

Energy

Renewable energy producers unite to fight retroactive changes

By Anca Gurzu | Monday 09 December 2013

Renewable energy producers from several member states have joined forces, calling on the European Commission collectively for the first time to take action against an increasing number of retroactive measures aimed at their sector.

Lawyers representing renewable energy companies and associations from Spain, Greece and Latvia met with officials from the Commission's Directorates-General for Energy, Competition and Taxation, on 5 December. Their message was that national retroactive measures are discriminatory and the Commission should send a clear message to member states in order to avoid a spill-over effect. The three law companies – Holtrop Slp of Spain, Metaxas and Associates of Greece and Fort Law Office of Latvia – met with the Commission officials following their joint letter to Energy Commissioner Günther Oettinger at the end of October, in which they asked the executive body to start infringement procedures against the respective member states.

The national governments in the three countries have introduced various changes targeting existing support schemes for the renewable energy industry, including retroactive ones, which have been met with a lot of criticism. In previous one-on-one meetings with the Greek and Spanish law firms, Commission officials maintained that the design of national support schemes for renewables is ultimately at the complete discretion of the member states and EU laws do not apply.

However, in a court decision from September 2013 involving the Belgian government, the EU Court of Justice clarified that renewable support schemes must be in line with EU law, specifically with the principle of equal treatment and non-discrimination.

"In the first five minutes, the Commission admitted they were wrong [...] and are now re-evaluating their entire position about these renewable reforms," Piet Holtrop from the Spanish law firm Holtrop Slp told *Europoltics* after the meeting. If the Commission has a legal instrument to evaluate support schemes, it has an obligation to do so, Holtrop said. The Commission has repeatedly described retroactive measures in critical terms, arguing that changes to previously made investments will deter future investments in that member state. Commissioner Oettinger even called such measures poison. However, its position has been inconsistent. While it showed concern over the numerous legislative changes in the renewable sector in Spain, it tacitly backed a retroactive tax in Greece, arguing that the country's fragile economic situation justifies such actions.

"If there is a reaction from the Commission, it should be equal to all member states," said Sandis Bertaitis from the Latvian law company Fort in an interview. Unlike Spain and Greece, Latvia is not in an economic crisis and will in fact join the eurozone as of next year. Nevertheless, renewable electricity producers will have to pay a 10% retroactive tax on their income starting 1 January 2014, he explained. Retroactive measures are like a virus, Bertaitis said, and the Commission must ensure it does not spread to the other member states.