



29.2.2016

NOTICE TO MEMBERS

Subject: Petition No 2520/2014 by Miguel Angel Martínez Aroca (Spanish), on behalf of the Asociación Nacional de Productores e Inversores de Energías Renovables (ANPIER) [National Association of Renewable Energy Producers and Investors], on the situation of the photovoltaic sector and the legality of the changes made to the law by the Spanish government

1. Summary of petition

The petitioner wants the European Parliament to investigate the situation that has been created in the photovoltaic energy sector as a result of the changes made to the law in Spain in recent years. The most effective regulation for promoting renewable energies in Spain was that enacted under Royal Decree (RD) 661/2007, which effectively introduced the FIT “feed-in tariff” scheme of premiums for generating electricity. 2008 brought new regulations limiting the remuneration of renewable energies, initially only for solar photovoltaic (PV) power facilities, but subsequently extended to cover all renewable energy sources. In 2009 the cost of the premiums payable on solar PV energy accounted for 45 % of the total cost of special regime premiums, but solar PV energy was the source of only 9 % of the electricity generated with renewable energies. A first change was made to the legislation under RD 1578/2008, which regulates the remuneration of electricity generation for new solar power plants using photovoltaic technology. A second change was made to reduce the costs of the special regime under RD 6/2009 of 30 April 2009, which adopted a number of measures relating to the energy sector. This decree set up a register to control upcoming planned facilities and access to the electricity system. Facilities had to be registered in order to benefit from the financial system provided under the special regime, and had to meet a series of technical and economic criteria in order to be included on the register. There was also a technology criterion for registration until the installed capacity targets set in the Spanish Renewable Energy Plan PER 2005-2010 then in force were met. In 2010 a number of changes were made to the legislation between 19 November and 23 December, bringing in retrospective cuts in the remuneration for solar photovoltaic, wind and solar thermal power. These included a change to the remuneration of reactive power, a reduction of the remuneration period to 30 years in the case of solar PV energy, a restriction on the annual number of premium-remunerated hours for

wind, solar thermal and solar PV power plants, a 35 % reduction in the premiums payable to wind power facilities in 2011 and 2012, and severe cuts for solar PV energy of up to 45 % of the remuneration. These restrictions were introduced in several Royal Decrees: RD 1565/2010 of 19 November 2010 limiting the period for the remuneration of solar PV energy to 25 years, and cutting the premiums for small rooftop installations by about 5 %, large rooftop installations by about 20 % and ground-mounted installations by about 45 %; RD 1614/2010 of 7 December 2010 regulating and modifying certain aspects of the generation of electricity using wind and solar thermal power; RD-Law 14/2010 of 23 December 2010 adopting urgent measures to correct the tariff deficit of the electricity sector. The biggest legislative change, bringing a complete reversal of the philosophy of special regime remuneration, was that enacted under RD-Law 1/2012, which applies to all new facilities and abolishes the economic regime regulated under RD 661/2007 (the FIT feed-in tariff scheme). The preamble to this urgent Decree refers to the high tariff deficit that could jeopardise the sustainability of the electricity system; the complex economic and financial situation for maintaining the incentives to renewable facilities; the excess installed generating capacity sufficient to ensure that demand is met; the fact that in 2010 a number of technologies (wind power, solar photovoltaic and solar thermal power) had exceeded the targets of Spain's Renewable Energy Plan 2005-2010, and achieving Europe's renewable energy targets for 2020 was possible. The Decree stresses the temporary nature of these measures. A number of regulations concerning special regime electricity generation were issued during 2012. These included a new tax on electricity generation levied on all sources of generation alike, and the abolition of the option to sell on the market for facilities covered by the special regime. On 14 September 2012, the Spanish government presented a bill of tax measures relating to the electricity sector. This draft legislation includes a tax on the sale of electricity at a fixed rate of 6% for all types of technologies, both conventional and renewable. The tax applies not only to new but also to existing facilities, and is therefore yet another retrospective measure. The latest regulation is described in yet another Royal Decree-Law, No 2/2013 of 1 February 2013, adopting urgent measures relating to the electricity system. The main changes are as follows: the option of sale on the market plus premium is abolished. The method for adjusting the remuneration of renewable energies is changed; the adjustment will be made by applying an index that does not include food and energy products, instead of the general consumer price index. Lastly, in the course of 2013 several drafts on the reform of the electricity sector envisaged various changes in the premiums on renewable energies, the reduction of the tariff deficit and the regulation of self-supply.

2. Admissibility

Declared admissible on 20 July 2015. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 February 2016

In previous 'EU semester' recommendations to Spain, the Council emphasised the need for Spain to make the structural and comprehensive reforms to the electricity sector necessary to address this tariff deficit.

Through its November 2013 Guidance on support schemes, the Commission has outlined best practices in the design of support schemes including, inter alia, that support schemes should be limited to what is necessary, be flexible and able to respond to falling production costs in

order to ensure certainty for investors. In addition, support schemes need to be compatible with the Guidelines on State aid for environmental protection and energy in as far as they constitute state aid.

The Commission has considered the petition carefully and does not believe that under Directive 2009/28/EC there are grounds for the Commission to take legal action against Spain with regard to the changes in their legislation affecting the level of support given to investors in renewable energy projects. In particular, pursuant to Article 3(3) of Directive 2009/28/EC, support schemes are but one instrument that can be chosen by Member States to achieve the binding national targets established by the Directive for the share of renewable energy in gross final energy consumption as well as in transport in 2020. Member States retain full discretion over whether they use support schemes or not and, should they use them, over their design, including both the structure and the level of support. This comprises the right for Member States to enact changes to their support schemes, for example to avoid over-compensation or to address unforeseen developments such as a particularly rapid expansion of a precise renewables technology in a given sector.

In addition, according to Article 3(2) of Directive 2009/28/EC, the main condition for the design of measures such as support schemes is that Member States ensure that the share of renewable energy equals or exceeds the indicative trajectory set out in Part B of Annex I of the Directive itself. According to the data made available by Eurostat, Spain is meeting this condition as its renewable energy share is above the one determined in the relevant indicative trajectory.

Therefore, in cases of changes to a support scheme as such, there is no breach of Directive 2009/28/EC.

If investors consider their legitimate expectations to have been breached, they may seek judicial review before the national courts.

Conclusion

The Commission considers that there is no breach of Directive 2009/28/EC regarding changes to a support scheme as such.