



EUROPEAN COMMISSION

Cabinet of Commissioner Günther H. Oettinger
Head of Cabinet

Brussels,
D(2010) JB/kg 981

Mr Jose Ramon Arasco Esteban
Email: jrarasco@hotmail.com

Dear Mr. Arasco Esteban,

Thank you for your mail of 19 July 2010 on the Spanish solar photovoltaic tariff revision.

I appreciate the concerns that you have expressed regarding the possible changes in the Spanish renewable energy legislation.

The EU Renewable Electricity Directive of 2001¹ requires Member States "to take appropriate steps to encourage greater consumption of electricity produced from renewable energy sources" in conformity with the national indicative targets set by the Directive for 2010.

The new Renewable Energy Directive² sets mandatory national targets for the share of renewable energy sources in energy consumption for 2020. It also requires Member States to introduce measures effectively designed to ensure that the share of energy from renewable sources increases as required by the Directive. Such measures would normally include financial support schemes, which are likely to be necessary in order to reach the targets. However these schemes are not regulated in detail by the Directive.

The Commission has in the past evaluated and commented on national schemes supporting the generation of electricity from renewable energy sources³. In the last of these reports the Commission stated that "stability is a critical feature of an effective system, in order to facilitate investment. Consequently, "stop-and-go" regimes that run out of budget, as well as policy and rule changes hamper the development of renewable electricity"⁴. That is in line with the general EU policy of seeking to establish stable and predictable investment conditions for renewable energy, which is the main aim of the Renewable Energy Directive.

¹ OJ L 283, 27.10.2001, p. 33

² OJ L140/16 5.6.2009

³ COM(2004) 366 final; COM(2005) 627 final; SEC(2008) 57 final; COM (2009) 192 final

⁴ COM (2009) 192 final p. 4

According to our information, the Spanish government decided in July to modify its support scheme for concentrated solar power and for electricity from wind. Neither of these modifications seems to include retroactivity.

We understand that the Spanish government is also planning to reduce the tariff for future projects in the field of solar photovoltaic for solar electricity (the tariff cut depends on the type of the installation – ground based or rooftop). However, we understand that the planned change does not include retroactive change to tariffs for existing plants.

On the basis of the information currently available to the Commission, we do not see an indication of a violation of either of the abovementioned Directives. In transposing Directive 2009/28/EC (by December of this year as required), the Spanish authorities and ultimately the Spanish courts will have to ensure that the principles of Community law including legal certainty and the protection of legitimate expectations are respected⁵.

Thank you again for informing us of your view on this matter, which will continue to have our full attention.

Yours sincerely,

Michael A. Köhler

⁵ ECJ of 10. September 2009, case C-201/08, Plantanol, points 43 and following