



Council of the European Union
General Secretariat

Brussels, 09 March 2018

WK 2983/2018 INIT

LIMITE

**ECOFIN
ENER
ENV
RECH
TRANS**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

CONTRIBUTION

From:	General Secretariat of the Council
To:	Delegations
Subject:	ES comments on EED

Delegations will find in the annex the ES comments on the Energy Efficiency Directive.

ES COMMENTS ON EED

8 MARCH 2018

I. Revised Presidency's assessment/compromise proposals

Further to the comments and concerns expressed by the Member States at the Energy Working Party of 5 March and to the outcome of the technical meeting held on 6 March, the Presidency would like to indicate that the changes affecting the four-column document (ref. 6803/18) concern the following lines:

14, 15, 30, 45, 57, 82, 116, 117, 118, 120, 123, 125-129, 131, 134, 135, 137, 144, 148, 149, 150, 159, 162, 165, 171, 181, 188, 192, 199, 202, 212, 213, 282, 283, 285, 288, 289, 290.

Member States are invited to comment on these changes or to indicate their flexibility.

ES COMMENTS

Line 45: ES proposes the following compromise amendment in order to reflect the existing delegation of powers:

“In order to ensure that the Annexes to the Directive and the harmonised efficiency reference values referred to in Article 14(10) can be updated, it is necessary to extend the delegation of powers granted to the Commission.

This possibility ~~should~~ could in particular be considered in order to align, to the extent appropriate, the requirements applicable for gas consumers in Annex VII to the updated requirements applicable to other energy forms as a result of the Clean Energy Package.”

Line 57: ES could accept including the energy efficiency first principle best in a recital, including a reference to the Governance Regulation, in order to make it clear that energy efficiency should be not prioritised over other legitimate energy policy objectives, such as cost efficiency, interconnections and competitiveness or renewables. We cannot agree on the second part of the AM 46 relating to the planning and financing decisions.

Line 117: for ES it is essential (red line) to maintain “and/or” and “and may include”. There are ongoing judicial proceedings on the possibility of MS to apply obligations to only certain types of energy suppliers or to exempt certain types of energy suppliers (such as fuel retail suppliers in the case of ES). Any change of wording is therefore very sensitive and in particular the elimination of “and/or” and “and may include” could be interpreted as a way to clarify that MS cannot apply the obligations only to distributors/retail sales companies, or provide exemptions for fuel retail suppliers or distributors. Therefore we firmly defend the maintenance of “and/or” and “and may include”.

If amended, it should be clear in a recital that *“Member States should designate obligated parties among energy distributors, retail energy sales companies and transport fuel distributors or retailers on the basis of objective and non discriminatory criteria. The*

designation or the exemption as obligated parties of certain categories of suppliers of the abovementioned should not be understood as incompatible with the principle of non-discrimination. Therefore, Member States are able to choose whether the obligation applies to all of the abovementioned categories of suppliers or only to certain categories.”

Line 165: we request to keep the GA regarding the application of the obligations to already installed meters. The GA includes ten years as the useful lifetime of the meters, whereas the Presidency and Parliament propose the obligation to replace the meters by 1 January 2027, which would mean requiring MS to replace meters when the investment has not been fully recovered.

Line 282: we cannot accept the monthly information or the continuous availability via internet, given the high costs of these requirements and the limited benefits appreciated. This discussion should be based on a cost benefit analysis that concludes that the measures are clearly beneficial, and according to our estimations, these measures would have high costs with limited benefits.

