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CONTRIBUTION

From:	General Secretariat of the Council
To:	Delegations
Subject:	IE comments on the revised Renewable Energy Directive

Delegations will find in annex the IE comments on the revised Renewable Energy Directive.

Ireland's comments on the Proposal for a Directive on the promotion of the use of energy from renewable sources (Version REV 3 13 November 2017)

Ireland's written comments on REV 3 of the Renewables Directive are set out below. These comments include **three red-line issues**, notably around:

- 1) **Article 3 (Member State contributions post 2020)**. Ireland has significant concerns in relation to the baseline level which continues to be discussed in detail as part of the Governance Regulation. Ireland's strong preference is for this issue to be dealt with exclusively in the Governance Regulation rather than the Renewable Directive.
- 2) **Article 23 (Heating)**. Member States must have maximum flexibility in setting their level of ambition – setting what is effectively a sectoral target in this Article could limit the potential for development of renewable energy in other sectors which may be more cost-effective.
- 3) **Article 25 (Transport)**. As above, Ireland does not support the setting of sectoral targets. Ireland is opposed in principle to the 12% target proposed, and suggests moreover that it is unrealistic.

Recitals

Ireland's revisions are highlighted in bold underlined yellow highlighted text and deletions are marked with a strike-through yellow highlighted text.

(16bis) Revise to read:

(16bis) ~~While Member States may should be required to progressively and partially~~ open support to projects located in other Member States, opening of support schemes should remain voluntary beyond this mandatory share. Member States have different renewable energy potentials and operate different schemes of support for energy from renewable sources at the national level. The majority of Member States apply support schemes that grant benefits solely to energy from renewable sources that is produced on their territory. For the proper functioning of national support schemes it is vital that Member States continue to be able to control the effect and costs of their national support schemes according to their different potentials. One important means to achieve the aim of this Directive remains to guarantee the proper functioning of national support schemes, as under Directives 2001/77/EC and 2009/28/EC, in order to maintain investor confidence and allow Member States to design effective national measures for their respective contribution to the Union's 2030 target for renewable energy. This Directive should facilitate cross-border support of energy from renewable sources without affecting national support schemes in a disproportionate manner.

It should therefore introduce, ~~in addition to the mandatory partial opening of support schemes,~~ ~~[While requiring Member States to progressively and partially open support to projects located in other Member States, this Directive maintains]~~ optional cooperation mechanisms between Member States which also allows them to agree on the further extent to which one Member State supports the energy production in another and on the further extent to which the energy production from renewable sources should count towards the national contribution of one or the other to the Union's 2030 target for renewable energy. In order to ensure the effectiveness of both measures of target compliance, i.e. national support schemes and cooperation mechanisms, it is essential that Member States continue to be able to ~~determine beyond the prescribed minimum share [to a large degree]~~ if and to what extent their national support schemes apply to energy from renewable sources produced in other Member States and to agree on this by applying the cooperation mechanisms provided for in this Directive.

Revise (17) and (17 bis) to read

- (17) The opening of support schemes to cross-border participation limits negative impacts on the internal energy market and can, under certain conditions, help Member States achieve the Union target more cost-efficiently. Cross-border participation is also the natural corollary to the development of the Union renewables policy **fostering convergence and cooperation to contribute []** Union-level binding target []. It is therefore appropriate ~~that to require~~ Member States ~~may to progressively and~~ partially open support to projects located in other Member States, and define several ways in which such progressive opening may be implemented, ensuring compliance with the provisions of the Treaty on the Functioning of the European Union, including Articles 30, 34 and 110. ~~As electricity flows cannot be traced, it is appropriate to restrict the opening to a share representing actual levels of physical interconnections and to allow Member States to restrict their open support schemes to Member States with whom they have a direct network connection as a practical proxy for demonstrating the existence of physical flows between the Member States.~~

~~(17bis) In order to ensure that the opening of support schemes is reciprocal and bring mutual benefits, Member States should not be allowed to restrict the participation of installations located on their territory to support schemes which are opened to them by other Member States. However, Member States should retain control over the pace of deployment of renewable electricity capacity on their territory, in order in particular to take account of associated integration costs and required grid investments. Member States should thus be allowed to limit the participation of installations located on their territory to tenders opened to them by other Member States, where they can demonstrate that doing so would threaten the security of their electricity system or lead to disproportionate costs. When doing so, Member States should however have taken due consideration of all measures that may allow for a cost-effective integration of such additional renewable electricity capacity, be they of regulatory nature (for instance related to market design) or additional investments in various sources of flexibility (for instance interconnections, storage, demand response, or flexible generation).~~

