

Political conflicts over EU renewable energy policy, 2010-17

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Which conflicts?

- Conflict over who may legislate on RES-E support? Parliament+Council or DG COMP?
- Conflict over the content of the 2014 COM Guidelines on State aid for environmental protection and energy 2014-2020
- Conflicts over content of upcoming Renewable Energy Directive (RED) 3 (proposal Feb 2017)
- RES-E and coal phase-out/Paris Agreement and IED 2017

Claude Turmes (2017), Transition énergétique

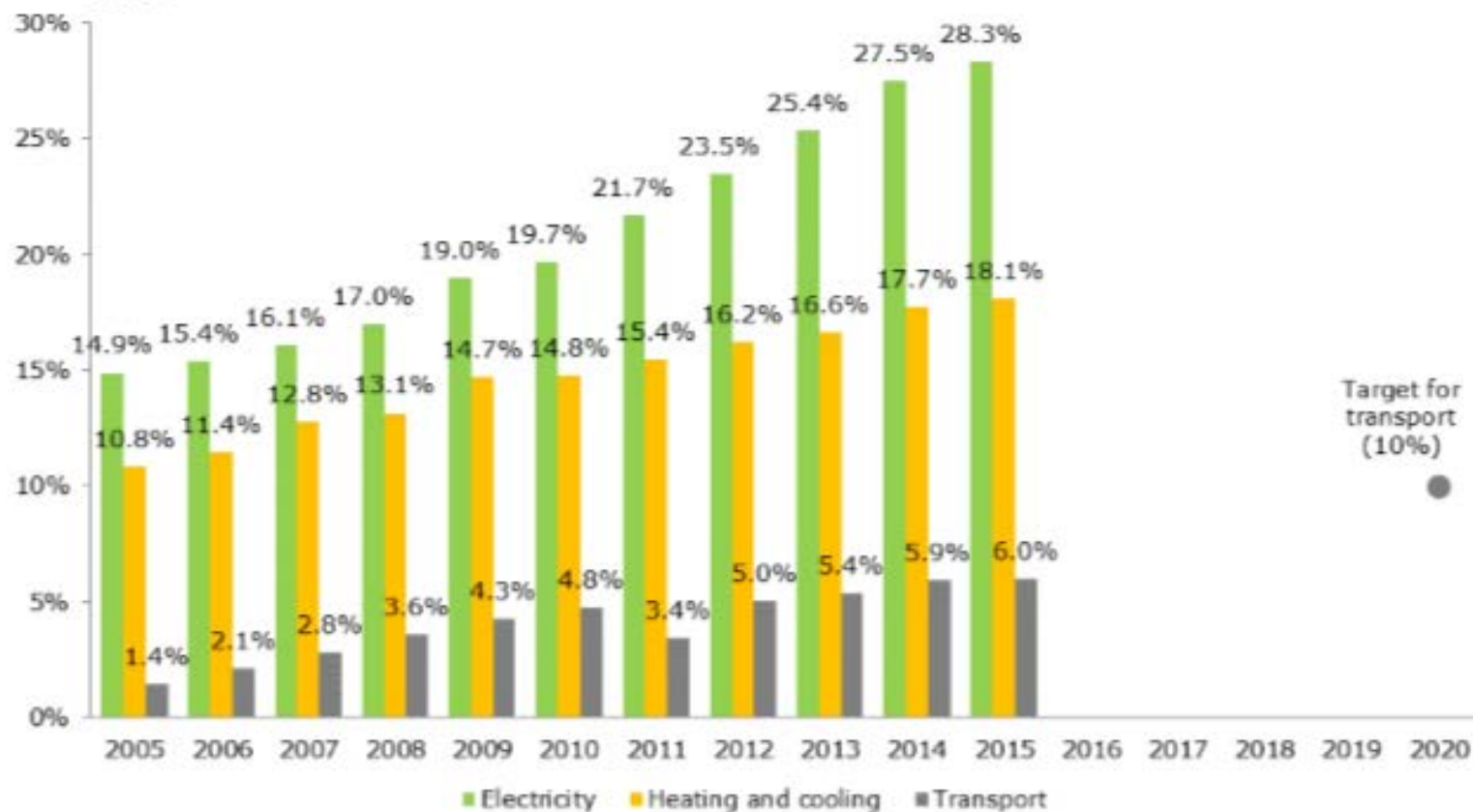
- My interest is to understand how RE policy actually works on the ground
- Difficult to find sources on inside struggles, but happily I found a book by Claude Turmes, long a central MEP for RE, with a key role in RED 2 (2009)
- Certainly he was and is not above the struggles but took intensely part in them
- I am always on the lookout for other sources

