Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (Text with EEA relevance)

DIRECTIVE (EU) 2018/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 December 2018

on the promotion of the use of energy from renewable sources

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Directive 2009/28/EC of the European Parliament and of the Council[(4)] has been substantially amended several times[(5)]. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

(2) In accordance with Article 194(1) of the Treaty on the Functioning of the European Union (TFEU), promoting renewable forms of energy is one of the goals of the Union energy policy. That goal is pursued by this Directive. The increased use of energy from renewable sources or ‘renewable energy’ constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and comply with the Union's commitment under the 2015 Paris Agreement on Climate Change following the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (the ‘Paris Agreement’), and with the Union 2030 energy and climate framework, including the Union's binding target to cut emissions by at least 40 % below 1990 levels by 2030. The Union's binding renewable energy target for 2030 and Member States' contributions to that target, including their baseline shares in relation to their national overall targets for 2020, are among the elements which have an overarching importance for the Union's energy and environmental policy. Other such elements are contained in the framework set out in this Directive, for instance, for

the development of renewable heating and cooling and the development of renewable transport fuels.

(3) The increased use of energy from renewable sources also has a fundamental part to play in promoting the security of energy supply, sustainable energy at affordable prices, technological development and innovation as well as technological and industrial leadership while providing environmental, social and health benefits as well as major opportunities for employment and regional development, especially in rural and isolated areas, in regions or territories with low population density or undergoing partial deindustrialisation.

(4) In particular, reducing energy consumption, increasing technological improvements, incentives for the use and expansion of public transport, the use of energy efficiency technologies and the promotion of the use of renewable energy in the electricity sector, the heating and cooling sector and the transport sector are effective tools, together with energy efficiency measures, for reducing greenhouse gas emissions in the Union and the Union's energy dependence.

(5) Directive 2009/28/EC established a regulatory framework for the promotion of the use of energy from renewable sources which set binding national targets on the share of renewable energy in energy consumption and in the transport sector to be met by 2020. The Commission Communication of 22 January 2014 entitled ‘A policy framework for climate and energy in the period from 2020 to 2030’, established a framework for future Union energy and climate policies and promoted a common understanding of how to develop those policies after 2020. The Commission proposed that the Union 2030 target for the share of renewable energy consumed in the Union should be at least 27 %. That proposal was endorsed by the European Council in its conclusions of 23 and 24 October 2014, which indicated that Member States should be able to set their own, more ambitious, national targets in order to deliver their planned contributions to the Union 2030 target and exceed them.

(6) In its resolutions of 5 February 2014 entitled ‘A 2030 framework for climate and energy policies’ and of 23 June 2016 entitled ‘The renewable energy progress report’, the European Parliament went further than the Commission proposal or the European Council conclusions, stressing that, in light of the Paris Agreement and the recent renewable technology cost reductions, it was desirable to be significantly more ambitious.

(7) The ambition set out in the Paris Agreement as well as technological developments, including cost reductions for investments in renewable energy, should therefore be taken into account.

(8) It is thus appropriate to establish a binding Union target of a share of at least 32 % of renewable energy. Moreover, the Commission should assess whether that target should be reviewed upwards in light of substantial cost reductions in the production of renewable energy, the Union's international commitments for decarbonisation, or in the case of a significant decrease in energy consumption in the Union. Member States should establish their contribution to the achievement of that target as part of their

integrated national energy and climate plans pursuant to the governance process laid down in Regulation (EU) 2018/1999 of the European Parliament and of the Council[6].

(9) The establishment of a binding Union renewable energy target for 2030 would continue to encourage the development of technologies which produce renewable energy and provide certainty for investors. A target defined at Union level would leave greater flexibility for Member States to meet their greenhouse gas reduction targets in the most cost-effective manner in accordance with their specific circumstances, energy mix and capacity to produce renewable energy.

(10) In order to ensure consolidation of the results achieved under Directive 2009/28/EC, the national targets set for 2020 should constitute Member States' minimum contributions to the new 2030 framework. Under no circumstances should the national shares of renewable energy fall below those contributions. If they do, the relevant Member States should take appropriate measures as provided for in Regulation (EU) 2018/1999 to ensure that that baseline share is regained. If a Member State does not maintain its baseline share over a 12-month period, it should, within 12 months of the end of that period, take additional measures to regain that baseline share. Where a Member State has effectively taken such additional measures and has fulfilled its obligation to regain the baseline share, it should be deemed to have complied with the mandatory baseline share requirements under this Directive and under Regulation (EU) 2018/1999 for the entire period in question. The Member State in question cannot therefore be considered to have failed to fulfil its obligation to maintain its baseline share for the period in time where the gap occurred. Both the 2020 and 2030 frameworks serve the environmental and energy policy objectives of the Union.

(11) Member States should take additional measures in the event that the share of renewable energy at Union level does not meet the Union trajectory towards the renewable energy target of at least 32 %. Under Regulation (EU) 2018/1999 the Commission may take measures at Union level in order to ensure achievement of the target if an ambition gap is identified by the Commission during the assessment of the integrated national energy and climate plans. If the Commission identifies a delivery gap during its assessment of the integrated national energy and climate progress reports, Member States should apply the measures provided for in Regulation (EU) 2018/1999 to close that gap.

(12) In order to support Member States' ambitious contributions to the Union target, a financial framework aiming to facilitate investments in renewable energy projects in those Member States should be established, including through the use of financial instruments.

