



EUROPEAN COMMISSION

Brussels, 27.7.2017

C(2017) 5444 final

*Ms. Malu DREYER
President of the Bundesrat
Leipziger Strasse 3-4
D – 10117 Berlin*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast) {COM(2016) 767 final}.

The Commission welcomes the broad support of the Bundesrat for the aims of the proposal, which forms part of the Clean Energy for All Europeans package. The package sets out the legislative framework to reach the energy and climate objectives agreed by the European Council in October 2014. These objectives include increasing the share of renewable energy to at least 27% by 2030. The package also implements the Energy Union with a view to providing European consumers – households and businesses – with secure, sustainable, competitive and affordable energy.

The proposal includes, in particular, a number of measures across various sectors aimed at fostering the deployment of renewables. This ambitious set of measures would allow Member States collectively and the European Union as a whole to reach the target of at least 27% of renewable energy in gross final consumption of energy in the Union by 2030. The proposal covers energy consumption in the sectors electricity, heating and cooling and in transport.

As regards the achievement of the European Union target, this is addressed in the proposed Regulation on Governance¹, which is also part of the package. The Commission would like to stress that the sharing of the effort amongst Member States should be fair and take into account Member States' early efforts to fulfil the Union's 2030 target, when determining the gap filling measures and the functioning of a future financial platform for the development of renewable energy projects.

¹ Proposal for a Regulation of the European Parliament and of the Council on the Governance of the Energy Union, COM(2016) 759 final.

It is important to note that, in accordance with the conclusions from the European Council of 2014, the proposal does not set up any binding national targets. Instead it suggests a comprehensive European framework that would enable renewables to grow.

The Commission notes the Bundesrat's observations regarding support schemes and regional cooperation. The Commission's proposal would foster the convergence of support schemes in Europe. It would complement the European Union's exclusive competence in the field of State aid. The proposal would also mandate a gradual cross-border opening of support schemes, since the impact assessment has shown that this can reduce significantly the cost of deployment for support schemes.

As regards priority dispatch, it should be noted that renewables would form the backbone of the European electricity system by 2030. With such a high market share, most renewables, except existing installations – already benefitting from priority dispatch and emerging technologies – cannot be exempt from fundamental market principles. In the Commission's view, curtailment will be the most important issue for renewable energies after 2020. Therefore, the Commission proposes that renewable electricity should only be curtailed as a last resort, if and once all other technologies that can reasonably respond have been exhausted. The Commission also proposes that any such curtailment should result in adequate compensation for renewables.

In response to the more technical comments in the Opinion, the Commission would like to refer the Bundesrat to the attached annex.

The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Julian King

Member of the Commission

ANNEX

The Commission has carefully considered the issues raised by the Bundesrat in its Opinion and would like to offer the following observations.

Points 11-14 on permitting procedures:

The Commission welcomes the Bundesrat's support for the swift permitting procedures. Regarding the single administrative contact point, the Commission considers that depending on the administrative set up of the Member States, several single administrative contact points may exist as long as it is ensured that every applicant only has one single entry point into the administration.

Points 17-19 on heating and cooling:

The Commission welcomes the Bundesrat's endorsement of the proposed non-discriminatory access to the district heating and cooling networks and the strengthening of the information provision requirement to consumers on energy performance. The Commission notes the Bundesrat's concerns as regards the need for ensuring technical feasibility, energy efficiency and economic viability for network operators and energy consumers, when implementing access and switching rights in national law, and to avoid a standstill in the building of new networks or the expansion of existing ones. In this context, the Commission would like to point out that the proposal leaves sufficient flexibility for Member States to define technical rules and regulations in order to ensure the reliable operation of their networks, provided those are objective and proportionate and support the objective of developing the potential of modern district heating and cooling systems in supplying better performing and more renewable heating and cooling services to consumers.

Points 20-34 on transport:

In its Communication from 2014 on the Climate and Energy policy framework in the period from 2020 to 2030², the Commission stated that crop-based biofuels have a limited role in decarbonising the transport sector due to their impact on indirect land use change and that they should not receive public support after 2020. Additional demand for first generation biofuels could lead to the extension of agricultural land into sensitive areas such as forests, wetlands and peat land causing increased greenhouse gas emissions which eliminate the direct emission savings of crop-based biofuels.

The Commission recalls that the proposal does not include any measures providing support for conventional based biofuels. The proposal would therefore reduce the incentives for Member States to promote these fuels by gradually reducing the share of crop-based biofuels, bioliquids and biogas consumed in transport that could count towards the European Union target for renewable energy from 7% in 2021 to 3.8% in 2030. The proposal would allow

² COM(2014) 15 final.

