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#### **COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 627 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the Proposal for a Directive of the European Parliament and of the Council on energy efficiency (recast)

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Delegations will find attached document SWD(2021) 627 final.

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Brussels, 14.7.2021  
SWD(2021) 627 final

**COMMISSION STAFF WORKING DOCUMENT**

**Subsidiarity Grid**

*Accompanying the*

**Proposal for a Directive of the European Parliament and of the Council  
on energy efficiency (recast)**

{COM(2021) 558 final} - {SEC(2021) 558 final} - {SWD(2021) 623 final} -  
{SWD(2021) 624 final} - {SWD(2021) 625 final} - {SWD(2021) 626 final}

## Subsidiarity Grid

<p><b>1. Can the Union act? What is the legal basis and competence of the Unions' intended action?</b></p>
<p><b>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</b></p>
<p>Article 194(2) of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for proposing measures on energy and in particular to promote energy efficiency and energy saving, one of the goals of the Union's energy policy, set out in Article 194(1)(c) TFEU. Directive 2012/27/EU (EED), now subject to recast, was also adopted under Article 194(2) TFEU in 2012.</p>
<p><b>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</b></p>
<p>In the case of energy policy, the Union's competence is shared.</p>
<p><i>Subsidiarity does not apply for policy areas where the Union has <b>exclusive</b> competence as defined in Article 3 TFEU<sup>1</sup>. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU<sup>2</sup> sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU<sup>3</sup> sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
<p><b>2. Subsidiarity Principle: Why should the EU act?</b></p>
<p><b>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2<sup>4</sup>:</b></p> <ul style="list-style-type: none"> <li>- Has there been a wide consultation before proposing the act?</li> <li>- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?</li> </ul>
<p>The evaluation roadmap/ inception impact assessment was published on 3 August 2020 and was available until 21 September 2020.</p> <p>The Commission received 189 replies, and 99 stakeholders submitted supplementary statements and information to their replies. The largest number of replies were received from business associations, followed by companies and NGOs.</p> <p>In addition, nine dedicated stakeholder meetings were organised in the period from September to October 2020 with targeted stakeholder groups on specific topics, and a dedicated Energy Efficiency Directive expert group meeting was held on 10 November 2020. The Commission also launched the internet based public consultation from 17 November 2020 until 9 February 2021, in line with the Commission Better Regulation rules. The survey contained multiple choice and open questions covering a wide range of aspects concerning the ex-post evaluation and options for the revision of the Energy Efficiency Directive. In total 344 replies were received from wide range of stakeholder groups. The largest group of respondents covered was business associations (132 replies), individual businesses and companies (92 replies), followed by NGOs (34 submissions).</p>

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

<sup>3</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

The explanatory memorandum and the impact assessment both contain a section on the principle of subsidiarity and address this issue in the context of the policy analysed, where appropriate.

**2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?**

The proposal builds on the growing importance of energy efficiency as a political and economic challenge and its close interrelation to the policy areas of security of energy supply, climate change, internal market and economic and social development.

The need for EU action

The underlying problems causing a shortfall in energy savings (compared to the optimal level from the perspective of society) are the same across the EU and cannot be sufficiently achieved by Member States alone. EU level action is needed to ensure that Member States contribute to the EU level binding energy efficiency target and that it is collectively and cost-effectively reached – while taking into account Member States national circumstances and context.

Moreover, in view of the external costs of energy consumption (e.g. greenhouse gas emissions, air pollutant emissions, energy security), actions to increase energy efficiency and reduce energy use are likely to lead to benefits beyond national borders. For trans-boundary problems, Member State action is unlikely to lead to optimal outcomes. In the presence of a higher climate target for 2030, which requires a higher energy efficiency target, EU action must supplement and reinforce national and local action.

In addition, the nature of the instrument and the fact that the energy efficiency targets are not binding at national level respects the principle of subsidiarity. Member States retain the same level of flexibility in terms of selecting their policy mix, sectors and the approach to achieve the required energy savings by 2030, by taking into account the national context and specificities.

