

POSITION PAPER
on the European Commission's proposal for the Energy Efficiency
Directive (EED): COM (2011) 370 final
October 2011

The time for postponing urgent decisions is over!



General appreciation

On 22 June 2011, the European Commission published its proposal for an Energy Efficiency Directive (EED)¹, which repeals the Cogeneration Directive (2004/8/EC) and the Energy Services Directive (2006/32/EC).

Energy Cities, the European Association of local authorities inventing their energy future, welcomes and recognises the priority given by the European Commission, the European Council and the European Parliament to saving energy and using energy more efficiently. The political framework -the Europe 2020 Strategy, the Energy Efficiency Plan adopted earlier in March and the 2050 Roadmap for a low carbon economy- underpinning the new Directive is ambitious, as outlined at the beginning of the EED proposal in recital 3, 5 and 7. However, it is clear to Energy Cities that this Directive proposal doesn't meet the ambitions set out in Europe's 2020 Strategy and will not allow for the EU to fulfill its energy efficiency objectives for 2020 nor for 2050!

In its monitoring of the drafting process, Energy Cities has experienced yet another disillusion in the direction energy efficiency policies are taking, an unfortunate trend that has repeated itself many times over the past 20 years of its existence. The process itself is like a slow-rhythm three-step dance:

- Step 1: Energy efficiency is considered as a top priority by the EU Council and the European Parliament (as stated in the above recitals of the Directive). Energy efficiency is the obvious way forward; it is affordable and easily accessible;
- Step 2: Its implementation involves millions of stakeholders thus generating antagonism of influential interest groups who, through their lobbying efforts, manage to transform binding targets into binding measures and binding measures into opt-outs, by introducing a large list of exceptions...;
- Step 3: We continue business as usual – with no meaningful objectives, measures and resources dedicated to energy efficiency.

Beyond the general consensus on generous words, strong interest groups still refuse to admit that **energy efficiency is a genuine component** -and not just a side option- towards a safe, sustainable and fair energy policy. The European Commission's failure to propose nationally binding targets for energy efficiency despite the well known fact that the EU is not on track to reach its 20% reduction objective by 2020, is clear evidence of this.

If Europe really wants to meet its 20% energy efficiency objective, an ambitious Energy Efficiency Directive has to be adopted. The proposed EED must be amended and strengthened by:

- Introducing binding targets for Member States;
- Imposing binding measures without any exemptions upon all stakeholders;
- Including the transport sector as it accounts for a third of final energy consumption;
- Setting out (earmarking) the relevant financial facilities for its implementation.

Energy Cities expects that the generous words used by European institutions and Member States recognizing the leading role of local authorities will materialise in concrete financial support and enable EU and national policies. The local authorities themselves are already taking action: Through the *Covenant of*

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0370:FIN:EN:PDF>

Mayors (www.eumayors.eu), more than 3,000 local authorities have already expressed their determination to invest in energy efficiency by committing to go beyond 20% CO₂ reduction by 2020. In this context, Energy Cities welcomes targets such as the 3% public building refurbishment rate, as an opportunity to stimulate the local economy in times of crisis. We are aware of the constraints and opportunities of such a measure, but if the European Commission and Member States are serious about their words on a new (green) economy, they will have to set up favourable (financial) frameworks that make these targets feasible.

The potential for energy efficiency is huge. So the question is: do we want our money for energy resources to be spent outside the EU, or do we want it spent locally, on energy saving and efficiency measures? Local authorities are ready to lead by example, by committing themselves to going even beyond the 3x20 target hence helping Europe out of the crisis. Will the EU and all Member States show the same desire, willingness and enthusiasm to fight this battle with the necessary intensity? Indeed, a crucial determinant for the success of this initiative is now in the hands of the European Union and Member States who hold most of the keys in designing the regulatory frameworks.

This is why Energy Cities intends to ensure that the EED - which has the potential of being a breakthrough in energy efficiency targets, but currently falls short if it is to attain its ambitions - lays the foundations of a territorial policy leading to innovation, social inclusion, economic development, job creation, responsibility and democracy at all levels.

The time for postponing urgent decisions is over!

