

EU adopts fast-track permit-granting process for renewable energy projects

Introduction

Lengthy and complex administrative procedures have been identified as a key obstacle hampering investment in renewables and related energy infrastructure.

To address this issue in the context of the EU's current energy disruption, on December 22, 2022, the Council of the European Union adopted [Council Regulation \(EU\) 2022/2577 laying down a framework to accelerate the deployment of renewable energy](#) and speed up the permit-granting process for renewable energy projects throughout the EU (the "Regulation").

The legal basis for this new piece of legislation is [Article 122](#) of the Treaty on the Functioning of the European Union (the "TFEU"), which provides for accelerated legislative procedures in cases of severe supply difficulties for Member States.¹

The Regulation is an extraordinary measure to be applied for a limited period of [18 months starting from its entry into force](#) (*i.e.*, December 30, 2022).² The purpose of accelerating the permit-granting process immediately is to support the deployment of technologies that contribute to EU overall energy security and, at the same time, have a low environmental impact.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

Rome

Giuseppe Scassellati-Sforzolini
+39 06 6952 2220
gscassellati@cgsh.com

Milan

Alessandro Comino
+39 02 7260 8264
acomino@cgsh.com

Brussels

François-Charles Laprèvote
+32 2 287 2184
fclaprevote@cgsh.com

Abu Dhabi

Scott Senecal
+971 2 412 1715
ssenecal@cgsh.com

¹ See Article 122(1) of the TFEU: "Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy". See our Alert Memorandum on [Article 122 TFEU as a Legal Basis for Energy Emergency Measures](#).

² The duration is subject to the European Commission's review (which must be carried out by December 31, 2023) in light of future security of supply and the further need for deployment of renewable energy. Based on this review, the Commission may propose to extend the validity of the Regulation.



Table of contents

1. Scope
2. General purpose measures
3. Measures that target specific technologies
 - A. Repowering of renewable energy power plants
 - B. Solar energy
 - C. Projects for the integration of renewable energy
 - D. Heat pumps

1. Scope

The Regulation applies to **new** permit granting processes that start after its entry into force and during its 18-month period of validity. Thus, it seems that the Regulation will apply to all permitting procedures initiated within the 18-month window, such that an approval might still be given after that window for filing closes.

Member States may also apply the Regulation to **ongoing** permit granting processes which have not resulted in a final decision before the entry into force of the Regulation, if the application of the Regulation would accelerate the procedure and pre-existing third party legal rights are preserved.

2. General purpose measures

The Regulation introduces a rebuttable presumption that renewable energy projects (namely, planning, construction and operation of renewable energy plants and installations; their connection to the grid; the grid itself; and storage assets) are of overriding public interest and serve public health and safety, for the purposes of the relevant EU environmental legislation.³ Recital 8 clarifies that the presumption is not applicable where there is clear evidence that these

projects have major adverse effects on the environment which cannot be mitigated or balanced by other relevant interests.

Therefore, pursuant to the Regulation, when balancing different legal interests in individual cases, public authorities would be required to apply this presumption and, accordingly, allow renewable energy projects to benefit from a simplified assessment procedure under relevant EU environmental legislation.

Pursuant to the presumption, renewable energy projects may be carried notwithstanding:

- (a) a negative assessment of the implications for special areas of conservation (provided that there is no alternative solution)⁴;
- (b) rules on the protection of animal and plant species (provided that (i) there is no satisfactory alternative, and (ii) the derogation is not detrimental to the maintenance of the populations of the species concerned at a favorable conservation status in their natural range)⁵ and other specific rules on the protection of birds (provided that there is no other satisfactory solution)⁶; and
- (c) a deterioration in the condition of a body of surface water under EU water policy (provided that (i) all practicable steps are taken to mitigate the adverse impact on the status of the body of water, (ii) reasons for those modifications are set out in a specific river basin management plan and the objectives are reviewed every six years, and (iii) objectives served by modifications of the water body cannot be achieved by better environmental options for reasons of technical feasibility or disproportionate cost)⁷.

³ See Article 3 of the Regulation.

⁴ Pursuant to Article 6(4) of [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#) (“Council Directive 92/43/EEC”).

⁵ Pursuant to Article 16(1) of Council Directive 92/43/EEC.

⁶ Pursuant to Article 9(1)(a), of [Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds \(Directive 2009/147/EC\)](#).

⁷ Pursuant to Article 4(7) of [Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy](#).

Member States may restrict the application of these provisions to certain parts of their territory as well as to certain types of technologies or projects, in accordance with the priorities set in their integrated national energy and climate plans.

In addition, the Regulation provides that the construction and operation of energy plants from renewable sources and the related grid infrastructure development should be given priority when the competent authority carries out the balancing of legal interests in the individual case, at least for projects which are recognized as being of public interest. With respect to species protection, such projects are given priority provided that appropriate conservation countermeasures are undertaken which are supported by sufficient financial resources and land allocations.

