Council of the European Union

Brussels, 3 October 2023
(OR. en)

13437/23

Interinstitutional File:
2021/0426(COD)

LIMITE

ENER 512
ENV 1046
TRANS 390
ECOFIN 930
RECH 419
CODEC 1697

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	15088/21 + ADD 1
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the energy performance of buildings (recast) - Preparation for the trilogue

I. INTRODUCTION

1. The Commission submitted to the European Parliament and the Council a proposal for a recast of the Energy Performance of Buildings Directive on 15 December 2021. The Directive forms part of the Commission Work Programme 'Fit for 55' package, setting the vision for achieving a zero-emission building stock by 2050. It is also a key component of the Renovation Wave Strategy published in October 2020. In addition, the Commission published the REPowerEU Plan on 18 May 2022, accompanied by a proposal for a Directive amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency (REPowerEU Directive).

2. Following intensive preparatory work, on 25 October 2022, the Council agreed on a General Approach on the proposal and gave a mandate to the Presidency to engage in negotiations with the European Parliament.

3. The European Parliament appointed the Committee on Industry, Research and Energy (ITRE) as the committee responsible for this proposal and Mr Ciarán Cuffe (IE, Greens/EFA) as rapporteur. The European Parliament adopted its position in plenary on 14 March 2023.

4. The European Economic and Social Committee adopted its opinion on the above proposal on 23 March 2022. The European Committee of the Regions adopted its opinion on the above proposal on 30 June 2022.

II. INTERINSTITUTIONAL NEGOTIATIONS – STATE OF PLAY

5. On 6 June 2023, the first trilogue concerning the revision of the Energy Performance of Buildings Directive (EPBD) was held at the Council premises. All institutions recognised the importance of this directive for the achievement of our common climate targets. The co-legislators presented their respective positions and held exploratory discussions on Article 9 (Minimum energy performance standards) and Article 16 (Energy performance certificates); and a more in-depth exchange and a preliminary agreement on several provisions in Articles 20, 21, 22, 23, 24 and Annex VI. The co-legislators gave a broad mandate to the technical level to continue the work.

6. On 31 August, during the second trilogue, articles 1, 11a, 13, 20 and 21 were provisionally agreed. Furthermore, it was agreed that the focus of the Directive would remain on the energy performance of buildings, while potential co-benefits such as safety could be taken into consideration, where relevant. The discussion on article 9a, on solar energy in buildings remained open due to the lack of agreement in the requirements on existing buildings.

7. In view of the preparation of the third trilogue, the Spanish Presidency has held exchanges with the European Parliament and the European Commission in six technical meetings on 7, 9, 20, 21, 22 and 29 of September.

8. The third trilogue will take place on 12 October.

III. PREPARATION FOR THE NEXT TRILOGUE

9. In view of the 3rd trilogue scheduled for 12 October 2023, the Presidency proposes to accept elements which were provisionally agreed at the technical level with the Parliament. These compromise proposals are contained in the four-column table, in document ST 13437/23 ADD1, and in Annex IV to this note (Renovation Passports), as listed below.

Pre-agreed lines:

- **Renovation Passports package** (Article 10 + annex [XX] and recitals) in **Annex III** to this note.

- Lines: 38b, 42a, 42b, 64, 140, 216, 220, 223d, 223e, 224, 225, 231, 252, 253, 254, 255, 258d, 258e, 258f, 258g, 258l, 258m, 258n, 258o, 275, 280, 280a,280b, 282, 283d, 283e, 284, 287, 287c, 287d, 287e, 288, 290, 290a, 290b, 290c, 290d, 290e, 290f, 291, 292, 293b, 294, 294b, 295a, 304, 313, 315, 316, 317a, 317b, 318, 320, 322, 322a, 323, 324, 325, 326, 327, 328, 329, 331, 332, 333a, 333b, 333d, 333e, 333f, 333g, 333h, 333i, 333j, 333k, 333l, 333m, 333n, 333o, 333p, 333q, 333r, 334, 335, 340, 342a, 343, 346, 347, 348, 349, 351, 651

10. Additionally, the Presidency, with the feedback provided in the Energy Working Party, considers certain flexibilities as being **already supported by delegations**. The list of supported flexibilities is presented in **Annex II**.

