

Comments from Communicant on Decision V/9g of the Meeting of the Parties on compliance by the European Union with its obligations under the Convention

By: Pat Swords

Date: 31 August 2015

In Decision V/9g of the Meeting of the Parties¹, it was stated:

- *4. Expresses its concern as to whether letters will provide “a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs” and that it remains unclear how the Party concerned will “adapt the manner in which it evaluates NREAPs” in accordance with the recommendations of the Committee;*

While I would certainly agree with the above, it is also necessary to evaluate its context and as to whether it has actually been complied with. In response to the letter from the Compliance Committee in relation to progress on the findings on ACCC/C/2010/54, the EU Commission in its reply of the 17th October 2013² provided information on the letters it had sent to the Member States. These letters solely referred to Article 4 of the Directive on 20% Renewable Energy by 2020 (2009/28/EC)³ and the preparation of an amended NREAP, should the need arise. It being only under these circumstances, according to EU Commission, that the findings and recommendations on ACCC/C/2010/54 were valid. Note: Article 4 of Directive 2009/28/EC requires that:

- *4. A Member State whose share of energy from renewable sources fell below the indicative trajectory in the immediately preceding two-year period set out in part B of Annex I, shall submit an amended national renewable energy action plan to the Commission by 30 June of the following year, setting out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory in part B of Annex I.*
- *The Commission may, if the Member State has not met the indicative trajectory by a limited margin, and taking due account of the current and future measures taken by the Member State, adopt a decision to release the Member State from the obligation to submit an amended national renewable energy action plan.*

However, the indicative trajectory in Part B of Annex I is characterised, as the EU Commission admits, by a singular lack of ambition in the initial years and a steeply rising trajectory towards the end of the programme. This can be seen graphically in the European Environment Agency’s Report No 6/2014 “Trends and projections in Europe 2014: Tracking progress towards Europe’s climate and energy targets for 2020”⁴, see its Figure 5.1 overleaf:

¹http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9g_on_compliance_by_the_European_Union.pdf

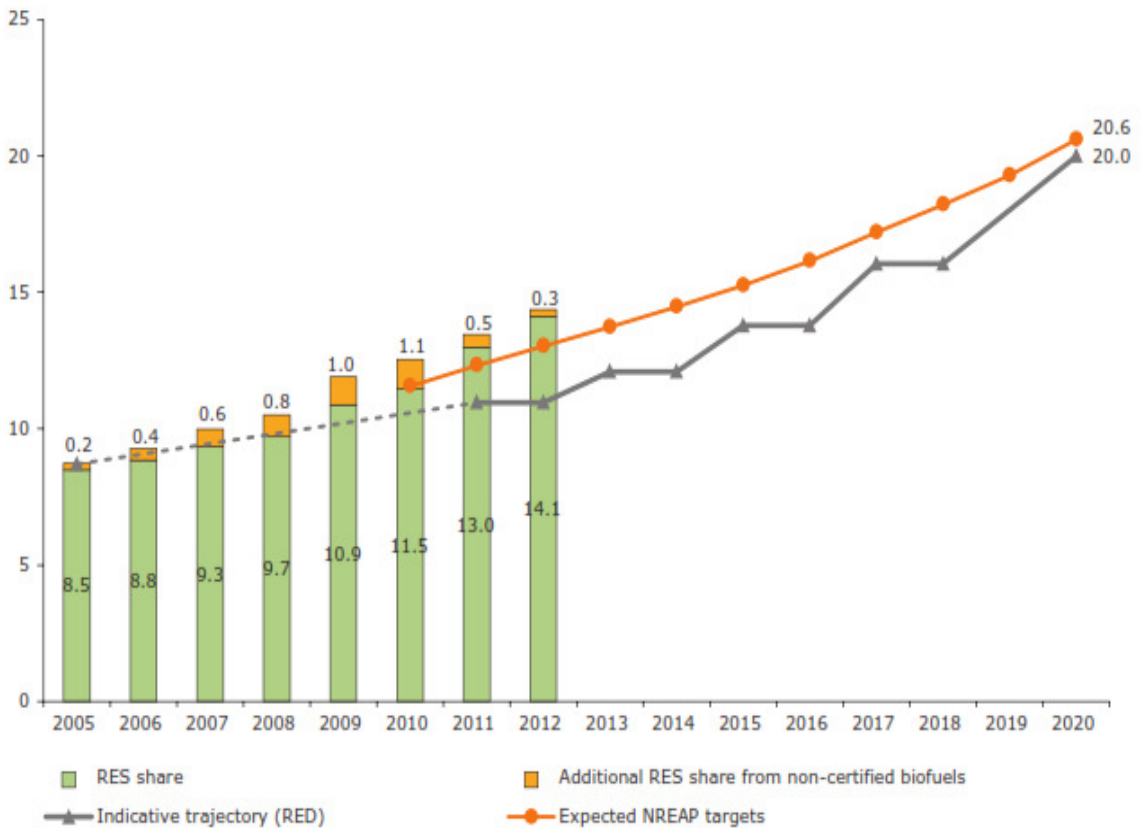
²<http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html>

