

Applying the WFC Best Policy Criteria to Existing Law

A WORKED EXAMPLE ON THE GERMANY'S RENEWABLE ENERGY SOURCES ACT (Feed-in Tariff Law), 2004

1. The duty of countries to ensure sustainable use of natural resources

1.1 Does the law/policy help to ensure that the Earth's scarce resources will be used in a more sustainable way?

Yes, it grants priority to renewable energy sources (hydropower including wave power, tidal power, salt gradient and flow energy, wind energy, solar radiation, geothermal energy, energy from biomass including biogas, landfill gas and sewage treatment plant gas as well as the biodegradable fraction of municipal and industrial waste) for generation of electricity. It makes it compulsory for operators of power grids to give priority to feeding electricity from renewable energies into the grid and to pay fixed prices for this.

1.2 Does it help to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks)?

Yes, the purpose of the Act is to facilitate a sustainable development of energy supply for the sake of protecting climate, nature and the environment. It avoids conflicts over fossil fuels and promotes the further development of technologies for the generation of electricity. It makes a huge contribution to reducing prices and increasing efficiency of renewable technologies. This makes the use of clean energy more accessible for more of the world's population.

1.3 Does it respect natural areas, artifacts and traditional knowledge and wisdom which are common heritage of humankind?

It provides different tariffs for electricity drawn from different renewable sources and provides for respect of common heritage and natural areas. Such as:

a. specific tariff for hydroelectric power plants which has 'demonstrably' brought about a good ecological status or substantial improvement in relation to the previous status.

b. specific tariff for electricity produced from plants which have originated from agricultural, silvicultural or horticultural operations or during landscaping activities and which have not been treated or modified in any way other than for harvesting, conservation or use in the biomass plant. It also requires biomass plants not to use any other substances in production of electricity. It requires "Bundestag" to define by ordinance 'biomass' - and which technical processes may be used to produce electricity and which environmental standards must be complied with.

2. The principle of equity and the eradication of poverty

2.1 Does the law/policy help to address pressing poverty and human rights challenges?

The generation of electricity from biomass (excluding landfill and sewage treatment plant gas) has substantially helped to boost incomes for populations in rural areas. Further, 134,000 jobs resulted from the Renewable Energy Sources Act where wind energy accounted for the major share around 82,000 jobs, followed by photovoltaics with 27,000 and 22,000 in bio energy power generation.

The technological development that goes along with market development has also improved the prospects for access to electricity in rural areas. For lower income populations, education, work and respiratory health gain support, as light is available later into the night, without burning fuelwood.

2.2 Does it demonstrate respect among generations, by including provisions that take into account the needs and aspirations of future generations of life?

Yes, the German government's target is to increase renewable source of energy to 27% by 2010 and 45% by 2030. The law, if widely adopted among the world's major economies, and well implemented, could trigger a tipping point in energy use, so that our energy system of the future is powered by free, clean energy (except biomass). Resource conflicts become less likely as more nations become energy independent.

2.3 Does it promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination, respect for the rights of indigenous peoples and local communities, eradication of poverty and less discrimination among species?

Yes, the law promotes respect for the natural environment, including our climate and resource use. It also opens eco-farming opportunities for new small renewable energy producers, which provides further benefits to the natural environment and prevents land degradation. It promotes social justice helping to maintain the social structure of rural communities. It could increase prices for electricity, which could have an equity impact on poorer urban constituencies. This is weighed against the advantages for the poorer rural constituencies, though, and it is likely that urban energy prices will improve again as renewable energy production becomes more competitive.

The law also allows all persons of sufficient means to become an independent energy producer. Other support schemes are tilted in favour only of large, sufficiently credit-worthy companies.

3. The principle of the precautionary approach to human health, natural resources and ecosystems

3.1 Does the law/policy promote prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm?

Yes. It takes a clearly preventative and precautionary approach to dealing with climate change. It has resulted in reduction of Co2 emissions by around 44 million tones through the promotion of renewable in the electricity sector. Many other instruments have not resulted in such high CO2 reductions. Further, to prevent (in a precautionary way) potential harm through development of excessive wind energy, this Act does not apply to German's exclusive economic zone or coastal waters where protected areas are found. It also does not apply to sites of European Community natural or heritage importance or European bird sanctuaries, even prior to their declaration as protected areas.

3.2 Does it place the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture?

Yes, in the case of electricity produced from biomass, the burden of proof is on the supplier to show that environmental standards (as defined by the Bundestag through ordinances) are complied with, and that no other substances are used for production of electricity in that biomass plant and any other biomass plant in similar situation.

3.3 Where there is insufficient scientific evidence, does it ensure that those most affected by a project can set the acceptable level of risk or threat?

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Federal Ministry of Consumer Protection, Food and Agriculture and the Federal Ministry for Economics and Labour are obliged by German law and policy to work together in defining environmental, health and consumer standards. The Act requires that a progress report be prepared every year by these government departments to monitor the effect and priorities set by the Act. This ensures that the groups who are affected by a project will have a voice in the implementation of the law. Further, German zoning, municipal planning and other policies which surround this Act ensure that communities and others who might be affected by a project will have a voice in setting acceptable levels of risk, in cases of uncertain science.

4. The principle of public participation and access to information and justice

4.1 Does the law/policy provide for public consultation and genuine engagement, in both its design and implementation?

The Act seems to be silent about public consultation. However it may be that different government departments have established separate public consultation before issuing an ordinance. This Act builds upon support from governmental departments. Planning laws were made more flexible for renewable energy, to give priority to them. However, as the Act ensures that a producer only gets paid for energy actually generated, it is in the interest of operators and investors to find sites which are a good resources (wind, etc) and have high levels of public acceptance. Furthermore, German zoning, municipal planning and other policies which surround this Act ensure that communities are consulted and engaged in making decisions related to the Act.