Issue/Line	EP position	Questions to MS/PCY suggestions	
Energy efficiency first principle Line 59	EP insists that the EE first principle is reflected in the text of Art. 1 not as a definition, but as a reference to the principle as defined in the Governance file. Further, the EP is ready to propose a compromise by moving the second part of the first sentence and the second sentence of AM 46 to a recital.	<i>Are MS ready to show flexibility to the idea of having a reference to the EE first principle in the text of Art. 1?</i>	<i>The correct place would be a recital.</i>
"Primary energy and/or" vs "primary energy and" Line 83	EP strongly supports the COM proposal	<i>Are MS ready to show flexibility in this respect? If so, under which circumstances?</i>	<i>We cannot show flexibility for the moment. This AM is linked to the</i>

			<i>nature of the energy efficiency target and the gap filler mechanism for energy efficiency is decided.</i>
Option for MS to count savings from a given year in any of the four previous or three following years as long as this is not beyond the end of the obligation periods set out in Article 7(1). Line 124	The legal consequences of moving this possibility to Art. 7 are not clear and the EP asks for more explanation about the rationale of moving this para from Art. 7a to Art. 7.	<i>Are the MS considering the option to return this AM to Art. 7a? If not, please provide a justification.</i>	<i>If there are no material implications as clarified by the COM in the EWP we would not mind.</i>
Article 7c (new) Provision of energy efficiency services AM 70 Line 139	The AM is very important for the EP. However, the COM considers that this AM is covered by Art. 18 of the current EED, and the EP idea is even expressed in Art. 18 in a stronger way. The EP will scrutiny this overlap further; if this is the case is ready to withdraw the proposal.	<i>Could the MS indicate their opinion to what extent is AM 70 overlapping with Art. 18 EED?</i> <i>What would be the preference of the MS for a compromise – to put a cross-reference to Art. 18 or to include the wording of AM 70 in a recital? Any other option welcome.</i>	<i>We see no value added on this article. A recital could be included.</i>
Metering for gas	COM considers that the EED revision is not the right context to address any gas	<i>Would Member States agree with the idea expressed in recital 17 about</i>	<i>See ES comments above.</i>

Lines 144 and 148-150	metering-related issue. EP could drop AM 72 and scrutinizes the possibility to move AMs 71 and 73 to recital.	<i>extension of power delegation?</i>	
PEFs Line 225	EP seems to be incline to find a compromise.	<i>Are Member States ready to accept a compromise in this respect? If so, what are the most important aspects to be preserved?</i>	<i>We agree to find a compromise.</i>
Minimum frequency of billing or consumption information AM 92 Line 282	The EP proposes the following changes in yellow, which should be seen as a compromise package (monthly frequency + no mandatory requirement for providing information via internet) "2. Minimum frequency of billing or consumption information As of [Please insert here ...the <i>date of transposition</i>] where remotely readable meters or <i>heat</i> cost allocators have been installed, billing or consumption information based on actual consumption <i>or heat cost allocator readings</i> shall be <i>provided to final users</i> at least quarterly upon request or where final customers have opted to receive electronic	<i>Are Member States ready to accept this compromise? If not, please indicate which reference between "monthly" and "continuous availability of information via the Internet" is less problematic for you to accept in the text.</i>	<i>See ES comments above.</i>

	billing, or else twice yearly. As of 1 January 2022, where remotely readable meters or heat cost allocators have been installed, billing or consumption information based on actual consumption or heat cost allocator readings shall be made available provided to final users at least every second month monthly. <i>It shall may also be made available continuously via the internet and shall be updated as frequently as allowed by the measurement devices and systems used.</i> Heating and cooling may be exempted from this outside the heating/cooling seasons."		
Detailed information on GhG emissions and taxes, levies, etc. Line 285	The EP really insist on this provision for the sake of transparency towards consumers. However, it seems to be incline to find a compromise	<i>In order to find a plausible compromise, please indicate which reference between "GhG emissions" and "taxes, levies, etc" is less problematic for you to accept in the text.</i>	<i>We could provide information on taxes and levies to be payed. We see no value added on the GhG emissions.</i>
Energy poverty Article 1 - AM 47 (line 58) Article 7 - Council GA (line 110) Article 7a - COM proposal (line 122)	EP is working on a set of compromise proposals to be submitted soon.	<i>Please flag your <u>red</u> lines.</i>	<i>We could accept AM 47. We could also accept reporting on how MS have fulfilled the obligation to MS in line</i>

Article 7b - AM 69 (line 136)			<i>110 (GA) in the National Energy and Climate Plans.</i>
--	--	--	--

