

The European Energy Transition Protocol

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still an option in the face of multiple
crises?

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H A S L I N G E R
N A G E L E



What were the objectives then?

▪ 2016: **Energy Transition Protocol**

draft submitted by the Austrian delegation to the Council of the European Union, distributed by the General Secretariat's Note of 16.2.2016, 6125/16

- „*with the intention to secure safe, environmentally friendly and sustainable energy production in Europe, which guarantees **security of energy supply**,*
- *... in the context of responsible energy supply, private households require support in multiple ways (...) especially **consumers** who are in particular need of **protection**,*
- *... to **combat climate change** (and) to **reduce the Union's dependence on energy sources from unstable or exposed regions**“*

→ establishing **long term structures** for energy transition



What are the objectives now?

- **2022: Proposal for a Council Regulation** laying down a framework to accelerate the deployment of renewable energy
9.11.2022, COM(2022) 591 final
 - „*In order to tackle the exposure of European **consumers** and businesses to prices that are too high and volatile (...) and to increase **security of supply**, the Union needs to take further immediate action to accelerate the deployment of renewable energy sources...*
 - ... to put an **end to the dependency on Russian fossil fuels** while achieving the **transition towards a climate-neutral economy**“
- implementing **immediate** measures for energy transition



Strategies of the Protocol I

- **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 a separate legal entity; not necessary
 - Protocol to the TFEU – also **primary law**, **requires unanimity** / ratification by all member states
- thus establishing a **counterbalance to Euratom** instruments



- **Strengthening the legal anchoring** of the promotion of renewable energies, energy efficiency and energy saving
 - **Expanding** existing (mostly secondary or non-binding) standards and safeguards through primary law
 - **turning competences into commitments**
 - Introducing **new institutions and substantive rules**
- thus creating **added (legal) value for Renewables**



Structure of the Protocol

- 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



A broad agenda ...

- Adopts appropriate measures to promote energy savings and energy efficiency
- **Establishes binding targets** to achieve a gradual increase in the share of energy from renewable sources in the Union's energy consumption
- **Promotes research and innovation** in the field of renewable energy, energy efficiency and energy saving
- Promotes the development of the market for renewable energy
- Supports and promote collaboration among the Member States
- Cooperates with third countries and international organisations to promote energy efficiency and energy saving



What has happened since then?

- **REPowerEU Plan 2018**
- Directive (EU) 2018/2001 (**RED I**)
- May 2022: Proposal for an Amendment to RED I (= **RED II**) COM(2022) 222 final.

setting **binding EU targets**, aiming to **scale up, speed up transition**

BUT: no structural remedies /defence against weaponising of energy



What is needed now?

Proposal for Regulation 2022

- acknowledging „*overriding public interest*“ for production and distribution of energy from renewable sources, thus **allowing exemptions under EU-nature and water protection law**
- speeding up permitting procedures, **allowing exemptions from the EIA-Directive**

BUT STILL: no structural remedies /defence against weaponising of energy

REMEMBER THE PROTOCOL

- support and promote **collaboration** among the Member States
- **cooperate with third countries** and international organisations to promote energy efficiency and energy saving



Establishing a **framework** for

- promoting, coordinating, funding **research**
- setting **targets**
- establishing **financing** instruments
- securing **social protection** (affordable energy for vulnerable consumers)
- adapting **state aid** and **public procurement**-provisions
- concluding **international agreements**



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

→ *Modeled after the Euratom Treaty; added value compared to general research programmes in the TFEU; mere competence; here positive commitment, specified for renewable energy etc.*

*Amendment of Art. 2 REG. 401/2009 („Tasks of the environmental agency“)
necessary!*



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
- *Modeled after the Euratom Treaty; currently no corresponding provisions in the TFEU*



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*



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)*



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 to submit periodically a progress report
 - framework conditions to promote common projects between two or more
 - *safeguarding RED I and II at treaty level!*
 - *no watering down!*
 - *in addition: commitment instead of competence!*



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*



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!*



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)
 - *In addition to Art 169 TFEU*



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)*



Public Procurement

- MS obligation to ensure Protocol targets in the context of contract specifications, award criteria and conditions for the contract execution (para 1)
- 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*



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



- The **Transition** to Renewables needs to be **faster and broader**: **It's not only about speed, „it's about building an entirely different energy system“** (Prof. Jan Rotmans).
- Current EU-legislation focuses on short term emergency measures
- BUT: Successful transformation needs **long term strategies and instruments**, thus needs to be **institutionalised with a strong commitment**

An (updated) Energy Transition Protocol is still a viable option!

Thank you for your attention!

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