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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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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 proposal 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 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 on the requirements for existing buildings.
7. On 12 October, during the third trilogue, Articles 9b, 12, 15, 15a and 16 were provisionally agreed. The overall architecture of Article 9(2) on minimum energy performance standards was defined. The discussion on Article 9a on solar energy in buildings was again inconclusive.
8. In view of the preparation of the fourth trilogue, the Spanish Presidency has held exchanges with the European Parliament and the European Commission in eight technical meetings on 25 October and 7, 8, 14, 15, 21, 22 and 28 November.

III. PREPARATION FOR THE NEXT TRILOGUE

9. In view of the 4th trilogue scheduled for 7 December 2023, the Presidency proposes to accept elements which were provisionally agreed at the technical level with the European Parliament. These compromise proposals are highlighted in green in the four-column table set out in document ST 16172/23 ADD1. In order to achieve a **balanced compromise** with the Parliament, the compromise proposals include several concessions towards the Parliament, provisionally agreed at different stages of the negotiations, regarding safeguards, financial incentives, vulnerable households, skills, indoor environmental quality, among others.
10. The Presidency is also seeking political guidance on:
- Phase-out of fossil fuel boilers in buildings (Article 8 and Annex II)
 - Solar Energy in public and existing buildings (Article 9a)
 - Mortgage Portfolio Standards (Article 15)
 - Minimum Energy Performance Standards, MEPS (Article 9)

Delegations can find the compromise proposals in Annexes I, II, III, IV respectively.

11. The Presidency would show flexibility towards the Parliament in the following aspects:
- a. [L258i] Regarding Article 9a, on **solar energy in buildings**, the Presidency would show flexibility in including public buildings and non-residential buildings over 500 m² which undergo an action that requires a *relevant* administrative permit.
 - b. [L317c] Regarding the **Mortgage Portfolio Standards**, the Presidency would show flexibility in accepting the adoption of a delegated act for the Commission to set a framework of *voluntary use* to support financial institutions to targeting and increasing lending volumes provided to energy renovations.
 - c. [Article 9(1)] In relation to **MEPS in non-residential buildings**, the Presidency would show flexibility towards the Parliament in advancing the date for the first requirement to 2028 (4 years after entry into force), in order to activate the renovation industry as soon as possible.

- d. [Article 9(2)] Including a clear reference to a more extensive use of **MEPS in the residential sector**, in the context of the recommendations issued by the Commission.
12. In return, the Presidency would ask the Parliament for the following flexibilities:
- a. [Article 9a] On **solar energy in buildings**, maintaining the overarching safeguard of *technical, economical and functional feasibility* and the principle of *technological neutrality*.
- b. Regarding the **phase-out of fossil fuels** in buildings:
- [L230b] Deleting the amendment introduced by the Parliament, addressing the use of fossil fuels in buildings undergoing renovation.
 - [L531(f)] In relation to the **plan** to phase out fossil fuels in heating, the Parliament's mandate required a planned phase-out of fossil fuels in 2035 and the General Approach required a complete phase-out by 2040 at the latest. Taking into account the discussions in the Energy Working Party, the Presidency would firmly defend the **General Approach**.
- c. [Article 9(1)] Including the option to set the threshold for MEPS in non-residential buildings in terms of **final energy**, maintaining the possibility to exempt individual buildings (under certain conditions), while maintaining the levels for the **non-residential thresholds** in the following intervals:
- 2028: [7-12]%
 - 2031: [19-28]%
- d. [Article 9(2)] Broadening the flexibilities for Member States, so that there is no limitation of the measures that can be used to achieve the target of renovation in residential buildings, while maintaining the levels for the **residential renovation** targets in the following intervals:
- 2030: [15-20]%
 - 2035: [20-25]%

- e. [Article 9(6)] Maintaining the exemptions for agricultural and armed forces buildings in line with the General Approach.

IV. CONCLUSIONS

13. In light of the above, the Permanent Representatives Committee is invited **to confirm the** lines preliminarily agreed at the technical level, marked in green in the four-column table, in document ST 16172/23 ADD1.
14. In addition, the Permanent Representatives Committee is invited **to provide political guidance** regarding the proposed revised mandate as described in points 11 and 12 of this note.

