

CICERO Working Papers 2011:02

The European Union renewable directive: The policy-making process and the stakeholders' positions

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September 2011

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Tittel: EUs fornybardirektiv: Beslutningsprosessen og interessegruppens posisjoner

Forfatter(e):
CICERO Working Paper

Finansieringskilde: Norges forskningsråd/ RENERGI

Prosjekt: Towards a low carbon energy future: Norway's policy opportunities and constraints in an international comparative perspective

Prosjektleder: Guri Bang

Kvalitetsansvarlig: Guri Bang

Nøkkelord: EU, fornybar energi, interessegrupper

Sammendrag: Dette arbeidsnotatet fokuserer på den Europeiske Unions fornybardirektiv – hvis hovedmål er å øke andelen fornybar energi i EU fra 8,5 til 20 prosent innen 2020. Arbeidsnotatet redegjør for beslutningsprosessen, fra utarbeidelsen av direktivet startet til det formelt ble vedtatt i april 2009. Det sees spesielt på forslagene om bindende interim mål med tilhørende økonomiske sanksjoner. Notatet tar for seg de formelle forslagene så vel som interessegruppens posisjoner i dette spørsmålet.

Språk: Engelsk

Rapporten kan bestilles fra:
CICERO Senter for klimaforskning
P.B. 1129 Blindern
0318 Oslo

Eller lastes ned fra:
<http://www.cicero.uio.no>

Title: The European Union renewable directive: The policy-making process and the stakeholders' positions

Author(s): Anne Therese Gullberg
CICERO Working Paper 2011:02
16 pages

Financed by: The Norwegian Research Council/ RENERGI

Prosjekt: Towards a low carbon energy future: Norway's policy opportunities and constraints in an international comparative perspective

Project manager: Guri Bang

Quality manager: Guri Bang

Keywords: EU, renewable energy, interest groups

Abstract: This working paper focuses on the proposal for a renewable energy directive in the European Union (EU), which main aim is to increase the share of renewable energy sources in EU energy consumption from 8.5 to 20 per cent by 2020. It accounts for the legislative process, from the drafting and consultation stage to the final directive was formally adopted in April 2009, and in particular the proposal of binding interim targets and financial penalty. The formal proposals as well as the stakeholders' positions on this issue are examined.

Language of report: English

The report may be ordered from:
CICERO (Center for International Climate and Environmental Research – Oslo)
PO Box 1129 Blindern
0318 Oslo, NORWAY

Or be downloaded from:
<http://www.cicero.uio.no>

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1 Introduction: 20 20 20 by 2020

In January 2008 the European Commission (the Commission) presented a proposal for a new directive on renewable energy. The proposal was part of a legislative package on energy and climate consisting of first, a revision of the Emissions Trading System (ETS), second, an 'Effort Sharing Decision' which distributes the emission reductions among the EU Member States from the non-ETS sectors, third, binding national targets for renewable energy and fourth, a legal framework to promote carbon capture and storage (CCS). A compromise on the legislative package was made in December 2008 – after an unusually quick decision-making process.

This working paper focuses on the proposal for a renewable energy directive, which aims to increase the share of renewable energy sources in EU energy consumption from 8.5 to 20 per cent by 2020. The working paper accounts for the legislative process, from the drafting and consultation stage to the final directive was formally adopted in April 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*).

In 2004, the European Renewable Energy Council (EREC) called for a legally binding EU target of 20 per cent renewable energy by 2020 (EREC 2011). This target was proposed by the Commission in January 2007, and endorsed by the European Council – consisting of the heads of state for the 27 Members – in March 2007. In the final compromise on the climate and energy package in 2008, the European Council and the European Parliament agreed to the 20 per cent legally binding target proposed by the Commission – without a general review clause in 2014 which would have opened for a downgrading of the 20 per cent target, as suggested by Italy in the negotiations. The legally binding renewable target was considered a success for the renewable energy industry, who had lobbied for this result.

The renewable energy industry was also lobbying for binding interim targets with a financial penalty for Member States failing to meet the interim targets. However, this proposal was not adopted – in spite of support from the European Parliament.

