

Questionnaire for the Avosetta meeting in Oslo, April 1-2, 2011:

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1. What is the share of renewable energies in overall final energy consumption in your country? From what sources is this renewable energy? How will / should the proportion and composition of renewable energy develop in your country? Can the requirements of the Directive 2009/28/EC be met or exceeded?

Share of renewable energy sources in total share of electric energy in 2010:

Biomass (households)	44,07 %
Biomass (other)	26,65 %
Hydropower	7,28 %
Biogas	4,28 %
Landfill gas	1,67 %
Geothermal	0,00 %
Biofuels for transportation	9,76 %
Solar	2,26 %
Wind	1,57 %

Share of renewable energies in overall final electric energy consumption in 2010: 8,3 %

Share of renewable sources in gross energy consumption:

	2005	2009	2010	2020
NAP scenario	6,1%	7,4%	8,3%	13,5%
NAP calculation	5,91%	7,86%	8,33%	13,47%

According to the Directive 2009/28/EC, Annex I, the national overall target for share of energy from renewable sources in gross final consumption of energy for the Czech Republic was 6,1% in 2005 and it is supposed to be 13% in 2020. The aim should be fulfilled; according to the National Action Plan (NAP), the 13,5 % share is anticipated.

As far as the proportion and consumption of renewable energy development is concerned, it is generally agreed that the highest share will be represented by biomass. The biomass share should be reduced in relation to increase of biogases and biofuels used in transportation. A moderate increase is also anticipated in wind energy share. The boom of solar energy share in 2011 should be reduced in next years.

Despite the increase in consumption of renewable energy, there are certain obstacles in further development. The share of biomass is limited by the transportation accessibility and by the area of land suitable to use for its production as well as the food safety. The biomass is used mainly to produce the heat, partially for the electric energy production as well. The number of biogas stations is increasing dramatically, on the other hand, biogas produced by the municipal waste water treatment plants and land fill gas are used marginally because of the impact on the environment.

Sources of water energy are fully utilized and no increase is anticipated. As far as the wind energy is concerned, there are some suitable sites left for the development of new wind mill farms, however, due to the high density of inhabitants, they are strongly opposed by certain municipalities and NIMBY.

Due to exaggerated state subsidy, there is a boom of solar energy electric power plants in the Czech Republic, which is now called the "Czech Sunny Republic". The state subsidy should be directed to other sources of renewable energy in next years, thus the solar energy consumption should decrease slightly in favour of the other renewable sources.

<http://www.mpo.cz/dokument77798.html>

<http://www.mpo.cz/dokument79564.html>

<http://www.mpo.cz/dokument25358.html>

<http://energie.tzb-info.cz/energeticka-politika/>

<http://www.tretiruka.cz/news/>

<http://www.vlada.cz/assets/media-centrum/aktualne/Pracovni-verze-k-oponenture.pdf>

2. Describe the key national legislation to promote renewable energies.
 - a. Subsidies and other financial support?
 - b. Purchase guarantees? (example: feed-in tariffs?)
 - c. Quota system? (example: “green certificates”?)
 - d. A special legal framework for the installation of facilities for the production of renewable energy sources? (short description)
 - e. Sustainability requirements for biomass / biofuels production? (art. 17-19 of 2009/28/EC)

**a.-c. Subsidies and other financial support? Purchase guarantees?
Green certificates?**

Since it came into effect, the Act No. 458/2000 Sb. (Energy law) brought the priority access in to the grid to all producers of electric energy from renewables. The Act No. 180/2005 Sb. on the promotion of the use of energy from renewable sources, implementing Directive 2001/77/ES, preserved this priority right. The priority access was followed by the purchase guarantee for guaranteed prices set by the Energetic Regulatory Authority. This situation should last till the electricity market would be fully open. The operators of a grid had a duty to make an agreement with the electricity producer if the producer wanted to.

If the producer did not offer the electric energy from renewables for the guaranteed price, he could sell it on the free market and then apply for the "green certificate". The green certificate is a financial contribution reflecting the lower environmental degradation related to the use of renewables comparing to the use of fossil fuels, the technology and its scale and the quality of the produced electricity. The right to choose green certificates could be applied since 2006 after full opening of the electricity market. After that, the system of green certificates was *supplemented by setting quotas for the share of the green certificates value in total amount of electric energy supplied. Financial sanctions (fines) were set for not keeping quotas.* Purchase guaranties are provided in a limited way.

The guaranteed price and the price of green certificates is set differently for different sources of energy, so that all kinds of renewable sources of energy would be supported to motivate investments into technologies using various sources of renewable energy. Moreover, the government provided the guarantee to the producers of electricity from renewable resources complying with the conditions set by the law, that in the period of 15 years from the start of the operation of the installation, the profit per unit of produced electricity will remain unchanged.

