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25 June 2024

Much-needed improvements in spatial planning for solar and wind expansion in the Energy Community must not be at the cost of nature

Dear Director General,

We understand that the European Commission is currently proposing a [Ministerial Council Recommendation on accelerating the deployment of renewable energy projects and implementing the energy efficiency first principle](#), which, if agreed, would be adopted at the Energy Community Ministerial Council later this year.

Our organisations fully support a rapid transformation to an energy-efficient, 100 per cent renewable energy system, and many of us actively promote this goal daily. Nevertheless, tackling the climate emergency must go hand in hand with tackling the biodiversity crisis.

Legal protection of biodiversity-rich areas is a crucial precondition for infrastructure planning, including renewable energy, but the countries still have a very low share of their land and sea areas protected by law, e.g. [4 per cent](#) of land in Bosnia and Herzegovina, [8 per cent](#) in Serbia and [11 per cent](#) in Georgia, compared to [26 per cent of land in the EU](#).

EU environmental law such as the Environmental Impact Assessment (EIA), Habitats, Birds and Water Framework Directives, when properly applied, represents a valuable tool to balance the needs of climate action with those of biodiversity protection, ensuring that planned installations are assessed in a manner commensurate to their likely impacts.

We have already seen the consequences of inadequate nature protection, environmental assessments and public consultations regarding hydropower. Countless rivers and streams have been seriously damaged and many more are still threatened. Communities are losing access to water

for crops, animals, fishing, and recreation. This has attracted a widespread public backlash, especially in the Western Balkans, the Dniester River basin, and Georgia.

Thanks to community and civil society resistance, there is still much to protect. The Energy Community countries include global biodiversity hotspots, and their extensive mountains, river and lake systems, and coastlines are home to numerous endangered species and important habitats with a high degree of endemism. Many of their rivers, and the Western Balkans' karst fields, are still in good or pristine condition, but are woefully under-protected.

The Energy Community Contracting Parties' Stabilisation and Association agreements or Association Agreements require them to transpose EU nature protection legislation, but in many cases without clear deadlines. This is why, in addition to the EIA Directive and Article 4.2 of the Birds Directive that are already a part of the Energy Community Treaty, for at least a decade¹ civil society organisations have been asking for the inclusion of the remainder of the Nature Directives² and the Water Framework Directive in the Treaty.

We have been repeatedly reassured that the Commission is working on their inclusion, but no proposals have been published yet. Instead, the proposed Recommendation would allow derogations from directives which have not even been properly transposed yet, including for highly damaging technologies such as hydropower and forest biomass.

With such a low share of protected areas, far from encouraging renewable energy developments mainly in 'no-regrets' locations, the 2023 amendments to the Renewable Energy Directive would encourage their deployment almost everywhere in the Energy Community countries, including in highly sensitive locations, with very few safeguards.

This sends a completely inappropriate signal to the Energy Community Contracting Parties that nature protection and public consultations are no longer a priority when planning renewable energy. It undermines the Commission's own efforts, as well as those of civil society, to ensure proper transposition and implementation of the environmental acquis.

Hydropower and bioenergy projects are particularly unsuitable for any form of derogation from EU environmental legislation, but all kinds of energy installation can cause harm if put in the wrong place, and need careful assessment. We are already starting to see [solar](#) and [wind](#) projects causing a public backlash due to poor siting, lack of public consultations and environmental assessments. This is likely to slow down renewable energy developments, instead of speeding them up, due to increased court challenges. This tendency would only be exacerbated by the Recommendation.

Although we appreciate the increased attention given to spatial planning in the 2023 amendments to the Renewable Energy Directive, any gains made in this field would be undermined by allowing derogations from environmental safeguards.

The Directive relies heavily on Strategic Environmental Assessment (SEA) – a tool which has only just started to be used in the Energy Community countries, and has so far not made a significant positive impact. We value the potential of SEA to assist with spatial planning, but the assumption that it can resolve siting conflicts to the extent that no EIA would be needed for projects in acceleration areas is high-risk and relatively untested, even in the EU. It is certainly not realistic in the Energy Community

¹ See e.g. [Joint CSO Comments on the High Level Reflection Group of the Energy Community Report "An Energy Community for the Future"](#), September 2014.