Energy Cities' detailed position on the different articles of the proposal and its suggestions for improvements

Local authorities already play a leading role in the energy efficiency sector, expressed by the impressive more than 3,000 signatories of the Covenant of Mayors. Unfortunately, their contribution to energy savings is not sufficiently acknowledged in the EED proposal. This is why we propose introducing the "Low energy cities and regions" scheme into recital 16:

Green text: Energy Cities' proposal for amendment

Black text: Original Commission document

Energy Cities' proposal for amendment:

(§16) A number of municipalities and other public bodies in the Member States have already put into place integrated approaches to energy saving and energy supply, for example via sustainable energy action plans, such as those developed under the Covenant of Mayors initiative, and integrated urban approaches which go beyond individual interventions in buildings or transport modes, **in order to design "low energy cities and regions". This concept of "low energy cities and regions" considers energy issues as an essential component of urban and regional development embedded in local democratic and governance processes.** Member States should then encourage municipalities and other public bodies to adopt ~~integrated and sustainable energy efficiency~~ **action** plan with clear objectives, to involve **local stakeholders and** citizens in their development and implementation and to adequately inform them about their content and progress in achieving objectives. Such plans can yield considerable energy savings, especially if they are implemented by energy management systems that allow the concerned public bodies to better manage their energy consumption. Exchange of experience between cities, towns and other public bodies should be encouraged with respect to the more innovative experiences.

Article 3: Energy Efficiency Targets (Including Recitals 13, 35, 36 and 37 and *article 19/4*)

Energy Cities welcomes the fact that that Member States are obliged by the EED to set up national energy efficiency targets. However, we deeply regret that the energy efficiency targets imposed are not binding. We are convinced that this is the only way to meet the 20% reduction objective, along with the binding measures presented in the EED proposal, which remain generally appreciated by us.

Anticipating a failure, the European Commission warns Member States that targets shall become binding after 2014 -which is later than foreseen in the Energy Efficiency Plan. But is it realistic to change the mechanism just a few months after the transposition of the currently discussed Directive and after a new Commission has been set up? (the current mandate of the commission runs until June 2014) Most probably not! To prevent such a chaos, the proposed Directive says that the current Energy Services Directive -that is supposed to end after the publication of the EED- will continue to be valid regarding its quantitative objectives till 2016. This leads us to question the real willingness/capacity of the European Commission to impose binding targets at that time: We believe that the EED is contradictory to the Presidency Conclusions of the European Council of 17 June 2010, which placed the energy efficiency target as one of the headline targets of the Union's new strategy for jobs and smart, sustainable and inclusive growth (Europe 2020

Strategy). It is important to recall that the EU Commission has already imposed national binding targets in other contexts/Directives² around climate or renewable energy, and this has proved to be a good way of pushing Member States to take concrete actions in order to reach the 2020 targets. The European Commission climate and energy policy would be built in a more coherent way if national binding targets were set up.

Finally, Energy Cities intends to ensure that local authorities are taken into account when Member States work on the transposition of the Directive, mainly when it comes to laws and regulations applied to buildings, town planning and urban transport, or when the subject regards local autonomy.

Energy Cities' proposal for amendment:

Article 3

Energy Efficiency target

- ~~1. Member States shall set a national energy efficiency target expressed as an absolute level of primary energy consumption in 2020. When setting these targets, they shall take into account the EU's target of 20% energy savings, the measures provided for in this Directive, the measures adopted to reach the national energy saving targets adopted pursuant to Article 4(1) of Directive 2006/32/EC and other measures to promote energy efficiency within Member States and at Union level.~~

For the European Union to achieve its target of at least 20% primary energy savings by 2020 -requiring a reduction of EU primary energy consumption of at least 368 Mtoe within this date-, legally binding targets for 2020 shall be proposed to each Member State following the assessment of the NEEAP2. The targets shall take into account the individual starting points of Member States, their economic performance and early actions taken. The targets should be added as an addendum to this Directive at the latest the day of the entry into force of the EED.

