

The EU Renewable Energies Directive

The European Union is about to adopt a Directive on the promotion of the use of energy from renewable sources ("Renewables Directive"), which has already been described as the "most important piece of legislation on renewable energy in the world." The Directive requires the 27 EU Member States and the three countries of the European Economic Area (*i.e.*, Iceland, Lichtenstein and Norway) to ensure, by 2020, a 20% share of energy from renewable sources in overall European energy consumption, and a 10% share of renewable energies in transport. The Directive is part of the EU's extremely ambitious climate change and energy package to achieve its 20-20-20 targets for greenhouse gas emission reductions, renewable energies, and energy efficiency by 2020.

The Renewables Directive will create a wealth of new business opportunities in Europe for green technology companies and suppliers of renewable energies and biofuels. Companies that understand the Directive's requirements and are able to help shape their implementation by the European Commission and transposition into national laws across Europe will be able to benefit from around \$20 billion per year that the Directive's objectives will require the European economy to spend in the development of new renewable energy technologies until at least 2020.

A review of the Renewables Directive provides green technology companies and suppliers of renewable energies with an insight into:

1. the new green business opportunities that will emerge in Europe in the coming years and the conditions that companies will need to meet to benefit from them;
2. the type of support instruments that will be used to encourage the development and use of renewable energies;
3. the necessity to ensure that a company's technologies and activities are included in the different National Action Plans;
4. the importance of the process of national implementation; and
5. the areas where the European Commission will play an important role and the types of implementing decisions that it may adopt.

This note briefly reviews the Renewables Directive's scope, targets, and requirements applicable to Member States to support renewable energies, international cooperation mechanisms, and sustainability criteria for biofuels and bioliquids. It also reviews the implementing and transposition measures that the Commission and European countries must adopt within the next several years and provides recommendations to companies wishing to

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participate in their adoption.

I. The Promoted Renewable Energies

Promoted energy from renewable sources includes “energy from renewable non-fossil sources: wind, solar, geothermal, aerothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases.”

The Directive distinguishes between biofuels and bioliquids. Biofuels are defined as “liquid or gaseous fuel for transport produced from biomass,” while bioliquids are “liquid for energy purposes, including electricity and heating and cooling, produced from biomass.” In turn, biomass is defined as “the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste.”

II. Targets of the Renewables Directive

The Renewables Directive aims at ensuring by 2020 a 20% share of energy from renewable sources in the overall EU energy consumption in the form of electricity, heating and cooling, and transport. This target represents more than twice the current European share of renewable energies (*i.e.*, 8,5%). For this purpose, the Directive requires Member States to achieve the following specific targets by 2020:

1. Each Member State must achieve by 2020 a specific national target of energy from renewable sources calculated as a share of its gross final consumption of energy. For example, while the United Kingdom must achieve a share of energy from renewable sources in gross final consumption of energy of 15%, Sweden must achieve a share of 49%.

To ensure that Member States achieve their specific targets by 2020, the Directive also imposes “indicatory trajectory” renewable energy targets for the periods 2011-2012, 2013-2014, 2015-2016, and 2017-2018.

Annex II to the Directive provides the methodology to account for the electricity generated from hydropower and wind power.

2. All Member States must also achieve a target of 10% of share of energy from renewable sources in their final consumption of energy in transport. Annex III to the Directive specifies the energy content of transport fuels for the purpose of calculating the 10% target.

The Directive particularly encourages the use of certain 2nd and 3rd generation biofuels. In calculating the achievement of the 10% target, the contribution made by biofuels produced from wastes, residues, non-food cellulosic material and ligno-cellulosic material must be considered to be twice that made by other biofuels.

The Directive also requires Member States to encourage the marketing of renewable energies for transport. Member States must provide information to the public on the availability and environmental benefits of the different sources of renewable energy for transport. In addition, if the percentage of biofuels, blended in mineral oil derivatives, exceeds 10%, Member States must ensure that this is indicated at gas stations and other sales points.

III. National Action Plans to Meet the Targets

To ensure that Member States achieve their renewable energy targets, the Directive requires them to adopt, by June 2010, National Action Plans (“NAPs”) describing the measures that they will adopt to encourage the production and consumption of renewable energies. Among other things, the NAPs must specify the national specific targets for the use of renewable energies in each of the areas of electricity, heating and cooling and transport, as well as measures on (i) facilitating the licensing of the production and distribution of renewable energies, (ii) technical specifications for renewable energy equipment, (iii) certification schemes for installers of renewable energy technologies, (iv) guarantees of renewable origin for electricity, (v) facilitation of access to and operation of electricity grids, (vi) promotion of renewable energies in building codes, (vii) national support schemes, (viii) specific measures for the promotion of energy from biomass, and (ix) joint projects for the production of renewable energies with other Member States or third countries.

In particular, Member States may adopt “support schemes” that promote the use of energy from renewable sources by reducing the cost of this energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of renewable energy purchased. These schemes may include, among other measures, investment aid, tax exemptions or reductions, refunds, renewable energy obligation support schemes, and direct price support schemes, including feed-in tariffs and premium payments. National support schemes, however, must be compatible with EU rules on State Aid.

