

EREF's
Good Planning Guide for Renewable Energy Installations

A guideline for overcoming obstacles in administrative planning
procedures in Europe

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1. Introduction

Increased electricity production from renewable energy sources will only attain significant levels if there is a guarantee that unnecessary legal and administrative obstacles from planning permission (licensing) regulations of the RES plants, monitoring of their operations, or application of these regulations by the administration are avoided and/or diminished as far as possible. Procedures should preferably be simplified, prompt and efficient. The licensing authority should be clearly regulated and concentrated at one responsible administration, although, when unavoidable, should be reasonably coordinated.

Adequate financial support schemes are not the only essential element to achievement of the Directive 2001/77/EC objectives, since failure to address fundamental problems and obstacles including the burden of administrative procedures and delays in obtaining building permissions could further jeopardise these ambitions.

The EREF/FEDARENE-workshop of 16th of October 2003 on „Public and Administrative Challenges for Green Electricity Projects“ lent insight into the regions and countries' problems concerning the promotion of renewable energies due to the problems stemming from a) complex administrative procedures of permissions, b) the insufficient clarity of responsible bodies and c) public opposition.

It is important that regional planning authorities recognise the full range of advantages and benefits of renewable energy sources as well as all their particular characteristics and local requirements. Therefore, stakeholders have to support the involvement of communities in RES projects and aim at promoting public knowledge and acceptance.

These planning guidelines are aimed at summarising problems faced by RES development in the past and to offer suggestions for an improvement of the administrative system for RES plant permission and of the planning of RES projects.

These guidelines would like to offer a framework for the European Commission to check the Member States' administrative procedures according to Article 6 of the Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and to develop its own report and possible own proposals for further regulations on EU level. The key articles of the Directive read as following:

“Article 6

Administrative procedures

1. Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 4 of Directive 96/92/EC, which are applicable to production plants for electricity produced from renewable energy sources, with a view to:
 - reducing the regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources,
 - streamlining and expediting procedures at the appropriate administrative level, and
 - ensuring that the rules are objective, transparent and nondiscriminatory, and take fully into account the particularities of the various renewable energy source technologies.
2. Member States shall publish, not later than 27 October 2003, a report on the evaluation referred to in paragraph 1, indicating, where appropriate, the actions taken. The purpose of this report is to provide, where this is appropriate in the context of national legislation, an indication of the stage reached specifically in:
 - coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations,
 - drawing up possible guidelines for the activities referred to in paragraph 1, and the feasibility of a fast-track planning procedure for producers of electricity from renewable energy sources, and
 - the designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations.
3. The Commission shall, in the report referred to in Article 8 and on the basis of the Member States' reports referred to in paragraph 2 of this Article, assess best practices with a view to achieving the objectives referred to in paragraph 1.

Article 8

Summary report

On the basis of the reports by Member States pursuant to Article 3(3) and Article 6(2), the Commission shall present to the European Parliament and the Council, no later than 31 December 2005 and thereafter every five years, a summary report on the implementation of this Directive.

This report shall:

- consider the progress made in reflecting the external costs of electricity produced from non-renewable energy sources and the impact of public support granted to electricity production,
 - take into account the possibility for Member States to meet the national indicative targets established in Article 3(2), the global indicative target referred to in Article 3(4) and the existence of discrimination between different energy sources.
- If appropriate, the Commission shall submit with the report further proposals to the European Parliament and the Council.”

2. PLANNING FRAMEWORK

a) Key principles of planning

Regional and local planning authorities should adhere to the following key principles in regard to renewable energy:

- Regional planning guidance and development plans should adopt policies designed to promote and encourage, rather than restrict, the development of renewable energy resources. Regional and local planning authorities should

understand the full range of advantages and benefits of renewable energy sources, their particular characteristics, local requirements and the potential for exploiting them subject to appropriate environmental safeguards.

- The wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are central considerations that should be given significant weight in determining whether proposals should be granted planning permission.
- Given the inherent environment – friendly nature of renewables, compared to all other forms of energy (nuclear, fossil fuels), it is important that the permission procedures for RES projects are kept as simple and time-condensed as possible. A “fast track” permission procedure should, thus, be adopted specifically for RES projects, in which a smaller number of permitting authorities and substantially shortened official consultation and permitting times should be instituted, compared to the corresponding number of permitting authorities and times regularly required for other types of projects. This “fast-track” permission procedure for all RES projects should be even more condensed for RES projects of a smaller scale (e.g. projects less than a pre-established level of installed capacity).
- Regional and local planning authorities should not make assumptions about the technical feasibility of renewable energy projects. Technological change may mean that sites currently excluded, such as locations for particular types of renewable energy development may, in the future, become suitable.
- Local planning authorities, regional stakeholders and Local Strategic Partnerships should foster community involvement in renewable energy projects and seek to promote knowledge of and greater acceptance by the public of prospective renewable energy developments. Developers of renewable energy projects should engage in active consultation and discussion with local communities at an early stage in the planning process.
- RES development proposals should demonstrate their national, regional and local environmental, economic and social benefits, as well as how any environmental and social impacts have been minimised through careful consideration of location, scale, design and other measures. Some proposals will be subject to a requirement for an Environmental Impact Assessment (EIA). In such circumstances, local

authorities and developers should discuss whether consideration of alternative sites is feasible and/or necessary.

