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From : General Secretariat of the Council

To : Delegations

Subject : Council (Transport, Telecommunications and **Energy**) meeting on
14 February 2012

Proposal for a Directive of the European Parliament and of the Council on energy
efficiency and repealing Directives 2004/8/EC and 2006/32/EC

– State of Play

= Information from the Presidency

Delegations will be attached an information note from the Presidency outlining the state of play on the
above proposal.

Proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC

State of play

The Commission submitted the above proposal on 22 June 2011, based on Article 194(2) of the Treaty on the Functioning of the European Union. It follows on from the Commission's Communication of 8 March 2011 on an "Energy Efficiency Plan 2011" (7363/11), on which Council adopted conclusions on 10 June 2011 (10709/11).

In its conclusions of 9 December 2011, the European Council called for an early agreement on the proposal on energy efficiency, which should establish an ambitious and flexible framework in line with the 20% target for 2020 as agreed by the June 2010 European Council. The EP's Committee on Industry, Research and Energy is expected to vote on a draft report on 28 February. The Economic and Social Committee and the Committee of the Regions adopted their opinions on 26 October and 14 December 2011 respectively.

STATE OF PLAY

Intensive work on the proposed Directive was carried out during the previous semester and reported to the November TTE Council (progress report 16165/11). This was followed on 8 December by the Polish Presidency tabling a revised draft (14980/1/11 REV 1) which aimed to provide both the necessary level of ambition for measures to support the achievement of the EU 2020 20% energy efficiency objective and flexibility for Member States to engage in the most cost-efficient measures. Delegations broadly received favourably this text and stressed that it provided improvements and addressed many of the concerns highlighted in the progress report. More time was however needed to scrutinise the proposal in more detail, and to continue to work on some of the elements.

The Energy Working Party therefore resumed its examination of the proposed Directive on the basis of 14980/1/11 REV 1 at its meetings on 10 and 26 January, with a view to the Presidency's objective of facilitating early agreement on the Directive with the European Parliament. Additional progress has been made, notably as regards possible modalities for the development of a method to be used by the Commission for its assessments on progress and on whether the Union is on track to reach the 2020 20% energy efficiency objective. It was agreed to initiate technical work to facilitate the elaboration of such a method, with a view to its inclusion in the Directive.

In preparation of coming informal trilogues, some issues need however to be clarified for which Council's guidance will be essential. It should be noted that, judging from ongoing work in the European Parliament, some major differences in views would need to be bridged.

Main issues:

Energy efficiency targets and assessment of progress (Article 3):

There seems to be large support among delegations for the proposed way to express and illustrate the EU's 2020 20% energy efficiency target, while the Commission strongly advocates that the EU objective needs to be explicitly anchored in a projection figure for an amount of energy savings in the operative part of the Directive, a view that was supported by some delegations. Developing a methodology for monitoring progress towards the 2020 target (see above) represents a promising perspective for moving forward on these issues.

Exemplary role of public bodies' buildings (Article 4):

Many delegations welcomed the suggested approach, including the alternative approach foreseen, and that the current text focuses the obligation on buildings owned by central government, while regional and local authorities and social housing bodies would be incentivised to improve the energy performance of their buildings, subject to further adjustments. For a number of delegations, however, this Article still raises concerns, for the 3% annual renovation target, the focus on renovations more generally, or budgetary constraints, while the Commission stressed that in its view, the proposed scope of the requirements would reduce intended energy savings.

Energy efficiency obligation schemes (Article 6):

The elements of clarification and flexibility were largely welcomed by many delegations as moving the text in the right direction. This includes the possibility of multiannual targets, clarification on what obligated parties Member States could designate, and recognition of "early actions" and of saving potential among non-end-use sectors, as well as the alternative approach set out in more detail in Article 6(9) through a list of possible alternative policy measures and conditions to ensure their equivalence with the obligation scheme approach. A number of elements, however, require further consideration and clarification, notably on the scope of the target and on aspects linked to establishing a level playing field between obligation schemes and alternative measures, and to their possible combination. The current proposal for arrangements on statistical transfers (Article 6(10)) also needs further reflection. The Commission is not convinced of all the proposed elements of flexibility that have been introduced.

More generally, questions remain on the appropriateness of the instrument of energy efficiency obligations as such and the connected target, and the level of the energy saving rate proposed.

Metering and informative billing (Article 8):

While delegations are broadly supportive of the evolution of the text in that it aims at coherence with the third internal energy market package and higher cost-efficiency, the Commission regrets what it sees as a lack of ambition to strengthening provisions flowing from existing pieces of legislation, such as the Energy Services Directive 2006/32/EC.

Promotion of efficiency in heating and cooling (Article 10) and energy transmission and distribution (Article 12):

Delegations broadly welcomed further progress on Article 10, in particular the inclusion of principles and detailed elements for cost-benefit analysis for the assessment of CHP/DHC¹ potential and of possible exemptions for peak load and back-up as well as nuclear power installations. Further consideration needs to be given *i.a.* to the articulation of the cost-benefit analysis with actual obligations that would stem from this Article.

In response to concerns raised on the role to be given to CHP in terms of access and dispatch, in particular in comparison with renewable energy sources, an additional subparagraph under Article 12(5) intends to provide clarification and assurance that it would be for Member States to establish any priority ranking in their electricity systems. However, concerns remain in relation to this aspect against the principle of non-discrimination stemming from the third internal energy market package, as well as with other elements contained in this Article, such as on tariff setting, the role of grid operators, implementation deadlines, and proposed requirements on balancing services and other operational services.

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Bearing in mind the main issues highlighted above and taking into account the latest draft under discussion, it appears necessary to identify which are the remaining potential areas of concern in terms of scope, requirements and implementation of the proposed Directive and to reflect on how they can best be addressed, both with a view to closing the gap to the 20% energy efficiency target in 2020 and to the aim of reaching early agreement on the Directive.

¹ Combined Heat and Power/District Heating and Cooling.