11. In the next trilogue, the Presidency would **firmly maintain the general approach** regarding the following elements:

Solar Energy in buildings (Article 9a):

- Reference to technological neutrality

Electromobility infrastructure (Article 12):

- L278 and 286: Substitution of 50% of the pre-cabling for ducting.

- L286a: No requirement to install one recharging point in residential buildings (new and undergoing major renovation)

Zero Emissions Buildings (art 2(2), 7, 9b, Annex III(I)):

- No Annex III (I) with EU thresholds on primary energy consumption in ZEB.

Minimum Energy Performance Standards (Article 9):

- Residential buildings:
    - No direct link between MEPS and EPCs
    - No targeting individual homeowners
    - No linear trajectory
    - Data based on statistical sampling or EPCs (L244p)
    - Set 2020 as the baseline
- Non-residential buildings:
    - The % architecture as in the General Approach

Financing (Article 15):

- L319: MS shall encourage financial institutions, instead of "shall ensure that financial institutions", offer energy efficiency lending products.
- L329: Date of ban of financial incentives of boilers using fossil fuels and grandfathering clause.

Energy Performance Certificates (Article 16):

- No strict harmonisation of scales

12. **In return,** the Presidency sees the need to find movement within an overall agreement. The presidency **seeks the Delegations' guidance on the following elements:**

Article 9a: Solar Energy in buildings

12.1. For existing non-residential buildings (L258i): Progressive approach (1000m2, 400 m2, 250 m2) with no link to deep/major renovation, as proposed in document WK 11667/2023.

Article 2, 7, 9b and Annex III(I)): Zero Emissions Buildings

12.2. Prioritization of admitted energy sources.

12.3. Primary Energy Consumption: nationally set thresholds based on NZEB - [x]%

12.4. Calculate the GWP of all new buildings, regardless of the floor area (L222)

12.5. Delegated Act on EU framework for the calculation of life-cycle GWP (L223a)

Article 12: Electromobility infrastructure:

Non-residential buildings, new and undergoing major renovations:

12.6. Increasing the number of recharging points from one (as in the GA, L277) to one per 5 parking spaces, *if technically and economically feasible*.

Existing non-residential buildings

12.7. For buildings with more than 20 parking spaces: one recharging point for every:

a) [50] parking spaces (L823a) (no ducting)

or

b) [20] parking spaces, condition to the EV market penetration above [20%]

if technically and economically feasible.

12.8. One recharging point in buildings with more than 10, but less than 20 car parking spaces, *if technically and economically feasible* (L283).

<u>New residential</u> and residential undergoing major renovations

12.9. One recharging point per 10 parking places, *if technically and economically feasible*.

<u>Article 15 and 15a: Financing and One-Stop Shop, and financing references in articles 10 and 16</u>

12.10. Requirement for MS to deploy One-Stop Shops across the national territory (L333c)

12.11. Addressing up-front costs (L314b)

12.12. Assigning part of the funding including a revenue-based criteria (L314c)

12.13. EP-introduced Delegated Act on Mortgage portfolio standards (L317c)

12.14. Financial support for EPC and renovation passport for vulnerable households.

<u>Article 16: Energy Performance Certificates</u>

12.15. Adding A+ class, as defined in EP mandate

12.16. Dropping A0 class (from the GA)

12.17. Member States shall ensure that the remaining classes (B to F) have an appropriate statistical distribution of primary energy use.

13. In relation to article 9(2) on **Minimum Energy Performance Standards** in residential buildings, both co-legislators highlighted their political priorities and tasked the Commission to draft three options to be discussed at technical level. Based on these options, the discussions, and written comments by several delegations, two options have been drafted. Both options comply with the requirement not to target individual homeowners, which is a clear political priority for the Council, and prioritize worst-performing buildings, which is the political priority for Parliament. **Delegations will find the two proposals in Annex I to this note.**

IV. CONCLUSIONS

14. In light of the above, the Permanent Representatives Committee is invited **to confirm:**

a) lines preliminarily agreed at the technical level, as listed in point 9 of this note and as set out Annex III (Renovation Passports) and in the four-column table, in document ST 13437/23 ADD1;

b) pre-**agreed flexibilities** that were supported already at the Working Party level, as listed in Annex II.

