

A new harmonised EU 27 Trade in Green Certificates as Guarantees of Origin

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The Setting towards Green Certificate Trade – the new Directive Proposal

- “The Renewables Directive aims to set the differentiated national binding targets for renewable energies.
- To ensure cost-effectiveness, it proposes a trading system in Guarantees of Origin.”
- See: Council of the European Union, Brussels, 4 April 2008 - 8085/08 - Note from the Presidency of the Council to the Council Members

Definition of goods

- Trade = free movement of goods originated in the Member States (MS), or originated in third countries which are in free circulation in the Member States = one of the fundamental principles of the Treaty (Article 23 ECT).
- European Court of Justice defines goods as “products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions” Commission v Italy (Italian Art Case) 7/68 [1968] ECR 423
- GoO fall under such category: sales and purchase of GoO is trade

The new trade paradigm in the new Directive Proposal

- A new – double - trading approach:
 1. Trade between Governments - Article 9 Paragraph 1
 2. Trade between Persons - Article 9 Paragraph 3

Both trade options focus on trade in Guarantees of Origin (GoO)

I. Trade between MS

- GoOs can be accounted for target reaching in another MS than the one where the renewable energy has been produced
- Sole pre- condition: So-called “trajectory” interim targets of the selling MS are met or even exceeded, in the previous two year evaluation period just before transfer of GoO to an other MS
- Transferred GoO will be cancelled in the receiving MS (Article 8 (1)a)

II. Trade between Private Persons -Traders or individual installations -

- Art. 9 (3)
- and Art 8 (1) b
- introduce principle for the EU 27:
- that GoOs reflecting production of RES in one MS can be sold directly to another MS

GoO are trade good - independent from the RES product

- Art. 9 (3), 2nd sentence : Transfer of GoO between persons of different MS may be separated from any transfer of related energy

The new importance of GoO in EU 27

- GoO as such were already introduced with Directive 2001/77/EC on the promotion of RES in the internal electricity market and Article 5
- **But. GoO in Directive 2001/77/EC are not tradable green certificates:**
- Recital (11):” It is important to distinguish guarantees of origin clearly from exchangeable green certificates.”
- **And they do not count automatically or as a rule for target fulfilment**
- Recital (10) (1): “This Directive does not require Member States to recognise the purchase of a guarantee of origin from other Member States or the corresponding purchase of electricity as a contribution to the fulfilment of a national quota obligation. “
- Sentence (3): “Schemes for the guarantee of origin do not by themselves imply a right to benefit from national support mechanisms established in different Member States. “
- This is now different: GoO are now per legem tradable green certificates in **the EU 27 and they count as contribution to the national target** of the country where they will be cancelled, again in EU 27.
- And Directive 2001/77/EC explicitly clarifies the validity for national only support mechanism for reasons of environment, climate and thus targets

Harmonisation of GoO trade

- Not only are GoO with this proposal
- tradable Green Certificates
- linked to achieving the MS targets
- framed in a new trade regulation
- But also is the Directive Proposal
 - Introducing a **harmonised** trade directive for GoO trade in the EU 27

Consequence of Harmonisation

- Any future justification or approach of a MS to opt out from this trade, to maintain its own national support mechanism
- is creating a barrier to trade of GoO
- can only be based on the specific exemptions provided for in the Directive Proposal and Article 9 Para 2
- No recourse to the broader application of Article 30 ECT outside this scope possible

A certain Omission by the Commission

- For:
- Not having clarified the direction of EU 27 in establishing harmonised trade in certificates and
- Not having assessed the impact
 - in looking also for alternatives such as
 - harmonised feed-in for EU or
 - alternatives in harmony with the open system approach of the current Directive 2001/77/EC
- Not having enough reflected on required rapidity for RES deployment, on security of sustainable energy supply, on security of investment and security of broad RES technology deployment in EU 27

Certain inconsistency as consequence

- **SEC(2008) 57 Commission Staff Working Document –” The support of electricity from renewable energy sources” – page 14 :**
 - The Commission considers that it is currently “inappropriate” to harmonise European support schemes
 - The experience with quantity-based and price-based instruments “does not allow picking a winner”
 - The introduction of one harmonised system would create a lot of uncertainty and disruption in the market for renewables, as it would abolish well-established national support schemes.
 - In a harmonised system- “ difficult to differentiate between different costs for different technologies in different countries”. If this is the case, additional support measures would be needed for technologies which are still relatively far from producing renewable electricity at market price.
 - National support schemes are often designed so that they also promote regional development. Harmonisation might oblige Member States to find other ways to promote regional development.
- **So, what happened after this evaluation ?**

■ Thank you for your attention !

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