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date of receipt:	15 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2021) 430 final
Subject:	REGULATORY SCRUTINY BOARD OPINION Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)

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Delegations will find attached document SEC(2021) 430 final.

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Encl.: SEC(2021) 430 final



EUROPEAN COMMISSION

18.11.2021

SEC(2021) 430 final

**REGULATORY SCRUTINY BOARD OPINION**

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL on the energy performance of buildings  
(recast)

{COM(2021) 802}

{SWD(2021) 453}

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EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
RSB

## **Opinion**

**Title: Revision of the Energy Performance of Buildings Directive**

**Overall 2<sup>nd</sup> opinion: NEGATIVE**

### **(A) Policy context**

The decarbonisation of buildings is central to delivering the EU's 2030 and 2050 climate and energy objectives. Buildings are responsible for 40% of total energy consumption and 36% of energy-related greenhouse gas emissions in the EU. The revision of the Energy Performance of Buildings Directive (EPBD) is part of the 'Fit for 55' package. Energy efficiency is an essential component and the building sector is one of the key sectors.

The 2020 Renovation Wave communication proposes an action plan with regulatory, financing and enabling measures. These aim to foster deep renovations and (at least) double the annual energy renovation rate of buildings by 2030. A revision of the EPBD is part of this action plan.

### **(B) Summary of findings**

The Board notes the clarifications in the revised report on the need for energy renovation of buildings while the power sector is being decarbonised, on the embodied greenhouse gas emissions of renovation and on distributional effects and possible capacity constraints.

However, the Board maintains its negative opinion, because the revised report still contains the following significant shortcomings:

- (1) The report is not clear which additional gap the EPBD needs to fill, taking into account the strengthened obligations for Member States to reduce greenhouse gas emissions of buildings in the proposed Effort Sharing Regulation.
- (2) The report does not convincingly show that there is a need for harmonised measures at EU level. The useful additional information on the characteristics of the buildings sector in Member States rather demonstrates that barriers to renovation are country-specific and should be tackled at that level.
- (3) The report is not sufficiently clear why it chooses the preferred option over other options. It also does not demonstrate that all proposed measures are necessary to reach the objectives.

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This opinion concerns a draft impact assessment which may differ from the final version.

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**(C) What to improve**

(1) The problem definition should clarify why the other measures in the Fit for 55 package are not sufficient to address the greenhouse gas reduction objectives in the buildings sector. It should specify the remaining gap that would be left for the EPBD to fill after the combined effect of the inclusion of the building sector in the Emissions Trading System and, in particular, the more ambitious targets for Member States in the Effort Sharing Regulation, which also includes the buildings sector.

(2) The report should better justify why the drivers that are assumed to capture the impacts of the EPBD to construct the new MIXwoEPBD modelling scenario can be fully attributed to the EPBD. In particular, it should explain why increased renovations and higher use of renewable heating and cooling equipment would not also or primarily result from Member States' actions under the Effort Sharing Regulation.

(3) The report should better analyse and demonstrate the respect of the subsidiarity principle of this initiative. It should justify why it includes split incentives in the problem drivers, even though the analysis shows that these are best tackled at Member State level due to their heterogeneity. More generally, the report should systematically integrate into its analysis that barriers to renovation are country-specific (as is demonstrated by the added information on the European building stock) and that there are only limited (potential) cross-border effects in the fragmented buildings sector.

(4) The options should be organised in a way that highlights political trade-offs and relevant political choices. The construction of options should allow for assessment of which measures are decisive for reaching the objectives and which ones should not be selected because of proportionality concerns.

(5) The comparison of options should be more coherent with the analysis. It should specify the differences across the options for proportionality and subsidiarity and integrate these in the respective scores. The report should justify why it considers that the options perform similar to the baseline on subsidiarity, even though they significantly reduce the room for manoeuvre of Member States to deal with county-specific barriers to renovation. It should more convincingly argue, based on available evidence, why the preferred option performs better than other options.

(6) The report should further clarify how the initiative will be monitored and evaluated. It should, in particular, specify what information Member States will have to provide in the annexes to their building renovation action plans and how the Commission will use this information. It should also stipulate how and when the Commission will evaluate the overall performance of the EPBD.

(7) The report should find a better balance between its core messages in the main report and the detailed discussion and analysis that should be part of the annexes.

