

Petition

on violation of Regulation 1698/2005EC and Directive 2009/28/EC in Bulgaria

Abstract

The petitions points to a violation of Regulation 1698/2005/EC and Directive 2009/28/EC on behalf of Bulgarian national authorities through introduction of §18 of the Final and additional provisions in the Bulgarian Energy act.

The legislative amendments introduced by Bulgarian authorities ended a notified and approved by EC “support scheme” as within the definition of art. 2 of Directive 2009/28/EC by withdrawing the right to sustainability for 324 small operating photovoltaic plants. This violation is against the objectives of Directive 2009/28/EC for promotion of renewable energy, and spiked investor confidence in such endeavors. The result is very few new renewable energy sources and a striking difficulty for Bulgaria to meet its target under the Directive!

Facts

Since its entry in the EU, Bulgaria has introduced a number of support schemes for promoting the creation of Renewable Energy Sources(RES). The most support schemes were the preferential price for energy produced by RES. The prices were adjusted with decisions by the Bulgarian Energy and Water Regulatory Commission(KEBP). This support schemes were notified and approved by EC (under number: SA.44840 (2016/NN)). Bulgaria has decided to arbitrarily end this support scheme for 324 small RES, on the basis that they received funding for opening new work places in rural regions(under Measure 311,312). This was done even though its in direct violation of EU law. All 324 companies had purchasing contracts with fixed price for 20 year period. The aforementioned change in the Bulgarian Energy Act annulled them, forcing all enterprises to suffer net loss, and many of them to bankrupt(while others are in procedure of insolvency at the very moment).

Legal Breach

The introduction of §18 of the Final and additional provisions in the Bulgarian Energy act led to suspending of 324 signed contracts for purchasing of electricity power produced by solar plants on preferential prices, and sets a new purchasing price which effectively lead to shutting down these enterprises. This policy is a direct breach of Article 1 of Directive 2009/28/EC and §25 of its Preamble which states that Member states must “*guarantee the proper functioning of national support schemes, as under Directive 2001/77/EC*”. The case law of the CJEU, states that the fulfillment of the business plan of an enterprise enjoying a support scheme for green energy also entails the concept of legitimate expectations which can

be seen at §103 of Case C-573/12. The same reasoning is also presented in the opinion of AG Bot on the same case. CJEU holds firmly that fixed prices are not to be changed in any circumstances. However, this was not taken in mind by Bulgaria, which decided not only to neglect but to outright disregard this.

The change in the Energy Act also infracts §23 of the preamble of of Regulation 1698/2005EC , as well as §35 of the same Regulation as all these solar plants received European aid under Measures 311 and 312 from the 2007-2013 framework, with the objective of creating new work places in rural areas.

This program was adopted on the condition that these project are viable and sustainable which is evident from Article 16(2) the Bulgarian Ordinance 25 on the conditions and order for presenting grants under measure 312 which states: that economically viable means: *“generating income from the activity, guaranteeing sustainability for the enterprise for the period of the business plan”*. The period of activity of these projects is fixed to 20 years, and they have suffered a great loss for the past 3 years, which is ongoing. In essence, money payed by the European taxpayers was wasted, because of a frivolous decision by Bulgaria, to amend its legislature in an unacceptable way, against the objectives of Directive 2009/28/EC (§25 of preamble), and against the general principle of legitimate expectations.

Lastly it should be noted that the adopted amendment in the Energy Act is discriminatory and violates Article 21 of the EU Charter of Fundamental Rights. This is so, due to the nature of the provision which is targeted at a numbered group which passes the so-called Plaumann test (the *“decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed.”*)

The bigger picture

The lack of viability and sustainability of supported photovoltaic plants must be considered in the context of breaching the objectives of the Directive referred to in Article 3 which the Bulgarian State has failed to fulfill. This is especially disturbing as according to Directive 2009/28/EC each Member State must set national target for production of renewable energy, and adhere to promoting it. However, new findings in the report of Bulgaria to the European Commission under its obligation stemming from Article 5 from Regulation 1099/2008 suggests serious mismatch between the declared objective by Bulgaria and their real actions. This suspicion arises from serious discrepancies between the declared statistical data and other statistics for national use, as well as the unprecedented idea to declare all the harvested and realized wood in Bulgaria for the annual period(regardless of its use), as one of the sources for renewable energy.

Proposed resolution



Съюз на европейските производители на зелена енергия

We the Union of European Green Energy Manufacturers request you to start a procedure under 226 TFEU. The temporary Committee of Inquiry shall investigate the malpractices of Bulgaria regarding the proper implementation of European Law and the breach of Bulgaria of its energy goals as declared under Directive 2009/28/EC.

This is not an isolated incident, but a established pattern of behavior by Bulgarian authorities . Attached we enclose a letter from a Bulgarian NGO (Коалиция за климата/ Climate coalition), regarding the statistical manipulation of the data for renewable energy consumption in Bulgaria. The unveiled findings show a firm dedication in evading the promotion of Green Energy production in Bulgaria.

For all of the aforementioned reasons we urge you to take action and start a procedure under 226 TFEU.