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NOTE

from: General Secretariat of the Council
to: Coreper

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No. prev. docs.: 6446/12 ENER 54 ENV 107 TRANS 41 ECOFIN 146 RECH 48 CODEC 369
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7127/12 ENER 78 ENV 164 TRANS 69 ECOFIN 208 RECH 75 CODEC 530
+ ADD 1

Subject: 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
- Guidance for future work

I. STATE OF PLAY

On 22 February 2012, Coreper discussed for the first time a number of key issues on the proposed Energy Efficiency Directive (6446/12 + COR 1), notably on Article 6 (Energy efficiency obligation schemes) and Article 4 (Exemplary role of public bodies' buildings). On the basis of guidance as it emerged from this exchange of views as well as delegations' views expressed within the Working Party on Energy, the Presidency presented a three-column document on 2 March 2012 (7127/12 +ADD 1) which was discussed by the Working Party on Energy at its meeting on 6 March.

The objective of the third column containing additional Presidency suggestions is to identify a possible package on which a credible and coherent position for trilogue mandates could be developed, taking into account calls for greater flexibility by Member States to choose the most cost-efficient measures, while achieving the necessary level of ambition. A key element for this credibility is to ensure that all the actions to be carried out by Member States are suitably measurable.

The Commission has voiced serious concerns as to whether the sum of flexibility elements that have been integrated into the text still provides a credible response to delivering on the 2020 20% energy efficiency target. The Commission in particular regrets what it sees as a significant reduction of the level of ambition in Articles 4 (Exemplary role of public buildings), Article 5 (Purchasing by public bodies) and Article 8 (Metering and billing), and calls for maintaining effective provisions and obligations in Articles 6, and 10 and 12 (Promotion of efficiency in heating and cooling, and energy transmission and distribution). The Commission stated that, while flexibility was justified in many cases, it should not lead to a lower level of ambition of the Directive.

In the meantime, the European Parliament's Committee on Industry, Research and Energy has voted an opinion on 28 February 2012, based on a series of compromise amendments which were supported by a broad majority across political groups.

While the purpose of the Coreper discussion is for the Presidency to obtain clear guidance, based on a number of possible options on key outstanding issues listed under section II, discussions should at this point in time also bear in mind proposed amendments by the EP's ITRE Committee. The outstanding issues listed under section II cover Articles which were discussed at the meeting of the Working Party on Energy on 6 March and are without prejudice to other issues that may still need to be addressed, as well as negotiating mandates for trilogues to be established at a later stage. While for expository purposes section II presents issues on an article by article basis, these provisions should be assessed as a whole, taking due account of trade-offs between them.

II. KEY OUTSTANDING ISSUES

Article 3: Energy efficiency targets

Based on the swift technical work carried out within the Energy Demand Management Committee which clarified methodological questions and options, the current wording of Article 3 builds in a series of options for Member States to set their own indicative national energy efficiency target.

Each Member State would be required to explain how its individual target was arrived at and expressed in a way that would allow for national targets to be summed up at EU level. The assessment of national targets at EU level would be carried out along common methodological elements set out in paragraph 3.

The fundamental question on which Coreper's view is sought is on which basis the 20 % EU target is to be illustrated, primary or final energy consumption, primary or final energy savings, or energy intensity. Linked to this question is the one whether Member States should express their national targets as an absolute level of primary energy consumption in 2020, or on another basis.

Additional issues as they were raised by delegations include the way in which the new figures mentioned in paragraph 1 (text in brackets) were calculated (i.e. the 1078 Mtoe of final energy, and energy intensity of no more than 104 toe/MEuro GDP'05)¹, and the timing and purpose of the reviews in paragraphs 1a and 2, linked also to Article 19.

Article 6: Energy efficiency obligation schemes

The current Presidency text aims to respond to calls for establishing equivalence and a level playing field between energy efficiency obligation schemes and alternative policy measures, including through a clarified and streamlined Annex V that would be applicable for both. The proposals intend to give further flexibility and greater clarity for an incremental approach for the target, the possibility to count greater efficiency in generation, transmission and distribution, a greater scope to count otherwise unrecorded action as of 31 December 2009, the introduction of the possibility of contributions towards a national energy efficiency fund, and possibly of a voluntary option to engage in statistical transfers.

