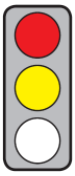
ENERGY PERFORMANCE OF BUILDINGS

Status: 09.01.2009

MAIN ISSUES

Objective of the Directive: The overall energy performance of buildings is to be improved.

Groups Affected: All tenants or owners of buildings.



Pros: Energy performance certificates provide tenants and buyers of buildings with more substantiated information.

Cons: (1) The planned provisions emanate from planned economy notions, are inefficient and cannot influence energy consumption patterns adequately.
(2) The Directive infringes the principle of subsidiarity as it lacks any cross-border reference.

CONTENT

Title

Proposal COM(2008) 780 of 13. November 2008 for a **Directive** of the European Parliament and of the Council **on the energy performance of buildings** (recast)

Abstract

- **Object**
  - The "energy performance" of buildings is to be improved (Art. 1) in order to utilise natural resources in a rational way and to reduce greenhouse gas emissions as well as to ensure energy supply (recitals 2, 3 and 4).
  - The "energy performance" of a building is the calculated or measured amount of energy needed to meet the energy demand to cover the typical use of a building (e.g. heating, hot water, cooling, ventilation, lighting) (Art. 2 (3)).
  - The present Proposal is to recast Directive 2002/91/EC on the energy performance of buildings.

- **Minimum Requirements for the Energy Performance of Buildings**
  - Member States are to set minimum energy performance requirements for buildings (Art. 4 (1)).
  - Member States are to apply a methodology of calculating the overall energy performance, in particular taking into account thermal characteristics (heating capacity, insulation) of in-built heating installations, hot water supply and air conditioning systems, usage, age, design, positioning and orientation of the building (Art. 3, Art. 4 (1), Annex I).
  - Minimum requirements must be set at the "cost-optimal level". That means that the total costs for the investment, maintenance and operation (incl. energy costs) of a building should be minimised during its life-cycle (Art. 4 (1), Art. 2 (10)).
  - Member States must calculate the "cost-optimal level" by a common methodology which is standardised within the EU and will be related to stricter legal consequences on a step-by-step basis:
    - By the end of 2010 the Commission will develop a comparative methodology to be applied by Member States in order to assess whether the set minimum requirements have reached "cost-optimal levels". Member States have to submit to the Commission regular reports on their comparative results every three years, whereupon the Commission will publish said reports (Art. 5).
    - As of 30. June 2014, Member States may no longer provide incentives for the construction or renovation of buildings whose overall energy performance does not comply with "cost-optimal levels" as calculated by the comparative methodology (Art. 4 (3)).
    - As of 30. June 2017, Member States must ensure that the minimum requirements comply with the "cost-optimal level as calculated by the comparative methodology.Art. 4 (4)).
  - Minimum requirements have to be regularly reviewed every five years and, if necessary, be adjusted to technical progress in the building sector (Art. 4 (1)).
  - Member States may refrain from applying minimum requirements to buildings which are under preservation protection, buildings used for religious activities, buildings used temporarily or seasonally as well as to industrial sites, workshops and non-residential agricultural buildings with low energy demand (Art. 4 (2)).

- **Requirements for New Buildings**
  - New buildings must fully comply with the minimum requirements for the energy performance of buildings (Art. 6 (1)).
  - Before construction starts "the technical, environmental and economic feasibility" of "alternative" energy supply systems (e.g. cogeneration, heat pumps) has to be analysed (Art. 6 (1)). Said analysis must

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be documented in the application for the building permit or the final approval of construction works (Art. 6 (2)).