15. In addition, the Permanent Representatives Committee is invited **to provide political guidance** to the Presidency on possible areas of flexibility regarding:

a) Minimum Energy Performance Standards in residential buildings, in Article 9(2), as explained in point 13 of this note. Delegations are invited to **choose between options A and B presented in Annex I**, including by indicating their flexibilities in the thresholds highlighted in grey in the same Annex I;

b) points listed under point 12 of this note, by signalling specific red lines, should there be any.

ANNEX I – MINIMUM ENERGY PERFORMANCE STANDARDS IN RESIDENTIAL BUILDINGS

OPTION A

Article 9(2)

2. Member States shall establish minimum energy performance standards for residential buildings which shall be based on a national trajectory for the progressive renovation of the building stock in line with the national roadmap and the 2030, 2040 and 2050 targets contained in the Member State's building renovation plan and with the transformation of the national building stock into zero-emission buildings by 2050.

The trajectory shall be expressed as a decrease of the average primary energy use in kWh/(m2.y) of the whole residential building stock over the period from [2020] to 2050, and shall identify the number of buildings and building units or floor area to be renovated annually.

Member States may exclude from the baseline those parts of the building stock affected by natural disaster requiring special remedial measures.

Member States may set additional indicators to define their trajectories, such as average ope/rational greenhouse gas emissions (in kg CO2 eq/(m2 year)).

When establishing the national trajectories, Member States shall ensure that the average primary energy use in kWh/(m2.y) of the whole residential building stock:

(a) has decreased by at least [X%] from [2020] to 2033;

(b) by 2038, and every **[5]** years thereafter, is at least equivalent to a nationally determined value derived from a progressive decrease of the average primary energy use from 2033 to 2050 in line with the transformation of the residential building stock into a zero-emission building stock.

For the purposes of this paragraph, at least **[40-60] %** of the decrease of the average primary energy use shall be achieved through the renovation of worst-performing residential buildings.

As part of the assessment of national building renovation plans, the Commission shall monitor the achievement of the values referred to in 2033 and 2040, as referred to subparagraph 2, and make recommendations where necessary. The trajectory shall refer to data on the national residential building stock, based, as appropriate, on statistical sampling and energy performance certificates.

These objectives shall be established as of [the date of entry into force of this directive]. Member States shall ensure that the average consumption and emissions levels of the residential building stock respect these thresholds throughout the reference period.

Article 2(3a)

(3a) 'worst-performing buildings' means buildings which are within the **[15-40]%** of buildings with the lowest energy performance in the national building stock;

OPTION B

Article 9(2)

2. Member States shall establish minimum energy performance standards for residential buildings to ensure that:

a) by [20XX], [X%] of the residential building stock with the lowest energy performance [at entry into force] reaches the average energy performance of the whole residential building stock [at entry into force];
b) by [20YY], [Y%] of the residential building stock with the lowest energy performance [at entry into force] reaches the average energy performance of the whole residential building stock [at entry into force]; and
c) by [20ZZ], [Z%] of the whole residential building stock with the lowest energy performance [at entry into force] reaches the average energy performance of the whole residential building stock [at entry into force].

The targeted average energy performance shall refer to data on the national residential building stock, based, as appropriate, on statistical sampling and energy performance certificates.

Member States may exclude from the baseline those parts of the building stock affected by natural disaster requiring special remedial measures.

Where appropriate, Member States may decide to apply the minimum energy performance standards to buildings outside of the *worst-performing* building stock. When doing so, the Member State has to ensure that the decrease of the average primary energy use of the building stock is equivalent. At least **[40-60]%** of the decrease of the average primary energy use shall be achieved through the renovation of worst-performing residential buildings.

Member States may set criteria to exempt individual buildings from the minimum energy performance standards pursuant to this paragraph, notably with regard to cases of social hardship, buildings to be demolished and economic and technical feasibility. Such exemptions shall not cover more than **[20-30]%** of the residential buildings over the threshold.

