QUESTIONABLE DEVELOPMENT OF REGULATION OF RENEWABLE ENERGY SOURCES IN THE EUROPEAN UNION

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Abstract: This article focuses on the development and current situation of renewable energy sources in the European Union in a sphere of Energy law. Energy is a key sector in the European Community which becomes increasingly integrated both politically and economically. Renewable energy sources have nowadays a great importance and big volume of legislation highly affects member states of the European Union. Article concerns the development of Renewable Energy policy in European Union and stress importance of many strategic documents which laid down the foundation of European Energy law legislation. Article also deals with directive 2001/77/EC and directive 2009/28/EC. Both directives establish a common framework for the use of energy from renewable energy sources primarily in order to limit greenhouse gas emissions and to promote cleaner transport.

Keywords: Renewable Energy; Energy Law; Energy Policy

1 Introduction

Renewable energy sources have for almost several years presented a very topical issue and they are one of the leading impulses for changes in the field of energy industry in the European Union and also in the whole World. The growing volume of production from renewable sources just documents this fact. The European Union has for decades promoted the legislative measures that significantly influence energy policy and legislation of the Member States. The importance of a common energy policy has been increasing both with growing importance of environmental protection and with energy problems, which over time proved to be more and more acute. The EU was forced to develop a comprehensive and effective energy policy which functional legislative framework and broad coverage. The EU therefore created a high-quality institutional base, which deals with issues of energy policy. The EU is forced while creating the energy policy act very carefully and thoroughly in each area, because the views of Member States are often diametrically different in many fields and the finding a compromise is very difficult.

2 Historical development of legislation on renewable energy sources in the European Union

2.1 Strategic documents of the European Union in the field of renewable energy

In 1996, the European Commission published a Green Paper on renewable energy sources, which recommended an indicative target for renewable energy of 12% for 2010. This target was endorsed by the Council which in its resolution from 1997[1] stated, that it is a very ambitious target and that it could provide the useful guidance for increased effort at both EU and national levels. The European Parliament has suggested even the target of 15% renewable energy by 2010 and also challenged the Commission to come forward with concrete measures, including setting targets for individual Member States. In many sectors of the economy, the obligatory targets are used to ensure readability and stability for the industry, which allows planning and investing with a higher degree of certainty. Setting goals at the European level this stabilizing effect furthermore reinforce, as the EU policy has generally a longer time horizon and it avoids to destabilizing effects of short-term political changes in the individual Member States. The goals to be effective, they must be clearly defined, sufficiently specific and mandatory. Target 12% share for renewable energy was well intended policy objective, but it proved that for the development of the renewable energy sector it has been still inadequate[2]. The idea of setting indicative target for renewable energy of the EU members was also maintained in the European Commission White Paper from 1997[3]

However, no attempts to distribute the target between Member States were made and the indicative target was not given even the legal framework in the framework of legal enactment of the EU. The indicative target so became a political tool and stimulus for further work. The White Paper only stated that setting targets in individual Member States could encourage efforts to increase the use of available potential of renewable energy sources. Each Member State had to propose his own strategy based on evaluation its energy potential and mix its own strategy and within it propose its contribution set for 2010. The White Paper, however, has become the crucial basis for the proposal, which set indicative minimum targets for renewable energy electricity production for each Member. In the White Paper, a strategy and action plan on renewable energy were also announced, and in the same time, the need to develop all renewable energy, to create a stable policy frameworks and to improve planning regimes and access of renewable energy to the electricity grid was stressed. The European Community so recognized its need to promote renewable energy sources as a priority task, primarily because their use contributes to environmental protection and sustainable development. Possibility to create local employment, a positive impact on social cohesion and contribution to energy delivery security were the next impulses.[4] In 1998, the Council issued the Resolution on renewable energy sources, where renewable energy sources were set as a major priority of the European Communities, primarily because of security and diversification of energy supply.[5] European Parliament in its resolution of 30 March 2000 on electricity from renewable energy sources and the internal electricity market[6] stressed that to achieve results and objectives of the Community the obligatory and demanding targets in the field of renewable energy sources at the national level are essential. To promote new and renewable energy resources into the economies of the Member States, the permanent effort is needed. The European Commission has stressed that renewable energy can achieve a sufficient level of competition, if they receive support for a relatively long period of time. The EU has set itself an ambitious target of 12% of consumption by 2010 from renewable energy sources, and therefore it is particularly important to mobilize support for their development and use. Relying solely on hydroelectric power is not sufficient enough, and it is necessary to give space also to other renewable energy technologies, including hydrogen technology. The increasing use of electricity produced from renewable energy sources also represented an important part of the package of measures needed to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and set of policies needed to meet other obligations.[7] European Union policy to support renewable energy sources stated a large number of non-obligatory goals, such as a target of 12% share renewable energy sources in 1997. Over time, however, it has proved that the achievement of these goals will be possible only if binding and enforceable standards will be set. The European Union therefore developed a series of legislation for specific sectors, such as the biofuels directive or the directive on electricity from renewable energy sources support, which introduced set of measures designed to achieve the objectives given. The support of renewable energy sources plays an important role in both areas. The EU cannot afford to

