

ClientEarth's response to the Commission's public consultation on a new Renewable Energy Directive for the period after 2020

Introduction

ClientEarth welcomes the Commission's commitment to transforming Europe's energy system - particularly to prioritise decarbonisation and decentralisation, facilitate market entry by new market actors, and place consumers at the centre of the energy system. We also applaud efforts to redesign the energy market so it is better fit for renewables and other decentralised energy sources, as well as efficiency first.

Below ClientEarth presents its vision for the role a new Renewable Energy Directive (RED) can play in continuing to further decarbonisation of the energy system consistent with 2050 decarbonisation needs. In our consultation response below, we focus on the following key messages:

1. **Credible governance arrangements will be needed to guarantee accountability, transparency and investor certainty** to ensure that the EU-binding renewable energy target of 27% is met, namely planning and reporting (P&R) rooted in binding legislation (including maintaining essential P&R provisions within the RED) to ensure the Commission can play a proper monitoring role and ensure public participation;
2. **Governance arrangements for meeting the 2030 renewables target should not be confined to the RED.** Institutional actors such as the Agency for Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators for Electricity (ENTSO-E) need to have stronger legal duties to ensure they fulfil their tasks

consistent with the effective delivery of the 2030 renewables target, particularly as it is binding at EU level.

3. **In order to prepare for the long term, Member States (MS) need to provide more information on how they intend to increase flexibility.** Currently, only a few MS are planning seriously on better integration of growing shares of renewables. There is a need for the next RED to integrate such planning requirements for MS and relevant market actors (e.g. DSOs and TSOs) to provide information on how they intend to integrate and enhance flexibility into their systems.
4. **To ensure all consumers across the EU have an opportunity to become prosumers, the next RED should contain a legal framework that supports citizen participation in the IEM.** Specifically, a EU framework should include provisions that:
 - allow MS to establish and/or maintain appropriate support schemes at national level for prosumers/community projects that provide space for them to participate in the IEM, with different rules if appropriate;
 - guarantee consumers across the EU rights to self-generate, store, use and export electricity, and receive a fair return on investment;
 - guarantee that consumers without direct access the market (e.g. household and SME consumers in the market for demand flexibility) have access through an intermediary (e.g. aggregator) if they so choose;
 - ensure simplicity and transparency (e.g. understandable information and technical support) for consumers regarding available support and relevant administrative rules and procedures;
 - regarding connecting to distribution infrastructure, require more equitability, certainty and understandability for all actors, particularly community projects; and
 - provide adequate support for public bodies that want to become prosumers and/or establish supportive local frameworks for prosumers.
5. **National Regulatory Authorities (NRAs) need a stronger legal mandate to promote market entry of new market actors and protect consumer/prosumer rights.** Specifically, NRAs need reinforced legal duties to ensure that actors generating and supplying renewables and providing new services to promote grid flexibility and participation by prosumers (e.g. aggregators) are not overly burdened by regulatory and other barriers.

With the above in mind, below we present our responses to the Commission's consultation on a new Renewable Energy Directive for the period after 2020.

General approach

1. To what extent has the RED been successful in helping to achieve the EU energy and climate change objectives?

Very successful	Successful	Not very successful	Not successful	No opinion
	X			

The Renewable Energy Directive (RED) represents a well-developed governance framework for optimising regulatory and investment conditions to expedite and increase deployment of renewable energy, which have significantly contributed to achieving EU climate and energy objectives.

Several governance features have helped the RED’s success. First, the binding nature of the 2020 target, along with “indicative trajectory” targets, required all Member States (MS) to increase the share of renewable energy, ensuring at least minimum action across the EU. Second, the RED contains key substantive legal obligations that require MS to address market and other barriers to the development of renewable energy through guaranteed/priority access to grids, simplified and/or streamlined administrative procedures, regulations and codes, and provision of information to the public. Third, the RED contains a binding template for national renewable energy action plans (NREAPs) and minimum required information for reports (though the template for reporting non-binding), ensuring that economic operators, investors, the public and the EU institutions have sufficient transparency related to MS progress and compliance.

Transparency is ensured under the RED because planning and reporting (P&R) are rooted in a legally binding instrument. The binding nature of P&R obligations have ensured a high degree of compliance by MS and good quality information, the latter of which cannot necessarily be said for the experience under the Energy Efficiency Directive (e.g. for Article 7 implementation), which provides more flexibility for MS. These binding provisions have provided international and local level actors with necessary information that is used to determine key investment decisions, and has helped ensure public participation in the planning process.

Accountability is ensured through a number of hard and soft mechanisms which have enable the Commission to oversee and ensure that EU and MS targets are reached. In addition to traditional enforcement of the binding targets, the Commission can issue recommendations to MS whose NREAPs are insufficient, and require MS that fall behind on their indicative trajectories to modify their NREAPs.

Despite these mechanisms, however, the effectiveness of the RED has been limited by several factors. First, although the NREAPs were intended to provide long-term investor certainty, due to the lack of scheduled updates the NREAPs have become outdated. Furthermore, the NREAPs have not protected investors and other economic operators from retrospective – and sometimes retroactive – changes to support, which has caused significant damage to the renewables industry in some MS. Finally, even though in its 2015 Progress Report the Commission noted that both France and the Netherlands had missed their indicative trajectories, neither have yet been required to update their NREAPs.