b) Integration of RES in regional and local planning

How can the issues of renewable energies be best integrated in regional planning and come into highest effect?

Far-sighted and effective regional planning can clearly reduce the conflicts and difficulties concerning the RES permission procedures and definitely diminish the required time period. Especially in the forefront of the permission process, local conflicts frequently can be avoided or decreased through geographically balanced regional planning. This gives investors a higher certainty of investment and simplifies projects; the subsequent permission process could especially be relieved indirectly, but very effectively.

Development plans, therefore, should provide a positive framework, guiding developers to areas where renewable energy developments are more likely to be permitted.

Regional planning guidelines and development plans have to be designed to encourage such projects, in order to promote the development and the increase of renewables from the very beginning. Policies must not constrain and suppress RES. Regional planning guidance must, therefore, include the target for renewable energy generation for the respective region, a target that results from assessments of the region's renewable energy resource potential. In these regional planning guidelines, targets should always be laid down as the minimum amount of renewable energy to be developed within a region. Fixed targets for specific RES technologies should not, however, be set because of their possible rapid change, which then makes the development of new RES technologies available. Targets need to be set for their achievement by the years 2010 and 2020. Regional planning bodies have to monitor progress towards these goals.

The participation of both regional and municipal authorities in the planning process is important. Planning should not be limited to the municipal level that cannot maintain sufficient expertise and overview (too few projects), nor to the regional level that does not have the same direct contact with locally involved citizens as municipalities usually have

Local responsible bodies have to set out clear criteria, which then need to be applied in assessing applications for planning permission of renewables. Planning authorities have to clearly demonstrate to the public that the environmental, social and economic benefits have been maximised and that any environmental and social impacts have been minimised through careful consideration of the location, scale and design of the site. Sometimes an Environmental Impact Assessment (EIA) will be needed.

On the one hand, a system of preliminary spatial planning is capable of being highly efficient: decisions on the use of land are not taken for every single project, but in the forefront through area-related planning. Such a system provides a certain degree of planning and investment reliability and security and for legal certainty, which encourage industry to invest in RES projects. On the other hand a detailed planning is not necessarily the best solution in all cases. The area-referred planning takes a substantial period, in particular because it takes place in an exhaustive, transparent procedure with comprehensive participation of the local population and authorities affected in their fields of responsibility. This can delay concrete RES development for years.

c) Involvement of stakeholders and the public

It is recommended that people living in areas with potential for RES be encouraged to get involved in the regional and local planning process, in particular if a detailed spatial-planning is made (e.g. with designation of sites as part of the planning).

For the community involvement in RES projects it is important to inform all stakeholder groups at a very early stage of the planning process via websites, local information channels (newspapers, radio and TV stations, etc.) or free pamphlets, as well as during the subsequent phase of the project's operation. More interest can be drawn to RES projects by giving local citizens the opportunity to financially participate by offering "public shares".

It is recommended that there are two (2) public consultation phases of 4 weeks length total. The consultations must be outside holiday periods or should be extended accordingly. At the start of the first consultation phase the planning authority should inform stakeholders including neighbours up to 2-5 km from the project site. A good, complete, and transparent communication is recommended during the consultation phase. It's not only necessary to present the project or proposed plan, it is also

important to explain the process. Therefore, it can be convenient to invite a delegate from the ministry or public authority involved in the permission process for public meetings.

In case that public opposition arises and starts to manifest itself, concerns of the local population need to be taken seriously and compromises have to be found. Local authorities and developers can organise further meetings (second consultation phase) and must not forget to bring in environmental groups speaking in favour of RES technology. Public opposition can be minimised through a strategy, by which project developers may sign formal agreements with the municipality where the project is located, committing themselves to the use of local business and personnel, the payment of a tax (or fee) and to the opening up of the installation to interested local visitors. That way developers of renewable projects can engage themselves in active communication with local communities.

d) Environmental impact assessment (EIA)

The EIA can be a tool to increase the confidence in the quality of a project and so can be a factor of social acceptance. An EIA should only be a requirement for larger projects, as experience show that smaller projects can be planned well without an EIA, and because of the substantial costs involved in developing an EIA. A developer should be able to choose to make a voluntary EIA to increase confidence in a project. To maximise the confidence in EIAs, they should be made or verified by an entity that is independent from project interests.

