

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

### **Legal issues related to the promotion and regulation of renewable energy**

The increased use of renewable energies is one of the essential building blocks of climate-protection-policy of the European Union and its Member States.<sup>1</sup> It also forms part of the strategy of energy security and competitive energy supply. These objectives are pursued by various legal instruments of the European Union and national legislation of Member States promoting the use of renewable energies. With Article 194 TFEU a new and potentially far-reaching competence to develop its own energy policy has been given to the Union. Directive 2009/28/EC sets ambitious targets for the development of renewable energies in the Member States. The choice of instruments is to large extent left to the Member States.

This legally based promotion of renewables will, on the other hand, have problematic side-effects on other environmental assets than the climate. For instance, biodiversity will be endangered by biomass monocultures both within the Union and – by way of imports – in third countries. Further, in some countries the development of wind farms and new hydro power plants is contested by the local communities and environmental groups. A new “internal” conflict between conflicting environmental goods appears to be emerging.

The goal of the Avosetta meeting shall be to first summarize european and national legal strategies of fostering renewables and on that basis explore mentioned conflicts, that are arising through the discussion of actual or potential legal instruments mitigating unwanted environmental side-effects. Such instruments include the general environmental law framework (as e.g. abatement of noise pollution, protection of species and habitats, land-use planning, etc.) and environmental protection clauses imbedded in the very law that fosters renewables (as e.g. the sustainability criteria of Art. 17 Directive 2009/28/EC).

As the legal area to be studied is broad and complex the national reports may focus on just one or a few renewable energy sources and/or one strategy of promotion and/or one environmental protection issue that is of high importance for the given Member State and at the same time instructive also from other Member States’ perspectives.

### **Questions:**

---

<sup>1</sup> For the purpose of this questionnaire, ‘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 (definition of art. 2 lit. a) of 2009/28/EC). Feel free to limit your answers to major sources but in any case deal with biofuels.

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?

The production of the electricity, from all possible sources (fossil sources, nuclear fuel and from renewable sources) in 2007, amounts 13.363 Gwh. The production of the electricity from renewable sources only amounts 24.9%, i.e. 3.397 GWh. The percentage is reached mainly by the sources like solar energy, biomass, bio-gas, less from wind and geothermal sources. With respect to the goal (25% of the electricity from renewable sources until 2020, Annex 1 of the Dir. 2009/28), it is necessary to add 3.146 GWh until 2020. The production of the electricity from renewable sources therefore needs to be doubled.

To reach the requirements from the Directive variety of main obstacles exists:

- long and demanding administrative procedures to obtain permissions for new constructions for production of energy from renewable sources;
- anticipated construction of TEŠ 6 (a huge fossil steam power station of 600 MV) in Šoštanj (in central part of Slovenian near town Velenje with a substantial lignite mine);<sup>2</sup>
- slow progress in building hydroelectric power and disputability of their suitability from environmental protection reasons;
- little chances to use wind power;
- lack of interest of private capital to invest in renewable energy projects;
- interest to invest in solar energy projects, but solar energy itself is not totally reliable for supply of energy net in Slovenia;
- etc.

2. Describe the key national legislation to promote renewable energies.

- a. Subsidies and other financial support?

Based on the Environmental Protection Act (1993 with later changes) Slovenian Environmental Public Fund has been established. Its role is to finance or co-finance projects enabling credits and loans for projects undertaken by natural or legal persons, aimed at:

- o making better use of buildings and construction regarding energy efficiency;
- o reducing CO<sub>2</sub> emissions;
- o helping to save drinking water, especially warm water;

---

<sup>2</sup> See more at: [http://www.euractiv.com/de/klima-umwelt/eu-zusch-sse-rdern-kontroverses-kohlekraftwerk-slowenien-news-501831?utm\\_source=EurActiv+Newsletter&utm\\_campaign=3200a62a27-my\\_google\\_analytics\\_key&utm\\_medium=email](http://www.euractiv.com/de/klima-umwelt/eu-zusch-sse-rdern-kontroverses-kohlekraftwerk-slowenien-news-501831?utm_source=EurActiv+Newsletter&utm_campaign=3200a62a27-my_google_analytics_key&utm_medium=email)

