



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a Directive of the European  
Parliament and of the Council on Energy End-Use Efficiency and Energy Services**

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**1. BACKGROUND**

Date of transmission of the proposal to the EP and the Council  
(document COM(2003) 739 final – C5-0642-03–2003/0300(COD)): 11 December 2003

Date of the opinion of the European Economic and Social  
Committee: 28 October 2004

Date of the opinion of the European Parliament, first reading: 7 June 2005

Date of adoption of the common position: 23 September 2005

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

This proposal is designed to promote and develop a market for energy end-use efficiency and energy services, contributing to the reduction of carbon dioxide emissions and to the Lisbon process, while improving the security of energy supply. The main elements of the proposal are as follows:

- The proposal sets forth two uniform annual compulsory energy savings targets for a period of six years. These are (1) an overall cumulative target of 1% of the average amount of energy distributed and/or sold to final consumers during a previous period (of five years) and (2) a similar but more ambitious sub-target of 1.5% each year for the public sector.
- Member States will also place an obligation on retail suppliers and/or distributors of energy to offer energy services to their customers or offer them energy audits.
- In order to help Member States measure progress towards achieving the targets, the proposal sets forth a framework for a harmonised methodology for measuring progress towards meeting the targets.
- In addition to the above targets and the obligation, the proposal sets forth tools in the form of special financing instruments for energy efficiency, requirements for improved metering and billing to provide better consumer information, and requirements for certification of energy service providers. Measures are also included that are intended to improve energy audits and to encourage regulators to develop electricity and gas distribution tariffs that

promote energy efficiency instead of unnecessarily encouraging increased energy consumption.

The proposal is broad in its scope. It covers the distribution and sales of most types of delivered energy to final customers, including electricity, gas, heating oil and transport fuels. It covers most final (or “end-use”) energy consumers, except those in the emissions trading sector.

### **3. COMMENTS ON THE COMMON POSITION**

#### **3.1. Overall remarks on the common position**

The Commission considers that the Common Position that has been reached is generally faithful to the spirit of the Commission’s proposal of 10 December 2003, with the exception of (1) the nature of the overall savings target (indicative as opposed to binding) and (2) the removal of the savings target for the public sector. The Common Position is acceptable as an important step forward in realising an overall agreement with the European Parliament on this proposal because the Common Position sets forth acceptable compromises in essentially all other areas of the proposal and thus prepares a good basis for the second reading. The issues regarding the target and the public sector remain, of course, to be resolved.

The Commission is also of the opinion that the Common Position improves the original proposal in many respects, while at the same time addressing many of the ideas and issues that have been raised by the European Parliament in their amendments.

The introduction of new recitals, the improvement of the existing definitions and the introduction of new definitions have all improved the cohesiveness and consistency of the Commission Proposal.

The broadening of the scope in Article 6 (an obligation for energy suppliers to provide their customers with energy services), for example, improves this article by providing for several additional alternative ways to meet the obligation. Included now are the offering of energy services, energy audits, energy efficiency improvement measures or paying into an energy efficiency fund. Removal of the free audits option also allows enterprises to work with prevailing market conditions.

The terms now set forth in the articles on financial instruments, billing, metering and energy audits have been refined and aligned more closely with Member State conditions. The Committee that has been created to assist the Commission in developing a more harmonised scheme for measuring energy efficiency improvements is also regarded as an improvement.

Many of the amendments put forward by Parliament in first reading and accepted by the Commission are already reflected in the Common Position, fully, in principle or in part. These include most of the definitions, the introduction of a comitology procedure, and the improvement of Article 6 on the obligation. In addition, many of the aspects of the system for measuring energy efficiency improvements found in the Parliament’s amendments have already been integrated in the Common Position. These are also acceptable by the Commission. These include the concepts of bottom-up measurements and top-down indicators, as well as benchmarking, which is used as a comparative top-down indicator.