² Habitats and Birds Directives.

countries. Moreover, in most countries, access to justice in relation to SEA is not enshrined in the national legislation, even though it is guaranteed by the Aarhus Convention.

The Recommendation would result in a significant legal inconsistency, since the EIA Directive and Article 4.2 of the Birds Directive are legally binding under the Energy Community Treaty, and the Treaty's Contracting Parties are also parties to [the Bern Convention](#) and [Aarhus Convention](#). A Recommendation is not legally binding and cannot therefore derogate from the provisions which are.

Directive (EU) 2023/1791 is not part of the Energy Community Treaty and thus cannot be treated as a *lex specialis* to the EIA Directive as it is in the EU. Articles 15e, 16a, and 16d(1) exempt projects from EIAs, which is against the binding ECT *acquis* for projects likely to have significant environmental impacts. Moreover, exempting such projects from EIAs is likely to result in no public participation which is in breach of the Aarhus Convention provisions on public participation in decision-making on activities that have a significant environmental impact and access to justice.

Solar installation has speeded up in many Energy Community countries in the last two years, and while renewables planning and permitting certainly need further improvement, this requires a tailored approach, which includes an impact assessment. Civil society groups have already provided suggestions related to [Bosnia and Herzegovina](#), [North Macedonia and Serbia](#).

If properly implemented, the 2018 Renewable Energy Directive, whose implementation deadline was 31 December 2022 in the Energy Community, will also bring significant improvements, so this should be a priority for now, particularly as the new amendments to the Renewable Energy Directive have not yet had a chance to prove themselves in the EU.

Renewable energy development must succeed, but it must avoid damaging nature, and it must have public buy-in. For this reason, we ask the European Commission to reconsider its proposed Recommendation and to significantly reduce its scope, in order to avoid contradicting the countries' nature protection obligations.

Specifically, we ask the Commission to delete Articles 15b, 15c, 15d, 15e, 16a, 16b, 16c, 16d(1)³ and 16f from the Recommendation, leaving only the 'no-regret' provisions 16, 16d(2), 16e, and Article 3 of Directive (EU) 2023/1791. For a further explanation of our reasoning for this, please see the Annex to this letter.

We ask for your earliest attention to this issue and look forward to your response. We remain at your disposal if you would prefer to discuss the issues in a meeting.

Kind regards,

Pippa Gallop

Southeast Europe Energy Policy Officer, CEE Bankwatch Network,

on behalf of the following NGOs:

³ Although we are aware that such projects are unlikely to have significant environmental impacts, excluding them from the screening procedure is in breach of the EIA Directive.

1. Aarhus Center in BiH Bosnia and Herzegovina



2. Akcija za socijalnu pravdu Montenegro



3. Bird Protection and Study Society of Serbia - BirdLife Serbia Serbia



4. Brodsko ekološko društvo-BED Croatia



5. Centar za životnu sredinu Bosnia and Herzegovina



6. Center for Protection and Research of Birds Montenegro



7. Centre for Environmental Initiatives 'Ecoaction' Ukraine



8. CEE Bankwatch Network Regional



9. ClientEarth Belgium



10. Ecological Association Rzav Serbia



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| 11. | Eco-Team | Montenegro |  |
| 12. | EcoZ | Kosovo |  |
| 13. | EDEN Center | Albania |  |
| 14. | Eko akcija | Bosnia and Herzegovina |  |
| 15. | EKO ELEMENT Bugojno | Bosnia and Herzegovina |  |
| 16. | Eko forum Zenica | Bosnia and Herzegovina |  |
| 17. | Environmental Citizens' Association "Front 21/42" | North Macedonia |  |
| 18. | Environmentally Responsible Action (ERA) group | Kosovo |  |
| 19. | Eurasian Wildlife and Peoples | Eurasian Regional (based in US) |  |
| 20. | EuroNatur Foundation | Germany |  |
| 21. | Foundation Atelier for Community Transformation - ACT | Bosnia and Herzegovina |  |

