

Energy Transition Protocol

Draft Protocol on the energy transition and to promote environmentally friendly forms of energy in the European Union

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Energy transition: objectives and strategies

- *„Energy transition is more than just using wind and solar power, it's about **building an entirely different energy system.**“*

Jan Rotmans, Professor of Transitions and Transition Management

- *„It is essential that the world works together in achieving this energy transition. This needs global and regional cooperation. Within the European Union I have proposed a **common European legal framework for energy transition**, a European Energy Transition Protocol“.*

Andrä Rupprechter, [former] Austrian Federal Minister of Agriculture, Forestry, Environment and Water Management



Energy transition: objectives and strategies

- Elevate energy transition to primary law level
 - **Protection against watering down** objectives
 - Make effective energy transition (also) **a case of law, not just politics, enforceable before the ECJ**
- Strengthening renewable energies, energy efficiency and energy savings
- Establishing counterbalance to Euratom instruments
- Rules beyond existing legislation ("*added value*")



Proposal

Protocol on the Energy Transition

- **Protocol** annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union on the Energy Transition and to promote environmentally friendly forms of energy in the European Union
- Generally **inspired by Euratom** solution,
 - except establishment of separate legal entity – not necessary
- Protocol to the TFEU more appropriate setting – also at **primary law level**



Implementation Process

Ordinary revision procedure – Article 48 TEU

- Art 48 TEU: “*The Government of any MS may submit to the Council proposals for the amendment of the Treaties*”
- Transmission to the European Council and national parliaments (without decision!)
- European Council decides by a **simple majority** to convene a Convention or an Intergovernmental Conference
- **Unanimity / Ratification by all Member States**



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Philosophy

- **Strengthening legal anchoring** of the promotion of renewable energies, energy efficiency and energy saving
- **Expanding existing standards and safeguards** (mostly secondary or non-binding) through primary law
- Introducing new institutions and substantive rules



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Structure

- Preamble
- Title I – Common provisions
- Title II – Encouragement of progress in the field of renewable energies, energy efficiency and energy saving
- Title III – Renewable energy sources
- Title IV – Energy efficiency and energy saving
- Title V – Financing and competition
- Title VI – Institutional provisions
- Title VII – Final provisions



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Article I – Aims and Tasks

- Aims:
 - Adopt appropriate measures to promote energy savings and energy efficiency
 - Establish **binding targets** to achieve a gradual increase in the share of energy from renewable sources in the Union's energy consumption
 - Promote **research and innovation** in the field of renewable energy, energy efficiency and energy saving
 - Promote the development of the market for renewable energy
 - Support and promote collaboration among the Member States
 - Cooperate with third countries and international organisations to promote energy efficiency and energy saving



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Article 2 – Common provisions

- Integrating energy transition requirements and promoting environmentally friendly forms of energy into all Union policies and activities (para 1)
 - *strengthening horizontal clause in Art 11 TFEU with regard to energy transition*
- Pursuing a high level of protection (para 2)
- Member states have the right to determine the conditions for exploiting their energy resources (para 3)
 - *necessary political concession: Art 192 para 2 lit c TFEU remains untouched*



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Article 3 – Promotion of research, education and training

- Commission shall be responsible for promoting and facilitating research in the field of new and renewable energy sources, energy efficiency and energy saving in the member states
- Commission shall be responsible for complementing such research by carrying out the „**Union’s research and training programme for renewable energy sources, energy efficiency and energy saving**“
- Assistance from the European Environment Agency (EEA)
 - *Inspired by Euratom-Treaty*
 - *added value compared to general research programmes in TFEU: commitment instead of competence!*
 - *need for amendment of Art 2 EEA-Regulation 401/2009/EC („Tasks of the environmental agency“)*



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Article 4 and 5 – Research Coordination / Assistance with Research

- Research coordination by Commission regarding research undertaken in MS in the field of new and renewable energy sources
- Commission shall publish at regular intervals a list of those research sectors in the field of new and renewable energy sources which it considers to be insufficiently explored
- Assistance with research (financial assistance, joint financing)
 - *Inspired by Euratom-Treaty, currently no corresponding provisions in the TFEU*



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Article 6 – EU Research and Training Programme

- Establishment of a “*Union’s research and training programme for renewable energy sources, energy efficiency and energy saving*” by EP and Council
 - Inclusion of funds in the EU research and investment budget
 - Implementation through specific programmes
 - logistical and administrative assistance by EEA
- *Inspired by Euratom-Treaty; currently no corresponding provisions in the TFEU*



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Article 8 – Joint undertakings to promote research

- Possibility of establishing a joint undertaking for research in the sector of renewable energy sources, energy efficiency and energy saving
 - Possible participation by a third state, an inter-governmental organisation or a natural or legal entity
 - Establishment by EP and Council
- *Inspired by Euratom-Treaty; added value compared to Art 187 TFEU*



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Article 9 – Publication of Programmes and Reports

- Comprehensive publication and reporting obligations of the Commission:
 - regarding research and training programmes and specific implementation programmes
 - regarding activities by joint undertakings
 - *Inspired by Art 11 Euratom-Treaty*



