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AK Position Paper

EU-Energy Package „Clean Energy for All Europeans“:
Directive on the promotion of the use of energy
from renewable sources

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

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Director

Executive Summary

The existing legislation of the European Union (EU) sets an EU-wide target of making renewable energy sources account for 20% of gross final energy consumption by 2020 (renewables target). This target is now to be reset for the period to 2030. In 2014 the European Council agreed on a target of at least 27% by 2030. The present Proposal for a Directive of the European Parliament and of the Council sets a binding EU-wide **target of making renewable energy sources account for 27% of gross final energy consumption by 2030.**

BAK recognises the need to significantly increase the share of renewable energy in overall energy consumption in order to counter climate change, and therefore supports the European Union's ambitious target. However, as previously stated in its position on the European Commission's Policy framework for climate and energy in the period from 2020 to 2030, **BAK regrets the lack of binding targets at Member State level.** This problem is also not resolved by the present draft of the RED. Instead of dividing the targets among the Member States according to their capabilities and capacities, now the Member States are required to propose how much they want to contribute towards achieving the target. This means that no binding targets for the share of energy from renewable sources have been set at Member State level for the period to 2030.

Apart from this, BAK supports the key aims and conditions of the present draft, in particular:

- the general criteria for support schemes, above all that they should be set up in a cost-effective way, and the guidelines for improved integration into the schemes,
- the proposed amendments relating to the use of biofuels, and particularly the reduction of the maximum share of biofuels that are produced from food crops or animal feed crops, and
- the obligation of Member States to designate an independent public authority to oversee consumer rights in the area of district heating and cooling.

However, BAK takes a critical view of certain points in the present draft, in particular

- the lack of binding and absolute targets for the share of renewable energy at Member State level,
- the frequent delegation of legal instruments to the Commission,
- the cross-border opening-up of national support schemes for renewable energy,
- the introduction of exemptions for certain market players,
- the failure to adapt consumer protection legislation on district heating and cooling so that it is in line with the consumer rights that apply to electricity and gas customers, and
- the efforts of the Commission to unbundle grid operations from the district heating supply without studying its technical and economic impact.

The AK's position in detail

Delegated acts

The present draft contains a number of provisions on delegated acts to be adopted by the Commission.

BAK opposes the frequent use of delegated acts for reasons of democracy.

Article 3 – Union binding overall target for 2030

As previously stated **BAK is in favour of setting binding and absolute targets for 2030, not only at EU level but, above all, at Member State level.** However, the present draft does not contain any binding targets at Member State level. Instead, it proposes a complicated system of rules and governance. Here, the RED specifically refers to the Governance Regulation. According to this, in the event of significant deviations en route to achieving the target, the Commission should be empowered to adapt the provisions on the expansion of renewable energy in the heating and cooling sector and the transport sector. In addition, in this case subsidies should be made available at EU level and "further action" taken. BAK believes these provisions do not go far enough. Only a concrete, binding target on expanding renewable energy for each Member State will guarantee that the target is achieved at aggregate level. This will ensure that every Member State contributes to achieving the EU-wide "renewables target", without the need for complicated rules and governance mechanisms. This will subsequently also support the main objective of reducing harmful emissions.

Article 4 – Financial support for electricity from renewable sources

BAK welcomes the general criteria set out in Article 4 that are to be met by support schemes for electricity from renewable sources. Support schemes have to be designed in such a way that they take into account the overall cost of the scheme. On the one hand, this means that the support scheme itself has to be designed to be cost-effective. On the other hand, incentives must also be provided for integrating installations into the system. The present draft meets these requirements in so far as the cost-effectiveness of support schemes and the need to harmonise electricity supply and demand are included in the general criteria. Grid shortages also have to be taken into account.

However, the Commission's proposal ignores the question of who is to shoulder the financial burden. **The costs of subsidising renewable energy must be fairly distributed amongst all electricity consumers. In this respect, BAK calls for clear EU-wide rules on limiting exemptions for particular consumers or consumer groups.** Without clear rules in this area, the planned expansion of renewable electricity production will lead to huge distortions of competition within the European Union. Some countries will find themselves forced to ease the burden on local companies through generous exemptions. This will inevitably lead to a race to the bottom. In the end, small consumers such as private households and small businesses will have to bear the costs of subsidies renewable energy.