Background 1: The heritage of RED 2 and the new 2010 COM

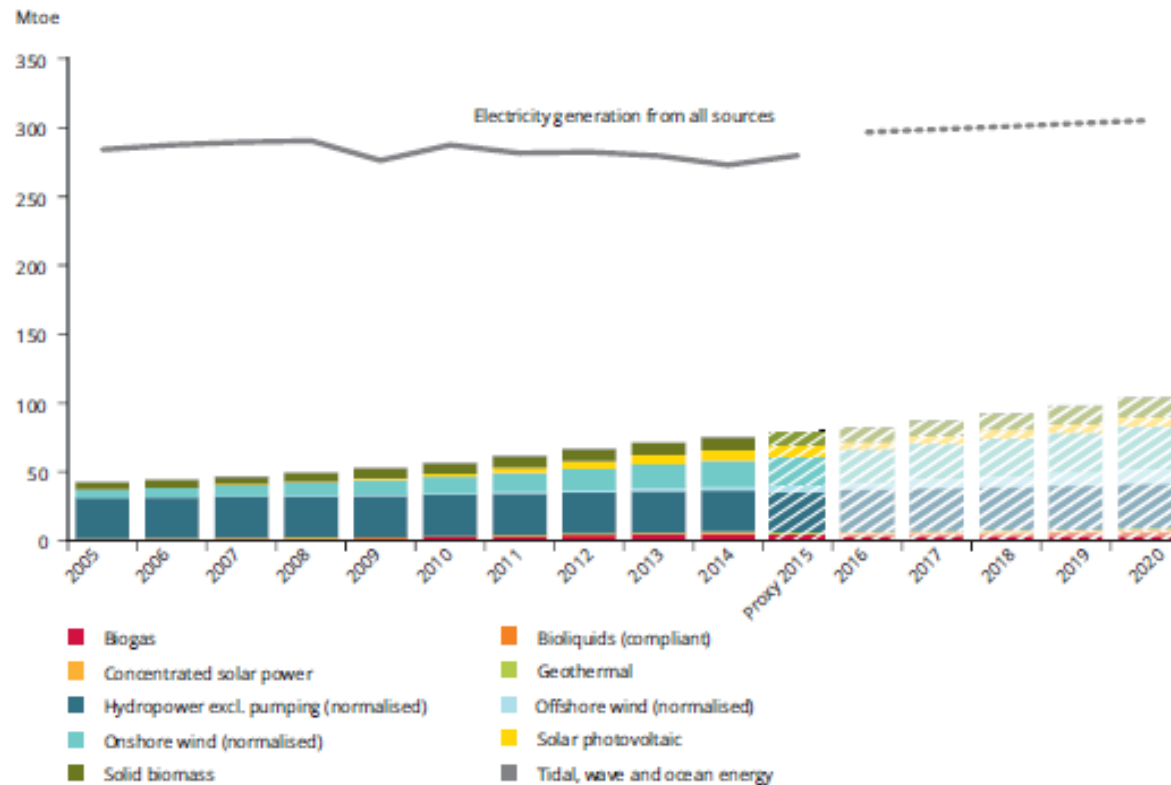
- The first half of the 2010s were a time both of faster RES-E growth – legacy of Renewable Energy Directive RED 2 (2009) – but also of RE policy rollback.
- The co-decision process for Renewable Energy Directive 2 (RED 2) in 2009 brought the defeat of a harmonised quota/certificate proposal among MS supposedly tolerant of national FITs but actually undercutting them; collapsed politically in scrutiny invited by Energy Commissioner Piebalgs
- RED2 support rules were then effectively drawn up by EP (Turmes) and Council (DE-UK-PL): FITs, priority grid access and binding national targets stepped up RES-E deployment (slide 4)

Figure 4.3 Shares of energy use from renewable sources by sector in the EU

Share of energy from renewable sources in gross final energy consumption, per sector

