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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the energy performance of buildings (recast) - Progress report

I. INTRODUCTION

1. The Commission submitted a proposal for a revision of the Energy Performance of Buildings Directive on 15 December 2021. The Directive forms part of the Commission Work Programme ‘Fit for 55’ package and complements the other components of the package proposed in July 2021, 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.

2. This Directive is a key legislative instrument for delivering on the 2030 and 2050 decarbonisation objectives. The proposal is particularly important because buildings account for 40% of energy consumed and 36% of energy-related direct and indirect greenhouse gas emissions in the EU. It therefore constitutes one of the levers necessary for delivering on the Renovation Wave with specific regulatory, financing and enabling measures, with the objective of at least doubling the annual energy renovation rate of buildings by 2030 and fostering deep renovations. This revision should also contribute to delivering on the New European Bauhaus initiative and climate-neutral cities.
3. An important new feature of the revision is the introduction of minimum energy performance standards to trigger the required transformation of the sector, in particular for the worst-performing buildings.
4. The examination of the above proposal by the European Parliament was assigned to the Committee on Industry, Research and Energy (to the Irish rapporteur from the Group of the Greens, Ciarán Cuffe). On 15 December 2021, the European Parliament adopted an own-initiative resolution on the implementation of the Energy Performance of Buildings Directive. This coincided with the publication of the Commission's legislative proposal.
5. The Economic and Social Committee's opinion on the proposal was adopted on 23 March 2022. The Committee of the Regions' opinion is expected by the end of June.
6. This report sets out the progress made on the matter and the main issues discussed in the Council preparatory bodies. The Permanent Representatives Committee and the TTE Council (Energy) are invited to take note of this progress report.

II. STATE OF PLAY

7. The Working Party on Energy carefully examined the proposal for a Directive, starting in January 2022. The impact assessment and the text were presented and discussed on 25 January and 10 February 2022 respectively. Three working party meetings, on 3 and 10 March and on 7 April, were then needed to examine all the articles of the Commission proposal.
8. During the working party meetings, delegations expressed their views on all of the articles, and in particular on zero-emission buildings (ZEBs) and their link with access to renewable energy, on minimum energy performance standards (MEPS) and their link with cost-optimal levels and the right to property, and on Energy Performance Certificates, in particular with regard to the definition of classes and their harmonisation between Member States.
9. Following those exchanges, the Presidency shared a first revised version with the Member States on 3 May 2022. This first revision was examined during three working party meetings on 12, 17 and 19 May.
10. Not all scrutiny reservations were lifted by the Member States. The impact of the proposed measures, as well as the links with the other proposals in the ‘Fit for 55’ package, are still being examined by some Member States.

A. General opinion

11. In general, the Member States expressed continued support for the policy measures for improving the energy performance of buildings, and were in agreement on their multiple benefits and the crucial role they should play in decarbonising the European economy and achieving the increased climate ambition by 2030 and carbon neutrality by 2050. At the same time, many delegations questioned the overall level of ambition of the proposal, highlighted the need for flexibility in order to implement the most cost-effective policy measures and stressed the importance of national specificities in this regard. While endorsing the objectives, delegations also called for keeping the administrative burden to a strict minimum.
12. From the point of view of the Presidency, a number of key issues emerged from the working party discussions, as set out in the following section. These elements are without prejudice to specific points of interest raised by the delegations or to the discussions at working party level.

B. Main topics

Zero-emission buildings (Articles 2.2, 7 and 9a (first revised version) and Annex III)

13. Many Member States lamented the fact that the concept of zero-emission buildings did not take account of renewable energy in national networks or produced nearby, and some mentioned the need for technology neutrality. Annex III, which provided for a threshold for energy use set by the Commission per climatic zone for zero-emission buildings, was rejected by a significant number of Member States, as was the update of that Annex by delegated act. Some Member States asked to increase the planned timeframe. A few Member States asked for clarification on the development of the Global Warming Potential (GWP) indicator for buildings.

14. The Presidency took the remarks into account and made substantial changes to the concept of ‘zero-emission building’ in the first revised version. The Presidency amended the definition of the concept, defining zero-emission buildings as buildings that consume very little energy, do not emit greenhouse gases on site due to fossil fuels and have very low operational greenhouse gas emissions. It reintroduced Article 9a, which imposes certain requirements in respect of energy consumption and greenhouse gas emissions in those buildings. The wording proposed by the Presidency would enable the Member States to set maximum energy use standards for buildings subject to the requirements for zero-emission buildings. The table of thresholds for energy use by region, proposed by the Commission in Annex III, was therefore removed. It was replaced by the calculation of a national threshold using the ‘cost-optimal’ method. A threshold for greenhouse gas emissions was added, which makes it possible for emissions associated with a building’s energy use to be taken into account during that building’s use and operation. The Presidency’s proposal provides for the maximum thresholds for energy use and greenhouse gas emissions to be indicated in the national renovation plans.

Energy use would be covered as a matter of priority through the use of renewable energy produced on site from efficient district heating and cooling or energy communities, provided that that is technically and economically feasible.

15. The Presidency's proposal was welcomed by all Member States. The great majority welcomed the newly introduced flexibility, although some expressed reservations about the freedom to set different thresholds and the less stringent requirements on the use of renewable energy. However, Member States remained divided over whether to include renewables from national grids or energy produced nearby. The Commission welcomed the Presidency's proposal, in particular the introduction of cost-optimal levels and maintaining the ban on on-site greenhouse gas emissions from fossil fuel use.