4.2 Does it specifically provide for transparency and access to information for concerned citizens, local communities, and others who might be affected?

Yes, for example, in order to increase transparency and to simplify the nation-wide equalization mechanism, a public register has been established under the Act through an ordinance, in which installations for the generation of electricity from renewable energy sources and mine gas are registered (register of installations). This public registry facilitates transparency and access to information for citizens and others who are affected by the Act.

4.3 Does it provide avenues for appeal and redress for citizens, communities and others?

Yes. For instance, the Act provides for a clearing house to settle any disputes and issues of application arising under this Act, which may involve the parties concerned. Further, it provides for an annual public forum and review, resulting in a publicly available report, in which issues of concern can be raised and addressed.

5. The principle of good governance

5.1 Does the law/policy establish adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions?

The law essentially mandates large energy companies to buy renewable energy from small and medium producers. The prices are predetermined and thus transparent. The small producers are protected against the market power of the large energy companies. As such, the law has a strong fairness aspect. The institutional oversight is also strong, since the energy market remains regulated in Germany.

5.2 Does it prevent and promote peaceful resolution of conflict, and help to ensure that human beings are able to live in freedom from fear, and freedom from want?

The law does prevent conflicts over the use of energy resources, and contributes to a society where human beings live in freedom from want. By making renewable energy more available, and creating incentives for investment into renewable energy, it helps to ensure that more people have access to light, heat and other basic needs from an environmentally and socially sustainable source.

5.3 Does the law/policy include provisions to ensure that its intentions are not thwarted by corruption or unethical conduct, and provide appropriate penalties for abuse of rights, or for mis-implementation?

There are no provisions as such to control or limit corruption and unethical conduct, though the law itself can be seen as a tool to prevent unethical conduct by the larger companies who otherwise control the power grid in Germany. Further, the surrounding German legislation and policies on corruption apply to this Act and its related institutions. As such, in the case of Germany, producers can be reasonably certain that independent certifiers and others will ensure that renewable energy being sold to the grid is actually renewable energy, that projects are obtaining proper licenses prior to development, and that criminal and civil sanctions are being applied when a producer or purchaser does not follow the law.

As the Act primarily regulates private behavior, and grants the weaker parties (small producers) better access rights, it facilitates more ethical conduct. The powerful large energy companies which control the grid do not face great dangers of abuse of rights from these smaller actors. Penalties are mainly governed by the market. If the small renewable producer becomes too large, the company loses the privileges of a guaranteed market share, as the law has certain amount restrictions for the feed-in privilege.

6. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

6.1 Does the law/policy integrate social justice and environmental protection into economic development plans and projects?

Yes, the law is a good example of integration. It serves an environmental purpose, by regulating economic relations of energy producers, and providing for social objectives by protecting small and medium producers who are guaranteed a revenue stream and can thus maintain their small farming businesses (or convert them in to eco-farms, which in turn serves an environmental purpose). It also helps to maintain social structures in rural communities.

6.2 Does it ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary?

The law itself does not touch on development decision-making or planning, but it is accompanied by a planning act which prioritises rural communities and open lands for windmills and other renewable energy production.

6.3 Does it provide or enhance benefits for the environment, and the society?

Yes, the law provides benefits to the environment by reducing green-house gas emissions and aiding conversion to eco-farming. It benefits society by helping to maintain the social structure of rural communities.

7. The principle of common but differentiated obligations

7.1 Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations?

Given the history of energy production through quasi-monopolistic structures, the law can address the historical inequalities between the large producers and new small renewable producers. It could be further improved by provisions to ensure better access or additional subsidies. Further, by dramatically reducing the CO₂ emissions that Germany, as a developed country, generates, it does help to redress global inequalities in relation to the impacts and costs of climate change.

7.2 Is the law/policy appropriate and well-adapted to the society or region's present level of technology, scientific knowledge, human/financial resources, cultural values and traditions?

The law is very appropriate to the society and even the different regions of Germany because it does not prescribe a specific source of renewable energy; there is more wind in the north and more geo-thermal energy in the south. It also does not prescribe the technology and thus allows small producers to experiment and increase the level of scientific knowledge. It is however restricted to Germany, even though the energy market in the European Union is becoming increasingly integrated. This law could be a 'WFC Best Policy' for Europe. It is unclear whether this Act would be appropriate for other regions of the world. Even in North America or Australia/New Zealand, it might need to be accompanied by a stronger set of supporting regulations or measures to ensure that some of the WFC principled criteria, such as those relating to abuse of rights, precaution or poverty eradication, are fully addressed.

The differences between countries with regulated and deregulated energy markets need to be taken into account. Further, the status of a country's legal and administrative system, and the state of surrounding legislation and policies on environmental impact assessment, public participation in decision-making and planning, anti-corruption controls, and other elements are crucial aspects of policy's success. These issues might, in some regions, not be real impediments, as other simple mechanisms can be implemented to spread the burden equally, and ensure that the appropriate technologies, cultures and human/financial resources are activated in support of the policy.

7.3 Does it avoid placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them?

Yes, it provides huge benefits for rural communities, and only increases costs for urban consumers by a small amount. Furthermore, globally, it helps make sure that changes to the global energy system take place in the countries that are best equipped to bear the burden of facilitating those changes, and that reductions in CO₂ take place in developed countries which have contributed most to the problem. Costs are mainly carried by the large power producers whose market share is reduced through this Act, and it can be argued that this is appropriate placing of the burden.