- ~~2. By 30 June 2014, the Commission shall assess whether the Union is likely to achieve its target of 20 % primary energy savings by 2020, requiring a reduction of EU primary energy consumption of 368 Mtoe in 2020, taking into account the sum of the national targets referred to in paragraph 1 and the evaluation referred to in Article 19(4).~~

Member States are free to set a national energy efficiency target, expressed as an absolute level of primary energy consumption in 2020, going beyond the target fixed by the European Commission at any moment of the implementation of the Directive.

To be revised accordingly:

Article 21

Repeal

~~Directive 2006/32/EC is repealed from [the date of time-limit for transposition of this Directive], except its Article 4 (1) to (4) and Annexes I, III and IV, without prejudice to the obligations of the Member States relating to the time limit for its transposition into national law. Articles 4 (1) to (4) and Annexes I, III and IV of Directive 2006/32/EC shall be repealed with effect from 1 January 2017.~~

Recital 35+36: Both to be removed

² Directive 2009/28/CE on the promotion of the use of energy from renewable sources – directive 2003/87/CE establishing a scheme for greenhouse gas emission allowance trading within the Community – decision 406/2009/CE on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020.

Article 4: Public bodies

Renovation target for public buildings

Energy Cities welcomes the Commission's growing interest in energy efficiency in cities. Local authorities are ready to take the lead in the implementation of the EU 2020 objectives and continue to be at the forefront.

The "public sector" shall ensure that at least 3% of its buildings' area is renovated each year. Energy Cities agrees that the public sector should lead by example. Even though we are aware that for some cities this might be seen as a breach of the subsidiarity principle, we welcome the introduction of a binding refurbishment rate for public buildings (as a binding measure), as a smart complement of the Energy Performance of Buildings Directive (EPBD; Directive 2010/31/EU). **3% per year means that the whole building stock will be refurbished in 33 years (more than a generation).**

Although today only a small number of local authorities has annual renovation rates above 2%, we see the uptake of the 3% rate as a chance to stimulate the local economy in time of crisis. Building refurbishment has to be seen as an opportunity (e.g. energy savings and local economic development including creation of jobs) and not only as a cost.

When talking about renovation, Energy Cities comprehends major refurbishments -that include measures on both the building envelope and the technical building systems- to meet at least the minimum energy performance requirements set by Member States. However, we are against introducing energy performance results for the refurbishment activities; for example reducing the energy consumption by XX% or imposing the passive house standard. Energy efficiency measures have to be based on cost-benefit analysis; otherwise we would only achieve a limited number of flagship projects, when renovation of a huge stock is crucial for achieving the 20% reduction objective by 2020.

But refurbishment of the building stock by local authorities requires adequate financing. Therefore Energy Cities requests that both at EU and national levels, (innovative) financing schemes be set up to support local and regional authorities. In light of this, we fully support the priorities set out in the future ERDF budget dedicated to energy efficiency, renewable energy and urban policies, as laid down in the proposal for an EU long-term budget 2014-2020. Fund management has to become totally transparent. This is also the reason why Energy Cities is requesting the introduction of a new article dealing with financing of energy saving and efficiency measures.

Energy Cities' proposal for amendment:

Article 4

Public bodies

1. [...] Member States shall ensure that as from 1 January 2014, 3% of the total floor area owned by ~~the~~ public bodies is ~~renovated~~ **subject of major renovation** each year. **Major renovation includes both building envelope and technical building systems, and has** to meet at least the minimum energy performance requirements set by the Member State concerned in application of article 4 of Directive 2010/31/EU (Energy Performance of Buildings Directive). The 3% rate shall be calculated on the total floor area of buildings ~~with a total useful floor area over 250 m²~~ owned by ~~the~~ public bodies of ~~the~~ ~~Member State concerned~~ that, on 1 January of each year, does not meet the national minimum energy performance requirements set in application of Article 4 of the Directive 2010/31/EU.
2. Member States may allow their public bodies to count towards their annual renovation rate the excess of renovated building floor area in a given year as if it has instead been renovated in any of the two previous or following years.
- 2a. **Member States shall support bodies governed by public law to undertake major renovations of 3% of the total floor area they own each year.**

Energy Efficiency Plan and Management System

Energy Cities welcomes the requested dialogue between national, local and regional levels and believes that Member States can provide relevant support, including financial resources, when encouraging public bodies “to adopt an energy efficiency plan”, (where such a plan is not already existing) building on the success of the Covenant of Mayors, as outlined above.