Revise (18) to read:

(18) Without prejudice to **Articles 107 and 108 of the Treaty on the Functioning of the European Union []**, renewables support policies should be stable and avoid **unjustified [] retroactive** changes. Such changes have a direct impact on capital financing costs, the costs of project development and therefore on the overall cost of deploying renewables in the Union. Member States should prevent the revision of any support **that has been** granted to renewable energy projects from having a negative impact on their economic viability, **unless such a revision relates to dynamic elements or mechanisms in the support schemes themselves, for example to adapt to market conditions and market arrangements had been already envisaged in the original design of the support scheme.** In this context, Member States should promote cost-effective support policies and ensure their financial sustainability.

Revise (26) to read:

(26) To create opportunities for reducing the cost of ~~achieving~~ meeting the Union targets laid down in this Directive and to give flexibility to Member States to comply with their obligation not to go below their 2020 national targets after 2020, it is appropriate both to facilitate the consumption in Member States of energy produced from renewable sources in other Member States, and to enable Member States to count energy from renewable sources consumed in other Member States towards their own renewable energy share national targets. For this reason, flexibility measures cooperation agreements are required, but they remain under Member States' control in order not to affect their ability to reach their national targets to complement the if a Member State decides obligations to open support schemes to projects located in other Member States. Those flexibility measures agreements include take the form of statistical transfers, joint projects between Member States or joint support schemes.

Revise (36) to provide that:

The following text in Recital (36) "...authorisations should be replaced by simple notifications to the competent body" should be replaced with **"the authorisation procedure should be based on a simple application procedure to the competent body"**

Article 2 – Definitions (see also Article 21)

(aa) – 'renewable self-consumers' - Ireland has a scrutiny reserve on the addition of the text 'confined boundaries' here. 'Renewable self-consumer' refers to certain activities and rights and clarity is sought on what the 'confined boundaries' means in this context.

(ww) - 'renewable energy communities' - Ireland suggests the following amendment to strengthen the principle of not-(purely)for-profit:

"... The primary purpose of an energy community is to provide environmental, economic or social community benefits for its members or the local areas where it operates rather than financial profits."

(ff) The definition of 'recycled carbon fuels' seems to be very restrictive. As it is worded it seems that a liquid and gaseous fuel produced from (not using) processing gases and exhaust gases of non-renewable origin from industrial installations are eligible. Why is it restricted to 'industrial installations'? And is it intended that only liquids and gases produced from processing and exhaust gases are eligible?

Article 3 - Union binding overall target for 2030 (and Article 34 – repeal)

Ireland does not support the reintroduction of **Article 3(3)** into the recast Directive and believes this issue should be dealt with exclusively in the Governance Regulation.

As Ireland has said previously, the baseline figure from the 2009 Directive, while legally binding on Member States (and we note the amendment to Article 34 in this regard), cannot be agreed to as the most suitable starting point for the period 2021 to 2030, for Member States who do not achieve their 2020 targets.

Ireland believes that Member States that do not maintain the baseline level of renewable energy should be provided with a reasonable opportunity to close the gap on a national basis. This could be achieved by allowing Member States to use the level achieved in 2020 as a baseline level for the period post-2020.

Notwithstanding this point, a degree of flexibility should be provided so that Member States do not face financial penalties post 2020 and are instead provided with an opportunity to take actions to further develop renewable energy.

Article 3.4(b) - Ireland has a scrutiny reserve on the reference in Article 3.4(b) to an interconnection target of 15% by 2030, and would suggest replacing “achieving a 15% target on 2030” with “achieving increased interconnection”.

Article 3.4(4bis) - Ireland has a scrutiny reserve on the reference to a facilitative platform, and on the revisions to **Article 8** generally.

Article 4 – Financial Support

Article 4.3bis - Ireland would like the deleted ‘security of supply’ to be re-instated as an objective to enable technology specific supports.

Article 5 – Opening of Support Schemes

Ireland thanks the Presidency for the amendments made to Article 5, and in particular the removal of the mandatory requirement to open support schemes and the significant simplification of this article that this now allows.

Ireland suggests that the text in **para 3 of Article 5.1** requiring Member States to aim for a specific percentage opening where they might decide to voluntarily open their schemes, is superfluous, confusing and should be deleted lest it create a disincentive to opening national schemes. Moreover, the increase proposed here from 5 to 10% to a minimum 10 to 15 % opening cannot be supported. At a minimum, this should be deleted or at most, reference the achievement of increased interconnection rather than a specific percentage. Member States who open schemes should have maximum control and flexibility of their national schemes to ensure their effectiveness and best facilitate their contribution to the EU binding 2030 target.

