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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	Energy Efficiency Directive - Presidency non-paper

In view of the Energy Working Party on 16 February 2023, delegations will find in the annex a Presidency non-paper on the Energy Efficiency Directive (recast).

Non-paper EED

The fourth political trilogue on Energy Efficiency Directive is planned for the 2nd of March. As indicated early in preparation for this trilogue the Presidency has identified three main packages of provisions, namely: Public sector package (Articles 5-7), Industrial, social and heating and cooling package (Articles 11, 11a, 22 and 24), and Target package (Articles 1, 4 and 8).

Presidency identifies that movement and possible compromises need to be found by both co-legislators in order for the agreement to be reached. The main balance in question here – is the one between the ambition levels on the targets in EED and the flexibility and cost-effectiveness needed for the Member States to be able to reach those ambitious targets.

In order to find the right balance, the Presidency would like to hear Member States' views on the following proposals:

1. Could Member States accept raising the EU energy efficiency target in Article 4 according to the REPowerEU proposal, with a requirement for MS to take reasonable measures to reach the national contributions if the following is maintained:

- a. The EU target is only binding when it comes to final energy consumption (FEC) (L 211), but the national contributions are expressed in both PEC and FEC (L 212);
- b. The national contributions are *per se* non-binding (L 212);
- c. The formula in Annex I is voluntary for MS to use (L 212).

If this balance is maintained in Article 4, could Member States give guidance on their flexibilities to the following elements:

- i. Using 2007 Reference Scenario for describing Union's target, while remaining with 2020 reference scenario as baseline for MS contribution calculation in Annex 1 (L 211);
- ii. Consider a possibility of opting-in for a binding level of primary energy consumption for the overarching target after 2030.
- iii. EP's proposal on the estimated trajectory with certain milestones (L 212);
- iv. Using an early action factor according to the Commission's proposal in the formula of Annex I (L 646 and L 650).

- v. EP's proposal on including security of supply in the scope of the EED under Article 1 (L 145);

2. Could Member States accept raising energy savings requirements in Article 8 up to 2 % in 2030, if the following is maintained:

- a. A principal of gradual/stepwise increase that exists in Council's general approach is maintained, but tightened;
- b. MS can count energy savings in the transport and building sector that would have occurred in any event as a result of climate policy measures which also result in energy savings, EPBD and measures within crisis-related legislation (only with the exception of rationing and curtailment measures) (L 760 and L 762);
- c. Flexibility regarding policy measures promoting combination technologies is maintained as in Council's general approach (L 767)
- d. Energy savings from direct fossil fuel combustion technologies improving the energy efficiency in energy intense enterprises in the industry sector, may still be counted as energy savings for the purpose of Article 8(1)(b) and (c) from 1st of January 2024 until 31st December 2030, on the basis of criteria established in Annex V of Council's general approach (L 767a-c).
- e. Malta and Cyprus maintain their own savings requirement (L 268a and L 269a).

As the overarching agreement also depends on the balance reached in other packages, the Presidency would like to hear Member States' views on the following:

3. Could Member States consider the following trade-offs and show flexibility to the EP's position in the 'public sector package' on the following:

- a. In Article 5: Consider to increase the target level closer to EP's proposal and keeping the derogation for the transport sector and armed forces, (L 238), shortening the transitional period from four to two years (L 238a), while maintaining the definition of public bodies according to the Council's general approach (L 160) but broadening the scope of the target to also include publicly and private entities that are almost fully state-financed and provide services of general interest, such as education, health or social housing. (L 238).
- b. In Article 6: Consider broadening the scope to private entities that are almost fully state-financed and provides social services of general interest, such as

education, health or social housing, in the renovation obligation if they own the building (L 245) and that such private entities, when occupying a building they do not own, are required to negotiate with the building owner (L 246), while maintaining the Council's alternative approach (L 251b) and refusing EP's proposal to increase the scope to 'buildings for social purposes' (L 160a) and 'buildings occupied by public bodies' (L 245c-d);

- c. In article 6: Consider showing flexibility regarding EP position regarding social housing in EP's proposal (L245b).

4. Could Member States consider the following trade-offs and show flexibility to the EP's position in the 'industry and heating and cooling package' on the following:

- a. In article 11: moving towards EP's thresholds for when Member States have to ensure that enterprises implement an energy management system, while having the flexibility to exclude sites with an energy use below as certain (low) threshold $<[X]$ % of the total energy use of the enterprise (to exclude enterprises that consists of many small business units.) (L 330).
- b. In art. 11(2): Strengthening the wording on implementation of recommendations of the energy savings identified in an energy audit, while keeping the threshold for obligation to carry out energy audits closer to 10 TJ (L 331 and L 332).
- c. In article 24 (1): Consider an earlier year for fossil fuel co-gen phase out in exchange for keeping the alternative method based on greenhouse gas emissions (L 487 and L 487 c).
- d. In article 24 (2): consider setting an earlier year when district heating and cooling systems in order to meet the requirements in 24(3) need to ensure that new heat sources do not use any fossil fuels, while keeping the natural gas exemption until that year (L 488).