

## EU Policy Update (EU2011.01):

### Energy Efficiency Directive

Updated: 09 February 2012

#### Summary of main points in proposals

On 22 June the European Commission published proposals for a new Energy Efficiency Directive<sup>1</sup>, aimed at establishing a common EU framework for promoting energy efficiency and to get the EU back on track towards achieving the target of 20 % primary energy savings by 2020<sup>2</sup>.

In broad terms it aims to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy. Specific actions in the draft Directive include:

#### End users:

- **Requirements on the public sector** concerning building renovation and application of high energy efficiency standards to the purchase of buildings, products and services.
- Establishment of **national<sup>3</sup> energy efficiency obligation schemes**.
- Regular **mandatory energy audits for large companies**, and requirements on energy

<sup>1</sup> COM(2011)370 – see **DG Energy**. This would replace Directives 2004/8/EC and 2006/32/EC if adopted.

<sup>2</sup> As part of the Europe 2020 Strategy adopted June 2010 and also as part of the Climate Change and Energy package adopted in 2009.

<sup>3</sup> The Commission uses the word “national” to mean Member State level, although in practice this means Member States preparing schemes in accordance with their own constitutional arrangements, which can mean sub-national schemes/plans where powers are devolved to sub-national governments.

companies in terms of metering and billing.

#### Energy supply sector:

- **National heating and cooling plans** to develop the potential for high-efficiency generation and efficient district heating and cooling, and to ensure that spatial planning regulations are in line with these plans.
- **National authorisation criteria** to ensure installations are located in sites **close to heat demand points**, and to ensure all new electricity generation installations and existing installations undergoing substantial refurbishment are equipped with **high-efficiency CHP units** (to apply to installations with thermal input above 20MW)
- National inventories of energy efficiency data for installations undertaking the combustion of fuels or the refining of mineral oil and gas
- Requirements on priority/guaranteed access to the grid, priority dispatch of electricity from high-efficiency cogeneration and the connection of new industrial plants producing waste heat to district or cooling networks.

#### Other measures proposed include:

- Efficiency requirements for national energy regulatory authorities
- Information and awareness-raising actions
- Requirements on the availability of certification schemes, and action to promote the development of energy services
- National obligations to remove obstacles to energy efficiency, including the split of incentives between the owner and tenant of a building or among building owners.
- Establishment of national energy efficiency targets for 2020.

## Background context to proposal

Recent evaluations by the Commission estimate that the EU will only achieve half of the energy efficiency target of 20% by 2020 if current practice continues. The Commission argues that common action is needed at EU level to get back on track.

The Commission published an Energy Efficiency Action Plan in March 2011<sup>4</sup>, in response to a call from the European Council for 'determined action to tap the considerable potential for higher energy savings of buildings, transport and products and processes'<sup>5</sup>.

Energy efficiency is one part of a broader EU energy strategy published in November 2010, **Energy 2020 - A strategy for competitive, sustainable and secure energy**, which focuses on a range of challenges including energy security, delivering on the wider climate change and energy goals including renewable energy commitments, and developing an EU internal energy market. The Commission also plans to publish an Energy 2050 roadmap, which will look at the more longer-term strategy.

## Relevance to Wales

The Welsh Government's *Energy Policy Statement* published in March 2010 has improving energy efficiency and savings as one of its core aims.<sup>6</sup> The Welsh Government will have competence for areas such as raising awareness of energy efficiency issues, funding for projects that support energy efficiency and encouraging the public sector to become more efficient. The Welsh Government does not however have competence over energy generating companies for onshore energy developments over and above 50 megawatts. The National Assembly for Wales also has

<sup>4</sup> COM(2011) 109

<sup>5</sup> Energy Council, 4 February 2011

<sup>6</sup> Welsh Government, *Energy Policy Statement*, March 2010

competence to make new laws for the "encouragement of home energy efficiency and conservation".<sup>7</sup>

## UK Government position

***The UK Government will publish an Explanatory Memorandum (EM) in July setting out its reaction to the Commission's proposals. This section will be updated accordingly. However, the new EM is likely to develop the position of the UK Government set out in its response to the Energy Efficiency Action Plan, which is summarised below.***

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The UK Government EM on the Energy Efficiency Action Plan<sup>8</sup> notes that energy efficiency is not an EU competence and consequently that they will consider subsidiarity issues as "draft legislative proposals develop" in follow up to the Action Plan.