Energy is a policy field with high investment needs. A coordinated approach at EU level can create trust, reliability and continuity, increasing the likelihood of different actors investing and getting involved. Policies at EU level can also create a just and fair transition for countries and regions with economies that may be significantly impacted by changes in industrial structure or employment as a result of the energy transition towards decarbonisation. Coordinated action at EU level, furthermore, enables taking better account of the different capabilities to act among Member States.

EU added value

Energy efficiency policies are a crucial mechanism to reduce greenhouse gas emissions and other environmental issues like air pollution. The EU's energy and climate targets for 2030 are collective targets. In this regard, coordinated EU policies have a better chance of transforming Europe to a climate neutral continent by 2050. A common approach is the most effective way to ensure the fulfilment of international commitments.

Concrete actions to reduce energy consumption need to be carried out at Member States' level. Nevertheless, an effective framework for those actions is needed at EU level. A coordinated and harmonised approach at the EU level will enable and enhance Member States' actions, and ensure the four freedoms. A common EU approach will help, for example, to create larger markets for European suppliers, workers and goods, and ensure that the same obligations and rules apply. This will protect and boost competition. A common approach at EU level will allow consumers to enjoy the same basic rights and to receive comparable and recognisable information across the EU. A common EU approach to energy efficiency will enable addressing specific common challenges such as

the need to alleviate energy poverty.

The experience from the implementation of the Energy Efficiency Directive has shown that a common EU framework is socially just, reduces costs, increases benefits from the internal market and allows national policy-makers to learn from each other. The Energy Efficiency Directive effectively complements and catalyses other national and EU measures. Policies adopted at EU level reflect the close interrelation of the policy areas of climate change, security of supply, sustainability, environment, the internal market, social and economic development. Effects on the single market concerning growth, investments and jobs creation can thus be considered when policies and measures are being decided and implemented. This was supported by the Task Force of mobilising Member States efforts to reach 2020 energy efficiency targets, which called for a strong, targeted and common energy efficiency policy framework to attract the necessary investments, ensure the energy savings are achieved in a just and fair way.

Moreover, the EU single market acts as a strong driver for cost-efficiency in achieving GHG emission reductions. A common EU action will ensure that the objectives of the policy are achieved collectively at the lowest possible cost. Therefore, to reach the overall targets collectively, the coordinated action at EU level can enable and enhance efforts at national level by ensuring a more harmonised approach, helping to create markets of scale for European suppliers, and ensuring that they are under the same obligations and rules. An EU-level framework will also provide more investor certainty. It will provide a general impetus across the whole single market to invest in more energy efficient products of all types. The definition of EU and national objectives gives a clear indication on how much efforts are expected in energy efficiency, and it helps defining the size of the market for energy efficient products and services. This will send a signal to suppliers and manufacturers to put more effort into product development in this regard.

Delivering on energy efficiency while empowering consumers requires meaningful, accurate and understandable information on energy use, related costs, and easy access to a competitive market of building construction materials (windows, insulation, etc.), heating and cooling solutions, and other products that help improve energy efficiency. Sector-specific measures, for example aimed at the heating and cooling sector, to ensure appropriate attention to sectors, where the largest reduction of GHG emissions need to be achieved. Harmonised planning ensures comparable quality of the national policies and measures. It also ensures availability of structured information on the sectoral objectives and plans in Member States, thus helping Member States and market participants to plan their activities. In the case of heating and cooling it helps ensuring a sufficient market with common standards for the suppliers of high efficiency equipment for district heating and cogeneration to lower costs and to motivate them to innovate and improve their offer.

By acting at EU level, several barriers to public and private investments can be tackled, addressing the lack of coordination between various authorising bodies at national level and stimulating the administrative capacity to implement cross-border projects and support schemes.

The Energy Efficiency Directive essentially sets the overall energy efficiency objective but leaves the majority of actions to be taken to achieve this objective to the Member States.

