

SUBJECT: Directive 2004/8/EC of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market (progress with transposition).

The French authorities' replies to the European Commission's questionnaire for the members of the Directive 2004/8/EC Committee concerning progress with the transposition of the directive are as follows.

I. Transposition of the legal text of Directive 2004/8/EC

1. Has your country already sent in notifications of transposition to the Commission?

Please indicate which document you sent on which date, and which Article was transposed in this way, and where it can be found in the document.

(background: there are Member States which transpose (parts of) Articles in a general energy law of many pages, making it hardly possible to do a check or specific translation)

Notification of the transposition of the guarantee of origin scheme was given by the French authorities on 11 October 2006. Legislative transposition was ensured by means of Article 33 of Programme Law No 2005-781 of 13 July 2005 laying down energy policy guidelines published in the Official Journal of the French Republic of 14 July 2005. The law was supplemented by Decree of the Council of State No 2006-1118 of 5 September 2006 on guarantees of origin for electricity produced from renewables or by cogeneration and by a Decree of 26 September 2006 laying down the tariff for the issue of guarantees of origin published in the editions of the Official Journal of the French Republic of 7 and 30 September 2006 respectively. This operational scheme for renewables will be supplemented for cogeneration by a decree taking over Annexes II and III to the directive and the harmonised efficiency reference values published by the Commission on 6 February 2007.

2. What is the timeline for the remaining parts of the transposition of the Directive? Please indicate how this will take place (revision of a general energy law, a specific law, decree, regulation,), at what stage in the legislative process your country is for this part, what the expected reasonable timeline until adoption will be, and what the obstacles are, if any.

The decree supplementing the guarantee of origin scheme (mentioned in the reply to question I.1) is scheduled for the second half of 2007. This text requires an opinion from the Conseil Supérieur de l'Energie (Higher Energy Council), a consultative body partly made up of deputies from the French National Assembly, the renewal of which in June 2007 means that this consultation will not be possible in the next three months. The cogeneration support scheme will also be aligned on the definition of high-efficiency cogeneration in the directive.

3. Will your country use any option that is described in Article 12? If so, which one?

The French authorities wish to reserve their support scheme for high-efficiency installations in accordance with the criteria laid down in the directive, taking into account Annex II concerning the quantity of electricity included in the formula for calculating primary energy savings. However, this option will be confirmed following an evaluation of the French support scheme for cogeneration, concerning which proposals and conclusions are under study.

4. Will (parts of) the transposition be done by regions? If so, which parts? And by which regions?

No transposition will be done by regions.

II Transposition of Commission Decision 2007/74/EC on harmonised efficiency reference values and related issues

1. What is the timeline for the transposition of the Commission Decision of 21.12.06? Please indicate how this will take place (revision of a general energy law, a specific law, decree, regulation,).

See the replies to questions I.1 and I.2.

2. Article 5 requires Member States to ensure that accurate and reliable guarantees of origin can be issued according to objective, transparent and non-discriminatory criteria not later than 6 months after the adoption of the harmonised efficiency reference values. Please indicate how your country is making progress towards meeting this deadline. Can you already indicate which will be the "one or more competent bodies" mentioned in Article 5.2?

The French guarantee of origin scheme is supervised directly by the French authorities. It provides for an annual report by the keeper of the register of guarantees of origin for the Energy Minister (the national register of guarantees of origin is kept by the public electricity transmission system operator, which records the guarantees of origin issued by it and by the public electricity distribution system operators; this register is on line on the website of the public transmission system operator) and authorisation by the decentralised inspectorate responsible for checking installations which have received guarantees of origin.

3. Is it already known if your country will adopt the model developed by the Commission and the European Association of Issuing Bodies?

If not:

-Is the national scheme similar enough to allow a transition to this model in the coming years?

-Can you indicate how the national scheme is matching the safeguards of fraud-resistance, accuracy and reliability that are provided by the Commission model?

Recital 22 of the directive indicates that it is important to distinguish guarantees of origin clearly from exchangeable certificates. The scheme established by the French authorities provides for the issue of guarantees of origin by the system operators covering quantities of electricity during a given period corresponding to the metering dates stipulated in the system access contract. Each guarantee of origin application must include all the data whereby combined production can be verified in accordance with the criteria laid down in the directive. A post-audit of applications and installations is provided for. This reliability also enables the scheme to constitute the basis for a green certificate scheme. Guarantees of origin could, for example, be irreversibly labelled to indicate that they have already been upgraded through the issue of green certificates.

4. Will (parts of) the transposition be done by regions? If so, which parts? And by which regions?

No transposition will be done by regions.

III. Reporting obligations

Article 10 of Directive 2004/8/EC requires Member States to submit various reports. Article 10.1 suggests that there could be one big overall report. Due to the developments in the CHP Committee it could be argued that there might be a reason to have a delay in the report

mentioned in Article 5.3 but this can not be a justification for a delay in the analysis and evaluations carried out in accordance with Article 9 and hardly for the one in accordance with Article 6.1.

1. Article 9.1 requires an evaluation of the existing legislative and regulatory framework with regard to authorisation and other procedures, applicable to high-efficiency cogeneration units. Article 9.2 requires Member States to provide indications on the stage reached in coordination between administrative bodies, on guidelines for reduced and/or simplified authorisation procedures and the reduction of barriers, as well as the designation of authorities able to mediate in disputes between applicants for cogeneration authorisation with issuing authorities. This report was due on 21.02.2006 and has no relation with the CHP Committee procedure. How far is your country with this report? When can the Commission expect it?

The French authorities will draw up one overall report incorporating an evaluation of the existing legislative and regulatory framework.

