

Translation of a letter

From: Swedish Government Offices, the Ministry of Enterprise, Energy and Communications

Date: 19 December 2013

To: European Commission, DG Energy

Subject: Notification of Sweden's intention regarding implementation of Article 5 and exemptions under Article 14 of the Energy Efficiency Directive (2 annexes)

Our ref.: N2013/5035/E (final)

Pursuant to the provisions of Articles 5(6) and 14(6) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, please find enclosed an explanation of Sweden's intention regarding the implementation of Article 5 and exemptions under Article 14. Sweden's intention is set out in *Annexes 1 and 2*.

Signed: Mr Dan Sandberg, Under-Secretary for Legal Affairs

Memorandum

Intention regarding implementation of Article 5 of the Energy Efficiency Directive

This memorandum explains how Sweden intends to implement Article 5 of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC ("the Energy Efficiency Directive"). The memorandum has been drawn up in accordance with the provisions of Article 5(6).

The assessments presented here are consistent with the assessments made in the memorandum *Proposal for the implementation of the Energy Efficiency Directive in Sweden* (N2013/2873/E). The memorandum has been prepared at the Government Offices and sent for consultation. Sweden's intention to implement Article 5 in accordance with the alternative approach under Article 5(6) is maintained as expressed in the memorandum.

1 The provisions of the Directive

Under Article 5(1) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC ("the Energy Efficiency Directive"), each Member State shall ensure that 3 % of the total floor area in heated and/or cooled buildings owned and occupied by its central government as from 1 January 2014 is renovated each year to meet at least the minimum energy performance requirements that it has set in application of Article 4 of Directive 2010/31/EU. The 3 % rate shall be calculated on the total floor area of buildings with a total useful floor area over 500 m² owned and occupied by the central government of the Member State concerned that, on 1 January of each year, do not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU. That threshold shall be lowered to 250 m² as of 9 July 2015.

Under Article 5(6) of the Energy Efficiency Directive, Member States may opt for an alternative approach to Article 5(1)-(4), whereby they take other cost-effective measures to achieve energy savings in buildings owned and occupied by their central government. Article 5(6) states further that Member States opting for the alternative approach shall notify to the Commission, by 31 December 2014, the alternative measures that they plan to adopt, showing how they would achieve an equivalent improvement in the energy performance of the buildings within the central government estate.

2 Which buildings are concerned?

In order to determine the extent of the requirements of the Directive and whether the basic approach under Article 5(1)-(4) or an alternative approach under Article 5(6) should be chosen, the buildings owned and occupied by the central government must be identified. The key here is to identify the buildings owned by the central government and calculate their useful floor area. There are no registers listing buildings that are both owned and occupied by the central government. Buildings occupied by the central government but owned by other property owners are not covered by the Directive's renovation requirements. Provisions on the central government as a tenant can instead be found in Article 6 of the Directive, dealt with in Section 7(2) on purchasing by the central government.

In the list of definitions in Article 2 of the Directive, the term “central government” means "all administrative departments whose competence extends over the whole territory of a Member State". "Total useful floor area" means the floor area of a building or part of a building, where energy is used to condition the indoor climate.

Some guidance for determining the buildings subject to the requirement is provided in Annex IV to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, which contains a list of each Member State's central government authorities covered by the said Directive. That Directive applies also to bodies governed by public law, including state-owned companies that meet needs in the public interest, provided that these needs do not have an industrial or a commercial character. Further guidance for determining the buildings subject to the requirement is provided in the definition of the "S.1311 Central government" category in the European Commission's guidance note for Eurostat's data collection for the European System of National and Regional Accounts (ENS 95)¹ pursuant to Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community. According to the Commission's guidance for implementing the Energy Efficiency Directive² "central government" consists of non-profit institutions which are controlled and financed mainly by the state and whose competence extends over the whole economic territory. In this definition the state is not limited to a few ministries/departments but covers also the entities directly dependent on them in terms of authority (i.e. they are not completely independent) and financing.

In the light of this, the renovation requirement is considered to apply to buildings owned by courts and administrative authorities under the government. On the other hand, buildings owned by state-owned companies are not covered by the renovation requirement.

