RENEWABLE ENERGY POST-2021

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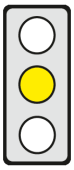
KEY ISSUES

Objective of the Directive: The EU Commission proposes rules to support energy from renewable sources ("renewables") in the EU post-2021 which aim to increase the share of renewables in overall EU energy consumption to 27% by 2030.

Affected parties: In particular, the energy and fuel sector.



Pro: (1) It is right that support for existing renewables plants should not be changed retrospectively.

(2) The Commission rightly calls for new plants producing renewables-based electricity not to have a general priority dispatch.

Contra: The Directive grants Member States too much scope for developing inefficient and anti-competitive renewables support schemes.

CONTENT

Title

Proposal COM(2016) 767 of 30 November 2016 for a **Directive** on the promotion of the use of **energy from renewable sources** (recast)

Brief Summary

- **Context and objectives**
  - For 2020, the current Renewable Energy Directive [2009/28/EC]; see cep**Compass** Climate and Energy, p. 89 et seq.) provides (old Art. 3 (1) and (4))
    - for the EU-wide target of increasing the share of renewables used in overall EU energy consumption (renewables share) to at least 20%,
    - binding national renewables development targets for the Member States in line with their respective renewables potential,
    - a binding renewables development target for Member States in the transport sector of at least 10%.
  - The current Renewables Directive largely leaves it up to the Member States to decide
    - how they divide their national renewables development target between the electricity sector, the heating and cooling sector and the transport sector,
    - which renewables they support and how they support them.
  - In 2014, the European Council decided (see cep**Compass** Climate and Energy, p. 112 et seq.), that by 2030
    - the EU-wide share of renewables must be increased to at least 27%,
    - no obligatory national renewables development targets will be determined by EU law.
  - The proposed recast of the Renewables Directive will regulate how renewables are to be supported post-2021 in order to achieve the binding EU-wide renewables target of 27% by 2030.
- **Realisation of the EU-wide renewables development target of 27% by 2030**
  - As from 2021, Member States must
    - "collectively ensure" that the EU-wide renewables development target of 27% is achieved by 2030 (new Art. 3 (1)),
    - continue to meet their national renewables development target for 2020 (new Art. 3 (3)).
  - By the start of 2019, Member States must establish "integrated national energy and climate plans" for the period 2021-2030 [Proposal for a Governance Regulation COM(2016) 759, Art. 3]. These plans must be submitted to the Commission in advance and indicate [COM(2016) 759, Art. 4 (a) (2) in conjunction with Annex I Part 2.1.2.],
    - what contribution in terms of national renewables development the Member States will make towards achieving the 27% target and
    - how the Member States want to divide up their national renewables development contribution between electricity, heating and cooling and the transport sector.
- **Preservation of existing support**
  Existing support which has already been guaranteed to renewables suppliers beyond 2020 cannot be changed or withdrawn retrospectively (Art. 6).

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- **Support in the electricity sector**
  - As from 2021, support for new power plants using renewables must be designed so that (new Art. 4 (1)–(3))
    - the level of support is determined in an "open, transparent, competitive, non-discriminatory and cost-effective" manner,
    - suppliers of power from renewables react to electricity market prices and network congestion.
  - Every Member State must ensure that, in future, part of the renewables capacity which they are supporting is available to renewables suppliers from other Member States.
  - This part amounts to (new Art. 5 (2))
    - at least 10% between 2021 and 2025 and
    - at least 15% between 2026 and 2030.
  - As from 2021, network operators must give the operators of new power plants using renewables priority over other power generators in accessing the network ("priority dispatch") insofar as the capacity of the renewables plant does not exceed the following thresholds:
    - 500 KW between 2021 and 2025 and
    - 250 KW as from 2026.

    The respective threshold is halved where the total number of plants with priority dispatch constitutes more than15% of the total capacity of all the power plants. [Proposal for an Internal Electricity Market Regulation COM(2016) 861, Art. 11 (2)–(4)]

- **Support in the heating and cooling sector**
  - Member States must "endeavour" to increase the share of renewables used for heating and cooling by at least one percentage point per year. They can determine how the renewables increase will be achieved on the basis of objective and non-discriminatory criteria. (new Art. 23 (1) and (2))
  - District heating and cooling suppliers must provide information to end-consumers on the share of renewables in their systems (new Art. 24 (1)).
  - Member States must ensure that renewables suppliers have non-discriminatory access to district heating or cooling systems (new Art. 24 (4)).

