relating to public participation and to access to justice, remain applicable.

Moreover, the revised Renewable Energy Directive requires that Member States ensure public participation regarding the plans designating renewables acceleration areas and to promote public acceptance of renewable energy projects by means of direct and indirect participation of local communities in those projects by local communities. Good practices in raising public support for renewable energy projects through participatory approaches can be found in the Commission’s guidance on speeding up permit-granting procedures for renewable energy projects[[9]](#footnote-9).

Conclusion

The complainant expressed concerns about Council Regulation 2022/2577[[10]](#footnote-10) and about the Spanish legislation, in particular, Royal Decree-Law 6/2022. In the complaint, there are some misunderstandings about the scope of the Regulation, which are important to clarify.

There is no scope for intervention on behalf of the petitioner, other than clarifying that the Regulation is a balanced act which introduces targeted measures ensuring environmental protection.

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. [↑](#footnote-ref-1)
2. 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, OJ L 328, 21.12.2018, p. 82–209. [↑](#footnote-ref-2)
3. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. OJ L 26, 28.1.2012, p. 1–21 as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014, p. 1–18. [↑](#footnote-ref-3)
4. Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy. [↑](#footnote-ref-4)
5. The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. [↑](#footnote-ref-5)
6. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50. [↑](#footnote-ref-6)
7. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73. [↑](#footnote-ref-7)
8. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010. [↑](#footnote-ref-8)
9. SWD(2022) 149 final, accompanying the Commission Recommendation of 18 May 2022 on speeding up permit-granting procedures for renewable energy projects and facilitating Power Purchase Agreements (C(2022) 3219 final). [↑](#footnote-ref-9)
10. 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. [↑](#footnote-ref-10)