

Günther H. Oettinger  
Commissioner for Energy  
European Commission  
Bruxelles

CC: Commissioner Connie Hedegaard, European Commissioner for Climate Action

Brussels, 27 November 2012

Subject: Retroactive changes to the renewable energy support mechanism proposed by the Estonian Government.

Dear Commissioner Oettinger

We are contacting you regarding some alarming developments in the regulatory framework proposed by the Government of Estonia on the renewable energy support mechanism. If adopted in its current form, the new proposal will endanger the investment climate in Estonia and would generate uncertainty in the renewable energy sector across the EU, as it would add to previous retroactive changes in other Member States.

In October 2012, a draft proposal for the amendment of the Electricity Market Act was presented by the Ministry of Economic Affairs and Communication. The proposal was drafted based on a Memorandum of Understanding signed with the Estonian Renewable Energy Association (EREA) (see Annex I). Nonetheless, at the end of October 2012, the Government decided to amend certain elements of the Electricity Market Act proposal, in discordance with the Memorandum.

The current proposal changes the structure and level of existing support scheme in a retroactive way as it would be applicable to already existing plants, therefore devaluing past producer's investments. This would lead to a loss of investors' confidence that may deter further investments in Estonia and cause a "spill over-effect" generating uncertainty in other EU-countries and a loss of confidence in the renewable energy regulatory framework both at national and European level, interfering with the existing EU targets for renewable energy.

Based on the analysis EREA commissioned to SEB Enskilda, the estimated loss in revenues for the existing producers could be between 103 and 141 Million Euros.

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The new legislative proposal contains the following worrying clauses:

- In the proposal, wind energy producers would be subject to a 600GWh capacity triggered reduction (CAR) as well as support payments reduction. The Memorandum agreed that the removal of the 600GWh CAR would compensate the support payments' reduction.
- The proposal does not reflect principles for the calculation of the weighted average of kilowatt-hour for biomass and the principles of calculation of support measures to be agreed with the Estonian Competition Authority as agreed in the Memorandum.
- The proposal provides a bidding process in 2015 to find the cheapest RES source to achieve the interim targets set in the RES Directive. This would mean burning of biomass together with oil shale at highly inefficient oil shale installations and the cessation of support for the development of new renewable energy capacities until 2020.
- Furthermore, the proposal excludes the consumption of electricity and heat by the energy branch for electricity and heat production from the support mechanisms.

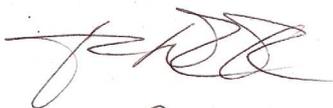
Overall, this is a very disappointing and anti-market behaviour where a Government - after intensive negotiation with an industry sector and conclusion of a joint memorandum - is back pedaling in an investment destructive manner without prior re-discussion with the sector.

The new legal proposal is now in the Estonian Parliament for discussion, with adoption scheduled for mid-December 2012.

EREF and EREA call on the Commission to take the necessary measures to convince the Estonian government and Estonian Parliament to adhere to the principle of legal certainty and refrain from adopting any retroactive legislation and to adopt a legislation that respects the terms agreed in the Memorandum of Understanding or the existing legislation.

Yours sincerely,

Rainer Hinrichs-Rahlwes,  
President  
European Renewable Energies Federation



Rene Tammist,  
Director  
Estonian Renewable Energy Association



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## *Annex I*

### ***Memorandum of Mutual Understanding***

*The Ministry of Economic Affairs and Communication and producers of electricity from renewable sources on the amendment of supporting measures for electricity from renewable sources*

*The Ministry of Economic Affairs and Communication (hereinafter Ministry), on the one hand and*