On the other hand, the Common Position does not address some issues raised in the Parliament's amendments, leaving them for further consideration and discussion. These include the mandatory nature of the targets, a possible longer target period, possible higher targets, and the need for a specific target for the public sector. Although many of these issues will be considered at a later date, the Commission must underscore the fact that it cannot accept the Common Position's modification of the 1 % mandatory overall savings target to an indicative target<sup>1</sup>. For the same reason, the Commission does not accept the weakening of the 1.5% mandatory public sector target by making it a simple requirement for the Member States to ensure that the public sector undertakes energy efficiency measures<sup>2</sup>. Finally, there is a recital (8a) in the Common Position that re-iterates the fact that indicative targets are not legally binding. This is also unacceptable by the Commission because it negates and reduces even further the importance of complying with and respecting the targets.

The Common Position thus postpones until later the discussion on a number of the amendments from the European Parliament. Some of these could probably have been accepted in part or in principle by the Member States and included in the Common Position, had time allowed for them to be discussed at length. The need to consolidate and include in the Common Position the compromises reached in all the other areas of the proposal has instead been given priority. In the opinion of the Commission some of the amendments not incorporated in the Common Position could be incorporated. (See 3.4 below.)

### **3.2. Amendments accepted by the Commission and incorporated in full or in part in the Common Position**

Amendment 1(Recital 1) states that improved energy efficiency facilitates the introduction of renewables, and an increased use of renewables is also an important Community energy objective. This is an important additional benefit of improved energy efficiency that is often neglected.

Amendment 3 as re-drafted adequately expresses the many advantages of improving energy efficiency. The more general reference to the Lisbon strategy is considered to have more currency than references to the Kok High-Level Group.

Amendments 5 and 12 are incorporated in Recital 9 (supply of and demand for energy services), in Recital 12 (the role of the public sector in increasing demand for energy-efficient technology and energy services) and Recital 15a (comitology), all of which are important.

Amendment 7 is satisfactorily incorporated except for the part on the nature of the target, which has been made indicative in the Common Position. Omission of this part is, of course, unacceptable. Omission of the reference to standards, however, is acceptable because this, at least with regard to tradable goods, is now the competence of the Commission.

Amendment 8 is acceptable as incorporated. In Article 6.3 (on obligations for the energy suppliers to offer their customers energy services and other energy efficiency improvement measures), it is made clear that Member States must ensure that all relevant market actors

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<sup>1</sup> The European Parliament's position on maintaining a mandatory target is in line with the Commission's position. This was clearly demonstrated by the size of the vote in the plenary session of 7 June. The vote (458 for, 148 against and 27 abstentions) shows strong support for mandatory targets, and provides a clear mandate in the second reading.

<sup>2</sup> The European Parliament not only prefers to maintain a specific public sector target, but has adopted an amendment to increase the size of the target.

must be allowed to enter this market and be ensured of a level playing field. The principle expressed in Amendment 8 of regulating and prohibiting the use of cross-subsidies between energy and technology is important and is partially addressed in Article 6.3.

Amendment 10, which deletes Recital 12, is acceptable because it is replaced satisfactorily by Amendment 5, as incorporated.

Amendment 11, on the value of recent developments in metering technology, is reflected in Recital 13a of the Common Position. This is also true of Amendment 13 on the Internal Market Directives, now covered satisfactorily and incorporated in Recital 4.

Amendment 12 on the comitology procedure is reflected in an acceptable way in Recital 15a in the Common Position.

Amendment 14 has been satisfactorily incorporated in part, as reflected in Article 2.2. The Commission accepts the exclusion of the emissions trading sector. The facilities covered by the IPPC Directive are almost the same as in the Emissions Trading Directive, and there is an exclusion in the IPPC Directive for bio-degradable waste that would create an inconsistency in the Common Position. Therefore, the Commission also accepts the removal of the IPPC exclusion. The issue of buildings and their exclusion is addressed in Article 12.3, where energy audits used in buildings certification are accepted as complying, thus implicitly allowing the exclusion referred to in this amendment.

Amendment 15, on waste from landscape conservation, is not explicitly incorporated in the Common Position, but is still implicitly and for the Commission satisfactorily covered in Article 3 (a), where the definition of biomass from Directive 2001/77/EC is applied.