22. Green Alternative Georgia



23. ICO "Environment - People - Law" Ukraine



24. Montenegrin Ecologists Society Montenegro



25. Nova agenda za razvoj Bosnia and Herzegovina



26. NGO ŠkArt Montenegro



27. Organic Agriculture Association Albania



28. Planinarsko - smučarsko društvo "Perun" Vareš Bosnia and Herzegovina



29. PPNEA - Protection and Preservation of Natural Environment in Albania Albania



30. Renewables and Environmental Regulatory Institute (RERI) Serbia



31. Rivers without Boundaries Regional



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| 32. | RiverWatch | Europe |  |
| 33. | Udruženje biologa CG-Cellula | Montenegro |  |
| 34. | UG "Za Doljanku" Jablanica | Bosnia and Herzegovina |  |
| 35. | Ukrainian Nature Conservation Group | Ukraine |  |
| 36. | UWEC (Ukraine War Environmental Consequences Work Group) | Regional |  |
| 37. | Women's Alliance for Development | Montenegro |  |
| 38. | WWF Adria | Regional |  |
| 39. | Young Researchers of Serbia | Serbia |  |
| 40. | Zeleni Neretva Konjic | Bosnia and Herzegovina |  |

Annex 1 - Reasoning on the request for deletion of certain articles from the Recommendation on renewables permitting

15b Mapping of areas necessary for national contributions towards the overall Union renewable energy target for 2030

15c Renewables acceleration areas

15d Public participation

15e Areas for grid and storage infrastructure necessary to integrate renewable energy into the electricity system

The amended Renewable Energy Directive is highly interlinked with other EU environmental laws and cannot be applied without fully implementing those laws first. Although we strongly support improvements in spatial planning and strategic environmental assessments for renewables, the way this is set up in the revised directive is linked with derogations from the Environmental Impact Assessment and Nature Directives, an approach which is risky and unproven even within the EU, and which would be highly damaging in our countries.

Acceleration areas should exclude protected areas, but in most or all of the Energy Community countries, the Emerald network is incomplete and not legally protected, while Natura 2000 areas have not yet been designated, and many areas have not been subject to detailed biodiversity research. Spatial plans are inadequate and/or outdated across the region, for example, that of Republika Srpska includes Emerald sites and hydropower plans in the same locations without resolving the conflicts, and the Federation of Bosnia and Herzegovina's spatial plan still dates from the early 1980s.

According to the [UN Environment Programme World Conservation Monitoring Centre \(UNEP-WCMC\)](#), the percentage of protected land area in Energy Community Contracting Parties ranges from 4 per cent in Bosnia and Herzegovina to 18.6 per cent in Albania, compared to [26 per cent in the EU](#) as of 2021. However, given the Energy Community countries' low planning and enforcement capacity, as well as major legal loopholes, even these figures are an overestimate.

This low share in practice opens even some of the most pristine areas to renewable deployment – something that is prevented in the EU under Article 15c(a) of the amended Renewable Energy Directive, but which is meaningless without designation and protection of Natura 2000 sites.

We appreciate the ongoing voluntary efforts to assist with identifying suitable brownfield areas for wind and solar development in some of the countries, but this is quite a different matter from carrying out official, time-bound mapping and legally defining large acceleration areas which will then allow the countries to derogate from the EIA and Nature directives.

The countries should instead:

- map and prioritise no-regrets brownfield and built-up locations and prioritise project implementation at these sites
- better implement the EIA and SEA Directives for other ongoing projects and plans
- improve spatial planning to resolve conflicts regarding specific locations (e.g. spatial plans should not allow projects with significant impacts in protected areas, planned protected areas, Emerald sites or other sites of high biodiversity value).
- properly transpose and implement the Nature and Water Framework Directives

- gradually conduct biodiversity research at other locations proposed for renewable energy development to decide which are suitable and which should be protected.

16a Permit-granting procedure in renewables acceleration areas

16b Permit-granting procedure outside renewables acceleration areas

16c Accelerating the permit-granting procedure for repowering

16f Overriding public interest

The EIA procedure is a key means of applying Article 6 of the Aarhus Convention, on public participation in decision-making on specific activities. It also facilitates the implementation of Article 9(3) on access to justice, in relation to specific projects. It is the only legally stipulated opportunity to examine the environmental impacts of individual projects in-depth in a transparent way, and in practice in many countries it is the only legal trigger for public consultations on projects that may have significant environmental impacts. It allows for a much more specific assessment than the SEA process, which covers whole plans or programmes.

