



EUROPEAN COMMISSION

*Brussels, 26.4.2022
C(2022) 2497 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Directive of the European Parliament and of the Council on energy efficiency (recast) {COM(2021) 558 final}.

The Commission welcomes the Bundesrat's support to the increased energy efficiency ambition and appreciates its call for targeted measures in support of energy poor citizens and the improved energy efficiency of buildings.

The proposal for an Energy Efficiency Directive (recast), together with the other legislative proposals of the 'Fit for 55' package, is key for ensuring a clean and inclusive transition that leaves no one behind, in line with the European Green Deal objectives. Energy efficiency policies are crucial for reducing greenhouse gas emissions in a cost-effective way and contribute to environmental, climate, economic and social benefits, including job creation, economic growth, alleviation of energy poverty, reduced energy bills, and better living conditions, air quality and health.

In the current crisis context, it is clear that the Union and its Member States need to prioritise energy efficiency policies and investments; we have to act urgently and decisively.

Concerning the 'Energy Efficiency First' principle, the Commission would like to clarify that the principle applies to planning, policy and major investment decisions in energy systems and non-energy sectors, where those sectors have an impact on energy consumption. Energy efficiency solutions shall be considered as alternative solutions that would lead to the original objective. Reducing demand should be preferred to producing energy from climate neutral sources, also because it helps controlling the level of the investments needed for the transition towards renewables and supports a more sustainable approach to resources that are in any case limited. Where the original objective was decarbonisation, energy efficiency solution shall be applied, where it is cost-effective from societal perspective. In cases where a cost-benefit analysis is required, the

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wider societal benefits of energy efficiency solutions shall be assessed, and Member States may choose another solution with better cost-benefit results.

The Commission appreciates that the Bundesrat supports the exemplary role of the public sector. The Commission would like to reassure the Bundesrat that in line with Article 3 (4) (a) of the Directive 2014/24/EU of the European Parliament and of the Council on public procurement, bodies that have industrial or commercial character are outside the scope of the definition of public bodies in Article 2(10). Energy efficiency in all buildings within and outside the public sector is tackled in the Commission proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)¹. While the proposal for a recast of the Energy Efficiency Directive includes provisions on the renovation of public buildings, it respects the subsidiarity principle and does not limit the extent or the concept of the service of general economic interest in relation to public housing.

The Commission notes that the Bundesrat welcomes that social housing owned by private persons is not subject to Article 6 obligations. The Bundesrat asks for inclusion of exceptions for protected, religious and defence buildings into Article 6. In the proposal for a recast of the Energy Efficiency Directive, these buildings are included in the baseline solely for the purpose of calculating the 3% of buildings that Member States should renovate every year. While this slightly increases the square meters to be renovated, it remains however entirely to the discretion of a Member State which buildings shall be renovated.

Therefore, Member States will be able to exclude protected, religious and military buildings from their renovation plans, if they choose to do so. In addition, it remains possible to respect technical and economic feasibility, to strike a balance between energy renovation and cultural heritage values, and to consider the reparation, reuse, recycling of materials and the life cycle of greenhouse gas emissions when renovating protected buildings. Public bodies are also encouraged to consider life cycle carbon emissions as part of public procurement in the purchase of new buildings under Article 7, and as part of energy services under Article 5(5).

With regard to the contribution to the alleviation of energy poverty, the Commission is committed to achieve a real change for people affected by energy poverty and vulnerable customers through structural changes. This is where the application of the 'Energy Efficiency First' principle and strengthening the energy savings obligation is paramount. The Social Climate Fund will complement in this respect both the proposal for a recast of the Energy Efficiency Directive in this regard and the proposal for a revised Energy Performance of Buildings Directive². The Fund shall provide funding to Member States for increased energy efficiency of buildings, decarbonisation of heating and cooling of buildings, including the integration of energy from renewable sources, and granting improved access to zero- and low-emission mobility and transport. These measures and

¹ COM(2021) 802 final

² COM(2021) 802 final

investments need to benefit foremost vulnerable households, micro-enterprises or transport users.

The proposal for a recast of the Energy Efficiency Directive aims to further empower and protect vulnerable customers and final users and those affected by energy poverty. The proposal provides specific requirements for the alleviation of energy poverty in the provisions on the energy savings obligation (Articles 8 and 10 and Annex V). In particular, it is proposed that policy measures shall be implemented as a priority among vulnerable customers and final users, people affected by energy poverty and, where applicable, people living in social housing. Moreover, Member States are to make best possible use of public funding and, where applicable, to consider the use of revenues from the auctioning of ETS allowances. Member States are required to ensure that their national policy mixes have no adverse effects on vulnerable groups, as well as to achieve a minimum share of the total amount of required end-use energy savings among those in need.

The proposal aims at diminishing the fossil fuel dependency, as welcomed by the Bundesrat. In this context, the Commission proposed not to incentivise energy efficiency measures regarding the use of direct fossil fuel combustion under the Article 8 on energy savings obligations.