- The application of the 'Energy Efficiency First' principle leaves flexibility to the Member States.
- -The Energy Efficiency Directive sets binding energy efficiency targets at EU level, but will not establish binding targets at national level for 2030. Member States should establish their contribution to the collective achievement of the Union's energy efficiency target taking into account the formula provided in the Energy Efficiency Directive.
- The Directive requires that Member States achieve an increased annual energy savings

obligation in end use sectors while leaving freedom to Member States how this obligation should be achieved either via an energy efficiency obligation scheme or alternative policy measures, or a combination of both. Since the energy savings obligation is an effective measure to improve energy efficiency in various sectors, it is also an effective tool to support Member States in the alleviation of energy poverty. Thus, the energy savings obligation will require Member States to achieve an individually calculated share of the total amount of energy savings required towards vulnerable consumers, people affected by energy poverty and, where applicable, people living in social housing. A harmonised approach will contribute to a just energy transition for all European citizens. The energy savings obligation retains full flexibility for Member States with regard to the types of policy measures, their size, scope and content.

- The Energy Efficiency Directive will continue providing an annual rate of renovation required related to the floor area of buildings. The scope of this obligation is extended to buildings owned or occupied by all public bodies on the territory of a Member State. This measure shall ensure that Member States continue to lead by example through upgrading the energy performance of buildings, while retaining the flexibility regarding the choice of measures.
- [An obligation to achieve an annual reduction of the energy consumption in the public sector will ensure that the public sector fulfils its exemplary role, whereas Member States retain full flexibility regarding the choice of energy efficiency improvement measures to achieve the required reduction of the final energy consumption.]

– Furthermore, the Energy Efficiency Directive will provide the necessary framework to ensure high energy efficiency performance of products, services and buildings purchased by public bodies, and to consider, where appropriate, wider sustainability, social, environmental and circular economy aspects. A harmonised approach, including considering energy efficiency aspects in tendering processes, will preserve competition, ensure long-term and cost-effective energy savings and allow for continuing markets of scale.

- The Energy Efficiency Directive will ensure the same level of basic contractual rights for all European citizens regarding heating, cooling and domestic hot water. Whereas the Energy Efficiency Directive will require the implementation of certain basic contractual rights of customers, the national competences would not be restricted. One level playing field across the EU is also required with regard to consumer information and awareness raising activities. Member States are required to take appropriate measures, whereas the concrete design of such actions remain at their discretion. The EU-wide impacts of economic and health crisis show that a harmonised approach is also required to empower and protect vulnerable consumers and those affected by energy poverty. To ensure the same level of protection and empowerment, the Energy Efficiency Directive requires to implement and finance energy efficiency improvement measures as a priority among those people, which will also support Member States in mitigating distributional effects. Network of experts will facilitate Member States' actions in this regard and should be established in all Member States.
- While requiring mandatory energy audits for large enterprises, as energy savings can be significant, Member States will retain flexibility to develop programmes to encourage SMEs to undergo energy audits.
- -Regarding the heating and cooling sector, Member States retain their competences to carry out a comprehensive assessment of the potential for high-efficiency cogeneration and efficient district heating and cooling, and may grant exemptions in the area of waste heat recovery through high-efficiency cogeneration or by supplying a district heating or cooling network. The Energy Efficiency Directive will allow Member States to introduce

- measures and procedures to promote high efficiency cogeneration installations.
- To contribute to the creation of a single market, all Member States, National Regulatory Authorities, transmission and distribution system operators should apply the ‘Energy Efficiency First’ principle and remove all regulatory, technical and non-regulatory measures for energy efficiency improvements in the operation of energy networks.
  - The development of a market for energy services to ensure the availability of both the demand for and the supply of energy services would remain subject to Member States’ discretion.
  - The Energy Efficiency Directive would retain the flexibility for Member States to take action in identifying and addressing regulatory and non-regulatory barriers for energy efficiency improvements.
  - Member States and regions would be encouraged to make full use of the Structural and Investments Funds and other financing facilities to trigger investments in energy efficiency improvement measures, to alleviate energy poverty, and to mitigate any distributional effects on vulnerable consumers, households affected by energy poverty, and those living in social housing.