In this working paper, I account for the process leading to the adoption of the renewable directive, and in particular, the 20 per cent renewable target in 2020. I also address the proposal of binding interim targets and financial penalty. The paper proceeds as follows: In section two I give a brief overview of the energy and climate package which the renewable directive was a part of. In section three I account for the policy-making process leading to the final renewable directive and for the main content of the renewable directive, including the stakeholders' positions on binding interim targets and financial penalty. The fourth section concludes.

2 The energy and climate package

In January 2007, the Commission presented an integrated energy and climate package. The aim of the package was to “combat climate change and boost the EU’s energy security and competitiveness” (European Commission 2007a). The Commissioner for Energy, Andris Piebalgs said: “If we take the right decisions now, Europe can lead the world to a new industrial revolution: the development of a low carbon economy.” (ibid).

Hence, the battle against climate change was to be combined with other policy objectives: enhancing energy security and EU competitiveness. By initiating the transformation of the EU

economy into a low carbon economy at an early stage – compared to competitors like the US and China – the Commission believed that the EU could lead the world towards a new low carbon world economy.

EU climate policy is based on the United Nations Climate Change Convention (UNFCCC), which ultimate objective is to achieve ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’ (UNFCCC 1992, 4). What actually constitutes “dangerous anthropogenic interference” is a matter of interpretation, but the EU has since mid-2000 defined this as limiting the global average temperature increase to maximum two degrees Celsius above pre-industrial levels.

The two degrees target was once again endorsed by the European Council in March 2007 – when they met to discuss the energy and climate package presented by the Commission in January 2007 (European Council 2007:10):

“The European Council underlines the vital importance of achieving the strategic objective of limited the global average temperature increase to not more than 2 degrees celsius above pre-industrial levels.”

The March 2007 European Council called on the EU Member States and EU institutions to pursue actions to “develop a sustainable integrated European climate and energy policy” (European Council 2007: 1). The conclusions were introduced with a reference to the economic growth at the time: “Europe is currently enjoying an economic upswing and reforms are starting to translate into growth and jobs” (European Council 2007:1).

The March 2007 European Council stated that the EU was to make a firm independent commitment to achieve at least a 20 per cent reduction of greenhouse gas emissions by 2020 compared to 1990, and a 30 per cent reduction by 2020 “provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities” (European Council 2007: 12). Furthermore, the March 2007 European Council endorsed ‘a binding target of a 20 % share of renewable energies in overall EU energy consumption by 2020’ (European Council 2007: 21). Finally, the European Council invited the Commission to work further on how to fulfill these ambitious targets.

3 The policy-making process: Towards a new renewable directive

This section accounts for the policy-making process and the stakeholders’ positions.

3.1 Background

Although the renewable directive was presented and later adopted as part of the larger energy and climate package, the policy-making process leading up to the targets on renewable energy was not fully a part of an integrated policy approach.

In 1997 the EU adopted a target of 12 per cent renewable energy in its overall mix by 2010. This implied a doubling compared to 1997 levels (European Commission 2007b: 12). The 1997 white paper on renewable energy sources was followed up by a directive on renewable energy in 2001 (Directive 2001/77/EC on the promotion of electricity produced from

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renewable energy sources in the internal electricity market). The 2001 directive set a 21 per cent indicative share of electricity produced from renewable energy sources in total EU electricity consumption by 2010 (in contrast to the overall energy consumption). In addition to defining national targets for each Member State, this directive promoted the use of national support schemes and obliged the Member States to issue renewable energy producers with guarantees of origin if requested by the producers.

In 2003 the EU adopted a directive on biofuels (Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport). The biofuel directive set a target of 5.75 per cent of biofuels in all petrol and diesel for transport by 31 December 2010. Member States were required to set indicative targets for 2005. However, the member states did not reach these interim targets (European Commission 2008).

Halfway through the period from 1997 to 2010 it became clear that the EU would fall short of the 12 per cent renewable target set back in 1997. The Commission's prognosis showed that the EU would only reach a 10 per cent share of renewable energy by 2010 (European Commission 2007b; 2007c). Since the Member States failed to meet the renewable energy targets, this was one of the issues the Commission addressed in the new initiative on EU energy policy in March 2006.