[1] Official Journal of the European Union, C 126, 1997, p. 6.

[2] Jones, CH., Ladefoged N., Van Steen H., Howes T. *EU Energy Law: Volume III - Book One, Renewable Energy Law and Policy in the European Union*, Claeys & Casteels Publishing BV, 2010, p. 115.

[3] European Commission, *Energy for the future: renewable sources of energy; White Paper for a Community Strategy and Action Plan* (COM (97)599), 1997.

[4] Bič, Josef. *Governance energetické politiky EU a potenciální pozice členských států*, Praha: Oeconomica, 2008, p. 18.

[5] Official Journal of the European Union C 198, 1998, p. 1.

[6] Official Journal of the European Union C 378, 2000, p. 89.

[7] Běhan P., *Nová právní úprava energetiky v právu ES*, Energetika, No. 9, 2006, p. 7.

fail in its elaborated and long-term policy of promoting renewable energy sources. From the development in this energy sector, it is clear that the EU is introducing more and more detailed, strict and obligatory measures in this area. Over time it became clear that the application of progressive measures relating to renewable energy at national level of member states has been sometimes very hard to enforce. That is why the EU must the most important and most needed measures establish in forms of directives and regulations which are binding and, in its specific way also enforceable.

2.2 Directive on the promotion of electricity from renewable energy sources in the EU internal market.

The above-mentioned policy instruments and initiatives led on September, 27th 2001 to the proposal and subsequent adoption of Directive 2001/77/EC on the promotion of electricity from renewable energy sources in the EU internal market ("Directive 2001/77/EC"). Even before the adoption of the directive, member states were engaged at the national level in various systems of support for renewable energy sources (such as green certificates, investment aid, tax exemptions or tax reductions). One of the objectives of this directive was to improve the functioning of these systems. It was mainly because in order to maintain investor's confidence and the development of renewable energy sources was thus reinforced. The directive also set indicative targets for renewable energy, simplified administrative procedures for new producers of electricity from these sources, set fair conditions for producers trying to connect to the grid and introduced mutually accepted guarantees of origin of electricity produced from these sources among member states. Original fifteen EU member states had an obligation to implement the Directive by October 2003. Ten new member states that joined the EU on May, 1th 2004 added to this obligation on the basis of the Treaties of Accession and accession-related acts.[8] The main goal of Directive 2001/77/EC is to increase the share of renewable energy sources on general production of electricity. Accordingly, the directive has set national indicative targets of energy consumption from these resources. The directive contains an obligation to ensure that the EU shall meet the global indicative target of 12% share of renewable energy in total primary energy consumption in 2010. The second key objective is to use 22.1% of electricity produced from renewable energy in overall EU electricity consumption in 2010. All member states so adopted national targets in the sense of the share of electricity produced from renewable energy sources. These objectives aside from small variations correspond to the reference values listed in Annex I of this directive. If the member states adopt measures necessary to achieve their national targets, the share of electricity from renewable energy sources for electricity production by 2010 in EU countries should be close to 22%, as expected by this directive.[9] There were just national targets for renewable energy in electricity consumption for individual member states which had to contribute to achieve this goal. While setting these targets by 2010, member states should ensure that these targets are compatible with all national commitments adopted in the framework of the commitments relating to climate protection by the EU under the Kyoto Protocol to the Framework Convention of the United Nations on climate change.[10]