The proposal therefore complies with the subsidiarity principle.

**2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?**

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The Energy Efficiency Directive sets binding energy efficiency targets at EU level, but will not establish binding targets at national level for 2030. Member States should establish their contribution to the collective achievement of the Union’s energy efficiency target taking into account the formula provided in the Energy Efficiency Directive. These aspects have been considered in detail in the impact assessment and the impacts have been quantified to the extent possible.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty<sup>5</sup> or significantly damage the interests of other Member States?

In accordance with Article 194(1) TFEU, one of the aims of Union energy policy shall be to promote energy efficiency and energy savings. If no action were taken at EU level this aim would be jeopardised.

In its Conclusions of 10 and 11 December 2020, the European Council endorsed a binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990. Energy efficiency is a key area of action, without which the full decarbonisation of the EU economy cannot be achieved (see Communication: A Clean Planet for all – A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy (COM/2018/773 final), where the role of energy efficiency as a condition sine qua non for all decarbonisation scenarios is assessed).

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

<sup>5</sup> [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)



Member States have shown, in their transposition and implementation of the Energy Efficiency Directive, that they can enact appropriate measures to reach the goals of the Directive. The measures included in the proposal leave adequate margin for Member States' specific circumstances to be taken into account, and flexibility is retained to give Member States a sufficient range of possibilities.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The underlying problems causing a shortfall in energy savings (compared to the optimal level from the perspective of society) are the same across the EU. Furthermore, the need to reduce greenhouse gas emissions and other environmental issues like air pollution, for which energy efficiency policies are a crucial mechanism, are global issues.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problems addressed by this initiative are widespread across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No, the qualitative and quantitative analysis of the impacts of the planned policies on the Member States, in particular the economic and social impacts, do not point to the conclusion that the Member States are overstretched (section 6 of the Impact Assessment).
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
Member States will have sufficient room of manoeuvre in the implementation of the Directive considering also the specific climate conditions, social and economic structures at national, regional or local level.
<b>2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?</b>
(a) Are there clear benefits from EU level action?
Yes, it sets a clear and common framework for the Member States and increases the chances of reaching the Union's climate ambition in effective manner together with the other initiatives proposed under the Fit for 55 package.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
The coordinated action of the EU and the Member States allows for cost-efficient achievement of the agreed targets, economies of scale for suppliers, workers and goods, as well as better functioning of the internal energy market by contributing to the removal of regulatory, technical and non-regulatory measures for energy efficiency improvements in the operation of energy networks; and to the better functioning of energy services markets.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
Energy efficiency policies are a crucial mechanism to reduce greenhouse gas emissions and other environmental issues like air pollution. The EU's energy and climate targets for 2030 are collective



targets. In this regard, coordinated EU policies have a better chance of transforming the EU to a climate neutral continent by 2050. A common approach is the most effective way to ensure the fulfilment of international commitments.

Concrete actions to reduce energy consumption need to be carried out at Member States' level. Nevertheless, an effective framework for those actions is needed at EU level. A coordinated and harmonised approach at the EU level will enable and enhance Member States' actions, and ensure the four freedoms. A common EU approach will help, for example, to create larger markets for European suppliers, workers and goods, and ensure that the same obligations and rules apply. This will protect and boost competition. A common approach at EU level will allow consumers to enjoy the same basic rights and to receive comparable and recognisable information across the EU. A common EU approach to energy efficiency will enable addressing specific common challenges such as the need to alleviate energy poverty. An EU-level framework will also provide more investor certainty.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Yes, as presented in the Impact Assessment accompanying the initiative (section 3 and for each measure in section 6.3).

(e) Will there be improved legal clarity for those having to implement the legislation?