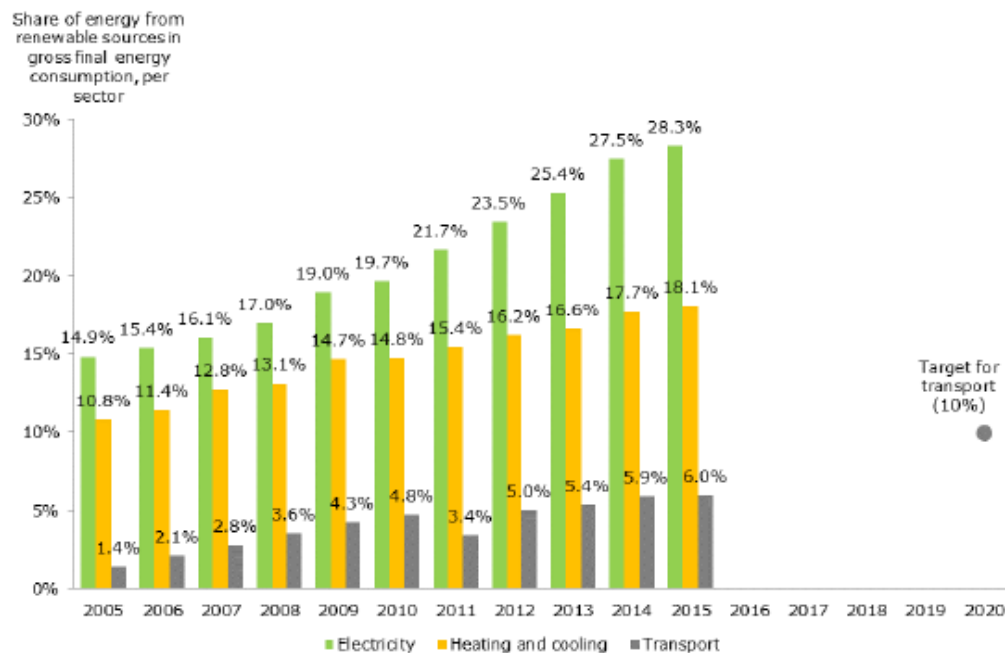


RES-E generation in the EU-28, 2005-2014



Source: European Environment Agency (April 2017) Renewable Energy in Europe 2017, p.15

Figure 4.3 Shares of energy use from renewable sources by sector in the EU



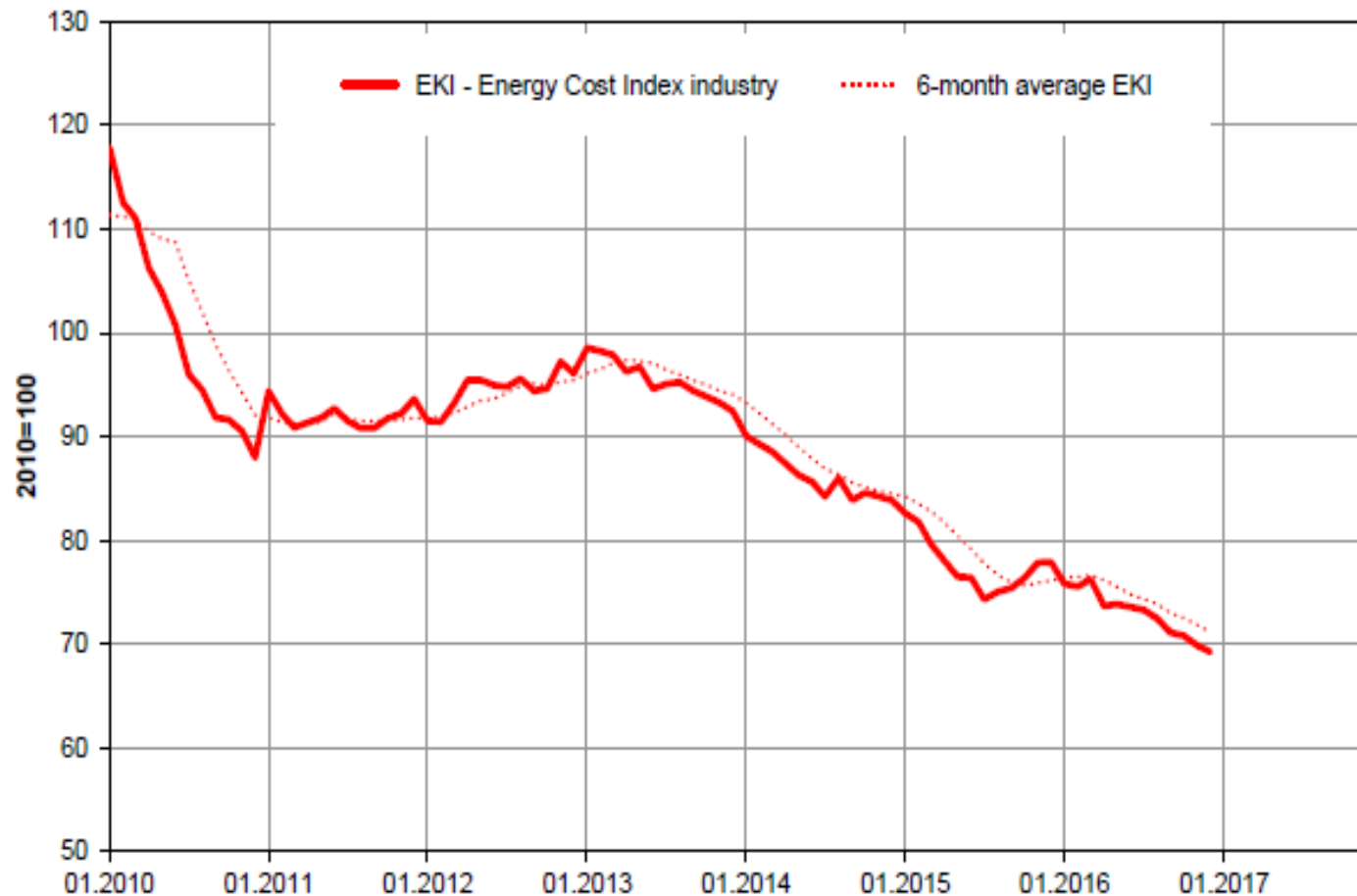
Note: Percentages indicate the share of energy from renewable sources in gross final energy consumption of the corresponding sector. The 2015 data are approximated estimates from the EEA.