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Article 10 and 11 – Procedure on Exchange of Research Work / Publication of Knowledge

- Commission shall provide the exchange of final results in the field of renewable energy, energy efficiency and energy saving (insofar as these results are not confidential)
 - Commission shall publish their knowledge and grant licences or sub-licences to member states and businesses
- *Inspired by Art 12-15 Euratom-Treaty; currently no corresponding provisions in the TFEU*



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Article 12 – Investment Programmes

- Commission shall periodically publish the illustrative programmes indicating in particular renewable energy production, energy efficiency and energy saving targets and all the types of investment required for their attainment
- Consideration of needs and eligibility of SMEs.
 - *Inspired by Art 40 Euratom-Treaty; currently no corresponding provisions in the TFEU; NEW: taking into account the needs of SMEs*



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Article 13 – Joint undertakings to Promote Investment

- Possibility of establishing a joint undertaking for investments in the field of renewable energy, energy efficiency and energy saving
 - Possible participation by a third state, an inter-governmental organisation or a natural or legal entity
 - Establishment by EP and Council
- *new provision: equivalent to Art 8 ETP – Joint Undertakings to Promote Research (TFEU only knows joint undertakings in the field of research)*



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Article 14 – Targets and Action Plans

- Union obligation to define:
 - binding targets to progressively increase the share of energy from renewable sources in the Union's gross final consumption of energy as a whole
 - binding national targets to progressively increase the share of energy from renewable sources in view of attaining the Union's overall objective
 - obligations of MS to adopt national action plans for renewable energy
 - obligations of MS s to submit periodically a progress report
 - framework conditions to promote common projects between two or more

 - *safeguarding RES-Directive at treaty level!*
 - *in addition: commitment instead of competence!*



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Article 15 – Energy Market

- Union shall take into account the positive effects on regional and local development possibilities of SMEs and independent energy producers (para 1)
- Union shall adopt measures to make the internal energy market more flexible, both on the supply and demand side, in order to prepare the market comprehensively for the integration of renewable energy sources (para 2)
- Social Protection Committee (Art 160 TFEU) establishes measures for particularly vulnerable consumers (para 3)
 - *new provision: Union must prepare the energy market for integration of renewable energy and not vice versa*
 - *Social Protection Committee acts with regard to affordable energy for vulnerable consumers*



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Article 16 – Objectives and Action Plans

- Union obligation to define:
 - binding energy efficiency and energy saving targets for the Union as a whole
 - binding national energy efficiency and energy saving targets in view of achieving the Union's overall objective
 - obligations of the member states to adopt national energy efficiency and energy saving actions plans with appropriate measures
 - obligations of the member states to submit periodically a report on the progress

 - *safeguarding Energy Efficiency Directive (Art 3, Art 24) at treaty level*
 - *in addition: commitment instead of competence!*



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Article 17 – Measures of the Union

- explicit legislative competence for EP and Council regarding the promotion of energy efficiency and savings (para 1)
 - *Art 194 (1) c TFEU: “Union policy **shall aim to promote** energy efficiency and energy saving and the development of new and renewable forms of energy”*
- Commission obligation to aim at a high level of energy efficiency and energy savings (para 2)
- Union shall adopt support measures for consumer information (para 3)
 - *Additionally to Art 169 TFEU*



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Article 18 – Financing Instruments

- Union and MS shall take appropriate measures for increased investment in the use of energy from renewable sources, energy efficiency and saving
- Union shall provide itself with the means necessary to implement the targets and tasks using existing financing instruments
 - *New! Union today uses existing financing instruments (European Structural and Investment Funds, EIB)*



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Article 19 – State Aid

- Exemption from the notification requirement pursuant to Article 108 (3) TFEU, provided that they meet conditions for exemption under secondary law
- Commission shall exercise its discretionary power in terms of the targets incorporated in this Protocol (promotion of renewable energy, energy efficiency and energy saving)
- Emphasis on MS free choice of energy mix also within renewable energy



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Article 20 – Public Procurement

- MS obligation to ensure Protocol targets in the context of contract specifications, award criteria and conditions for the contract execution (para 1)
 - *Directive 2014/24/EU allows contracting authorities to levy certain environmental criteria; now obligatory! See also Art 6 Energy Efficiency Directive*
- If possible and appropriate in view of the relevant subject of the public contract, environmental characteristics of the works, goods or services, renewable energies must be taken into account (para 2)
- Evaluation of economically most advantageous tender shall primarily be based on lifecycle costing approach (para 3)
 - *Lifecycle costing approach as a compulsory criterion*



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Article 21 – Committee to promote environmentally friendly forms of energy

- An advisory committee shall be established, composed of representatives of the member states
- Consultation and participation rights, in particular with regard to the Commission



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Article 22 – International Agreements

- Self-Commitment of the Union and the member states to cooperation with IOs and third countries in the field of renewable energy, energy efficiency and savings
 - *Self-commitment gives added value compared to mere competence*

Article 23 and 24 – Ratification clause and Authentic Texts

Thank you for your attention!

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