

**Proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the promotion of the use of renewable energy sources**

**(version 9.6.1)**

Text with EEA relevance

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the promotion of the use of renewable energy sources**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof and Article 95 thereof in relation to Article 15 of this Directive,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) It is necessary to promote greater use of renewable energy in the European Union and in each Member State, with a view to reducing emissions of greenhouse gases; promoting security of energy supply; providing new economic opportunities; and facilitating the integration of renewable energy in the internal market and the operation of the internal market in renewable energy sources, systems and equipment.
- (2) The increased use of energy from renewable sources constitutes 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 with further European and international greenhouse gas emission reduction commitments beyond 2012.
- (3) The increased use of energy produced from renewable energy sources contributes to the diversification of energy sources and improves energy security. In particular, increased use of biofuels for transport is one of the most effective tools by which the Community can reduce its dependence on imported oil – where the security of supply problem is most acute - and influence the fuel market for transport.
- (4) The exploitation of renewable sources contributes to the development of a knowledge based industry creating jobs, economic growth, competitiveness, and rural

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

development as well as regional and local development opportunities, export prospects and social cohesion. Beneficial development opportunities are especially high for small and medium-sized undertakings.

- (5) All Member States include renewable energy sources in their mix of energy sources and all have already made the choice to aim for greater use of renewable energy sources in future.
- (6) Renewable energy is, in general, a close substitute for conventional energy and is supplied by means of infrastructure and logistical systems that have the same general structure as those used for the supply of conventional energy.
- (7) Directives 2001/77/CE and 2003/30/CE established settled definitions for different types of renewable energy. In the interests of stability and clarity it is appropriate for these definitions to be maintained in their original forms by the present Directive.
- (8) The Renewable Energy Roadmap<sup>5</sup> demonstrated that a 20% target for the overall share of renewable energy sources and a 10% target for renewable energy in transport would be appropriate and achievable objectives, and that a framework that includes mandatory targets should provide the business community with the long term stability it needs to make rational investment decisions in the renewable energy sector.
- (9) The Brussels European Council of March 2007 reaffirmed the Community's commitment to the EU-wide development of renewable energies beyond 2010. It endorsed a mandatory target of a 20% share of renewable energies in overall EU energy consumption by 2020 and a mandatory 10% minimum target to be achieved by all Member States for the share of biofuels in transport petrol and diesel consumption by 2020.
- (10) The European Parliament, in its resolution on the Roadmap for Renewable Energy in Europe<sup>6</sup>, has called on the Commission to present by the end of 2007 a proposal for a renewable energy legislative framework, referring to the importance of setting targets for the shares of renewable energy sources at EU and Member State level. In its resolution on heating and cooling from renewable energy sources<sup>7</sup> the Parliament called on the Commission to propose an EU target of at least a doubling of the share of renewable heating and cooling by 2020.
- (11) In the light of the positions taken by the Commission, the Council and the European Parliament, it is appropriate to establish mandatory targets for an overall 20% share of renewable energy and a 10% share of renewable energy in transport in the European Union's consumption in 2020.
- (12) It is 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.

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<sup>5</sup> COM(2006) 848 final

<sup>6</sup> P6\_TA-PROV(2007)0406, 25 September 2007

<sup>7</sup> 2005/2122(INI)

