(4) Investment protection and prevention of retroactive changes

The rule of law principle is a key EU advantage in the global competition for quality investments. Yet, Directive 2009/28/EC lacks the adequate tools to safeguard investors' legitimate expectations in the face of unforeseen changes to national regulatory regimes.

Since 2011, several Member States have proceeded with retroactive changes (e.g. Spain, Czech Republic, Romania, Bulgaria) undermining the viability of existing projects. In the absence of any legitimate instrument at European level for investor-State dispute resolution, the industry has resorted to legal challenges at national level and, paradoxically, to international arbitrations outside of the EU.

RECOMMENDATIONS

- The Commission should address this policy gap through the establishment of an EU-wide legally binding and enforceable settlement mechanism. In the meantime, the post-2020 Renewable Energy Directive should establish a grandfathering principle to prevent retroactive changes to renewable energy support mechanisms and safeguard the economic viability of existing assets.
- The directive should also promote market responsive support mechanisms that can be adjusted to declining technology costs to minimize the need for policy changes.
- The Directive should enable the Commission to intervene in case of changes to national regulatory frameworks preventing the fulfilment of national renewable energy commitments. To that end, the Commission should make regular and country-specific policy recommendations on renewable energy policies.

RATIONALE

Stable regulatory frameworks are crucial to maintain investment levels and ensure the cost-efficient deployment of renewable energy ultimately benefiting consumers.

1) Sustain investment flows to Europe

Due to unstable regulatory environment, investments in renewable energy assets in the EU dropped by 18% to USD 58.5 in 2015, the lowest level since 2006. Meanwhile, emerging economies allocated billions to clean energy in 2015 with record increases (e.g. South Africa - $4.5bn, a four-fold increase)[1].

2) Pursue further cost of capital reductions

Wind energy projects are capital intensive and therefore particularly sensitive to regulatory uncertainty. The cost of capital for onshore wind varies considerably across the EU depending on regulatory stability and risk perception. It is generally lower in the North/West EU (e.g. 3.5%-4.5% in Germany) compared to East/South EU (12% in Croatia, 10% in Spain)[2]. For example, a 2% additional risk premium could increase the financing cost in the UK with an extra £3.14bn annually in financial costs[3].

3) Ensure geographically balanced deployment

In 2015, 47% of the new wind capacity installations took place in Germany alone due to the stability of the regulatory framework[4]. The concentration of investments in a small number of markets causes the prices of those new assets to be higher than they would be if a large number of markets were making investments. This increases the cost of the energy transition. Investor protection mechanisms are indispensable in the post-2020 period to ensure that all Member States contribute their fair share to fulfilling the collective 2030 EU-wide binding renewables target.

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[1] BNEF, January 2016
[2] EU-funded DIACORE project
[3] The UK Energy and Climate Change Committee, March 2016
[4] EWEA, Wind in power – 2015 European statistics, February 2016

Annex 1: Amendments to Directive 2009/28/EC

LEGEND:

NEW	new Article proposed by WindEurope
Blue text	new legal text proposed by WindEurope
Black text	existing legal text under Directive 2009/28/EC
[…]	comments by WindEurope

NEW Revised article 3 of the aforementioned directive *Article (...): Measures for the use of energy from renewable sources*

1. Member States shall introduce measures effectively designed ~~to ensure that the share of energy from renewable sources equals that shown in the indicative trajectory set out in part B of Annex I~~ to ensure the fulfilment of national commitments set out in their integrated national climate and energy plans.

2. In order to reach, or exceed, the ~~targets~~ national commitments ~~set in paragraphs 1 and 2 of this Article~~, Member States may, inter alia, apply the following measures:

(a) support schemes;

(b) measures of voluntary cooperation between different Member States and with third countries for achieving their national commitments ~~overall targets in accordance with Articles [5 to 11].~~

Without prejudice to Articles 87 and 88 of the Treaty, Member States shall have the right to decide, ~~in accordance with Articles 5 to 11 of this Directive~~, to which extent they support energy from renewable sources which is produced in a different Member State.

3. For the purposes of paragraph 2, and without prejudice to Article 194 of the Treaty, the following provisions shall apply:

(a) Member States shall not alter support schemes in a way that impacts the legitimately expected revenue streams associated with consented renewable energy projects, except when a modification of the support scheme is compatible with paragraph (X) of Article (X) "Design of support schemes";

(b) Member States shall guarantee that any modification of support schemes for new assets is publicly announced at least six months in advance and is subject to a transparent and inclusive public consultation process;

(c) Member States shall guarantee that any substantial change to an existing support scheme includes a sufficient transition period prior the new support instrument taking effect.

Annex 2: WindEurope position papers

- Post-2020 Renewable Energy Directive, April 2016