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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on energy efficiency (recast)

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

With the adoption of the European Green Deal in December 2019¹, the Commission set out *"a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. It also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts"*. To reach these objectives, *"energy efficiency must be prioritised"*.

At that occasion, the Commission also announced that it would present an impact-assessed plan to increase the Union's greenhouse gas (GHG) emissions reduction target for 2030 in a responsible way, and committed to *"review and propose to revise, where necessary, the relevant energy legislation by June 2021"*².

In March 2020, the Commission tabled a proposal for a European Climate Law to decarbonise Europe by 2050. In its Climate Target Plan (CTP)³, the Commission proposed to raise the Union's ambition on reducing greenhouse gas emissions to at least 55% below 1990 levels by 2030, which is a substantial increase compared to the existing 40% target. The Climate Target Plan also outlined necessary actions required across all sectors of the economy, including the revisions of the key legislative instruments to achieve this increased ambition and to deliver on the commitment made in the Communication on the European Green Deal⁴ to put forward a comprehensive plan to increase the European Union's target for 2030 towards 55% in a responsible way. The Climate Target Plan is also in line with the Paris Agreement⁵ objective to keep the global temperature increase to well below 2°C and pursue efforts to keep it to 1,5°C. In December 2020, the European Council endorsed a binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990.⁵ The European Council concluded that climate ambition needed to be raised in a manner that would spur sustainable economic growth, create quality jobs, deliver health and environmental benefits for citizens of the Union, and contribute to the long-term global competitiveness of the Union's economy by promoting innovation in green technologies. On 22 April 2021, the European Parliament and the Council came to a provisional political agreement to achieve at least a 55% reduction in GHG emissions by 2030. This sets the framework for action to reduce GHG emissions over the coming decades, but needs to be implemented through specific legislation to ensure those reductions occur. Projections indicate that, if current policies are fully implemented, greenhouse gas emissions reductions

¹ The European Green Deal, COM(2019) 640 final).

² Annex to the Green Deal Communication, page 2.

³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people, COM/2020/562 final.

⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The European Green Deal, COM/2019/640 final.

⁵ <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>.

by 2030 would be around 45% compared to 1990 levels, when excluding land use emissions and absorptions, and around 47%, when including land use. The 2030 Climate Target Plan therefore previews a set of actions required across all sectors of the economy and the launch of revisions of the key legislative instruments to achieve this increased ambition.

To implement this, the European Commission 2021 Work Programme⁶ announced a ‘Fit for 55’ package to reduce GHG emissions by at least 55% by 2030, and achieve a climate-neutral Europe by 2050. This package will cover a wide range of policy areas including energy efficiency, renewables, land use, energy taxation, effort sharing and emissions trading.

Energy efficiency is a key area of action, without which the full decarbonisation of the Union economy cannot be achieved⁷. The Energy Efficiency Directive has led to the Union’s current energy efficiency policy to capture the cost-effective energy saving opportunities. In December 2018, the Energy Efficiency Directive was amended as part of the ‘Clean Energy for All Europeans package’, in particular to include a new headline 2030 Union energy efficiency target of at least 32,5% (compared to projected energy use in 2030), and to extend and strengthen the energy savings obligation beyond 2020.

While the 2020 energy efficiency target may have been achieved due to the exceptional circumstances created by the Covid-19 pandemic, the sum of national contributions communicated by Member States in the National Energy Climate Plans (NECP) falls short of the Union’s level of ambition of 32,5% in 2030. The contributions collectively would lead to a reduction of 29,4% for final energy consumption (FEC) and 29,7% for primary energy consumption (PEC) compared to the projections from the 2007 reference scenario for 2030. This would translate in a collective ambition gap of 2,8 percentage points for primary energy consumption and 3.1 percentage points for final energy consumption for EU27. This gap also affects the level of efforts needed to reach the higher ambition of energy efficiency targets. The CTP Impact Assessment concludes that it is unlikely that the necessary higher levels of energy efficiency needed would be achieved through market forces, current market organisation and technology development alone, meaning that further efforts are needed. According to the impact assessment⁸ accompanying this Directive, energy efficiency improvements will need to be significantly stepped from the current ambition level of 32,5%.

The higher ambition level requires a stronger promotion of energy efficiency, wherever cost-effective, in all areas of the energy system and in all relevant sectors, where activity affects energy demand, such as the transport, water and agriculture sectors. Addressing the water-energy nexus is particularly important, due to increasing water and energy needs, or increasing pressure on water resources due to climate change.