**(D) Conclusion**

**The Board's opinion is in principle final. The DG should seek political guidance on whether, and under which conditions, this initiative may proceed further.**

Full title	Revision of the Energy Performance of Buildings Directive
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Reference number	PLAN/2020/8667
Submitted to RSB on	20 October 2021
Date of RSB meeting	Written procedure



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
RSB

## **Opinion**

**Title: Impact assessment / Revision of the Energy Performance of Buildings Directive**

**Overall opinion: NEGATIVE**

### **(A) Policy context**

The decarbonisation of buildings is vital to deliver the EU's 2030 and 2050 climate and energy objectives. Buildings are responsible for 40% of total energy consumption and 36% of energy-related greenhouse gas emissions in the EU. The revision of the Energy Performance of Buildings Directive (EPBD) is part of the 'Fit for 55' package. It complements the other initiatives to cut net greenhouse gas emissions in the EU by at least 55% by 2030 compared to 1990. Energy efficiency is an essential component and the building sector is one of the key sectors that needs additional effort.

The 2020 Renovation Wave communication contains an action plan with regulatory, financing and enabling measures. These aim to foster deep renovations and (at least) double the annual energy renovation rate of buildings by 2030. A revision of the EPBD is part of this action plan.

### **(B) Summary of findings**

**The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.**

**However, the Board gives a negative opinion, because the report contains the following significant shortcomings:**

- (1) The problem definition does not explain why the other Fit for 55 initiatives are not sufficient to address the objectives, and what this initiative will deliver to complement them. The report does not clearly frame its options to reflect the complementary role of the EPBD.**
- (2) The report does not sufficiently identify and analyse the possible bottlenecks and supply-side constraints that may hamper the pathways towards the objectives.**
- (3) The report does not adequately balance the positive and negative impacts of this initiative for different social groups, sectors and Member States. It does not discuss how the different characteristics of Member States may determine the success of this initiative.**

**(C) What to improve**

- (1) The problem definition should clarify why the initiative is needed with an increasingly and progressively decarbonised energy sector, and why the Fit for 55 package is not sufficient to address the objectives. The problem definition should develop the non-economic barriers in sufficient detail in the problem drivers. It should demonstrate with evidence the uniformity of the problems and problem drivers across Member States. The scope of the problem definition should be limited to what this initiative addresses and should exclude other building deficiencies.
- (2) The report should justify why it does not include the already proposed Fit for 55 measures in the baseline. It should explain why there is no common approach on the baseline between follow-up initiatives to the July Fit for 55 package. If the report uses the same baseline as this package, the impact analysis should distinguish between the effects of the EPBD and of the package.
- (3) The report should clarify the link between the reformulated problem drivers and the objectives and options. It should clarify which emission coverage (e.g. direct, operational, indirect/embedded, full life cycle) corresponds to each of these dimensions and why. It should reflect whether this may lead to regulatory overlap (e.g. with construction material standards).
- (4) The options should identify and highlight the main policy choices and relate them to the reformulated problem drivers and identified gaps to be filled. The current approach does not demonstrate that all measures are necessary, in particular the obligation to renovate buildings. The report should make a clearer distinction between ‘main measures’ and ‘supporting measures’, and apply it more coherently. It should specify the precise content and parameters of all measures.
- (5) The report should demonstrate better the respect of the subsidiarity principle of this initiative. It should be more explicit on the inter-play between the harmonised objectives at EU level and the flexibility for Member States (e.g. the use of fiscal measures). To demonstrate the need for EU intervention, it should explain clearly what would be the cross-border effects of a lack of building renovation in some Member States.
- (6) The report should assess the feasibility of the options, given the possible shortage of (skilled) labour and materials. It should analyse the required capacity changes and assess their feasibility and impacts in a realistic macroeconomic scenario. It should also be clear about the emissions resulting from renovations themselves as compared to those from an un-renovated building using decarbonised energy.
- (7) The report should disaggregate the positive and negative impacts across different stakeholders, e.g. income groups, renters/owners, sectors and Member States. It should not simply assume that sufficient financing or mitigating measures would be available when assessing distributional effects. It should take into account the heterogeneous characteristics of individual Member States including in terms of building type and age, property ownership and differing liabilities of owners, leaseholders and tenants; and how these differences may lead to uneven impacts. The report should discuss the total investment needs and identify possible funding mechanisms that may remove some of the barriers.
- (8) The report should better reflect the stakeholder views throughout the report, including in the problem definition, option construction and the choice of preferred option. It should explain how it took into account minority views.
- (9) The report should identify the indicators and data sources needed for an adequate

monitoring framework. It should define from the outset what success would look like, and when would be the most appropriate moment for an evaluation.

*Some more technical comments have been sent directly to the author DG.*

**(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**

Full title	Revision of the Energy Performance of Buildings Directive
Reference number	PLAN/2020/8667
Submitted to RSB on	20 July 2021
Date of RSB meeting	15 September 2021