Article 2(3a)

(3a) 'worst-performing buildings' means buildings which are within the **[15-40]%** of buildings with the lowest energy performance in the national building stock;

ANNEX II – FLEXIBILITIES IDENTIFIED AT THE ENERGY WORKING PARTY

Article 9a: Solar Energy in buildings

1. For existing residential buildings (L258k): National Strategy on Solar on Existing Buildings

2. Adding an obligation on new roofed carparks (L258j)

Article 2, 7, 9b and Annex III(I)): Zero Emissions Buildings

3. Calculate the GWP of all new buildings, with a progressive approach regarding floor area (L222)

4. Roadmap detailing limit values for Global Warming Potential in new buildings (L223c)

Article 12: Electromobility infrastructure: non residential buildings, new and undergoing major renovations

5. Bike parking spaces: [5-10]% of total user capacity (instead of average as in the GA)

Article 12: Electromobility infrastructure: existing non-residential buildings

6. Bike parking spaces: [5-10]% of total user capacity (instead of average as in the GA)

ANNEX III – Renovation Passports (Article 10, recitals, and Annex)

Recitals

(32a) There are some synergies between renovation passports and energy performance certificates, in particular as regards the assessment of the current performance of the building and the recommendations for its improvement. In order to reap those synergies and reduce costs for building owners, Member States should be able to allow the renovation passport and the energy performance certificate to be drawn up jointly by the same expert and issued together, in which case the renovation passport should substitute the recommendations in the energy performance certificate. It should nonetheless always remain possible to obtain an energy performance certificate without a renovation passport.

(32x) A staged deep renovation can be a solution to address high upfront costs and hassle for the inhabitants that may occur when renovating 'in one go' and can allow for less disruptive and more financially feasible renovation measures. However, such staged deep renovation needs to be carefully planned in order to avoid that one renovation step precludes necessary subsequent steps. One-step deep renovation can be more cost-effective and result in less emissions linked to the renovation than staged renovation. Renovation passports provide a clear roadmap for staged deep renovations, helping owners and investors plan the best timing and scope for interventions. Therefore, renovation passports should be encouraged and made available as a voluntary tool to building owners across all Member States. Member States should ensure that renovation passports do not create a disproportionate burden [and are accompanied by adequate financial support for vulnerable households].

(32a) Long-term contracts are an important instrument to stimulate staged renovation. Member States may introduce mechanisms that allow the establishment of long-term contracts over the various stages of staged renovation. Where new and more effective incentives become available during the various stages of the renovation, access to those new incentives may be ensured by allowing beneficiaries to switch to new incentives.

Article 10: Renovation passport

1. By [date of transposition], Member States shall introduce a scheme of renovation passports based on the common framework set out in Annex [X].

That scheme shall be of voluntary use by owners of buildings and building units, unless the Member State decides to make it mandatory.

2. The renovation passport shall comprise a holistic renovation roadmap indicating a sequence of a maximum number of renovation steps building upon each other, in line with the energy efficiency first principle, to achieve a staged deep renovation in line with the objective to transform the building or building unit into a zero-emission building by 2050 at the latest.

[2a. Member States shall ensure that renovation passports are financially supported as part of national building renovation plans in order to not create a barrier, in particular for homeowners. Member States shall ensure that building renovation passports are made available with due financial support for vulnerable households wishing to renovate their buildings in whole or in part.]

3. Member States may decide to allow for the renovation passport to be drawn up and issued jointly with the energy performance certificate.

4. The renovation passport shall be issued in a digital format suitable for printing by a qualified and certified expert, following an on-site visit.

5. When the renovation passport is issued, a discussion with the building owner shall be suggested to allow the expert to explain to the building owner the best steps to transform the building into a zero-emission building well before 2050.

6. Member States shall strive to provide a dedicated digital tool for preparing and potentially updating the renovation passport. Member States may decide to develop a complementary tool allowing building owners and building managers to simulate a draft simplified renovation passport for the building and for them to update it once a renovation takes place or a building element is replaced.

