



II-5.10: The European Commission states that France and the Czech Republic do not currently respect European Regulation on Renewable Energies

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Translated Article



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MAIN INFORMATION

The European Commission issued a reasoned opinion on November 24th, 2011, to France and the Czech Republic demanding that those countries modify their legislation in order to comply with European regulation on renewable energies. If the modifications are not implemented in the upcoming two months, the Commission will open a case before the European Court of Justice.

CONTEXT AND SUMMARY

On April 23rd, 2009, the European Directive on Renewable Energies (2009/28/EC) was issued. It defined the new European standards on the use and promotion of the use of renewable energies. The Directive aims at making the share of renewable energies in final energy consumption up to 20% by 2020 in European countries, in order to promote sustainable and competitive development in the EU. Another objective of the Directive is to cut greenhouse gas emissions by 20% as compared to 1990 levels by 2020.

Each Member State must thus reach individual targets for the overall share of renewable energy in energy consumption. As for the transport sector, the Directive sets the share of renewable energy consumption in the final consumption at 10%. Whenever biofuel is used to satisfy the demands of the Directive, it should meet a set of sustainability requirements. Indeed, they must be issued from an area where there is no high biodiversity value, such as, for example, areas that store a high amount of carbon (forests, peat lands), or protected areas. These biofuels must also save a much larger amount of greenhouse gases rather than fossil fuels.

In order to render these objectives effective, each Member State had until December 5th, 2010, to transpose it onto their national legal framework. Yet, almost a year after this deadline, France and the Czech Republic failed at fulfilling the full transposition of Directive 2009/28/EC. Both failed to do so on two specific points, the Commission noted. First, the Directive aims at removing administrative barriers preventing the free access to the electricity grid for renewable energies, and promotes the facilitation of decentralized production of energy from renewable sources. Neither France nor the Czech Republic have set a clear administrative framework to do so. Also, both countries failed to fully transpose the sustainability criteria for biofuels and bioliquids.

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BRIEF COMMENTARY

In the event of a lack of compliance by these countries to the Commission's reasoned opinion, the European Commission will submit the case to the European Court of Justice. This follows European rules on the lack of transposition of a Directive. In France, where the energy sector is regulated and was historically a monopoly, this European Directive clearly helps at opening the market to other participants, especially for it opens the access to the grid. This access is the key to competition on energy markets, for it is a monopoly that needs to be modernized.

The Directive is also an interesting example of how European Environment Law sets up standards, which are assessed and technically defined. Environment law thus conceives the environment as an external object to legal reasoning, which can rationally be separated into different areas, characteristics. Yet, this fundamental conception fails at conceiving environment as an internal, global and hardly divisible whole, which of course is constantly evolving and interdependent, making it impervious to legal reasoning as we know it.