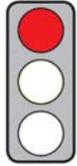


## MAIN ISSUES

**Objective of the Directive:** The aim of the Directive is to ensure an EU-wide primary energy saving of 20% by 2020.

**Parties affected:** All citizens, companies and the public purse.

**Pros:** –



**Cons:** (1) The failure to implement voluntary efficiency targets in Member States is not a cross-border problem. Therefore, the Proposal infringes the principle of subsidiarity.

(2) Even the Commission itself admits that the obligation to renovate at least 3% of public buildings in an energy-efficient manner leads not to especially high energy savings but to a doubling of financial burdens; therefore, infringes the principle of proportionality.

(3) The requirement that only energy-efficient products may be used for public procurement leads to considerable additional burdens for those involved in the supply and demand.

(4) Energy suppliers should not be held statutorily liable for the energy savings of their customers as they can only influence their behaviour to a very limited extent.

## CONTENT

### Title

**Proposal COM(2011) 370** of 22 June 2011 for a **Directive** of the European Parliament and of the Council on **energy efficiency** and repealing Directives 2004/8/EC and 2006/32/EC

### Brief Summary

Note: Articles and Annexes quoted refer to the Directive Proposal.

#### ► Context and objective

- The EU Member States are currently pursuing the legally non-binding objective to increase energy efficiency by 20% of the primary energy consumption projected for 2020 (s. [CEP-Kompass](#), p. 40 ff., *in German only*).
- According to the Commission's estimate, only half of the 20% target is achievable with today's means.
- The Directive is to (Art. 1):
  - ensure EU-wide primary energy savings of 20% by 2020;
  - establish an EU legal framework for energy efficiency measures by 2020 and beyond;
  - stipulate additional measures which the Commission proposed in its "Energy Efficiency Plan" (EEP) [COM(2011) 109; s. [CEP Policy Brief](#)] in the form of binding minimum requirements; and
  - largely substitute the Directives on the cogeneration (Directive 2004/8/EC; s. [CEP-Kompass](#), p. 48 et sqq.) and on energy services (2006/32/EC; s. [CEP-Kompass](#), p. 42 et sqq.) (Art. 21).
- Member States should continue to strive to achieve by 2016 the target to save 9% of energy consumption ("indicative energy savings target", Art. 4 Directive 2006/32/EC; s. [CEP-Kompass](#), p. 42 et sqq.).

#### ► National energy efficiency targets

- Member States determine a non-binding "national energy efficiency target" regarding their primary energy consumption projected for 2020 (Art. 3 (1)).
- By 30 June 2014, the Commission will evaluate whether the EU is likely to achieve its 20% saving target by 2020 through the energy efficiency measures of the Member States (Art. 3 (2)).
- If necessary, it will propose binding national energy efficiency targets by 30 June 2014 (Art. 19 (7)).

#### ► Measures in the public sector

- As of 1 January 2014, 3% of public buildings must be renovated so as to comply with the minimum energy performance requirements for buildings (Directive 2010/31/EC, Art. 4; s. [CEP Policy Brief](#)).
- Public institutions may acquire only products, services and buildings which comply with the requirements for "high energy efficiency" (Art. 5, Annex III).
  - Products covered by the Directives on energy consumption labelling (2010/30/EU) and household appliances (92/75/EEC) must comply with the highest energy efficiency class requirements. Purchase decisions should take into account cost efficiency, economic feasibility, technical suitability and "sufficient competition". (Annex III lit. a)
  - Other products covered by implementing measures of the Ecodesign Directive (2009/125/EC; s. [CEP Policy Brief](#)) must comply with the energy efficiency requirements stipulated therein. (Annex III lit. b).

