



Brussels,
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Opinion

Title **DG ENER - Revision of directive 2009/28/EC on the promotion of the use of energy from renewable sources (draft version of 15-9-2016)***

(A) Context

Directive 2009/28/EC (RES directive) establishes a binding target for the amount of renewable energy consumed in each Member State as a fraction of its gross final energy consumption. In addition, the RES directive requires that at least 10% of energy used in the transport sector in all Member States be from renewable sources. All targets must be attained by 2020.

In October 2014, the European Council agreed on a binding EU-level target of at least 27% for the share of renewable energy consumed in the EU in 2030, but decided against binding Member State-specific targets.

The impact assessment (IA) assesses possible amendments to the RES directive to ensure cost-effective achievement of the EU-level target by 2030 whilst maintaining consistency with the Union's climate goals.

(B) Overall opinion: NEGATIVE

The Board notes that the impact assessments on the improvement of the EU Electricity Market Design, on the Energy Union Governance, on the revision of the Renewables Directive and on the Bioenergy sustainable policy are in many ways interlinked. As a result, a number of issues raised by the Board in the context of the consideration of the present impact assessment are cross-cutting to the other related impact assessments.

The Board gives a negative opinion on the present impact assessment because the report contains shortcomings that need to be addressed, particularly with respect to the following issues:

Issues cross cutting to other impact assessments

- (1) This IA and the one covering electricity market design need a coherent analysis of renewable electricity support schemes. They need to reconcile different expectations of what the market will deliver in terms of the share of renewable electricity and of the participation of prosumers. If there is uncertainty on these issues, both impact assessments should incorporate the same range of possible outcomes in their analysis.**

*Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

- (2) This IA addresses biofuels while bioenergy as a whole is the subject of another impact assessment. Given that the issues for biofuels are not different from the issues for other sources of bioenergy, the reference to the impact assessment on renewables should demonstrate the coherence or the possible differences in policy approach. In particular, consistency should apply to sustainability criteria, expectations as to the role of bioenergy/biofuels in relation to the overall target for renewables, assumptions on the role of subsidies, and the cost-benefits of any feasible policy at this stage.
- (3) Both the impact assessment on Energy Union Governance and this impact assessment include measures, which aim at monitoring progress towards the target for renewables. The two reports need to explain how these measures interact. They also need to explain why additional monitoring measures are needed, and why they do not consider the lighter option of standard review clauses in the relevant legislation. Such clauses would establish a time frame to review progress and assess the need for additional measures.
- (4) The IA should clarify and explain the content and underlying assumptions of the baseline scenario in relation to the other parallel initiatives.

Issues specific to the present impact assessment

- (5) The IA report is too long and complex to make it helpful in informing political decisions. The Board recommends that this report begin with a concise, plain-language abstract of approximately 10-15 pages. This abstract should summarise the key elements of the IA and identify the main policy trade-offs.
- (6) The report should justify why all sectors (electricity, heating and cooling, transport) should contribute more or less equally to reaching the overall RES target, and it should explain how this would be the most efficient approach.
- (7) Although the European Council has decided against national binding targets for renewable energy, the treaty-based principles of subsidiarity and proportionality remain relevant. The IA report should therefore explore whether national measures would be more appropriate. Would they be more coherent with the approaches taken in related initiatives, such as the effort sharing of greenhouse emissions reductions in the Member States? This applies especially in the heating and cooling sector, where large numbers of small economic operators makes compliance monitoring difficult. It also applies in the transport sector, where tax-based instruments may be more efficient. The subsidiarity argument is particularly relevant for issues related to administrative procedures for permits or the legal definition of energy communities.
- (8) The IA report discusses many options but expresses no preferences. While this is not obligatory, doing so would enhance the usefulness of the IA in the subsequent decision making process. At least, the report should reduce the number of potential "preferred options" to a few realistic ones.

The lead DG shall ensure that the report is revised accordingly and resubmitted to the Board, which will issue a new opinion on the revised draft.