- **Requirements for Existing Buildings**
  - When undergoing "major renovation", existing buildings must also comply with the minimum requirements for the energy performance of buildings, if "technically, functionally and economically feasible" (Art. 7).
  - "Major renovation" means
    - buildings where the building envelope or the technical building system (e.g. heating, cooling, air conditioning, hot water supply, lighting) has to be renovated and the total costs exceed 25% of the value of the building (excluding the value of the real estate), or
    - where more than 25% of the surface of the building envelope are renovated (Art. 2 (6)).
- **Requirements for Heating, Hot Water Supply and Air Conditioning**
  - Member States must set minimum requirements for technical building systems, in particular for heating, hot water supply and air conditioning systems (Art. 8 (1)).
  - Boilers of an effective rated output of more than 20 kW and air conditioning systems of more than 12 kW must be regularly inspected (Art. 13 (1); Art. 14 (1)).
- **Energy Performance Certificate**
  - An "energy performance certificate" must be issued if buildings are newly constructed, sold or rented out, or if over 250 m^2 of the total floor area is occupied by a public authority (Art. 11 (1)).
  - In order to enable owners and tenants of buildings to assess and compare the energy performance of buildings, the energy performance certificate must include the following information (Art. 10 (1) and (2)):
    - energy performance of a building
    - reference values such as minimum energy performance
    - detailed recommendations for specific and feasible measures to improve the energy performance.
  - When buying or renting out a building, or parts of a building
    - the energy performance must be stated in all advertisements for sale or rent
    - the energy performance certificate must be shown to all prospective buyers or tenants
    - the energy performance certificate must be handed over to the buyer or tenant at the moment of contract conclusion at the latest (Art. 11 (3) and (4)).
- **Promotion of Buildings with Low CO_2 Emissions and Low Primary Energy Consumption**
  - By 30. June 2011 at the latest Member States have to draw up plans for promoting buildings whose CO_2 emissions and energy consumption are "low or equal to zero". Those plans must contain set targets for the percentage of all buildings and their total floor area which are to become equal to zero or low energy consumption houses by 2020 (Art. 9 Abs. 1).
  - On the basis of regular reports by Member States on the implementation of their promotion plans, the Commission will develop a strategy and, "if necessary", propose measures to increase the number of those buildings (Art. 9 (3) and (4)).

Changes Compared to the Status Quo

- Currently, Member States must set requirements for the energy performance of buildings, but in so doing do not yet have to consider "cost-optimal levels". In future, the Commission intends to oblige Member States to determine cost-optimal levels based on a common comparative methodology taking binding legal effect as of 30. June 2017.
- To date, only buildings with a total floor area of more than 1,000 m^2 have had to have their "alternative" energy supply systems analysed before construction. In future, such analysis is to be applied to all new buildings.
- To date, the minimum requirements for the overall energy performance of major renovations have had to be adhered to only if the building had a total floor area of over 1,000 m^2. This threshold, which according to the Commission exempts 72% of the current buildings stock from the obligation to undergo energy-efficient renovation, now ceases to apply.
- To date, Member States have not been obliged to set minimum requirements for technical energy systems such as heating, hot water supply and air conditioning systems.

Statement on Subsidiarity

According to the Commission, the energy performance of buildings cannot be enhanced sufficiently by Member States due to the "complexity of the building sector" and the "inability of the national housing markets", and can due to "the scale and the effects of the actions" be better achieved at EU level. Since the proposed Directive establishes common principles for the sale and renting of buildings it allegedly reduces administrative burdens for EU citizens and companies wishing to buy or rent buildings in other Member States.

However, even the Commission itself assumes that setting specific requirements for the energy performance of buildings would not be compatible with the principle of subsidiarity.

Political Context

The Action Plan for Energy Efficiency [COM(2006) 545] states that the energy consumption of residential buildings and commercial buildings together amount to around 40% of the total energy consumption in the EU and therefore have major energy savings potential. In March 2007, the European Council decided to increase energy efficiency by 20% by 2020. The present Proposal forms part of the "energy efficiency package" of 13. November 2008, published along with a Proposal for a recast of the Directive on labelling the energy consumption of products [COM(2008) 778; cp. CEP Policy Brief]. Aside from that, the EU intends to oblige Member States to promote the use of renewable energy sources in new buildings [Art. 12 (4) and (5) of the Proposal COM(2008) 19; cp. CEP Policy Brief].

Legislative Procedure

13.11.08	Adoption by Commission
01.04.09	Scheduled: 1. reading European Parliament
Open	Adoption by 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 and Transport
Committees of the European Parliament:	Industry, Research and Energy (in charge), rapporteur: Silvia-Adriana Ţicău (PSE Group, RO); Legal Affairs
Committees of the German Bundestag:	Open (in charge); open
Decisison Mode in the Council:	Qualified majority (refusal by 91out of 345 votes; Germany: 29 votes)

Formalities

Legislative competence:	Art. 175 (1) TEC (Environmental Policy)
Form of legislative competence:	Concurrent legislative competence
Legislative procedure:	Art. 251 TEC (Codecision)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

CO_2 abatement costs for the use of buildings are significantly lower than are, for example, abatement costs in the transport sector. This is due to both the much longer renovation cycles of buildings and the existing tax and environmental policy. For instance, diesel fuel is taxed considerably higher than heating fuel, albeit generating stronger incentives for saving energy consumption. Thus, **buildings have a great potential for achieving cost-efficient reductions in the total emissions in the EU**.

