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CONTRIBUTION

From:	General Secretariat of the Council
To:	Delegations
Subject:	DE comments on the Renewable Energy Directive

Delegations will find in annex the DE comments on the Renewable Energy Directive.

German preliminary comments on major points as regards Art. 1-22 of

COM Proposal for a Directive on the promotion of the use of energy from renewable sources (RED II)

The following comments only address first major comments as regards Article 1 to22 of RED II. They are not exhaustive.

The current proposal misses the chance to set a reliable legislative EU support framework for national renewable support schemes in particular with regard to the electricity sector.

We need a reliable investment framework that promotes the gradual convergence of national support schemes across Europe and thereby reduces system and transaction costs for industry.

The fundamental rules on the nature and methods of supporting renewable energy across Europe should be part of the RED II as called for by the Franco-German-Paper for a "Common Rule Book". Basic rules and principles belong in the legislation. The key decisions need to remain subject to a transparent political discussion and are to be decided in Parliament and Council. They cannot be left solely to individual state aid decisions or internal Guidelines of the Commission. Art. 194 TFEU calls on the European Council and the European Parliament to set the basic rules of market integration.

The following basic elements should thus be incorporated into the Directive:

- *The proposal should set a reliable framework for the convergence of* ***national support schemes*** *as one key instrument for implementing Member States' contributions to the 2030 EU target as well as more ambitious national targets.*

- *The "****Common Rulebook"*** *should particularly focus on all design elements related to* ***market integration*** *of Renewables (see Art. 194 TFEU), that is* ***how to make renewable support gradually more market responsive and market-based****.*

- *The RED II should draw upon the experience gathered when implementing the current Directive and should reflect more that it sets the framework in a rapidly changing environment: The new Directive should therefore contain* ***roadmap elements*** *which, where appropriate, should ensure a stepwise pathway* ***towards more market integration*** *in the period 2021 to 2030. Furthermore, the Directive, as much as the Electricity Market Design package, should come under review in 2025.*

*[Changes to the Commission proposal are **bold and underlined** and marked yellow]*

Article 4, Financial support for electricity from renewable sources

Article 4 is the key provision regarding basic rules on RES-E support schemes. It needs more substance and should therefore be complemented - at least as regards the key elements of support scheme design relevant for market integration. That is how to make renewable support schemes market-based and market-responsive.

*For concrete proposals on how to improve the text of Art.4, please refer to the **joint comments by Finland, France, Germany and Italy.***

Article 5, Opening of support schemes for renewable electricity

1. **Member States shall have the right to decide, in accordance with Articles 7 to 13 of this Directive, to which extent they support energy from renewable sources which is produced in a different Member State. However,** Member States shall open support for electricity generated from renewable sources to generators located in other Member States under the conditions laid down in this Article **and in Articles 7 to 13 of this Directive.**

Rationale:

- *It needs to be clarified that opening of support schemes beyond the minimum tresholds remains voluntary. Opening of support schemes has many positive effects, in particular mutual learning and convergence as regards support scheme design, cooperative exploring of synergies between Member States and possible cost reductions. But it should remain balanced.*
- *Thus, the above first sentence should be inserted. It corresponds to the text of Art. 3 paragraph 3 of the existing RES Directive , which has been deleted in the proposal. This sentence is also legally important as it constitutes the basis for the ECJ ruling in the Åland case, in which the European Court of Justice rejected a claim for 100% opening of renewable support schemes which was based on the free movement of goods.*
- *For the same reasons and in line with the existing Directive, it is important to clarify that for opening of support schemes, the cooperation mechanisms of Art. 7 to 13 apply, which are in essence voluntary.*

2. Member States shall ensure that support for at least 10% of the newly-supported capacity in each year between 2021 and 2025 and at least 15% of the newly-supported capacity in each year between 2026 and 2030 is open to installations located in other Member States. **These thresholds reflect the interconnectivity level between Member States according to the EU interconnectivity goal. Above these thresholds, opening of support schemes shall remain voluntary in accordance with paragraph 1.**