Table 1 shows which authorities under the government own buildings. The table also shows how many buildings have a floor area greater than 250 m² and a certified energy performance above the minimum requirement set out in the National Board of Housing, Building and Planning building regulations and are owned by authorities, their total floor area and their total energy consumption. The list of buildings owned by the central government excludes buildings which may be excluded under Article 7(2), i.e.:

- a) buildings officially protected as part of a designated environment, or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;

¹ [http://circa.europa.eu/irc/dsis/nfaccount/info/data/esa95/en/een00081 .htm](http://circa.europa.eu/irc/dsis/nfaccount/info/data/esa95/en/een00081.htm)

² Guidance note on Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EC, and repealing Directives 2004/8/EC and 2006/32/EC Article 5: Exemplary role of public bodies' buildings, SWD(2013) 445 final, accompanying the document Communication from the Commission to the European Parliament and the Council, implementing the Energy Efficiency Directive - Commission Guidance. COM(2013) 762 final.

- b) buildings owned by the armed forces or central government and serving national defence purposes, apart from single living quarters or office buildings for the armed forces and other staff employed by national defence authorities;
- c) Buildings used as places of worship and for religious activities.

Table 1. Energy-certified buildings owned by the central government and their energy consumption (Source: National Board of Housing, Building and Planning)

Authority	Number of buildings	Total floor area A_{temp} (m ²)	Total energy consumption (kWh/year)
National Fortifications Administration	264	696 770	130 817 790
Civil Aviation Administration	11	68 067	15 195 047
Swedish Environmental Protection Agency	2	1 197	221 271
Swedish Maritime Administration	8	3 763	914 314
National Property Board	433	897 683	139 570 376
Swedish University of Agricultural Sciences	7	2 580	529 075
Swedish Transport Administration	6	8 619	1 555 361
Total	731	1 678 679	288 803

3 Selecting an alternative approach

The Directive should be complied with cost-effectively. Cost-effectiveness means the efficiency with which measures are implemented and the efficiency of the administration established to deal with selection and reporting. Table 1 (above) shows that a few central government authorities own buildings and that ownership is divided unevenly. Two authorities own around 95 per cent of the buildings and the total floor area. Other authorities own only a few buildings. Requiring that every authority annually renovate an area equivalent to 3 % of the floor area does not take into account the unequal distribution of ownership. In principle this would mean that all authorities except the National Fortifications Administration and the National Property Board would have to renovate their entire stock of buildings within a period of seven years. Authorities with few buildings or buildings subject to special conditions have fewer options. There is a considerable risk that such a system would impose measures that are costly and not particularly appropriate. If the government or the authority appointed by the government is instead allowed to decide which buildings are renovated each year, this is likely to encourage cost-effective measures, though it would lead to extensive administration. A register would be needed of all possible energy-saving measures in all the buildings and of the estimated costs in order to prioritise the proposed measures every year.

In order to promote cost-effective measures and reduce administrative costs, an alternative approach should instead be selected pursuant to Article 5(6), where an energy saving target would be determined for central government authorities owning buildings.

4 How much energy must the central government save by adopting specific measures in buildings?

For the purpose of the alternative approach, Member States may estimate the energy savings that paragraphs 1 to 4 would generate by using appropriate standard values for the energy consumption of reference central government buildings before and after renovation and according to estimates of the surface of their stock.

Energy savings are determined on the basis of the amount of energy savings that would be achieved globally between 1 January 2014 and 31 December 2020 if 3 % of the floor space would be renovated each year to meet the national minimum energy performance requirements. The annual savings target for the entire stock of state-owned buildings is calculated as 3 % of the difference between the total current energy consumption of the buildings and their total energy consumption if the minimum requirement set out in the National Board of Housing, Building and Planning building regulations (BBR)³ were fulfilled.

The average energy efficiency performance of the state-owned buildings presented in Table 1 (above) is 172 kWh/m²/year. The average energy performance for these buildings had they complied with the requirement for new buildings set out in BBR19 is 108 kWh/m²/year, resulting in a difference of approximately 64 kWh/m²/year.