Amendments 16, 17, 21 and 22 on the definitions (Article 3) have been satisfactorily incorporated in the definitions in the Common Position. (Amendment 21 and 22 propose a redrafting of the definitions of “Third-party financing contract” and “Energy performance contracting”. These are acceptable to the Commission.) Amendment 23 is incorporated in the DE language version.

Amendment 26 on “energy savings performance contracts” has not been explicitly incorporated in the Common Position because this definition is now considered to be a subset of “energy performance contracts”, for which a definition exists in the Common Position. The Commission accepts this now as sufficient incorporation.

Amendment 33 underscores the fact that national energy efficiency measures may already exist. The Commission concurs with the need to verify the effects of existing national measures as these can be credited towards meeting the savings target.

Amendment 47 removes free audits as a way of fulfilling the obligation in Article 6. This is acceptable because there is a need to further develop the emerging commercial market to provide such audits.

Amendment 48 is acceptable as incorporated because the demand side is as important as the supply side of the market for energy services and other energy efficiency improvement measures. It should also be incumbent upon the Member States to take the necessary measures to prevent market impediments.

Amendment 49 sets forth the need to protect privacy and personal integrity. This important aspect has been satisfactorily incorporated.

Amendment 50 provides for Member States to ensure that all market actors can participate in the market for energy services and energy efficiency improvement measures. This is an important consideration and it is accurately incorporated in the Common Position.

Amendment 57 is acceptable as incorporated since there is a need to require Member States to address the small customers in the domestic sector, where transactions costs are higher.

Amendment 58 is incorporated in a satisfactory manner since energy efficiency funds should be open to all providers of energy services and energy efficiency improvement measures.

Amendment 64 is acceptably incorporated, stating that information should be regular and come frequently enough to allow customers to regulate their consumption.

Amendment 69 is satisfactorily incorporated. Information should be made available to final customers and to other bodies such as energy agencies.

Amendment 74 states that a Commission report should be prepared not later than four years after transposition. This is partially incorporated. However, it is also appropriate to include in Article 14.1 the proposed requirement on sharing best practices, as suggested in the Amendment.

Amendment 76 is incorporated in Article 16. It proposes a comitology procedure to help develop a harmonised system for measuring energy efficiency improvements.

Amendment 78 is incorporated in a way which leads to the clarification of the calculation method, as intended by the amendment in question.

Amendment 79 is incorporated in Annex I, although a six-year base is used. The clarification regarding the calculation of the target and the fact that this target is fixed, and not subject to changes in GDP in future years, are also acceptably incorporated.

Amendments 82, 86, 88 and 90 propose new examples of eligible energy efficiency improvement measures and are incorporated in Annex III in an acceptable manner because this makes the list more comprehensive.

Amendments 83, 84, 92, 93 95 and 96 are accepted in part or in principle by the Commission. These amendments have also been acceptably incorporated into the Common Position: Amendments 83, 92 and 95 are partly incorporated in the new text in Annex III, points m and n. Amendment 93 is partly introduced in point f (new efficient devices and time control for optimised energy use) and point d (digital control systems). Amendment 84 is also partially incorporated under point f (combined heat and power appliances). Amendment 96 is partly incorporated (implicitly) under point p (energy labelling schemes).

Amendment 99 outlines a harmonised bottom-up system for the measurement of energy efficiency improvements. This has been partially incorporated in a manner satisfactory for the Commission. However, the proposed thresholds -- 2% ceiling for measurement costs and 40 million kWh for the use of simplified indicators -- should be left to comitology.

### **3.3. Amendments rejected by the Commission but incorporated in the common position**

Amendments 80, 87, and 98 were rejected by the Commission but incorporated into the Common Position. Amendment 80 is incorporated in the Common Position to the extent that early measures must have “a lasting effect”. The Commission has rejected Amendment 80 largely because it attempts to shorten the period for acceptance for “early actions” taken in Member States by moving the start year from 1995 (1991 in some cases) to 2000. Amendments 87 and 98 (in Annex III and Annex IV) were rejected by the Commission because they were already covered elsewhere and were thus deemed unnecessary. *(This could also be interpreted as meaning that they are already successfully incorporated and should therefore be considered under 3.2, above.)*

### **3.4. Amendments accepted by the Commission and not incorporated in the common position**

Amendment 2 (new Recital 2a) and Amendment 4 are acceptable by the Commission, although they are not incorporated in the Common Position. It has not been deemed necessary in the Common Position to re-iterate the fact that the proposed targets may not automatically prevent total energy consumption from growing. (However, the absolute and fixed value of the amount of energy to be saved can be considered satisfactorily incorporated in Annex I, part 1 of the Common Position.)