The Energy Efficiency Directive is an important element to progress towards climate neutrality by 2050, under which energy efficiency is to be treated as an energy source in its own right. The key role of energy efficiency is supported by the energy efficiency first principle. It is recognised as a guiding principle of the Union energy policy and should be

⁶ COM(2020) 690 final

⁷ Communication: A Clean Planet for all – A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy (COM/2018/773 final), where the role of energy efficiency as a condition sine qua non for all decarbonisation scenarios is assessed.

⁸ SWD(2021) 623.

taken into account across all sectors, going beyond the energy system, at all levels, including in the financial sector. Energy efficiency solutions should be considered as the first option in planning and investment decisions, when setting new rules for the supply side and other policy areas. The principle has been recognised as a key element of the Strategy for Energy Sector Integration⁹.

While the energy savings potential remains large in all sectors, there is a particular challenge related to transport, as it is responsible for 30% of final energy consumption, and to buildings, since 75% of the Union building stock has a poor energy performance. Another important sector to which increasing attention is being paid is the information and communications technology (ICT) sector, which is responsible for 5-9% of the world's total electricity use and more than 2% of all emissions. In 2018, the energy consumption of data centres in the Union was 76,8 TWh. This is expected to rise to 98,5 TWh by 2030 a 28% increase. This increase in absolute terms can as well be seen in relative terms: within the EU, data centres accounted for 2,7% of electricity demand in 2018 and will reach 3,21% by 2030, if development continues on the current trajectory¹⁰. Europe's Digital Strategy¹¹ already highlighted the need for highly energy-efficient and sustainable data centres and transparency measures for telecoms operators on their environmental footprint.

The public sector is an important economic actor in its own right and is responsible for around 5 to 10% of the total Union final energy consumption.¹² Overall, the Union's share of public procurement contracts attributed to central government bodies is estimated to be approximately 16%. At Member States' level this varies between 5% and 86%¹³. Public buildings are estimated to use around 2% of the Union's final energy consumption. Cost effective savings potentials still exist in the entire public sector both in the renovation and energy management of existing buildings as well as the future procurement of energy efficient buildings, products and services.

Industry is one of the sectors that has achieved significant energy efficiency improvements over the last decade. Nevertheless, cost-effective savings potentials still exist¹⁴. Heating and cooling consumes half of Union FEC, making it the biggest energy end-use sector. There remains much potential for reducing energy use in this sector, while still achieving the temperatures needed¹⁵. Heating and cooling, therefore, plays a crucial role in the Union's ambition to transition into a clean and carbon-neutral economy by 2050. Much of the effort is needed in the field of better insulating buildings, but there is also potential in terms of more efficiently supplying the heat or cold needed¹⁶. Energy losses in energy transformation,

⁹ COM(2020) 299 final.

¹⁰ <https://digital-strategy.ec.europa.eu/en/library/energy-efficient-cloud-computing-technologies-and-policies-eco-friendly-cloud-market>.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Shaping Europe's digital future (COM(2020) 67 final).

¹² SWD(2021) 623, section 2.2.2.

¹³ Evaluation of Articles 6 and 7 of the Energy Efficiency Directive (2012/27/EU) (SWD(2016)403 final; https://ec.europa.eu/energy/sites/ener/files/documents/3_en_autre_document_travail_service_part1_v3.pdf).

¹⁴ SWD(2021) 623, Annex H.

¹⁵ SWD(2021) 623, section 2.2.2.

¹⁶ An EU Strategy on Heating and Cooling (COM/2016/051 final).

transmission and distribution can be significant¹⁷. The absence of common methodologies and reporting makes it difficult to compare networks or operators or benchmark performance. In fact, there is no uniform definition of energy losses within the Union, which results in sub-optimal data quality, which needs to be addressed.

The household sector makes up around a quarter of all final energy consumption in the Union. The behaviour of consumers and citizens has an important impact on this energy consumption and the EED contains several provisions that support the empowerment of citizens and consumers. The lack of strong consumer behaviour and consumer empowerment aspects in promoting energy efficiency, in particular at more local levels, results in insufficient incentives for consumers to realise energy efficiency improvements and to tackle high upfront costs and the split incentives problem.¹⁸

While the Energy Efficiency Directive already provides incentives for Member States to address energy poverty, the Covid19 crisis has highlighted the urgency of addressing energy poverty, if the Union is to create a social Europe, as agreed by the joint Porto Social Commitment¹⁹, that caters for the needs of all its citizens by enabling them to play an active role in the green transition, while mitigating adverse effects and leaving no one behind. Energy poverty levels across Member States will be in the spotlight as more Europeans may struggle to afford access to essential energy, particularly with rising energy costs and unemployment. Also medium-income households might be at increasing risk of facing energy poverty in the near future, as already today the majority of households affected by energy poverty are (lower) middle-income households. Energy efficiency has been identified as the most effective solution to alleviate energy poverty and to overcome some of the potential negative distributional impacts of pricing measures.²⁰ As required by the European Green Deal, the Energy Efficiency Directive together with the other initiatives under the 'Fit for 55 Package', most notably the Social Climate Fund, will address the twin-challenge and turn both, climate and social needs, into opportunities.