- the use of solar energy – for production of energy or heating purposes;
  - helping to purchase car with electric engines or hybrid cars;
  - enabling different measures which help saving energy in buildings and business premises;
  - newly constructing passive houses with low level of coefficient of heat losses, etc.
- Ordinance adopted by the Minister for the Environment (OG RS, No 79/99, 80/00) foresees also subventions for the use of renewable energy sources. Subventions can cover project documentation and the investment itself. The subvention can amount up to 50% of the whole investment.
  - Under the Energy Act<sup>3</sup> it is regulated that private producers of the electricity from renewable sources can sell electricity in the market and the state is adding subvention (a part of the total price per KWh). Producers therefore can get a part of subvention which is “assured part” and part which covers production support.

**b. Purchase guarantees? (example: feed-in tariffs?)**

One of the important warranties for producers of the green electricity from renewable sources is also feed-in tariffs. Apart from the above mentioned advantages credit, co-financing and financing of the projects (project documentation, factual investment) by Slovene Eko Fund, feed-in tariffs play crucial role, acting as economic incentive for future investors. Since there is no other economic incentives, like tax alleviations etc, feed-in tariffs are, notwithstanding their negative characteristics (higher price of the green electricity, political risk, lack of incentive for producers to lower the costs on the production unit, etc), indeed important for private investors to invest in the instalment for production of the electricity from renewable sources. Feed-in tariffs encourage investments also in areas which are not the best for production of the green electricity. This is another weakness of the feed-in tariffs in cases where cost benefit analysis is not achieved.

**c. Quota system? (example: “green certificates”?)**

Green certificates or Renewable Energy Certificate System (RECS) is applicable also in Slovenia. Rules are the same as in the rest of Europe (BC-Basic Commitment). In Slovenia RECS certificates are issued by the Agency for Energy of the RS (Issuing Body – IB).

---

<sup>3</sup> OG RS, No št. 79/1999, 8/2000, 110/2002-ZGO-1, 50/2003 Odl.US: U-I-250/00-14, 51/2004, 26/2005-UPB1, 118/2006 (9/2007 popr.), 27/2007-UPB2, 70/2008, 22/2010.

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

Rules and legal framework for installation of facilities for the production of renewable energy sources are different for respective sources, i.e. small hydropower centrals, solar power plants, biomass power plant and wind power plant. It is common for all of them, except for solar power plants installed on existing buildings, that it is necessary to obtain building permit. This includes environmental impact assessment for certain instalments (like hydropower for production of 1000 KWh or accumulation of water of more than 10.000m<sup>3</sup>, or biomass facilities for production of at least 50.000 ton of fuel per year).

There are no simplified procedures which would speed up the procedure for obtaining the building permit.

After the facility is built, the competent authorities check the congruity of the facility with the building permit and then issue a permit to use the facility; in case of solar power plant the permit to connect the plant to Slovenian electric net system suffice. This is also a document needed to apply for subvention which forms part of the price to sold electricity at the market.

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

The implementation of Art. 17-19 of the Directive in the Slovenian legislation has not been achieved yet. However Action plan of Slovenia from July 2010 already presupposes such implementation through the changes of Energy Act, which will probably take place in year 2011. The Energy act is the one which shall include sustainability requirements for biomass.

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

Legal instruments regarding environmental protection issues linked to the renewables, on my opinion, are:

- EPA necessary for some instalments for the production of energy from renewable sources;
- public participation in cases where EPA in necessary;

- economic incentives for projects aiming to invest in the instalments for the use of renewable sources of energy;
- legal demands that new construction has to take into account energy saving efficiency standards;
- legal obligation that every such instalment can be wired to the public electricity net and that electric distribution companies have to conclude contract with the producer of the energy.