Article 5 - Opening of support schemes for renewable electricity

BAK is strongly opposed to opening up national support schemes for electricity from renewable energy sources. The cross-border opening-up of support schemes and the lack of binding targets for expanding renewable energy at Member State level give Member States less incentive to push ahead with the transformation of their energy system.

If part of the subsidies is transferred to another EU Member State, consumers have to pay for the subsidies but only gain a limited benefit from the positive effects of the support. The financial effort would only be partially reflected in the expansion of domestic production capacities for renewable energy. This means that the value creation and employment effects triggered by these investments would largely be felt in another country. Supply side price-effects on the wholesale price would also be limited. Therefore, private households and businesses would only gain a limited benefit from lower electricity prices. The proposed opening-up of support schemes would therefore have a negative impact on the acceptance of those who have to pay for them (taxpayers and consumers), which in the long run would make it more difficult to implement the policies needed to achieve the EU's targets for 2030/2050. On top of this, applicants for subsidies in different countries are not subject to fair competition. For example, the system of grid charges is different in each Member State. Operators of renewable energy plants are at a disadvantage in Member States where electricity producers have to make larger contributions to solidarity-based grid financing. The same applies to states

with higher social and environmental standards. Production plants in countries with lower social and environmental standards and low grid costs have a major advantage when taking part in tenders. Therefore, the cross-border opening-up of support schemes would not help to achieve the European Union's targets on expanding renewable energy. Instead, it could lead to negative competition, with similar consequences to the known results of tax competition between countries. Opening up subsidy schemes means creating a financial transfer mechanism. However, such transfers should continue to be exclusively carried out directly via the European Union's common funds, so the EU budget. BAK believes that a cross-border support system should therefore only be introduced EU-wide and using European Union funds (e.g. EU funds).

Article 6 – Stability of financial support

With regard to Article 6, BAK refers to its comments on Article 4 of the present Directive and its position on the Commission's guidelines on State aid for environmental protection and energy dated 4.2.2014 and the fact that the relevant statements and proposals contained therein still apply. It is particularly important that the cost of financing support for renewable energy is fairly distributed across all consumer groups. Tax relief for environmental levies or exemption from levies (green electricity subsidies) represent a deviation from the polluter pays principle. These kinds of exceptions would only be justified if otherwise the economic activity would be transferred to another country and hence the original purpose of the levy (e.g. "efficient energy usage") would be frustrated. In any

case, such an exception should only be made for good reason in individual cases and be subject to a strict examination of the particular case.

Article 21 – Renewable self-consumers

BAK supports the plan of preventing discrimination against people who generate and consume their own electricity. However, the provisions set out in Article 21 mainly affect consumers who feed their electricity surplus into the public electricity grid. It is necessary to draw a clear distinction here: On the one hand, self-consumers who feed their surplus energy into the public electricity grid should also be afforded consumer rights in their role as consumers. On the other hand, they also have obligations as energy producers, in particular responsibility for the grid system. Correspondingly they have to contribute to solidarity-based grid financing, grid stability and the costs of the system (e.g. balancing energy). **BAK believes the exemptions contained in Article 21(1)(c) and (d) and (2) for self-consumers who feed their surplus energy into the grid in conjunction with the defined class of beneficiaries are inappropriate and go too far.**

The individual limits for the utilisation of the exemptions relate to the annual maximum amount of electricity fed into the public grid and amount to a maximum of 10 MWh for private individuals and a maximum of 500 MWh for legal entities. However, these electricity volumes exceed many times over the average person's self-consumption of electricity. No specific limits have been set for groups of households or legal entities that are in the same building or whose buildings are close together. This rule means that large residential or office blocks that can generate double-

digit megawatts-range benefit from the exemptions and, despite their size and importance for the power grid according to Article 21(1)(c), they do not fall under the rules that apply to energy producers. The BAK calls for a significant reduction in the individual limit to a realistic level with regard to the volume of individual self-consumption.