In this context, the amendments will help reinforce the Energy Efficiency Directive to better address remaining market barriers and failures by considering broader objectives of the European Green Deal, which aims to leave no one behind and to deliver a sustainable economy. The proposal thus will strengthen the different provisions of the Energy Efficiency Directive to ensure that it contributes optimally to the higher climate target of at least 55% GHG emissions reduction ambition for 2030, as set out in the Climate Target Plan.

- **Consistency with existing provisions in the policy area**

The Proposal is part of a broader policy framework of energy efficiency policies addressing energy efficiency potentials in specific policy areas, including buildings (Directive 2010/31/EC²¹ (Energy Performance of Buildings Directive (EPBD))), products (Directive 2009/125/EC, Regulation (EU) 2017/1369 and Regulation (EU) 2020/740²²) and Governance

¹⁷ See for example; 2nd CEER Report on Power Losses; Council of European Energy Regulators; 2020.

¹⁸ SWD(2021) 623, section 2.2.2.

¹⁹ <https://www.consilium.europa.eu/en/press/press-releases/2021/05/08/the-porto-declaration/>

²⁰ SWD(2021) 623, section 2.2.2 and Annex L.

²¹ Directive 2010/31/EC of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.

²² Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products; Regulation (EU)

Regulation (EU) 2018/1999. These policies play a very important role in delivering energy savings when products are replaced or buildings constructed or renovated²³. The Proposal is consistent with the proposal for revision of the Renewable Energy Directive^{24, 25}.

This proposal for the Energy Efficiency Directive Recast sets a framework for other energy efficiency policies by laying down the energy efficiency targets and setting the main cross-sectoral measures as well as more specific ones. It targets energy savings in the public sector including via obligations to renovate public buildings annually and taking into account energy efficiency in procurement of goods, services, works and buildings. Its particular aim at public buildings is complementary to the EPBD, which sets the standards and specific technical obligations related to buildings. The public sector serves the population at large, including the vulnerable customers and those in risk of energy poverty, thus ensuring that no one is left behind in line with the objectives of the European Green Deal. The special focus on public sector in the Energy Efficiency Directive is vital to undertake its exemplary role in promoting energy efficiency. The Commission has started the review of the EPBD with a view to come forward with a proposal towards the end of 2021. While at this point in time it is not possible to prejudge the outcome of that review, this proposal respects the specific role of the EPBD in setting cost-optimal energy performance requirements, while strengthening the EED provisions pertaining to the exemplary role of public bodies, notably regarding buildings (Article 5 and Article 6), and public procurement (Article 7), which provides the necessary horizontal framework for action.

The Energy Efficiency Directive sets the framework for heating and cooling planning in terms of identifying the energy efficiency and renewable energy potential by the Member States. It also provides for monitoring policies and measures to exploit this potential. These policies and measures directly support the achievement of the renewable target in the heating and cooling sector target set out in Article 24 of the Renewable Energy Directive. For example, a revised definition of efficient district heating and cooling (Article 2(43) of the Energy Efficiency Directive) would directly promote the deployment of renewable energy in district heating and cooling. Vice versa, these sub-targets would contribute to the achievement of the energy efficiency objectives of the Energy Efficiency Directive.

Furthermore, the planning measures for the heating and cooling sector under the Energy Efficiency Directive will be synchronised with the timeline of the NECPs. This facilitates higher consistency between the NECPs, the Comprehensive Assessments and the assessments of the potential of energy from renewable sources and of the use of waste heat and cold in the heating and cooling sector pursuant to Article 15(7) of the Renewable Energy Directive.

2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and Regulation (EU) 2020/740 of the European Parliament and of the Council of 25 May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters respectively.

²³ Moreover, implementation of the product reviews under the Ecodesign Working Plan 2020-2024 and the “Renovation Wave” Action plan, together with the review of the EPBD, will make an important contribution to reaching the 2030 energy efficiency target.

²⁴ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, PE/48/2018/REV/1, OJ L 328, 21.12.2018, p. 82–209.

²⁵ SWD(2021) 623, Annex M.

