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EUROPEAN COMMISSION

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294 (6) of the Treaty on the Functioning of the European Union  
concerning the**

**Council's position at first reading on the adoption of an amended proposal for a  
Directive of the European Parliament and of the Council on energy performance of  
buildings (recast)**

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**1. BACKGROUND**

Date of transmission of the proposal to the EP and the Council 13 November 2008  
(COM(2008)0780 – COD/2008/0223):

Date of the opinion of the European Economic and Social Committee: 13 May 2009

Date of the opinion of the Committee of the Regions: 24 April 2009

Date of the opinion of the European Parliament, first reading: 23 April 2009

Date of adoption of the Council position at first reading: 14 April 2010

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

The aim of the recast of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ("EPBD") is to clarify and simplify certain provisions, extend the scope and strengthen some of its provisions to improve their effectiveness, and to provide for the leading role of the public sector. The objectives and principles of the current Directive are retained and it is still left to Member States to determine the concrete energy performance requirements.

**3. COMMENTS ON THE COUNCIL POSITION at FIRST READING**

**3.1. General comments on the Council Position**

The text of the negotiated Council Position is, in substance, in line with the Commission's proposal and therefore can be supported.

**3.2. Agreement on Council Position at first reading stage**

The negotiated Council Position is the result of inter-institutional negotiations in two steps. The first step covered the substance of the proposal and the second step the adaptation of the proposal to the Treaty on the Functioning of the European Union as regards the delegated and implementing acts (Arts 290 and 291 TFEU) as well as the legal basis.

As for the substance of the proposal, on 30 November 2009, the chairman of the ITRE Committee, Mr Herbert Reul, confirmed Parliament's agreement to the text which had been agreed at the trilogue on 17 November 2009 and endorsed by Coreper on 20 November 2009.

As to the adaptation of the proposal to the Treaty on the Functioning of the European Union, the compromise reached was endorsed by Coreper on 24 March 2010 and confirmed by Parliament's ITRE Committee chairman Mr Reul on 25 March 2010. The negotiated Council position was formally adopted by written procedure on 14 April 2010.

The main subjects of negotiation on which an agreement was reached are as follows:

*Change of legal basis (preamble):* due to the entry into force of the Treaty on the Functioning of the European Union, the co-legislators agreed to change the legal basis to Article 194 (2) TFEU. A paragraph was added to Article 1 underlining that the Directive sets minimum requirements that do not prevent Member States from maintaining or introducing more stringent measures. The Commission agrees with these changes, which do not modify the applicable decision-making procedure.

*Provisions on delegated and implementing acts (Articles 22 to 26):* the Directive delegates powers on the Commission to adopt the comparative methodology framework of Article 5 (until 30 June 2011) and to adapt to technical progress (points 3 and 4 of Annex I) for a period of 5 years -automatically renewed- following the entry into force of the Directive. The Parliament and the Council may revoke the delegation of powers at any moment and object to the delegated act within the 2 months following the notification, with the possibility of asking for an extension of 2 additional months. A Commission statement concerning the notification of delegated acts during the recess period of the institutions has been included at the request of the Parliament, together with a joint statement of the European Parliament, the Council and the Commission declaring that the provisions of this Directive will not constitute a precedent on their positions on delegated acts (*see Annex I*).

The Commission is also requested to adopt an implementing act, in accordance with the advisory procedure of Article 3 of the Decision 1999/468/EC, to establish a voluntary common certification scheme for energy performance of non-residential buildings (Article 10 (9)).

*Cost-optimal minimum energy performance requirements and comparative methodology framework (Article 5 and Annex III):* the Commission will develop a comparative methodology for calculating energy performance cost-optimal levels for buildings. Member States will justify any significant gap and present a plan outlining appropriate steps forward.

*Existing buildings (Article 7):* this provision was reinforced by requesting that all existing buildings undergoing major renovation meet energy performance requirements and that energy performance requirements are also set out for building elements.