These and other deficiencies, such as the lack of a dedicated framework to ensure citizen/consumer participation in the achievement of renewable energy goals, should be addressed and improved in the new RED.

2. How should stability, transparency and predictability for investors be ensured with a view to achieving the at least 27% renewable energy target at EU level? Please indicate the importance of the following elements:

	Very important	Important	Not very important	Not important	No opinion
Forward looking strategic planning of RES development is required by EU legislation	X				
Best practice is derived from the implementation of the existing Renewable Energy Directive		X			
Regional consultations on renewable energy policy and measures are required		X			
Member States consult on and adopt renewable energy strategies that serve as the agreed reference for national renewable energy policies and projects	X				
The Commission provides guidance on national renewable energy strategies		X			

Given the likelihood of no national binding renewables targets post-2020, credible governance arrangements will be needed to guarantee accountability, transparency and investor certainty to ensure achievement of the EU level target.

To ensure reliability and transparency, P&R must be rooted in legally binding legislation. The alternative, a soft non-binding approach (i.e. an Open Method of Coordination), will be incapable of providing a credible and transparent framework. Furthermore, the streamlining agenda must not weaken accountability, with the Commission deprived of crucial means to monitor how MS implement mandatory measures on renewables. Based on collaborative analysis conducted by ClientEarth, IDDRI and Ecologic, the EU should adopt a 'modular' structure for Energy Union P&R, differentiating appropriately between 1) high level strategies, including pledges towards EU targets and tracking of key indicators relevant to outcomes by MS; and 2) more detailed transparency and information that builds on existing P&R requirements (e.g. in the existing RED).

The development of national energy and climate plans (NECPs) must be open, participatory and rooted in legislation. Participation, while promoted in the current RED, did not prevent the Commission (along with Ireland) from being brought before the Aarhus Compliance Committee for failing to ensure proper public participation in the development of NREAPs. The Commission

said it would consider possible ways to improve effective implementation of during the national planning process. Such improvements should be reflected in a legal framework governing participation in the development of the NECPs, particularly with regard to renewables.

Maintaining investor certainty post-2020 will require the continuation and enhancement of concrete legal obligations that require MS to take specific measures (e.g. reduce administrative and regulatory barriers, guarantee access and reinforce/extend infrastructure to further integrate renewables). Such obligations need to be binding on MS and enforced by the Commission in cases of non-compliance. Such obligations should be complemented through P&R to provide transparency for investors and the public.

A new RED will also need to better protect investors' reasonable expectations. Specifically, retroactive changes to renewables support should be explicitly prohibited. MS should also be required to establish expedited national legal proceedings to determine the legality of retrospective changes to support schemes. The Commission should also develop guidance to ensure that changes to planned policies and measures do not harm reasonable investor expectations.

Finally, the Commission needs tools to ensure the 2030 target is met. While national binding targets may not be possible, the Commission should still be enabled to make recommendations to MS on their NECPs, and to make use of indicative trajectories, as in the existing RED. Monitoring of the 2030 target should also have a prominent space within a semester-type process rooted in EU legislation. If, upon assessment, the EU target is not likely to be met the Commission should be required to propose additional EU-level measures to fill the gap. Such an assessment should take place in time for course correction (e.g. in 2023). There is precedent for the development of such measures, in particular Article 4 of the Effort Sharing Decision, which provided a trigger for the development of the Energy Efficiency Directive to ensure achievement of the 2020 energy savings target.

3. Please rate the importance of the following elements being included in Member States' national energy and climate plans with respect to renewable energy in ensuring that the plans contribute to reaching the objectives of at least 27% in 2030.

	Very important	Important	Not very important	Not important	No opinion
Long term priorities and visions for decarbonisation and renewable energy up to 2050	X				
In relation to national/regional natural resources, specific technology relevant trajectories for renewable energy up to 2030		X			
Overview of policies and measures in place and planned new ones	X				
Overview of renewable energy trajectories and policies to 2050 to ensure that 2030 policies lie on the	X				

path to 2050 objectives					
Qualitative analysis	X				
Trajectories for electricity demand including both installed capacity (GW) and produced energy (TWh)	X				
Measures to be taken for increasing the flexibility of the energy system with regard to renewable energy production	X				
Plans for achieving electricity market coupling and integration, regional measures for balancing and reserves and how system adequacy is calculated in the context of renewable energy		X			

First, it is important to be clear about, and distinguish between, different governance objectives to which NECPs should respond. In particular, NECPs have been suggested to ensure:

1. MS set and collectively meet high level 2030 targets and objectives;
2. The Commission has the information to be able to evaluate and to enforce EU legislation; and
3. MS provide transparency and other aspects of their national strategies for information sharing purposes (e.g. for regional cooperation, investor visibility, tracking EU level progress, development of future policy, etc).