IV. Cooperation Mechanisms

The Directive encourages Member States to cooperate among each other (and with third countries) in order to meet their renewable energy targets in a cost efficient way. First, Member States may agree on the transfer of energy from renewable sources from other Member States.

Second, Member States may cooperate through joint projects for the production of energy from renewable sources with other Member States and/or third countries, which may also involve private businesses. In particular, two or more Member States may cooperate on joint projects for the production of energy from renewable electricity and heating or cooling. Furthermore, one or more Member States may cooperate with one or more third countries on joint projects for the generation of electricity from renewable sources. Arguably, in both cases the electricity may also be generated through bioliquids. Renewable energy produced through these joint projects may be allocated among the participating Member States and count for the achievement of their targets.

Third, Member States may also cooperate in the form of joint support schemes to encourage the production and consumption of similar renewable technologies in their jurisdictions. In that case, they must also agree on the allocation of renewable energies generated through such schemes.

V. Sustainability Criteria for Biofuels and Bioliquids

The Directive prohibits the use of biofuels and bioliquids to meet the Directive’s renewable energy targets, national renewable energy obligations, and their eligibility for financial support, if they do not meet specified sustainability criteria relating to greenhouse gas saving emissions and biodiversity.

Independently of whether the raw materials of biofuels or bioliquids are produced in the EU or in third countries, biofuels and bioliquids must (i) meet specified greenhouse gas emission savings; (ii) not be produced from raw material obtained from land with high biodiversity value, high carbon stock, or peatlands; and (iii) in the case of agricultural raw materials cultivated in the EU, their production must be in compliance with EU environmental requirements on agricultural production.

In particular, the Directive requires the use of biofuels and bioliquids to achieve a greenhouse gas emission saving of 35% by mid 2010. In the case of installations that were already in operation in January 2008, this threshold shall apply as of April 2013. The threshold increases to 50% by 2017. In addition, after 2017 the saving must be of 60% for biofuels and bioliquids produced in installations whose production started after 2017.

Annex VII to the Directive specifies the method for calculating the greenhouse gas emission savings from biofuels and bioliquids. It provides typical and default values for specified production pathways, and a methodology to calculate the actual greenhouse gas emission savings where no default value is specified or can be used. In particular, it provides a bonus for biofuels and bioliquids obtained from biomass produced in restored degraded land.

Member States must require economic operators to show that their biofuels or raw materials for biofuels meet the Directive's sustainability criteria. Operators must use a mass balance system ensuring that (i) consignments of raw material or biofuel for differing sustainability characteristics can be mixed, (ii) information about the sustainability characteristics and sizes of the consignments remains assigned to the mixture, and (iii) the sum of all consignments withdrawn from the mixture is described as having the same sustainability characteristics, in the same quantities, as the sum of all the consignments added to the mixture. Information submitted by operators must be subject to independent auditing.

The Directive also provides that the EU may conclude bilateral or multilateral agreements with third countries regulating the sustainability criteria of biofuels and bioliquids. As explained below, the Commission may decide that such agreements demonstrate that the raw materials from contracting parties comply with the Directive's sustainability criteria.

The Directive does not impose social sustainability criteria on the production of biofuels. Instead, as explained below, by 2012, the European Commission must present appropriate legislative proposals on the social impact of the production of biofuels, including impact on food prices and compliance with ILO agreements by countries that are significant sources of raw materials for biofuels.

VI. Implementation of the Directive's Requirements and Recommendations for Companies

The Council of the European Union is expected to formally adopt the Renewables Directive within the next several weeks. The Directive will then enter into force after it is published in the Official Journal of the European Union.

In the short to medium term, companies will have ample opportunities to influence the impact of the Renewables Directive on the promotion of various renewable energies and related technologies. That is because the Directive's requirements must be implemented by the European Commission and be transposed into the national laws of the 27 EU Member States and EEA countries.

A. Commission Implementation

In particular, companies should closely monitor and seek to shape the Commission's measures reviewing, adapting and proposing the amendment of the Directive's requirements. Among other things, the Commission is expected to:

1. Review and Amend Requirements on All Types of Renewable Energies

- By June 2009, present a template for Member State NAPs on the basis of the criteria of Annex VI to the Directive.
- As from June 2010, evaluate and issue recommendations on Member State National Action Plans.
- By December 2010, present an action plan to improve the financing and coordination necessary to achieve the 20% renewable energies target. The plan must include proposals on (i) better use of EU structural funds and framework programs, (ii) increased use of funds from the European Investment Bank and other public finance institutions, (iii) better access to risk capital, (iv) better coordination of EU and national funding and other forms of support, and (v) better coordination in support of pan-European renewable energy initiatives.
- By the end of 2011, present a proposal permitting the consideration of the whole amount of electricity originating from renewable sources used to power electric vehicles in the calculation of the 10% target for final consumption of energy in transport.
- By the end of 2011, present a proposal for a methodology for calculating the contribution of hydrogen originating from renewable sources in the total fuel mix.
- By 2014, propose an overall review of the Renewables Directive, which may include a review of the 10% target for renewable energy in transport energy consumption and the Directive's cooperation mechanisms among Member States and with third countries. The Directive, however, contains a "symbolic" obligation on the Commission not to change the 2020 20% target for renewable energies.