Member States in this reduction to distinguish between different types of conventional crop-based biofuels taking into account the risk of indirect land use change. The proposal would not set physical limits on the amount of biofuels that can be produced or consumed and conventional crop-based biofuels would still be able to fulfil the sustainability criteria.

The Commission would like to stress that renewable fuels of non-biological origin are considered to have a significant potential for decarbonising transport since they are less affected by the scarcity of land and biomass supply. Renewable fuels of non-biological origin should indeed only be promoted if they achieve carbon savings. Against this background, the proposal would incentivise the production of these fuels from electricity with a high share of renewable energy or from renewable electricity produced in dedicated installations and proposes that a methodology to determine greenhouse gas emission savings and minimum greenhouse gas savings' requirements can be adopted a later stage in a delegated act. Using guarantees of origin to count renewable energy as 100% renewable could risk promoting the production of fuels in regions where the carbon footprint of electricity is high. Fuels produced from electricity with high carbon are unlikely to be able to contribute towards the decarbonisation of transport.

Points 35-38 on bioenergy:

Bioenergy currently represents a significant share of the European Union's renewable energy mix, and it will continue to do so in the foreseeable future. Bioenergy promotes employment and economic development in rural areas, contributes to energy security and helps to reduce carbon emissions. While the risk of unsustainable biomass production/use is currently low, research suggests that risks could increase along with growing biomass demand for energy and the wider bioeconomy, including higher biomass imports from third countries. The reinforced European Union sustainability criteria would minimize the risk of using unsustainable biomass for energy in the European Union. They would also provide a level playing field for bioenergy operators across the European single market and help to secure local support for bioenergy projects. The sustainability criteria for forest biomass fully addresses subsidiarity and proportionality, as they build on national forest management legislation and existing market-based sustainable forest management schemes and therefore avoiding certification of all woodfuel consignments. The so-called 'risk-based approach' would allow economic operators to comply by providing evidence that the criterion is met through national or subnational legislation of the country of origin of the forest biomass. If credible evidence of relevant legislation cannot be provided, the forest biomass can be considered of risk for non-compliance with the minimum requirements. In this case, economic operators will be required to provide evidence of compliance with the sustainability requirement at the forest holding level. Alternatively, they could change their sourcing practices by not sourcing from an area where a low risk of non-compliance cannot be shown.

Points 40 – 42 on biogas/ biomethane:

The Commission welcomes the Bundesrat's support for the increased production of biogas and biomethane from wastes and residues which is covered by several of the measures proposed by the Commission. These measures include the proposed cap for the accounting of crop based biofuels, bioliquids and biogas consumed in transport sector towards the European Union's target for renewable energy, keeping a harmonised feedstock list for biomethane to be eligible for accounting towards the incorporation obligation for transport fuel suppliers, and increased threshold for the minimum greenhouse gas emission savings compared to fossil fuels to be reached also by biogas and biomethane used in all three energy sectors – electricity, heating and cooling as well as transport.

The proposal is based on an analysis of the current biogas/ biomethane markets, technology deployment, as well as existing support policies and sustainability frameworks in Member States. Therefore, Annex VI to the proposal establishes typical and default values for the most commonly used feedstocks in the European Union (bio-waste, maize and animal manure) for which data was sufficiently available. Annex VI to the proposal also includes a methodology for calculating actual greenhouse gas emission values, as well as typical and default values for any proportion of substrate mixtures from these three feedstocks. The list of default values for other pathways can be added by delegated act.

The Commission would like to stress that the proposal also takes into account the fact that after-treatment technologies and techniques applied in biogas installations can have a considerable impact on the greenhouse gas emission performance of biogas and biomethane. Therefore different default values have been added to the proposal to cover both: the use of open and closed digestate, and in case of off-gas combustion or without.

Points 42 – 43 on greenhouse gas emission calculation methodology:

Emission savings from improved agriculture management are taken into account and calculated in accordance with the rules applied to liquid biofuels and biogas used in the transport sector under the current Directive on Renewable Energy³. In order to increase legal certainty, the Commission has proposed to include in Annexes V and VI to the proposal a clarification of the scope and methodology requirements which are currently applied in accordance with the Commission Communication on the practical implementation of the European Union biofuels and bioliquids sustainability scheme and on counting rules for biofuels⁴.

³ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140, 5.6.2009, p. 16.

⁴ 2010/C 160/02, OJ C 160, 19.6.2010, p. 8.

The Fossil Fuel Comparator for electricity represents in the proposal the European Union average of fossil electricity emissions. As regards bioliquids – used in the electricity sector – the Commission has introduced in Annex V to the proposal a new requirement for the calculation of greenhouse gas emission savings in order to ensure that emissions related to the conversion of bioliquids to electricity and/or heat and cooling are also taken into account. Finally the Commission notes that the proposed cap for counting towards the European Union renewable target applies not only to biofuels and biogas, but also to bioliquids.