The public may sometimes worry about possible (or perceived) environmental impacts of RES plants. For example, visual effects have to be minimised, whenever possible, through appropriate setting and design, depending on size and type of development proposed. An assessment using objective material analysis is indispensable. A moderating-focussed policy is needed for planning. What can be put forward against public opposition is the demonstration of the heavy environmental impacts of all possible alternatives to renewable energies, depicting clearly that nuclear power or fossil fuel - fired electricity production are not at all less intrusive to the view and that are a big burden to the environment. Nevertheless, local planning has to take the best location into consideration and may adopt criteria on the minimum distances between RES projects.

e) Administrative procedures

How can States produce an incentive for developers to plan RES plants and how do administrative procedures have to be better constructed?

Undoubtedly, the complex licensing procedures for RES projects (electricity-generation licence, installation licence, operation licence, pre-siting permission, approval of environmental terms and conditions) constitute the most difficult obstacle today in the effective materialisation of commercial-scale RES investments. These procedures involve a multitude of central, regional, prefectural and local authorities (departments, committees, councils, agencies, etc.), interwoven in a lengthy, bureaucratic and, at times, confusing licensing process, that invariably takes years to complete.

Due to the fact that licensing (permission) procedures for the establishment of RES plants frequently divide themselves into a main procedure and into additional permission acts after other legislation, the question arises whether and in which way the relationship of the different permission acts stand to each other. On the one hand they can stand independently next to each other, on the other hand an integrated and “concerted” procedure can take place. The “concerted” procedure ensures that for the RES plant in principle no further official permission has to be obtained. The authorities consulted in their fields of responsibility are included into the concerted procedure without having the final decision. In that case especially the permission does not depend on their agreement.

The licence-related deadlines must be given an irrevocable character. Authorities that are consulted as part of the project should respect deadlines for responses. Lack of reply from the respective departments, committees, etc. should be treated as no objections and be counted as having positive opinions towards the respective RES project. The possibility to incorporate all RES-licensing procedures into a “one stop shop”-mechanism, e.g. under the supervision of a Ministry, is a suitable measure which should be examined seriously. This may constitute the only viable long-term solution, for the rationalisation and speeding up of the current inefficient RES-licensing procedures.

Since permission procedures have been criticised for their long duration and lacking clarity, it is important to draw a clear demarcation line between powers and to enhance coordination between the work of different public authorities,, in case more than one permission is needed. In some member states area related planning is taken by responsible bodies on the municipal level following the respective code on regional planning and the land utilisation plan. Here municipal authorities merely have a margin of discretion of what they want to allow in which area. In the subsequent individual project permissions the responsible bodies do not have such discretion, as they are limited by the regulations of the superior plans and only scrutinise whether a given project fits into these plans.

In any case, given the inherent environment – friendly nature of renewables, compared to all other forms of energy (nuclear, fossil, fuels), it is important that the permission procedures for RES projects are kept as simple and time-condensed as possible. A “fast track” permission procedure should, thus, be adopted specifically for RES projects, in which a smaller number of permitting authorities and substantially shortened official consultation and permitting times should be instituted, compared to the corresponding number of permitting authorities and times regularly required for other types of projects. This “fast track” permission procedure for all RES projects should be even more condensed for RES projects of a smaller scale (e.g. projects less than a preset level in installed capacity).

EREF would like to point out two examples for planning procedures in a RES supportive legal environment:

(1) Germany

Germany provides for a system of fixed compensation rates for renewables in the Renewable Energy Sources Act (*EEG*). In addition to that it has developed special incentive programmes for the promotion of the production and utilisation of renewable electricity. However, these instruments can only develop full effect when permission procedures do not produce impediments. Thus, it is significant that procedures are kept as simple as possible and that only few allowances are needed.

In Germany the permission authorities have to decide in general on a permission request within seven months. Specifically for RES projects, simplified licensing procedures are applied, which should be completed within three months after submission of the complete RES application documentation. In practice the extension possibility of further three months, given by the State regulation, is often used. In that case the authority has to give special reasons for the extension of the permission period. However, the application of this exception has to be used more restrictively.

The recent EC regulation No. 1774/2002 contains new permission facts for biogas facilities, in which animal by-products are used. The procedural conclusions drawn from this regulation have to be examined very precisely to avoid any further obstacles. The regulation's requirement leads to the fact that smaller biological gas facilities, which needed a building permission after German law so far, have in the future to go through a second official procedure of admission, while this will not be necessary for larger facilities because their permission is granted through a one-stop shop process. For the reason of avoiding any unnecessary burdens, a coherent and transparent permission procedure has to be established.

