



**WINDEUROPE RESPONSE TO THE PUBLIC CONSULTATION ON
THE IMPLEMENTING ACT ON NON-PRICE CRITERIA IN RENEWABLES AUCTIONS (NZIA)**

With the Net Zero Industry Act, the European Union wants to strengthen its domestic clean tech manufacturing. The EU wants to have 420 GW of wind energy installed by 2030, up from 220 GW today. The European wind supply chain is ramping up to meet this demand.

Over a year has now passed since the EU Wind Power Package with its 15 immediate actions to strengthen Europe's wind industry – and the EU Wind Charter in which Governments pledge to take the actions that fall to them. And a lot of good things have happened. In total 30 new factories are now under development in the wind and grid equipment supply chain. By the end of this year Europe's annual wind turbine manufacturing capacity will be 32 GW.

The challenge now is to ensure these factories are on a level playing field with non-European manufacturers and can produce equipment at the competitive prices wind farm developers require. At the heart of the NZIA are changes to renewable energy auction design – with a stepwise approach. The law raises the bar for the participation in wind energy auctions by enshrining pre-qualification criteria on cybersecurity, responsible business conduct and the ability to deliver on projects. National Governments can also reward bids based on sustainability, energy system integration or supply chain resilience, and therefore reward projects based on the value they bring to Europe, rather than on cost only.

WindEurope's answer to the public consultation aims at ensuring clear and implementable policy, consistent with the objectives of the NZIA to strengthen the European wind supply chain, while not delaying the roll out of wind deployment. The regulation must be fit for purpose and not create unnecessary complexity. Most importantly, the implementing act must be clear enough so that all Member States share the same interpretation of all non-price criteria. The industry simply cannot afford to comply with 27 different sets of rules.

General remark

The industry acknowledges and appreciates the effort to align article 25 and 26, notably as regards to public undertakings participating in renewables auctions. To ensure fair competition among market players regardless of their ownership structure, recital 6 recommends not to apply the rules set out in Article 25 to the procurement of the net zero technologies by public undertakings, where such procurement is used to carry out projects awarded in the context of renewable energy auctions subject to Article 26. We fully support it and would even recommend incorporating it directly in an article of the Implementing Act. In addition, all Member States should apply the rules of article 26 when it comes to renewables auctions, and not article 25, to avoid setting two different sets of rules in Europe especially when it comes to supply chain resilience.

We invite the European Commission to clarify that, for those countries that apply several stage auctions, non-price criteria in auction only apply to the procurement of renewables technologies and not to allocating bed at sea, seabed right and grid connection (for transmission right auctions).

Pre-qualification criteria

Responsible Business conduct:

In keeping with the logic of regulatory simplification set out in the EU Competitiveness Compass, it must be clear that companies should be able to refer to existing reporting and not create a new specific reporting for each bid in an auction. The compliance with the core elements of due diligence should therefore not be project-specific but company-wide or at the level of a business-activity (for instance a Renewables Division).

Cybersecurity

The security of the Union and its member states largely depends on the security of the energy system and the assets connected to it.

The industry supports a strong focus on cybersecurity as a very important factor – there must be a risk management-based approach also looking into asset and its supply chain risk (certification of single components is not sufficient and still needs to be developed).

The handling of data access from different locations should be clarified in light of requirements to be fulfilled. It must be ensured that parties/companies that are subject to any third country regulation related to disclosure, access, potential modification or other forms of espionage and/or data misuse cannot access or store data. Banning data storage in countries where the access to the data is controlled (access can be denied) by the local authorities appears consequent, also to ensure continuous data accessibility.

Nevertheless, reasonable transfer to and access practices from non-EEA location might be required for operations. Ambiguous requirements can cause problems in the case of wind turbine OEM staff travelling for service activities or supporting operations from e.g. non-EEA territory. The focus must be on ensuring end-to-end protection through cybersecurity best practices and along European/international standards. European agencies should oversee and verify compliance to European/International cybersecurity standards.

Unlike traditional IT environments, wind power plants do not store emails or customer data. Instead, the primary security concern is protecting access to the control system and the integrity of the control system itself. Since "data protection" is often associated with personal data, many OT specialists do not immediately consider OT/ICS/SCADA instructions as "data." To prevent misunderstandings, it would be helpful to explicitly differentiate or include these aspects in the definition of protected data.

Bidders should be required to store and process auction-related data within the EEA or in non-EEA locations that provide risk assessment results in line with international cybersecurity risk management frameworks and standards. These locations must also demonstrate that appropriate controls and mitigations have been implemented to address any identified risks.

Furthermore, the requirement outlined in Article 5(d) should be relocated to another section of the Implementing Act, as it primarily pertains to installation management rather than cybersecurity. Lastly, a clearer definition of "operator" and "operational control" would enhance precision and facilitate proper implementation. The term "operator" is not defined in the NIS2 Directive (Directive EU 2022/2555) nor in the NZIA regulation. We recommend clarifying whether, under this paragraph, 'operator' means 'the owner of the asset' who can also manage/control the asset, or if it should be 'electricity undertaking' as defined in Directive EU 2019/944 on common rules for the internal market for electricity.