Annex I – Phase-out of fossil fuels in building’s heating and cooling (Articles 3, 8 and Annex II)

- Article 3(1), L179h would be **deleted**
- Article 7(4a) L225a would be **deleted**
- Article 8(3b), L230b would be **deleted**

Annex II, L531 would read as follows:

(f) the decarbonisation of heating and cooling, including through district heating and cooling networks, and the phase out of fossil fuels in heating and cooling with a view to a complete phase-out of fossil fuel boilers by 2040;

Recital 14, L24 would read as follows:

*[L24] Two-thirds of the energy used for heating and cooling of buildings still comes from fossil fuels. In order to decarbonise the building sector, it is of particular importance to phase out fossil fuel in heating and cooling. Therefore, Member States should indicate their national policies and measures to phase out fossil fuels in heating and cooling in their building renovation plans. **They should strive to phase out stand-alone boilers powered by fossil fuels, and as a first step, no financial incentives should be given for the installation of stand-alone boilers powered by fossil fuels as of 2025, with the exception of those selected for investment, before 2025, under the Recovery and Resilience Facility, the European Regional Development Fund and on the Cohesion Fund. It should still be possible to give financial incentives for the installation of hybrid heating systems with a considerable share of renewable energy, such as the combination of a boiler with solar thermal or with a heat pump. A clear legal basis for the ban of heat generators based on their greenhouse gas emissions, the type of fuel used or to the minimum part of renewable energy used for heating at building’s level should support national phase-out policies and measures.***

Annex II – Article 9a, Solar Energy in Buildings

1. Member States shall ensure that all new buildings are designed to optimise their solar energy generation potential on the basis of the solar irradiance of the site, enabling the subsequent cost-effective installation of solar technologies.
2. For the installation of solar energy equipment, the permit-granting process pursuant to Article 16c, and notification procedure pursuant to Article 17 of Directive (EU) 2018/2001 [RED as amended] apply.
3. Member States shall ensure the deployment of suitable solar energy installations, **if technically suitable and economically and functionally feasible**, as follows:
 - a) by 31 December 2026, on all new public and non-residential buildings with useful floor area over 250 m²;
 - (b) by 31 December [2027], on all existing public buildings with useful floor area larger than [2000] square meters;
 - (ba) by 31 December [2028], on all existing public buildings with useful floor area larger than [1000] square meters;
 - (bb) by 31 December [2030], on all existing public buildings with useful floor area larger than [250] square meters;
 - (bc) by [2027], on existing non-residential buildings with useful floor area larger than [500] square meters, **where the building undergoes an action that requires a *relevant* administrative permit**;
 - c) by 31 December 2029, on all new residential buildings on all new roofed carparks physically adjacent to buildings.

In their building renovation plans referred to in Article 3, Member States shall include policies and measures with regard to the deployment of suitable solar energy installations on all buildings.

4. Member States shall define, and make publicly available, criteria at national level for the practical implementation of these obligations, and for possible exemptions for specific types of buildings **taking into account the principle of technological neutrality** with regard to technologies not producing any on-site emissions and in accordance with the assessed technical and economic potential of the solar energy installations and the characteristics of the buildings covered by this obligation.

In order to achieve the objectives of this Article and to take into account the issues linked to the stability of the electricity network, Member States shall include relevant stakeholders in the establishment of the above criteria.

Member States shall also take into account structural integrity, green roofs and attic and roof insulation, where appropriate.

5. Member States shall put in place a framework providing the necessary administrative, technical and financial measures to support the deployment of solar energy in buildings, including in combination with technical building systems or efficient district heating systems.

Annex III – Mortgage Portfolio Standards [L317c]

*By 12 months after the date of entry into force of this Directive, the Commission shall adopt a Delegated Act in accordance with Article 29 supplementing this Directive in order to effectively encourage financial institutions to increase volumes provided for energy performance renovations, by means of a comprehensive portfolio framework **of voluntary use** that supports lenders to targeting and increasing lending volumes provided in accordance with the Union’s decarbonisation ambition and relevant energy targets. The actions foreseen in this framework shall cover increasing lending volumes for energy renovations and include suggested safeguards to protect vulnerable households through blended funding solutions, and share best practices to encourage lenders to identify and act upon the worst performing buildings within their portfolios.*

Annex IV - Minimum Energy Performance Standards (Article 9)

Article 2(4), L98

4. *'minimum energy performance standards' means rules that require existing buildings to meet an energy performance requirement as part of a wide renovation plan for a building stock or at a trigger point on the market (such as sale, rent, donation or change of purpose within the cadastre or land registry), in a period of time or by a specific date, thereby triggering renovation of existing buildings;*

Article 9 : Minimum energy performance standards

1. Member States shall establish minimum energy performance standards which ensure that non-residential buildings do not exceed the specified maximum energy performance threshold, as referred to in subparagraph 3, expressed by a numeric indicator of primary [**or final**] energy use in kWh/(m².y), by the dates specified in subparagraph 6.