*Technical building systems (Article 8):* a new provision requires the setting of energy performance requirements for the technical building systems (e.g. heating, hot water, and air-conditioning systems).

*Nearly zero energy buildings (Article 9):* a consensus emerged on the definition of 'nearly zero energy buildings' and the need for developing national plans to increase their number. Member States shall ensure that by 31/12/2018 new buildings occupied and owned by a public authority and by 31/12/2020 other new buildings are 'nearly zero energy buildings'.

*Financial incentives and market barriers (Article 10):* this new article was included to highlight the importance of appropriate financing. Member States shall draw up a list of

existing and proposed measures and the Commission shall present an analysis of the funds available. A Commission's statement on financing for energy efficiency in buildings indicates its role in supporting the use of financing instruments to achieve an energy-efficient and low carbon European building sector (*see Annex II*).

*Energy performance certificates (Articles 11 to 13)*: this provision was reinforced by improving the content of the certificates, by reinforcing the obligation to display the certificate in public buildings and by requiring that the performance indicator set on the certificate is indicated in housing advertisements.

*Inspection of heating and air-conditioning systems (Articles 14 to 16) and Independent experts and control systems (Articles 18 and Annex II)*: greater flexibility to Member States regarding the inspection of air-conditioning systems was coupled with a requirement to ensure independent control systems for certificates and reports on inspections of heating and air conditioning systems.

*Review clause (Article 19)*: the review clause was made more specific by setting a date to evaluate the Directive (01/01/2017).

*Transposition (Article 28)*: the adoption of transposition measures by the Member States was changed to 'two years after the entry into force' of the Directive. The dates of application of national provisions transposing most of Directive's provisions are now 'two years and six months' and 'three years' after the entry into force of the Directive. Additional time (until 31/12/2015) was granted for the application of Article 11(1) and (2) to single rented units.

#### **4. CONCLUSION**

The Council Position meets the aims of the Commission's initial proposal. The Commission therefore supports the text.

**Statement by the European Parliament, the Council and the Commission  
on Article 290 TFEU**

"The European Parliament, the Council and the Commission declare that the provisions of this Directive shall be without prejudice to any future position of the institutions as regards the implementation of Article 290 TFEU or individual legislative acts containing such provisions."

**Commission Statement**

"The European Commission takes note that except in cases where the legislative act provides for an urgency procedure, the European Parliament and the Council consider that the notification of delegated acts shall take into account the periods of recess of the institutions (winter, summer and European elections), in order to ensure that the European Parliament and the Council are able to exercise their prerogatives within the time limits laid down in the relevant legislative acts, and is ready to act accordingly."

### **Commission Statement on Financing for Energy Efficiency in Buildings**

"The Commission underlines the crucial role that financing instruments play for a successful transformation of the European building sector into an energy-efficient and low carbon one. The Commission will continue to encourage Member States to use extensively the available funds under the European Regional Development Fund (currently up to 4 % of the total national amounts of the European Regional Development Fund, representing an amount of EUR 8 billion, can be used for increasing energy efficiency and use of renewable energy in the housing sector, in addition to the un-capped financial support already available for sustainable energies in public and commercial/industrial buildings) and will also support Member States in better use of all available funds and funding that can act as a leverage for stimulating investments in energy efficiency.

In addition, the Commission will explore the possibility to further develop all existing initiatives, such as the Smart Cities initiative<sup>1</sup> or the use of the Intelligent Energy - Europe II budget, e.g. for the purpose of knowledge sharing and technical assistance on the establishment of national revolving funds.

Moreover, the Commission shall prepare an overview and analysis of financing mechanisms currently in place in Member States and take account of the findings to endeavour to disseminate best practice across the EU.

Finally, the Commission, following the analysis referred to in Article [9a(4)] of Directive [2010/XXX/EC], will reflect on possible future development of financial incentives (inter alia with regard to the Community instruments referred to for this purpose in Article 9a(4a)) and their optimal use for investments in improved energy efficiency of buildings."

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<sup>1</sup> SET-Plan COM (2009) 519