- (13) By contrast, it is appropriate for the 10% target for renewable energy in target to be set at the same level for each Member State in order to ensure consistency in transport fuel specifications and availability. Because transport fuels are traded easily, Member States with low endowments of the relevant resources will easily be able to obtain renewable transport fuels from elsewhere.
- (14) To ensure that the overall targets are achieved, Member States should work towards a series of minimum interim targets and should establish a national action plan including sectoral targets.
- (15) To permit the benefits of technological advance and economies of scale to be reaped, the paths traced by the series of minimum interim targets should be compatible with a more rapid growth in the use of energy from renewable sources in later years.
- (16) The path should take 2005 as its starting point because that is the latest year for which reliable data on national renewable energy shares are available.
- (17) It is necessary to set unambiguous rules for calculating the share of renewable energy sources.
- (18) In calculating the contribution of hydropower, the effects of climatic variation should be smoothed through the use of a normalisation rule.
- (19) Heat pumps using ambient heat from the ground, water and air, to transfer the thermal energy to a useful temperature level, need electricity to function. To avoid the encouragement of production processes that require the use of significant amounts of conventional energy, only useful thermal energy coming from heat pumps that meet the minimum requirements of the coefficient of performance established in Commission Decision 2007/742/EC<sup>8</sup>, in accordance with Regulation (EC) 1980/2000 of the European Parliament and of the Council on a revised Community eco-label award scheme<sup>9</sup>, should be taken into account for the purpose of measuring compliance with the targets established by this Directive.
- (20) Passive energy systems achieve the harnessing of renewable thermal energy through building design, such as angled windows to allow more solar energy to be harnessed. Passive energy technologies are considered to be energy saving technologies and therefore any thermal energy harnessed in this way should not be covered by this Directive.
- (21) Energy from renewable sources produced outside the EU and consumed in the EU should only count towards national or EU targets if this production is additional to the quantity of energy from these sources that would have been produced in any event. Because many installations for the production of electricity from renewable energy sources have high capital costs and low production costs, there will be a pronounced tendency – if Member States offer incentives for imports of such electricity – for these imports to take the form of a mere reassignment of the destination of energy that would always have been produced. To ensure that imports of electricity from renewable energy sources represent a net addition to total production of such

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<sup>8</sup> OJ L 301, 20.11.2007, p.14

<sup>9</sup> OJ L 237, 21.9.2000, p.1.

electricity, it is necessary to take such imports into account only on condition that they originate in countries subject to appropriate rules to ensure additionality.

- (22) Heating and cooling can only be transmitted over short distances; it is not therefore necessary to consider how imports of heating and cooling produced from renewable energy sources outside the EU might be taken into account in assessing target compliance.
- (23) Raw material inputs account for most of the cost of biofuel production; it is therefore reasonable to assume that EU consumption of biofuels produced elsewhere represents a net addition to total production of such fuels; it is not therefore necessary to lay down conditions for how imports of biofuels produced outside the EU might be taken into account in assessing target compliance.
- (24) It should not be possible for renewable energy produced and consumed in third countries to count towards the EU's targets for the consumption of renewable energy, since this would prevent this consumption from making its full anticipated contribution to the goals of energy security and economic development in the EU.
- (25) To increase the flexibility of the regime for the promotion of renewable energy sources and to create opportunities for reducing the cost of achieving the targets, it is appropriate to facilitate the consumption in Member States of energy produced from renewable sources in other Member States, and also to enable Member States to count electricity and heat consumed in other Member States but promoted by them towards their own national targets. For this reason, European standardised criteria for the design and transfer of guarantees of origin in these sectors should be adopted.
- (26) The obligatory issuing, on request, of guarantees of origin for heat or cooling produced from renewable energy sources, should be limited to plants with a capacity of at least 5 MW<sub>th</sub>, in order to avoid unnecessarily high administrative burdens due, in particular, to the participation of households.
- (27) To avoid any interference with support schemes granted to existing installations and to avoid overcompensation of renewable energy producers, only guarantees of origin issued to installations that were commissioned after the date of entry into force of this Directive, or for production from an increased renewable energy capacity of an installation after this date, should be considered for this flexibility regime in relation to national targets; it should however remain possible for guarantees of origin issued for such production to be transferred between Member States for the purpose of proving the renewable origin of electricity.
- (28) In order to ensure the development of a vibrant local renewable energy sector, Member States should be able to limit the extent to which renewable energy consumed elsewhere will count towards their national targets. However, they should cease to be able to do this if they fall behind in achieving their targets.
- (29) In order to be able to plan for the orderly development of the local renewable energy sector, and to prevent installations from benefiting from support schemes in more than one Member State and possible windfall profits or overcompensation, Member States should be able to limit the extent to which renewable energy produced domestically will count towards another Member State's national targets.