These different objectives imply different things for P&R. Specifically, they have different implications for the type of information that is relevant, how it is collected and used, and to whom it is most relevant. To be fit for purpose, P&R must be designed with different goals clearly in mind.

Collaborative analysis conducted by ClientEarth, Ecologic and IDDRI on different options for P&R has concluded that instead of a single high level plan and report replacing existing provisions, a calibrated “modular” structure for Energy Union P&R should be used. This would allow NECPs to respond to concerns for streamlining and reduced administrative burden, while also ensuring integration and conformity with good governance principles. Such a structure would allow for:

- High level strategies, including pledges towards EU targets and tracking key indicators that are relevant to MS achieving outcomes of strategies in core areas of the Energy Union; and
- More detailed transparency and information-sharing that builds in existing P&R requirements (e.g. in sector-specific legislation such as the RED).

For the RED, this would mean maintaining essential P&R provisions within the Directive as a basis for, inter alia, ensuring transparency and visibility for investors, proper monitoring and oversight by the Commission.

In particular, there is a need for MS to provide more information on how they intend to increase flexibility. This will become an increasing need between 2021 and 2030, and it will have significant implications for the smoothness of the energy transition, regional cooperation, development of new business models (e.g. storage and demand response) and achievement of other important targets such as energy savings. In the underlying analysis of the Commission's 2015 Renewables Progress Report, it was highlighted that only a few MS are planning seriously on better integrating growing shares of renewables, including through flexibility measures. There is a need for the next RED to integrate such planning requirements for MS and relevant market actors such as DSOs and TSOs to provide information on how they intend to better integrate and enhance flexibility into their systems.

Finally, there is a need to make a stronger link between P&R under the RED and EU level institutional actors such as ACER and ENTSO-E. As the 2030 target will be binding at EU level, these actors should have distinct legal duties to ensure their role in EU level P&R supports the achievement of the target. Furthermore, National Regulatory Authorities (NRAs) in their position at national level, in cooperation with ENTSO-E are in the best position to take a more visible and active role in ensuring that flexible renewables, demand response and energy efficiency are treated on a level playing field with conventional sources in strategic infrastructure planning.

4. What should be the geographical scope of support schemes, if and when needed, in order to drive the achievement of the 2030 target in a cost-effective way?

- **Harmonised EU-wide level support schemes**
- **Regional level support schemes (group of Member States with joint support scheme)**
- **National support schemes fully or partially open to renewable energy producers in other Member States**
- X Gradual alignment of national support schemes through common EU rules**
- **National level support schemes that are only open to national renewable energy producers**

ClientEarth does not think that full harmonisation at EU level of support schemes for renewable energies would be feasible, nor necessarily desirable. Regional support schemes could provide unique possibilities to further MS cooperation and further completion of the market, but should be incentivized and supported, not mandated.

A complex and uncertain balance exists between the EU and MS competencies under the Treaty on the Functioning of the EU (TFEU), making it difficult for the Commission to propose a high level of harmonization of national support schemes for renewables. Under Article 194, the Commission has been provided with the competence to promote new and renewable forms of energy, but that article also does not allow for measures that "affect the energy mix" of MS, including determining conditions for exploiting energy resources. There is a great deal of uncertainty regarding the extent to which the EU can act on renewables without contravening MS' right to determine their energy mix. On its face, any proposal seen to affect this right could

be subject to challenge from any MS. Alternatively, it would need to be adopted through unanimity, meaning all MS would have to agree.

The more an EU-level framework for support schemes were to prescribe harmonized standards for MS, the more likely it would run afoul of EU competencies under the TFEU. For instance, if the EU were to adopt full harmonization for support schemes, it would most likely affect MS' right to determine their energy mix under Article 194, particularly over how to exploit renewable energy.

A more practical approach would be to establish some general principles at EU level, for instance to require MS to begin to - partially - open support schemes to other MS on a regional basis (similar to the State aid guidelines). Furthermore there should be a general rule that MS should ensure local and smaller actors (e.g. cooperatives and other community-owned projects) can continue to have access to effective and appropriate support. The latter will be necessary to provide a level playing field for smaller actors. Framework rules such as these would help to build the internal energy market (IEM), increase cost-efficiency and promote cooperation, while also addressing important barriers such as public and local acceptance, as well as promote equality and competition between market actors. Ensuring this type of cooperation and support to all actors will provide the best chance that the 2030 target will be met, particularly in a way that ensures the EU maintains sufficient progress for long-term climate and energy objectives (e.g. 2050).

In addition to setting out general principles in a future RED, the Commission should be required to establish guidance to assist MS in transposing and implementing these rules at national level.

Furthermore, instead of primarily focusing on support schemes, additional harmonisation efforts should rather target remaining non-economic barriers such as administrative barriers and conditions for grid connections/access.