Source: EEA (2016) Trends and projections in Europe 2016 - Tracking progress towards Europe's climate and energy targets

Background 2: Efforts at slowdown under Barroso and Oettinger, 2010-14

- This state of affairs irritated many political actors: The new 2009 German (CDU-FDP) govt with its plans to extend nuclear power; the new UK govt/Cameron with even more ambitious nuclear goals; DG Comp for ideology and status; conventional utilities ...
- With Energy Commissioner Oettinger (2010-2014), DE govt - before Fukushima and Merkel's U-turn to Energiewende - nominated an outspoken anti-RE, pro-nuclear politician who was seeking to contain RE deployment
- Utilities (Magritte group) and top industry associations concoct the new myth of deindustrialisation in Europe due to the high cost of renewables to industry (but see slides below). Serves power grab of DG Comp on RE policy – an opportunity to get back at FITs

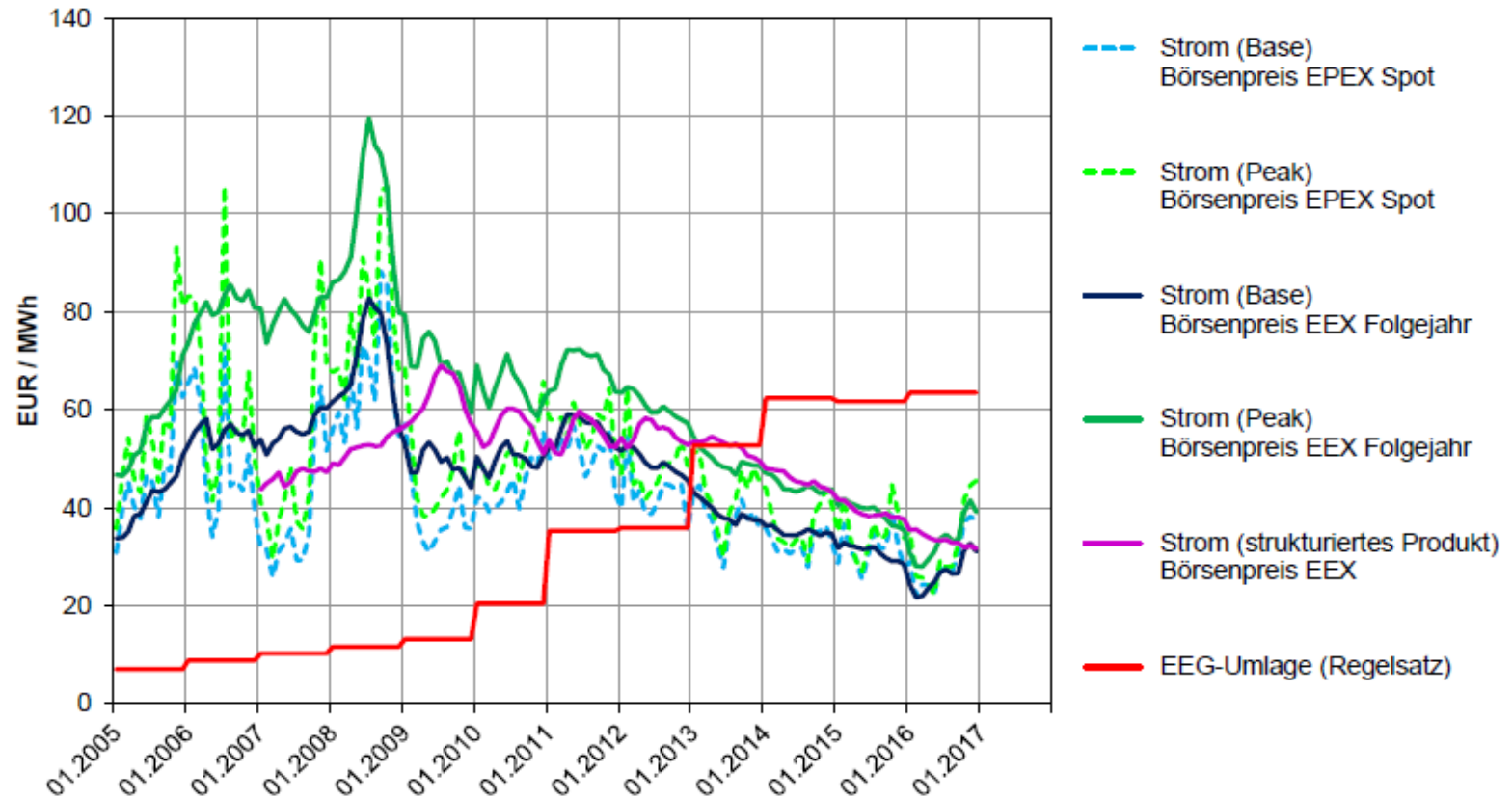
Fig. S-1:
Evolution of EKI–Energy Cost Index for German industry, 2010 - 2016



Source: Öko-Institut und DIW Berlin (2017): EKI – Der Energiekostenindex für die deutsche Industrie (Bericht 2017/03, 30 June 2017)

Fig. 2.:

Evolution of wholesale prices for electricity and the EEG surcharge, 2005 - 2017



Source: European Energy Exchange (EEX), European Power Exchange (EPEX), Bundesministerium für Wirtschaft und Energie (BMWi), cited in: Öko-Institut and DIW Berlin (2017)

Background 3: The Juncker years from November 2014-2019

- Juncker COM much more favourable to renewable energy. His major project - European Energy Union – assigns key role to RE
- Faces difficult heritage and national divergences. Cameron going for nuclear against RE; PL PiS govt trumpist before Trump, even tries to undercut Paris agreement in 2017; Merkel govt rejoins Eastern European “coal” govts on IED in 2017