3 New energy policy of the European Union on renewable energy for the 21th century

3.1 Determination of binding and enforceable targets for renewable energy

In the period after the adoption of Directive 2001/77/EC, the EU position has changed considerably in the energy sector. Even though measures resulting from the directive were groundbreaking somehow, they proved not be very adequate for the needs of European climate-energy policy for the 21st century. It has become obvious that the EU has become strongly dependent on imports of oil and natural gas from politically unstable areas and in conditions of still increasing prices.[11] In 2005, the European Council agreed at a meeting at Hampton Court, the EU is necessary to formulate a new European energy policy which should be grounded mainly on three pillars: namely on sustainability, security of energy supply (energy security) and competitiveness. Consequently, the Council in early 2006 appealed to the European Commission to take the leadership in the field of renewable energy sources, and asked it for an analysis on how to further promote the long-term renewable energy sources policy. The European Parliament even proposed to set target on 25% of renewable energy by 2020.[12] The European Commission on the basis of ideas mentioned above, established a work plan[13], which had to set itself a long-term vision for renewable energy in the EU. The work plan followed the lack of progress in the field of renewable energy sources in recent years. The European Commission understood main barriers in the complexity and decentralized applications using renewable energy sources, as well as in unclear and lengthy permitting procedures for planning and construction. Transparent and non discriminatory access to electricity networks was also not guaranteed. Progress in the EU proceeded quite unevenly and the national policy was often not proved as satisfactory and offering a stability for investors. The absence of legally binding targets for renewable energy on the EU level has proved as a overwhelming problem. A weak legal framework for the use of biofuels, and the lack of legislation for the heating and cooling have been also problematic. For the future development of renewable sources of energy it was required to remove inadequate barriers to the integration of these energy sources in the EU energy system and removing the persisting administrative barriers. Only in the electricity sector, based on Directive 2001/77/EC a modest progress was achieved and set targets undoubtedly promote the development of renewable energy sources. Differences in regimes for electricity, biofuels, heating and cooling so bring in different rates of growth in these sectors, which are not considered to be desirable. One of the key points of the draft work plan was proposal for mandatory and legally binding target of 20% share of renewable energy sources on the energy consumption in EU by 2020. The European Commission concluded that the overall target of 20% share of these resources on the EU energy composition is possible and necessary. The work plan also explains the need for surface implementing of renewable energy sources into energy policies in EU markets, and in this context proposes a new legislative framework for extending the use of these resources in the EU. This initiative should be linked with greater stability for businesses subjects, which could also lead to higher investment in this area. The European Commission then elaborated the Strategic goal for Europe's energy policy, which contained a set of measures that would contribute to achieve above mentioned objectives. It was indeed a very ambitious goal of European energy policy. While changing the long-term development of renewable energy, it should be come from existing legislative and policy instruments, especially from the Directive 2001/77/EC. The important task for the development of renewable energy sources should be finding a balance between increasing number of plants installment and a gradual reduction

[8] Official Journal of the European Union, L 236, 2003, p. 65.
[9] According to the latest developments in energy policies of member countries is predicted that by 2010 the member states reach a real share around 19%. The main reason can be seen that many member states did not adopt an active policy in line with EU objectives.
[10] Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfillment of commitments there under, available at: <http://eur-lex.europa.eu>

[11] European Parliament resolution on a European strategy for sustainable, competitive and secure energy − Green paper (P6_TA(2006)0603) of 14 December 2006, available at:
< http://www.europarl.europa.eu >
[12] Communication from the Commission to the Council, the European Parliament Renewable Energy Road Map Renewable energies in the 21st century: building a more sustainable future (COM/2006/0848) of 10 January 2007, available at:
< http://eur-lex.europa.eu>
[13] Communication from the Commission to the European Council and the European Parliament: An energy policy for Europe (COM/2007/01) of 10 January 2006, available at:
< http://eur-lex.europa.eu>

of costs on technologies using these energy sources.[14] The primary measure, which should lead to achieving above mentioned objectives, was to increase the share of renewable energy in the energy mix from original 8% to 20%. The important step towards an agreement on "the new directive" was meeting of the European Council in March 2007. The Council formally approved the so-called "20-20-20" proposal of the European Commission[15], including concrete and legally binding target for renewable energy sources for each Member State. The Council thus invited the Commission to submit its proposal for a new comprehensive directive on using renewable resources. The Council also agreed with the European Commission's proposal that 10% of all fuels in each Member State must come to the year 2020 from renewable energy sources. Thus, the proposal should include legally binding targets, determining the overall share of renewable energy and biofuels in the transport sector in all member states.