5. If EU-level harmonised /regional support schemes or other types of financial support to renewable energy projects would be introduced:

- **What hinders the introduction at the EU wide and/or regional scale?**
- **How could such mechanism be activated and implemented?**
- **What would be their scope (what type of projects/technologies/support mechanisms could be covered?)**
- **Who would finance them?**
- **How could the costs of such measures be shared in a fair and equitable way?**

Article 194 of the TFEU hinders the introduction of an EU-wide harmonised support scheme for renewables. At regional level, there are no legal barriers per se, but there are political barriers, such as issues with public acceptance and benefit and cost sharing. It is important to note, however, that there is a difference between voluntary regional support schemes and regional support schemes imposed by EU legislation. The latter could potentially create a legal problem if it were to go beyond an obligation to create the scheme, not only leaving the design to MS, but also imposing conditions on the design and implementation of such schemes. The more specific the conditions are, the higher the risk that these conditions could violate Article 194.

With regard to how such mechanisms could be activated and implemented, as mentioned before, at EU level such a mechanism would not be desirable. At a regional level, the most appropriate approach would be to leave design and implementation as much as possible with the MS.

With regard to scope, support schemes should be as broad as possible, for instance beyond what the current State aid guidelines impose (e.g. technology neutrality and tender/auction procedures for all but the smallest projects). Support schemes should be allowed to be designed without obligations imposed on MS with regard to technology neutrality and choice of State aid measure.

In particular, it is of utmost importance that support schemes are designed in such a way that they promote and support participation by all actors, in particular for the implementation of local community projects. It is for this reason that general principles applicable to all MS would be appropriate, specifically to ensure consumer participation and a level playing field for all actors.

At the very least, MS should be required to ensure that support schemes do not prevent community projects or individual consumers from participating in the market. As such, MS should be able to exclude local community projects from tendering or auction procedures. Otherwise, MS should be required to include safeguards in support schemes to ensure that rules or procedures that form a prerequisite for participation do not unfairly burden smaller, non-traditional actors from participating. Alternatively, right-to-purchase schemes should be promoted and incentivised, particularly in regional support schemes.

The above could be established in a new RED through the lens of a general right to participate for prosumers, as a non-exhaustive list of how communities should be encouraged to participate in both individual MS and/or regional support schemes.

Questions 6 - 8 were not answered.

9. Please assess what kind of complementary EU measures¹ would be most important to ensure that the EU and its Member States collectively achieve the binding at least 27% EU renewable energy target by 2030:

	Very important	Important	Not very important	Not important	No opinion
EU-level incentives such as EU-level or regional auctioning of renewable energy capacities		X			
EU-level requirements on market players to include a certain share of renewables in production, supply or		X			

¹ Without prejudice of the actual funding mechanism, where required, of the complementary EU measures

consumption					
EU-level financial support (e.g. a guarantee fund in support of renewable projects)		X			
EU-level support to research, innovation and industrialisation of novel renewable energy technologies		X			
Enhanced EU level regulatory measures	X				

The discussion of complementary measures to meet the 2030 renewables target should not be confined to the RED. As renewables are further integrated into the IEM, it will be necessary to ensure that IEM governance arrangements embed the delivery of 2030 renewable energy – and energy efficiency – objectives. Specifically, institutional actors need to have a stronger link to the Energy Union Governance System and legal duties to ensure they fulfil their tasks consistent with the effective delivery of the 2030 climate and energy targets. This will be particularly important for the renewables target, because it is binding at EU level.

First, the 2030 renewable energy target must be properly embedded in both the new RED and IEM legislation (e.g. through an E-RES target, which through the Commission’s modeling makes up a share of the overall 2030 target). This will provide a basis for strengthening the duties of EU level actors such as ENTSO-E and ACER to ensure the delivery of the target.

ENTSO-E should be required to ensure that the Community-wide ten-year network development plan (TYNDP) and the European generation adequacy outlook, as well as in the development, implementation and reform of Network Codes, are consistent with EU policy and targets. In particular, ENTSO-E’s methodology for conducting Scenario Outlook & Adequacy Forecasts (SO&AF) needs to be revised to ensure that not just renewable energy sources but also flexibility measures and energy efficiency potential/energy savings are more explicitly accounted for. In addition, links should be made between the SO&AF and the Energy Union Governance system, particularly within the regional dimension of P&R.

ACER should also play a more significant role in ensuring that the 2030 targets are met. It should be required to ensure that TYNDPs, the European generation adequacy outlook and EU Network Codes support delivery of the 2030 targets. In addition, ACER should be required to ensure that regional cooperation between NRAs and TSOs promotes effective target delivery. Together with ENTSO-E, ACER should also play a role in overseeing MS P&R under the Energy Union Governance System through its monitoring of markets and its contribution to reporting on indicators.

Furthermore, the roles/duties of NRAs must be reinforced so they can play a role in promoting target achievement. Specifically, they will need a stronger legal mandate to enforce enhanced market rules so that actors generating and supplying renewables and providing new services to promote grid flexibility and participation by prosumers (e.g. aggregators) are able to enter and participate on a level playing field with incumbents. NRAs should also have enhanced legal

duties to ensure regulatory and other barriers to market entry are not overly burdensome on new market actors.

10. The Energy Union Framework Strategy sets the ambition of making the European Union the global "number one in renewables". What legislative and non-legislative measures could be introduced to make/strengthen the EU as the number one in renewables? Has the RED been effective and efficient in improving renewable energy industrial development and EU competitiveness in this sector?