Minimum energy performance standards (Article 9)

16. Many Member States asked for greater flexibility and clarity as regards the technical and economic aspects, although some Member States welcomed the measure. It was argued that the measure would be difficult to implement, that the cost-benefit ratio would be too high, and that it would pose a problem concerning property rights in some Member States. These Member States therefore asked for an extension of their exemption from implementing the measure, or for the scope of buildings to be limited to include only those that are for sale or for rent. Member States also expressed concerns about applying penalties to owners of buildings and parts of buildings that do not meet minimum energy performance standards. Some delegations called for an alternative measure to be implemented based on a mechanism allowing an equivalent volume of energy to be saved, while others called for the deadlines to be extended. There were calls, albeit to a lesser extent, for Member States themselves to establish levels directly in national renovation plans. Concerning these points, the Commission pointed out that it was more necessary than ever to speed up the rate of renovation and to focus on those buildings with the highest energy consumption where energy savings would be the easiest to make. The Commission also emphasised the measure's social dimension, since it would reduce the costs associated with energy consumption for vulnerable households.

17. In response to Member States' requests for flexibility, one possible option could be to modify the minimum energy performance standards so that they correspond to energy consumption thresholds for buildings that may not be exceeded beyond a certain date, rather than to an energy performance certificate class as is the case now. Member States would be free to establish these thresholds, with the constraint that they target a certain percentage of the building stock to be renovated, as laid down in the Directive. While this would still represent a considerable goal, as defined by the percentages to be established in the Directive, it would leave Member States more flexibility to put in place the technical levers to reach this goal.

Energy performance certificates (Articles 16 to 18)

18. Many Member States objected to the imposed distribution of energy performance certificate classes, which is often incompatible with national schemes. Some questioned the definition of a G rating, which should correspond to 15% of the worst performing buildings in the national stock. Some delegations also criticised the reduction of the validity period of licences for lower energy classes. Some Member States expressed concerns about the evolving costs of energy performance certificates, while others expressed concerns about the possibility of systematically carrying out on-the-spot visits to draw up these certificates.

19. As a result of this feedback, the Presidency amended the period of validity of the certificates in the first revised version back to ten years. It also introduced a three-year transitional period for old certificates. This period was considered too short by the Member States. The imposed distribution of energy performance certificate classes was not changed. However, the requirements for establishing the scale of energy performance certificate classes could have been removed and Member States could have been allowed to continue to set thresholds for the various classes, with renovation targets being introduced independently of these classes. Some Member States expressed the need to be able to include the renovation passport provided for in Article 10 in the energy performance certificate.

National renovation plans (Article 3)

20. Most Member States expressed support for this article. However, a considerable number requested better alignment with the Regulation on the governance of the energy union and climate action, in particular to reduce the administrative burden for the production of the mandatory data specified in Annex II. Only a few Member States asked to revert to the former long-term renovation strategies.
21. Following this feedback, the Presidency amended the Commission's proposal, with the aim of simplifying the production of the renovation plan without affecting its quality, while maximising synergies with the integrated national energy and climate plans (INECPs). Although Member States were in favour of the changes, a few reiterated their concerns about switching to a new method of monitoring the building stock.

Sustainable mobility (Article 12)

22. Member States generally supported the new provisions but called for greater flexibility on account of the costs involved or because the pace of development was too fast. The adaptation of requirements for existing buildings, or for buildings exempted thus far, was widely discussed. In addition, some Member States opposed the provision under which the owner's consent would not need to be obtained in order to install recharging points.
23. The first revised version shared by the Presidency introduced a measure to adapt the provisions to e-bikes and cargo bikes, and to decouple the number of spaces for bicycles from the number of spaces for cars. These proposals were supported by the majority of Member States. This first revised version also includes amendments to the number of bicycle spaces and the possible exception for these installations and to the pre-cabling requirement for parking spaces.
24. Despite these changes, Member States expressed the need for additional flexibility, in particular the need to be able to adapt the requirements to each region. Some Member States questioned allowing tenants to install charging points without the owner's consent.

Smart readiness of buildings indicator (Article 13 and Annex IV)

25. Several Member States were in favour of removing the draft delegated act which would make the indicator mandatory for the non-residential sector. Member States pointed out the introduction of a testing phase that is not compatible with the timetable proposed by the Commission.
26. In response to these comments, the Presidency proposed, in the first revised version, to make the adoption of the delegated act conditional on a positive outcome of the testing phase of the smart readiness of buildings indicator. This proposal was generally well received.

Financing for fossil fuel systems (Article 15)

27. In response to requests from Member States evoking the current global context and based on the European Council conclusions of 24 and 25 March 2022, which include the objective of phasing out dependency on Russian gas, oil and coal imports, the Presidency has brought forward the date from which public funding for the installation of fossil fuel energy systems would be banned.
28. A large majority of Member States, in addition to the Commission, welcomed this date being brought forward, although there is still some resistance.

Additional comments

29. Member States requested numerous adjustments to Article 2, which lists the definitions of terms used in the Directive. As a result, the first revised version proposed by the Presidency aligns certain definitions with the Energy Efficiency and Renewable Energy Directives, both currently under revision.
30. Member States shared their concerns regarding Articles 14 and 19 on what data it would be mandatory to share. The Commission clarified that it did not envisage that confidential data would be shared, nor data that would pose a national security risk.
31. Some Member States requested that the transposition period in Article 32 be two years in order to reduce the administrative burden.