- The myth of deindustrialisation due to RE cost to industry weakens only after the middle of the decade. Many energy CEOs less hostile to now RE than in Magritte days (Franco Starace ENEL/2017 head of Eurelectric – “why not 30% RE target”; Make Energy Clean Charter 2017 (Euractiv, 2017) signalling alliance RE-gas against coal
- This COM submits proposals for RED3

Back to 2010-14: Attacks by DG COMP and Oettinger on feed-in tariffs

- In the early 2010s, DG Energy and DG Comp considered to scrap RE support schemes and to rely on ETS only (supposedly more efficient, despite ETS' chronic failure) to stimulate RE. At Euro 5/ton? Instead of Euro 30 as promised...
- Proposal for harmonised TGC/quota scheme was then pondered but rejected (would have been 3rd)
- Eventually, COM let DG Comp – long hostile to FITs - regulate (legislate?) on RE support schemes dressed as new state aid guidelines on the subject
- Such guidelines existed before – parallel to RED1 (2001) and RED2 (2009) but not of such high rank

DG Comp's power grab

- In 2013, DG Comp submitted draft guidelines that specified which RE support schemes submitted to its scrutiny (as state aid) during 2014-2020 it would approve or reject – practically invalidating the relevant rules of Renewable Energy Directive 2009 which expires only at end of 2020)
- DG Comp specified e.g. that it would no longer accept FITs (one of chief instruments of the 2009 Directive); temporarily tolerate self-styled market instruments; and for the future insist on technology neutral tenders (Guidelines 3.3.2.1) (REFER TO DRAFT GUIDELINES details)
- Upon Turmes' intervention (p. 184), it added a *de minimis* rule: Aid may be granted without competitive bidding to small installations up to 1MW, and 6 MW or 6 generation units in the case of wind (Guidelines §127, 2014)

SKIP?