The EM is broadly welcoming of the thrust of the plan, agreeing with the Commission's assessment of the situation and the focus on actions that can only be addressed at EU level. It, however, cautions an over-prescriptive approach in "encouraging, facilitating or requiring action at national level", and also suggests proposed targets for renovation of public buildings could potentially be costly and bureaucratic to administer.

The UK Government published its explanatory memorandum on the draft Energy Efficiency Directive on 7 July.

This mentions the interests of devolved administrations (including Wales), however, there are no points mentioned in the EM highlighting any

<sup>7</sup> *Government of Wales Act 2006*

<sup>8</sup> EM7363/11, 28 March 2011

specific concerns raised by the Welsh Government on the draft Directive.

The UK Government makes the following comments on the dossier, whilst also noting that it is preparing an impact assessment on the draft Directive:

- Welcomes the proposal but wants to avoid “over-prescription” in terms of actions required at national level
- Agrees with Commission that there is no need for binding national targets on energy efficiency
- Welcomes focus on the role of public procurement in promoting energy efficiency but does not support mandatory renovation targets for public sector buildings
- Highlights potential subsidiarity issues around the proposal for an energy saving obligation on energy suppliers
- Supports promoting benefits of energy audits to companies but does not agree with mandatory energy audits for large companies
- Supports smart metering, and that this should go hand in hand with promoting energy efficiency but questions the imposition of requirements on frequency and accuracy of billing, and wants to see economic considerations taken into account on the rationale that smart metering is not economically viable everywhere
- Calls for deployment of co-generation requirements to take into account considerations of cost effectiveness and potential conflicting requirements regarding plant location
- Concerns regarding some measures proposed aimed at tackling non-regulatory barriers to energy efficiency, including splitting incentives between tenants and owners of buildings. Who would pay for improvements in communal areas in blocks of flats/tenements?

In subsequent correspondence to the House of

Commons Scrutiny Committee<sup>9</sup> the Minister of State at the Department for Energy and Climate Change (Mr Gregory Barker) presented an **initial impact assessment** by the UK Government on the proposals. This highlighted ambiguity about the costs/benefits of the proposals, and potential impact in the UK, and also noted subsidiarity concerns raised on the ‘prescriptive’ nature of a number of elements in the draft Directive.

The **House of Commons European Scrutiny Committee** at its meeting in July 2011 deferred consideration<sup>10</sup> of the draft until it had seen the UK Government’s impact assessment. Subsequently it reconsidered the dossier at its meeting on 7 December, which focused on the letter from the UK Minister (referred to above). The Committee concluded that this

... merely reinforces our initial misgivings about the relative costs and benefits of this proposal, and our view that — quite apart from the intrinsic significance of the subject concerned — it raises a number of important issues, relating not least to the overly prescriptive nature of some of its provisions and to the principle of subsidiarity.

The **House of Lords European Select Committee** considered the dossier in July but decided not to raise subsidiarity concerns on the proposals.

## Welsh Government position

Although the Welsh Government will not have competence for some of the proposals contained within the Directive the Welsh Government published a *National Energy Efficiency and Savings Plan* in 2011 which reflects many of the Directive’s policy aims.<sup>11</sup>

The Plan contains a Vision for 2020 which is: that Welsh businesses are taking advantage of opportunities arising from making Wales more energy efficient; that

<sup>9</sup> See **European Scrutiny Committee Forty-eighth Report of Session 2010-12**

<sup>10</sup> See note from **13 July meeting of House of Commons European Scrutiny Committee**

<sup>11</sup> Welsh Government, *National Energy Efficiency and Savings Plan*, 2011

households and the public and third sector across Wales will have reduce energy emissions and costs; that fuel poverty has been eradicated as far as possible; that the energy performance of buildings has been improved; and that there is low carbon energy on a micro and community scale. The Plan also supports the roll-out of smart meters across Wales.

