

UPEI comments
On two Draft Delegated Acts based on Articles 25, 27 and 28
of the Renewable Energy Directive RED II

INTRODUCTION

UPEI firmly supports the European Commission's climate-neutrality target by 2050. To achieve this goal and limit the global temperature increase to well below 2° Celsius of pre-industrial levels, all sectors must significantly intensify their efforts to reduce greenhouse gas (GHG) emissions. Hydrogen-derived products, such as carbon-neutral synthetic fuels, can make a decisive contribution here - initially by blending with conventional fuels (drop-in capability), and ultimately as a substitute for them. They provide a climate-neutral solution for several sectors, as they can substitute fossil fuels in road transport, aviation and the maritime sector as well as represent a climate-neutral alternative to conventional heating oil and can also be used as feedstock for the industrial chemical sector.

However, the absence of two delegated acts to be adopted by December 2021 based on article 27 (renewable electricity supply concept) and 28 (GHG reduction methodology) of the Renewable Energy Directive (REDII) has so far hindered investments in large-scale production facilities and electrolyzers due to a lack of certainty.

UPEI therefore welcomes the publication of both draft Delegated Acts by the Commission and the request for comments. As part of this process, UPEI offers the following comments and requests for change: only with a more pragmatic approach, can the necessary investments in the market ramp-up of hydrogen and hydrogen products such as synthetic fuels (eFuels) be promoted.

SUMMARY

- ▶ Delegated Act 27, Article 4, Clause 1: The minimum percentage of renewable electricity needs to be reduced from 90% to 70%. If more than 70% renewable electricity exists, the electricity should be considered "fully renewable" for these full load hours.
- ▶ Delegated Act 27, Article 8: Grandfathering should also apply to the temporal correlation. We demand a "monthly" temporal proof for plants that go into operation until 2027.
- ▶ Delegated Act 25&28, Article 11: An exclusion of CO₂ emissions from industrial sources for the production of RFNBOs from 2036 on blocks all investments in this technology already today, as a lifespan of barely 10 years is not sufficient to amortize the costs of CO₂ capturing. This prevents the production of eFuels at industrial sites such as the cement, steel or glass industry. To enable plants using industrial CO₂ until 2036 to continue to do so, we call for the introduction of grandfathering in this regard.



DELEGATED ACT BASED ON ARTICLE 27: POWER SUPPLY CONCEPTS

Delegated Act Article 27 defines the electricity supply criteria for grid-connected facilities that produce RFNBOs and thereby establishes several temporal, geographic, and other conditions that must be met. While UPEI supports the proposed use of Power Purchase Agreements (PPAs) as proof of the electricity origin, as well as the inclusion of repowered renewable energy facilities in addition to new facilities, we propose to amend the delegated Acts on the following points:

- Additionality criterion, which states that the electricity for the production of RFNBOs must come from new renewable energy plants that started operation no more than 36 months before the electrolyser. This restriction is a massive hurdle to meeting the EU's hydrogen targets: new renewable energy plants involve a lengthy planning and permitting process in addition to their construction time, which as an example amounts to up to 6 years for new wind turbines in Germany¹. In addition, these new renewable energy plants would have to be built in the grid area of the electrolyser, due to the required geographic correlation. Such requirements jeopardize and delay the roll out of the European hydrogen market significantly, rendering it unrealistic to achieve the hydrogen goal of the European union.
- Additionally, the draft calls for a close **temporal correlation** between the RFNBO production and RE plants, requiring that the proof of the PPAs is provided on an hourly basis. Such proof is difficult to provide from a technical point of view, as it requires a high availability of the eFuel plant. The frequent start-up and shut-down of hydrogen production that this would require is also highly inefficient and reduces the economic viability of the production. As stricter the temporal correlation as larger hydrogen storage facilities are needed, which increases the production cost of RFNBOs. Instead, UPEI recommends to maintain the proposed daily proof of PPAs after the transitional period and allow a grandfathering for the monthly basis for plants that come into operation before 2027.
- Finally, the draft Delegated Act introduces **geographic correlation** by requiring, among other things, that the RFNBO generation and the RE plant are located in the same bidding zone. While this approach is generally feasible, the definition of bidding zones needs to be re-evaluated. Its current form allows for "equivalent concepts", which poses problems in many third countries outside the EU, where electricity markets operate under completely different models and cannot be equated with the unique EU rules for bidding zones. In this regard, clarification is needed to define exactly which electricity market models are considered as an equivalent and thus to minimize the uncertainty this passage leaves open for RFNBOs produced outside the Union.
- With regards to exemptions, UPEI welcomes the inclusion of a transitional phase until 31st December 2026, in which the additionality has not to be fulfilled. It also defines a **monthly proof via Power Purchase Agreements** as sufficient. We call for grandfathering to also apply for this temporal correlation, so that plants build until 2026 can continue to certify the origin of their renewable energy on a monthly basis from 2027 on - in addition to be grandfathering of the additionality.
- Finally, we strongly recommend lowering the minimum percentage that defines all electricity from a grid as fully renewable from 90% to 70%. This would enable a feasible solution in most Member States after the transitional phase and allow for a hydrogen ramp-up in several countries in parallel and make renewable energy already produced widely available, thereby immediately concretising possible CO2 emission reduction potential.