[7. Member States shall ensure that the renovation passport is uploaded to the national database for the energy performance of buildings in accordance with Article 19.]- → **To be discussed together with article 19**

8. Member States shall ensure that the building renovation passport is stored in, or can be accessed via, the digital building logbook, when established.

Renovation passports: ANNEX [X] : REQUIREMENTS FOR BUILDING RENOVATION PASSPORTS
(Referred to in Article 10)

1. The renovation passport shall include:

   (a) Information on the current energy performance of the building;

   (b) A graphical representation or graphical representations of the roadmap and its steps for a staged deep renovation;

   (c) Information on relevant national requirements such as minimum energy performance requirements for buildings, minimum energy performance standards and rules in the Member State on the phase-out of fossil-fuel used in buildings for heating and cooling, including application dates;

   (d) A succinct explanation on the optimal sequencing of steps;

   (e) Information about each step, including:

      i. The name and description of the renovation measures for the step including relevant options for the technologies, techniques and materials to be used;

      ii. The estimated energy savings in primary and final energy consumption, in kWh and in percentage improvement compared to the energy consumption prior to the step;

      iii. The estimated reduction of operational greenhouse gas emissions;

      iv. The estimated savings on the energy bill, clearly indicating the assumptions on energy costs used for the calculation;

      v. The estimated energy performance class of the energy performance certificate to be achieved following completion of the step;

(f) Information about a potential connection to an efficient district heating and cooling system;

(g) The share of individual or collective generation and self-consumption of renewable energy estimated to be achieved after the renovation;

(h) General information on available options for improving construction products' circularity and for reducing their whole lifecycle greenhouse gas emissions, as well as wider benefits related to health and comfort, indoor environmental quality and the improved adaptive capacity of the building to climate change;

(i) Information on available funding and relevant weblinks to the sources of such funding;

(j) Information on technical advice and advisory services, including contact details and weblinks to one-stop-shops.

2. The renovation passport may include:

(a) An indicative timing of the steps;

(b) For each step:

i. A detailed description of the technologies, techniques and materials to be used, their advantages, disadvantages and costs;

ii. How the energy performance of the building would compare to minimum energy performance requirements for buildings undergoing major renovation, nearly zero-energy building and zero-emission building requirements after completion of the step and how the energy performance of the building elements replaced would compare to minimum energy performance requirements for single building elements [where these exist];

iii. The estimated costs for carrying out the step;

iv. The estimated pay-back period for the step, with and without any financial support available;

v. The estimated time needed to carry out the step;

vi. Where available, the reference values on the lifecycle greenhouse gas emissions for the materials and equipment and a link to the relevant webpage where they can be found;

vii. The estimated lifetime of measures and the estimated maintenance costs;

(c) Independent modules on:

i. The typical trades necessary or recommended for carrying out energy renovations (architects, advisors, contractors, suppliers and installer, etc.) or a weblink to the relevant page(s);

ii. A list of relevant architects, advisors, contractors, suppliers or installers in the area, that may include only those fulfilling certain conditions such as matching higher qualification or certification labels or conditions, or a weblink to the relevant page(s);

iii. The technical conditions needed for an optimal roll-out of low temperature heating;

iv. How the renovation steps and additional measures could improve the smart readiness of a building;

v. Technical and safety requirements for materials and works;

vi. The underlying assumptions behind the calculations provided or a link to the relevant webpage where they can be found;

(d) Information on how to access a digital version of the renovation passport;

(e) Any major renovations made to the building or building unit, as referred to in Article 8(1), and any retrofitting or replacement of a building element that forms part of the building envelope and which has a significant impact on the energy performance of the building envelope, as referred to in Article 8(2), where such information is made available to the expert carrying out the renovation passport;

(f) Information related to seismic safety, where such information relevant to the building is made available to the expert;

(g) upon request of and based on information made available by the current building owner, contain in an attachment additional information, such as the adaptability of spaces to evolving needs and any planned renovations.

5. Regarding the status of the building prior to the renovation steps, the renovation passport shall consider, to the extent possible, information contained in the energy performance certificate.

6. Each metric used for estimating the impact of steps shall be based on a set of standard conditions.