ENERGY EFFICIENCY

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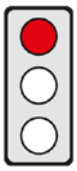
KEY ISSUES

Objective of the Directive: A stricter and now also binding energy savings target of 30% by 2030 is to be brought in, as well as obligations for the Member States on achieving this target.

Affected parties: Energy consumers, energy companies and Member States.



Pro: –

Contra: (1) By contrast with emissions trading, tightening the 2030 energy savings target to a binding 30% does not constitute a targeted or cost-effective way of achieving the actual environmental and energy policy targets – climate protection and security of supply.

(2) The obligations for the Member States to reach the energy savings targets – particularly the obligation to save 1.5% of energy annually among energy end-users– are therefore misguided.

(3) Binding EU energy efficiency targets for Member States – particularly the requirement to renovate 3% of central government public buildings each year – are in breach of the principle of subsidiarity because there is no cross-border issue.

(4) The application of the 1.5% energy savings obligation for an indefinite period until the Commission no longer considers it necessary is in breach of the EU principle of legal certainty.

CONTENT

Title

Proposal COM(2016) 761 of 30 November 2016 for a **Directive** of the European Parliament and of the Council amending Directive 2012/27/EU on **energy efficiency**

Brief Summary

- **Context and objectives**
  - The existing Energy Efficiency Directive (2012/27/EU; see cep**Compass** Climate and Energy, p. 77 et seq.) provides for a – non-binding – EU-wide energy savings target of 20% by 2020 as compared with forecast consumption (Art. 1 (1)).
  - In addition, it constitutes the EU legal framework for establishing non-binding "national energy efficiency targets" for 2020 (Art. 3 (1)) and energy efficiency measures by the Member States.
  - In 2014, the European Council passed (see cep**Compass** Climate and Energy, p. 112 et seq.)
    - a – non-binding – EU energy efficiency target of 27% by 2030 and
    - a review by 2020 as to whether this target should be increased to 30%.
- **EU energy efficiency target for 2030 and national energy efficiency contributions**
  - In future there will be a – binding – EU-wide energy efficiency target for 2030 of 30% as compared with forecast consumption (new Art. 1 (1)).
  - To achieve this target, Member States must set – non-binding – "national energy efficiency contributions" (new Art. 3 (4)).
  - When setting their energy efficiency contributions [new Art. 3 (4) in conjunction with Art. 6 Governance Regulation, Proposal COM(2016) 759]
    - Member States must "take into account" the EU energy efficiency targets for 2020 and 2030,
    - Member States may also take into account "national circumstances" - e.g. their "cost-effective energy-saving potential".
  - Member States must notify the Commission [new Art. 3 (4) in conjunction with Art. 3 et seq. and Art. 15 et seq. Governance Regulation, Proposal COM(2016) 759]
    - by 2019 of their national energy efficiency contributions and
    - every two years, as from 2021, of their implementation plans.
  - Where the Commission believes that the national energy efficiency contributions of individual or all Member States or their implementation is insufficient in order to achieve the EU energy efficiency target for 2030, it may [Art. 25 et seq. Governance Regulation, Proposal COM(2016) 759]
    - make recommendations to individual or all Member States,
    - to take additional measures at EU level – e.g. for products (Eco-label Directive 2010/30/EU and Ecodesign Directive 2009/125/EC; see cep**Compass** Climate and Energy p. 82 et seq.) –.

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- **Annual energy savings obligation of the Member States**
  - Every Member State must ensure that the energy consumption of end-users falls annually by 1.5%. Until now, this energy savings obligation was applicable up to 2020. In future, it will continue to apply beyond 2030 for 10-year periods until the Commission considers that it is no longer necessary in order to achieve "the Union's long term energy and climate targets for 2050". (amended Art. 7 (1))
  - When calculating the energy savings obligation, Member States may deduct renewable energy generated for own use (new Art. 7 (2) (e).
  - Member States may fulfil their energy savings obligation in two – combinable – ways:
    - They can introduce an "energy efficiency obligation scheme" (EEOS) (new Art. 7a).
      - In this case, they must oblige the energy companies ("the energy distributors and/or retail energy sales companies") to make energy savings among their end customers - by efficiency measures - or among third parties (new Art. 7a (2) and (5) (b).
      - Member States must include in these energy savings obligations "requirements with a social aim", e.g. by requiring that "a share of energy efficiency measures must be implemented as a priority in households affected by energy poverty and in social housing" (new Art. 7a (5) (a).
    - They can also take "alternative policy measures" (new Art. 7b (1)). In so doing, they must take into account the effect on "households affected by energy poverty" (new Art. 7b (2)).
    - Member States must set up independent measurement, control and verification systems to carry out representative samples of the energy savings by the EEOS (new Art. 7a (4)) or by "alternative policy measures" (new Art. 7b (3)).