I am not aware of any important court decision. Nevertheless one pending case where investor (distributor of the electricity) would like to build wind power stations in Natura 2000 area and where the Association for bird protection are successfully stopping them from obtaining all permissions exists.

Another case and example of unfriendly politic towards the investor in the green energy is also a measure of the Ministry of Economy that any object wired to the public electricity net needs to get a building permit (i.e. even any small solar power plant on private house), otherwise it can be removed on the costs of the owner. This provision was, due to the heavy pressure of the public, removed just before the biggest solar plant in Slovenia (in town Celje) would have been removed.

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?

There is on-going national debate on economic justification of measures, products etc. For instance, should solar panels indeed be promoted, if one uses more energy for their production than it is produced by the panel; or why should we subsidize installation of heating pumps, if the prevailing part of our electricity is produced from fossils sources of energy, etc. Discussions are also directly connected with energy efficiency of buildings, where waste majority of the energy shall be saved in case of greater efficiency. Unfortunately, these discussions have little to none effect to legislative procedures. The energy efficiency of buildings has been regulated, but not for all, only for new constructions, whereby it should necessarily apply, understandable under certain transitional period, also for other constructions.

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

The answer to this question is quite different for different instalments. Solar power plants are well accepted in the public and owners like to put instalments on the roofs of different buildings, also stables etc. There are fewer instalments on the ground.

On the other hand there are some hesitations for bio mass plants due to the smell. Also civil groups are sometimes used to strike against the plans. However, some last instalments were presented by the Slovene Government as proper instalments also for the urban environment and common opinion in this respect is changing.

There is also a rather substantive case regarding wind power plants in a part of Slovenia (Snežnik) which falls within the area of Natura 2000. Environmentalists are fighting against the instalments and they are successfully making procedural hindrances in the procedure. It is, however, not clear whether the result of the procedure will, at the end of the day, enable such intervention into the environment or prevent it.

Mostly there are no other problems in this respect.

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?**

To some, not to all, installations for acquiring electricity from renewable sources, EPA and Strategic EPA apply. Both EPAs are connected. Strategic EPA applies in cases where it is necessary to preserve worsening of situations in the environment and protected areas. This, rather abstract definition, can better be understood with the help of the Regulation on the list of projects where EPA is required. Instalments for which EPA is required will also be instalments for strategic EPA activities. Apart from this link it is also up to the Ministry of Environment to decide on each individual case whether the Strategic EPA is required. This is, in any event, necessary for cases where intervention is planned for areas protected by Natura 2000. There are no procedural exception provided in this respect, but this does not mean that even in the area protected by Natura 2000 instalments for the use of renewable energy sources would not be possible.

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?**

In Slovenia two Action plans on strategy regarding the use of renewable energy sources has been prepared. One was prepared for the purposes of Chamber of Energy and one for purposes of the Dir. 2009/28 by the Ministry of Economy. The first one, which is not following the EC's action plan form, also addresses the problem of legal instruments for promoting renewables. One thing is, that there are no exceptions for those instalments regarding the conditions on which one can build certain instalment in the environment. There are also no other incentives, apart from economic ones (see above the role of the Slovene Eko Fund, possibility of subventions etc).

With respect to the transposition and implementation of the Dir. 2009/28 it is anticipated by the Ministry of Economy that Energy Act should be changed accordingly. By now (February 2011) this has not been done, although the implementation deadline was Dec 5, 2010. Slovenia, however, prepared Action plan as required by the Commission decision.

To my knowledge, the EU Commission has not started the administrative phase of the infringement procedure in this respect.

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?

A law on climate change is under preparation and currently in the parliamentary debate. At the same time numbers of meetings are organized by the Chamber of Commerce. There is namely a strong resistance by the industry and economy against the proposal, claiming that it included proper goals but the ways on which they should be achieved, are not proper. The industry demands more economic incentives for green production. Currently it seems, at least from the media news, that the Government of RS and the Chamber of Commerce of the RS are at odds. It is impossible to anticipate when the next step in the legislative procedure will take place and corollary when the law will be adopted.