³<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0028&from=EN>

⁴<http://www.eea.europa.eu/publications/trends-and-projections-in-europe-2014>

Figure 5.1 EU progress to interim and 2020 RES targets

RES shares in gross final consumption (%)



Note: The EU's indicative trajectory is calculated from all national indicative RED trajectories. The other trajectory represents cumulative expected realisations according to Member States' NREAPs. For a consistent comparison across years, this figure separately provides the RES shares accounting only for biofuels complying with RED sustainability criteria, and the additional RES shares due to the other biofuels consumed in transport. However, the RES shares in gross final energy consumption reported by Eurostat (SHARES Results 2012) takes into account all biofuels consumed in transport for the period from 2005 to 2010, and only biofuels complying with RED sustainability criteria for the years following 2011.

Source: EEA (based on RED and Eurostat SHARES Results, 2012) for the Indicative RED trajectory; Eurostat SHARES Results 2012 for the actual RES shares 2005–2012; NREAPs⁽⁵⁷⁾ (using gross final energy consumption after reduction for aviation in the energy efficiency scenario) for the period from 2010 to 2020.

However, despite the singular lack of ambition in the trajectories in the initial period, how are Member States performing? The EU Commission's press release of 16th June 2015⁵ clarifies:

- *25 Member States are expected to meet their 2013/2014 renewable energy national targets. 26 Member States met their 2011/2012 targets. Since the interim targets will become more ambitious over the coming years, some Member States may need to intensify their efforts to keep on track including the possible use of cooperation mechanisms with other Member States.*

However, if one cares to examine the detail in the European Environment Agency's report referred to previously, then this is provided in Table 5.3 overleaf:

⁵ http://europa.eu/rapid/press-release_IP-15-5180_en.htm

Table 5.3 Member State progress towards interim RES targets in 2012

	Interim RED target (%)	RES share (%)	Expected NREAP target (%)	RES share (%)	Overall progress in 2014
	2011–2012 average	2011–2012 average	2012	2012	2012
Austria	25.4	31.4	31.6	32.1	
Belgium	4.4	6.0	5.2	6.8	
Bulgaria	10.7	15.5	10.7	16.3	
Croatia	14.1	16.1	15.1	16.8	
Cyprus	4.9	7.3	7.1	7.8	
Czech Republic	7.5	10.3	10.5	11.2	
Denmark	19.6	25.0	24.2	26.0	
Estonia	19.4	25.7	22.0	25.8	
Finland	30.4	33.5	31.0	34.3	
France	12.8	12.4	14.0	13.4	
Germany	8.2	12.0	11.4	12.4	
Greece	9.1	12.3	9.5	13.8	
Hungary	6.0	9.3	7.4	9.6	
Ireland	5.7	6.9	7.6	7.2	
Italy	7.6	12.9	9.2	13.5	
Latvia	34.1	34.7	34.3	35.8	
Lithuania	16.6	21.0	18.0	21.7	
Luxembourg	2.9	3.0	2.9	3.1	
Malta	2.0	1.1	2.6	1.4	
Netherlands	4.7	4.4	5.6	4.5	
Poland	8.8	10.7	10.6	11.0	
Portugal	22.6	24.6	26.9	24.6	
Romania	19.0	22.1	19.0	22.9	
Slovakia	8.2	10.3	8.2	10.4	
Slovenia	17.8	19.8	18.7	20.2	
Spain	11.0	13.7	15.1	14.3	
Sweden	41.6	49.9	44.9	51.0	
United Kingdom	4.0	4.0	4.0	4.2	
EU	11.0	13.5	13.0	14.1	
Iceland	65.1	75.9	76.0	76.0	
Norway	60.1	64.5	62.7	64.5	

Note: RED: Renewable Energy Directive; NREAP: National Renewable Energy Action Plan.

In the coloured cells containing RES shares, a green colour indicates that the RES share was higher than the respective target, while an orange colour indicates a RES share being lower than the respective target.

In the last column, Member States are considered to be on track (green cells) if the RES share was higher than both interim targets. Member States are considered to be partly on track (light yellow cells) if, while the RED target was met, the NREAP target was not. Member States are considered not to be on track (orange cells) if the RED target was not met.

With regard to the calculation of its gross final energy consumption, Cyprus notified the EEA that it intends to make use of the derogation in Directive 2009/28/EC, which allows it to consider the amount of energy consumed in aviation, as a proportion of its gross final consumption of energy, to be no more than 4.12 %.