3.2 Public consultation

The consultative green paper on energy – “A European Strategy for Sustainable, Competitive and Secure Energy” was the starting point of the energy part of the climate and energy package of communications and legislative proposals which followed in 2007 and 2008 (see European Commission 2006a). The green paper focused on competitiveness in the internal EU energy market, diversification of the energy mix, preventing energy supply crises, balancing the objectives of environmental protection, competitiveness and security of supply, ensuring EU world leadership in energy technology development, and finally, the external policy, more precisely the question of whether the EU should speak with one voice in energy matters.

Stakeholders were included in the policy-making process through public consultations on the Energy Green Paper and the Strategic European Energy Review between March and September 2006. The Commission received 1516 responses on a questionnaire – 85 per cent of the responses came from individual citizens. In addition, the Commission received 164 written contributions. 18 of these came from Member States, 18 from public authorities, 22 from non-governmental organisations, 91 from trade associations and individual companies and 10 from intergovernmental organisations. 5 came from individual citizens (European Commission 2006b). In addition to the questionnaire and written contributions, the stakeholder process consisted of a wide range of meetings in stakeholder forums such as Sustainable Energy Forum, Fossil Fuels Forum and the High level Group on Competitiveness, Energy and the Environment. The latter group consists of stakeholders, but also of the Commissioners for Enterprise and Industry, Competition, Energy and the Environment, as well as some EU Ministers.

The Commission also held four consultations during 2007 on the following subjects: First, the revision of biofuels policy, second, heating and cooling in renewable energy, third, administrative barriers and fourth, biofuels sustainability. These consultations included citizens, stakeholder groups, civil society organisations, non-governmental organisations and consumer organisations in addition to the Member States (European Commission 2008: 5). Hence, in spite of several public consultations (the broad consultation on energy in general

and the more specific ones on aspects of the renewable energy directive), there were no public consultation on the renewable energy directive as such.

3.3 2007: Energy Policy for Europe and the Renewable Energy Road Map – a long term renewable energy target

In January 2007, the Commission presented a package of communications to the European Council and the European Parliament. The package included the communications “Energy Policy for Europe” (European Commission 2007b) and “Renewable Energy Road Map. Renewable energies in the 21st century: building a more sustainable future” (European Commission 2007c). While “Energy Policy for Europe” discussed the basic principles for the whole energy policy field in Europe, the “Renewable Energy Road Map” focused on the role of renewable energy in the coming century.

According to the communication “Energy Policy for Europe”, the three main challenges of EU energy policy were sustainability, security of supply, and competitiveness (European Commission 2007b: 3-4).

First, the Commission stated that the present EU energy policy is not sustainable. Energy accounts for 80 per cent of the greenhouse gas emissions, and this is not compatible with EU’s target of maximum two degrees Celsius rise in the global average temperature.

Second, the Commission focused on the increasing energy security problem of the EU. According to the communication, the EU will increase its dependency on energy import from 50 per cent in 2007 to 65 per cent in 2030. The dependency on imported oil and gas was expected to increase to 93 and 84 per cent respectively in 2030 (Commission 2007b: 3).

Finally, the Commission emphasised competitiveness as an important challenge. The EU is vulnerable to price volatility and price rises in the international energy market. Moreover, energy efficiency and renewable energy may promote innovation in the EU. The Commission emphasised the opportunity to “lead the rapidly growing global market for low carbon energy technologies...Europe's determination to lead the global fight against climate change creates an opportunity for us to drive the global research agenda” (European Commission 2007b: 4).

To address these three main challenges of EU energy policy, the Commission proposed an action plan focusing on ten areas: The internal energy market, security of supply, a long-term commitment to greenhouse gas reductions, energy efficiency, a long term target on renewable energy, a plan on energy technology, reducing the CO₂-emissions from fossil fuels by applying carbon capture and storage technologies, discussing the future on nuclear power, the need for international action on energy and climate change objectives, and finally, effective monitoring and reporting.