Amendment 6 on the 2.5% energy intensity improvement target in the Parliamentary Resolution of 14 March 2001 indicates the importance that is attached by the Parliament to improving energy efficiency as quickly as possible and is therefore acceptable, although it is not incorporated in the Common Position.

Amendment 9 provides clearly for the possibility to use funds to start up the market for energy efficiency and is therefore acceptable, although not incorporated.

There are several other amendments that are acceptable to the Commission, but were not incorporated in the Common position. The following deserve to be highlighted since they deal with Articles 4 and 5, on the overall and public sector targets, respectively:

Amendment 28 is acceptable in principle by the Commission (provided “energy efficiency improvement measures” replaces “energy efficiency measures, in order to agree with the Common Position definitions). This is an important amendment that reflects the Parliament’s view regarding mandatory targets and a longer (nine-year) target period consisting of three three-year targets instead of a six-year target.

Amendment 29 is also acceptable by the Commission in part because the idea of the nine-year target is acceptable. However, progressively increasing the size of the three targets poses a problem because during this period a more accurate bottom-up system for target measurement will be brought into use. Normally, a more accurate bottom-up system allows for a lower target than would be the case with a target measured only by a top-down system. This is because the margin of error is lower with bottom-up measurement.

Amendment 32 requires Member States to implement new measures if they report that they are falling short of the target. This is acceptable with re-drafting because the requirement will promote immediate action on the part of Member States. It would be better placed, however, in the reporting article (Article 14).

In Amendment 39 (on public sector targets), three consecutive three-year mandatory targets are proposed. This principle is acceptable although it has not been incorporated. However, gradually increasing the target to 2% a year is not consistent with the gradual development and implementation of a more accurate bottom-up system, which should allow a constant target. In addition, the level is higher than what is likely to be attainable in some Member States. Amendment 40 is acceptable for the same reason, namely because it refers to the three consecutive three-year targets.

Amendment 41 sets forth, in addition to mandatory targets, mandatory public purchasing guidelines. Such guidelines are the best way to ensure that the target can actually be reached.

Amendment 43 requires the publication and reporting of each Member State system of national procurement guidelines and the evaluation of these by the Commission. This would allow fairness, comparability and in time some degree of harmonization, at least regarding the level of ambition. These principles are all acceptable by the Commission.

Amendment 45 on the use of (voluntary) agreements to fulfil requirements has already been accepted in other Directives (e.g., the Energy performance of buildings Directive), provided equivalence can be demonstrated. It is also acceptable here, being mentioned in Article 5.1.

Amendment 85 on passive heating and cooling is important but is lacking in Annex III in the Common Position.

In addition to the amendments mentioned above, the Commission is also accepting the following amendments from Parliament, fully, in part or in principle: 30-31, 34, 38, 40, 44, 46, 51-52, 54, 60, 63, 65-66, 71-72, 75, 78, 95, and 107-109. These have not been included in the Common Position for varying reasons. In many cases additional time and further discussion would have been needed to gain acceptance in the Council. Examples are Amendments 30, 46 and 107(excluding the part on differentiated targets, which is unacceptable by the Commission) and 108 (including benchmarking, which could probably be accepted as a top-down indicator to guide Member States in selecting cost-effective sectors for energy efficiency measures). Amendment 31 concerns a nine-year target instead of a six-year target and could probably be considered as a means of increasing flexibility. Amendments 38, 40 and 44 have not been incorporated in the Common Position due to the fact that the role of the public sector and the public sector target have both been diminished compared to the Commission's original proposal. Amendments related to Article 7 in the Common Position (Amendments 51, 52 and 54) could also possibly be considered, even though the nature of Article 7 has changed in the Common Position. Amendment 63, on replacing meters could also probably be accepted after discussion and slight re-drafting. Amendment 75 on a Commission cost-benefit report could also possibly be acceptable but with different deadlines and under different conditions. Amendments 78 and 95 on Annexes I and III, respectively, could also very probably be acceptable after further discussion.

