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Subject: Proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC  
- Progress report

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**I. INTRODUCTION**

1. The Commission submitted the above proposal on 22 June 2011, based on Article 194(2) of the Treaty on the Functioning of the European Union. It follows on from the Commission's Communication of 8 March 2011 on an "Energy Efficiency Plan 2011" (7363/11). The Council adopted conclusions on 10 June on the basis of this Communication, setting out a number of priority areas for further action in favour of energy efficiency, addressing the public sector, buildings, industry and the energy sector, as well as ways to encourage favourable consumer choices (10709/11).

2. The opinions of the Economic and Social Committee and the Committee of the Regions are not yet available. The European Parliament's Committee on Industry, Research and Energy is expected to vote on a draft report in early 2012.
3. The Permanent Representatives Committee/Council (TTE - Energy) are invited to take note of this progress report drawn up under the responsibility of the Presidency. This report outlines the main issues discussed and suggestions on how to address them.

## II. STATE OF PLAY

The Working Party on Energy examined the proposed draft Directive (and the impact assessment) intensively throughout July and September, analysing first the main principles and provisions, then examining all articles and annexes. On 3 October, the Presidency presented a first revised text of the draft Directive (14980/11) with suggestions for a number of elements, based on oral and written comments from delegations. In the course of October, key articles contained in this proposal were discussed (Articles 4, 6, 10 and 12(5)).

The Presidency, together with the Danish delegation, organised two technical workshops on experience with national energy efficiency obligation schemes and CHP/DHC<sup>1</sup> national systems, in response to Member States' requests. The aim was to facilitate an understanding of the implications of the proposed provisions of the Directive and to exchange best practice. The findings of these workshops, which are without prejudice to formal proceedings in the Council's preparatory bodies, were reported to the Working Party on Energy on 25 October.

From mid-October to the beginning of November, the Presidency held bilateral consultations with all delegations in order to gain a better insight into their positions.

Delegations hold general reservations/scrutiny reservations and are partly still analysing the provisions contained in the draft Directive in more depth.

The Council Legal Service presented an opinion (15452/11) on Union competence to adopt measures on spatial planning (Article 10 and Annex VII) and the subsidiarity principle.

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<sup>1</sup> Combined Heat and Power/District Heating and Cooling.

### **A. General views:**

In line with the conclusions of the European Council of 4 February 2011, delegations emphasised that achieving the EU's energy efficiency objective is fundamental for the overarching EU policy goals in the field of energy, for competitiveness, security of supply and sustainability. Delegations support the aim of the proposal and additional measures for energy efficiency, but also underlined the importance of flexibility for Member States to apply the most cost-efficient measures, of coherence with existing legislation, and of the respect of the subsidiarity principle. In the light of the discussions, the Presidency's text proposal has aimed to maintain the level of ambition set out above and to provide more flexibility.

### **B. Main issues:**

It is the Presidency's understanding that the following main issues have emerged from the discussions and consultations and will require further in-depth consideration, without prejudice to particular points of interest of individual delegations or other provisions included in the proposal which have not been addressed further under the working method proposed by the Presidency to date:

#### Energy efficiency targets (Article 3):

The current Presidency text responds to calls for the text to be aligned with more recent European Council and Council conclusions, including as regards a review to take place in 2013, and for allowing Member States to better reflect national circumstances when setting indicative national energy efficiency targets. At delegations' request, the Presidency suggested an alternative option for expressing and illustrating the EU's 2020 20% energy efficiency target<sup>1</sup>. A two-step assessment of progress achieved, to be carried out in 2013 and 2015, has been included. As a method to compare Member States' progress, the Presidency suggests -as one of the possible options- that the Commission come forward with a draft delegated act by 31 December 2014. It is the Presidency's understanding that a methodology should include a projection for absolute energy consumption in the EU.

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<sup>1</sup> See footnote 9 in 14980/11.

#### Public bodies (Article 4):

Similar to the discussions that took place when the Commission Communication on an Energy Efficiency Plan 2011 was examined, many delegations questioned the scope, financial feasibility and appropriateness of the proposed annual 3% refurbishment target for all buildings owned by public authorities. There were requests for better coherence with Directive 2010/31/EU on the energy performance of buildings, including on possible exclusions. Several delegations have stated the view that any such obligation should be backed by additional sources of financing.

One way to define and delimit more clearly the scope of this provision that was suggested during discussions in the Working Party would be to focus the obligation on buildings owned by central government, whereby Member States could at the same time be required to incentivise the retrofitting or upgrade of the energy performance of the buildings owned by regional and local authorities and in social housing.

The Presidency text includes a first suggestion for an alternative approach to the annual renovation target, which was called for by the Council in its conclusions of June 2011. The alternative approach may require further fine-tuning to provide the flexibility requested by several delegations and at the same time ensure equivalence with the efforts to be undertaken.

#### Purchasing by public bodies (Article 5):

For many delegations, the current text as proposed by the Presidency, including Annex III, does not give rise to major objections at this stage. There have, however, been calls for wider aspects of sustainability for public procurement to be considered, and for further analysis of Annex III and the compatibility of the proposed provisions with EU public procurement legislation.