Article 6 – Stability of financial support

Ireland notes the changes made to Article 6, and would suggest the following additional changes:

“.....Member States shall ensure that the level of, and the conditions attached to, the support that has been granted to renewable energy projects are not **unjustifiably** revised in a way that restricts the **existing** rights conferred thereunder **and the economics of supported projects**.
“This provision shall not affect dynamic elements or mechanisms in the support schemes themselves, for example to adapt to market conditions **and market arrangements**, ~~provided that such elements or mechanisms are established in the original support mechanisms.~~”

Article 8 Statistical Transfers

IE has a scrutiny reserve on the proposal for a new EU Renewable Development Platform.

Art 8 (1bis) Ireland proposes revision of the text as below.

Art 8 (1ter) The objective of the first sentence of this paragraph is unclear. More detail on this proposed structure, how it would operate, what powers it would have, etc., would be required before it could be supported. We note the voluntary nature of the proposal for Member States to yearly submit data.

1bis. In order to facilitate the achievement of the Union binding target, Member States' respective contributions to this target as set out in Article 3 of this Directive and statistical transfers in accordance with paragraph 1 of this Article, the Commission shall establish a European Union Renewable Development Platform (“ERDP”). Member States may submit to this platform on a voluntary basis yearly data on their contributions to the EU binding target for 2030 or any benchmark set for monitoring the progress in Regulation [Governance], including the expected shortfall or overachievement thereof, and an indication of price on which they would accept to transfer any excess production of energy from renewable sources from or to another Member State.

1ter. The Commission shall ensure that the ERDP is able to match the demand and offer for amounts of energy from renewable energy sources that is taken into account in measuring the renewable energy share of Member State based on prices or any other additional criteria specified by the Member State that the energy is transferred to.

The Commission is empowered to adopt delegated acts in accordance with Article 32 for the establishment of the ERDP and setting the conditions of finalising transactions as referred to in paragraph 3 of this Article.

Articles 16 and 17 Permitting and Simple Notification Procedures

Ireland thanks the Presidency for the amendments made to both of these articles. Our position does remain however, that the requirement in Article 15 for Member States to ensure that national rules and procedures are streamlined and proportionate is sufficient.

Notwithstanding this, Ireland suggests the following further amendments:

Article 16.2 – The deletion of the words “coordinate” and “administrative” from the first line. There is no need to reference coordination given the guidance role proposed for the contact point(s).

Article 16.2 - The deletion also of last sentence “At the end of the process, the contact point shall transmit the outcome of the procedure which may include one or several decisions from the relevant authorities”. An applicant should be able to progress its project as relevant consents are granted and not have to await a final consent decision before doing so; there is no added value in this sentence.

Article 16.4 – Provision should also be made to allow the timelines of three years to be extended if the applicant has not provided all of the required information for permits to be granted.

The second sentence of 16.4 should read: “However, the period of three years may be extended **if the applicant has not provided all of the required information to enable the consenting authority to assess the application and may also be extended** with the mutual agreement of the relevant consenting authority and the applicant.”

Article 17 – the term “notification” should be replaced with “application” both in the title of this article and throughout the text to reflect the reality that DSOs manage the connection process and projects apply for connections.

Article 19 Guarantees of origin

Scrutiny reserve.

Article 21 -Renewable self-consumers (see also Article 2 definitions)

Ireland continues to support the premise of the renewable self-consumer and continues to welcome the flexible language around implementation.

Article 21.1(d) - Ireland sees no need for the addition of the term ‘at least’ and would ask for its removal. It should be up to each Member States to design their own support scheme including what the level of supports for renewable self-consumers are.

Article 22 - Renewable Energy Communities

Article 22.1(f) - Ireland seeks further detail on section (f) and ‘sharing of renewable energy’.

Article 22.3 - As before, Ireland cannot support the seeming obligation in Article 22.3 for Member States in designing Support Schemes, to ensure more favourable conditions for one category of producers over another. More clarity is needed on what is intended here. Ireland suggests that this obligation not be mandatory, i.e., change “shall” to “may”.