The Commission stated that: “The main reason for the failure to reach the ...targets for renewable energy...is the lack of a coherent and effective policy framework throughout the EU and a stable long-term vision.” (European Commission 2007b: 12). Hence, the Commission proposed a binding target of increasing the level of renewable energy in the EU’s overall energy mix to 20 per cent by 2020 (European Commission 2007b: 13). In addition, the Commission proposed a target of 10 per cent biofuels in the transport sector.

The Commission noted that the targets required substantial change in three main sectors: The electricity sector, the biofuels sector and the sector of heating and cooling (European Commission 2007b: 13).

Finally, the Commission called on the European Council and European Parliament to:

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“Endorse the binding targets of 20% for the share of renewable energy in overall EU energy consumption by 2020 and 10% minimum biofuels. Invite the Commission to table a new Directive to put this into practice during 2007 specifying their national targets and the procedure for developing National Action Plans to meet them” (European Commission 2007b: 21-22).

The second communication presented by the Commission in January 2007 was the communication “Renewable Energy Road Map. Renewable energies in the 21st century: building a more sustainable future”. In this communication the Commission emphasises the stabilising effect of long-term targets:

“In many sectors of the economy, targets are used to provide clarity and stability to industry, to allow them to plan and invest with a higher degree of certainty. Providing targets at the European level augments this stabilising impact: EU policy generally has longer time horizons and avoids the destabilising effects of short term domestic political changes” (European Commission 2007c: 10).

As mentioned in the introduction; European Renewable Energy Council (EREC), representing the renewable energy industry, had already in 2004 proposed to establish a binding target of 20 per cent renewable energy by 2020.

EREC is the European umbrella organisation of the renewable energy industry – an industry with an annual turnover of EUR 70 billion and providing over 550.000 jobs (EREC 2011). The following organisations are represented by EREC: European Biomass Association (AEBIOM), European Geothermal Energy Council (EGEC), European Photovoltaic Industry Association (EPIA), European Renewable Energies Federation (EREF), European Small Hydropower Association (ESHA), European Solar Thermal Electricity Association (ESTELA), European Solar Thermal Industry Federation (ESTIF), European Biomass Industry Association (EUBIA), European Ocean Energy Association, European Association of Renewable Energy Research Centres (EUREC), and European Wind Energy Association (EWEA). The renewable energy industry, represented by EREC, strongly supported the Commission’s proposal of a binding renewable target.

In a resolution, the European Parliament also supported a target of 20 per cent renewable energy by 2020. However, the European Parliament did not call for a legally binding target in this resolution (European Parliament 2004).

In 2005 the renewable energy industry got support from the European forum for renewable energy sources (EUFORES) – a group consisting of Members of the European Parliament (MEPs) as well as parliamentarians from EU Member States. EUFORES called for 25 per cent renewable energy by 2020.

On the other hand, EURELECTRIC was opposed to binding targets (Nilsson et al. 2009). EURELECTRIC organises the electricity industry, and is based on national representation – representing the national electricity associations with a total of 33 full members, 27 of them are the national electricity associations of the EU Member States (Eurelectric 2011a). EURELECTRIC’s members represent a diverse range of electricity producers – spanning from the Scandinavian organisations representing energy producers with large hydropower portfolios, to the French nuclear power industry and to the Eastern European organisations with many members with far more carbon intensive portfolios. EURELECTRIC is considered as one of the most powerful business organisations in the field of EU energy policy (Greenwood 2003). However, the diversity of EURELECTRIC’s members is reflected in the policy positions of the organisation – as it might be a great challenge to come to united policy positions (Skodvin et al. 2010).