The maximum energy performance thresholds shall be established on the basis of the non-residential building stock on **1 January 2020**, based on available information and, where appropriate, on statistical sampling.

A “[**7-12**]% threshold” shall be set so that [**7-12**]% of the national building stock is above that threshold, and a “[**19-28**]% threshold” shall be set so that [**19-28**]% of the national building stock is above that threshold. The maximum energy performance thresholds may be differentiated between different building types and categories.

Compliance by individual buildings with the thresholds shall be checked on the basis of energy performance certificates or, where appropriate, other available means. Member States may set the thresholds at a level corresponding to a specific energy performance class provided that they comply with the level of the thresholds in subparagraph 3.

The minimum energy performance standards shall at least ensure that all non-residential buildings are below:

(a) the [7-12]% threshold as of [2 years after transposition date]; and

(b) the [19-28]% threshold as of [5 years after transposition date].

In their roadmap referred to in Article 3(1)(b), Member States shall establish specific timelines for the buildings referred to in this paragraph to comply with lower maximum energy performance thresholds by 2040 and 2050, in line with the pathway for transforming the national building stock into zero-emission buildings.

Member States shall exclude from the baseline buildings that they exempt pursuant to paragraph 6.

[Member States may set criteria to exempt individual buildings, in light of the expected future use of the building or in the case of an unfavourable cost-benefit assessment, from requirements in this paragraph. **In case that, in application of this exemption at individual building level, more than [5]% of the affected buildings get exempted, the Member State shall achieve equivalent performance improvements in the non-residential building stock**].

[To the extent that the national non-residential building stock, or part of it, is seriously damaged by a natural disaster, a Member State may temporarily adjust the maximum energy performance threshold so that the energy renovation of damaged non-residential buildings replaces the energy renovation of other worst-performing buildings, whilst ensuring that the similar percentage of the non-residential building stock undergoes energy renovation. In that case, the Member State shall report the adjustment and its projected length in its national building renovation plan.]

2. The Member States shall establish minimum energy performance standards for residential buildings which shall **contribute to** 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.

This trajectory shall be established as of the transposition date.

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, including the number of worst performing buildings and building units or floor area.

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

When establishing the national trajectories, Member States shall ensure that **[from 2020]** the average primary energy use in kWh/(m².y) of the whole residential building stock:

- (a) decreases by at least **[15-20]%** by 2030;
- (b) decreases by at least **[20-25]%** by 2035;
- (c) by 2040, and every 5 years thereafter, is equivalent to, or lower than nationally determined value derived from a progressive decrease of the average primary energy use from 2030 to 2050 in line with the transformation of the residential building stock into a zero-emission building stock.

Member States shall ensure that at least 55 % of the decrease of the average primary energy use is achieved through the renovation of worst-performing residential buildings. Member States may count the energy savings achieved by the renovation of buildings affected by natural disasters such as earthquakes and floods towards the share achieved through the renovation of worst performing buildings.

In their renovation efforts to achieve the required decrease in the average primary energy use of the whole residential building stock, Member States shall not disproportionately exempt rental dwellings.

Member States shall report in the national building renovation plans the methodology used and data gathered for estimating the values referred to in subparagraphs 2 and 3.

As part of the assessment of national building renovation plans, the Commission shall monitor the achievement of the values referred to in subparagraphs 2 and 3, including the number of buildings and building units or floor area of worst performing buildings, and make recommendations where necessary. **[Those recommendations may include a more extensive use of minimum energy performance standards]**

The trajectory shall refer to data on the national residential building stock, based, as appropriate, on statistical sampling and energy performance certificates. Member States shall ensure that the average consumption and emissions levels of the residential building stock respect this trajectory throughout the reference period.