- **Renovation of public buildings and public procurement**
  - Since 2014, 3% of the total area of heated and/or cooled buildings belonging to the central government of a Member State must be renovated annually, such that the minimum standards for overall energy efficiency under Art. 4 of the Energy Performance of Buildings Directive (2010/31/EU) are satisfied.
  - Central governments are only permitted to procure products, services and buildings which meet the requirements of "high energy efficiency performance" and cost effectiveness (Art. 6 in conjunction with Annex III).

- **Metering and accounting systems**
  - In the case of new-builds or major renovation of multi-apartment and multi-purpose buildings which have a central heating or cooling source, or are supplied from district heating and cooling systems, newly installed meters and cost allocators must be remotely readable as from 2020.
  - Meters and cost allocators that have already been installed but which are not remotely readable must be upgraded by 2027 (new Art. 9a (4).

Main Changes to the Status Quo

- Until now, there has only been a non-binding EU energy efficiency target of 20% by 2020. Now an additional binding EU energy efficiency target of 30% by 2030 will be established.
- Until now, the Member States' annual 1.5% energy saving obligation only applied until 2020. Now it will continue to apply for 10-year periods beyond 2030.
- New: Member States may deduct renewable energy generated for own use when calculating the energy savings obligation.
- New: under national energy saving obligations "requirements with a social aim" and the effect on "households affected by energy poverty" must be taken into account.
- New: in the case of new-builds or major renovation of multi-apartment and multi-purpose buildings which have a central heating or cooling source, or are supplied from district heating and cooling systems, individual meters must be installed and, as from 2020, newly installed meters and cost allocators must be remotely readable.

Statement on Subsidiarity by the Commission

To date, energy efficiency objectives could "not be sufficiently achieved by Member States alone". EU action is necessary to "facilitate and support" activities at national level. According to the Commission, the principle of subsidiarity is respected as Member States have flexibility when selecting the measures for achieving the required energy savings. (p. 4)

Policy Context

In February 2015, in order to implement the EU energy efficiency target of at least 27% by 2030, passed by the European Council in 2014, the European Commission outlined possible measures which will have priority in its "Framework Strategy for an Energy Union" (see cep**PolicyBrief**) ("energy efficiency first"; see cep**Input** 01/2017). In December 2015, the European Parliament called for a binding EU energy efficiency target of 40% by 2030. On 30 November, in addition to this Proposal for an amendment to the Energy Efficiency Directive

(2012/27/EU), the Commission also submitted Proposals to amend the Directive on the energy performance of buildings (2010/31/EU) [Proposal COM(2016) 765] and for a new Regulation on "Governance" of the Energy Union [Proposal COM(2016) 759].

Legislative Procedure

30 November 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	Energy
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: TBA; Environment, Public Health and Food Safety, Rapporteur: TBA
Federal Ministries:	TBA (leading)
Committees of the German Bundestag:	TBA (leading)
Decision-making mode in the Council:	Qualified majority (adoption by 55% of the Member States making up 65% of the EU population)

Formalities

Legislative competence:	Art. 194 TFEU (Energy)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

There is no reason why increased energy efficiency in itself should be generally framed as a – primary – **political aim** because an energy efficiency target may exceed the amount of energy savings necessary to achieve the true environmental and energy policy objectives - climate protection, clean air and security of supply - in a cost-effective way.

In addition, a general energy savings obligation is not a suitable means of achieving targets because it does not take account of the fact that the various methods of generating energy have different effects on climate and air quality and it makes no distinction between local supplies and imports and even less between gas, oil and coal. In the case of some energy efficiency measures, future cost savings do not cover the higher acquisition costs. In addition, an increase in technical efficiency does not always result in an equal reduction in energy consumption, e.g. where increased use gives rise to greater energy consumption or cost savings are spent on other energy consumption (known as the "rebound effect").