Article 23 - Mainstreaming renewable heating in the heating and cooling installations

Ireland continues to have concerns in relation to the indicative reference value of 1 percentage point. It is not clear what flexibility Member States have to set their own level of ambition and how the 1 percentage point reference value will be used in the assessment of National Energy and Climate Plans. Clarity is needed in this regard. Setting an effective sectoral target could limit the potential for development of renewable energy in other sectors which may be more cost-effective. Ireland proposes that cost effectiveness is included as a key criterion for Member States in determining their own appropriate level of increase of renewable energy in the heating and cooling sector. Ireland also strongly believes that it is crucial to clarify the new term ‘reference value’ in line with the interpretation which the Presidency shared at the last Energy Working Group meeting based on the ILUC Directive approach.

Article 24 - District heating and cooling

Ireland supports the inclusion of Article 24(10) which provides for Member States deciding not to apply paragraphs 2 to 9 in certain circumstances. The proposed level of 2% of the overall consumption is considered an appropriate benchmark in relation to these provisions.

Article 25 - Mainstreaming renewable energy in the transport sector

Paragraph 1

- Ireland has a number of concerns in relation to the setting of a transport sector target of 12% in 2030 in Article 25(1).
 - Ireland does not support setting sectoral targets (even when applied to fuel suppliers) and would favour an indicative target only. Sectoral targets limit the potential for development of renewable energy in other sectors which may be more cost-effective.
 - The proposed target of 12% renewable energy by 2030, which is a sectoral target, will require a significant level of fuel and/or technology development. The proposed trajectory assumes a significant increase in the availability biofuels and the ability of the national vehicle fleets to use such fuels. The proposed target would require a substantial increase in the number of electric vehicles in use. Such an increase in uptake would require considerable progress in terms of both pricing and technical development. It is also not clear how fuel suppliers can significantly impact the increase in use of electric vehicles. If a 2030 target is to be put in place for fuel suppliers, it should be indicative and at a level that encourages investment in biofuels and electric vehicles but does not determine a sectoral level of ambition for Member States that may not be cost effective. If this sectoral target is to be retained, double counting should be re-included.

- Ireland would like clarification that where a Member State has set a national target under Article 3(4)(e) of Directive 2009/28 that is lower than the reference value of 0.5 percentage points (e.g. 0.25% in Ireland's case), that this is the starting level that will be used for biofuels and biogas produced from feedstock listed in part A of Annex IX. If this is the case, Ireland welcomes this change that will ensure the provision set out for this target under the ILUC Directive remain.
- As set out above, Ireland does not support sectoral targets and therefore the 3% target for advanced biofuels should be indicative only. The proposed trajectory assumes a significant increase in the availability of advanced biofuels.
- Notwithstanding the above, Ireland requests clarification on the calculation of the share of advanced biofuels. The provisions set out in Article 25(1)(a) and (b) relate to the "*...calculation of the shares referred to in the first and second sub-paragraph...*". However, this implies that the same provisions apply to calculating two different shares i.e., the same numerator and denominator are used for two different calculations.
- Ireland supports maintaining the limit on the share of energy from renewable fuels produced from food or feed based crops at the current level of 7%.
- Ireland supports Member States having the option to limit the contribution from biofuels and biogas produced from feedstock in part B of Annex IX. This should not return to a mandatory level as previously proposed.
- Ireland supports the continued use of a 5 times multiplier to promote the growth in electric vehicles.

Paragraphs 4 & 5

The intention of paragraphs 4 and 5 of Article 25 would appear to be the establishment of a central EU database, maintained by the Commission. This central database would be populated by data transferred from Member States who may establish their own national databases. Economic operators therefore would interact with their own Member States database and Member States would interact with the Commission.

However, the wording of paragraphs 4 and 5 is not entirely clear. Some phrases would seem to suggest that economic operators would be required to interact directly with the Commission database e.g. technical specs in para 5.

It would be a duplication of effort for economic operators to enter the same information in both national and central databases.

Therefore, the wording in paragraphs 4 and 5 should be amended to clarify this point.

Paragraph 6

Ireland suggests that the date by which the Commission shall adopt the methodologies, should be no later than December 2020 (not December 2021 as currently indicated in the text).

Annex IX

Ireland proposes that 'perennial ryegrass' be included in Annex IX. The transport sector in Ireland is faced with the challenge of increasing uptake of advanced biofuels without hindering potential sources of biogas or biomethane, considered sustainable alternatives to compressed natural gas (CNG). It is therefore a priority that Ireland's domestic biogas industry, which would be instrumental in indigenous production of biogas/biomethane for use in the transport sector, should not be inhibited by non-inclusion of related feedstocks such as perennial ryegrass. Ireland agrees that biofuel production should be sustainable and supports regular evaluation of Annex IX to assess the possibility of extending the annex to new feedstocks and strongly calls for the inclusion of perennial ryegrass.