



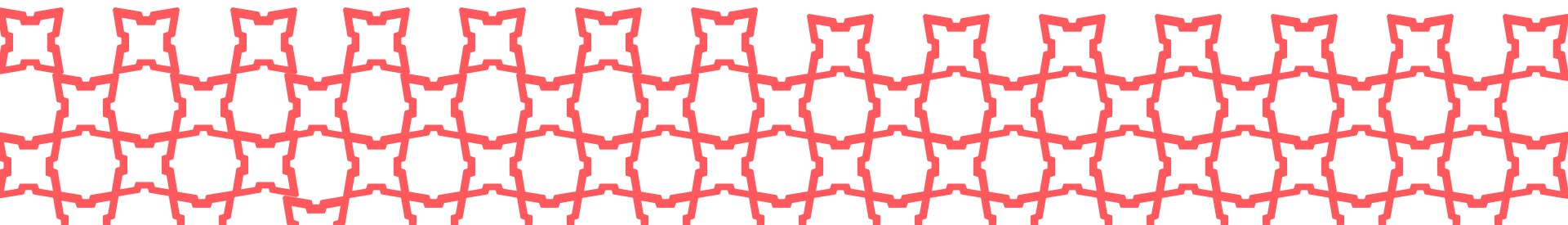
**FORT**

Advokātu birojs  
Law Office

# Renewable energy in Latvia: current status

**Sandis Bertaitis**

Partner, Attorney-at-Law



- Latvia has variety of renewable energy resources – wind, sun, small hydropower, bioenergy (biomass and biogas) etc.
- Latvian Renewable Energy Federation unites all leading renewable energy associations in Latvia – one voice in dialogue with government
- FORT is official partner serving legal assistance to Latvian Renewable Energy Federation



Pro rata share is above 30%, however ...  
 most share of electricity (**90%**) of the renewable  
 energy is produced by state company  
 LATVENERGO in **hydroelectric power**  
**plants** built in the Soviet times



LITHUANIA

LATVIA

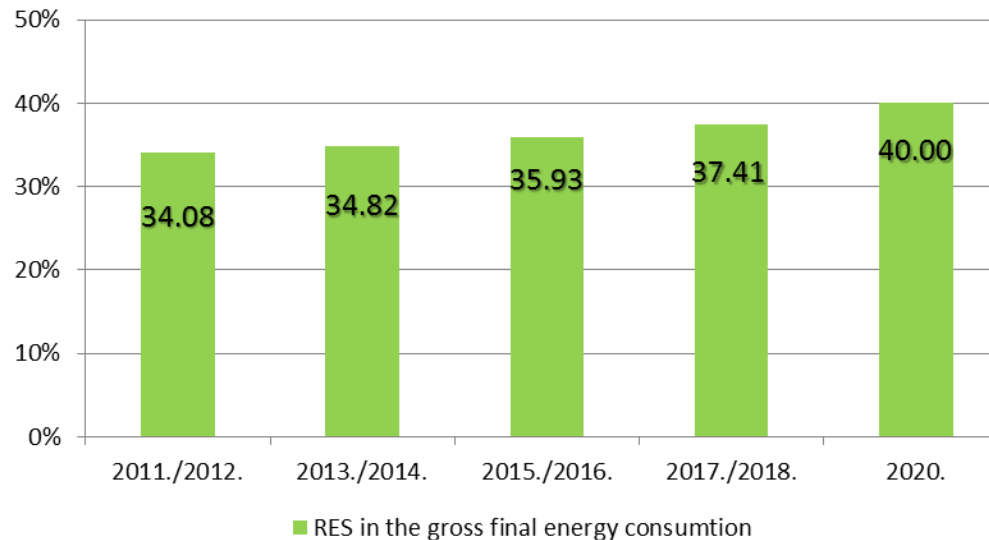
Amount of electricity produced in 2012:

- large hydroelectric power plants (3706 GWh)
- other RES plants (399 GWh)

	1990	1995	2000	2005	2010	2011	2012
	Electrical capacity (MW)						
<b>Total</b>	<b>1 487</b>	<b>1 508</b>	<b>1 515</b>	<b>1 572</b>	<b>1 622</b>	<b>1642</b>	<b>1701</b>
Hydropower plants	1 487	1 507	1 513	1 536	1 576	1576	1576
Wind power plants	-	1	2	26	30	36	59
Biomass* power plants	-	-	-	3	5	5	23
Biogas power plants	-	-	-	7	11	25	43

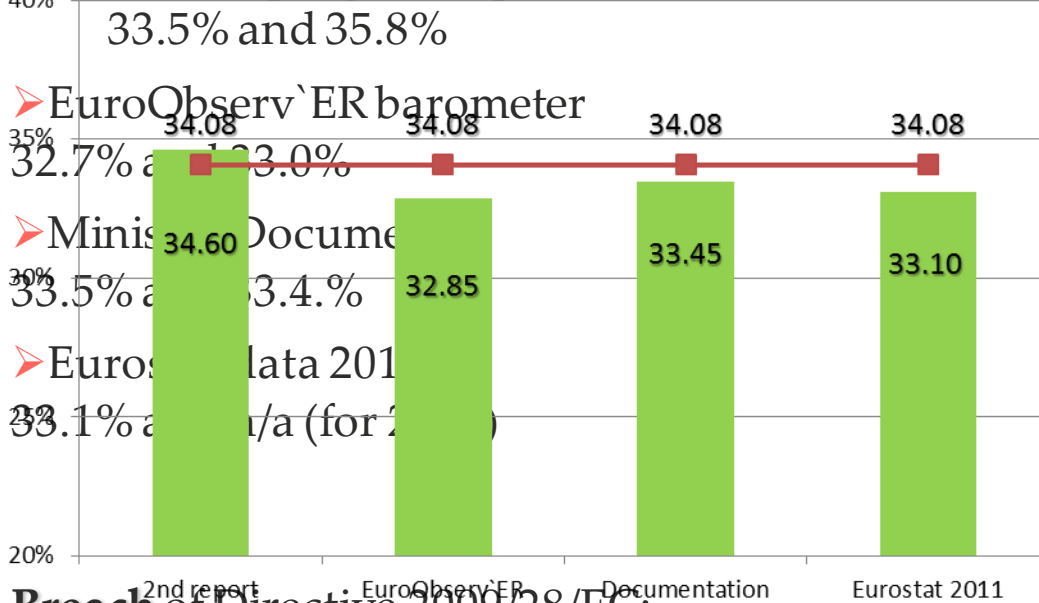
ESTONIA

- Directive 2009/28/EC establishes obligation for Latvia to increase share of RES in the gross final energy consumption **up to 40%** by 2020
- Support mechanisms in Latvia:
  - Mandatory procurement (feed-in tariff)
  - Guaranteed payment for installed capacity



What is the **real share** of RES in the gross final energy consumption?