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EURELECTRIC's chairman, Fulvio Conti, who is also the CEO of the Italian energy company Enel, summarises EURELECTRIC's view on renewable energy as follow: "Renewable energy will play a fundamental role for a low-carbon energy mix, but it cannot be the silver bullet. We need a wide spectrum of complementary technologies, sources and approaches: energy efficiency measures, CCS, nuclear." (EURELECTRIC 2011b: 8). This view was also expressed in EURELECTRIC's written contribution to the stakeholder process in June 2006: "nuclear, coal, lignite, natural gas, hydro and other renewables all have their distinct role and contribution to make the above objectives [competitiveness, security of supply and sustainability]".¹

Moreover, EURELECTRIC expressed skepticism against the target approach in the same contribution:

"the document refers to a series of targets, benchmarks or plans, covering energy efficiency, renewables, interconnection, import dependency, etc. It is unclear how consistent such targets are with a liberalised market and if they do not turn out to be cost-effective, the question arises whether they should still be pursued."

Hence, EURELECTRIC considered the target approach to be difficult to combine with a liberalised energy market – which is one of the main aims of the organisation, and also supported by the Commission.

Furthermore, environmental NGOs participated in the stakeholders' process, including WWF, Friends of the Earth Europe (FoEE), European Environment Bureau (EEB), Greenpeace European Unit (Greenpeace EU) and the umbrella organisation Climate Action Network Europe (CAN Europe) organising European environmental organisations working on climate policy. These organisations supported a legally binding 2020 target.

Another important actor in EU energy and climate policy – and an active participant in the decision-making process was Business Europe (former UNICE). Business Europe is considered as one of the most influential industrial interest groups in the EU (Greenwood 2003). The organisation represents industry with above average energy and emissions intensity (Michaelowa 1998). Since Business Europe represents energy-intensive industries, the organisation is concerned about rising energy prices as a consequence of the increase in renewable energy (Business Europe 2011). Business Europe was positive to the renewable target, but expressed concern about the competitiveness of European industry (Euractiv 2007).

Eurochambres, another powerful actor within European business, was outright negative to the target approach: 'we ask the Commission to avoid setting long-term targets for minimum levels of renewable energies' (Eurochambres 2006: 6).

The European Council in March 2006 suggested a 15 per cent target by 2015, while the European Parliament had called for a 25 per cent target by 2020. In addition to these calls from the European Council and the European Parliament, the Commission's proposal in January 2007 was based on the public consultation and an impact assessment.

According to the Commission's summary of the public consultation, there was considerable support for a long-term target – with suggestions ranging from 20 per cent by 2020 to 50 per cent and more by 2040-2050 (European Commission 2006b: 4). However, many non-

¹ The position papers can be found at the web page of DG Energy: http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

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governmental organisations suggested a 35 per cent target by 2020 (European Commission 2006b: 8).

The Commission finally proposed a 20 per cent target – somewhat less ambitious than the target proposed by the European Parliament, and more in line with the European Council's proposal. The Commission also proposed a minimum target for transport biofuels of 10 per cent.

It is also noteworthy that the Commission proposed a *binding* target of 20 per cent of the EU overall energy mix to be sourced from renewable energy by 2020:

“Most importantly, the Commission is convinced that a legally binding target for the overall contribution of renewables to the EU's energy mix plus mandatory minimum targets for biofuels are now called for” (European Commission 2007c: 18).

Hence, the Commission expressed a clear preference for first, the stabilising impact of long term targets and second, for legally binding targets. Moreover, the Commission emphasised the importance of monitoring, transparency and reporting: “Monitoring, transparency and reporting will be essential elements in progressively developing an effective European energy policy” (European Commission 2007b: 19).

The European Parliament supported a target on renewable energy sources in a resolution on climate change in February 2007, but again called for a target of 25 per cent, as well as 12.5 per cent with regard to biofuels (European Parliament 2007a).

In the same resolution on climate change, the European Parliament called for binding *sectoral* targets:

“[The European Parliament] Notes the absence of binding sectoral renewables targets; points out that these would bring about a real reduction in GHG [greenhouse gas] emissions in order to tackle climate change; urges the Commission to propose, in addition to the general target, the submission of sector-specific targets, notably for electricity generation, heating and cooling” (European Parliament 2007a).

As mentioned above, in March 2007 the Council of Ministers endorsed the 20 per cent target proposed by the Commission two months earlier.