The EU has obtained many benefits of being a 'first mover' in renewable energy. As the rest of the world (including China and the USA) catches up, the EU should focus on maintaining its role as an innovator for the energy transition, particularly by demonstrating how to safely increase shares of renewable energy into the system.

First, this will require a commitment to continue building capacity of renewable energy in all sectors, including electricity, transport and heating and cooling. However, it will also require innovation in 're-thinking' the energy system, particularly one that prioritises flexibility and decentralised energy production and management, as well as integration of electricity with the transport and heating and cooling sectors.

In the underlying analysis of the Commission's 2015 Renewables Progress Report, it was highlighted that only a few MS are planning seriously on better integration of growing shares of renewable energy, including through enhancing flexibility of the grid. There is a need and an opportunity for the next RED to create a framework to ensure that national energy systems become smarter and more flexible. This will require substantial efforts from MS and relevant market actors such as DSOs and TSOs to provide information on how they intend to better integrate flexibility into their systems.

Such a framework should include, but not be limited to, the following:

- Reinforcing obligations on TSOs and DSOs to integrate flexibility (e.g. storage, demand response, energy efficiency, cross-border transfers, and renewable via aggregators) into their existing P&R duties on a level playing field with conventional sources of generation;
- Through market design, enhancement of rules that allow renewable energy installations and consumers through demand response to participate on a level playing field with conventional generators in balancing and intra-day markets and markets for ancillary services;
- A proper legal framework that provides clear incentives and rights for consumer participation in self-consumption, demand response and storage; and
- A stronger legal mandate for NRAs to ensure new business models can enter the market for energy services (e.g. Energy Service Companies, or ESCos) and aggregation of consumer demand/flexibility.

Empowering consumers

11. How would you rate the importance of the following barriers for consumers to produce and self-consume their own renewable energy?

	Very important barrier	Important barrier	Not very important barrier	Not important barrier	No opinion
Self-consumption or storage of renewable electricity produced onsite is forbidden	X				
Surplus electricity that is not self-consumed onsite cannot be sold to the grid	X				
Surplus electricity that is not self-consumed onsite is not valued fairly	X				
Appliances or enabler for thermal and electrical storage onsite are too expensive			X		
Complex and/or lengthy administrative procedures, particularly penalising small self-consumption systems	X				
Lack of smart grids and smart metering systems at the consumer's premises		X			
The design of local network tariffs	X				
The design of electricity tariffs			X		

A number of problems prevent individual consumers (household and non-household) from self-generating, storing or self-consuming their own electricity, and from providing services to the energy system.

First, the level of support for prosumers differs significantly between MS. For example, in Germany almost half of renewables is in the hands of citizens (both individual consumers and collective projects). In other MS such as Poland, however, due to the lack of EU-level binding

regulations for prosumers, there is no guaranteed return of investment (ROI) for micro-installations. Until the end of 2015, Polish prosumers were only able to sell surplus electricity at 80% of the actual market price. In addition, Poland has officially admitted to the European Commission that the newly adopted feed-in tariff (FiT) rates for wind micro-installations under its national RES Act do not cover levelised cost of energy (LCOE). As such, Poland's support scheme does not grant any real benefits for consumers, and can actually lead to financial losses for households.

Second, there is no legal certainty for consumers in many MS due to unstable support frameworks for small-scale renewables. This includes, inter alia, retrospective and retroactive changes to support schemes, the introduction of penalising fees and taxes for maintaining a connection to the grid, and the inability to receive fair value for excess electricity that is exported.

All of the above have been experienced in Spain, where a 2013 proposal for a decree on self-consumption has stopped uptake almost entirely, even though it has not entered into force. This has shifted Spain from leader on renewables to laggard, and Spain now risks not meet its binding 2020 RED target. Spain, however, is not alone, and other MS are now imposing dissuasive fees and other barriers to prevent or limit consumer uptake of micro-installations.

In Poland there is also a complete lack of legal certainty. A few months after the adoption of its RES Act (February 2015), which was supposed to introduce a FiT support scheme for micro-installations up to 10 kW, Polish authorities changed the previous interpretation of the scheme. As amended, FiTs should be granted only for surplus electricity and not for the entire volume of electricity distributed to the grid (while economic calculations were made on the assumption that all electricity that is not self-consumed is sold to the grid). In addition, the FiT scheme should have entered into force on 1 January 2016. However, just 2 days before it was to enter into force, another Act amending the RES Act was adopted, which postponed the original Act's entry into force until 1 July 2016. Furthermore, on 27 January 2016 the new Polish Minister of Energy announced that the FiT scheme will, in the meantime, be amended and the rates of respective tariffs may be reduced.

Such measures are not only arguably discriminatory against prosumers (e.g. they have little impact on the system relative to larger installations), but they could, as in Spain, further perpetuate a lack of trust among consumers towards market incumbents and/or the energy transition in general. Furthermore, the lack of legal clarity or certainty for investors could actually end up harming individual consumers, such as in Poland.