Source: EC, 2013i; EU, 2009b; Eurostat, 2014a and 2014b.

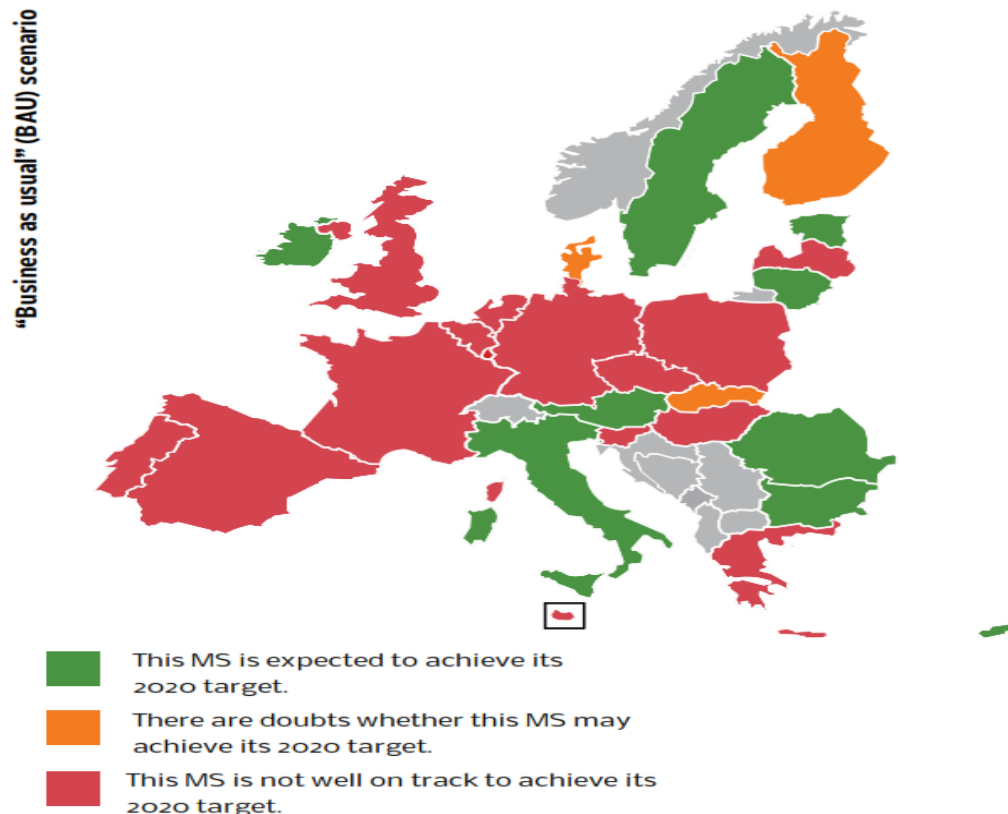
As can be seen from the above, three Member States failed to achieve their interim targets for 2011/2012. However, there is no indication that Article 4 of Directive 2009/28/EC was engaged and public participation completed on the amended NREAPs. Indeed, where does that lead us with the 2013/2014 interim targets? It is clear that even more Member States are failing to achieve the trajectories set for

them. This is not surprising given how dysfunctional the renewable programme was for the onset, in which it was never worked out what was to be built, where it was to be built, what were the impacts, what were the benefits, what were the mitigation measures, etc.⁶

There is a website funded by the EU's Intelligent Energy Europe Programme 'Keep on Track'⁷, whose function is to track the progress towards the EU's 20% renewable energy by 2020 programme, namely the implementation of Directive 2009/28/EC. Indeed, the website's press release of 6th October 2014 couldn't be clearer: "14 EU Member States will fail to meet their 20% renewables target by 2020, as progress stands today"⁸.

- According to the 2020 RES (Renewable Energy Sources) Scenarios for Europe Report, as it stands today, 14 Member States will fail to meet their 2020 RES targets and there are doubts about 4 other Member States reaching their target.

Consideration of their latest 2015 report⁹ shows the results in the figure below of the quantitative analysis of a Member State's ability to meet its 2020 target given the current 'Business As Usual (BAU)' scenario:



The traffic light colours of the figure on the left hand-side show an achievement or shortfall of 2020 RES targets by Member State. Note: Under current RES support frameworks and related parameters (BAU) case

⁶ <http://irishenergyblog.blogspot.ie/2015/04/cost-benefit-analysis-obligations-for.html>

⁷ <http://www.keepontrack.eu/>

⁸ <http://www.keepontrack.eu/contents/mediapressreleases/scenario-2020-press-release.pdf>

⁹ http://www.keepontrack.eu/contents/publicationseutrackingroadmap/eu_roadmap_2015.pdf