Although important in principle for informing the public and serving as a basis for public consultations at an early stage, in practice, the SEA is often not detailed enough to fully identify project impacts and is a rarely-used, relatively new innovation in the Energy Community countries. Access to justice in relation to the SEA is not explicitly included in the SEA Directive, although it is guaranteed by the Aarhus Convention. Although within the EU, the European Court of Justice has confirmed this, most of the Energy Community countries have not explicitly included access to justice provisions for SEA in their laws. In the absence of proper guidance, this may result in denying access to justice in relation to SEAs and lengthy legal disputes resulting in proceedings before the Aarhus Convention Compliance Committee.

Yet the above articles in the 2023 amendments to the Renewable Energy Directive heavily rely on the SEA procedure for plans or programmes designating acceleration areas to resolve siting conflicts. It also relies on the SEA Directive to serve as the main opportunity for the public affected by the acceleration areas and the potential renewable energy projects deployed there to have their say.

They allow the EIA procedure to be circumvented for renewable energy installations in acceleration areas unless the permitting authority finds that the project is *'highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographical area where the project is located that cannot be mitigated by the measures identified in the plans designating acceleration areas or proposed by the project developer'*. And even then, *'In the event of justified circumstances, including where needed to accelerate the deployment of renewable energy to achieve the climate and renewable energy targets, Member States may exempt wind and solar photovoltaic projects from such assessments'*.

The assumption in these articles is that permitting authorities are zealously requiring EIAs for renewable installations even when this is not required by the EIA Directive. But in the Energy Community countries, the situation is the opposite.

None of the countries have demonstrated a consistent ability to properly apply the EIA Directive yet, and some countries such as Serbia and North Macedonia have not even fully transposed the 2014 amendments to this directive. Governments are far more likely to unjustifiably decide that a project does not need an environmental impact assessment than the other way around.

Ensuring that countries apply the criteria included in Annex III of the EIA Directive to decide whether an installation needs to undertake a full environmental impact assessment is an ongoing process, and introducing new and potentially confusing rules that partially contradict this would be counterproductive.

Introducing a presumption that an EIA is not needed for projects in acceleration areas and imposing a short screening deadline also turns the precautionary principle on its head, putting the onus on permitting staff to identify the actual impacts under strong time pressure instead of only having to decide whether an assessment is needed.

As the EIA procedure is often the only chance that the public gets to comment on such projects in these countries, there is already a public participation loophole for projects deemed by the permitting authorities not to need a full assessment, which often results in a public backlash which risks delaying the permitting processes. The Recommendation would extend this risk to all renewable energy projects in acceleration areas.

Every year the European Commission's enlargement reports underline the need for better EIAs in most or all of the accession countries/Contracting Parties, with hydropower often singled out as particularly problematic. Suddenly changing this important message will result in even poorer practices, more public outcry and an increased number of legal challenges.

Some of the provisions of Article 16b of the 2023 Renewable Energy Directive may be reasonable, but add no value compared to the 2018 Renewable Energy Directive, and the provision on deliberate killing or disturbance of birds and other species is almost certain to be misused, given the low capacity of environmental inspectorates in the countries.

Appropriate assessments are very rarely applied in the countries, and the concept of overriding public interest is often completely misunderstood by project developers and authorities. It is frequently mixed with 'public interest' designations for the purpose of expropriations, leading to assumptions that projects can go ahead without even attempting to examine them according to the criteria from the Habitats, Birds and Water Framework Directives, such as the absence of reasonable alternatives.

Introducing Article 16f of the Renewable Energy Directive into this chaotic situation therefore makes no sense at all. It is also in sharp contradiction with the precautionary principle, as in cases where it cannot be proven that a project is of overriding public interest, the decision according to the precautionary approach would be not to go ahead.

We recommend that the countries should instead:

- Apply the 2018 Renewable Energy Directive provisions to ensure reasonable deadlines for EIA processes, one-stop shops and the possibility for online submission of permitting documents.
- Ensure adequate staff capacity to process permit applications in a timely manner.
- Concentrate on no-regret options such as rooftop solar and heat pumps as well as utility-scale projects on sites such as abandoned mines and brownfield areas.
- Concentrate on improving the application of the SEA, EIA, Nature and Water Framework Directives, including provisions on public consultations, to reduce legal challenges against renewable energy projects.