¹ <https://www.cleanenergywire.org/factsheets/german-onshore-wind-power-output-business-and-perspectives>

DELEGATED ACT BASED ON ARTICLES 25 & 28: GHG REDUCTION METHODOLOGY

The delegated act based on Articles 25 and 28 of REDII introduces criteria and a methodology to measure the GHG footprint of RFNBOs. These must emit at least 70% less greenhouse gases compared to fossil fuels, following a calculation method described in Annex I of the draft that considers all life cycle emissions. Therefore, the draft Delegated Act also touches upon the issue of the origin of CO₂ used to produce RFNBOs, such as captured CO₂ from industrial sources.

Unfortunately, the draft limits the **use of industrial sources of CO₂** to 2035, stating that the production of RFNBOs from these sources is "not compatible with climate neutrality", compared to direct capture from air and CO₂ from biogenic sources. UPEI disagrees with this temporal limit, as it would discourage investment in such RFNBO plants from the outset since their time horizon for economic viability amounts to at least 20 years.

Instead, grandfathering such plants should be allowed beyond 2036, so that advantage can be taken from the industrial CO₂ emissions that would be generated anyway and realise their immense GHG reduction potential by substituting fossil energy carriers in their numerous potential use cases. Otherwise, investments that could meaningfully recirculate CO₂ emissions will not be made. Unavoidable industrial CO₂ emission will continue to exist even after 2036, since for many industries technology alternatives do not exist. Industrial CO₂ emission are limited by the European Trading System (ETS) in any case.

REASONABLE, CONSISTENT AND NON-DISCRIMINATORY REQUIREMENTS FOR ALL CLIMATE PROTECTION SOLUTIONS

Beside the necessary changes to each Delegated Act, several cross-cutting issues need to be addressed:

- Although both delegated acts are based on the same Regulation (RED II), they display **numerous inconsistencies** regarding some provisions, for example as regards criteria for green electricity.
- Regarding the proposed time limit for the criterion of additionality in the Delegated Act base on Article 27, it is also unclear why the maximum periods indicated vary between 24 months for "off-grid" plants and 36 months for "grid-connected" installations.
- Furthermore, the inclusion and applicability of certain terms to third countries outside the EU need improvement: this concerns not only the definition of a "bidding zone" mentioned above, but also the definition of "aid", which leaves out the question of how to apply the proposed legal framework to the urgently needed imports of hydrogen and hydrogen derivatives.

The Delegated Acts would therefore greatly benefit from simplification and clarification of these sometimes conflicting provisions, as well as a reduction in the number of conditions, in order to provide a clear, coherent regulatory framework.

In general, we point to the inconsistency of an approach that requires that hydrogen and eFuels have to meet criteria like additionality, temporal or geographical correlation while other technology applications like battery electric vehicles or heat pumps do not have to provide such evidence in use, regardless of the underlying electricity mix, and therefore receive preferential treatment. **Here, different technologies are plainly treated in different ways. We strongly advocate for a level-playing field for all technologies.**

We highly expect that the Commission will take into account the points raised above in order to finalise coherent and technology-neutral Delegated Acts necessary for the ramp-up of

hydrogen production. This is the only way to achieve the ambitious goals formulated in the European Hydrogen Strategy.

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UPEI represents nearly 2,000 European importers and wholesale/retail distributors of energy for the transport and heating sectors, supplying Europe's customers independently of the major energy producers. They are the interface between producers and consumers, using their own infrastructure and flexibility to supply existing demand for conventional and renewable liquid fuels, as well as non-liquid alternatives as part of the energy transition. They cover more than a third of Europe's current demand. The organisation brings together national associations and suppliers across Europe.

Independent fuel suppliers bring competition to Europe's energy market and are able to respond rapidly to changes affecting supply, contributing to security on a local, national and regional level. They have developed and maintain a comprehensive infrastructure for the sourcing, storage and distribution of transport and heating fuels, with a commitment to delivering a high-quality service to all consumers, including those in remote areas.

Since 1962 UPEI has been advocating for a level playing field and fair competition to ensure an affordable, sustainable, and secure energy supply for Europe's consumers. Today, in the context of the transition to a low carbon economy, UPEI and its members are also addressing the challenges of adapting the product range and meeting consumer demand through market-oriented solutions.

With its strong track record in pioneering the supply of renewable fuels in the EU, UPEI's members remain committed to delivering and embracing new, cost effective solutions which further promote energy efficiency and reduce pollutants and emissions.