(C) Main recommendations for improvements

(1) Support schemes for RES. The two IAs on electricity market design and renewable energy present different assessments about the investment that the market will provide to support renewable electricity. It is not clear whether a funding gap arises because expected investment is too low, or whether a "safety net" is needed to mitigate the risk that the market might not provide enough investment to reach the EU target on renewables. In addition, the state of commercialisation and maturity of the different renewable energy technologies and their differing need (if any) for public support is not addressed. The IA report also does not explain why new legislative provisions are needed beyond the Commission's current guidelines on energy and environment state aids and their future review in relation to the period after 2020. It is also unclear how tendering procedures to procure renewable electricity cost-efficiently (and based on the principle of technology neutrality) can address the needs of immature renewable energy technologies and avoid overgenerous support schemes in a rapidly changing environment.

(2) Sustainability of biofuels. The scientific evidence clearly shows that indirect land use change is an important consequence of the EU's biofuels policy. More specifically, when ILUC is accounted for, the available evidence points to there being no greenhouse gas savings from (the substantially more expensive) food-based biodiesel compared to fossil diesel. The greenhouse gas emissions performance of food-based bioethanol is better than that of biodiesel. Given this, the IA report should: (i) address the sustainability of biofuels (and the need to revise the existing sustainability criteria in the RES Directive) in a manner coherent with the approach taken in the IA on bioenergy; (ii) explain why the IA report does not distinguish between food-based bioethanol and biodiesel given their different greenhouse gas emissions performance; and (iii) explain why options which require frontloading advanced biofuels which are unlikely going to be mature over the 2020-30 period are not discarded. In addition, the IA report should look at whether national measures would be more appropriate in respect of subsidiarity, effectiveness and efficiency.

(3) Baseline: The content and assumptions of the baseline scenario should be clarified, including the differences between the PRIMES 2016 reference scenario and the scenario extending the "current renewable arrangements". The IA should also explain the implications of the scenarios for the cost of the policies and for the energy mix, in particular on bioenergy, which affects negatively the CO₂ target.

(4) Report length: An IA report should not generally exceed 40 pages in length, otherwise its usefulness in the decision making process is impaired. The current report substantially exceeds this limit. A short abstract of the IA report should be presented at the beginning of the revised report. This abstract should cover the main elements of the IA (problems, objectives, options, impacts and trade-offs, how options compare) focussing in on the critical points for political decision-making. It should be approximately 10-15 pages in length.

(5) Preferred options: Many different options are discussed but no preferences are expressed. It is difficult, therefore, to gauge the overall balance and proportionality of the intended approach towards attainment of the EU-level target and to assess coherence with other initiatives and Union policies. While it is not mandatory to express a policy preference, the usefulness of the IA report would be enhanced if preferences were stated or if options that compare less well in the analysis could be discarded.

(6) Subsidiarity and proportionality: The discontinuation of national targets introduces more uncertainty regarding the collective attainment of the EU-level target and the

individual contributions of the Member States. However, the principles of subsidiarity and proportionality remain relevant. The current impact assessment has only investigated options for action at the EU level notwithstanding that national measures may be less costly, more effective or simply more appropriate from a subsidiarity perspective. The IA should look at a wider range of options including action at Member State level particularly in the transport and heating and cooling sectors. Moreover, the extension of the scope of the directive to cover administrative issue for permits and the legal definition of energy communities is questionable on subsidiarity grounds.

(7) Governance and mid-term review: The IA report should explain why it is necessary now to anticipate the potential failure of the envisaged governance system without any evidence or understanding as to why the Union may not be on track to attain the EU's target of 27% renewables in 2030. The option of having a mid-term review should be considered, which would be based an evaluation of the RES Directive using the information generated by the governance process to assess the causes for any non-attainment and the need for additional measures. Such an evaluation would in any event be required under the Commission's better regulation policy.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.

(D) Procedure and presentation

See above comments on the report length and readability (3).

(E) RSB scrutiny process

Reference number	2016/ENER/025
External expertise used	No
Date of RSB meeting	14 September 2016