Table 2 presents a preliminary estimate of the overall energy savings target for central government authorities that own buildings. By the end of 2020 measures must be taken to reduce energy consumption in buildings owned by central government authorities by a total of just under 21 GWh, which corresponds to over 7 per cent of the current annual energy consumption in these buildings

Year	Cumulative savings [MWh]
2014	3 219
2015	6 342
2016	9 371
2017	12 309
2018	15 160
2019	17 924
2020	20 606

5 The total energy savings should be allocated to the authorities with the biggest stock of buildings

Energy savings can be achieved either by requiring all of the authorities concerned to implement the measures or they may be allocated to the authorities in different ways. The

³ The calculations are based on the assumption that the buildings would meet the BBR requirements for new buildings after renovation. This exceeds slightly the minimum standards, which include rules for modifications (which are less far-reaching than the rules for new buildings). The rules for modifications are designed so as to take into account an individual building's conditions and they may thus be different for each building. One method would be to make a general estimate of how much lower the energy performance requirement pursuant to the rules for modifications is compared to the requirements for new buildings and to use that level as a basis for calculations.

main basis for choosing an approach should also in this case be high cost-efficiency and light administration.

An alternative approach may give an authority more freedom, as it includes more measures than the renovation requirement, but the same problems would arise as described above. An authority with a small building stock may be forced to take costly and unprofitable measures, and a centralised system involves extensive administration. As explained above, two authorities (the National Fortifications Administration and the National Property Board) together own the majority of the buildings and total useful floor area. The same applies to the total energy consumption. In order to promote cost-effective measures and reduce administrative costs, the energy savings targets, calculated for the buildings of all the authorities, should be applied to the largest property owners. This would mean that the National Property Board and the National Fortifications Administration would be required to collectively reduce their energy consumption by nearly 21 GWh by 2020. An advantage of this approach is that the administrative burden is minimal. The risk of imposing inappropriate or cost-ineffective measures can be avoided also if the stock of buildings of these authorities is considered big enough to provide sufficient flexibility to implement the savings using cost-effective and appropriate measures.

The wording of the provisions, including on the sharing of the commitment between the two authorities, will be considered when drafting an ordinance.

Memorandum

Notification to the Commission pursuant to Article 14(6) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC

Under Article 14(6) of the Energy Efficiency Directive, Member States may exempt certain installations from the cost-benefit analysis requirement referred to in Article 14(5).

The installations, which may be exempted are

- a) those peak load and back-up electricity generating installations which are planned to operate under 1 500 operating hours per year as a rolling average over a period of five years, based on a verification procedure established by the Member States ensuring that this exemption criterion is met;
- b) nuclear power installations;
- c) installations that need to be located close to a geological storage site approved under Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006.

Under the second subparagraph of Article 14(6) Member States may also lay down thresholds, expressed in terms of the amount of available useful waste heat, the demand for heat or the distances between industrial installations and district heating networks, for exempting individual installations from the provisions of points (c) and (d) of the first subparagraph of Article 14(5).

Under the second subparagraph of Article 14(6) Member States shall notify exemptions adopted under this paragraph to the Commission by 31 December 2013 and any subsequent amendments to them thereafter. According to the information provided by the Commission, this obligation shall be interpreted as meaning that an intention to benefit from an exemption must also be notified.

According to the memorandum *Proposal for the implementation of the Energy Efficiency Directive in Sweden* (N2013/2873/E), a new law on cost-benefit analyses in the energy sector should be adopted. The memorandum states further that Sweden should use the possibility to benefit from exemptions as provided by the Directive and that it would be appropriate to lay down provisions to this effect in an ordinance or in administrative provisions. According to the memorandum, the proposed law on cost-benefit analyses should contain provisions on such regulatory powers.

The memorandum has been prepared at the Government Offices and sent for consultation. Sweden's intention to use the possibility to benefit from exemptions as provided by the Directive is maintained as expressed in the memorandum.

Any exemption should be in place at the same time as the legislation is scheduled to enter into force, i.e. on 1 June 2014.

We hereby notify this intention to the Commission. A renewed notification to the Commission will be made once a decision has been made on the exemptions.