- **Support in the transport sector**
  - The currently binding target of a 10% renewables share in the transport sector by 2020 will be abandoned as from 2021 (p. 21).
  - The manufacture of fuels using food or feed crops ("conventional bio-fuels") gives rise to the danger that the demand for arable land will increase worldwide and areas not previously used for agriculture will be transformed into arable land ("indirect land use change", ILUC). As a result, savings in greenhouse gases (GHG) may be partly or completely nullified by biofuels. [ILUC Directive (EU) 2015/1513; see cep**PolicyBrief**]
  - In order to restrict ILUC, the share of conventional biofuels in overall energy consumption in the transport sector currently must not exceed 7% and from 2021 until 2030 must be gradually reduced to a maximum of 3.8% (Art. 7 in conjunction with new Annex X Part A).
  - Member States will promote alternatives to conventional biofuels in the transport sector (alternative energy sources). The alternative energy sources include (new Art. 25 (1))
    - "modern biofuels and gases" which are obtained from raw materials with an otherwise low economic value – such as algae, straw or bio-waste – (Annex IX Part A),
    - non-biological renewable fuels, e.g. hydrogen,
    - waste-based fossil fuels and
    - Electricity from renewables.
  - In future, fuel suppliers will have to prove that a minimum proportion of the total amount of fuel which they supply comes from alternative energy sources (new Art. 25 (1) in conjunction with new Annex X Part B and C):
    - at least 1.5% in 2021 and 6.8% in 2030 for alternative energy sources and
    - 0.5% in 2021 and 3.6% in 2030 for modern biofuels.

Main Changes to the Status Quo

- New: from 2021, Member States will no longer be subject to fixed renewables development targets.
- New: from 2021, the national support schemes in the electricity sector will have to be designed competitively and cost-effectively and be open to a limited degree for use by foreign renewables providers.
- By 2020, the transmission system operators will have to grant all renewable electricity suppliers priority dispatch (Directive 2009/28/EC Art. 16 (2)]. From 2021, they can and must grant priority dispatch only to new renewables plants up to a certain size.
- New: Member States must endeavour to increase the renewables share in the heating and cooling sector by at least one percentage point per year.

- By 2020, every Member State must ensure they have a minimum renewables share of 10% in the transport sector. Instead of this, as from 2021, fuel suppliers will have to prove they supply a minimum share of modern biofuels and gases.

Statement on Subsidiarity by the Commission

According to the Commission, the proposed measures are necessary in order to achieve the renewables development target of 27% passed by the European Council, in a collective and cost-effective way. Member States are also provided with sufficient freedom and flexibility in order to make the best of their individual potential when promoting renewables. (p. 7 et seq.)

Policy Context

In 2014, in its Guidelines on State Environment and Energy Subsidies 2014-2020 (2014/C 200/01, "Subsidy Guidelines"; see cep**Study**), the Commission set out the criteria under which it considers national renewables support provisions to be consistent with the internal market under the law on subsidies. This was to avoid distortions of competition and over-compensation under the numerous national renewables support schemes and to encourage cross-border cooperation. In 2015, in its "Strategic Framework for an Energy Union" the Commission also calls for "market-based mechanisms" in national renewables support systems and for "greater cross-border openness" [COM(2015) 80; see cep**PolicyBrief**].
In addition to this proposal for a Directive, the Commission has also submitted proposals to recast the Internal Electricity Market Regulation [No. 714/2009; COM(2016) 861] and the Internal Electricity Market Directive [2009/72/EC; COM(2016) 864] and to amend the Energy Efficiency Directive [2012/27/EU; COM(2016) 761; see cep**PolicyBrief**], the Energy Performance of Buildings Directive [2010/31/EU; COM(2016) 765; see cep**PolicyBrief**] and a proposal for a new Regulation on "Governance" of the Energy Union [COM(2016) 759].