In September 2007, the European Parliament adopted a Resolution on the Roadmap for Renewable Energy in Europe (European Parliament 2007b). Here the European Parliament called on the Commission to present by the end of 2007 a proposal for a renewable energy legislative framework. Moreover, the European Parliament emphasised the importance of setting targets for the shares of renewable energy sources at EU and Member State level.

3.4 2008: Towards a renewable energy directive - The European Parliament proposes binding interim targets and financial penalty

In January 2008 the Commission presented the legislative proposal for a Directive on renewable energy (European Commission 2008). The Commission proposed a legally binding target of 20 per cent renewable energy by 2020.

“The main purpose of binding targets is to provide certainty for investors. Deferring a decision about whether a target is binding until a future event takes place is thus not appropriate” (European Commission 2008: 13).

Another central feature of the renewable directive was the burden sharing between the Member States:

“Member States' starting points, renewable energy potentials and energy mixes vary. It is therefore necessary to translate the overall 20% target into individual targets for each Member State, with due regard to a fair and adequate allocation taking account of different national starting points and potentials, including the existing level of renewable energies and energy mix” (European Commission 2008: 12-13).

The burden sharing agreement was based on a formula taking gross domestic product (GDP) and the share of renewable energy in 2005 into account. The national renewable energy targets are found in Annex I of the Communication (see table 1). Among the member states with a low share of renewable energy we find the United Kingdom which is to increase its share from 1,3 to 15 per cent and Belgium which is to increase its share from 2,2 to 13 per cent. Among the member states with a somewhat higher share of renewable energy, we find Denmark which is to increase its share from 17 to 30 per cent and Austria from 23,3 to 34 per cent. Among the member states with a high share of renewable energy, we find Latvia, which is to increase its share of renewable energy from 34,9 to 42 per cent, and finally, Sweden which is to increase its share of renewable from 39.8 to 49 per cent.

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Table 1. National targets as proposed by the Commission in 2008 and as adopted in 2009.

Annex I – National overall targets for the share of energy from renewable sources in final consumption of energy in 2020

A. National overall targets

	Share of energy from renewable sources in final consumption of energy, 2005 (S ₂₀₀₅)	Target for share of energy from renewable sources in final consumption of energy, 2020 (S ₂₀₂₀)
Belgium	2.2%	13%
Bulgaria	9.4%	16%
The Czech Republic	6.1%	13%
Denmark	17.0%	30%
Germany	5.8%	18%
Estonia	18.0%	25%
Ireland	3.1%	16%
Greece	6.9%	18%
Spain	8.7%	20%
France	10.3%	23%
Italy	5.2%	17%
Cyprus	2.9%	13%
Latvia	34.9%	42%
Lithuania	15.0%	23%
Luxembourg	0.9%	11%
Hungary	4.3%	13%
Malta	0.0%	10%
The Netherlands	2.4%	14%
Austria	23.3%	34%
Poland	7.2%	15%
Portugal	20.5%	31%
Romania	17.8%	24%
Slovenia	16.0%	25%
The Slovak Republic	6.7%	14%
Finland	28.5%	38%
Sweden	39.8%	49%
United Kingdom	1.3%	15%

Source: European Commission (2008: 41).

While the national targets were differentiated, the 10 per cent biofuel target was set at the same level.

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EREC had welcomed the endorsement of the 2020-targets in March 2007, but was also concerned about the enforcement of the targets. In a position paper, EREC wrote:

“The new Directive has to provide for adequate enforcement mechanisms to ensure the achievement of the targets...EREC is of the opinion that the European Commission needs to have a direct possibility to impose fines on Member States if it becomes clear that they are not starting effective programmes and that they will be short of reaching the overall national binding target. Details of such a system of penalties have to be laid down in a Commission regulation, which should be published no later than one year after the entering into force of the Directive.” EREC 2007: 13.

The Commission’s proposal in January 2008 included an indicative trajectory – in other words, no binding interim targets and no other sanctions than the normal infringement procedures. As a result, the renewable industry and the environmental organisations continued to lobby to get *binding* interim targets and financial penalties. For example, EREC writes in 2008:

“EREC is concerned that these interim targets need to be of mandatory nature in order to avoid delay in renewables deployment. EREC believes that the Commission should as a consequence impose direct penalties on Member States which fail to comply with the binding interim targets. These penalties should be set at an appropriate level to provide strong incentives for Member States to invest in renewable energy.” (EREC 2008: 3).

