

A New Regulatory Design used by the EU

- with the promotion of renewable energy as an example

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Abstract:

The World Commission on Environment and Development highlighted in its Report "Our Common Future" (1987) the need to ensure sustainable development by the laws and other regulatory instruments in the area of energy. Several challenges are, however, decisive for a shift to a new regulatory design, at the EU as well as at the national levels.

This paper will paint a picture of the "regulatory-design" used by the EU in the promotion of renewable energy - with the Renewable Energy Directive (RED) as the key directive. It is related to the question in the call for papers: What are the implications for Directive driven legislation in the area of energy generation and transportation, and adjusting the atmospheric signature of industry and agriculture?

The regulatory design used by the EU rests on resource saving concepts covering both command-and-control regulation and that of framework setting for voluntary actions. Each Member State (MS) is subject to individual, quantitative reduction commitments on economic, social and environmental criteria set out in an annex. They have an obligation to take appropriate measures to ensure the implementation and effective effect of the RED as well as other EU law. The RED is a comprehensive activity-based instrument regulating resource use. It covers all forms of RES-technologies and all types of energy generation. It was adopted on the basis of the EC Treaty's environmental rule (minimum harmonization) as well as on the provisions on the internal market (total harmonization). The interplay between the RED and several instruments (e.g. the EU ETS Directive, Energy Performance of Buildings Directive, Fuel Quality Directive, Industrial Emissions Directive, Regulation on Common Rules for direct Support Schemes for Farmers, and NATURA-2000 networks directives) is an example of a horizontal coordination. The RED is also ensuring vertical coordination established by the binding sustainability criteria that biofuels and bioliquids must adhere to in order to be counted in as contributing towards the mandatory 10% target. The criterion mentioned includes references to the Ramsar-Convention, the Biodiversity-Convention, the UNFCCC/Kyoto Protocol and other international instruments. Sustainability characteristics would have to include information on the country of origin of the feedstock.

The MSs have procedural and organizational autonomy. Also the principles of subsidiarity and the shared competences between the EU and the MSs have to be remembered. The legal cultures of the different MSs are diverse – will the described regulatory design be useful at the national level? As part of the fulfillment of their performance, the MSs are allowed to use the cooperation mechanisms established by the RED. Is such an alternative fulfillment relevant at the national level?

References:

Hans Christian Bugge and Christina Voigt (2008), *Sustainable Development in International and National Law*, Amsterdam