## Progress of dossier in EU Institutions

*This section will be updated as the negotiations take place in Brussels and the official positions of the EU Institutions become clear.*

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### Monitoring the dossier

The progress of the dossier through the EU decision-making process can be followed on two web-sites (both hyperlinks take you direct to the Energy Efficiency Directive dossiers):

- **European Parliament's Legislative Observatory**
- **European Commission's Pre-Lex web-site**

Note: these pages will contain info on the broad EU level discussion, but will not contain specific information on the UK/Welsh positions/interests on the dossiers. We will pick up on the latter in the sections below.

### European Parliament:

Lead committee will be the **Industry Research and Energy (ITRE) Committee**. There are no Welsh MEPs on this Committee. **Claude Turmes MEP** (Greens/European Free Alliance) was appointed lead rapporteur on 13 July, whilst Peter Liese MEP (European People's Party) was appointed on 27 July by the Environment Committee to draft their opinion (covering the aspects of the draft directive that fall within the remit of this Committee).

Claude Turmes draft report was published on 4 October and received over 1800 amendments. These

were considered in ITRE Committee on 20 December and 12 January (2012). The ITRE Committee is scheduled to adopt the report on 28 February, and an indicative date of 22 May has been scheduled for adoption at 1<sup>st</sup> reading in plenary [the updated draft opinion that will be considered is not yet available].

The Environment Committee adopted its **opinion** (Peter Liese MEP) on 18 January, which proposes 110 amendments to the original text. This report is broadly supportive of the European Commission proposals, but calls for stronger measures to incentivise action by Member States (including a European methodology to encourage ambitious actions to be taken at national level) to deliver change on the ground.

### Council of Ministers:

Energy Council, June 2011 adopted conclusions on the Energy Efficiency Action Plan<sup>12</sup>.

The Council's Energy Working Group in Council started work on the dossier in July.

Ministers discussed the dossier at the Transport, Telecommunications and Energy Council on **24 November**, based on a progress report from the (then) Polish EU Presidency on discussions within Council working groups. The following points were noted in the **press release** from this meeting:

...it appears that delegations support the aim of the proposal and additional measures for energy efficiency. However they also underline the importance of flexibility for member states to apply the most cost-efficient measures, consistency with existing legislation and respect for the subsidiarity principle.

The presidency report covers the main issues that will need more in-depth consideration: energy efficiency targets, public bodies, purchasing by public bodies, energy efficiency obligation schemes, energy audits and energy management systems, metering and informative billing, promotion of efficiency in heating and cooling, energy transmission and distribution and review and monitoring.

<sup>12</sup> 10 June Transport, Telecomms and Energy Council – see **press release**

This Council next meets on 14 February and consideration of the Energy Efficiency Directive is one of the items listed as a possibility under 'any other business'.

### Others:

On 13 July the Bavarian Parliament (Landtag) adopted a motion stating that the draft Directive does not respect the principle of subsidiarity. The motion highlights a number of concerns:

- Requirement to ensure renovation of 3% of public buildings each year (Article 4): concern that this doesn't take account of renovations already undertaken
- Requirement to introduce obligatory energy efficiency schemes (Article 6): consider there is no need for EU level obligations (a concern also raised in the UK Government EM – see above)
- Requirement for national heating and cooling plans (Article 10): insufficient account taken of need for local/regional development criteria
- Requirement for authorisation criteria for new thermal electricity generation installations (Article 10.3): no need for EU level requirements
- Split of incentives between tenants and owners (Article 15): the relationship between tenants and owners should be determined by national law (not EU law)

These concerns were passed to the Bundesrat in the German National Parliament, however, in the end the concerns raised by Bavaria were not endorsed, and a 'reasoned opinion' was not submitted by Germany on the proposals.

The **Committee of the Regions (CoR)**, which is the EU consultative body representing regional and local authorities in Brussels, adopted its **opinion** on the draft Directive at its December plenary session in Brussels. Of particular note is the rejection by the CoR of the European Commission's proposal to create a

requirement to ensure that 3% of all public buildings are renovated each year. The CoR has no power (beyond persuasion) to enforce changes in the proposals.

The **Economic and Social Committee** (the other EU consultative body, for interest groups, including business, social, voluntary sectors) adopted its **opinion** on the draft on 26 October.

### Further information

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