To not only promote citizens' role as prosumers across the EU but also protect them as consumers, the next RED should contain at least basic provisions that would guarantee the protection of fundamental prosumers' rights at the national level.

12. In general, do you think that renewable energy potential at local level is:

- Highly under-exploited
- X Underexploited
- Efficiently / fully exploited
- Over-exploited (i.e. beyond cost-effectiveness)

- **No opinion**

The RED has been effective in driving the growth of renewables in the EU. By allowing producers to receive operational support and ensuring that renewable energy has access to the grid, the RED has facilitated participation by large and small actors. The RED also supports informing and promoting public awareness of consumers and citizens (the Commission has framed this as a right), recognises a leading role for local/regional authorities in uptake of renewables and aims to eliminate non-economic barriers.

However, the RED only implicitly refers to prosumers, and no EU energy legislation refers to or supports community energy. As such, the current EU legal framework neither sufficiently recognises/supports citizen participation in the energy system, nor does it ensure their equal/fair treatment as distinct market actors or protection as consumers.

The lack of a dedicated EU legal framework for citizen participation has resulted in two problems:

1. While some MS have developed national frameworks for community energy/prosumers, this is the exception, resulting in a disparity in citizen participation between MS. For example, in Germany almost half of renewables is in the hands of citizens (e.g. individual consumers and collective projects). However, in Poland, at the end of September 2015 there were less than 3,000 micro-installations that produce electricity (with installed capacity at about 22 MW).
2. Due to the lack of a dedicated EU legal framework for community energy, the Commission's agenda to integrate renewables into the IEM has resulted in the restriction of national support for community projects (e.g. elimination of FiTs and mandates to introduce tendering/auctions under the State aid guidelines). The State aid guidelines have already resulted in the withdrawal of FiT support schemes in Germany and the UK. Post-2020, there is a need for rules that ensure community projects are not pushed out of the market because they cannot access support schemes on a level playing field with other market actors. If left unaddressed, this will affect public support and the EU's ability to achieve its 2030 targets and other climate and energy objectives (i.e. a safe, secure and sustainable transition).

To ensure all European consumers have an opportunity to participate and benefit from renewables production, the next RED should contain a dedicated legal framework that supports citizen participation in renewables production, both for self-consumption and export to the grid. Specifically, a EU framework should include provisions that:

- allow MS to establish and/or maintain appropriate supportive frameworks at national level for prosumers/community projects that provide space for them to participate in the IEM, with different rules if appropriate;
- guarantee consumers across the EU rights to self-generate, store, use and export electricity, and receive a fair return on investment, along with appropriate enforcement of such rights;
- guarantee that consumers without direct access the market (e.g. household and SME consumers in the market for demand flexibility) have access through an intermediary (e.g. aggregator);

- ensure simplicity and transparency (e.g. understandable information and technical support) for consumers regarding available support and relevant administrative rules and procedures; and
- provide adequate support for public bodies that want to become prosumers and/or establish supportive local frameworks for prosumers.

13. How would you rate the importance of the following barriers that may be specifically hampering the further deployment of renewable energy projects at the local level (municipalities and energy cooperatives):

	Very important barrier	Important barrier	Not very important barrier	Not important barrier	No opinion
Lack of support from Member State authorities	X				
Lack of administrative capacity and/or expertise/knowledge/information at the local level	X				
Lack of energy strategy and planning at local level		X			
Lack of eligible land for projects and private property conflicts	X				
Difficulties in clustering projects to reach a critical mass at local level			X		
Lack of targeted financial resources (including support schemes)	X				
Negative public perception		X			

First, it is important to emphasise that collective community projects represent a set of non-traditional market actors. Such projects often form as distinct legal entities, but under ownership models that are more democratic and do not fit traditional notions of commercial enterprises. Furthermore, the aims and objectives of these entities differ from traditional commercial enterprises in that they incorporate non-profit and/or community aims into their objectives. They are also composed mainly of local community members that often lack prior experience in project development, or they often rely on volunteer support with little paid staff. Because of these distinct characteristics, the community energy sector experiences issues that differentiate them from other actors. These issues include disproportionate impacts from costs and administrative barriers associated with the preparatory phase of projects, lack of experience compared to larger firms, risks related to upfront costs, and asymmetry of information and capacity between community enterprises and larger undertakings.

In MS where community energy is not well understood, access to private finance can be very hard to obtain and in particular it can be difficult to convince private lenders that community projects are a safe investment. Nevertheless, with FiTs, for example in Germany and Denmark, private financial institutions have found investing in community energy safe. However, due to market integration and the State aid guidelines in particular, communities are facing an end to non-premium based FiTs, which are being replaced by auction and tendering procedures. This is creating more financial risk for continued investment in community projects and there is a danger they will be driven out of the market unless certain protections are in place.

Furthermore, it is often not possible (except for some limited examples, such as in Germany) for collective community projects to sell electricity directly to their members. In many MS it is very difficult and costly to become a fully licensed supplier. Other than a general objective of NRAs to promote market opening to new actors, NRAs lack specific duties and/or powers to ensure that barriers to entry for new market actors are not overly onerous, complicated or expensive. Existing disparity in market entry barriers between MS means that there is an unlevel playing field between MS with regard to market entry, stifling competition between incumbents and new actors.

