



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 February 2012

7091/12

**ENER 77
ENV 161
DELECT 14**

"A" ITEM NOTE

from: Permanent Representatives Committee
to: Council

No. prev. doc.: 5931/1/12 REV 1 ENER 34 ENV 59 DELACT 4

No. Cion prop.: 5441/12 ENER 14 ENV 22 DELACT 1

Subject: Commission Delegated Regulation (EU) N° .../... of 16.1.2012 supplementing Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) by establishing a comparative methodology framework for calculating cost-optimum levels of minimum energy performance for buildings and building elements
- Intention not to raise objections to a delegated act

1. The Commission has submitted the above delegated act¹ to the Council in accordance with the procedure set out in Article 290 TFEU and with Article 23 of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings². The Commission having notified the delegated act with regard to establishing a comparative methodology framework for calculating cost-optimum levels of minimum energy performance for buildings and building elements on 16 January 2012, the Council may object to it until 16 March 2012.

¹ 5441/12 ENER 14 ENV 22 DELACT 1.

² Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (OJ L 153, 18.6.2010, p.13).

2. The Working Party on Energy has examined the delegated act at its meetings on 26 and 31 January 2012. It took note of the information given by the Commission representative that, given the delay in the submission of the delegated act, the Commission will not launch any infringement proceedings on Member States' reporting obligation pursuant to Article 5(2), second paragraph, of Directive 2010/31/EU until 12 months after the establishment of the delegated act through its publication.

The delegation of the United Kingdom has indicated its opposition to this delegated act. The German, Italian, Maltese and Slovenian delegations have indicated that they would not take a position either for or against the delegated act. Germany, supported by Spain, France, Malta, Romania and Slovenia, makes the statement set out in Annex. No other delegation has indicated its opposition and there is therefore no qualified majority in support of objecting to the delegated act. On that basis, taking into account the positions of the above-mentioned delegations, the required conditions to conclude that there are no grounds for the Council to object to the delegated act are fulfilled.

3. It is therefore suggested that the Council confirm that it has no intention to object to the delegated act and that the Commission and the European Parliament are to be informed thereof, and that Council enters into its minutes the statement of Germany supported by Spain, France, Malta, Romania and Slovenia set out in Annex. This implies that, unless the European Parliament objects to it, the delegated act shall be published and enter into force in accordance with Article 25 of Directive 2010/31/EU.

Declaration of Germany
supported by Spain, France, Malta, Romania and Slovenia

concerning the delegated Regulation supplementing Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) by establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements of building elements (hereinafter “Delegated Act on the EPBD”)

1. The Lisbon Treaty (Article 290 TFEU) allows the legislator to delegate to the Commission the power to adopt non-legislative acts of a general application to supplement or amend certain non-essential elements of a legislative act.
2. In its communication of 9 December 2009 (COM(2009)0673) the Commission declares that it intends to systematically consult experts from the national authorities of all Member States. The consultation would be carried out well in advance to give the experts an opportunity to make a useful and effective contribution to the Commission. At the end of the consultations, the Commission would inform experts of the conclusions it believes should be drawn from the discussions, its preliminary reactions and how it intends to proceed.
3. Responding to the communication the Council adopted a declaration on 14 December 2009 (17512/09) underlining the importance of the Commission’s commitment to systematically consult experts from the national authorities of the Member States. The Council notes further that the Commission would carry out the consultation well in advance to give the experts an effective possibility to make a useful and effective contribution. The Council also notes with satisfaction the Commission's commitment to inform the experts of the conclusions it believes should be drawn from the discussions, its preliminary reactions and how it intends to proceed.
4. The Common Understanding between the three institutions from 3rd March 2011 (8753/11) foresees that in exercising their powers and in compliance with the procedures laid down in the TFEU, the three Institutions shall cooperate throughout the procedure with a view to a smooth exercise of delegated power and an effective control of this power by the European Parliament and the Council.

5. Before the Commission submitted the proposal for the Delegated Act on the EPBD the Energy Demand Management Committee (EDMC) was consulted twice. Germany would have appreciated if the Commission had informed the Member States about changes in the Delegated Act during the inter-service consultation more promptly and if the details of the changes had been presented in the EDMC meeting on 12 January 2012. In the future the national experts should be informed if major changes occur before the Commission's adoption of the proposal of the delegated act.

6. As already mentioned in the EDMC Germany takes the view that the aim pursued with the delegated act is to perceptibly reduce the energy consumption of buildings by enhancing the energy efficiency. Germany recognises both the need to tap economic potentials when determining national minimum standards and the need to lay down ambitious minimum requirements in all Member States of the European Union. Therefore, Germany welcomes in particular that the Member States are given the necessary freedom and flexibility to take account of their respective national situations when it comes to lay down the calculation parameters and that national assumptions regarding the economic lifecycle, the discount rate and the development of the prices of the individual energy carriers can be used when calculating. Besides, Germany appreciates the efforts made by the Commission after discussions in the EDMC to keep the burden related to the calculations and the reporting requirements as low as possible by reducing the number of relevant reference buildings and excluding apparently uneconomical (sets of) measures.

7. However, pursuant to Article 3(1) of the Commission proposal of the "Delegated Act on the EPBD" in conjunction with Annex I, the Member States are obliged to carry out calculations of cost-optimal levels "for both macroeconomic and financial" (investor) "viewpoints". Member States must first carry out calculations for both viewpoints before they may determine which methodology to use for calculating cost-optimal levels. This proposal results in an increased burden in terms of both finances and personnel without, however, leading to a corresponding benefit. Since in the end one option would have to be rejected after a lot of money and time has been invested in calculating the two results.

8. Against this background, Germany would have strongly preferred to agree on one of the two calculation methodologies - the macroeconomic or the financial viewpoint - before calculations are carried out in order to avoid unnecessary duplication of calculation work and the related costs. This is what had been suggested in an earlier Commission proposal and what several Member States' experts in the EDMC had asked for. Germany regrets that in the final proposal of the Delegated Act on the EPPD this view has not been taken into account.

9. Pursuant to Article 5(2) of Directive 2010/31/EU on the energy performance of buildings (recast), the Member States shall submit to the Commission a first report on the results of the national calculations of the cost-optimal levels and on the assumptions on which these calculations are based by 30 June 2012. Contrary to the original belief at the time of the adoption of the Directive, the methodology framework for calculating cost-optimal levels had not been established by the Commission by means of delegated acts by 30 June 2011. Therefore it is not possible for the Member States to meet this obligation by the time mentioned in the Directive. Basically, Germany does welcome that the Commission has decided to carry out the related work as thoroughly as necessary although this means that it was not possible to comply with the original timetable. This shows the complexity and the time needed to establish such a calculation methodology framework. However, the understandable delay regarding the adoption of a methodology framework for calculating cost-optimal levels must not result in drawbacks for the Member States. As there is no formal legal way to solve this problem within a reasonable time, Germany welcomes the commitment by the Commission given orally in the Energy Working Party of the Council on 31 January 2012 not to launch any infringement proceedings on Member States' reporting obligations pursuant to Article 5 (2), second paragraph, of Directive 2010/31/EU until 12 months after the establishment of the Delegated Act on the EPBD through its publication. Germany would however strongly welcome to prevent such a situation in future in favour of legal certainty.