*The Estonian Renewable Energy Association (hereinafter Investors)*

*on the other hand,*

*taking into consideration that*

- 1. Capital intensive investments made by investors in the last several years to develop the renewable energy sector have been based on regulations in force, but have resulted in a faster than expected rise in the proportion of renewable electricity, which has been reflected in the rise of renewable energy tariffs paid by the consumer. In order to alleviate the aforementioned situation, the Ministry and Investors have after negotiations agreed on new principles for subsidizing the electricity production from renewable sources, which when the draft regulation is approved shall apply to existing investments.*
- 2. According to directive 2009/28/EC, Estonia has committed to the target of electricity production from renewable sources at 25% of overall consumption, and investments made by Investors into the renewable energy sector help achieve this target, while increasing the use of renewable sources, and reducing waste and emissions;*
- 3. The support scheme for the use of renewable sources for electricity production, which entered into force in Estonia in 2007 has proved to be more successful than expected. According to the directive the targets for electricity produced from renewable sources for 2010 was 5.1% of end user consumption. In reality the share of energy produced from renewable sources in Estonia was 9.7 percent in 2010. In the first quarter of 2012 the share of electricity from renewable sources was 16% of end user consumption;*
- 4. The increase of electricity production from renewable sources in the past years (the share of renewable sources in the overall energy consumption was 1.5% in 2007, 2.1% in 2008, 6.2% in 2009, 9.7% in 2010 and 13% in 2011), and the effect this has had on consumer tariffs. The tariff for renewable energy and high-efficiency cogeneration excluding VAT*

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*was 0.14 €cent/kWh in 2007, 0.19 €cent/kWh in 2008, 0.81 €cent/kWh in 2009, 0.81 €cent/kWh in 2010, 0.61 €cent/kWh in 2011 and 0.97 €cent/kWh in 2012;*

- 5. Installation of new renewable energy and cogeneration units and ongoing projects allow the prediction of the renewable energy and cogeneration tariff as follows: 1.12 €cent/kWh in 2013, 1.28 €cent/kWh in 2014, 1.38 €cent/kWh in 2015 and 1.67 €cent/kWh in 2020;*
- 6. Investments made by Investors into the renewable energy sector and the renewable energy support mechanism created by the state, help reduce risks and commitments for Estonia in regard to investing in renewable energy, while increasing energy security and security of supply in form of a domestic fuel consumption;*
- 7. Parties are convinced that the regulatory principles stated in this Memorandum are sustainable, sound, and intend on the long-term and unalterable implementation of the principles agreed in this Memorandum;*
- 8. The development of renewable energy helps to increase the export potential of the state, improves the balance of trade and improves employment in regions with a low employment rate;*
- 9. The supporting mechanism for electricity production from renewable sources and efficient cogeneration must be in accordance with the EU internal market and European Commission legislation on State Aid;*

*have agreed on the following,*

## **Article 1**

*New principles for supporting measures for electricity produced from renewable energy.*

*The principles of the support scheme for electricity produced from renewable sources and high-efficiency cogeneration in force during the signing of this Memorandum will be changed for producers who have started production already and for future producers. The new principles of the support mechanism will enter into force on 1 January 2013 and are as follows:*

- 1. Persons, whose production units, by the time of entry into force of the amendment to the regulation, use renewable sources for electricity production, except wind for electricity production, or who have by 15 July 2012 at the latest signed an agreement for the sale of heating in accordance with the District Heating Act §14, or whose production units, which have a building permit by 15 July 2012 or which have a positive financing decision from the Environmental Investment Centre by 15 July 2012 and which do not exceed the electricity production capacity of 10 MW, shall receive a support payment €0.0537 for kWh of electricity produced with this production unit for 12 years from the start of production;*