2. Review and Amend Specific Requirements for Biofuels and Bioliqids

- Monitor the origin of biofuels and other bioliqids consumed in the EU/EEA and their impact on land use in the EU/EEA and third country suppliers and on commodity price changes.
- Adapt to technical and scientific progress the energy content of the transport fuels listed in Annex III to the Directive.
- Adapt to technical and scientific progress the methodology to calculate the greenhouse gas emissions resulting biofuels and bioliqids specified in Annex V to the Directive.
- Negotiate and endeavor to conclude bilateral and multilateral agreements with third countries defining sustainability criteria for biofuels and bioliqids corresponding to those of the Directive. When those agreements are concluded, the Commission may decide that such agreements demonstrate that biofuels and bioliqids from raw materials produced in third country contracting parties comply with the sustainability criteria of the Directive.
- Decide that voluntary national and international schemes setting standards for the production of biomass products contain accurate data for the calculation of greenhouse gas emission savings and/or demonstrate that consignments of biofuel comply with the biodiversity requirements of the Directive.
- Adopt criteria and geographical ranges to determine the grasslands where raw materials for biofuels and bioliqids may not be produced.

- By December 2009, adopt a guide for the calculation of land carbon stocks on the basis of the IPCC Guidelines on National Greenhouse Gas Inventories.
- By December 2009, report and if necessary, propose legislative measures, on a sustainability scheme for energy uses of biomass other than biofuels and bioliquids, including the methodology to calculate the greenhouse gas emissions and the criteria for carbon stocks of forest biomass.
- By March 2010, report and if necessary, propose legislative measures, on lists of areas in third countries where typical greenhouse gas emissions from cultivation of raw material for biofuels and bioliquids can be expected to be lower than or equal to those specified in Annex V to the Directive.
- By 2010, review and if necessary, propose legislative measures, on the operation of the mass balance verification method to ensure compliance of biofuels and bioliquids with the Directive's sustainability criteria.
- By December 2010, propose legislative measures on a concrete methodology to calculate greenhouse gas emissions resulting from carbon stock changes caused by indirect land use changes.
- By 2012, report and if necessary, propose legislative measures, on the introduction of requirements on air, soil and water protection in the production of raw materials for biofuels and bioliquids.
- Starting in 2012 and every two years thereafter, report and if necessary, propose legislative measures, on compliance with the sustainability criteria of the Directive in those Member States and third countries that are a significant source of biofuels or their raw materials consumed in the EU/EEA.
- Starting in 2012 and every two years thereafter, report and if necessary, propose legislative measures, on the impact of increased demand for biofuels on social sustainability in the EU and in third countries, including impact on availability of food at affordable prices.
- By December 2012, amend the estimated typical and default values of greenhouse gas emissions specified in Annex V to the Directive.
- By 2014, propose legislative measures amending the Directive's greenhouse gas emission saving targets for biofuels and bioliquids.

The Directive requires the Commission to maintain a dialogue and exchange of information with third countries, producers, consumer organizations and civil society during the implementation of the Directive's requirements on biofuels and bioliquids.

The Directive also creates a Committee on Renewable Energy Sources and a Committee on the Sustainability of Biofuels and Other Bioliquids, which must be consulted by the Commission when implementing the Directive's requirements on renewable energies and the specific requirements on the sustainability of biofuels and bioliquids. These committees will be composed of Member State expert representatives and will be chaired by officials of the Commission.

Companies should start building and strengthening their relationships with Members of the European Parliament and policy makers in national capitals. The Directive provides that many of the Commission's measures must be subject to the scrutiny of the European Parliament and Council. In addition, all Commission proposals for legislative measures will be subject to consideration by the Parliament and Council through the EC Treaty co-decision procedure.

B. Pan-European Transposition of the Directive's Requirements

Companies should also closely monitor and try to influence the specific national measures to achieve the renewable energy targets across Europe. Generally speaking, the Directive is not directly applicable in the 27 EU Member States and the EEA countries. Instead, the European countries must adopt national legislation transposing the Directive within 18 months of its publication. In particular, they must adopt their NAPs by June 2010.

Member States are likely to significantly diverge in the renewable energies that they promote and how they do so. Member States may also adopt additional measures to encourage the use of renewable energies, including higher renewable targets than those specified by the Directive. While Member States may not prohibit the marketing of biofuels and bioliquids that meet the sustainability criteria of the Directive, they may regulate aspects of biofuels and bioliquids that are not specifically regulated by the Directive.

To increase the transparency of EU Member State measures on renewable energies and promote cooperation, the Directive requires the Commission to create an online public transparency platform. Among other things, this platform must include information on (i) Member State NAPs, (ii) Member States' forecasts on the achievement of their targets, (iii) transfers of renewable energies among Member States, (iv) Member States' joint projects, and (v) Commission and Member State reports on the implementation of the Directive.

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