We would like to outline that many of Energy Cities' members and Covenant of Mayors signatories have already set up a local Sustainable Energy Action Plan including energy issues related to climate, environment, mobility, waste and water, etc. This is why we insist for local authorities to be able to build on their existing plans and use their existing reporting systems instead of being asked to provide more compulsory statistic reports.

Energy Cities' proposal for amendment:

Article 4

Public bodies

4. Member States shall encourage public bodies to:
 - (a) adopt a **sustainable** energy efficiency plan, freestanding or as part of a broader **plan on climate or environmental plan, aimed at designing low energy cities or region**, containing specific energy saving objectives, with a view to continuously improving the body's energy efficiency. **In this perspective Member States shall require energy utilities to provide local authorities with appropriate data on electricity, gas and thermal energy consumption.**
 - (b) put in place an energy management system as part of the implementation of their plan.

The Directive proposal refers to the term “public bodies/sector” to designate Member States, regions, cities and any intermediate level. This denomination presents the advantage of being simple, and the disadvantage of mixing very different realities: Member States always have legislative and fiscal prerogatives, a feature they share with regional authorities in some countries but rarely with local

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authorities, except in rare occurrences. All these levels of public stakeholders must work together but it seems unfair to put all-mighty stakeholders and stakeholders who are asking for more power on the same level, as if they had the same level of responsibility. Therefore, Energy Cities requests that Member States improve (in consultation with local authorities) the framework for energy efficiency (e.g. legislations related to landlord-tenant conflicts (investor-user), incentive programmes, etc.) as outlined in article 15 paragraph 1a of the Directive.

Article 5: Purchasing by public bodies

Energy Cities appreciates article 5 -including annex III- which gives details on the energy efficiency requirements for purchasing products, including office equipments and tyres, services and buildings-, seeing as it means that the Member States have to set up an enabling framework (removing barriers as mentioned in article 15) and measures within their NEEAP.

Article 6: Energy saving obligation schemes *Recital 18, articles 6 and 9, and annex V*

Energy Cities fully supports the proposed energy efficiency obligation schemes on retail energy sales companies or energy distributors to achieve 1.5 % annual energy savings. However, from our point of view there being an option to take alternative measures is not helpful; it might lead to distorted competition between Member States and thus turn out to be counterproductive.

Energy Cities insists on the efficiency obligation as a binding measure. A scheme to prove that the savings have been achieved is needed. The transport sector also has to be included, but it must be dealt with separately, by adding a specific article to the Directive (see below).

Energy Cities' proposal for amendment:

Article 6

Energy saving obligations scheme

1. Each Member State shall set up an energy efficiency obligation scheme. This scheme shall ensure that either all energy distributors or all retail energy sales companies operating on the Member State's territory achieve **cumulative** annual energy savings equal to 1.5% of their energy sales, by volume, in the previous year in that Member State ~~excluding energy used in transport~~. This amount of energy savings shall be achieved by the obligated parties among final customers. **The Commission shall adopt guidelines on how to deal with the energy savings targets when the number of final customers varies or when final customers switch energy source.**
2. Member States shall express the amount of **end-use** energy savings required from each obligated party in terms of ~~either final or~~ primary energy consumption...

...

Paragraph 9 and 10 should be deleted entirely

- ~~9. As an alternative to paragraph 1, Member States may opt to take other measures to achieve energy savings among final customers. The annual amount of energy savings achieved through this approach shall be equivalent to the amount of energy savings required in paragraph 1.~~
- ~~10. If appropriate, the Commission shall establish, by means of a delegated act in accordance with Article 18, a system of mutual recognition of energy savings achieved under national energy efficiency obligation schemes. Such a system shall allow obligated parties to count energy savings achieved and certified in a given Member State towards their obligations in another Member State.~~

Article 7: Energy audits and energy management systems

Article 7 states that Member States shall develop programmes to encourage households and SMEs to undergo energy audits (every three years). Energy Cities is not opposed to article 7, but doesn't believe in its success. There is no real need for energy audits for final customers since standardised solutions for all building types are available and approved. There is still a lack of a "one-stop shop" solution providing technical assistance and financial assistance for final customers in order to carry out an optimal building refurbishment. There is also a continuous need for awareness-raising actions.