BAK also takes a critical view of the introduction of aggregators and third parties. There is no legal definition of the term "aggregator", nor is there a legal framework for the cited "third party". Experiences in local and district heating supply also show that the contributions of aggregators and third parties are often linked to a lack of transparency in price structures and billing, complicated contracts and legal problems for private households. For BAK it is crucial to ensure that the involvement of private households in power generation systems, such as photovoltaic plants, is always voluntary and that consumer rights – particularly the free choice of electricity supplier – must not be restricted by aggregators and third parties. BAK rejects the introduction of aggregators and third parties as long as the legal framework is lacking or unclear in this respect.

Article 22 – Renewable energy communities

BAK is critical of the introduction of special laws for renewable energy communities. Favouring certain market players leads to distortion of competition because regulatory provisions are undermined. This could have a negative impact on the whole system. This is particularly the case because of the very unclear wording in points 1 and 3, which leave a great deal of room for interpretation. The definition states that

four out of five criteria must be fulfilled in order to be considered a renewable energy community, but this is too imprecise. The key criterion on size set out in (e) is therefore invalid. BAK asks for clarification in this respect.

Article 23 – Mainstreaming renewable energy in the heating and cooling installations

BAK welcomes the efforts of the European Commission to increase the proportion of renewable energy in the supply of district heating and cooling. With regard to the measures listed in (3), BAK believes that trading with renewable heating and cooling certificates does not help to promote the expansion of renewable energy in this sector.

Article 24 – District heating and cooling

BAK welcomes the fact that more attention is being paid to consumer interests in the area of district heating, particularly the requirement for Member States to appoint a public authority to oversee consumer rights in the district heating and cooling sector. However, the Commission's proposal does not go far enough. Consumers will only have the right to information about the heating certificate that shows the primary energy sources of the heating or cooling, along with the right to change supplier. But the latter right is only theoretical. In Austria it is possible to give notice of termination, but generally there are no economic or technical alternatives when it comes to the supply of heating and hot water. It would, therefore, be far more important to amend consumer law in the area of district heating and cooling so that it is in line with the law that applies to electricity and gas customers. There is also no objective justification for the current inequality be-

cause supplying heating is also a public service just as supplying electricity

BAK is critical of the Commission's proposals on opening existing heating and cooling networks to third parties, therefore the unbundling of network and supply activities. To an even greater extent than with electricity and gas grids, technical feasibility has to be taken into account with heating grids. They are self-contained, local circulation systems involving flows and return flows, so it is impossible for a third party to simply feed heat into the system. BAK also believes the Commission's attempts at unbundling do not tackle the existing problems faced by consumers with regard to heating supply, and indeed could exacerbate them. The main problems include a lack of transparency in price structures and billing, poor price control, a lack of consumer protection legislation, particularly for low-income households, and a lack of legal protection.

Articles 7 and 25 - Biofuels

BAK broadly welcomes the proposed amendments relating to biofuels.

Compared to the provisions of earlier versions of the Directive, they clearly reflect a more sober assessment of their contribution to preventing climate change. **BAK particularly supports the proposed reduction in the maximum share of biofuels that are produced from food crops or animal feed crops.** In this respect, BAK calls for gaseous biofuels made from food crops or animal feed crops also to be included in this restriction.

Apart from this, the method of calculating the total share of energy from renewable sources, as standardised in Article 7, is considered to be appropri-

ate. It should be stressed that it cannot be used for calculating the share of energy from renewable sources at sectoral level. Accordingly, the share of energy from renewable sources in the transport sector is also calculated on a different basis in accordance with Article 25. BAK also finds this appropriate.

However, in general there is clearly a need for fundamental changes in the transport sector if the targets of the Paris Agreement are to be met. These targets implicate the decarbonisation of the transport system in the EU by 2050. This decarbonisation is synonymous with a total phase-out of fossil fuels in the transport sector by 2050. From a financial point of view it is quite impossible to replace the volumes of fossil fuels used in combustion engines with biofuels, so this decarbonisation will also have to involve a general shift away from the combustion engine. Transport by road will also have to be reduced in favour of more energy-efficient forms of transport. This also requires true-cost pricing to be set up by the various modes of transport. This in turn depends significantly on working conditions and wage levels, which is why BAK regularly stands up for improved social provisions in transport and for their effective monitoring.

These considerations must also be taken into account at a superordinate level when revising the Renewable Energy Directive.

Should you have any further questions
please do not hesitate to contact

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