Rationale:

- *Concrete figures for mandatory opening should remain in the text to guarantee legal certainty.*
- *Germany can support the concrete figures of 10% and 15% as they reflect the interconnectivity level of each Member State according to the EU interconnection target. This should be clarified explicitly as it would make it much easier to justify the opening in the context of physical import without further excessive administrative proof.*

3. Support schemes may be opened to cross-border participation through, inter alia, opened tenders, joint tenders, opened certificate schemes or joint support schemes. **The opening shall be subject to a cooperation agreement, which shall inter alia regulate ~~T~~t**he allocation of renewable electricity benefiting from support under opened tenders, joint tenders or opened certificate schemes towards Member States respective contributions **~~shall be subject to a cooperation agreement setting out rules for the cross-border disbursement of funding~~**, following the principle that energy should be counted towards the Member State funding the installation. **In addition, Member States may require reciprocity of the opening and that the supported electricity can be physically imported. The requirement of physical import shall not alter or otherwise impact real physical flows between Member States which shall be determined solely by the outcome of capacity allocation pursuant to Article 14 [Electricity Market Regulation].**

Rationale:

- *It should be clarified that the opening is subject to the conclusion of a cooperation agreement. Such an agreement is necessary to agree upon the basic principles of the cooperation, e.g. that installations may only be supported in another Member State if they adhere to certain location-specific rules like land-use criteria or, technical criteria for grid integration etc. The regulation of the allocation of renewable electricity towards Member States' contributions is just one issue among many which has to be addressed in the agreement.*
- *Member States should be able to require reciprocity when conducting cross-border opening. This means: Member States have to open their support schemes only for those Member States that in turn also open their support scheme. This is key for public acceptance. This is needed despite the mandatory opening for all since some Member States might choose to phase-out RES support in the light of missing national targets.*
- *Member States should also be able to require physical import when implementing cross-border opening. It is also important for public acceptance that it can be proven that there is a real effect on the market of the country that pays for the support.However, the requirement of physical import shall not alter physical flows between Member States (e.g. by reserving interconnector capacities) as this would lead to inefficient market results. Within the interconnection target level of 10%/15% a lump sum approach seems pragmatic.*

~~**4. The Commission shall assess by 2025 the benefits on the cost-effective deployment of renewable electricity in the Union of provisions set out in this Article. On the basis of this assessment, the Commission may propose to increase the percentages set out in paragraph 2.**~~

Rationale:

The merit of mandatory opening figures is legal certainty. This should not be compromised.

Moreover, this would be inconsistent with the approach of tying the opening volume to the EU interconnection target.

Article 19: Guarantees of origin of electricity, heating and cooling produced from renewable energy sources

1. For the purposes of proving to final customers the share or quantity of energy from renewable sources in an energy supplier's energy mix ⇨ and in the energy supplied to consumers under contracts marketed with reference to the consumption of energy from renewable sources ⇦ ~~in accordance with Article 3(6) of Directive 2003/54/EC~~, Member States shall ensure that the origin of ~~electricity~~ **⇨ energy ⇦ electricity** produced from renewable energy sources can be guaranteed as such within the meaning of this Directive, in accordance with objective, transparent and non-discriminatory criteria.

Rationale:

- *Issuing GOs for energy forms other than electricity should remain voluntary. The heating and cooling sector is of local nature, either being limited to heating and cooling generation in a single installation or limited to networks which are limited in geographical scope. Disclosure of the energy mix in such system is already regulated in Article 24 para. 1 of this Directive. Trading the green value of energy across these isolated systems does not represent any added value for consumers.*
- *It seems to be consensus between MS and with COM that GOs from one sector should not be used for disclosure in other sectors (e.g. GOs for RES-H&C for disclosure of RES-E). This should be made explicit in the text.*

2. […]