3. In addition to primary energy use referred to in paragraphs 1 and 2, Member States may define additional indicators of non-renewable and renewable primary energy use, and of operational greenhouse gas emissions produced in kgCO₂eq/(m².y). In order to ensure reduction of operational greenhouse gas emissions, the minimum energy performance standards shall take into account the [Article 15a (1) Renewable Energy Directive COM (2021) 557 final].
4. In accordance with Article 15, Member States shall support compliance with minimum energy performance standards by all the following measures:
 - (a) providing appropriate financial measures, in particular those targeting vulnerable households, people affected by energy poverty or, **where applicable**, living in social housing, in line with Article 22 of Directive (EU) .../.... [recast EED];
 - (b) providing technical assistance, including through one-stop-shops **[with a particular focus on vulnerable households and, where applicable, people living in social housing, in accordance with Article 22 of Directive (EU).../.... [recast EED]]**;
 - (c) designing integrated financing schemes, **[which provide incentives for deep and staged deep renovations, pursuant to Article 15]**;
 - (d) removing non-economic barriers, including split incentives; and
 - (e) monitoring social impacts, in particular on the most vulnerable **households**;

5. Where a building is renovated in order to comply with a minimum energy performance standard, Member States shall ensure compliance with the minimum energy performance requirements for building elements pursuant to Article 5 and, in the case of major renovation, with the minimum energy performance requirements for existing buildings pursuant to Article 8.
6. Member States may decide not to apply the minimum energy performance standards referred to in paragraphs 1 and 2 to the following categories of buildings:
- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, [**or other heritage buildings**], in so far as compliance with the standards would unacceptably alter their character or appearance, [**or if their renovation is not technically or economically feasible**];
 - (b) buildings used as places of worship and for religious activities;
 - (c) temporary buildings with a time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential [**agricultural**] buildings which are used by a sector covered by a national sectoral agreement on energy performance;
 - (d) residential buildings which are used or intended to be used for either less than four months of the year or, alternatively, for a limited annual time of use and with an expected energy consumption of less than 25 % of what would be the result of all-year use;
 - (e) stand-alone buildings with a total useful floor area of less than 50 m²;
 - [(f) buildings owned by the armed forces or central government and serving national defence purposes, apart from single living quarters or office buildings for the armed forces and other staff employed by national defence authorities.]**

7. Member States shall take the measures necessary to ensure the implementation of minimum energy performance standards referred to in paragraphs 1 and 2, including appropriate monitoring mechanisms and penalties in accordance with Article 31.

When laying down the rules on penalties, Member States shall consider the financial situation and access to adequate financial support of homeowners, in particular for the vulnerable households.

In support of the implementation of this Directive and taking due account of the principle of subsidiarity, the Commission shall, by 31 March 2025, present an analysis on, in particular:

- (a) the effectiveness, the appropriateness of the level, the actual amount used and types of instruments in structural funds, framework programmes from the European Union, including from the EIB, for improving the energy performance of buildings, especially in housing;
- (b) the effectiveness, the appropriateness of the level and types of instruments and measures from public finance institutions;
- (c) the coordination of Union and national funding and other forms of measures that can act as a leverage for stimulating investments in the energy performance of buildings and the adequacy of such funds for achieving Union objectives.

Based on that analysis, the Commission shall subsequently submit a report to the European Parliament and to the Council on the effectiveness and appropriateness of financing instruments towards the improvement of energy performance of buildings, in particular the worst-performing ones.

Recital on natural disasters:

If the building stock of a Member State is seriously damaged by a natural disaster such as earthquakes or floods, that Member State should have the possibility to prioritise the necessary renovation of the damaged buildings, including to improve the energy performance of those buildings. To this end, the renovation of such damaged buildings should be able to temporarily replace the renovation of a share of other very worst-performing buildings which is required pursuant to the minimum energy performance standards for non-residential buildings.

Recital on mixed-use buildings:

With regard to mixed-used buildings that include both residential and non-residential units, Member States may **continue to** choose whether to treat them as residential or non-residential.

Recital on MEPS:

(23a) For residential buildings, Member States should have the flexibility to design minimum energy performance standards at the national level, adapted to national conditions and based on a national trajectory with intermediate milestones for the average energy performance of the residential building stock. [Examples of minimum energy performance standards include, but are not limited to, requirements for individual buildings to achieve a certain energy performance class by a specific date or at a specific trigger point such as rent or sale, requirements for the buildings in a specified area to improve their average energy performance by a specific date, and requirements to achieve binding performance-based renovation targets for the residential building stock, or parts of it, combined with effective implementation measures to achieve the targets.]