3.2 The climate-energy legislative package

In order to solve problems mentioned above, the European Commission proposed a package of measures concerning emissions trading, renewable energy sources, energy efficiency in the internal energy market and energy security, so called the Climate-energy package. In 2008 the European Commission proposed a package which represented an ambitious legislative project in the field of energy. The EU has worked on this package for several years, and the package represents the result of compromises across Member States. It consists of six legislative measures, which should primarily lead to reduction of greenhouse gases contributing to climate change and to reducing the dependence on fossil fuels. Besides to the objective directive which establishes targets for renewable energy sources in 2020, the climate-energy package includes also a regulation updating national emission targets for greenhouse gases reduction and a directive focused to improvement and expanding the EU Emissions Trading Scheme (EU ETS).[16] The final version of the legislation contained in the climate-energy package was approved by the Council of Ministers on the sixth April 2009 and so confirmed the wording which was agreed by member states in December 2008. The new EU energy policy unambiguously identified as one of priorities to begin as soon as possible expressively promote measures to protect the environment (mainly the reduction of greenhouse gases) and reduce the EU's dependence on energy imports from third countries. The new and revolutionary in its way measures in the field of renewable energy sources and energy efficiency just should contribute to this. The “20-20-20” initiative, which initially seemed to be unrealistic and too ambitious, happened to transform from strategy papers into binding and enforceable targets for EU member states. The climate-energy package introduced the major legislative measures, which greatly affect the energy national policies and influence their economies. Despite the reluctance of many states to accept these provisions, mainly because of fear from reducing the economic growth, it is necessary to realize that these measures are absolutely essential for energy policy development and for reducing negative impacts of energetics on the environment. The introduction of legislative measures of climate-energy package will represent considerable administrative costs, and many states will have great problems to meet with its standards. Even though that most likely not all the measures will be rigorously completed, the impact of the package on energy policies of the member states is crucial. The EU states have to respect its provisions and approximate to the targets set while implementation any new measures. One could expect that the more sophisticated EU legislative measures in the field of renewable energy sources will continue to follow. With the development of new technologies and exchange of experience between member states, the EU has had possibility for further enhancing of its legal regulation and for creating pressure for greater and more efficient use of renewable energy sources. Simultaneously, the EU policy in the field of resources becomes a stimulus for other nations of the world, which could be inspired by the EU legislation and in the same time more cooperate in solving energy and climate issues.[17]

3.3 New directive on the promotion of energy from renewable sources

Complex and complicated negotiations on the final form of the new directive on promoting renewable energy sources culminated in early 2009. In the course of legislative work the directive has been slightly modified from the original version which was introduced in the climate-energy package.[18] The Directive 2009/28/EC deals in details with facilities that are aimed to support the development of renewable energy sources. These include administrative procedures, planning, construction, information and training. Revaluation of policy development of renewable energy sources across member states in recent years showed that administrative obstacles and lack of transparent rules slow down the use and development of these resources. The unambiguous administrative procedures with fixed deadlines should be set. The rules should be adjusted so that to reflect the efficiency of equipments using renewable energy sources in terms of both cost and environment. The Directive 2009/28/EC is particular about developing awareness, education and the widest possible availability of certificates for installation equipment using renewable energy sources. It accents the cooperation between member states in issuing certifications and harmonization of principles based on European technology standards. In this respect, the directive comes from the directive of the European Parliament and Council 2005/36/EC from July, 6th 2005 on the recognition of professional qualifications, which will hereinafter cover matters that the new directive does not. Distribution of the binding target among the 27 EU member states in a form of an independent and legally binding minimum target for renewable energy sources became a key regulation of the whole directive. The way of allocation of renewable resources (20%) among member states has become the subject of complicated discussion across the EU Member States.[19] As the best system a method of so-called flat-rate increasing adjusted by GDP, which expresses the simple and fair increase for all EU states was chosen. In sectors of renewable energy sources both electricity (which has been already supported by Directive 2001/77/EC), but also heating, cooling and transport were included. Thus introduces a comprehensive tool for the legal regulation in this area, enabling a coherent and effective approach to solve problems and to save administrative costs. The development of renewable energy sources in the field of heating and cooling could be recently seen as stagnating and the legal framework governing these areas has still not been sufficient. The directive gives member states a free choice in selecting the extent to which they will invest into renewable energy sources.[20] The only exception represents transport sector, in which the share for renewable sources is at least 10%. The reason is not only a strong increase in emissions of greenhouse gases in this area but also reducing of dependence on oil and other fossil fuels, which is in correspondence with the current policy of energy supplies covering. The given target for the share of renewable energy sources in transport has been established for all member states equally to ensure compliance among them within the variety and availability of fuels. Although among the

[14] Use of renewable energy is still undoubtedly significantly more expensive than the use of carbon technology, but it is necessary to take into account heavy secondary costs associated with the fight against climate change.

[15] European initiative known as "20-20-20" means the EU target in 2020 reduced consumption energy use by 20%, reduce greenhouse gas emissions by 20% and increase renewable energy to 20% of total energy production in the EU compared to 1990.

