

Bergen and Aberdeen, 22 September 2020

EUROPEAN COMMISSION

Response to the EU Offshore Renewable Energy Strategy

To whom it may concern,

Who we are

This contribution to the EU Offshore Renewable Energy Strategy public consultation has been jointly prepared by members of the *Bergen Offshore Wind Centre*, the *Aberdeen University Centre for Energy Law*, University of Aberdeen, and the *Research Group for Natural Resource Law, Environmental Law and Development Law*, University of Bergen.

The Bergen Offshore Wind Centre and the Research Group for Natural Resource Law, Environmental Law and Development Law are two research initiatives integrated to the University of Bergen. These bodies group academics from different disciplines, with a concentration in legal energy and environmental issues, as well as offshore wind technologies. Our aim is to create leading research in the field of regulation of offshore wind technology in three areas: wind resources, site selection and wind farm operations, and combine this with a law in a technological context approach to the use of natural resources.

The Centre for Energy Law of the University of Aberdeen is comprised of legal academics working on legal and governance issues related to the energy sector. Having built our reputation as a leading research and teaching centre for oil and gas law and responsible resource management, we have been expanding our expertise to low-carbon energy transition (renewables, nuclear, CCUS), decommissioning, climate change governance, law and technology, and energy investment regulation.

We, Lecturer Daria Shapovalova, Lecturer Eddy Wifa, and Associate Professor Ignacio Herrera Anchustegui, are legal researchers specializing in offshore energy law, climate change and sea use with no industry affiliation. Through this contribution, we seek to highlight the importance of a solid, coherent and well-integrated regulatory framework towards the development of renewable energy solutions offshore. While the technological development is paramount, such development does not take place in a vacuum; without a regulatory regime that fosters the energy transition for offshore renewables, its proper integration with the rest of the EU energy governance system, efficient and fair use of sea resources as well as the inclusion of citizens' concern and participation. Thus, with this contribution, we want to stress the importance of the regulatory regime around the EU Offshore Renewable Energy Strategy as well as suggesting giving to these matters a larger focus and importance that they seem to have at the moment.

Our vision regarding the EU Offshore Renewable Energy Strategy

The development of offshore renewable energy sources in Europe presents opportunities for the development of an industry that can be competitive at a global scale, generate jobs through the whole value chain in Europe. Additionally, offshore energy sources have the potential to supply with clean energy the European power markets in which energy demand will increase due to population growth and increased electrification, as well as being a strong medium to reach the 2050 European Climate change goals. Furthermore, offshore energy developments will bring about increased competition in the European electricity markets and could play a role in ensuring the energy security and addressing system intermittency.

Despite the well-known benefits, the development of offshore energy renewable solutions in EU waters faces several challenges that range from ground research (resource mapping, meteorological conditions, effects of the weather in the equipment), to technical aspects (materials used for turbines, sizes, foundations), industry-coordination (value chain related issues), as well as environmental and social acceptance dilemmas. Addressing all of these underlies the regulatory framework in which such industries will operate. In this short contribution, we would like to stress a few key legal issues that the EU Offshore Renewable Energy Strategy (“EU-ORES”) should consider and address.

Our priority areas

An integrated regulation for regional development: Development of offshore renewable energy requires an integrated and holistic approach to the use of sea space. Coordination among different categories of users (energy developers, fisheries, maritime transport, the navy, tourism industry) and activities (production of energy, cabling, transportation) is not an easy task. A strong, well-regulated and clearly-defined framework for the use of sea spaces is paramount. For this, research evaluating the current maritime spatial planning regime, as well as rules enabling the promotion and coordination of European, regional and national, as well as adequation of current rules and practices to facilitate offshore energy development is necessary.

Sustainability and environmental impact: While on life-cycle basis, offshore renewable energy is responsible for significantly lower carbon emissions than fossil fuels, the activities associated with the production of equipment, its installation, and ultimate decommissioning may be a source of substantial emissions, which should be addressed. Furthermore, the effects of offshore renewable energy development on wildlife must be assessed and monitored throughout the lifetime of offshore renewable projects. As above, the ecosystem approach to planning and development is imperative to consider the cumulative environmental effects of multiple uses of marine areas, including offshore oil and gas, fisheries, shipping, and recreation.

Public participation: A just transition to low-carbon energy systems must include meaningful public participation going beyond the performatory approaches often employed in the past. Effective public engagement with offshore will require the provision of accessible information on offshore renewable technologies, potential impacts and mitigation measures, benefits for the local economy and broader climate goals. Especially in communities directly affected by offshore renewables projects (fishing communities, tourism hotspots, oil and gas provinces), effective engagement considering the local economic and workforce strengths and potential, is crucial for ensuring public support.

Health and Safety: As offshore renewable energy develops, issues regarding health and safety of workers have begun to emerge. This is an area that has unfortunately received far less attention. Research reveals that on-going expansion has led to an increase in the workforce, the need to go further offshore and potential conflicts with other sea users, all of which create significant health and safety challenges. Some of these challenges include an increase in accidents, skills shortages, and insufficient safety data. As offshore energy operations move further into the sea, correlatively the environmental conditions become more unpredictable and hostile, and the risks are exacerbated. The safety of those who would work in the offshore renewable energy industries must be prioritized and receive adequate regulation, being reflected in both the classification of the industry and the regulatory orientation. Also, lessons should be drawn from similar offshore energy industries and synergies and collaborations should be maximised.

Public and private financing of renewable energy infrastructure: Economic viability of offshore renewable energy is a pre-requisite for its development. Near-shore (and now offshore) wind farms

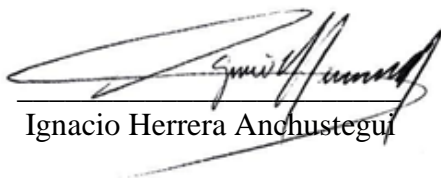
have received public financing (lawful state aid) to make them a reality. A solid tendering system (energy auctions) has also ensured the minimization of this public support and a drastic reduction in the total cost of energy. The EU-ORES must, therefore, be aligned with the EU State Aid framework and vice versa. Furthermore, private investment should be the primary vehicle driving offshore energy activity. Here, national frameworks to facilitate the bankability of these activities are necessary, including possibilities for using offshore assets as securities for debt, insurance possibilities and clarifying issues of jurisdiction and liability. While these are typically issues in which Member States have exclusive competence, guidance from the EU concerning best practices and possibilities.

Networks and cross-border interconnections: Cross-border and integrated transmission systems for a complex energy system - including solutions for sector coupling - will be the future. The existing rules for electricity and gas will need to be evaluated and possibly modified to reflect this new integrated reality - as well as develop rules related to new forms of energy or energy carriers, such as hydrogen and ammonia. The role of the Law of the Sea, regional international law, and their interaction with EU/EEA law regarding these integrated and sector coupled networks should be researched further.

Governance and institutional landscape: The EU renewable energy regulatory framework has been contributing to streamlining the national legislation on authorisation, governance, and financial support of the offshore renewable sector for many years. With the commitment for net-zero goals, there is an opportunity to push forward the further integration of the European grid and large-scale deployment of offshore renewable technologies. It is important to continue cooperation with the relevant non-EU countries, such as Norway and the UK. It is further imperative to consider energy justice concerns when planning and adopting further governance initiatives to ensure public support for these measures. Scotland's [Just Transition framework](#) is a good example of initial attempts to integrate public engagement in energy decarbonisation.

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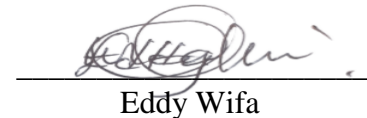
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