(13) The Commission should focus the allocation of funds on the reduction of the cost of capital of renewable energy projects since such cost has a material impact on the cost of renewable energy projects and on their competitiveness, as well as on the development of essential infrastructure for an enhanced technically feasible and economically affordable uptake of renewable energy such as transmission and distribution grid infrastructure, intelligent networks and interconnections.

(14) The Commission should facilitate the exchange of best practices between the competent national or regional authorities or bodies, for instance through regular meetings, to find

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

a common approach to promote a higher uptake of cost-efficient renewable energy projects. The Commission should also encourage investments in new, flexible and clean technologies, and establish an adequate strategy to manage the retirement of technologies which do not contribute to the reduction of emissions or deliver sufficient flexibility, based on transparent criteria and reliable market price signals.

(15) Regulation (EC) No 1099/2008 of the European Parliament and of the Council[7], Directives 2001/77/EC[8] and 2003/30/EC[9] of the European Parliament and of the Council, and Directive 2009/28/EC established definitions for different types of energy from renewable sources. Union law on the internal market for energy establishes definitions for the electricity sector in general. In the interests of clarity and legal certainty it is appropriate to apply those definitions in this Directive.

(16) Support schemes for electricity from renewable sources or 'renewable electricity' have been demonstrated to be an effective way of fostering deployment of renewable electricity. If and when Member States decide to implement support schemes, such support should be provided in a form that is as non-distortive as possible for the functioning of electricity markets. To that end, an increasing number of Member States allocate support in a form by means of which support is granted in addition to market revenues and introduce market-based systems to determine the necessary level of support. Together with steps by which to make the market fit for increasing shares of renewable energy, such support is a key element of increasing the market integration of renewable electricity, while taking into account the different capabilities of small and large producers to respond to market signals.

(17) Small-scale installations can be of great benefit to increase public acceptance and to ensure the rollout of renewable energy projects, in particular at local level. In order to ensure participation of such small-scale installations, specific conditions, including feed-in tariffs, might therefore still be necessary to ensure a positive cost-benefit ratio, in accordance with Union law relating to the electricity market. The definition of small-scale installations for the purposes of obtaining such support is important to provide legal certainty for investors. State aid rules contain definitions of small-scale installations.

(18) Pursuant to Article 108 TFEU, the Commission has exclusive competence to assess the compatibility of State aid measures with the internal market which the Member States may put in place for deployment of energy from renewable sources. That assessment is carried out on the basis of Article 107(3) TFEU and in accordance with the relevant provisions and guidelines which the Commission may adopt to that effect. This Directive is without prejudice to the Commission's exclusive competence granted by the TFEU.

(19) Electricity from renewable sources should be deployed at the lowest possible cost to consumers and taxpayers. When designing support schemes and when allocating support, Member States should seek to minimise the overall system cost of deployment along the decarbonisation pathway towards the objective of a low-carbon economy by the year 2050. Market-based mechanisms, such as tendering procedures, have been demonstrated to reduce support cost effectively in competitive markets in many

circumstances. However, in specific circumstances, tendering procedures may not necessarily lead to efficient price discovery. Balanced exemptions may therefore need to be considered to ensure cost-effectiveness and minimise overall support cost. In particular, Member States should be allowed to grant exemptions from tendering procedures and direct marketing to small-scale installations and demonstration projects in order to take into account their more limited capabilities. Since the Commission assesses the compatibility of support for renewable energy with the internal market on a case-by-case basis, such exemptions should comply with the relevant thresholds set out in the latest Commission Guidelines on State aid for environmental protection and energy. In the Guidelines for 2014 to 2020, those thresholds are set at 1 MW (and 6 MW or 6 generation units for wind energy) and 500 kW (and 3 MW or 3 generation units for wind energy) in terms of exemptions from, respectively, tendering procedures and direct marketing. To increase the effectiveness of tendering procedures to minimise overall support costs, tendering procedures should, in principle, be open to all producers of electricity from renewable sources on a non-discriminatory basis. While Member States develop their support schemes, they may limit tendering procedures to specific technologies where this is needed to avoid sub-optimal results with regard to network constraints and grid stability, system integration costs, the need to achieve diversification of the energy mix, and the long-term potential of technologies.

(20) In its conclusions of 23 and 24 October 2014 on the '2030 Climate and Energy Policy Framework', the European Council stressed the importance of a more interconnected internal energy market and the need for sufficient support to integrate ever increasing levels of variable renewable energy and thus allow the Union to fulfil its leadership ambitions for the energy transition. It is therefore important and urgent to increase the level of interconnection and to make progress towards the European Council's objectives, in order to maximise the Energy Union's full potential.

(21) When developing support schemes for renewable sources of energy, Member States should consider the available sustainable supply of biomass and take due account of the principles of the circular economy and of the waste hierarchy established in Directive 2008/98/EC of the European Parliament and of the Council[10] in order to avoid unnecessary distortions of raw materials markets. Waste prevention and recycling of waste should be the priority option. Member States should avoid creating support schemes which would be counter to targets on treatment of waste and which would lead to the inefficient use of recyclable waste.

(22) Member States have different renewable energy potentials and operate different support schemes at national level. The majority of Member States apply support schemes that grant benefits solely to energy from renewable sources that is produced on their territory. For the proper functioning of national support schemes, it is vital that Member States continue to be able to control the effect and costs of their national support schemes in accordance with their different potentials. One important means by which to achieve the aim of this Directive remains to guarantee the proper functioning of national support schemes under Directives 2001/77/EC and 2009/28/EC, in order to maintain investor confidence and allow Member States to design effective national measures for their respective contributions to the Union's 2030 target for renewable energy and for the