Community projects – particularly medium sized projects – also experience difficulties connecting to the grid. Such processes are long, complicated and costly, and can easily prevent community projects, which frequently rely on volunteers or outside help, from going forward. Due to less capacity, most community projects are unable to compete on par with large developers familiar with grid connection processes. Furthermore, community groups often have limited options for citing projects near the closest connection point with available capacity, increasing connection costs.

Community groups often also lack guidance and access to information on relevant laws and regulations at local level, adding time and costs to projects. Despite obligations to streamline and expedite administrative procedures under the RED, permits and/or licenses in many MS are still usually needed. For inexperienced and non-expert community groups, navigating the numerous amounts of complex administrative hurdles to realise a project is often cost-prohibitive.

14. Please rate the appropriateness of stronger EU rules in the following areas to remove barriers that may be specifically hampering the further deployment of renewable energy projects at the local level

	Very appropriate	Appropriate	Not very appropriate	Not appropriate	No opinion
Promoting the integration of renewable energy in local infrastructure and public services	X				
Supporting local authorities in preparing strategies					

and plans for the promotion of renewable energy	X				
Facilitating cooperation between relevant actors at the local or municipal level		X			
Facilitating access to targeted financing	X				
EU-wide right to generate, self-consume and store renewable electricity	X				
Measures to ensure that surplus self-generated electricity is fairly valued	X				
Harmonized principles for network tariffs that promote consumers' flexibility and minimise system costs	X				

To ensure all consumers across the EU have an opportunity to participate as prosumers, the next RED should contain a legal framework that supports consumer participation in the IEM.

First, there is a need to define prosumers within the EU energy legal framework. The definition of prosumer should not be defined restrictively, so that it covers a wide variety of potential entities (e.g. household and SME consumers, public bodies and collective initiatives) and protects certain actors from discrimination. In the Polish RES Act, for example, there is a narrow list of entities that can act as prosumers. The right to sell surplus electricity to the grid has been granted only to entrepreneurs and natural persons, excluding businesses, local government entities (including public schools) and charities.

Second, certain rights should be granted to all EU consumers. This should include, for example, prohibitions on network tariffs or taxes designed to penalise or dissuade prosumers from producing, storing, self-consuming, exporting electricity to the grid, and participating in flexibility services. A right should also include guarantee of fair remuneration/return on investment. Existing provisions on information and transparency should also be enhanced so that support schemes are clear and understandable for consumers and that they can weigh the benefits and costs. In addition there should be special safeguards in place at national level to ensure respect for legitimate investor expectations (e.g. retrospective withdrawal of support). Within their existing mandate to protect consumers and promote market entry of new actors, NRAs should also be required to ensure prosumer rights are respected at national level.

There is also a need to recognise the difference between different actors, particularly within the scope of the definition of prosumers. In particular, collective projects are usually composed of individual citizens coming together to form a distinct legal person (enterprise) that exports electricity to the grid. Therefore, they are not really consumers in the traditional sense. EU legislation (e.g. the RED and other IEM legislation, as appropriate) should acknowledge that as non-traditional market actors, collective projects may need special – and in some cases different – rules in order to participate on a level playing field with other market actors (e.g. with regard to support schemes, obtaining grid connections and reduced/streamlined administrative procedures). This is consistent with the objectives of the IEM which aim to promote non-discrimination, which according to the EU legal principle of equality, prohibits treating similar situations differently and treating different situations in the same way, unless there are objective reasons to do so.

Furthermore, it is necessary to reinforce the duties of NRAs within the IEM legal framework so they can play a stronger in promoting market entry for actors, where overburdensome and detailed licensing arrangements currently make it significantly more difficult for collective projects or other community initiatives to become suppliers and/or aggregators for purposes of demand response. Such enterprises are necessary for ensuring that presumers can exercise rights to participate.

Lastly, there is a need to strengthen provisions that currently exist under the RED to support local delivery of renewables objectives, particularly regarding the development of local planning frameworks, enhanced support for local governments, and provision of information and technical support through one-stop shops.

Questions 15 - 19 not answered.

Adapting the market design and removing barriers

20. Please assess the importance of stronger EU rules in the following areas to remove grid regulation and infrastructure barriers for renewable electricity deployment:

	Very important	Important	Not very important	Not important	No opinion
Treatment of curtailment, including compensation for curtailment	X				
Transparent and foreseeable grid development, taking into account renewable development and integrating both TSO and DSO level and smart technologies	X				

Predictable transparent and non-discriminatory connection procedure	X				
Obligation/priority of connection for renewables	X				
Cost of grid access, including cost structure	X				
Legal position of renewable energy developers to challenge grid access decisions by TSOs		X			
Transparency on local grid congestion and/or market-based incentives to invest in uncongested areas	X				

A new RED should require MS to ensure that community projects can connect to the grid. As, Ofgem, the UK NRA, has acknowledged, community projects face a number of distinct challenges not faced by traditional commercial developers. Specifically, community projects:

- Are unlikely to have significant finance available for early stages of project development;
- Are less likely to have expertise in grid connections; and
- Use different governance models, which mean that projects usually take longer to develop and may therefore find it difficult to respond as quickly as commercial developers when capacity becomes available.