(2) Greece

Greece introduced the Renewables Law 2244/1994 on the pattern of the German so called „Erneuerbare Energien Gesetz“. The Greek Law establishes fixed tariffs for renewable electricity at a level in real terms equal to 90% of the medium-voltage, general use consumer tariff and made it obligatory for the Public Power Corporation (PPC) to buy the RES electricity .

The subsequent Law 2773/1999 concerning the liberalisation of the domestic electricity market maintained the favourable pricing regime for RES electricity by also placing emphasis on RES priority access to the grids. At the same time, this law introduced a fee of 2% on the renewable energy proceeds for the benefit of the relevant local municipalities in the vicinity of a RES project.

On the regulatory level, Law 2941/2001 provides that the preliminary and final planning permissions, in case of power generation plants using RES, are granted on the basis of petitions accompanied by the necessary supporting documents forwarded

to the relevant planning Services by the regional authority being in charge of issuing the installation permit. In that way a precursor of the one-stop shop principle is being set up.

In April 2003 the Joint Ministerial Decision 1726/2003¹ (JMD) was issued in order to adjust (and simplify) the specific licensing procedure of RES projects to the general environmental consent process. It covers all three basic stages of the RES licensing process which are preliminary environmental impact assessment, approval of environmental terms and conditions and approval of intervention on public land.

Through the provisions of this JMD the licensing authorities, the advisory bodies, the precise and explicitly determined subject of each body's advisory scope, and the deadlines for the issue of permits are defined. Furthermore strict deadlines (time limits) for the delivery of the required advisory responses are set. All applications will be examined and permits will be issued in a uniform manner by a single licensing authority. Should no action be taken within the above set time limits, the authority managing the licensing procedure is entitled to consider the interim approvals or opinions lacking from other authorities as positive and thus to press the licensing process forward to completion. The total licensing time for RES projects (excluding the time required for obtaining the initial electricity generation license) is set at 90 working days from the date the application and file are submitted to the respective authority. Moreover, the JMD reduces significantly the overall number of required interim approvals.

f. Grid connection

The distribution company should be obliged to provide the required RES grid-connection and extension as first priority within no more than 3 (three) months. Relevant power utilities must be involved in RES planning and should themselves include future RES developments in their planning of line extensions and reinforcements.

¹ Joint Ministerial Decision 1726/2003, "Procedure for approval of preliminary environmental impact appraisals, environmental terms and conditions, transfer of property or of the right of use of forests and scrublands, in the context of the issue of installation permits for power plants using renewable energy sources". Text to be found at Ministry's website http://www.ypan.gr/fysikoi_poroi/pdf/JMD1726-2003.doc

All grid-connection costs paid by the investor must be transparent and non-discriminatory. The advantages given to the grid include other use of the extension by current and future consumers and generators. The utility should co-finance or reimburse investments proportionally to the benefits given to the grid by the extension. Specific attention should be taken by the regulator or the respective authority to supervise and prevent exaggerated “pre-feasibility” costs some grid owner try to burden on the RES developer and concerning future grid access.

It is recommended that the grid-connection costs paid by the investor only cover connection to the nearest medium voltage grid. The distribution companies have to pay for reinforcement of grid and substations. The developers should be allowed to use open tender procedures for their grid-connection and extension investments.

If new RES capacity can no longer be connected to the existing grid (due to its capacity saturation), e.g. in regions of high wind potential, plans for upgrading the transmission grid in those regions (by re-enforcing and extending the existing power lines) have to be drawn up immediately because of the crucial problem with these plans concerning their long period of materialisation due to difficulties in land expropriation and construction of high-voltage power lines through environmentally sensitive areas.

g) Reforming the Structural Funds – Financial support from structural funds/European financial institutions

EREF asks the European Commission and the Member States to modify the different structural fund regulations.² A clear legal base should be implemented encouraging explicitly the co-financing of RES installations with high local benefit (labour, local added value, economic development). This approach should then in the following also be reflected in the National Operational Programmes submitted by the Member States for approval by the European Commission.

² ESF: Regulation (EC) No. 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the European Social Fund [Official Journal L 213/5, 13.08.1999];
EFRE: Council Regulation (EC) No 1783/1999 of the European Parliament and of the Council of 12 June 1999 on the European Regional Development Fund [Official Journal L 213/1, 13.08.1999].

Subsequently EIB funding/lending should further be encouraged by binding minimum shares of projects concerning RES development, with clear priority for SME and locally integrated projects.

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