➤ Latvia: 2<sup>nd</sup> progress report



**Breach of Directive 2009/28/EC:**

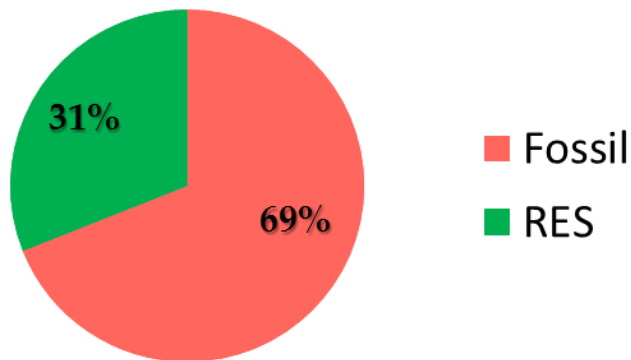
➤ Interim target: **not achieved**; and

➤ Support measures: **inadequate, not effective**

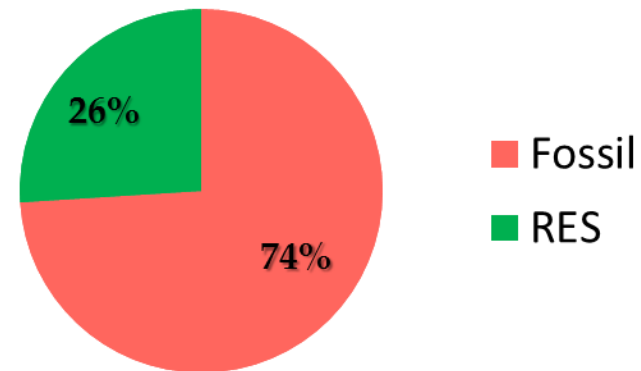
Fossil-fuelled CHP plants:

- EUR 236`513`432 (2013)
- EUR 216`975`794 (2012)

## Support in 2013



## Support in 2012



RES plants:

- EUR 104`084`367 (2013)
- EUR 77`096`679 (2012)



**NO  
TO RENEWABLES!!!**



- **2011:**
  - sudden moratorium on new support till 2013 (RES)
- **2012:**
  - FIT shortened till 10 years (<4 MW) and 15 years (>4 MW) (CHP)
  - moratorium on new support till 2016 (CHP and prolonged for RES)
- **2013:**
  - obligation to fulfil new requests (CHP and RES)
  - subsidized energy tax in amount of 5-15% of FIT (CHP and RES)
- **2014:**
  - review of feed-in tariff formulas (?)



- **Possessions (ECHR Case-law)**

- autonomous meaning
- not limited to ownership of physical goods
- public subsidy
- rights and interests constituting assets
- legitimate expectations to obtain possession

Conclusion: the notion of possession encompasses every right or interest having patrimonial or economic value

- **Possession must be**

- sufficiently established
- existing and/or based on legitimate expectation

- **Peaceful enjoyment of possessions: FIT rights**

- acquired rights (subsidy) restricted
- possession deprived
- levying of taxes as an interference
- problems with legitimate reason and means

- **Legitimate expectations**

- retroactive measures towards investments in RES sector
- unprotected investments, breach of legitimate expectations
- sudden amendments, legal basis changed
- no transitional period

- **Proportionality**

- no reasonable balance
- interests of general public not achieved
- interests of general public put on even greater risk
- possibility to use alternative means

- **Equality**

- more favorable conditions for fossil-fueled producers
- Ministry of Economics is 100% shareholder in dominant market player LATVENERGO leading to conflict of interest

ECJ Judgment 26.09.2013, Case 195/12, *Industrie du bois de Vielsalm & Cie (IBV) SA v Région wallonne*, para. 49:

“It follows that, **where**, as in the case in the main proceedings, **a Member State adopts measures of support for cogeneration and renewable energy sources within a framework such as that laid down**, first, by Directive 2004/8, in particular Article 7, and, secondly, **by Directive 2001/77**, in particular Article 4, and thus implements European Union law, **it must observe the principle of equal treatment and non-discrimination** laid down in particular in Articles 20 and 21 of the Charter”.

Similar conclusions, but with regard to Directive 2009/28/EC and principle of proportionality, can be found in ECJ Judgment 21.07.2011, Case 2/10, *Azienda Agro-Zootecnica Franchini sarl and Eolica di Altamura Srl v Regione Puglia*



# FORT

Advokātu birojs  
Law Office

# Thank you!

Antonijas Street 8-4 © Riga © LV-1010 © Latvia

Phone: +371 6770 4080 © Fax: +371 6733 3410

[riga@fortlegal.com](mailto:riga@fortlegal.com) © [www.fortlegal.com](http://www.fortlegal.com)

