

COURTESY TRANSLATION

**Subsidiarity analysis of the proposed directive recasting Directive 2002/91/EG on the energy performance of buildings (COM(2008)780)**

To the European Commission

Vice-President of the European Commission,  
Margot Wallström

The Hague, 12 February 2009

The Dutch House of Representatives has analysed the proposed directive recasting Directive 2002/91/EG on the energy performance of buildings with regard to the principles of subsidiarity and proportionality, in conformity with the procedure specified for this purpose. This analysis applies Article 5 of the EC Treaty and Protocol 30 of the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

The purpose of this letter is to inform you of the position of the Dutch House of Representatives. Duplicates of this letter have been submitted to the European Parliament, the Council, COSAC and the government of the Netherlands.

Although there is no dispute regarding whether climate and energy policy belongs to the competencies of the European Union, the House of Representatives is not convinced that the proposal in question conforms to the requirements of subsidiarity and proportionality.

*Subsidiarity*

The House of Representatives argues that the member states themselves have the right to determine how and in which sectors the national climate targets are to be achieved. They feel their opinion is strengthened by the proposal for a Decision on the effort of Member States to reduce their greenhouse gas emissions (COM(2008)17) which is a part of the EU climate and energy package. In light of the policy freedom mentioned in this decision, it is not appropriate for the European Union to prescribe further specified instruments with regard to energy performance in the built environment. Moreover, the housing market is not a cross-border market. Although it is permissible to place certain requirements on building materials and on heating and cooling systems, such requirements should be arranged in a directive regarding product requirements.

*Proportionality*

With regard to proportionality, the House of Representatives is of the opinion that the proposed recasting of the directive adds too many detailed regulations to the existing directive. Mandating national plans and targets for energy-neutral buildings constitutes an excessive intrusion into the rights of member states to determine for themselves the sectors in which emissions reductions are to be achieved.

The requirement to develop a system of fines is an extreme tool; the means of enforcing the directive can better be determined on a national level.

Extending the application of the energy label, along with its central registration, would entail major administrative burdens, which are unlikely to be offset by the environmental benefits that could be achieved with the directive.

The committee is therefore not convinced that the proposal meets the criteria of subsidiarity and proportionality.

Respectfully,

President of the Dutch House of  
Representatives,  
G.A. Verbeet