Based on positions expressed by delegations, the following elements have been identified if the current approach for a cumulative end-use energy savings target corresponding to 1.5% annually can be framed in a way that could gain general support, noting that some of them may require further elaboration:

- "early actions" and the possibility to count energy savings in transformation, distribution and transmission explicitly to apply for both obligation schemes and alternative measures;

¹ The Commission representative gave indications on the figures at the meeting of the Energy Working Party on 6 March, complemented by a short explanatory paper from the Commission which was circulated.

- the concept and basis of additionality needs to be clarified², also vis-à-vis requirements of existing EU law that should not risk discouraging "virtuous action". In this respect, one proposal was made to make Annex V more flexible by transforming more of the elements into guiding principles;
- more flexibility for the incremental pace of the target;
- the degree to which energy savings in transformation, transmission and distribution could be accounted for, while limiting the risk of double-counting;
- treatment of ETS-covered sectors in the context of the 1.5% target;
- as an essential point, methodological questions need to be clarified in order for Member States to be able to assess whether, on the basis of the elements in Annex V, an annual 1.5% target is achievable;
- in the context of Annex V, connected issues on lifetimes of savings, rebound effects, but also the more fundamental question of administrative burden.

In relation to these issues, an explanatory document including case studies to illustrate the articulation of Annex V with the obligations in Article 6, notably how measures/actions could be accounted for, and to address methodological questions, was seen as a crucial element by delegations.³

In addition, thought should be given to an additional alternative approach suggested by one delegation, whereby Member States could choose, as a basis for Article 6, either an energy efficiency requirement or a requirement for an absolute cut in energy use, calculated against a preceding three-year reference period.

Article 4: Exemplary role of public bodies' buildings

Given the broad support for delimiting the obligation for the proposed 3% annual renovation rate and for a narrower concept of public bodies' buildings, the focus on "central" government has been changed into one in accordance with a specific definition for "general government"⁴ following a request made at the last meeting of Coreper and in order to address concerns by Member States

² In energy efficiency national and EU policy measures often complement each other. This makes it necessary to decide how to assess "additionality" i.e. what energy savings are added by the national measures to the savings that would in any case have been achieved by the EU measures.

³ A relevant Commission non-paper has been circulated.

⁴ inspired by Council Regulation (EC) No 2223/96 on the European system of national and regional accounts in the Community

having federal/regional government levels. This focus is also intended to create a more "even" approach than the limitation to "central government authorities" as listed in Annex IV of the current Public Procurement Directive 2004/18/EC may allow. Additional elements of clarification, flexibility and on possible use of financial means linked to the Effort Sharing Decision 406/2009/EC have also been included on request by delegations.

Apart from more general concerns as to the feasibility and appropriateness of the proposed obligations maintained by some Member States, several delegations queried the exact scope that this new delimitation would imply. There were suggestions for facilitating achievement of the obligation by allowing general government to fulfil it by contributing annually to an energy efficiency fund as suggested in new Article 6(8a), and to place an obligation for a 2% annual renovation rate on all public bodies' buildings.

Against this background, guidance from Coreper is sought as to whether the current scope of the obligation, together with the alternative approach already provided in the text (paragraph 3a) to achieve equivalent improvements of the energy performance of such buildings, is sufficient to reach broad agreement on this Article, or whether other avenues should be pursued, such as:

- reverting to a scope defined in terms of "central government", possibly by adding a provision (e.g. in the form of a specific Annex) tailored to the circumstances of Member States having federal/regional government levels, or
- placing the obligation again on public bodies more generally, but with a lower annual renovation rate as the basis.

In addition, the Presidency believes that it is worth considering long-term improvement of the energy performance of buildings as proposed in the **new Article 4a**, also against the background of what has been proposed by ITRE as a 2050 perspective on the energy consumption for the existing building stock in the EU.

Article 5: Purchasing by public bodies

Despite significant concerns expressed by the Commission on the thresholds that would be applied for the purchasing obligations of public bodies under this Article in analogy to what is currently in force under the Public Procurement Directive, a broad common understanding seems to be emerging among Member States on the current text, subject to some adjustments that may still be necessary, including in Annex III. There are calls for requiring the "highest" energy performance for purchasing, to envisage lower thresholds, or to transform the obligation into an "encouragement" for Member States to purchase high energy efficient products.

The Presidency seeks to establish whether the current text indeed represents a valid compromise, also taking into account the amendments on this Article as suggested by the EP's ITRE Committee.

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The Presidency will build on guidance resulting from Coreper's discussion on the above-mentioned key issues when developing proposals for negotiating mandates for informal trilogues with the European Parliament side.