- (30) Once the system of flexibility through trade in guarantees of origin has been put in motion, the Commission should review whether such safeguards are still needed.
- (31) The lack of transparent rules and coordination between the different authorisation bodies has been shown to hinder the deployment of renewable energy. Therefore the specific structure of the renewable energy sector should be taken into account when national, regional and local authorities review their administrative procedures for giving permission to construct and operate plants producing electricity, heating and cooling or transport fuels from renewable energy sources. Administrative approval procedures should be streamlined with clear deadlines for installations using renewable energy sources. Planning rules and guidelines should be adapted to take into consideration cost effective and environmentally beneficial renewable heating and cooling and electricity equipment.
- (32) At national and regional level, rules and obligations for minimum requirements of renewable energy use in new and refurbished buildings have led to considerable increases in renewable energy use. These measures should be encouraged in a wider European context.
- (33) Information and training gaps, especially in the heating and cooling sector, should be removed in order to promote the internal market and to encourage the deployment of energy from renewable sources
- (34) A harmonised approach is needed to develop training and qualifications and appropriate accreditation for renewable energy equipment installers in order to avoid market distortions and to ensure high quality products and service provision. National accreditation schemes should therefore be based on minimum harmonised standards, taking into account European technology standards, and existing training and qualification regimes for renewable energy equipment installers, including for general professions pursuant to Titles II and III of Directive 2005/36/EC of the European Parliament and of the Council<sup>10</sup>, to ensure high quality products and service provision. The accreditation of the training programmes leading to installer accreditation should be done in accordance with EN standard 17024, which sets requirements for a body certifying persons against specific requirements, including the development and maintenance of a certification scheme for personnel.
- (35) While Directive 2005/36/EC of the European Parliament and of the Council lays down requirements for the mutual recognition of professional qualifications, including for architects, there is a further need to ensure that architects and planners properly consider the use of renewable energy sources in their plans and designs. Member States should therefore provide clear guidance.
- (36) The costs of connecting new producers of electricity from renewable energy sources to the electricity grid should be objective, transparent and non-discriminatory and due account should be taken of the benefit embedded generators bring to the grid.
- (37) In certain circumstances it is not possible to fully ensure transmission and distribution of electricity produced from renewable energy sources without affecting the reliability

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<sup>10</sup> OJ L255, 30.09.2005, p.22

and safety of the grid system therefore financial compensation might be given to those producers.

- (38) Biofuels used for compliance with the targets laid down in this Directive, and those that benefit from national support systems, should deliver a minimum level of greenhouse gas savings and should not be produced from raw material cultivated on land converted from high-carbon-stock or high-biodiversity uses. If made from raw material produced in the EU, they should comply with EU environmental requirements for agriculture.
- (39) To ensure consumer confidence and ensure that biofuels meeting the environmental sustainability criteria can command an appropriate price premium, thus providing an incentive for changes in behaviour, the system for verification of compliance should require there to be a physical connection between the biofuels that are produced in ways that meet the criteria and those that are marketed as having done so.
- (40) It is necessary to lay down clear rules for the calculation of greenhouse gas emissions from biofuels and their fossil fuel comparators.
- (41) The substitution method of accounting for co-products in the calculation of greenhouse gas emissions is appropriate for policy analysis purposes. However, it is not appropriate for regulatory purposes because it depends on a complex and uncertain hypothetical assumption; risks creating perverse incentives; and cannot be applied to fuels produced in refineries. The method of accounting for co-products through economic allocation is not appropriate for regulatory purposes because it makes calculated greenhouse gas savings vary unpredictably over time; this is not conducive to investor confidence. The mass allocation method is not appropriate because it places an exaggerated value on products of limited worth. The energy allocation method is easy to apply; predictable over time; minimises perverse incentives; and gives results that are generally comparable with the range of results given by the substitution method. It is therefore the most appropriate method to use in assigning greenhouse gas savings to individual consignments of biofuel. For policy analysis purposes the Commission should also, in its reporting, give results using the substitution method, allowing a double-check of the results given through the use of the energy allocation method.
- (42) In order to avoid a disproportionate administrative burden, a list of default values should be laid down for common biofuel production pathways. Biofuels should always be entitled to claim the level of greenhouse gas savings established by this list. Where the default value for greenhouse gas savings from a production pathway lies below the required minimum level of greenhouse gas savings, producers wishing to demonstrate their compliance with this minimum level should be required to show that actual emissions from their production process are lower than those that were assumed in the calculation of the default values.
- (43) In order to avoid encouraging the cultivation of raw materials in places where this would lead to high greenhouse gas emissions, the use of default values for cultivation should be limited to regions where such an effect can be ruled out.
- (44) The need for sustainability requirements at European level for energy uses of biomass, including forest biomass, outside the transport sector should be reviewed, taking into

account the need for biomass resources to be managed in a way that is environmentally sustainable.