Member States ~~may provide~~ shall ensure that no ~~support be granted~~ guarantees of origin are issued to a producer ~~when~~ that ~~producer~~ receives financial support from a support scheme ~~a guarantee of origin~~ for the same production of energy from renewable sources. ~~**Member States shall issue such guarantees of origin and transfer them to the market by auctioning them. The revenues raised as a result of the auctioning shall be used to offset the costs of renewables support.**~~

[…]

8~~7~~. Where an electricity supplier is required to prove the share or quantity of energy from renewable sources in its energy mix for the purposes of Article 3(~~6~~9) of Directive ~~2003/54/EC~~2009/72/EC, it ~~**shall**~~ ~~may~~ **may** do so by using ~~its~~ guarantees of origin. Likewise, guarantees of origin created pursuant to Article 14(10) of Directive 2012/27/EC ~~**shall**~~ ~~may~~ **may** be used to substantiate any requirement to prove the quantity of electricity produced from high-efficiency cogeneration. ~~**Member States shall ensure that transmission losses are fully taken into account when guarantees of origin are used to demonstrate consumption of renewable energy or electricity from high efficiency cogeneration.**~~

~~8. The amount of energy from renewable sources corresponding to guarantees of origin transferred by an electricity supplier to a third party shall be deducted from the share of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC.~~

Rationale:

- *Issuing Guarantees of Origin (GOs) for supported electricity is consumer fraud. The Directive makes this fraud mandatory.*
- *Issuing of GOs for supported electricity leads to a situation of "double counting": On the one hand, the taxpayer (or cosumer paying a levy) is being told how much renewable electricity he has supported through the national support scheme. On the other hand, the consumer with a GO-based green contract is told that he has financed the same amount of renewable electricity through his contract. Actually, it is the same amount of electricity that is counted twice – both the taxpayer and the consumer with the green contract are cheated upon. And the buyer of a GO can take away this green value for a nearly zero price from the taxpayer/consume who had paid a significant amount.The average price of Guarantees of Origins is currently below 0.1 ct/kWh, whereas support costs are on average several cents per kWh. This would eradicate the public acceptance of support schemes particularly in the first mover countries who bear the costs of technology learing.*
- *GOs are not needed to transfer the green value to consumers/taxpayers. This can be done, as today, based on the statistics of RES-elecricity fed into the grid. These statistics are needed anyhow as they form the basis for issuing GOs and for calculating the national electricity mix.*
- *Finally, mandatory issuance of GOs for supported electricity would flood the market, which is already suffering from extremely low prices. GOs would in essence have no market value at all anymore. This undermines what is left of the credibility of green contracts.*
- *All in all, issuing of GOs for supported electricity should remain vountary.*
- *Fully taking into account transmission losses when using guarantees of origin creates an unnecessary administrative burden. Moreover, it suggests that only renewable energy is responsible for transmission losses.*

8. The amount of energy from renewable sources corresponding to guarantees of origin transferred by an electricity supplier to a third party shall be deducted from the share of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC.

[…]

Rationale:

- *This is a consequence of the changes proposed for para. 2.*
- *Thus, para. 7 and 8 should be changed back to their original wording under the old Directive.*

Art. 2 (aa) and Art. 21: Empowerment of ~~Renewable self~~ consumers producing renewable electricity

Article 2 Definitions

(aa) 'renewable **self-generator ~~consumer~~** ' means an ***~~active customer as defined in Directive [MDI Directive]~~*** **individual consumer who without using a grid** consumes **~~and may store and sell~~** renewable electricity which is generated **simultaneously in an installation operated by himself in direct vicinity of the place of consumption~~within his or its premises, including a multi-apartment block, a commercial or shared services site or a closed distribution system~~**, provided that, for non-household renewable **self-generators~~consumers~~**, those activities do not constitute their primary commercial or professional activity;

Rationale:

- *Rules on renewable self-generation are important for public acceptance.*
- *However, they need to be balanced in order to avoid that a large number of renewable auto-producers leaves the system or the levy schemes and charges. This would mean that the "normal" consumers are left behind and the burden of financing e.g. national support schemes has to be borne by an ever smaller number of people. This would affect public acceptance of support schemes. The incentive of "running away" from the system would be particularly high in the early mover countries who have paid a lot of the technology learning and are now facing high levies for the financing of the RES support scheme as a consequence.*
- *The definition of "renewable self-generator" has to be clarified in order to avoid a discrediting of the whole concept. The current wording would allow business models of virtually clustering (large) consumers who are not even living close to each other. This would affect the public acceptance for the whole idea of granting exemption to small self-generating consumers.*
- *The term "self-consumer" is awkward for native speaker as it literally means "consuming oneself".*

(bb) 'renewable **self-generation ~~consumption'~~** means the generation and consumption, and, where applicable, storage, of renewable electricity by renewable self- **generators ~~consumers~~ under the conditions laid down in lit. aa ~~on his or its own premises;~~**

Rationale:

This definition should be brought in line with the definition of renewable self-generator laid down in lit. aa.

Article 21: Empowerment of ~~Renewable self-~~consumers producing renewable electricity

1. Member States shall ensure that renewable **self-generators ~~-consumers, individually or through aggregators~~**:

(a) are entitled to carry out **self-generation ~~consumption~~** and sell, including through power purchase agreements **or aggregators**, their excess production of renewable electricity without being subject to disproportionate procedures and charges **~~that are not cost-reflective~~;**

(b) maintain their rights as consumers;

(c) are not considered as energy suppliers according to Union or national legislation in relation to the renewable electricity they **self-generate** **~~feed into the grid not exceeding 10 MWh for households and 500 MWh for legal persons on an annual basis; and~~**

(d) receive **the applicable ~~a~~** remuneration for the self-generated renewable electricity they feed into the grid which reflects the market value of the electricity fed in.

~~Member States may set a higher threshold than the one set out in point (c).~~

Rationale:

- *The prohibition of non cost-reflective charges is prone to misinterpretation and should be changed into a prohibition of disproportionate charges. The current wording could be read as an obligation to completely exempt self-generators from all kinds of charges and levies on electricity, e.g. levies for the financing of renewables support schemes.*

- *It is important that self-generators are not considered suppliers with regard to the self-generated electricity. For excess electricity fed into the grid and marketed on the wholesale market, they do not per definition act as suppliers. For cases where self-generators in addition generate large amounts of excess electricity which they choose to sell as an energy supplier, the same rules should apply as for every other market participants.*

- *It should be clarified that renewable self-generators are entitled to receive the applicable remuneration, i.e. the remuneration that all other producers of renewable electricity in the same situation will receive (e.g. market premium, feed-in-tariff, depending on the national support scheme).*

Rationale:

For consumers living in the same multi-apartment block, there should also be a possibility to benefit from the rights given to renewable self-generators. However, in order to avoid discrediting of the concept of renewable self-generation, it is important to distinguish this situation from individual renewable self-generators. With regard to other aspects (e.g. direct or indirect support) it must be possible to treat such constellations less favorably than individual renewable self-generators, otherwise too many consumers can opt out of charges and levies.

3. The renewable **self-generator's** ~~**consumers**~~ installation **or jointly operated installations according to paragraph 2** may be managed by a third party, **if subject to instructions of the respective consumers** for installation, operation, including metering, and maintenance, **and as long as the economic risk of the operation of the installation remains with the respective consumers.**

Rationale:

The generation facililty should be operated by the self-generator himself or jointly by the consumers living in the same multi-apartment block. This is important to contain business models of third parties which are profit-driven and de facto own and operate installations, which are prone to discredit such schemes.

A third party managing the installation should therefore be subject to instructions of the renewable self-generator or those jointly operating an installation in a multi-apartment block accroding to para. 2. They should be the ones bearing the economic risk of the operation of the installation but also benefitting from its operation. They should retain "ownership".

