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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a new Energy Efficiency Directive {COM(2011) 370}, whilst apologising for the delay in this response.

The Commission shares the view of the Bundesrat that increasing energy efficiency is important to help the European Union achieving its 2020 targets for greenhouse gas emission reduction and increasing the share of renewable energy in a cost effective way. The EU indeed needs to take stronger efforts to save energy to reduce its dependence on fossil fuel imports from non-EU countries and reduce the negative impacts of growing energy prices.

Getting on track to achieve the 20% target is estimated to increase EU GDP by €34 bn in 2020 and increase net employment by 400 000 jobs. The insufficiently developed markets for energy services and energy efficiency improvements are the biggest obstacles to linking the benefits and the costs. To this end, market based mechanisms such as energy efficiency obligation schemes are proposed and the establishment of Energy Service Companies (which commit to make the investment and implement the measures in exchange for income from the financial savings on the energy used) is supported.

The Commission agrees with the Bundesrat that it is important to continue the activities initiated under existing EU legislation addressing energy efficiency, including Directive 2006/32/EC on energy end-use efficiency and energy services and Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand. Experience with the implementation of both Directives has however shown that they have not provided sufficient clarity for the Member States on the required obligations. The proposal for a new Energy Efficiency Directive builds on this experience and aims to introduce clearer obligations for Member States. It will cover all sectors, from energy supply to end-use, to ensure that the EU reaches its 2020 target. The Commission does not see any cause for concern in relation to overlaps with the existing Directives 2006/32/EC and Directive 2004/8/EC. The new Directive will repeal both while retaining and, where necessary, clarifying most of the obligations already laid out in the earlier Directives.

*Mr Horst SEEHOFER
Präsident des Bundesrates
Leipziger Straße 3 - 4
D-10117 BERLIN*

The impact assessment for the new Energy Efficiency Directive shows that even if the current target of the existing Energy Services Directive is fully achieved, the EU will reach only half of its 2020 target for primary energy savings. It is important, however, not to become bogged down in a debate on targets. Energy savings are not achieved by targets alone. This is why the Commission opted to propose stringent and ambitious binding measures, rather than binding targets in the proposal for a new Energy Efficiency Directive. It is the Commission's belief that if the measures proposed in this Directive, the regulations on Eco-design (implementing measures of the Directive 2009/125/EC) and Energy Labelling (delegated acts of the Directive 2010/30/EU), the Energy Performance of Buildings Directive (Directive 2010/31/EU), and the measures being taken at Member States level are well implemented, then the proposed 2014 assessment will show that the EU is on track for its 2020 target, without the need for binding targets at national level.

The proposed Energy Efficiency Directive is currently being discussed by the European Parliament and the Council. The Commission is certain that the opinion of the Bundesrat will be taken into account in the discussions during the legislative procedure. Please find in the annex some additional clarifications and explanations to the points raised by the Bundesrat.

I look forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

ANNEX

REPLY TO SPECIFIC POINTS MADE BY THE BUNDESRAT ON THE PROPOSED ENERGY EFFICIENCY DIRECTIVE {COM(2011) 370}

Concerning article 4 of the proposal:

Point 10) The Commission has undertaken an extensive analysis of the principle of subsidiarity in the Impact Assessment accompanying the draft Directive (document SEC(2011)779). Art. 4 of the Directive takes into account the starting points of individual Member States since the 3% rate will be calculated on the total floor area of public buildings that, on 1 January of each year, do not meet the national minimum energy performance requirements set by Member States in application of Article 4 of Directive 2010/31/EU. Therefore, in those Member States where the average energy efficiency of public buildings is already high, the effort to reach the target will be proportionally smaller.

Point 11) The Commission has analysed economic feasibility in detail in the Impact Assessment accompanying the proposed Energy Efficiency Directive (document SEC(2011)779). This analysis shows that the target to double the existing refurbishment rates is an ambitious one, but still in the realm of economic feasibility.

Point 12) Please refer to reply to point 10.

Point 13) Exempting all residential buildings or residential buildings run by communal housing societies would mean that a large share of occupied buildings would be exempted from the provisions of Article 4. However, the Commission's analysis shows that large energy savings can be triggered through refurbishing these types of buildings.

Rental prices in social housing are regulated in many EU Member States. It will be up to the relevant Member State authorities to decide if/how/to what extent the cost of renovations is passed on to the tenants. Decreasing the energy bill of low-income households (through energy efficiency measures) should be a priority in the light of the expected growth of energy prices in the coming years.

The Commission acknowledges that refurbishment will require increased investments. However, the use of the existing funding support schemes – inter alia through the European structural funds – or engaging energy service providers (ESCOs) can considerably buffer the need for additional investments.

Point 14) In the proposed draft Energy Efficiency Directive, historic buildings are not exempt from the provisions of Article 4. However, Member States will be able to choose to give other buildings priority in deciding which to refurbish.

Point 15) Please refer to the reply to point 13.

Point 16) The Commission agrees that the administrative burden of setting up the registers for public buildings should be kept to a minimum.

Concerning article 5 of the proposal:

Point 18) Article 5 of the Energy Efficiency Directive does not force authorities to purchase products/buildings/services that are not cost-effective. Tenders should consider the life-time cost, and not only the upfront cost. Including such considerations in the tendering process is not contradictory with/does not exclude the consideration of other, non-economic criteria.

Point 19) Article 5 deals with the provision of goods and services only. The Commission agrees with the view that the total efficiency of a building has to be the central focus of refurbishment action.