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2. *Persons, whose production units, which use wind for electricity generation, shall receive support payments for kWh electricity produced, which shall be the difference between €0.093 and the weighted average market price of the previous month;*
3. *Persons, whose productions units, by the time of entry into force of the amendment to the regulation, which use biomass for electricity generation or who have signed an agreement for the sale of heating in accordance with the District Heating Act §14, or whose production units, which have a building permit by 15 July 2012 or which have a positive financing decision from the Environmental Investment Centre and which have an electricity production capacity of 10MW to 50MW shall receive support for 12 years from the start of production, according to the price of biomass used for energy generation, as follows:*
  - a) *if the average price of biomass was below €0.016/kWh in the calendar year preceding the support payment, the payment per kWh shall be calculated as the difference between €0.088 and the weighted average of the market price of electricity in the previous calendar month;*
  - b) *if the average price of biomass was between €0.016/kWh and €0.020/kWh in the calendar year preceding the support payment, the support payment per kWh shall be calculated as the difference between €0.093 and the weighted average of the market price of electricity in the previous calendar month;*
  - c) *if the average price of biomass was between €0.0201/kWh and €0.024/kWh in the calendar year preceding the support payment, the support payment per kWh shall be calculated as the difference between €0.098 and the weighted average of the market price of electricity in the previous calendar month;*
  - d) *if the average price of biomass was above €0.024/kWh in the calendar year preceding the support payment, the support payment per kWh shall be calculated as the difference between €0.103 and the weighted average of the market price of electricity in the previous calendar month;*
4. *The average price per kWh in the year preceding the support payment referred to in point 3, will be based on the data published for the arithmetic mean of biomass used in heat and heat and electricity cogeneration for the previous year.*
5. *Persons, whose production units, which use renewable sources for electricity production, and who have not by 15 July 2012 signed an agreement for the sale of heating in accordance with the District Heating Act §14, or whose production units do not have a building permit by 15 July 2012 or do not have a positive financing decision from the Environmental Investment Centre by 15 July 2012, shall receive a support payment per kWh electricity produced with this production unit for 12 years from the start of production, which is calculated as the difference between €0.093 and the weighted average of the market price of electricity in the previous calendar month;*
6. *Parties will agree on the calculation method for the weighted average of the market price in the previous calendar month referred to in points 1-5.*

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7. *§ 59 pt (5) of the Electricity Market Act, which stipulates that in a calendar year support for producers using wind as a source of energy shall receive support up to the point when support has been paid out for 600GWh of electricity produced from wind, shall be repealed.*
8. *The regulation will be amended with a provision, which gives the Government the mandate for the following five years until 2020 to set on an annual basis the minimum for electricity production for which support can be paid. In determining this minimum the obligations under 2009/28/EC must be taken into account. The production capacity of all production units, which have by 15 July 2012 at the latest signed an agreement for the sale of heating , or which have a building permit by 15 July 2012 or have a positive financing decision from the Environmental Investment Centre by 15 July 2012, shall be counted within this minimum. Support payments will be paid to the aforementioned production units for production capacity above the minimum. This minimum will not be reduced compared with the previous period;*
9. *The Electricity Market Act shall be amended with §59 pt 4 as follows: (4) 1) The calculation of reasonable rate of return provided in (4) 4) for persons, who have started production by the time of entry into force of the amendment to the regulation or who have by 15 July 2012 at the latest signed an agreement for the sale of heating in accordance with the District Heating Act §14, or whose production units have a building permit by 15 July 2012 or have a positive financing decision from the Environmental Investment Centre by 15 July 2012, shall be based on the weighted average cost of capital. Return on capital shall be the internal rate of return, which the operator is justified to receive from capital invested during the support payment period. The internal rate of return is 10%.*
10. *The calculation of the internal rate of return is based on the cash flow of the business and investment activities related to the operations of energy producers (including purchase and sale transactions of businesses and stock, which have taken place before 15 July 2012). The level of support will be such that the return on investment for production units is 10%. In order to adjust the level of support the Government shall order an analysis performed at a regular interval, which takes into account the cost and revenue factor changes in energy production and other factors, which affect the financial indicators of energy producers.*
11. *The explanatory note attached to the draft legislation, which shall be drafted on the basis of this Memorandum, shall include a draft Government Regulation or draft Regulation of the Minister, which shall provide the calculation method referred to §59 (4).*
12. *Parties shall engage fully in applying for European Commission permission for the support scheme under the EC state aid rules. This application shall include payments made prior to the entry into force of the new support scheme provided in the Electricity Market Act §59.*

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## *Article 2*

### *Final provisions*

*The Memorandum of Mutual Understanding can only be changed in writing in mutual agreement by the undersigned parties;*

*The Memorandum of Mutual Understanding will enter into force when both parties have signed it.*

*On behalf of the*

*Ministry of Economic Affairs and Communication*

*On behalf of*

*Estonian Renewable Energy Association*

*Juhan Parts*

*Minister*

*Rene Tammist*

*Chairman of the Board*