



BBH
Becker Büttner Held

Rechtsanwälte · Wirtschaftsprüfer · Steuerberater



The "Legal Helpdesk" within the European project "Keep on track!"

Legal consultation tool on renewable energy policies


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Jana Viktoria Nysten


- As part of the Keep on track! website a **Virtual Legal Helpdesk** is operated by BBH.
- The Legal Helpdesk assists **local, regional, national and European policy makers** as well as **national renewable energy associations** with the implementation of the RES Directive into national law.
- The Legal Helpdesk has three dimensions:
 - Internal: Assisting consortium members and in particular national renewable energy associations
 - External: Stakeholders involved in the implementation of Directive 2009/28/EC may submit their questions via the Legal Advice Facility
 - Broad Public: Offers FAQs and guidance documents online

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QUESTIONS CORNER


 **EMAIL ADDRESS**

Please enter official (work) email address. Please be advised that we only answer questions where we are able to identify - based on the email address - that it comes from a targeted stakeholder¹ in the course of the Keep on Track! Project. Answers will be sent from a no reply account to the address you enter.


¹ Policy makers and public administrations at European, national and regional level, in particular national and regional governments and members of parliament.

 **YOUR QUESTION**

Please state your question here. Please be as clear as you can, support it with facts and details we may need to answer the question. You don't need to disclose information about your person/country etc. However, all questions will be treated absolutely confidential and no personal/country specific etc. information will be disclosed.

 **UPLOAD FILES**


In case you think that there is additional information that we might need in order to answer your question (e.g. national legislation), please feel free to attach this. However, please be informed that only information in English can be considered.



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HELPDESK

RES DIRECTIVE (2009/28/EC) AND TARGET ACHIEVEMENT

LEGAL ADVICE FACILITY



DOWNLOAD DOCUMENTS

WHAT SANCTIONS ARE AVAILABLE FOR MEMBER STATES WHICH FAIL TO ACHIEVE THEIR 2020 TARGET?

The Renewable Energy Directive, Directive 2009/28/EC, provides for an overall EU-wide renewable energy target of at least 20% to be achieved by 2020, as well as for national targets for each of the Member States. Those targets are binding, in the sense that they create concrete obligations on the Member States which they have to comply with. [...]

The Directive foresees a trajectory for the years up to 2020 as well, which is intended more as guidance for the Member States. It is not binding and Member States thus do not have to justify any deviations from the intermediary targets set out in the trajectory, as long as they reach their binding target for 2020. However, if the trajectory targets are missed by far, and given additional circumstances, such as change in legislation, stop-and-go policies, negative changes, the European Commission may find this Member State at high risk not to reach the binding target, and could already consider opening of infringement procedures.

The text of the Directive does not foresee a specific enforcement or penalty mechanism in case a Member State fails to reach its target.¹

Rather, the "normal" procedures would be applicable, and the European Commission could open an infringement procedure, based on Article 258 of the Treaty on the Functioning of the European Union (TFEU).²

Infringement procedures can be started based on a complaint sent to the Commission. In such a case, the European Commission may first investigate whether there is merit to the complaint or not, in order to decide whether to act upon it or not. But the Commission can also start proceedings out of own initiative, based on their own information and investigation. In the course of those investigations, the pre-contentious stage of the proceedings, the Commission may give the Member State already the chance to explain its position and the opportunity to reach a solution together with the Commission, so that no further steps are necessary. The second step in an infringement procedure would then be a „letter of formal notice“, formally notifying the Member State of the alleged infringement and asking the Member State to submit its observations on the infringement. The Member State addressed gets some time to submit the responses, usually about two months. Based on this response or absence of a response from the Member State concerned, the Commission may decide to send a "reasoned opinion" to the Member State. This reasoned opinion constitutes sort of a final written warning summoning the Member State to comply within a specified period, normally within two months. However, Member States in practice often ask for and get prolongation of the deadline for compliance. Until the

- Provided answers to specific questions asked by the NAN
- Worked closely with a NAN on the planned RES reforms in their country, in form of a dialogue:
 - They submit all the information they have about – often not yet published – proposals
 - We provide them with legal arguments against one proposal and in favour of another one
 - We help them develop alternative proposals
 - Etc.
- Provided advice on general questions such as state aid under EU law on the website
- Helped with policy briefing on retroactivity in conjunction with other consortium partners



Thank you for your attention

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