Concerning article 6 of the proposal:

Point 20) Costs and benefits of national energy efficiency obligation schemes have been analysed in detail in the Impact Assessment accompanying the proposed Directive (document SEC(2011)779). This analysis shows that the costs are outweighed by the benefits provided by these schemes. The schemes running in several EU Member States, as UK, France, Italy, Denmark and Belgium (region of Flanders), show that suppliers and distributors can play a major role in harvesting energy saving options on the consumer side.

Point 22) As Article 6 addresses energy retailers or distributors operating on a Member State's territory, a relocation of these entities and in consequence a carbon leakage can by definition be excluded. The obligated parties are free to achieve the savings among all final customers which safeguards that a cost effective implementation of these savings will take place.

Point 23) The energy consumption of installations covered by the EU Emissions Trading Scheme (ETS) are included in the calculation for the annual energy savings value. It may nevertheless be relevant to point out that to date, the majority of savings obtained through national energy efficiency obligation schemes have come from households rather than industry.

Point 24) The text of Article 6, paragraph 6 (c) is identical to that of Article 6, paragraph 1 (a) of Directive 2006/32/EC and should therefore already have been transposed into German law. The Commission is aware of the sensitivity of the data to be provided. In order to meet confidentiality concerns, the expression "while preserving the integrity and confidentiality of private or commercially sensitive information in compliance with applicable European Union legislation" is included in the text.

Concerning article 8 of the proposal:

Point 28) The new Directive is fully consistent with the Directives on the internal market for electricity and gas. As regards electricity, Directive 2009/72/EC requires 80% of the consumers to be equipped with intelligent metering systems by 2020, subject to a positive cost-benefit assessment. As regards natural gas, no deadline has been included in the EU legislation. However, the Energy Efficiency Directive does not oblige Member States to roll-out smart meters as such by any date. It only specifies conditions to enhance consumer rights to have easy access to information about their own consumption when Member States decide to carry out such a roll-out.

Point 29) The Commission proposes that the obligation for frequent billing based on actual consumption should be introduced before 1 January 2015. This does not automatically require the installation of electronic meters with remote reading. In the short term, frequent billing can be introduced on the basis of self-reading by consumers using existing traditional individual meters. In several Member States systems based on self-reading have been introduced by different energy suppliers - often for the billing of individual hot water consumption and recently in some cases also for natural gas and electricity.

The introduction of frequent billing based on actual consumption is crucial. Without this, the smart metering would have only a limited and/or temporary impact on the behaviour of consumers. Ideally, billing based on actual consumption should be provided monthly. With longer intervals the signal to the consumer is significantly reduced and it is not possible for most consumers to establish any link between their individual energy bill and their earlier behaviour leading to certain energy consumption during the billing period

Concerning article 10 of the proposal:

Point 33) Article 10 of the new Directive requires Member States to carry out a comprehensive assessment of their heating and cooling needs in order to better estimate and use the saving potential capacity of cogeneration and district heating and cooling. Those reports need to be updated and notified to the Commission every five years in order to ensure further developments in savings.

It is not possible to improve the efficiency of district heating and cooling and the establishment of high-efficiency cogeneration without considering them in local and regional energy strategies and planning. The efficient use of energy resources and the development of resource efficient heating and cooling systems should therefore be taken into consideration in regional and local spatial planning.

Point 34) The objective of the proposal is precisely to safeguard an economically sustainable deployment of CHP plants. The use of surplus heat (waste heat) which in conventional generation is lost, is a cost effective way of increasing the efficiency of energy production. The additional gain in generation efficiency generally amounts to 10-20 percentage points. The background studies for the impact assessment accompanying the Directive also show that this is one of the cheapest ways to abate CO₂.

However, this does not mean that this single criterion should override all other considerations. The utilisation of waste heat through the careful selection of location should become one of the criteria used in the authorisation procedure. Under the proposed Article a cost-benefit analysis (CBA) should also become part of the authorisation procedure. This CBA will provide a comprehensive assessment of how much each of the criteria should weigh in the authorisation decision. If the use of waste heat in a certain location is not cost-effective in comparison to other locations necessitating a power-only plant, those other locations could be selected. The aim of this Article is that each solution and location will have to be assessed in terms of costs and benefits.

Point 35) Please refer to the reply to point 34.

Point 36) The 20 MW thresholds were selected to achieve the biggest efficiency impact with the least administrative burden. For these installations, the statistical/institutional framework set up under the emissions trading system can be used.

Point 37) In its impact assessment accompanying the proposed Directive, the Commission has closely analysed the administrative burden caused by the obligation to set up inventories according to Article 11. The result of the analysis shows that the overall benefits are highly likely to exceed the costs of this measure.

Concerning article 15 of the proposal:

Point 39) Article 13 of the proposed Directive asks Member States to ensure that by 1 January 2014, "certification schemes or equivalent qualification schemes are available for providers of energy services, energy audits and energy efficiency improvement measures, including for installers of building elements as defined in Article 2(9) of Directive 2010/31/EU". If this is already the case in Germany, then there will be no need for additional action.

Concerning article 15 of the proposal:

Point 40) The Commission agrees that measures to remove regulatory and non-regulatory barriers to energy efficiency have to be taken at national level. Article 15 does not ask for a change in the German rental laws, but rather asks in paragraph 1 (a) to remove barriers caused by "...the split of incentives between the owner and the tenant of a building or among owners, with a view to ensuring that these parties are not deterred from making efficiency-improving investments that they would otherwise have made by the fact that they will not individually obtain the full benefits or by the absence of rules for dividing the costs and benefits between them". The split incentive problem is one of the key impediments hindering refurbishments in the existing building stock, where the largest cost-efficient energy saving potentials can be found. It is up to the national legislator to decide how to best remove this barrier.