The proposal for a recast of the Directive combines a codification and an amendment of the Energy Efficiency Directive, which has been also amended previously in 2018. The recasting technique contributes to simplifying Union legislation by allowing the adoption of a single legislative text which simultaneously makes the desired amendment, codifies that amendment and previous ones the unchanged provisions of the earlier act, and repeals that act and previous amending acts. The purpose is thus simplifying and clarifying the law of the Union so as to make it clearer and more accessible to businesses and citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

[the amended requirements on energy audits give better clarity to enterprises as those requirements would apply on basis of energy consumption rather the size of an enterprise (in line with SME definition (previously)), which created a lot complexity in terms of identifying large enterprises subject to the energy audit requirement.

### 3. Proportionality: How the EU should act

#### **3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?**

Based on the accompanying Impact Assessment and in accordance with the principle of proportionality, overall the proposed modifications do not go beyond what is necessary to achieve the objectives to reach the higher energy efficiency ambition in view of the increased climate target for 2030.

As regards the energy efficiency targets, the amendments are proportional to the required EU ambition in line with the increased climate target of at least 55% GHG emissions reduction as proposed by the Climate Target Plan. Several amendments set specific targets and obligations for public administrations to achieve energy savings in certain areas – public sector and energy poverty,

which will be overall proportionate. Regarding the [energy savings obligation for the] public sector, public bodies are defined in the Public Procurement Directive 2014/24/EU (contracting authorities). [Member States would need to establish a database with public bodies, including their annual energy consumption. The proposed energy consumption reduction obligation leaves significant flexibility to Member States as to where and how energy savings could be achieved. Given the cost-benefits that would accrue from implementing savings measures, this effort is considered effective and not excessive. ]

The Proposal also considers the Energy Efficiency Directive's aim to address distributional impacts from a possible extension of the ETS. Setting definitions and obligations notably in relation to heating and cooling would be proportionate to the additional energy savings and synergies with the other instruments that could be achieved in this sector. Proportionality of additional monitoring and reporting requirements depend on the balance between increased cost and savings achieved due to a better understanding of the impacts of relevant measures.

The level of constraint imposed is thus proportionate to the objective.

**3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?**

- (a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes. The problem to be tackled is not limited to individual Member States but is Union-wide. Strengthening the efforts to achieve higher Union's energy efficiency targets, to ultimately achieve climate neutrality, cannot be achieved by action at national level alone. The measures proposed are a mix of Union level measures and action at Member State level which is considered proportionate and cost-effective. The individual situations of Member States have been taken into account to the extent possible. The costs are commensurate with the objectives.

- (b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The instrument chosen is a Directive that has to be implemented by the Member States. A Directive is the appropriate instrument and it is consistent with the objectives pursued, as it clearly defines the EU objectives to be reached, while leaving sufficient flexibility to Member States to implement it in the way that suits their particular national circumstances.

The proposal for a recast of the Directive combines a codification and an amendment of the Energy Efficiency Directive, which has been amended previously in 2018. The recasting technique contributes to simplifying Union legislation by allowing the adoption of a single legislative text which simultaneously makes the desired amendment, codifies that amendment and previous ones the unchanged provisions of the earlier act, and repeals that act and previous amending acts. The purpose is thus simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

- (c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Although Member States are left as much freedom as possible, some measures are enhanced, given the critical importance of reducing energy consumption in order to reduce GHG emissions and tackle the climate change emergency,.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

The impacts related to the costs of the initiative have been analysed where appropriate and possible (section 6 of the Impact Assessment). More detail is provided in Annex D and a summary of the costs and benefits is shown in Annex C (section xx). The analysis shows that the costs are commensurate with the objectives.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

As indicated above, the proposal takes into account the Member States' national circumstances. This is in particular evident in relation to national indicative contributions to achieve the EU energy efficiency target. Member States will be able to set their national contributions on basis of formula considering objective criteria relevant to ensure fairness and balances approach in terms of efforts to achieve the EU target collectively across the Union.