

EREF

European Renewable Energies Federation

Council of the European Union
Rue de la Loi 175
Brussels

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Comment on Presidency Proposals on 2020 national renewable energy targets and baseline for progress in renewable energy development per Member State (Art. 3 (3) RED II proposal and Art. 27 (4) GR proposal

Dear Ministers, dear Excellencies,

As representative of the European Renewable Energy Federation (EREF), we would like to present you with our view on the current dispute concerning the proposed undermining of the 2020 renewable energy targets and the deletion of the baseline for progress in renewable energy development per EU Member State for the next decade.

As recently underlined by European renewable industry champions and associations (e.g. in the (offshore-) wind sector), the governance framework for the implementation of the 2030 Energy Union goals and the Paris Agreement obligations needs to be clear and trustworthy. This is one prerequisite to establish confidence for the renewable energy sector in order to trigger investment.

The current proposal by the Estonian Government seems to incur the risk as to weakening this role and also to undermine the role of the European Commission as guardian and its infringement power. It could lead to an auto-amnesty for some Member States who are short in reaching their 2020 binding national renewables targets and it could dilute the base for the RED II to achieve at least a hopefully 35 % minimum binding target.

EREF is the federation of national renewable energy associations from EU Member States, representing sectors such as wind, solar, small hydro, bio-energy, tidal, wave, and geothermal. Its objective is to defend the interests of independent power, fuel and heat production from renewable sources and to promote non-discriminatory access to the energy market. EREF strives to create, maintain and further develop stable and reliable framework conditions for renewable energy sources. EREF continuously advocate for ambitious and legally binding targets for all renewable energy sectors beyond 2020.

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The COREPER needs to reflect further on the proposal by the Estonian Presidency, as the Presidency itself is certainly open for a constructive review of its latest proposal:

- The clarity of Art. 3 (3) RED II Proposal ¹ needs to remain in the text. Without this clarity it is even questionable if the Commission could pursue successfully infringement procedures under the current RES Directive. She can open them but if the baseline after 2020 for the 2030 targets will be scrapped in the REDII the legal question is if she could still force the achievement of the old targets which have been overruled by the new REDII approach and further weakened by the Governance Regulation.
- If Art. 3(3) REDII proposal is taken out, there will be no more clarity and legal security that the binding 2020 renewable energy targets remain a reference point and infringement could become an empty shell.

Consequently, Art. 3 (3) RED II needs to remain in the REDII text and a further line (highlighted in yellow below) should be added to the Art. 27 (4) of the Governance Regulation. This amendment below could ease the claimed fear of some Member States to risk double punishment.

The fear as such is unfounded, since there is clearly no double punishment: Shortcomings under the current Directive in reaching their binding national targets will lead to infringement procedures by the EU Commission. The objective of the Directive 2009/28/EC and its fixed binding target remain the baseline for progress towards 2030. Any deviation for the binding target per Member States would in effect lead to an empty shell infringement situation.

The current Presidency proposal could weaken both, the pathway towards reaching at least the EU binding 2030 target and the sovereignty of the Commission to effectively pursue legal obligations by Member States through infringement procedure.

Furthermore, it is not up to the Member State alone to report that he falls behind the baseline but it would be the Commission to evaluate the development per Member State. Therefore the addition proposed by the Presidency "**If a Member State reports**" should be taken out of the text below.

¹ „3. From 1 January 2021 onwards, the share of energy from renewable sources in each Member State's gross final consumption of energy shall not be lower than that shown in the third column of the table in part A of Annex I. Member States shall take the necessary measures to ensure compliance with this baseline.”

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The current proposal by the Presidency on Article 27(4) is outlined as follows- **with EREF's suggested amendments (in bold)**:

- (d) [other] **national** measures to increase deployment of renewable energy;
- (a) adjusting the share of renewable energy in the heating and cooling sector set out in Article 23(1) of [recast of Directive 2009/28/EC as proposed by COM(2016) 767];
- (b) adjusting the share of renewable energy in the transport sector set out in Article 25(1) of [recast of Directive 2009/28/EC as proposed by COM(2016) 767];
- (c) making a **voluntary** financial contribution to a financing platform set up at Union level, contributing to renewable energy projects and managed directly or indirectly by the Commission;

/.../

If a Member State does not maintain **from 2021 onwards** a baseline share of energy from renewable sources in its gross final consumption of energy **equal to its mandatory national overall target for the share of energy from renewable sources in 2020 as set out in Directive 2009/28/EC as in force on 31 December 2020**, the Member State concerned shall ensure that any gap to the baseline share is **addressed** by **additional measures such as those as set out in points (a) to (d) of this paragraph within one year**. **For this Member State concerned the provisions under (c) become binding unless he can show that the provisions under (a) and (b) result in the achievement of the baseline by 2022 or that specific fulfilment following infringement procedures by the Commission against the Member State concerned have effectively lead to his baseline achievement.** For the purposes of point (c) of the first subparagraph, Member States may use their revenues from annual emission allowances under Directive 2003/87/EC. **The financing platform referred to in point (c) shall tender support for new renewable electricity projects in the Union. Support shall be provided in the form of a premium paid on top of market prices, and support shall be allocated to projects bidding for the lowest premium. Every year, renewable energy generated by installations financed by the financing platform shall be statistically attributed to the participating Member States, reflecting their relative financial contribution.**

We look forward to positive contributions and a clear respect to the aim of Directive 2009/28/EC agreed at COREPER level on 27 October.



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