Legislative Procedure

30 November 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Energy (leading)
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: José Blanco López (S&D, ES)
Federal Ministries:	Economic Affairs and Energy (leading)
Committees of the German Bundestag:	Economic Affairs and Energy (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Legislative competence:	Art. 194 TFEU (Internal Market)
Type of legislative competence:	Shared competence (Art. 4 (2) TFEU) Legislative procedure:
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

In principle, the renewables share in the Member States and the EU as a whole should not be determined by political decision but by competition taking account of the European Emissions Trading System and other climate policy instruments. However, since a fixed policy-based target for the renewables share at EU level already exists for 2030, we should at least make sure that it will be achieved at the lowest possible cost to citizens and companies.
The fact that the 27% renewables development target for 2030 is only binding at EU level and Member States have to set their own targets within the framework of their national energy and climate plans, avoids the imposition of disproportionately high economic and political costs on Member States with low renewables development potential.
Retrospective changes to support for existing renewables plants should – as the Commission **rightly** proposes – **not be permitted** because retrospective changes to statutory rules lead – irrespective of how existing renewables support is viewed – to greater investment insecurity and undermine the credibility of state incentive schemes.

Impact on efficiency and individual freedom of choice.

Although the Commission recognises that the design of support schemes for renewables-based electricity will need to be more competitive and efficient in the future, **the Directive** nevertheless **allows Member States too much scope for developing inefficient and anti-competitive renewables support schemes** since it does not require the level of support to be determined in tendering procedures nor that support schemes be open to any kind of renewables technology.

The proposal that national renewables support schemes should be opened up to foreign suppliers, to a limited extent post-2021, is a step in the right direction but does not go far enough because foreign renewables suppliers can also be largely excluded from support post-2021 which, in the case of renewables-based electricity generation, prevents economically meaningful competition for the best locations in the EU.

The lifting of a general rule on priority dispatch for new renewables-based electricity plants is appropriate firstly because, as a rule, they do not need priority dispatch as their insignificant marginal costs mean that renewables plants can in any case offer electricity more cheaply than conventional plants do. Secondly, abolition of priority dispatch enables renewables plants producing fluctuating amounts of renewables-based electricity to be switched off in the event of an electricity oversupply that would otherwise result in negative electricity prices and strain on the electricity networks. This is generally cheaper than shutting down coal or gas power plants and than expanding the network just for such exceptional cases.

Renewables should be developed in places where it is cheapest to do so taking account of all ecological and economic costs. Lifting the sector-specific 10% renewables target in the transport sector increases competition for the cheapest forms of renewables production in the EU and thus reduces the inefficiency of EU climate policy. At the same time, however, the one-percent per year increase in renewables called for in the heating and cooling sector as well as the requirement that fuel suppliers must prove that a minimum proportion of the total amount of fuel which they supply comes from alternative energy sources, are misguided. This will distort competition between the sectors for the best renewables technologies.

The Commission correctly points out that a massive increase in food and feed crops for producing conventional biofuels may result in an expansion of global arable land and as a consequence to a rise in global GHG emissions. For this reason, however, the proportion of conventional biofuels is already restricted to 7% in the transport sector. Further restricting the use of conventional biofuels will reduce what is currently the only possibility for low-cost deployment of renewables in the transport sector. Contrary to the Commission's proposal, therefore, the deployment of conventional biofuels should not be restricted beyond the existing level.

Impact on Growth and Employment

Negligible.

Impact on Europe as a Business Location

Inefficient renewables support schemes lead to higher electricity and fuel prices and thereby reduce Europe's attractiveness as a business location.

Legal Assessment

Legislative Competency

The EU can take measures to support renewable energy sources (Art. 194 (1) (c) TFEU).

Subsidiarity.

Unproblematic.

Compatibility with EU Law in other Respects

The ban on retrospective changes to existing guarantees of renewables support complies with the ban on retro-activity under the Rule of Law (Art. 2 TEU; CJEU C-98/78 – Racke).

Conclusion

It is right that support for existing renewables plants should not be changed retrospectively. The Directive still grants Member States too much scope for developing inefficient and anti-competitive renewables support schemes. The lifting of a general rule on priority dispatch for new renewables-based electricity plants is appropriate because, due to their insignificant marginal costs, new plants can in any case offer electricity more cheaply than conventional plants do. Lifting the 10% renewables target in the transport sector increases competition for the cheapest forms of renewables production in the EU and thus reduces the inefficiency of EU climate policy.