### Energy efficiency obligation schemes (Article 6):

A number of Member States, partly based on their experience, are favourable in principle towards the proposal to introduce a requirement to set up an energy efficiency obligation scheme, but request flexibility to design the schemes best suited for their circumstances and avoiding the unravelling of already existing and functioning national systems. A number of other Member States are not convinced of the approach, either because they have doubts about the extent of the suggested obligation, fear negative impacts on consumer costs and competitiveness, because national circumstances (limited future potential due to early action, or comparatively low per capita energy consumption) are not taken into account, or because they contest what they view as a binding sectoral target. Among both groups, questions remain on the level of the energy saving rate proposed.

There is resistance to establishing a system of mutual recognition of such schemes on the basis of a delegated act, which is why the Presidency suggests the possibility of envisaging an optional system instead based on a voluntary approach.

For many delegations, the current Presidency text goes some way in addressing their concerns. In particular, it revises the provisions in paragraph 1, providing for greater clarity, for example in relation to the transport fuels sector. Furthermore, the designation of obligated parties would now be left to Member States, regarding which there has been a call to include some guidance on what possible obligated parties could be. In response to requests by delegations, the Presidency text sets a time horizon for the scheme to run until the end of 2020 and suggests higher thresholds for possible exemptions in paragraph 8.

On the basis of the Presidency text, delegations have suggested in the Working Party to provide for a gradual increase of the target, starting from a lower level in order to ramp up the system and reach higher saving rates over time, or to leave flexibility for Member States to set longer periods (e.g. three years) for a cumulative target. During the discussions, there have also been questions on how to recognise "early action" within a 1.5 % saving rate, and savings among non-end-use sectors. Furthermore, there is support for setting out the alternative approach in paragraph 9 in more detail, including the possibility of combining elements of an obligation scheme with other possible approaches (such as fiscal measures, support schemes and voluntary long-term agreements), and ensuring a level playing field with the obligation scheme approach, thus making ex-ante verification by the Commission unnecessary<sup>1</sup>.

#### Energy audits and energy management systems (Article 7):

While there is broad agreement on the usefulness of energy audits to tap additional saving potential, some delegations do not view favourably a mandatory requirement for larger companies to conduct energy audits, on grounds of proportionality, administrative burden and the creation of unnecessary peak demand for auditors. They hold that it would be more useful to focus on the actual implementation of recommendations stemming from energy audits, including through energy management systems. The changes proposed in the Presidency text respond to some of the concerns, in that they clarify the conditions under which in-house experts can perform the audits and extend both the deadline for the obligation to come into effect and the frequency of the audits. Some Member States have stressed the need for a European energy audit standard (currently under development by CEN/CENELEC), which should be reflected in the proposed Directive.

#### Metering and informative billing (Article 8):

While delegations generally support the aim of delivering energy savings through behavioural change, a number of delegations expressed concerns about the relationship between suggested obligations on informative billing and what is laid down on the roll-out of smart meters in the third internal energy market package legislation, which Member States are currently implementing. On the other hand, the Commission has stated that the suggested obligations on informative billing do not rely on smart meters.

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<sup>1</sup> See footnote 10 in 14980/11.

Proposed requirements for individual heat consumption meters or individual heat cost allocators in multi-apartment buildings are viewed as not always cost-effective by a number of delegations. If maintained, an obligation to install any of those could therefore be subject to cost-efficiency. In addition, certain categories of buildings, such as where vertical piping is installed, could be excluded from the scope of heat metering obligations in this Article.

Promotion of efficiency in heating and cooling (Article 10):

Many delegations found the proposed requirements aimed at developing the potential of high-efficiency cogeneration and district heating and cooling too rigid, and several Member States object to the obligations with regard to spatial planning on subsidiarity grounds.<sup>1</sup> CHP/DHC are not seen by all as a viable option in the face of an increasing share of intermittent renewable energy sources, because of certain climate conditions, or a lack of CHP potential identified already in application of Directive 2004/8/EC on cogeneration.

Delegations generally welcomed the suggestions made in the Presidency text as improvements. They streamline the provisions and provide greater flexibility for Member States, notably through, in the first instance, an assessment of CHP/DHC potential within their territory, by including cost-benefit analysis at the level of installations as a basis for exemption under authorisation/permit criteria, and by providing for a simple notification to the Commission. There were requests to make a clearer separation between CHP and DHC, so that the provisions could respond better to different national circumstances and policy choices. It seemed appropriate that Member States would explicitly have the option to exclude nuclear power plants from the requirements of Article 10.

Some delegations asked for the deletion of conditions on the location of installations where waste heat can be used by heat demand points, and several Member States do not support the idea that industrial installations should be required to make use of waste heat and be connected to DHC networks. The Presidency is of the view that these proposed amendments need careful further consideration.

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<sup>1</sup> The opinion of the Council Legal Service on this issue is contained in 15452/11.

Energy transmission and distribution (Article 12):

In the view of a number of Member States, the role to be given to CHP in terms of access and dispatching needs further analysis, in particular in comparison with renewable energy sources and in relation to Directive 2004/8/EC on cogeneration and requirements flowing from internal energy market legislation. As to the relationship between CHP and renewable energy sources in access to the grid and dispatch, the Commission representative expressed the view that it would be the role of the individual Member State to identify a need for and establish any possible priority ranking.

Review and monitoring (Article 19):

At this stage, changes in this Article relate essentially to the two reviews under Article 3. Many delegations expressed hesitations on the ensuing administrative burdens and the timing of certain reporting obligations, stating that reliable statistical data would not be available (either not in April for the preceding year or only for the previous year minus one). On the other hand, the Commission has stated that the administrative burden of reporting will be lower than under the current legislative framework.

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