However, **the** planned **assessment of "cost-optimal levels" for the energy performance of buildings through public agencies is to be dismissed due to its planned economy approach.** As a result of insecure or lacking forecast data on technical progress and the development of energy prices during the decades of a building's life cycle, "cost-optimal levels" cannot be reliably calculated. Given such overall insecurity, decisions regarding the energy performance of buildings should be best taken by building owners or tenants themselves, as they have to bear the consequences of such decisions. Besides, any provisions on buildings can at best only consider the potential energy consumption but not the actual figures, as they may vary due to differing heating and ventilation practices.

Impact on Efficiency and Individual Freedom of Choice

The ambitious climate protection targets set by the EU should be pursued by the most cost-efficient means possible. However, **the instructions and prohibitions** provided for by the Directive **are not as efficient as the** newly introduced **EU emissions trading scheme,** which leaves it up to citizens whether to react to price signals or not.

Emissions trading is actually the most cost-efficient way to ensure adherence to the CO_2 emissions cap in the participating areas of the economy. The more areas of the economy that are involved, the more its efficiency-enhancing effects will increase. Thus the most efficient cost abatement potentials will be revealed and deployed. **Fossil fuels** which produce emissions at a later time, namely when combusted by end consumers, **should** already **participate in the emissions trading system when produced or imported** ("upstream-emissions trading"). **In addition, the heating of buildings**, for instance, **should participate** in emissions trading [cp. CEP Policy Brief on the Proposal to extend greenhouse gas emission allowance trading system COM(2008) 16].

Obliging Member States to reach a certain number of low energy houses is not justifiable in terms of environmental policy, since it is not the energy performance of single buildings that is decisive, but the efficiency of the total number of buildings, if at all.

The introduction of an energy performance certificate, however, **is to be welcomed,** as in this way the energy performance of buildings becomes a transparent distinctive feature for tenants and buyers. The information provided by it is likely to boost the demand for energy-efficient buildings.

The obligation to analyse alternative energy supply systems before construction leads to unnecessary administrative burdens. Although it might improve the information supply for building owners, the energy performance certificate and the energy consumption savings the certificate would entail already set incentives which are strong enough to waive such dispensable considerations.

Impact on Growth and Employment

The proposed measures to improve energy efficiency might lead to additional employment in the building sector. However, since the Commission did not choose the more cost-efficient means, namely emissions trading as an option, the Directive will have a negative impact on growth and employment compared to the better aforesaid alternative.

Impact on Europe as a Business Location

Unproblematic.

Legal Assessment

Legislative Competence

The legislative competence for environmental policy measures at EU level, reducing the energy consumption of buildings and thus lowering greenhouse gas emissions, is laid down in Art. 175 (1) TEC.

Subsidiarity

Both buildings and the real estate and housing market are of local and not of cross-border nature. **Due to the lack of transnational aspects of those markets, EU action for the improvement of energy efficiency is therewith excluded**. Accordingly, even the Commission itself correctly assumes that setting specific requirements for the energy performance of buildings at EU level is inconsistent with the principle of subsidiarity. The same argument is true for all other, more general, guidelines of the Proposal: Each Member State itself is capable of setting requirements for the energy performance of buildings, of prescribing energy performance certificates and of promoting low energy houses. The Commission's not yet proven claim that the Directive would minimise administrative burdens for EU citizens and companies wishing to settle down in other Member States is not at all adequate to substantiate any transnational references. **Therefore the Proposal infringes the principle of subsidiarity.**

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

The German Energy Saving Regulation (EnEV) already contains various revisions of the present Proposal, such as minimum requirements for heating, hot water supply and air conditioning systems (§§ 13-15 EnEV). It would have to adopt the obligation to calculate and set "cost-optimal levels" of minimum requirements for the overall energy performance of buildings. Moreover, in future, the assessment of the feasibility of alternative energy supply systems will no longer be limited to buildings with a total floor area of over 1,000 m^2 (§ 5 EnEV) but will have to be carried out for all new buildings. The obligation to state the overall energy performance of buildings in all advertisements for sale or rent would also have to be newly adopted.

Alternatives Policy Options

Instead of setting administrative requirements for the energy performance of buildings, their energy consumption should be integrated into the emissions trading system ("upstream emission trading").

Possible Future EU Action

Not yet foreseeable.

Conclusion

The energy performance of buildings is an important field for the implementation of the climate change targets of the EU. Moreover, the energy performance certificate is an effective tool to improve information supply and, indirectly, to increase energy performance. However, the remaining regulatory measures emanate from planned economy notions. Integrating fossil fuels into the emissions trading system would constitute a more effective means to reach climate protection and energy saving targets. Last but not least, the Directive draft infringes the principle of subsidiarity, as real estate and housing markets are of local and not of cross-border nature.