Energy audits might be more relevant and useful for SMEs. However a "one-stop shop" solution similar to the final customers' one including continuous accompanying might prove more helpful than an update of an energy audit every 3 years.

If Member States develop incentive and financial schemes to ensure that SMEs can totally or partly cover the costs of an energy audit, these should also be accompanied by a result obligation: Member States have to ensure that beneficiaries of incentives or financial support schemes commit themselves to implementing the highly cost-effective recommendations identified by the audits (e.g. measures with a return of investment within 5 years).

Article 8: Metering and informative billing *Recital 21, articles 8 and 9, and annex VI*

Article 8 states that Member States shall ensure that final consumers of electricity, natural gas, district heating or cooling and district-supplied domestic hot water are provided with smart and individual meters that measure their actual energy consumption and provide information on actual time of use. Energy Cities generally welcomes article 8 completed with the respective annex 6. Nonetheless, it is of our opinion that smart meters must not be designed with the only objective of satisfying the legitimate desire of distributors to improve peak demand management. Instead, they must first and foremost help consumers monitor their energy use in real time, thus enabling them to adapt their behaviour as stated in article 8. This is why all "smart" meters should include a display unit, visible inside the residential or office building, which -if possible- shows electricity, gas, heat, and domestic water consumption. Member States should develop training programmes for tenants/house owners on the optimised use of these smart meters. However, so far the efficiency and relevance of smart meters in terms of energy consumption reduction and costs for small customers such as households has not been proven. We are in favor of the progressive setting up -or if necessary replacement- of smart meters on a voluntary basis, rather than a fast and large scale deployment. Furthermore, the directives linked to gas and electricity (Directives 2009/72/EC and 2009/73/EC) submit the setting up of smart meters to a cost-benefit analysis. More coherence is needed.

Last but not least, prior to installing smart meters, it must be ensured that the tenant can influence the energy consumption in his apartment through his behaviour (e.g. radiators equipped with thermostat valves). The real-time information on actual time of use has to be provided to the final customer free of charge and in a format that enables him to better understand his energy use. Since the cost of installing smart meters in existing buildings is quite large, some kind of funding is necessary. This action should also be put together with Article 4: Renovation target for public buildings in particular.

Article 10: Promotion of combined heat and power production (cogeneration)

Recitals 23 to 26, 28, 29, article 10, and annex II and VII

Energy Cities welcomes the proposed obligation to combine power and heat production and the related provisions. Municipalities support the obligation for CHP for new and existing heating plants, because district heating is an activity closely related to the tasks within their authority.

Member States should take advantage of the local potential of combined production of power, heat and cooling they have on their territory. Energy Cities sees no reason for exemptions and therefore suggests to delete entirely paragraph 4 and 7 and to keep only the first two clauses of paragraph 8.

Energy Cities' proposal for amendment:
Paragraph 4 and 7 should be deleted entirely

Article 14: Energy Services

Recitals 30 to 32, articles 13 and 14, and annex XIII

Energy Cities welcomes the proposal of removing barriers to the use of energy services. We insist that Member States should create a legal framework to strengthen or create an energy services (ESCO) market³. In addition, Intracting⁴ should be promoted as a valuable option for local authorities and a tool for long-term sustainable management of their resources.

Member States shall support 'national' technical assistance schemes such as ELENA. Financed through the Intelligent Energy-Europe programme, ELENA provides grants on technical assistance to local and regional authorities. The wide range of measures eligible for such financial support includes: feasibility and market studies; structuring of investment programs; business plans; energy audits; preparation of tendering procedures and contractual arrangements; allocation of investment programme management⁵.

What is missing in the proposed Energy Efficiency Directive

APPROPRIATE NATIONAL AND EUROPEAN FINANCIAL SUPPORT

A range of indispensable financial instruments

Financing for energy efficiency measures in the public sector is only mentioned in an inconvenient way in recital 33, stressing the need to exploit the potential of Structural funds and in article 14, where Member States are encouraged to "disseminate information on financial instruments, incentives, grants and loans to support energy service projects". However, there is no clear link between binding measures (such as the 3% renovation rate) and financial instruments to ensure that the measures are implemented.