The increased expences should be reflected in the price of electric energy and should be born by consumers.

Tax exemptions are set according 3 tax laws:

- a) Income tax - operation of electric power plants using renewable sources of energy (solar, wind, water and others.) is exempted for 5 years since they started to operate.
- b) Value added tax - reduced tax is imposed on technologies using the renewable sources of energy
- c) Property tax (Real estate tax) - tax exemption for 5 years relates to buildings in which the heating system was changed from fossil fuels to the systems using solar, wind, biomass and geothermal energy.

d. A special legal framework for the installation of facilities for the production of renewable energy sources? (short description)

General requirements:

1. Each project must be consistent with land use plans; if not, the planning documentation must be changed.
2. Environmental impact assessment for installations set by the law.
3. Development consent under the Construction Act No. 183/2006 Sb. issued by the Construction Authority based on approvals/opinions of concerned environmental protection authorities.
4. IPPC (only certain incineration installations and waste disposal facilities)
5. Construction permit issued by the Construction Authority accompanied by approvals/opinions of environmental protection authorities. Conditions set by those environmental protection authorities must be included in the construction permit.
6. Permit to operate issued by the Construction Authority.

Special requirements:

All installations projected on the agricultural land or on the forest land:

- the approval to use the agricultural/forest land for different purpose (e.g. for development) must be granted by the agricultural land protection authority / forest protection authority prior the development consent would be issued by the Construction Authority

Hydro electric power plants are considered to be waterworks according to the Water Act:

- the permit to dispose the waters must be issued by the water protection authority not later than the construction permit of the waterwork.

Installations that are medium, large or extra large sources of air pollution must obtain a permit to operate by the air protection authority.

Installations projected in areas with the interests of the nature protection:

- limitations set by the Nature Protection Act (for example prohibition to install new facilities in certain areas etc.)
- different kinds of opinions/approvals/exemptions are required according to the Nature Protection Act

f. Sustainability requirements for biomass / biofuels production? (art. 17-19 of 2009/28/EC)

I do not have any information on a special regulation in this field. However, the sustainability requirements are fulfilled by regulatory requirements encompassed in environmental laws, namely in the Nature Protection Act No 114/1992 Sb., Agricultural Land Protection Act No. 334/1992 Sb., and Forest Act No. 289/1995 Sb., in relation to the Construction Act No. 183/2006 Sb., and Environmental Assessment Act No. 100/2001 Sb., all as amended. In my opinion, only simple and understandable regulation has a chance to be successful.

3. Describe mayor legal instruments, arguments, and court decisions concerning environmental protection issues of renewables.

Each environmental component is protected under special laws by setting conditions, duties, bans and limitations to the activities having the impact on them. These legal instruments are complemented by the system of general prevention tools (EIA) and administrative tools in the form of permits, approvals, opinions issued by the environmental protection authorities based on the law and by system of administrative and criminal sanctions.

Despite the high standard of legal protection, different kind of problems occur in relation to renewables:

- operators of small hydroelectric power plants do not often comply with conditions set in the permits (mostly related to the flow of the water) having disastrous impact on the parts of the nature. The inspections authorities are not able to check their operation all the time.
- the environmental impact statement and decisions permitting/non permitting wind mills is sometimes substantially different in comparable situations, which led to some administrative actions
- the support for solar energy was set too high and it was guaranteed for at least 15 years. This had led to the enormous interest of investors in the solar electric power plant

development. In the beginning of 2010 the number of approvals many times exceeded the capacity of the Czech grid. Those investors, who obtained approval, are free to establish new power plants and thus their number will be increasing, even though new projects will not be approved in near future and legal and economic restrictions had to be passed.

- the support is given also for "island systems" - producing electricity only for its own consumption. This does not motivate the producers to effective use of their energy and the support might be misused.

- current support of renewable sources of energy would lead to the increase of price of the electricity (households 12,7% , industry 18,4%), which would have fatal impact on the Czech industry. Therefore. the amendment to the Act No. 180/2005 Sb. was passed at the end of 2010. Its aim was to reduce the support of the energy from renewable sources and especially, to reduce the construction of solar electric power plants. The amendment introduced a levy on the electricity produced by solar power plants with the exception of small solar power plants established on roofs or other parts of buildings. Therefore, the support will be limited only to those roof installations.

- the biomass raised to produce the energy is very invasive in the Czech territory and thus those species of plants are threatening less aggressive original species.