The Commission agrees with the opinion that billing information and billing are important means for customers to be informed about their energy consumption and react in ways that lead to more efficient use of energy. In this context, Directive (EU) 2018/2002 of the European Parliament and the Council amending Directive 2012/27/EU on energy efficiency strengthened the framework for metering and billing for district heating, cooling and domestic hot water. To avoid a disproportionate application, the Directive requires the installation of sub-metering devices and/or remotely readable devices where technically feasible and cost effective, which is proportionate to the potential energy savings. This allows Member States to decide, based on objective grounds, which categories of buildings should be equipped with these devices and which not.

The Commission believes that the installation of remotely readable devices creates new opportunities for accurate and frequent information being available to consumers of district heating, cooling and domestic hot water. In this respect and taking into account the advantages offered by digital and online technologies, the co-legislators agreed in 2018 that the provision of billing or consumption information based on actual consumption or heat cost allocator readings to final users, within the heating or cooling periods, is a proportionate measure.

The Commission agrees with the opinion expressed by the Bundesrat that consumer protection organisations are key stakeholders in supporting people affected by energy poverty, vulnerable customers and, where applicable, people living in social housing. The chapter IV of the Energy Efficiency Directive is dedicated to aspects relevant to consumer information and empowerment in line with the inclusive and just transition objectives of the European Green Deal communication, especially for the most vulnerable or excluded groups of citizens. One of the proposed measures is the establishment of one-stop-shops or similar mechanisms for the provision of technical, administrative and financial advice and

assistance on energy efficiency, including energy renovations of buildings and the take-up of renewable energy for buildings to final customers and final users. This proposal prescribes neither the exact form of the one-stop-shops (or similar mechanisms), the portfolio of services they will offer, nor their customer groups. However, the Commission believes that final customers and final users, especially households, are the ones more often in a disadvantaged position in terms of technical expertise or access to technical and financial services. Thus, the proposal requires Member States to focus on these categories.

The Commission welcomes the support expressed by the Bundesrat to the multilateral dialogue process proposed in Article 21(5) of the Energy Efficiency Directive recast. It also shares the view that there is a need to adequately study and propose measures that will remove regulatory and non-regulatory barriers to energy efficiency in relation to the split incentives between owners and tenants or among owners in a building. The Commission recalls that most of these split incentives are closely linked to national ownership and tenancy legislation, thus each Member State shall define the terms and practice as well as expected results from the proposed multilateral dialogue process.

The proposal also includes strengthened requirements on awareness raising and information provision to empower and engage consumers to participate in energy efficiency improvements and interventions. Among others, it requires implementing and financing energy efficiency improvement measures as a priority among vulnerable customers, people affected by energy poverty and, where applicable, people living in social housing, to alleviate energy poverty. Whereas a similar provision is set in Article 8(3) (energy savings obligation), it is Article 22 that broadens the scope of the obligation.

The proposal provides Member States with concrete fields for action in Article 22. The list of elements is non-exhaustive, which means it does not limit Member States to go further in the alleviation of energy poverty. Member States should make the best possible use of public funding available at national and Union level for investments into energy efficiency, which support vulnerable customers, people affected by energy poverty and, where applicable, people living in social housing. The proposal allows full discretion for Member States to define and implement the instruments and the measures to fulfil this obligation, including the level and origin of the funding and the target groups that will benefit from those measures.

Member States have already been required to establish a concept of vulnerable customers and assess the number of households in energy poverty pursuant to Article 28(1) and 29 of Directive (EU) 2019/944 and Article 3(3) of Directive 2009/73/EC. In this regard, the proposal does not intend to duplicate, but complements and improves the acquis on the empowerment and protection of vulnerable customers by requiring Member States to define energy poverty and vulnerable customers and to introduce the necessary measures that help alleviate energy poverty. Without prejudice to the proposed provisions, Member States retain their full flexibility in defining these concepts and taking the appropriate measures according to their national circumstances.

The Commission appreciates that the Bundesrat supports the progressive tightening of the definitions of 'efficient district heating and cooling'. Together with the definition of 'high-

efficiency cogeneration' and linked planning obligation for district heating systems to meet the definition of efficient district heating and cooling, these are enablers for the clean transition in line with the decarbonisation objectives of the European Green Deal. A revision of the definitions is needed to ensure that any EU funding and state aid is used only for investments compliant with common climate and energy objectives. Including, without any limitations, waste to heat conversion into the definition of efficient district heating would risk creating the wrong incentives contrary to the principles of waste management: waste avoidance, reuse and recycling. While the gases from biogenic waste can be treated as renewable energy, decarbonised and climate-neutral gases should be counted as renewable only when their production is based on biomass or they can be categorised as renewable fuels of non-biological origin.

The points made above are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council. The Bundesrat's Opinion has been made available to the Commission's representatives taking part in the ongoing negotiations of the co-legislators, the European Parliament and the Council, and will inform these discussions.

The Commission believes that the political dialogue with national Parliaments and their views are essential for bringing together the institutions and the citizens of the European Union for implementing the European Green Deal objectives in the most effective way. The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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