Financing is crucial for the proposed measures to be delivered. Energy Cities calls on the European institutions and Member States to foresee a separate article on "Financing and Technical support" including

³ See Energy Cities' guidelines on EPC for municipalities:

http://energy-cities.eu/IMG/pdf/performance_contracting_en.pdf

⁴ Intracting = internal contracting, Different services of the city administration conclude an energy performance contract (see "[Inspirational Financing scheme](#)" published by the Covenant of Mayors office, 2011)

⁵ See page 11 "[Energy Cities calls for the future EU budget to accelerate the transition towards low energy cities with a high quality of life for all!](#)", Energy Cities, August 2011

a wide range of possibilities for directing European funding to municipalities' and regions' energy efficiency projects.

Although the European budget represents only 1% of Europe's GDP, Energy Cities notes that it often provides a strong political signal capable of influencing budget priorities at national, regional and local levels. Energy Cities has published recommendations following the European Commission's proposal of Multi-annual Financial Framework 2014-2020⁶.

The Commission shall, where appropriate, directly or via the European financial institutions, assist local and regional authorities in the implementation of the EED. To do so, financing facilities and technical support schemes such as the *"Intelligent Energy-Europe"* programme should be strengthened. Such a programme contributes to increased energy efficiency and the use of renewable energy by supporting innovative solutions, market replication tools, pilot and demonstration projects, networking and exchange of experiences among local, regional and national stakeholders. It also fosters behavioural change, education, technical assistance and creation of new jobs. These **'soft measures' with a huge leverage effect have proved to be as important as 'technological solutions'** and are therefore absolutely necessary for a successful implementation of the EED.

Energy Cities' proposal for amendment:

A new article should be introduced on financing and technical support. Part of this article should be a paragraph on an accompanying programme:

To foster the practical implementation of this Directive at national, regional and local levels, the Commission shall develop an accompanying instrument under the "Intelligent Energy — Europe" programme. This instrument shall support the exchange of experiences on practices, benchmarking, networking activities, as well as innovative practices.

TRANSPORT

Transport has once again been forgotten

The Energy Efficiency Plan (EEP) rightly notes that *"transport - which accounts for 32% of final energy consumption - is a key area for energy savings"* and that *"it is the fastest growing sector in terms of energy use, with the strongest reliance on fossil fuels"*. However, the issue is broached neither in the EED nor the EEP. Therefore, the European Commission relies completely on the "White Paper on Transport"⁷ to define a strategy. Energy Cities knows by experience that this type of general-interest document is not the most appropriate for setting up successful actions. In the case of transport, energy efficiency cannot simply be reduced to technological improvements of vehicles, but relies very much on behavioural changes and planning. Urban mobility and urban transport are not only local issues, but must be addressed at national and EU levels where appropriate legislative, administrative and financial environment can be set up for the promotion and development of energy-efficient mobility.

⁶ "The future EU budget must accelerate a transition towards a low carbon & low energy economy", Energy Cities, August 2011, for download: www.energy-cities.eu/IMG/pdf/FUTURE_EU_BUDGET_Energy_Cities_FINAL-2.pdf

⁷ The White Paper was published the 28th March 2011 under the title "[The Transport 2050 roadmap to a Single European Transport Area](#)". Energy Cities is to publish its position paper on this document in the upcoming months.

Therefore, Energy Cities calls for the transport sector to be included in the EED, in line with the Sustainable Urban Mobility Plans and relevant measures proposed by the SEAP guidelines of the Covenant of Mayors. Measures in the transport sector related to local authorities include:

- Inclusion of the transport sector in local Sustainable Energy Action Plans (SEAP)
- Local authorities leading by example with fossil-fuel free fleets of vehicles
- Priority for public transport, pedestrians and bicycles
- Promotion of local incentives such as congestion charges and parking spaces allocation
- Etc.

Contact:

Peter Schilken, E-mail: www.energy-cities.eu/peter