Ability to deliver

The article is in line with current practices. It is indispensable that National Government are clear that information available at the time of the bid can *only* be in the form of offers and not actual contracts, that are signed sometimes only months after the project's delivery.

Financial requirements should be designed in a way that they do not represent hurdles for smaller developers, ensuring open competition.

The track record used to demonstrate technical expertise should include all relevant experience, regardless of geography. For example, experience in the UK and Norway should be considered on a par with experience in the EU.

Supply chain resilience

We invite the Commission to clarify that the definition of a "final product" and "net zero technologies" means a wind turbine for onshore wind, and the combination of an offshore wind and its foundation for offshore wind.

As long as there is no dependency at technology level, wind energy will be subject to paragraph 7.3, which means that 75% of the turbines of a project need to fulfil the requirements of paragraph 7.1 b) to d). For onshore wind, a maximum of 3 main specific components can be imported from or be assembled in China. For offshore wind, a maximum of 4 main specific components can be imported from or be assembled in China. The full wind turbine, direct drive generators and gearbox drive trains shall not originate or be assembled in China.

On top of it, 7.2 will also apply if the Commission establishes a dependency at main specific component level. In the case of a component with already a high dependency, such as permanent magnets, having 7.2 applying cumulatively to 7.1 leads to an unsolvable equation, where permanent magnets would be listed as one of those components coming from China, while forcing to diversify its supply, even if the alternative supply does not exist. In this case, we recommend to Member States to make the use of recital 10, that allows flexibility in case the 15% diversification requirement is not achievable with the state of current supply chains, based also on the grounds of recital 9. The European Commission should allow Member States to use it as a waiver not to apply diversification requirements as long as alternative supply is not available. To ensure a unified approach across the EU, the incentives and the timeline to diversify the permanent magnet supply chain should be set outside of the auction, for instance in a roadmap as per the Critical Raw Material Act.

The listed main specific components should be understood in a way that makes sure that no technology is unfairly treated. It should be clarified that rotor hub and each technological type of the drivetrain, also considering existing medium speed technology with little amount of rare earths material, should be understood at assembly level.

Existing tariff codes applicable to wind components do not always match the list of main specific components, which may create difficulties in tracking exact dependencies and verifying compliance with the resilience criterion based on customs declarations. Documents allowed to demonstrate supply chain resilience should also include invoices.

The methodology to assess the dependence of both a technology or a component as per NZIA article 29.2 should rely on imports statistics as well as production figures and EU demand.

It should however be considered that, based on the Union Customs Code, offshore wind farms located beyond 12 nautical miles are considered as extra- EU territory, and thus components meant for *re-export* to the Exclusive Economic Zone do not follow regular customs declaration procedure.

Award criteria

System integration

It needs to be clear that auctions which apply system integration as an award criterion must only address *only 1* of the three options set out in the article:

- temporal flexibility ;
- locational impact ; or
- connections across energy carriers

Requesting the 3 sub-points in parallel will create unnecessary complexity and will encourage 'box ticking' rather than a sound approach to system integration. Moreover, locational impact is limited for central offshore tenders with pre-determined site and landing points out of control.

Moreover, project design should be driven by energy quantified system needs, as identified by System Operators when they perform grid planning and consider all elements for the future development of grids and renewables.

Innovation

While we recognise the central role innovation towards competitiveness, auctions should drive scale first and foremost. Innovation should be driven by the industry in a market context.

Knowledge dissemination and licensing provisions should not be included in non-pure innovation auction as this could effectively erode the competitiveness and risks undermining intellectual property (SMEs and start-ups need to demonstrate strong IP protections to secure the investments needed to scale up)

Pure innovation auctions should support those technologies that are not yet fully competitive in the energy market. Pure innovation auction should be technology-specific and tailored to each Member State's unique renewable energy resource potential (e.g. floating offshore wind, for airborne wind, etc.). We are asking to correct "kite borne technology" with the right name of the technology "airborne wind" in recital 28 and article 14.

Carbon footprint

Bidders are not in a position to calculate the actual emissions of the project at the time of bid, only an estimation is possible as there is not yet full visibility on the supply chain. Flexibility should be allowed for changes during the process.

Circular economy

The criterion on circular economy needs clarification. As it stands it is too broad and may lead to very different requirements from one Member State to another. Circularity requirements would be imposed on the supply chain without the necessary volume of projects to make investments (in e.g. recovery or recycling) economically viable. Member States should use this criterion to help operationalise the commitment of the wind industry not to landfill blades, which, until recently, was the only component that was not fully recyclable.

Penalties

There is a need to ensure penalties apply in a balanced way across the supply chain to share the risks that are out of the control of developers, for instance supply chain failures such as key suppliers going bankrupt or delay in supply chain manufacturing beyond the developer's control or additional unforeseen circumstances impacting project feasibility.

Based on the draft implementing act, compliance with the non-price criteria could be assessed at different points throughout the project's life cycle, as deemed appropriate by the authorities. This creates a challenge for project developers. Resilience should be required only at the contract execution time and providing a high-level commitment at the time of the bid given the uncertainty of the supply chain until later in the project cycle.