



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
D(2016)

Opinion

Title **DG ENER - Revision of directive 2009/28/EC on the promotion of the use of energy from renewable sources- (resubmitted version of 17 October 2016)***

(A) Context

The RES Directive 2009/28/EC requires each Member State to consume a minimum amount of renewable energy in 2020. In addition, at least 10% of the energy consumed in the transport sector in 2020 in all Member States must come from renewable sources. Furthermore, biofuels must meet the sustainability criteria contained in the Directive before placing on the market in the EU. These criteria continue to operate after 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 Renewables (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 acknowledges the improvements in the resubmitted impact assessment report. It provides a useful abstract, an improved problem definition, a better quantified baseline, more details on the options. In particular it establishes the investment gap in renewables for power generation and makes the case for the continuation of market based support schemes. .

However, the Board maintains its negative opinion because the revised report still contains significant shortcomings as listed below:

- **The report fails to assess sufficiently the principles of subsidiarity and proportionality. The case for EU-level legal obligations in several areas is not clear. Options for action at Member State level have not been considered. A different mix of EU and national measures might arguably be more efficient and effective, notably in light of the following:**
 - **the political decision of the European Council to move away from national legally binding targets for renewable energy;**
 - **the extent to which national measures are already in place;**
 - **the relatively limited additional efforts required to reach the EU target as compared to the baseline, as well as the generally underestimated trend of**

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

renewables growth;

- **the need to ensure coherence with the various climate and energy policy instruments (such as the proposal on effort sharing in sectors not covered by the emissions trading system, energy efficiency and energy performance of buildings and the initiative on electricity market design).**

More specifically:

- **Proportionality is particularly relevant for the options in the heating and cooling sector. Impacts and costs of the different obligations have not been assessed against their small contribution to the overall target.**
- **Proportionality is also a consideration regarding the cumulative requirements under the new RES Directive, the Effort Sharing Decision and the revised Energy Union Governance (especially with regard to national trajectories and corrective measures). Together these might be a disproportionate way to deliver the Union's target for renewable energy.**
- **The existing state aid guidelines already address most of the issues that the IA report examines and already acknowledge the 2030 climate and energy targets. It is not clear, therefore, why the IA addresses the design of public support schemes for renewable electricity.**
- **Moreover, the sustainability of biofuels and their potential contribution to the Union-level target is unclear. The issues have not been assessed in the same way as for other forms of bioenergy in the related impact assessment on bioenergy sustainability. Possible changes to the sustainability criteria of biofuels might be appropriate, but this has not been assessed.**
- **Finally the report does not provide sufficient clarity concerning the preferred set(s) of options and associated policy trade-offs to facilitate decision-making by the College of Commissioners.**

(C) Main requirements for adjustment

- (1) In relation to renewable electricity, the IA should explain why new legal provisions are needed on how to design state aid schemes beyond what exists already in the Commission's state aid guidelines on energy and the environment (e.g. tendering obligations and opening of tenders to EEA).
- (2) The text should better explain how a single uniform (technology-neutral) approach to auctions/tenders for supporting renewable electricity will be able to accommodate the different situations of the various RES technologies. Conversely, if technology-specific tenders are permitted, how would these avoid over-generous subsidies (particularly given the intention to prevent retroactive action by Member States)?
- (3) The approach presented in the IA is primarily to deliver the 27% EU renewables target with EU-level instruments. While the revised report raises subsidiarity-related issues in the context of providing "flexibility" for implementing the EU instruments, options for Member State action should also be considered.
- (4) The report should better justify the proportionality of the obligations in the heating and cooling sector:
 - The report should analyse likely costs and benefits to justify the level of the

particular renewable fuel obligation imposed on fuel suppliers.

- The report should assess the administrative burden associated with certification regarding district heating and fuel obligations in particular for SMEs. .
 - The risk of unintended consequences should be analysed, such as a worsening of air quality due to the use of biomass instead of clean fuels such as natural gas.
 - The report should better consider consistency with other legislation on energy efficiency, non-ETS GHG emissions reduction and new proposals on the energy efficiency of buildings (EPBD). Article 13 of the existing RES Directive already obliges Member States to ensure that their national buildings codes promote a minimum level of renewables for near-zero energy buildings and buildings undergoing a major renovation. In addition, the envisaged revision of the EPBD aims to promote "own production" of renewable energy as a way to meet near-zero energy standards for buildings. In addition, each Member State also has a different target for greenhouse gas emission reduction in the non-ETS sector, which might imply less stringent obligations to reduce greenhouse gas emissions.
- (5) This impact assessment takes a different approach to that which assessed directly the sustainability of other forms of bioenergy in relation to their possible contribution to the Union's 27% target. The revised IA remains primarily focused on how to deliver a particular volume of renewable energy in the transport sector but does not address the sustainability of biofuels directly including the important issue of indirect land use change (and associated greenhouse gas emissions). It is not clear whether food-based biofuels should contribute to the Union's 2030 target. Consideration should be given to an additional policy option that addresses the deficiencies in the current sustainability criteria (i.e. absence of Indirect Land Use Change) and which would apply equally to all biofuels (advanced and food-based).
- (6) The coherence and proportionality of the measures intended under the present initiative and under the energy governance and RES options related to the delivery of the EU's 27% target should be better explained. Assuming the new legal obligations are adopted, and taking into account the commitments under the Effort Sharing Decision, the report needs to demonstrate the need for the linear increasing trajectory for the period 2020-2030 as well as the possible corrective measures under the governance framework.

(D) Procedure and presentation

While the report is still very long, adding the abstract has improved the presentation of relevant information.

The lead DG should seek the appropriate political approval should it wish to proceed further with this initiative and launch an interservice consultation prior to presenting the draft legislative proposal to the College.

(E) RSB scrutiny process

Reference number	2016/ENER/025
External expertise used	No
Date of RSB decision	4 November 2016