GREEN ALTERNATIVE

Environmental and social justice in Georgia

Green Alternative Comments on proposed renewable energy directive amendments

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Association Green Alternative Welcomes European Commission efforts to increase the deployment of renewables, reduce dependence on gas and speed up the green transition towards a low carbon economy. However, the European Commission should ensure that the move toward renewable energy is aligned with existing EU law on nature conservation and protection and implementation of EU biodiversity strategy 2030.

The European Commission's Renewable Energy Directive amendments proposal could have adverse environmental and biodiversity outcomes in the European Union. It will also have spillover effects on non-EU members of the European energy community treaty, including Georgia. The amendments also threaten public participation in environmental decision-making and contradict the Aarhus Convention's core principles.

Weakening the environmental legislation

The draft directive considers bureaucratic burden, non-transparent processes, and different interpretations of existing legislation by the competent authorities as significant barriers. It also acknowledges environmental protection (biodiversity and protection of endangered species and water bodies) as an obstacle to investments in renewables. The draft proposal states (Paragraph 7, page 11) that "some of the most common issues faced by renewable energy project developers relate to procedures established at the national or regional level to assess the environmental impact of the proposed projects. Therefore, it is appropriate to streamline certain environmental-related aspects of the permit-granting procedures and processes for renewable energy projects."

Hydropower plants have significant direct and indirect impacts on the environment, rivers' ecosystems, fish, water flow regimes, and underground waters. At the same time, upstream and downstream populations often experience drastic social and economic consequences. The construction of large wind farms on bird migration routes or in nature protection areas leads to significant harm for migratory birds. The building of solar farms on meadows and pastures destroys habitats for numerous species.

Therefore, while permitting procedure can be simplified whenever possible, it should not be done at the expense of weakening the environmental legislation and public participation process.

The proposed go-to zones for renewable energy require well-developed spatial planning in all MS. Good spatial planning is needed. it is crucial that for each cluster of renewables, the related specific impact assessments are done not only within the MS borders., E.g. in the case of wind farms, cumulative impact assessments should be done not only within MSs but region-wide, including in countries outside of the EU.

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Therefore, the lighter environmental procedures are acceptable for - degraded lands or urban areas and repowering projects. However, to ensure the sustainability of go-to zone planning, it should be based on comprehensive scientific data and environmental impact assessments, including SEA and in a transboundary context to align with EU Biodiversity strategy 2030. That exercise is time-consuming and lengthy if appropriately done and should undergo public scrutiny; therefore, it is not visible how it could address the immediate threat of Russian aggression.

The existing Environmental Legislation that creates the basis for the legislation of the energy community in non-EU countries is quite flexible. Screening procedures allow the construction of some renewable projects without any environmental impact assessment. However, the building of the greenfield projects (under any technology), especially in protected areas, such as the Natura 2000 and its analogue Emerald sites, should require environmental impact assessment and appropriate assessment of the site (if needed), as it is defined under EU environmental legislation. "a presumption of not having significant effects on the environment" and not having significant effects on the environment are two different things. Thus, we should strive for the last one.

Public Participation in environmental decision making

Under the Universal Declaration of Human Rights, everyone has the right to take part in the government of their country. According to the UN special rapporteur on human rights and environment, Prof. John Knox, "the exercise of human rights helps to protect the environment, and a healthy environment helps to ensure the full employment of human rights." Proposed amendments under permitting directive are against the core principles of Aarhus Convention, as well as contradicts countries obligations to facilitate public participation in environmental decision making.[1]

The Environmental Impact Assessment (EIA) is a vital part of EU environmental legislation and a crucial tool for environmental decision-making and democracy. Full exemptions of renewables from the EIA process will benefit harmful projects due to the lack of public participation. It is well-known practice all over the neighborhood and CEE region to disregard the EIA's and other assessment tools without presenting any significant evidence. As a result, in Georgia, some of the constructed hydropower plants projected failed (some of them physically)[2]. There are also cases in the European Union like the last corruption case in Austria[3] which highlights that all major energy projects have been given the green light based on corruption and bribery. The future diminishing of EIA-related procedures creates the window of opportunity for non-EU governments to entirely disregard the environmental assessments and project justifications in the name of public interests.

Overriding public interest

According to amendments (Para 22), "Renewable energy sources are crucial to fight climate change, reduce energy prices, decrease the Union's dependence on fossil fuels and ensure the Union's security of supply. For the purposes of the relevant Union environmental legislation, in the necessary case-by-case assessments to ascertain whether a plant for the production of energy from renewable sources, its connection to the grid, the related grid itself or storage assets is of overriding public interest in a particular case, Member States should presume these plants and their

[1] https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report
[2] https://www.business-humanrights.org/en/latest-news/georgia-locals-assure-shuakhevi-hydropower-plant-is-responsible-for-increasing-water-droughts-and-landslides-in-nigazeuli/
[3] https://steiermark.orf.at/stories/3129184/

related infrastructure as being of overriding public interest and serving public health and safety, except where there is clear evidence that these projects have major adverse effects on the environment which cannot be mitigated or compensated. Considering such plants as being of overriding public interest and serving public health and safety would allow such projects to benefit from a simplified assessment." The question here is - how can the MS find “clear evidence” that the project has “major adverse major adverse effects on the environment which cannot be mitigated or compensated.”

In addition, the Article 16d says, "until climate neutrality is achieved, Member States shall ensure that, in the permit-granting process, the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself and storage assets are presumed 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 Articles 6(4) and 16(1)(c) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.'" It means that any renewable project is being granted the overriding public interest status, despite its negative implication on biodiversity and people. So, the amendment gives the impression that "climate neutrality” is of higher value than lives and health of the people on the ground, biodiversity and ecosystem healthiness.

On the one hand, any renewable energy project has to be presumed as overriding public interest statute and should benefit from a simplified assessment, but on the other hand, it requests member states "for the purposes of the relevant Union environmental legislation case-by-case assessments" to ascertain whether a plant really serves that purpose.

According to the UN, "climate action should be consistent with human rights obligations, standards and principles and protect the rights of all persons, particularly those most affected by climate change. Often those who have contributed the least to climate change unjustly and disproportionately suffer its greatest harms. These rights holders must be meaningful participants in and primary beneficiaries of climate action, and they must have to access to effective remedies[4]." From this point of view, article 16 does not allow any room neither duty bearers as well as rights holders in that regard.

The Renewable Energy Directive amendments do not go in line with UN Business and Human Rights principles and create room for very problematic interpretations. Considering, that EU law usually is quoted as the best practice, the countries outside the EU with weak environmental legislation and governance will try to use the amendment's deficiencies and justify their own unlawful actions.

[4] FSheet38_FAQ_HR_CC_EN.pdf (ohchr.org)