[16] European Council, *Energy and climate change - Elements of the final compromise* (17215/08), 2008, available at: <http://www.consilium.europa.eu>

[17] Frass-Ehrfeld, C. *Renewable Energy Sources: A Chance to Combat Climate Change*, 2009, p. 315.

[18] On 5 June 2009 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 was published in the Official Journal L 140, p. 16.

[19] Johnston, A.: *The Proposed New EU Renewables Directive: Interpretation, Problems and Prospects, European energy and environmental law review*, Kluwer Law International, No. 3. 2008, p. 126.

[20] Werring, L., Bertoldi, P., Bowie, R., Hodson, P., Lorentzen, J., Vaggen Malvik, H., *EU Energy Law: EU Environmental Law, Energy Efficiency and Renewable Energy Sources*, 2010, p. 116.

states there are large disparities in access to renewable energy sources, this provision could reinforce a trade between member states and a development of trans-European networks. The directive so gives member states a possibility in case they do not keep their national targets for 2020, the other countries can transfer their 'accounting' surpluses to them. The EU thus took the standpoint that mainly meeting the general target of 20% renewable energy in total energy consumption by 2020 is important[21]. As stated in article 4, paragraph 3, the each member state is obliged to publish and submit to the European Commission a document with preliminary estimates, in which primarily indicates the estimated surplus of renewable energy sources in comparison with estimated demand of them which should be covered from other sources than from domestic production by 2020 six months before the deadline for drawing up national action plan for renewable energy sources. This is therefore a certain own assessment of the potential of renewable energy sources in the territory of individual member states in the framework of their preparations for the issue of national action plans. It should be noted that these reports are by the nature political documents and thus they are not directly binding or enforceable. On the basis of reports submitted to the European Commission[22], most European countries suppose that the share of renewable energy sources in energy consumption total they will meet exactly according to allocated binding targets (e.g. the Czech Republic or France). Several countries, including Sweden, Denmark, Germany or Spain, announced that medium-term targets will be evidently exceeded and their offered their surplus to others. Some countries have nevertheless expressed doubts whether they can fulfill their promises (e.g. Belgium and the Netherlands).

Conclusion

The Directive 2009/28/EC has in a way meant a revolutionary step in promoting greater use of renewable energy sources. It has become a key part of a new energy policy that has been intensively prepared for several years in the EU. The Directive enforces a new policy to increasing the share of renewable energy sources in EU energy mix, which should become the leading initiative to enhance the EU autonomy in the field of energy and fighting against climate change. Setting mandatory national targets for individual member states should help provide certainty for investors as well as to encourage the continued development of technologies. Meeting the mandatory targets will require both the EU member states invest considerable funds in research and development in the field of technologies for energy from renewable energy sources. Member states are also expected that in promoting national measures they will cooperate with local and regional authorities, and disseminate information on how greater use of renewable energy sources is possible, which could help them to meet binding targets. After the inconsistent implementation and application of Directive 2001/28/EC, it is possible to use a complex system of administrative tools and notifications, which should ensure that the development of greater use of renewable energy sources in all member states will proceed exactly according to planned binding targets. Among these measures, in particular the National Action Plan stands out. It describes in the very detail national measures to promote renewable energy sources and is binding in individual member states. Even though the majority of member states is optimistic with regard to meeting its binding targets for renewable energy by 2020, the directive gives member states a possibility of utilizing a number of alternative tools that can help achieve this objective. These include primarily the possibility of joint projects between member states or support of mutual trade of electricity from renewable energy sources in the framework of internal energy market among member states. Renewable sources currently represent one of cornerstones of the ambitious energy policy in the European Union. Comprehensive and effective regulation on renewable energy sources, which is one of the fundamental objectives of energy policy the European Union, is in this respect a model and inspiration for the rest of the world. The support of renewable energy sources cannot be seen in isolation, but it is necessary to analyze also economic and social impacts, as well as their ambiguous impact on the environment. It is also necessary to take into account the different climatic and economic conditions of member states and related issues concerning integration trends and application of European legislation in this area.

[21] Member States were obliged to implement Directive 2009/28/EC until 5th December 2010. The provisions of Directive 2001/77/EC and Directive 2003/30/EC that overlap with the provisions of Directive 2009/28/EC should be repealed 5th December 2010. Only provisions dealing with targets and reports for 2010 should remain in force until the end of 2011.

[22] European Commission, *Renewable energy in EU – Forecast documents*, 2009, available at: <http://ec.europa.eu>.

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