- In the case of orders for the public purse, service providers may use only products which comply with certain efficiency requirements (Annex III lit. e).
  - Only buildings which are subject to the minimum energy performance requirements for public buildings may be acquired or rented (Art. 4 (1), Annex III lit. f).
- **Energy saving obligation of energy supply companies**
- Either all “energy distributors” transporting energy to final customers (Art. 2 (7)), or all retail energy sales companies who sell energy to final customers (Art. 2 (9)), must achieve annual energy savings equal to 1.5% of their energy sales in the previous year (Art. 6 (1)).
  - In order to calculate savings, Member States may apply different methods (Art. 6 (4), Annex V.2) such as engineering estimates, metering, lifetimes and standard values of devices (Annex V.3).
  - Measures aimed at short-term savings (e.g. installing energy-efficient lamps or shower-heads) must not exceed 10% of the annual 1.5% saving volume and must be combined with long-term saving measures (Art. 6 (3), Annex V.1).
  - Energy distributors or retail energy sales companies are to be allowed to count energy savings achieved towards their obligations in another Member State. For that purpose, the Commission will introduce a “system of mutual recognition” by means of a delegated act (Art. 6 (10), Art. 18).
  - As an alternative to energy efficiency obligation schemes, Member States can take “other measures” in order to achieve equivalent energy savings with their final customers (Art. 6 (9)).
- **Energy audits**
- All companies – apart from “small and medium-sized enterprises” (SMEs, cp. Art. 2 Commission Recommendation 2003/361/EC) – must undergo an “energy audit” (Art. 7 (2)).
  - Energy audits serve to identify saving potentials in the energy consumption of buildings, operating processes, industrial or commercial installations and private or public services (Art. 2 (12)).
  - Energy audits must be carried out by 30 June 2014 at the latest and thereupon every three years.
- **Metering and billing energy consumption**
- Electricity, natural gas, district heating or cooling and district-supplied domestic hot water must be provided with individual meters that provide information on actual energy consumption and actual time of use (Art. 8, Annex VI).
  - Final customers must be enabled to self-check historical consumption in detail (Art. 8 (2)).
- **Cogeneration**
- “Cogeneration” means the simultaneous generation in one process of both thermal energy and electrical or mechanical energy (Art. 2 (15)).
  - Cogeneration is “highly efficient” if, in comparison with the separate production of heat and electricity, at least 10 % of the primary energy is saved (Annex II).
  - New thermal electricity generation installations with a total thermal input exceeding 20 MW must:
    - allow for the recovery of waste heat by means of a high-efficiency cogeneration unit, and
    - be positioned where waste heat can be used by heat demand points (Art. 10 (3)).
  - Electricity generation installations with a total rated thermal input exceeding 20 MW must be converted if (Art. 10 (6))
    - they are being “substantially refurbished” (Art. 2 (27) or if their permit or license is being updated and
    - if they are positioned where their waste heat can be used.
  - Industrial installations with a total thermal input exceeding 20 MWh must capture their waste heat and use it if they were newly built or “substantially refurbished” (Art. 10 (8)).
- **Energy transmission**
- National energy regulatory authorities must ensure that network tariffs and regulations provide incentives for grid operators to offer system services to network users permitting them to set up “smart grids” (s. [CEP Policy Brief](#)) and take energy efficiency measures (Art. 12 (1)).
  - Network regulation and network tariffs fixed or permitted by the national energy regulatory authorities must comply with the energy efficiency criteria (under Annex XI) (Art. 12 (1)).

## Changes to the Status Quo

- Until now, the legally non-binding indicative energy savings target to which Member States must currently aim for in 2016 is at least 9% of the national energy consumption. Now, the Member States define a non-binding “national energy efficiency target” in the form of the primary energy consumption projected for 2020.
- To date, national energy saving targets have been non-binding. Now the Commission is to propose legally binding energy efficiency targets, as the 20% saving targets for 2020 are not likely to be met.
- Until now, annually 3% of public buildings have not had to be renovated in an energy-efficient manner.
- It is new that energy supply companies selling energy to final customers must achieve annual energy savings to the value of 1.5% of their energy sales in the previous year.
- It is new that companies are subjected to energy audits.

## Statement on Subsidiarity by the Commission

The current measures taken by the EU and Member States are insufficient for saving 20% of primary energy consumption by 2020. According to the Commission, the energy policy challenges (security of energy supplies, sustainability and climate protection, competitiveness) are “concerns shared by the EU as a whole”. Therefore, collective action at EU level is necessary in order to guarantee that measures are coordinated and “the shared objectives are achieved more effectively” (p. 6).

## Policy Context

The manifold EU measures to increase energy efficiency are to help reduce energy consumption and thus decrease dependence on energy imports, harmful greenhouse gas emissions and energy costs: “energy-related products” should be designed in an environmentally friendly manner (“Ecodesign”) by complying with the energy consumption requirements (Directive 2009/125/EC; s. [CEP Policy Brief](#)). Energy consumption labelling is to enable consumers to take into account energy efficiency when buying products (Directive 2010/30/EU; s. [CEP Policy Brief](#)). Member States must set the minimum energy performance requirements for existing and new buildings (Directive 2010/31/EU; s. [CEP Policy Brief](#)). During public procurement of road vehicles, contracting authorities must take into account how much energy the said vehicles consume (Directive 2009/33/EC; s. [CEP-Kompass](#), p. 47, in German only). As the reduction of tyre rolling resistance contributes to increased energy efficiency in road transport, a labelling system should provide consumers with consistent information on the fuel efficiency of tyres (Regulation No. 1222/2009; s. [CEP-Kompass](#), p. 48). Cogeneration units (CHP), in which the heat resulting from power generation is used, are to be promoted by, for example, issuing proof of origin for CHP electricity (Directive 2004/8/EC; s. [CEP-Kompass](#), p. 48 et sqq.).

