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French Energy Ministry consultation on a draft ordinance on the implementation of RED II and the recast Electricity Directive

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EFET response – 2 February 2021

EFET welcomes the opportunity to provide comments to the draft ordinance proposed by the French Energy Ministry for the implementation of EU Directives 2018/2001 (RED II) and 2019/944 (recast Electricity Directive). You will find below our remarks on a number of provisions.

1. Definition of renewable energy and necessary inclusion of renewable hydrogen

We welcome the clearer definition of energy produced from renewable sources proposed by DGEC in article 1 of the draft ordinance. The update of article L. 211-2 of the Energy Code is necessary to reflect the evolution of technologies since the 2011 version of the article.

Nonetheless, the article, which is located in Book II, Title I of the Energy Code concerning all types of energy carriers, omits renewable hydrogen. Renewable hydrogen should be defined in a new article L. 811-1 as part of another ordinance currently under consultation[2]. Omitting renewable hydrogen from article L. 211-2 and separating it from other energy carriers produced from energy sources means that the provisions of Book II of the Energy Code will not be applicable to renewable hydrogen. We fail to understand this difference of treatment. We advise the Ministry to include renewable hydrogen in the list of renewable energy carriers of the new article L. 211-2, and possibly make a reference to the definition hydrogen in the proposed article L. 811-1 of the above-mentioned draft ordinance on hydrogen.

[2] http://www.consultations-publiques.developpement-durable.gouv.fr/IMG/pdf/202210113_ordonnance_consultation_v2.pdf

[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org

2. Guarantees of Origin

We welcome the proposal of the Ministry in article 2 of the draft ordinance to move the majority of provisions on guarantees of origin (GoOs) from Chapter IV to Chapter I of Book III, Title I with the proposed articles L. 311-20 to L. 311-27. This allows decoupling the question of GoOs from renewable electricity only and open the field of GoOs to the certification of electricity produced from non-renewable sources. The modification of article L. 314-14-1 and the introduction of the new articles L. 314-14-2 and L. 314-14-3 in Chapter IV of Book II, Title I rightly concern only renewable electricity.

3. Restrictions to the use of guarantees of origin

Article 3 of the draft ordinance proposes to slightly modify the 3rd paragraph of art. L. 314-14-1 of the Energy Code to update the references to the new proposed article L. 311-20. The rest of the text remains unchanged, but states that any subsidised RES-E production facility in a municipality that makes this request will have its GoOs confiscated and returned to the said municipality for immediate use in order to certify the renewable origin of its own consumption of electricity. Any GoOs that will not be claimed by the municipality itself could be auctioned by the registry itself (4th paragraph), and possibly purchased by the RES-E operators themselves (new proposed 5th paragraph).

We do not agree with this approach, which prevents the RES-E installation owners/operators to value the "green value" of their electricity production under the same conditions as those located in municipalities not claiming the GoOs. We recommend the deletion of the 3rd, 4th and proposed new 5th paragraph as they distort the level-playing field between RES-E operators. At the very least, if the provisions were to stay in legislation, the GoOs confiscated by municipalities should be compensated at market value to the RES-E producers, and the GoOs not claimed by the municipality should be freely usable by the producers, rather than having to be purchased by them.

The same reasoning holds true for article 4 of the draft ordinance relating to the 3rd paragraph of article L. 446-19 of the Energy Code. A similar system of confiscation and transfer of the GoOs for biogas to municipalities is foreseen in this article as the one of article L. 314-14-1 for RES-E. We object to this provision and request it be removed from the legislation. At the very least, if the provision were to stay in legislation, the GoOs confiscated by municipalities should be compensated at market value to the biogas producers, and the GoOs not claimed by the municipality should be freely usable by the producers, rather than having to be purchased by them.

More generally, we see the current system of GoOs for RES-E in France as widely inefficient, as RES-E operators benefitting from state aid cannot issue GoOs without relinquishing their right to state aid. This impedes RES-E producers from marketing the sustainable character of their RES-E production directly to customers, thereby foreclosing demand-side response to the renewable character of electricity supply.

Also, by preventing producers to retain the value of the GOs issued for the renewable production the system poses fundamental limits to the "packaging" of long-term corporate PPAs. In facts, as traders are obliged to procure most of the GOs from auctions they remain

exposed both to a volume and a price risk. Such structural constraint has made the uptake of corporate PPAs in France very slow compared to other European countries.

Should the government wish to avoid stacking of revenues, then an appropriate model of subsidy discount based on GoO sales by the RES-E operators should be put in place.

4. Energy and renewable energy communities

We advise the Ministry to clarify the wording of article 5 of the draft ordinance where it mentions production assets that the energy or renewable energy communities own ("détient"). We remind the Ministry that the community may not be the direct owner of the production assets. To avoid any future legal challenge of the Energy Code, it would be wise to complement the text with the following wording:

> "[…]that community owns, or that its shareholders or members own and operate for the benefit of the community" ("[…] *qu'elle détient ou que ses actionnaires ou members détiennent et opèrent pour le benefice de la communauté*").

This suggestion applies to the proposed new articles L. 291-2, 1° and L. 292-2, 2°.

5. Energy community ownership and operation of DSO(s)

We welcome the provision in the proposed new article L. 293-2 that energy or renewable energy communities may not own or operate a distribution network for gas or electricity. This is consistent with the unbundling principle enshrined in EU legislation.

We attract the attention of the Ministry to a typo that made its way in the proposed text of article L. 293-2: the new proposed article should make reference to the decree mentioned in article L. 293-4, not L. 293-3.

6. Auto-consumption

We oppose the use of the term "auto-consumption" in so far as it applies indiscriminately to consumers that also produce energy without regard for the connection status to the network (distribution or transmission). If these producers/consumers are not connected to the network, the term auto-consumption rightly applies as they indeed consume their own production. For producers/consumers connected to the network, the electrons or molecules they consume is not necessarily the ones they produced. Hence, we believe that the use of the concept of auto-consumption in these cases is abusive, and that these producers/consumers should have the same rights and responsibilities as other market participants. Hence, we request a clarification of the definition of auto-consumption in article L. 315-1 of the Energy Code.