- (45) In order to permit the achievement of a 10% share of biofuels, it is necessary to ensure the placing on the market of higher blends of biodiesel in diesel than those envisaged by standard EN590.
- (46) Support measures taken pursuant to this Directive that constitute state aid in the sense of Article 87 of the Treaty have to be notified to and approved by the Commission before their implementation pursuant to Article 88(3) of the Treaty. Information provided to the Commission on the basis of this Directive does not substitute for the obligation of Member States under the notification obligation pursuant to Article 88(3) of the Treaty. Such support measures shall be assessed under Articles 86, 87 and 88 EC Treaty and, in particular, the Community guidelines for State aid for environmental protection<sup>11</sup> and, if they constitute public service obligations, the Community framework for State aid in the form of public service compensation.<sup>12</sup>
- (47) Support measures in the form of investment grants to end consumers, renewable energy obligations, fixed-price payments and premium payments may not constitute state aid in the sense of Article 87 of the Treaty and, in this case, cannot be regulated under the state aid provisions of the Treaty.
- (48) In order to encourage environmental improvement, energy efficiency, innovation and security of energy supply, support schemes that do not constitute State aid in the sense of Article 87 of the Treaty should differentiate their support levels so that more energy-efficient renewable energy applications, and those that diversify the range of feedstocks used for biofuels, receive higher levels of support to reflect their higher environmental and security of supply benefits.
- (49) National technical specifications and other requirements falling within the scope of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>13</sup>, relating for example to levels of quality, testing methods or conditions of use, should not create barriers for trade in renewable energy equipment and systems.
- (50) Regular reporting is needed to ensure a continuing focus on progress in the development of renewable energy at national and Community level.
- (51) Member States operate different mechanisms of support for renewable energy sources at the national level, which vary also among renewable energy sectors. It remains premature to decide on a harmonised Community-wide framework regarding support schemes in any of the renewable energy sectors.

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<sup>11</sup> OJ C 37, 3.2.2001, p. 3.

<sup>12</sup> OJ C 297, 29.11.2005, p. 4.

<sup>13</sup> OJ L 204, 21.07.98

- (52) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>14</sup>.
- (53) In particular, power should be conferred on the Commission to adapt the methodological principles and values necessary for assessing whether environmental sustainability criteria have been fulfilled in relation to biofuels. Since those measures are of general scope and are designed to amend non-essential elements of this Directive by the adaptation of the methodological principles and values, they must be adopted in line with the regulatory procedure with scrutiny provided for in Article 5a of Council Decision 1999/468/EC.
- (54) Those provisions of Directives 2001/77/CE and 2003/30/CE that overlap with the provisions of this Directive should be deleted from the moment of its transposition; those that deal with targets and reporting for 2010 should remain in force until the end of 2011.
- (55) Since the general objectives of achieving a 20% share of renewable energies in overall EU energy consumption and a 10% share of biofuels in each Member State's transport petrol and diesel consumption by 2020 cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. Their detailed implementation should, however, be left to the Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1 - Scope*

This Directive establishes a common framework for the promotion of renewable energy sources. It sets mandatory targets for the overall share of renewable energy sources in energy consumption and for the share of renewable energy sources in transport. It lays down rules relating to guarantees of origin, administrative procedures, electricity grid connections and support schemes for the use of renewable energy sources. It sets a binding target for the consumption of renewable energy in transport and establishes the environmental sustainability criteria for biofuels.

#### *Article 2 – Definitions*

1. For the purposes of this Directive, the definitions in Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market of electricity and repealing Directive 96/92/EC shall apply.
2. The following definitions shall also apply:

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<sup>14</sup> OJ L 184, 17.7.1999, p.23 Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006. p.11)