Also the environmental organisations supported binding interim targets and a strong compliance mechanism; a financial penalty if the interim targets were not met by the Member States. Moreover, there was a close cooperation between the renewable energy industry and the environmental organisations. Dörte Fouquet, the director of European Renewable Energies Federation, wrote a report for Friends of the Earth Europe where the proposal of binding interim targets and a financial penalty was discussed – not only with regard to the renewable energy directive, but also the EU emissions trading scheme.

Friends of the Earth Europe recommended in June 2008 to emphasise the importance of binding interim targets. The organisation linked the issue to trading, and proposed:

- legally binding interim targets that should be met before trading between EU countries can be considered;
- a direct, swift and effective penalty system with fines considerably higher than the average price for the support of renewable energy across the EU in case of non fulfillment of the mandatory intermediate and final targets.” (Friends of the Earth 2008: 4)

Friends of the Earth Europe argued that the EU needs steep emission cuts to reach the two degree target, and that the “existing infringement procedures against Member States for non-compliance in environmental matters are very slow and do not encourage speedy catch-up when targets fail to be met” (Friends of the Earth 2008: 4).

In a draft report from the European Parliament in May 2008, the European Parliament once again supported at least a 25 per cent share of renewable energy (European Parliament 2008a: 7). Furthermore, the European Parliament warned against watering down of the target:

“Member states should work intensively towards meeting their 2020 targets. Adjustments of the targets on the basis of “very long lead-

times projects” and “force majeure” could be used by Member States to either water down the target, postpone or even avoid the achievement of their targets. It should therefore be deleted. 27 Member States have committed through their Heads of State to a mandatory 2020 target. It is not a 2022 or 2024 target. Member States should deliver on their commitment.” (European Parliament 2008a: 27).

The Committee on Industry, Research and Energy (ITRE) was the responsible committee of the EP and the rapporteur Claude Turmes, representing the Greens, had drafted the report.

In the same draft report from the European Parliament, the EP calls for proper monitoring:

‘In order to ensure that the Member State progress will be properly monitored, and any failure to comply will be swiftly and effectively addressed, stricter procedures should be adopted concerning the submitted renewable energy action plans. The latter should be further binding on the Member States.’ (European Parliament 2008a: 25ff).

ITRE adopted its amendments on September 11 in 2008. Among the main amendments of the committee we find strengthening of the compliance mechanisms in amendment 17:

‘to ensure that the mandatory overall targets are achieved, Member States should work towards mandatory minimum interim targets tracing a path towards the achievement of their final mandatory targets’ (European Parliament 2008b).

The committee also suggested a direct penalty mechanism in its amendment 22:

‘in order to ensure clear and robust compliance by the Member States with the objectives of this Directive the Commission shall establish a direct penalty mechanism against them. It shall impose direct penalties on Member States which fail to comply with the objectives, by falling short of mandatory interim and 2020 targets.’ (European Parliament 2008b).

Moreover, ITRE proposed to establish a special fund based on the revenues from the penalty. The fund would guarantee revenues for Member States that exceeded their national renewable energy targets (European Parliament 2008a).

The ITRE proposals were adopted by the European Parliament in the end of September 2008 (European Parliament 2008c).

3.5 *Negotiating the energy and climate package*

EU energy and climate policy is dealt with through the co-decision procedure, which means that the European Parliament and the Council of Ministers are joint legislators. The Commission has an exclusive right of legislative initiative in all the areas subject to the co-decision procedure. The Commission drafts a legislative proposal and sends it to the European Parliament and the Council, which discuss the proposal. If the European Parliament and the Council do not agree after the second reading, the institutions meet in the Conciliation Committee. If the negotiations fail, the proposal is not adopted.

