



EUROPEAN COMMISSION

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Ms Verbbet
President of the House of Representatives
of the States-General
(The Netherlands)

Dear President,

It is my pleasure to thank you for the Second Chamber's letter of 12 February 2009 regarding subsidiarity and proportionality aspects of the proposal for a recast Energy Performance of Buildings Directive (COM(2008) 780).

I may reassure you that subsidiarity and proportionality of this legislative proposal have been a priority of its development from the very beginning. This is inter alia why the Commission has chosen the legal instrument of a recast, consistently building on the current Energy Performance of Buildings Directive 2002/91/EC, adopted by the European Parliament and the Council of the European Union on 16 December 2002. In this respect the Commission welcomes the First Chamber of the Parliament of The Netherlands' judgement that the proposed recast Directive fully respects subsidiarity aspects as expressed in their letter of 10 February 2009 to the Commission.

Furthermore, the Commission's work on this holistic EU legislation for buildings, which has been announced for the first time in its "Action Plan for Energy Efficiency"¹, was endorsed by the Council of the EU in its Presidency Conclusions of 2 May 2007² on the "European Council Action Plan 2007 – 2009" for an Energy Policy for Europe; and it was affirmed by the Presidency Conclusions of 20 June 2008³. Requirements solely limited to individual products or technical building systems as you refer to in your letter would not enable the full realisation of the overall cost-effective energy saving potential in the complex buildings sector. Holistic energy saving policies and methodologies developed together within EU are effective instruments that support every Member State at a time of increasing climate and energy concerns and economic downturn. The existing Energy Performance of Buildings Directive with its support actions has proved to be such an instrument.

The objective of the proposed recast Directive is consequently twofold. First, to clarify some of the original provisions and definitions. Second, to exploit the energy savings effect of its key elements to its full extent.

¹ COM(2006)545

² Document no. 7224/1/07 REV1, Annex I, point 6, of the Council of the EU.

³ Document no. 11018/08, point 38, of the Council of the EU.

Proposed changes and adding of provisions were comprehensively analysed beforehand in the Commission's Impact Assessment.⁴ Therein, both the effect of proposed provisions and the related administrative burdens and costs were assessed, based on in-depth studies and on conducted showcases from different Member States.⁵

The provisions and changes introduced to the proposed recast Directive give comprehensive room for manoeuvre to Member States to implement them in the most effective way, tailored best to their national and regional conditions. The specific provisions also provide flexibility to Member States to make use of lessons learnt and to choose from relevant best practices, as they are e.g. regularly discussed with Member States' representatives in the Concerted Action for the existing Energy Performance of Buildings Directive since 2005. This inter alia applies for national plans for zero/low energy and carbon buildings you refer to, for what the Commission proposal does neither prescribe the national strategies nor the targets for this type of buildings. Many Member States are already working on zero/low energy and carbon buildings, so our proposed stepwise approach should benefit all Member States. The required penalty regimes you refer to, are also for Member States to determine and define at national or regional level in order to guarantee their proportionality. Experience in some Member States has shown that penalties improve the effectiveness of these policy tools.

Better regulation and low administrative burdens are of our key interest and an important matter of the Lisbon Strategy for jobs and growth. Effective administration is a crucial competitive factor for the EU economy. The Commission detected schemes for Energy Performance Certificates for buildings in some Member States, having almost no positive impact in energy savings but nevertheless leading to considerable costs for individuals and administration. Such proceeding unfortunately can be judged being the contrary of better regulation. This is why the recast proposal foresees improvements with regard to the relevant provisions for certificates, to which you refer to in your letter.

The recast proposal reflects that there is huge cost-effective energy savings potential in the buildings sector but that it is not realised by its own or by solely volunteer or informational initiatives. Best practices throughout the EU, based on the experience with the current Directive, prove that the overall energy saving objectives will not be achieved without common efforts such as proposed by the recast Energy Performance of Buildings Directive.

The Commission remains at your disposal for further information, namely with regard to the proportionality of individual provisions in the recast proposal.

I look forward to developing our policy dialogue further in the future.

Yours sincerely

Margot WALLSTRÖM
Vice-President of the European Commission

⁴ SEC(2008)2864.

⁵ For example, the impacts of a proper scheme for Energy Performance Certificates for buildings have inter alia been quantified by a study carried out by the Delft University of Technology (NL), which is quoted in the Impact Assessment.