The economic justification used for government intervention in free market processes is often the need to overcome "external effects" such as the emission of greenhouse gases (GHG), whose costs are not borne by the polluter and information problems (see cep**Input** 01/2017). With the Emissions Trading System (ETS), see cep**Compass** Climate and Energy, p. 10 et seq.), however, the EU already has an effective and cost-efficient instrument for internalising the costs of climate change due to GHG. In the course of this GHG reduction, fossil fuels will be saved both directly - by way of greater technical efficiency or changes in behaviour - and indirectly by the increased use of renewable energy. This reduces not only emissions of air pollutants but also imports of fossil fuels which increases security of supply. Since savings are also achieved by changes in behaviour, the increase in technical efficiency needed to make savings is less and can be implemented more cheaply.

The dual **reinforcement of the 2030 energy reduction target** from a non-binding 27% **to a binding 30%**, as proposed by the Commission, must be rejected because, by contrast with emissions trading, it **does not constitute a targeted or cost-effective way of achieving the true environmental and energy policy targets – climate protection and security of supply.**

The higher the target the greater the risk of inefficient, state-planned energy savings being made for their own sake. The expansion of the ETS to include other sectors is the better alternative. Labelling the energy consumption of products (Directive 2010/30/EU, see cep**PolicyBrief**) can also make savings potential more apparent to consumers which may also arise without energy efficiency obligations. The EU should therefore avoid an independent energy efficiency policy that is going beyond energy efficiency information requirements.

Consequently: The planned **requirements for the Member States to reach the energy reduction targets** – **particularly the** continuation of the **obligation to save 1.5% of energy annually among energy end-users – are therefore misguided.**

Impact on Efficiency and Individual Freedom of Choice

"Households affected by energy poverty" should not necessarily have priority when implementing energy efficiency measures because efficiency requirements may unreasonably increase the acquisition costs of low-energy products or of rent so that the available monthly budget in low-income households and their scope for making savings in the event of short-term financial emergencies is reduced. In some cases, this will exacerbate energy poverty.

Impact on Growth and Employment

According to model-based estimates, the Commission expects 400,000 new jobs by 2030. In the scenario where households and businesses have no capacity for indebtedness, however, there is a negative impact on employment [p. 1 and Impact Assessment SWD(2016) 405, p. 54]. In order to assess the impact on employment, particularly of the EEOSs, an additional estimate has been based on data from the employment-intensive construction sector which has been extrapolated for all energy efficiency measures in all the participating sectors (p. 6). On this basis, no meaningful assertions are possible regarding the impact on employment.

Impact on Europe as a Business Location

Negligible.

Legal Assessment

Legislative Competency

Unproblematic. The EU can take energy policy measures to promote energy efficiency and energy savings (Art. 194 TFEU).

Subsidiarity

Binding EU energy efficiency targets for the Member States – particularly the planned **requirement to renovate 3% of** central government **public buildings each year – are in breach of the principle of subsidiarity** (Art. 5 (3) TEU) **because there is no cross-border issue.** The existing Energy Efficiency Directive (2012/27/EU) therefore allows Member States plenty of scope to decide on how to achieve energy savings.

Compatibility with EU Law in other respects

The application of the Member States' **1.5% energy savings obligation for an indefinite period until the Commission no longer considers it necessary** for achieving "the Union's long-term energy and climate targets for 2050" is too uncertain. Although, in 2009, the European Council said it was committed to the aim of reducing EU greenhouse gas emissions by 85-90% by 2050 as compared with 1990 levels (see cep**Compass** Climate and Energy, p. 5), this Directive does not provide any concrete criteria which could be used for the Commission's necessity test. It is therefore in breach of the Principle of Certainty arising from the Rule of Law (Art. 2 TEU; cf. ECJ, Case No. 169/80, para. 17 – Gondrand Freres).

Conclusion

There is no reason why increased energy efficiency in general should be framed as a political aim in itself. By contrast with emissions trading, tightening the 2030 energy efficiency target to a binding 30% does not constitute a targeted or cost-effective way of achieving the actual environmental and energy policy targets – climate protection and security of supply. Consequently: The requirements to reach the energy reduction targets – particularly the obligation to save 1.5% of energy annually among energy end-users – are therefore misguided. Binding EU energy efficiency targets – particularly the requirement to renovate 3% of public buildings each year – are in breach of the principle of subsidiarity because there is no cross-border issue. The application of the 1.5% energy savings obligation for an indefinite period until the Commission no longer considers it necessary is in breach of the principle of legal certainty.