(The Commission has rejected the following amendments to Annex III, which have also not been incorporated in the Common Position: Amendments 81, 89 and 91, on enabling equipment, fuel switching and bio-fuels, respectively. All of these are out of the scope of the proposed Directive.)

### **3.5. New elements introduced by the Council**

Compared to the proposal as presented by the Commission, the Common Position contains a number of changes, many of which are in line with in the Parliament's amendments, as

described above. A notable exception is the change from a mandatory target to an *indicative target* (Art. 4.1 and Recital 8a). And there is no longer a (*higher*) specific target (1.5%) for the public sector (Art. 5.1). Member States are instead obliged to take measures which will contribute towards achieving the overall target (Art. 4.1). An indicative list of energy efficiency improvement measures for the public sector is instead added in a new Annex V.

In addition, a *Comitology procedure* is now included in the Common Position. Its purpose is to further develop the calculation methodology set out in the Annexes and to adapt it to technical developments. This is in line with the European Parliament's amendments. Furthermore, provisions have been introduced that will allow the use of *voluntary agreements* and *white certificate schemes* as instruments that will contribute towards fulfilling the obligation in Article 6 and toward target achievement.

#### 4. CONCLUSION

The Commission considers that the Common Position unanimously adopted on 19 September 2005 further clarifies many issues, improves the definitions, and provides for a satisfactory comitology process and for a framework for measuring energy efficiency improvements. It also introduces additional flexibility for the cost-effective implementation of the Directive in Member States.

Other issues related to the scope of the qualification process for providers of energy services and other energy efficiency improvement measures and to the promotion of financial instruments for energy efficiency investments have also been effectively dealt with and improved. The Commission finds acceptable in the Common Position the use of innovative tariff structures, the structure of efficiency funds, and the availability and quality assurance of energy audits. Measures to ensure improved metering and informative billing have also been satisfactorily formulated to obtain a balance that ensures implementation in a cost-effective manner.

The Common Position thus consolidates the agreements reached in Council on a large number of important issues and does so in a way that incorporates into the relevant Recitals and Articles many of the amendments adopted by the European Parliament.

However, the Commission regrets to note the absence of meaningful mandatory targets in the Common Position, both for the overall target and for the public sector target. It also cannot accept Recital 8a, which re-iterates and emphasises the non-binding nature of the proposed savings target. The Commission is of the opinion that the importance of working towards improved energy efficiency is undermined by the weakened nature of the target and by Recital 8a. Moreover the weakening of requirements regarding public procurement guidelines is lamentable.

The Commission notes the importance Member States have attached and continue to attach to improved energy efficiency. The Commission is thus aware of the broad support given by the Member States to the general aim of this proposal. The Commission sees a certain inconsistency in the concern voiced by the Member States regarding the prospect of infringement procedures for non-achievement of the target level of the savings (Recital 8a). This is in view of the fact that Member States need only take those measures that are cost-effective. Also, while the "energy-consuming behaviour" of individual citizens and undertakings may sometimes be difficult to influence as much as is desirable, energy

efficiency improvements in the public sector can be strongly influenced. This is not made clear in the Common position.

In general, the Commission considers that by not meeting the overall annual savings target set forth in the proposal, it will mean that the Member States and the EU as a whole will experience difficulty in meeting their Kyoto commitments. This is because at least half of the commitment must come from increased energy savings. Not meeting the targets will also hamper progress towards meeting the Community competitiveness and employment goals as set out in the Lisbon strategy. It will also mean that an opportunity to improve the security of energy supply in the EU will be lost.

The Commission therefore considers the Common Position to be a useful stepping stone upon which to build further and from which to go back and resolve in second reading the few remaining issues concerning the need for meaningful targets and the need to accept a leading role for the public sector.

The Commission commends this Common Position to the European Parliament.