## Legislative Procedure

22 June 2011	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

Leading Directorate General:	DG Energy
Committees of the European Parliament:	Industry, Research and Energy (in charge), rapporteur: Claude Turmes (Greens/EFA Group, LU); environment, health and food safety
Committees of the German Bundestag:	Economics and Technology
Decision mode in the Council:	Qualified majority (rejection with 91 of 345 votes; Germany: 29 votes)

## Formalities

Legal 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 to set a blanket higher energy efficiency target by means of policy as not every type of energy consumption is harmful to the environment.** Consequently, the Commission should forego threatening to stipulate legally binding efficiency enhancing targets for Member States, especially as the review of the proposed national measures is already scheduled for 30 June 2014 – in other words, very soon [for details see [CEP Policy Brief](#) on the energy efficiency plan COM(2011) 109].

### Impact on Efficiency and Individual Freedom of Choice

**The obligation to annually renovate 3% of public buildings in an energy-efficient manner, “would not lead to especially high energy savings”, as even the Commission itself admits** [SEC(2011) 779, p. 69]. In fact, it **would engender a doubling of expenditure on the energy-efficient renovation** of public buildings. This would burden public budgets substantially in times of urgent fiscal consolidation.

Public procurement should continue to avoid any excess spending of scarce public means. In this context, energy efficiency characteristics could play a major role. **The requirement that only energy-efficient products should be procured publicly**, unless this goes against cost efficiency, “economic feasibility”, technical suitability or compatibility, **leads to substantial burdens in public procurement.**

In particular, the service providers’ obligation to use only energy-efficient products where procurement for the public purse is concerned restricts the entrepreneurial decision on how to provide a service. The evidence that may be required, showing that in a given case the less energy-efficient product is cheaper and therefore of a higher benefit, also results in a substantial administrative burden.

**Energy supply companies should not be held statutorily liable for the energy savings of their customers.**

For such an approach would shift the responsibility of energy use from its users to **suppliers**. However, the latter **cannot influence the consumption behaviour of their customers**. In a market economy, cost-saving efficiency improvements lead to competitive advantages over competitors. Politically driven energy efficiency increases would ignore the cost factor and restrict competition. Besides, such an obligation would lead to substantial measuring problems as energy savings can only be tracked on the basis of hypothetical energy consumption without any saving efforts. Referring to estimates and device-specific standard values for energy consumption (Art. 6 (4) in conjunction with Annex V) can at best reflect potential energy savings but not actual values. These methods can even lead to a higher than actual energy consumption, as users might feel encouraged to consume more energy by alleged energy savings.

**Impact on Growth and Employment**

Politically enforced innovations can definitely contribute to growth and employment in certain sectors. However, at the same time politically driven decisions are not expected to increase growth and employment in the overall European economy since the cost factor is ignored. This holds particularly true if companies are additionally burdened by red tape and higher costs [s. [CEP Policy Brief](#) on the energy efficiency plan COM(2011) 109].

**The Commission assumes that in the “short-term” energy prices will increase by 3.5%** from 141 Euro per megawatt hour (MWh) to 146 Euro per MWh [SEC(2011) 799, p. 76]. Although in the medium-term the Directive will trigger a reduction in the demand for power as it will lower the burden of higher power prices, this will be faced by higher costs through energy efficiency measures, in particular through a tendency towards capital-intensive production. The impact on growth and employment is therefore unclear.

**Impact on Europe as a Business Location**

Steering efficiency guidelines and the related administrative burdens lower the attractiveness of Europe as a business location.

**Legal Assessment****Legislative Competency**

Unproblematic. The EU is empowered to adopt energy policy measures in order to promote energy efficiency and energy savings (Art. 194 TFEU).

**Subsidiarity**

The fact that the Member States have agreed on **the 20% saving target** but, at the same time, are hesitant to take the pertaining action, **itself does not justify a need for action at EU level, as there is no cross-border problem**. This precondition must not be waived; otherwise, the principle of subsidiarity could be undermined through the stipulation of EU-wide targets only. **The bundle of proposed energy efficiency measures therefore infringes the principle of subsidiarity** (Art. 5 (3) TFEU).

**Proportionality**

As the Commission says itself, **the obligation to annually renovate at least 3% of public buildings in an energy-efficient manner** “would not lead to especially high energy savings” [SEC(2011) 779, p. 69]. In view of the substantial financial burdens to public households, the proposed obligation **infringes the principle of proportionality** (Art. 5 (4) TEC).

**Compatibility with EU Law**

Unproblematic.

**Compatibility with German Law**

Unproblematic.

**Conclusion**

There are no grounds for setting higher energy efficiency as a political target, as not every type of energy consumption is harmful to the environment per se. Moreover, the Proposal infringes the principle of subsidiarity as there is no cross-border problem. The obligation to annually renovate 3% of public buildings in an energy-efficient manner “would not lead to especially high energy savings”, as even the Commission itself admits, but would instead result in a doubling of expenditure on the energy-efficient renovation of public buildings and thus burden public budgets substantially. Therefore, it infringes the principle of proportionality. The requirement that only energy-efficient products may be used for public procurement leads to considerable costs for public households. Energy supply companies should not be held statutorily liable for the energy savings of their customers as they cannot influence their customers’ behaviour. The Proposal should be withdrawn.