

EU directive: Trading places



THE CONVOLUTED (AND COMPLEX) DEBATE SURROUNDING THE TRADE OF GUARANTEES OF ORIGIN FOR RENEWABLY-GENERATED ELECTRICITY IN A TARGET-DRIVEN EU POLICY LANDSCAPE RUMBLES ON. TO TRADE OR NOT TO TRADE (AND WHAT'S LEGAL AND WHAT ISN'T?) THAT SEEMS TO BE THE THRUST OF THE DEBATE AT PRESENT, AS MEMBER STATES WEIGH UP WHAT THE FLEXIBILITY MECHANISM MEANS FOR THEM.

Dirk Hendricks, Radhika Perrot

Background to the draft Directive

Following the European Commission (EC's) proposal for a Directive promoting renewable energy systems in January 2008, the European Parliament and the EC are in the process of developing their responses to the new legislation.

The Directive breaks down the overall 20% target into national renewable energy sources (RES) targets. Every Member State is required to increase its share of renewables by 5.5% from 2005 levels, while the remaining increase will be calculated on the basis of the country's gross domestic product (GDP). In addition, a separate target for biofuels has been mandated at 10% of transport fuel consumption, and is equal for each country.

The European Parliament and the EC are both under extreme time pressure to move things forward, given the ambitious schedule to pass the Directive before the next Parliament elections in June 2009. And a solution at present still looks a considerable distance off, due to differences of opinion over trading.

Trade: still a problem

The main point of contention is still the planned flexibility mechanisms, especially the voluntary transfer of Guarantees of Origin (GoO) between EU member states. Whereas the Commission regards the proposed mechanisms as a balanced tool – allowing each member to reach its targets – several Governments have raised concerns about the potential negative impacts on existing national support schemes, namely Feed-in-Tariff (FIT) systems.

Many believe that the trading of GoO certificates between private individuals is a serious threat to such technology-specific support measures, which are already in place in countries like Spain and Germany.

FITs have been singularly effective in promoting the generation of electricity by means of renewable energy sources in many Member States.

Why? Because traditional FIT systems offer long-term and guaranteed prices for each kwh of electricity produced by any kind of renewable energy source, and guarantee producers unlimited access to the grid to sell any quantity of electricity they want. Several provisions in the proposed Directive might undermine these essential prerequisites for a successful FIT, despite the fact that the Commission has previously taken these concerns into account.

If GoO trade is freely allowed between Member States and persons, there is a high chance that national targets will not be met. And so to safeguard against a failure to meet national targets, the new Directive has put certain limits on the transfer of GoOs between Member States. Without these provisions, Member States would lose control of their targets, as persons or firms would be free to buy and sell across borders without meeting national RES targets.

Limits to trade in the current proposal

The current proposal allows a voluntary transfer of GoOs between EU member States, **only after that respective country has met its interim targets**. And private individuals are only allowed to trade GoOs generated from new installations, **after approval from their Government**.

Producers of renewable energy receive GoOs to certify that their energy production is from a renewable energy source. Certificates are issued and then traded electronically – as a separate commodity in the market.

This so-called “flexibility mechanism” aims at helping those Member States meeting their national targets – which have a low renewable

From a legal perspective, EU Governments will find it difficult opting out of the GoO trade scheme.

energy potential – to achieve their targets at a lower cost. Governments of EU Member States such as Luxembourg, Malta and Estonia are apprehensive about their chances of achieving national RE targets due to the small size of their countries. In their opinion, they would therefore benefit from a voluntary trading scheme.

Despite general agreement that these flexibility mechanisms are necessary for meeting national targets, several Governments including Germany, Spain and Slovenia criticise flaws in the design of these mechanisms.

What's wrong with these limits as proposed?

The German Government points to potential legal conflicts between private producers wanting to trade GoOs, and Governments opting out of the voluntary trade scheme.

From a legal perspective, EU Governments will find it difficult opting out of the GoO trade scheme. The plausible opt-out exemptions (threat to energy supply; environmental objectives underlying national support schemes; and national target achievements) are not solid in their argumentation:

- If it is possible to buy GoOs in the European market, there can be no foreseeable threat to national target achievement;
- The concept of an "environmental objective" does not ensure that national support schemes are protected against the risks of the internal market;
- And as a general rule, Member States cannot restrict free trade on the condition that it might lead to price increases.

And therefore the "opt-out" exemptions in the Directive do not give full authority to Member States to choose to "opt-out" of GoOs without possible legal consequences.

And what's more, the resulting court cases would lead to long periods of investment insecurity, thus delaying the further installation of new renewable energy production facilities. As a consequence, the ambitious 20-20-20 target might not be met.

What are the possible compromises?

- As an alternative to an opt-out, the German Government has introduced the idea of including an **opt-in** clause for those Member States wishing to trade;
- The Spanish Government has suggested certain tender schemes for countries with FIT systems;
- The Polish Government suggests restricting any GoO trade to Member States only, and to focus on well-established instruments such as joint projects between Member States, cross-border cooperation between Governments and local authorities, and/or shared targets and shared support schemes;
- The Dutch Government considers limiting the use of GoOs for disclosure purposes only, and to reconsider a link of flexibility mechanisms with physical electricity.

As this article went to press, experts are still in process of discussing these and other different options, and trying to develop suitable alternatives for the next round of negotiations in the EC. *Watch this space.*

About the Authors:

Dirk Hendricks is the Head of the Brussels-based EU Liaison Office of the World Future Council. Dirk supports the WFC's global climate and energy activities with the aim to accelerate the deployment of renewable energy, especially through the promotion of "Feed-In Tariffs". The WFC has launched a website for decision-makers to develop national feed-in law (Policy Action on Climate Toolkit).

Radhika Perrot, World Future Council (Brussels), is a PhD student with a thesis on renewable energy technologies from the United Nations University-University of Maastricht.



NaREC

AT THE HEART OF INNOVATION

Boost your Energy

www.narec.co.uk

NaREC is a leading research and development platform for new and renewable energy. If you are seeking an independent partner to accelerate the development of your technology, NaREC is dedicated to supporting you every step of the way on the route to commercialisation.

- Explore the potential of innovative new concepts
- Overcome the challenges of prototype development
- Achieve the highest standards in verification
- Excel in new product commercialisation
- Complete, effective implementation and electrical integration

Contact: **Louise Harrison, Marketing Manager** +44 (0)1670 357 621
louise.harrison@narec.co.uk