3. Measures that target specific technologies

A. Repowering of renewable energy power plants

In the Commission and Council's view, repowering existing renewable energy structures may have a number of positive features as it, among other things, (i) reduces the need to designate new sites for renewable energy projects, and (ii) entails a likely higher degree of public acceptance and knowledge of environmental impacts.

To streamline the permit-granting process,⁸ the Regulation provides that:

- (a) the permit-granting process must not exceed six months;⁹
- (b) environmental impact assessments,¹⁰ if applicable, must be limited to assessing significant impacts resulting from the changes or extensions compared to the original project;
- (c) repowering of solar energy installations are exempted from environmental impact assessment,¹¹ provided that no additional spaces are used and environmental mitigation measures established for the original project are respected.

B. Solar energy

The Regulation provides that the permit-granting process for installation of **ancillary solar energy equipment and co-located energy storage assets** (including building-integrated solar installations and roof-top solar energy equipment) must not exceed three months,¹² provided that:

- (a) installation is made in existing or future artificial structures (excluding artificial structures on water surfaces); and
- (b) such artificial structures are not primarily dedicated to solar energy production.

In addition, such installations of solar energy shall be exempted from environmental impact assessment.¹³

However, Member States may rely on certain justifications (namely, cultural or historical heritage protection, or reasons related to national defence or safety) to exclude certain areas or structures from the

⁸ Pursuant to Article 2 of the Regulation, "*permit granting process*" means the process comprising (i) all relevant administrative permits issued to build, repower and operate plants for the production of energy from renewable sources including heat pumps, co-located energy storage facilities, and assets necessary for their connection to the grid, including grid connection permits and environmental impact assessments, and (ii) all administrative stages starting from the receipt of the complete application by the relevant authority and ending upon the notification of the final decision by the relevant authority.

⁹ The deadline does not include (i) time during which plants, their grid connections and related necessary grid infrastructure are being built or repowered and (ii) time for

administrative stages necessary for significant upgrades of the grid to ensure grid stability, reliability and safety, except when the time coincides with other administrative stages of the permit-granting process. In addition, and as a general rule, deadlines are provided for without prejudice to national provisions establishing shorter deadlines.

¹⁰ Pursuant to Article 4 of [Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment](#) ("Directive 2011/92/EU")

¹¹ Pursuant to Article 4 of Directive 2011/92/EU.

¹² See footnote 9.

¹³ Pursuant to Article 4 of Directive 2011/92/EU.

application of the shorter deadline and derogation. In order to speed up the deployment of small-scale installations, including for renewables self-consumers,¹⁴ the Regulation provides that permit-granting processes for **solar energy equipment** with a capacity of 50 kW or less¹⁵ are covered by the principle of administrative positive silence. Therefore, lack of reply by competent authorities within one month¹⁶ following the application would result in the permit being considered as granted, provided that capacity of the solar energy equipment does not exceed existing capacity of the connection to the distribution grid.

C. Projects for the integration of renewable energy

Member States may exempt renewable energy projects, energy storage projects and electricity grid projects which are necessary to integrate renewable energy into the electricity system from environmental impact assessment¹⁷ and species protection assessment,¹⁸ provided that:

- (a) the project is located in a dedicated renewable or grid area (where Member States have set such areas); and
- (b) the area has been subject to a strategic environmental assessment.

Member States shall ensure that appropriate mitigation measures are applied to secure species protection. Where mitigation measures are not available, the operator shall pay a monetary compensation.

D. Heat pumps

The Commission and Council consider heat pumps a key technology to produce renewable heating and

cooling from ambient energy, including from wastewater treatment plants, and geothermal energy. In particular, they emphasize that heat pumps are capable of reducing the use of gas in the supply of heating.

Based on the Regulation, the permit-granting process for the installation of heat pumps below 50MW shall not exceed one month (three months in case of ground source heat pumps).¹⁹

Moreover, it introduces a simplified procedure for grid connection of smaller heat pumps.

However, also in this case, Member States may rely on certain justifications (namely, cultural or historical heritage protection, or reasons related to national defence or safety) to exclude certain areas or structures from the scope of the above shorter deadline.

...

For more information on the EU energy disruption crisis, consult our [resource center](#).

CLEARY GOTTLIEB

¹⁴ Pursuant to Article 2(14) of [Directive \(EU\) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources](#), “renewables self-consumer” means a final customer operating within its premises located within confined boundaries or, where permitted by a Member State, within other premises, who generates renewable electricity for its own consumption, and who may store or sell self-generated renewable electricity, provided that, for a non-household renewables self-consumer, those activities do not constitute its primary commercial or professional activity.

¹⁵ Where the application of the threshold leads to a significant administrative burden to the operation of the electricity grid, Member States may apply a lower threshold provided this remains above 10.8kW.

¹⁶ See footnote 9.

¹⁷ Pursuant to Article 2(1) of Directive 2011/92/EU.

¹⁸ Pursuant to Article 12(1) of Council Directive 92/43/EEC and Article 5 of Directive 2009/147/EC.

¹⁹ See footnote 9.