2. Article 6.1 and 6.2 requires Member States to establish an analysis of the national potential for the application of high-efficiency cogeneration, including high-efficiency micro-cogeneration. This has to be based on well-documented scientific data. It has to identify all potential for useful heating and cooling demands as well as fuels and other energy resources, including waste heat. It also has to include a separate analysis of barriers, in particular relating to prices and costs of and access to fuels, grid system issues, administrative procedures, internalisation of external costs. Has your country already submitted this report? If so, when? If not, when can it be expected? Will the final report have taken into account the harmonised efficiency reference values as endorsed by the CHP Committee in August 2006 and officially adopted by the Commission on 21.12.2006? Will the report include an analysis of the heat demand suitable for CHP and the waste heat potential?

The French authorities have not yet submitted this report. It will be submitted as soon as possible, and will take into account the efficiency reference values for separate production adopted by the Commission in Decision 2007/74/EC published on 6 February 2007. This report will attempt to analyse the heat demand suitable for cogeneration and the waste heat potential.

3. When can the report referred to in Article 5.3 and 10.1 and related to Chapter II of this template be expected?

The report on the measures taken to ensure the reliability of the guarantee of origin scheme will be submitted once the French scheme is operational following publication of the decree taking over Annexes II and III to the directive and the harmonised efficiency reference values published by the Commission on 6 February 2007 (see the reply to question I.1).

4. Will (parts of) the reporting obligations be fulfilled by regions? If so, which parts? And by which regions?

No transposition will be done by regions.

IV. Support schemes

Article 7 of Directive 2004/8/EC deals with support schemes for high-efficiency cogeneration.

1. Does your country already have support schemes for CHP (operational and/or investment aid)? Have these schemes been notified to and approved by the Commission (DG COMP)? If so, please give references. Until when are these schemes running? What kind of support is provided (feed-in tariffs, certificates and quota, priority access to the grid, ...)? How much money on a yearly basis has been provided in this way in the past years to the promotion of cogeneration in general and to the promotion of high-efficiency cogeneration in particular?

Cogeneration is encouraged in France through a purchase obligation scheme under the Law of 10 February 2000 on the public electricity service and the Decree of 6 December 2001. The purchase obligation only applies to the electricity generated by cogeneration installations below 12 MW and installations supplying a heat network. An implementing decree of 3 July 2001 sets an energy performance of 5% of primary energy saving for eligibility for the purchase obligation scheme. An implementing decree of 31 July 2001 sets favourable purchase tariffs for the most energy-efficient installations and small installations.

The purchase obligation tariff is higher than market prices. The additional cost compared with market prices is estimated at EUR 642 million for a production of 14 TWh.

Cogeneration installations also benefit from several tax advantages:

- extraordinary depreciation over 12 months ;
- 50% reduction in the basis of assessment for business tax, which may be raised to 100% by the local and regional authorities;
- exemption from domestic tax on the consumption of natural gas (TICGN) and mineral oils (TIPP).

2. Is your country in the process of developing or introducing new support schemes to promote cogeneration? Will these be reserved for high-efficiency cogeneration units based on Directive 2004/8/EC and Commission Decision 2007/74/EC? What kind of support is planned? Which sectors will be targeted (agricultural and/or industrial and/or heating cogeneration)? Will these measures be general or based on certain principles or criteria? If so, which? Have they been based on an assessment, including cost-effectiveness, of earlier support schemes in your country or elsewhere, and if so, which ones? Are they designed to provide stable long-term investment conditions? At which stage in the legislative process are these new schemes? When are these new schemes expected to be notified to the Commission? How much money is expected to be made available on a yearly basis to the promotion of high-efficiency cogeneration in the coming years?

The French support scheme for cogeneration is currently being evaluated, and proposals and conclusions are under study. The development of the support scheme will take account of the provisions of the directive and will be presented in the context of the abovementioned report.

3. Will there be regional support schemes? If so, please answer these questions for each of them.

No transposition will be done by regions.

V. Statistics

Under Article 10.3 of Directive 2004/8/EC Member States shall submit statistics on national electricity and heat production from cogeneration, in accordance with Annex II, as well as annual statistics on cogeneration capacity and fuels used for cogeneration. Most Member States seem to be able to comply with this obligation, even without detailed guidelines being in place. Do you have any comments regarding this requirement? Does your country also submit statistics on primary energy savings achieved by cogeneration in accordance with Annex III, or does it plan to do so in the future? If so, when?

The French questionnaire on electricity production has been amended to take into account the criteria set out in the directive. The first additional results will relate to 2006 and will not be available before early 2008.

The questions added to the questionnaire concern:

- the thermal capacity of cogeneration,
- the breakdown by type of equipment used for the production of electricity, heat and fuels, and the electricity and heat efficiency of each type of equipment.

The French survey does not enable statistics to be compiled on primary energy savings.

VI Concrete progress

Can your country already show progress in high-efficiency cogeneration since the publication of the directive on 21.02.2004 which can be ascribed to either EU or national legislation and support schemes? If so, please inform the Commission of the details (success factors, problems, risks,). If regions are responsible for (part of the) legislation and support schemes please specify your answer at the level of these regions as well.

French cogeneration capacity has been stable since 2003, and in 2004 the Industry Ministry carried out a survey to determine the average level of primary energy savings from cogeneration projects eligible for the purchase obligation scheme, involving total electrical capacity of over 70 MW (running on natural gas) for which a firm order was placed as of 31 December 2003 and brought into service in 2004 or 2005. The average level of primary energy savings, calculated on the basis of figures for two-thirds of the natural-gas cogeneration installations for which certificates had been applied for, was 12.8%. The study to be carried out by the French authorities on high-efficiency cogeneration potential will make it possible to refine this survey, taking into account the harmonised efficiency reference values recently published in the Official Journal of the European Union.