Despite legal rules under the current RED, community projects still face high costs and complicated/uncertain timelines in obtaining a connection. In MS that use deep cost connection charging methods, obtaining grid connections is particularly difficult. Furthermore, there is a perception among community groups that system operators (e.g. DSOs) treat network users inconsistently and lack transparency. These issues are exacerbated by capacity constraints on distribution and transmission networks, where project proponents often face additional delays and costs in order to fund grid expansion/reinforcements. Furthermore, community groups are physically and financially constrained from relocating their project to an area where the grid is not constrained. As renewables continue to expand, constraint issues are likely to increase.

There is justification under EU law for treating certain network users differently, particularly when similar treatment raises issues of equality and proportionality. Under the legal principle of non-discrimination, to treat different network users similarly could constitute discrimination. Likewise, where actors are in sufficiently different positions/situations, different treatment is not discriminatory.

While community projects sufficiently differ from other commercial operators to justify unique treatment under existing EU rules, there is a need for explicit treatment of their unique positions. This is because different treatment needs to be justified on the basis of possible exemptions provided for in EU legislation.

A new RED should require connection processes to be more understandable for all actors, particularly community projects. Specifically, MS should be required to ensure information to local stakeholders on obtaining a grid connection is understandable and accessible. MS should also be required to ensure DSOs provide enhanced financial and procedural certainty for obtaining a connection. For instance, MS should be required to ensure shallow connection charging methods apply to community projects. DSOs should also be required to provide more clarity in providing timelines for connections, with binding deadlines and penalties for non-compliance. MS should also be required, if appropriate, to establish priority – or alternatively, separate – grid connection procedures for community projects. At the very least, MS that want to provide more certainty to community projects should be able to do so without worrying whether they violate IEM rules.

In order to prepare for the long term, MS need to provide more information on how they intend to increase flexibility as currently, only a few MS are planning seriously on better integration of growing shares of renewables. There is a need for the next RED to integrate such planning requirements for MS and relevant market actors (e.g. DSOs and TSOs) to provide information on how they intend to integrate and enhance flexibility into their systems.

Questions 21 not answered.

22. Please assess the importance of stronger EU rules in the following areas to remove administrative barriers to renewable energy deployment:

	Very important	Important	Not very important	Not important	No opinion
Creation of a one stop shop at national level to allow for more streamlined permitting procedures	X				
Online application for permits		X			
A defined maximum time-limit for permitting procedures, and effective consequences if deadline is missed	X				
Harmonisation of national permitting procedures		X			
Special rules for facilitating small-scale project permitting, including simple notification	X				

Pre-identified geographical areas for renewable energy projects or other measures to integrate renewable energy in spatial and environmental planning		X			
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The RED has provided an effective legal framework for reducing administrative and planning barriers for renewables across MS over time. Furthermore, a wealth of best practice on tools such as online information platforms for local citizens and project developers alike, as well as one-stop shops at local and national level, can now be identified and shared.

Nevertheless, as the Commission's 2015 Renewable Energy Progress Report acknowledges, the implementation of these provisions across MS overall has been slow. Furthermore, MS still maintain a high degree of discretion, limiting the effectiveness of the provisions. As it currently stands, therefore, a significant disparity in administrative barriers for renewables exists between MS.

In order to allow renewables to continue becoming cost-competitive, there is a need to further reduce and/or harmonise national rules regarding administrative and other barriers such as planning. Therefore, provisions under Article 13 of the current RED should be renewed and strengthened to improve certainty by further reducing and/or simplifying rules and procedures (e.g. simple notification and/or automatic approvals), particularly for the construction of installations by local citizens (individually and cooperatively).

Furthermore, in order to alleviate the burden of remaining administrative hurdles, informational requirements under the existing RED should be strengthened. Specifically, the new RED should require MS to establish one-stop shops at appropriate level (national and/or local) to: 1) coordinate different administrative approval processes and licences for local projects; and 2) advise local citizens and community groups to help them with technical issues, access finance and navigate relevant regulations and procedures. Such a role could be undertaken by a public body or private entity, although if public it would need to be guaranteed sufficient financial and technical resources, independence and political support from higher levels of government.

More broadly, a new RED should provide better support for local governments that want to become leaders in renewable uptake. In particular, the next RED should promote the use of voluntary community energy targets by national governments at all levels. Specifically, MS should be required to encourage the inclusion of community energy considerations in the development of national and regional/local renewable energy plans and associated administrative procedures, regulations and codes. Such targets could be linked to enhanced financing mechanisms under a new RED. For instance, aspects of the Covenant of Mayors could be embedded in the RED to link local energy plans to financing. New funding mechanisms could also be envisioned to help support local governments, such as through a mechanism that is being discussed in order to ensure the prevention of a 'gap' in the EU's 2030 renewables target, and is being pushed for by Germany and Portugal.

Questions 23 - 30 not answered.

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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