The purposes of tenders

In the context of the mid-to-late 2010s, RES-E tenders will

- bring down prices and communicate an exaggerated picture of this decline (2-8 years from tender to completion!) Remarkably successful so far for wind (on/offshore) and PV (Agora Energiewende, 2017)
- restrict competition for RE support in favour of corporate actors often long opposed to energy transition and with excess generation capacity on their hands, for whom the complex, expensive bidding process is a lesser hurdle
- slow down RES-E deployment through caps
- hide this last feature by stimulating deployment before tenders become effective: what we see today (e.g. wind power boom in DE before tenders become normal)

Abuse of power?

- Formally, state aid guidelines are not legislation; they merely inform what DG Comp is likely to do in future. For this reason (and also the standing issue) it is difficult to challenge them. There seems to be no European Court decision on this
- On the other hand, these guidelines have the impact of legislation – de facto they orient member states' behaviour and are invoked to sanction it if not in line
- But if they are only information, not law, how can they invalidate a directive? RED 2 expires only end of 2020

Abuse of power? 2

- DG Comp actually holds that these guidelines are authentic interpretations of primary law and thus have precedence over mere directives adopted by Parliament and Council in co-decision (secondary law) (Turmes 2017, p.176)
- See COM's RED 3 Proposal of Feb. 2017, p. 13: "The principles in this proposal are fully in line with the ... State Aid Guidelines ... and develop them further ..." and comply with the opinion of the Regulatory Scrutiny Board (pp.12-13);

Abuse of power? 3

- In political terms, to use State Aid Guidelines in this way allows to smuggle quasi-legislation past Parliament and Council if its rejection in co-decision (normal procedure for energy and climate) is likely
- When Parl.+Council made effort to include support mechanisms in RED 3, the legal service of COM argued that “the European legislators do not have the power ... to establish conditions for the implementation of state aid via support schemes” (retranslated by author from Turmes p. 467). The Regulatory Scrutiny Board added that support mechanisms should not be included in the directive (RED 3) since 2014 Guidelines on state aid already deal with them (Turmes, 465)

A concrete illustration of DG Comp's use of power

- During the preparation of RED 3 proposal, the German and French governments suggested to COM that the decision on the principles of financial support to RE should be taken at the normal political level (i.e. in co-decision), and that Member States should be able to adapt those principles to specific technologies (no technology neutral tenders as required by COM)
- Commissioners Sefcovic, Canete (Energy) and Vestager (Comp) agreed to this, but DG Comp rejected - with the argument that this would violate its monopoly to decide on the legality of state aids and that anchoring such a regulation in a directive was incompatible with the need for frequent revisions (Turmes, 466-467)

Conflicts over RED3: Principles and Targets

- 2012-3: Key actors question the need for such a directive: Oettinger, Cameron (“ETS only”) (TF 160, 459), then briefly considered a harmonised TGC scheme (Turmes, 178-80)
- In Jan. 2014 , Barroso and Oettinger present the COM’s policy framework for energy and climate for 2020-2030. In spirit of slowing down RE, they propose an unambitious target: from 20% RE in 2020 to a least 27% RE in 2030; and no binding (nat’l) targets
- EP (resolution 5 Feb. 2014): This is “short-sighted and unambitious... specifically ...the lack of national targets”. Calls for at least 30% share of RE
- Oct. 2014: Cameron, backed by Visegrad countries +threat of Brexit, vetoes in European Council binding national targets. But: details of legislation do not belong in Europ. Council but in EP and Council. No veto/no unanimity in co-decision but qualified majorities.