- EU ETS is enabling tax evasions by avoiding to pay the value added tax on trade in emission allowances (more about ETS in the Czech Republic in Ilona Jancarova: Legal Aspects of Global Warming. Amsterdam Law Forum, Amsterdam : Vrije Universiteit Amsterdam Library, 2/2010, 2, p. 51-60, 10 ps. ISSN 1876-8156. 2010. [URL](#))

Court decisions:

The ruling of the Czech Constitutional Court (**IV.ÚS 652/06**) is dealing with the compensation for the free acces of hydro electro power plants operators to those plants across the privately owned land. The Water Act enables the oprators of hydro electric power plants to enter the property owned by the neighbour. This is consitent with the Constitution, however, the limitation of the ownership right must be compensated, as far as the electricity production is a private enterprise.

The Supreme Administrative Court was engaged in solving the problems of the negative impact of the wind mills to the landscape (**2 As 35/2007**). The Court ruled that the economic aspects of the installation must not be elevated over the preservation of the landscape assets. Economic profit can be reasonable to allow the interference with the landscape character, however, this interference must not be excessive. All cases must be assessed on the case-by-case basis. (Similarly **2 As 35/2007 - 75**).

The Supreme Administrative Court abolished the land-use planning documentation for the Pilsner region. This land-use plan was banning generally the establishment of new wind mills plants in the region (4 Ao 5/2010 – 48).

Judicial actions are expected in connection to the limitation of the solar electric power plants support .

4. Is there a national debate about the sense and nonsense of renewable energies, and if so, has this lead to changes or corrections of the regulatory framework?

The debate is not addressing the sence of renewable energies, but the way their use is asserted (starting at the EU level), and the way they are supported including market distorsions and opening a space for a speculative behaviour. The worst critique was addressed to biofuels and to the support of the solar energy plants.

The corrections of regulatory framework were, according to my opinion, initiated by the risks of a total black-out more than by the public debate.

5. How well do the public accept renewable energy proposals (eg new on- shore and off- shore windfarms, biomass plants etc.)?

Because of the high density of inhabitants, the public concerned by those projects is oppposing them because of their negative impact on the public health, landscape and the environment. Generally, they are also being opposed because of their economic consequence in the form of increased price of energy and because of the loss of agricultural land. The prohibition of electric light bulbs as well as the mandatory amount of biofuels in gasoline is perceived - as the result of lobbying - by the public negatively. Media informed on different foreign studies (even at the EU level) proving mostly negative effects of both.

6. How does Strategic Environmental Assessment and Environmental Assessment apply to renewables in your country? Have any particular legal/procedural issues emerged? How does Natura 2000 influence the promotion of renewables?

The basic strategic document related to renewable sources of energy is the State energetic policy which is subject to SEA (strategic environmental assessment). The National Program of effective energy consumption and use of its renewable sources is based on the State energetic policy and its impact on the environment should be assessed as well. Both documents must be approved by the government.

As far as the individual projects are concerned, only some of them are subject to the environmental impact procedure:

- dams with the capacity over 10 mil m³ of accumulated water
- Incineration installation with the output higher than 200 MW
- hazardous waste disposal plants
- waste disposal plant with the capacity higher than 30 000 tons of waste/year.

Projects of wind mills, hydroelectro power plants and other incineration plants and waste disposal plants are subject to the environmental impact assessment based on findings of the screening procedure - e.g. only if they are supposed to have significant impact on the environment.

According to the Nature Protection Act No. 114/1992 Sb., as amended, any policy or project which could have by itself or in connection with other projects/policies a significant impact on the state of nature and/or on the integrity of NATURA 2000 sites, must be assessed in a special EIA procedure.

- 7. Do the existing or planned national legal instruments promoting renewables already comply with EU law or are important adaptations required?
What is the status of adoption of the new pieces of legislation necessary to transpose into domestic law the new provisions of Directive 2009/28/EC?
Were there already court decisions or infringement procedures taken by the Commission concerning this question?**

As to my knowledge, the Czech legislation is not in non-compliance with the EU law. According to its proponents, the latest amendment proposals stated that EU Directives do not set a duty for MS to support solar electric power plants established in the open landscape, therefore, the limitation of the support is complying with the EU law as well. There are no cases like *PreussenElektra* solved by the ECJ.

- 8. Is there anything like a general framework act on climate change issues, and if so, what is its main content? If no, is such an act being considered?**

Regulation addressing the climate change issues is encompassed in several acts. The basic law is the Air Act No. 86/2002 Sb., as amended and Act No. 695/2004 Sb. on conditions of the trade in greenhouse gas emissions allowances. These acts are accompanied by the legislation in the field of energy saving and in the field of renewable energies support. Significant

provisions are contained in the tax laws as well. No special act is being prepared as to my knowledge, however, some NGOs were working on its draft.

‘energy from renewable sources’ means 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