The Commission’s legislative proposal was discussed, together with the other legislative proposals of the energy and climate package, at a meeting of the European Council, in October 2008. The European Council called on the Commission and the French EU Presidency to do the necessary preparations, so that the legislative package could be decided

on by the European Council in December 2008. Hence, in contrast to the standard co-decision procedure, the legislative energy and climate package was to be decided on by the European Council – not the Council of Ministers. This implied that climate and energy legislation had to be adopted by consensus, which in principle gave all member states veto power (Skodvin et al. 2010: 868). Moreover, the decision-making process deviated from a standard co-decision procedure as the Council gave its opinion before the European Parliament. Normally, the European Parliament gives its opinion before the Council.

The energy and climate package was negotiated by the European Council and the European Parliament – the aim was, as mentioned above, to finalise the legislative package in December 2008, and preferably before COP 15 - the international climate change negotiations - started in Copenhagen on December 7th.

Only three days before the COP 15 started, it was clear that Italy insisted on a general review clause in 2014. The rapporteur of the renewable energy directive and negotiator of the European Parliament, Claude Turmes, had already in October criticised the French Presidency because of the review clause proposal. Turmes claimed that the review clause implied that ‘the EU goal and individual national targets would become "conditional" on the outcome of the review’ (ENDS 2008a).

Moreover, it was also clear that the Council did not support binding interim targets. In return for the concession of binding targets, the European Parliament succeeded in deleting a provision that would have allowed the Member States to count renewable energy plants in construction – but not yet in operation – when they were to report their final 2020-target (ENDS 2008b).

On December 9th the negotiators reached an agreement on the renewable directive. The directive did include a review clause, but it was clear that there would be no changes in the 2020 target or the support mechanisms. The 2020 target was legally binding, but there were no binding interim targets or financial penalty in line with what the European Parliament had called for.

3.6 The final directive on renewable energy

The aim of the renewable directive is to establish a common framework for the promotion of energy from renewable sources – defined as “energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases” (European Commission 2009, article 2a).

The directive establishes mandatory national targets: 20 per cent share of energy from renewable sources and 10 per cent of energy from renewable sources in transport by 2020. While the 20 per cent target is translated into individual targets for each Member State – depending on their starting point and potential, the 10 per cent target is the same for all Member States “in order to ensure consistency in transport fuel specifications and availability” (European Commission 2009: 17).

The targets are mandatory. As mentioned above, the aim of mandatory targets were to provide certainty for investors. In the final directive it is added that mandatory targets will encourage technology development (European Commission 2009: 17).

The individual targets are established by a formula reflecting “the required total increase in the use of energy from renewable sources between Member States on the basis of an equal increase in each Member State’s share weighted by their GDP” (European Commission 2009: 17).

The Member States are all to adopt a National Action Plans setting out “Member States’ national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account...adequate measures to be taken to achieve those national overall targets...” (European Commission 2009, article 4). The National Action Plans were submitted to the Commission in 2010.²

According to article 22.1, each Member State: “shall submit a report to the Commission on progress in the promotion and use of energy from renewable sources by 31 December 2011, and every two years thereafter.” Based on these reports, the Commission will report every two years to the European Parliament and the Council.

Instead of mandatory interim targets, the Member States are given an ‘indicative trajectory’ to follow in the run-up to 2020. By 2011-12, they should be 20 per cent of the way towards the target (compared to 2005), by 2013-14, 30 per cent, by 2015-2016, 45 per cent and by 2017-18, 65 per cent (Annex I, European Commission 2009: 46).

4 Conclusion

This working paper has focused on the proposal for a renewable energy directive. It has accounted for the legislative process, from the drafting and consultation stage to the final directive was formally adopted in April 2009.

The renewable energy industry, in companionship with several environmental organisations, advocated a legally binding renewable energy target by 2020 – in which they succeeded. The renewable energy industry also advocated binding interim targets and a financial penalty.

In September 2008 the European Parliament Committee on Industry, Research and Energy proposed binding interim targets. Moreover, it proposed a financial penalty for Member States failing to meet these targets. The proposal was adopted by the European Parliament, but the final compromise after the negotiations with the Council did not include this proposal.

² See http://ec.europa.eu/energy/renewables/transparency_platform/action_plan_en.htm for the NAPs

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