Targets 2

- Spring 2016: France and Germany (“EU motor”) propose to make targets *somewhat* binding (failing MS pay penalty into RE fund). Not taken up by COM (TF 161)
- June ’16: EP resolution restates its position: 30% or higher (COP21!), national targets
- Nov. ’16: Just before COM presentation of “winter package”: press conf. and top-level meeting of Magritte Group, Eurelectric and Business Europe with commissioners Sefcovic and Canete to argue for “ETS only”, against binding targets and against priority grid access
- COM proposal for RED3 (30 Nov ’16, unchanged 23 Feb ’17 on p.27): “It is thus appropriate to establish a Union binding target of at least 27% of RE” = not binding
- EP draft reports on RED3 recast in 2017 call for 35 or even 45% target (Agora Energiewende 2017, slide 5) CHECK THE 45% FIGURE

Guaranteed/priority access to the grid; priority dispatch

- Renewable Energy Directive 2009/28/EC= RED2 states in article 16 (2)c:
- Member States shall ensure that when dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources insofar as the secure operation of the national electricity system permits...(and that)...measures are taken to minimise the curtailment of electricity from RES...
- This clause is repealed in RED3 proposal (p.23). Regulated elsewhere? (so Kahles-Kahl-Pause, 2017). But European Energy Regulator organisations CEER and ACER welcomed what they view as a COM proposal to remove priority dispatch altogether (Morris, 2017)

The biggest obstacles for RES-E growth: cost myths and overcapacity

- Myths about the prohibitive cost of RES-E and the resulting deindustrialisation are still widespread, even with wind and PV approaching competitiveness
- But the biggest current obstacle is probably overcapacity in electricity generation due to failure of ETS to produce the expected price level of Euro 30+/t of CO₂ (instead: 5-6) and the lack of other efforts at carbon pricing (with few exceptions, e.g. UK). 5-6 Euros are insufficient to motivate the closing of obsolete coal and lignite plants
- Coal has even been able to obtain new state aid in the form of capacity payments, legitimated by DG Comp

Improvement may be forthcoming – and produces new conflicts

- In April 2017, the EU adopted in co-decision a reform of the Industrial Emissions Directive to reduce emissions of NO_x, SO₂, mercury and particulate matter by large combustion plants
- The new standards – supposedly catching up with the US and China - will apply by 2021
- According to IEEFA (2017), this will force one third of coal and lignite capacity to expensive upgrades or closure (Acid News, 2017; European Climate Foundation report (2016))

The new conflicts

- IED reform was adopted with very narrow Council majority, with Poland, Czechia, Hungary, Slovakia, Bulgaria, Romania, Finland and – Germany voting against. Germany and Poland have the biggest coal plant emissions; still surprising to see Germany in this company
- Poland initiated the yellow card procedure to block the whole “winter package” (WBJ, May 2017). Yellow card is a subsidiarity control mechanism to stop EU legislation if enough objection can be mobilised among national parliaments, rarely invoked
- The Polish PiS government openly ignores EU directives, COM decisions, even a ECJ injunction, misuses EU funds. On energy and climate issues, it makes Trump look like a moderate (Olszewski, 2017; Turmes, 210-13). Donald Tusk warned about the risk of a Polish EU exit under this govt (Broniatowski, 2017).
- Four German lignite Länder recently asked the German govt to sue COM to invalidate IED (klimaretter.info, 2017).

Question regarding RED 3

- With UK on the way out and PL isolated,
with Macron supporting a strong RE policy,
with Eurelectric and gas lobby more pro-RE,
with wind and PV prices dropping steeply,
with US sanctions on EU gas imports from Russia,
with nuclear no longer credible economically,
with the Paris Agreement as incentive,
with most of the world stepping RE up faster than EU:
- **does it really make sense to stick to a 27% target owed to Oettinger and Cameron, both open adversaries of RE?**

C'est tout pour aujourd'hui

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Abbreviations

COM: European Commission

Council: Council of Ministers of the EU

DE: Germany

DIW: Deutsches Institut für Wirtschaftsforschung=German Institute of Economic Research

DG Comp: Directorate-General for Competition of the EU

ECJ: European Court of Justice

EP: European Parliament

ETS: The greenhouse gas emissions trading system of the EU

Govt: government

IED: Industrial emissions directive of the EU

IEEFA: Institute for Energy Economics and Financial Analysis

MS: Member States

Parl.: European Parliament

PL: Poland

RE: renewable energy

RED: Renewable energy directive (RED1: 2001; RED2: 2009; RED3: in progress)

RES-E: electricity from renewable energy sources

TGC: Tradable green certificates

TF: Turmes (2017) French version (for pagination)

WBJ: Warsaw Business Journal (here online)