An examination Member State by Member State then follows in the “2020 RES Scenarios for Europe Report”¹⁰ published in June 2015, some points to note in relation to these Renewable Energy Sources (RES) targets being:

- *France shows severe deficits regarding its 2020 RES target achievement. For a target of 23% renewable energy, current renewable energy sources amount to about 15% and a deficit of 4.4% is predicted under the BAU scenario.*
- *For Germany it cannot be expected that the given 2020 RES target (18%) will be achieved under baseline conditions, i.e. if currently implemented RES policy measures are kept in place. Note: Not included in this report was the reform of Germany’s renewable supports (EEG) in August 2014, which reduced significantly the previous generous renewable subsidies, given soaring electricity prices amounting to a doubling of electricity rates, since these renewable supports were introduced in 2000.*
- *The modelled BAU case for Greece shows a declining RES share from 15.0% in 2013 to 13.7% in 2020. Thus, the target of 18% in 2020 will be failed considerably by 4.3 percentage points. Given Greece’s economic problems, slashing renewable subsidies was the only realistic option available to its administration.*
- *Poland is a Member State where the achievement of its 2020 RES target cannot be expected under baseline conditions. Note the report predicts a renewable energy share of 13.7% under the business as usual case versus a target of 15% set in the EU Directive. 90% of Poland’s electricity comes from coal and the Polish Prime Minister Donald Tusk has it made it clear that the Polish economy will continue to be based on coal¹¹. Poland has never implemented generous support schemes for renewables.*
- *In terms of stagnating RES deployment in previous years Spain is expected to fail in achieving its 2020 RES target under baseline conditions. Note the report predicts a renewable energy share of 14.7% under the business as usual case versus a target of 20% set in the EU Directive. Generous renewable energy subsidies in Spain had to be slashed due to soaring electricity costs and worsening economic conditions. Not a single MW of wind energy has been installed so far in 2015 in Spain.*
- *2020 RES target achievement is not likely for the UK under baseline conditions. Note the report predicts a renewable energy share of 8.9% under the business as usual case versus a target of 15% set in the EU Directive. In mid-July 2015, the new UK Conservative Government slashed renewable subsidies, so this BAU case most certainly does not apply anymore.*

If we go back to the previous mentioned 2014 report of the European Environment Agency, in respect to the growth rates in Renewable Energy Sources (RES) required by Member States:

¹⁰ <http://www.keepontrack.eu/contents/publicationsscenarioreport/kot--2020-res-scenarios-for-europe-tu-wien-june-2015-final.pdf>

¹¹ <http://www.thenews.pl/1/12/Artykul/146850.-Poland-will-stick-with-coal-PM-pledges>

- *By 2020, Ireland, Luxembourg, Malta, the Netherlands, Portugal and the United Kingdom need to achieve absolute RES growths that are four to seven times higher than the absolute increases these countries achieved between 2005 and 2012. Belgium, Croatia, Cyprus, France, Greece, Hungary, Latvia, Romania and Spain also need to achieve absolute growth two to three times higher compared to the period 2005 to 2012.*

In reality, despite the EU's projected trajectories requiring a rapid rise in deployment of renewable energy from the current position we are in in 2015, the whole renewable programme right around Europe is 'running into a wall', related not least to the huge costs, both financial and environmental.

So if Member States are clearly not meeting their trajectories, a position which will only worsen over the next while, then why are the public not being provided with their opportunity to participate on amended NREAPs? Clearly the EU Commission is not living up to the commitment it gave the Compliance Committee in October 2013, not to mention completely failing to comply with its obligations under the Convention in the first place.

There is, as documented in ACCC/C/2014/112, clear evidence in relation to the Irish NREAP, that it is being significantly amended based on the progress reports sent to the EU¹². Again, this is bypassing the requirements for public participation.

Finally, if we consider the EU Commission's June 2015 Renewable energy progress report {SWD(2015) 117 final}¹³, then this refers to "Regulatory fitness and performance: results and next steps" (REFIT) review completed of the Renewable Energy Directive. Not a single mention is made of public participation. A more detailed analysis of this REFIT report itself¹⁴ does reveal that it links Article 4 of the Directive with the concept of 'transparency'. However, this is clarified within the relevant EU Commission's report:

- *transparency for investors and other economic operators*

¹² See answer to Question 2 on page 7:

http://www.unece.org/fileadmin/DAM/env/pp/compliance/Pre-admissibility_communications/Ireland_European_Platform/frComm_response_to_Committees_questions_01.12.2014.pdf

¹³ <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-293-EN-F1-1.PDFc>

¹⁴ https://ec.europa.eu/energy/sites/ener/files/documents/CE_Delft_3D59_Mid_term_evaluation_of_The_RED_DEF.PDF