



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 March 2010

**Interinstitutional File:
2008/0223 (COD)**

**5386/10
ADD 1**

**ENER 12
ENV 16
CODEC 17**

DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to adoption of a Directive of the European Parliament and of the Council on the energy performance of buildings

DRAFT STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 19 November 2008, the European Commission submitted the above proposal to the Council and the European Parliament ¹.
2. The European Parliament adopted its opinion in first reading on 23 April 2009, adopting 107 amendments ².
3. The Committee of the Regions adopted its opinion on 21 April 2009.
4. The European Economic and Social Committee adopted its opinion on 14 May 2009 ³.

II. OBJECTIVE OF THE PROPOSAL

Together with two other proposals ⁴ this proposal is part of the Energy Efficiency Package tabled by the Commission in November 2008.

The aim of this proposal is to increase further the energy efficiency in buildings in the EU, against the background of the EU's climate/energy policy goals for 2020 as regards greenhouse gas emissions, the share of energy from renewable sources and energy savings and its transition to a low carbon economy. The proposal therefore aims to clarify, strengthen and extend the scope of the current Directive 2002/91/EC, and to reduce the large differences between Member states' practices in this sector. Its provisions address different regulatory and information-based instruments, and cover energy needs for space and hot water heating, cooling, ventilation and lighting for new and existing, residential and non-residential buildings.

¹ doc. 15929/08

² doc. 8877/1/09 REV 1

³ OJ C 277, 17.11.2009, p. 75

⁴ The other two proposals in this package are:

- draft Directive of the European Parliament and of the Council on the indication by labelling and standard product information on the consumption of energy and other resources by energy-related products (recast) (2008/0222 COD);
- Regulation (EC) No 1222/2009 of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342 of 22.12.2009, p. 46).

III. ANALYSIS OF THE COUNCIL POSITION AT FIRST READING

1. In view of the tight timetable required in order to reach early agreement on this proposal as called for by the European Council, the Council aimed from the start at identifying elements that would be acceptable to both Parliament and Council, rather than drawing up a complete agreed Council position before entering into negotiations with Parliament. In order to make rapid progress while taking into account the date of entry into force of the Treaty on the Functioning of the EU, it was agreed to proceed in two steps:
 - Reaching agreement on the substance of the Directive. Following consultations with the EP this first step was concluded in November 2009. This agreement was confirmed by Coreper on 19 November 2009 and on the level of the EP ITRE committee by means of a letter of its Chairman, dated 30 November 2009.
 - Reaching agreement on the modifications resulting for the entry into force of the TFEU, concerning notably the adaptation of the legal basis and the comitology provisions. Following consultations with the EP this second step was concluded in March 2010, relying to the extent possible on horizontal solutions, notably as regards the consultation of experts, the EP, Council and Commission statement on Article 290 and the Commission statement on recess periods. This agreement was confirmed by Coreper on 24 March 2010 and on the level of the EP ITRE committee by means of a letter of its Chairman, dated 25 March 2010.

2. The Council position incorporates the two agreements recalled above. Its main elements are:

Provisions on financial instruments:

A new Article 10 "*Financial incentives and market barriers*" and new recitals 18, 19 and 20 were introduced in order to place much more emphasis on the funding side of the energy efficiency of buildings.

Nearly zero energy buildings

As was done for other EU legislation in the climate/energy area, a "2020 target" was inserted: Article 9(1) and 9(2)(b) now prescribe that all new buildings must be nearly zero energy buildings by 31 December 2020, that an intermediate target must be set for 2015, and that buildings occupied and owned by public authorities have to be nearly zero energy buildings after 31 December 2018, in line with the *leading role* that the public sector should play in this field (see recital 23). Furthermore, Member States should develop policies for the transformation of *existing* buildings into nearly zero energy buildings (Art. 9(1a)). Because the transformation of existing buildings into nearly zero energy buildings is often relatively costly, and therefore can be an ineffective use of scarce funds, Council could not accept to set binding targets for *existing* buildings.

Building elements

In the spirit of EP amendments the scope of the proposal was expanded to include building elements (Article 7, second subparagraph).

Energy performance certificates: issuing and display

As suggested by the EP, Council agreed to lower the threshold for the issuing of certificates for public buildings (Article 12), to lower the threshold for the display of certificates in public buildings (Article 13), and agreed to re-insert what it had deleted earlier, namely the requirement to display the energy performance indicator in advertisements (Article 12(4)).

Comparative methodology framework

Council could not accept the European Parliament's request for a *common* methodology framework (Article 5(1)) that would be applied in all Member States. In view of the differences in climatic and geographic conditions, as well as the different 'starting points' in terms of energy efficiency in buildings, Council was of the opinion that a common methodology framework would not only be inappropriate, but also impossible to draw up. Council did accept the addition of a new Annex III proposed by Parliament which describes the content of the comparative methodology framework. Furthermore, Council agreed to introduce a benchmarking system (Article 5(3)) whereby Member States must justify significant differences between cost-optimal levels of minimum energy performance requirements and minimum energy performance requirements in force.

Review

Council accepted the European Parliament's request for a review by the Commission; a compromise date of 1 January 2017 was agreed upon as deadline for this review (Article 19).

Information

Council proposed, in order to address several requests from the European Parliament related to the provision of information, to insert a new Article 20 in order to group together all information provisions.

* * *

In addition to the above main elements, and with a view to reaching an early agreement, Council examined every amendment of the European Parliament. Wherever possible, amendments were accepted, either in full or partially; sometimes the spirit of an amendment was addressed in another article or in a recital. Thus, in its position, the Council:

- accepted amendments 1, 2, 36, 37, 38 and 45;
- partially accepted amendments 3, 4, 5, 6, 10, 13, 14, 16, 18, 19, 20, 21, 22, 27, 28, 29, 30, 32, 33, 34, 35, 39, 42, 43, 47, 48, 50, 51, 52, 57, 58, 60, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 82, 83, 93, 94, 95, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 116, 117, 119, 120, 123 and 124;
- could not accept amendments 7, 8, 9, 12, 15, 17, 23, 24, 25, 26, 31, 40, 41, 44, 46, 53, 54, 55, 59, 64, 73, 80, 81, 84, 85, 86, 87, 88, 89, 90 and 91.