Article 22: Renewable energy communities

1. Member States shall ensure that renewable energy communities are entitled to generate, consume, store and sell renewable energy, including through power purchase agreements, without being subject to disproportionate procedures and charges ~~**that are not cost-reflective**~~.

Rationale:

The prohibition of non cost-reflective charges is prone to misinterpretation and should be deleted. It is sufficient to limit this to disproportionate charges. The current wording could be read as an obligation to completely exempt self-consumers from all kinds of charges and levies on electricity, e.g. levies for the financing of renewables support schemes.

Further German preliminary comments on on renewable energies in the transport sector (Art 7 and Art 25)

Regarding the cap for conventional biofuels and the fuel supplier obligation, we are currently assessing the response provided by the European Commission to our questions. Germany will send additional comments once this assessment is finalised.

Beyond this, Germany has the following general comments as regards other provisions in Art 25. Again, these comments are not exhaustive.

[Biogas]

- We welcome that the Commission proposed more specific rules for biogas in the RED II.
- Nevertheless we think that the RED II should also include detailed rules for **cross-border trade of biogas**, to avoid multiple claiming of biogas injected into the gas grid in one MS which could in the absence of clear rules be sold to several MS without them knowing about each other.
- Provisions for this should be included in the Directive since this **cannot be regulated properly on national level** as the provisions in different Member States need to fit.

[Renewable fuels of non-biological origin]

- Renewable fuels of non-biological origin are an important topic. We also consider green hydrogen which is exclusively produced on basis of renewable electricity to be a renewable fuel of non-biological origin.
- Therefore, we welcome that the Commission proposed to count them toward the proposed RED II transport targets.
- We should clarify the proposal in a number of aspects:
    - At the point when renewable fuels of non-biological origin are placed on the market they cannot be chemically differentiated from fossil fuels. Suppliers could claim that they are placing renewable fuels of non-biological origin on the market and national authorities would have no way to verify this claim.
    - Therefore, we need a system to trace them back to their production facility. Such a system is already in place for biofuels and could be extended to renewable fuels of non-biological origin.
    - Also we need to ensure that renewable fuels of non-biological origin are sustainable and do have a positive GHG balance through certification of the producers of these fuels.
    - In Art 25 paragraph 3a clarification is necessary that green hydrogen which is exclusively produced on basis of renewable electricity and used in refineries is also considered to be a renewable fuel of non-biological origin and can be counted toward the

target.

- Also in respect to green hydrogen it is necessary to have a system in place that includes the whole chain of custody. This starts with the refinery itself: gasoline and diesel are only a part of the refinery product portfolio and hydrogen is also included in other refinery products. The Directive needs to define which share of hydrogen is allocated to the transport fuels.
- Furthermore, the chain of custody of finished diesel / gasoline needs to be monitored as these products are often traded after the refinery, in many cases also cross-border. Chemically green hydrogen cannot be recognized at the point when the fuel is placed on the market.

[Co-Processing]

- In terms of co-processing in Art 25 paragraph 3b Germany has a number of concerns, including the feedstock basis. HVO placed on the market in Germany in the past three years was produced almost exclusively from palm oil. We see no reason why this should be different in the case of co-processing.
- Why does the proposal just mention „adequate conversion factors“ [Article 25 para 3b] instead of determining them directly to avoid the risk of strong variations across Member States causing barriers of trade?
- In terms of paragraph 6 it is unclear to us how co-processing shall be handled by MS before delegated acts including uniform rules are adopted.

[Database]

- Our understanding is that the main purpose of the system of electronic databases is to avoid multiple claiming of a single consignment of biofuels.
- To avoid this each entry within each database would have to be cross-checked with each entry in all the other databases of the other MS.
- We are wondering if the Commission also considered having a central database so that each MS database does only have to cross-check with one other database?