The details for the reporting on various provisions of the Energy Efficiency Directive are set in the Governance Regulation (Regulation (EU) 2018/1999²⁶). Under this Regulation, each Member State is required to establish a ten-year integrated national energy and climate plan (NECP) for 2021-2030, outlining how it intends to contribute, *inter alia*, to the 2030 target for energy efficiency. The Governance Regulation also includes specific requirements for setting the energy efficiency targets, reporting obligations, monitoring of progress, and corrective actions to be taken in case of insufficient ambition and progress. The impacts of the changes in this Directive will need to be analysed, which might require subsequent amendment of the Governance Regulation to ensure coherence between the two legal acts. New provisions, notably related to setting national indicative contributions, gap filling mechanisms and reporting obligations, should be transferred and streamlined with the Governance Regulation, once it is revised, to avoid overlapping requirements. Some provisions of the Governance Regulation might also need to be reassessed in view of the changes proposed in this Directive.

The Energy Efficiency Directive interacts with other energy efficiency legislation, *i.e.* the Energy Performance of Buildings Directive, the Union's Ecodesign Directive, the Union's Energy and Tyre Labelling Regulations.²⁷ These instruments set minimum performance standards, but do not require any acceleration either of replacement rates or choosing more efficient outcomes above the minimum. The main mechanisms available to Member States to boost their energy savings above natural rates to meet the Energy Efficiency Directive requirements are to stimulate replacement of energy inefficient devices and stimulate more efficient choices. Each instrument is addressing different energy efficiency aspects, while ultimately leading to the same goal *i.e.* improving energy efficiency and achieving the overall Union energy efficiency target. In other areas, the Energy Efficiency Directive complements other legislation to increase the focus on energy efficiency and thus increase the overall amount of energy savings for example the measures on public procurement, energy networks and heating and cooling.

- **Consistency with other Union policies**

Changes to the policy architecture of the Energy Efficiency Directive interact with existing and planned policies and measures, including pricing and non-pricing mechanisms and measures. The Energy Efficiency Directive, which addresses existing market barriers hampering energy efficiency, works hand-in-hand with the introduction of emissions trading for fuels used in buildings, which will shorten payback time of energy efficiency investments and strengthen the business case for energy efficiency measures across the Union. The Climate Target Plan demonstrated that a mix of regulatory intervention and carbon pricing is needed to deliver the most cost effective pathway towards achieving the 55% GHG reduction target. Striking a balance between carbon pricing and the regulatory policies is crucial to achieve the increased climate target in a cost-efficient manner, while mitigating any impacts of carbon costs being passed on in particular on vulnerable customers and final users. At the same time, emissions trading will generate additional revenues from the allowance auctions that can be redistributed among Member States and within Member States in order to support

²⁶ OJ L 328, 21.12.2018, p. 1–77

²⁷ SWD(2021) 623, Annex M.

vulnerable and energy poor end-users in paying their bills and carrying out building renovation.

The 'Fit for 55' package brings together the relevant policy instruments that can contribute to the 55% GHG reduction target and aims to do so in a coherent and proportional manner among other relevant regulations and directives. This is notably the case for the Energy Efficiency Directive, the Renewable Energy Directive (REDII), the EU Emissions Trading System (ETS), Effort Sharing Regulation (ESR), Land use, Land Use Change and Forestry (LULUCF), energy taxation and CO₂ emission standards for vehicles. The coherence between the different initiatives under the Fit for 55 package was recognised as key to ensure that the different policy instruments of the package including the Energy Efficiency Directive contribute to achieving the higher climate target of 55% in a most effective way. Those EU policies contribute to achieving the objectives of the Energy Efficiency Directive, in particular as regards the energy efficiency target. The targets and measures provided in the Energy Efficiency Directive will ensure more effective interlinks and synergies with the other Union policies.²⁸

The EED has important interlinkages with the Renewable Energy Directive, notably in relation to heating and cooling as both also contribute to achieving the objective of the Strategy for Energy Sector Integration. The EED provides strengthened framework for planning in terms of identifying the energy efficiency and renewable energy potential in heating and cooling, and requires that Member States implement policies and measures to exploit this potential. These policies and measures directly support the achievement of the renewable energy target in heating and cooling laid out in Article 23 of Renewable Energy Directive. Vice versa, these targets contribute to the achievement of the energy efficiency objectives laid out in Article 23 of the EED and the whole EED.

The EU ETS establishes a cap on GHG emissions, which is declining over time. The ESR establishes binding annual GHG emissions targets for Member States targeting GHG emissions from sectors not covered by the EU ETS, including buildings, transport and agriculture. The ESR drives compliance with the Energy Efficiency Directive, in particular with the energy savings obligation. The additionality requirement under the energy savings obligation provides incentives to Member States to implement national policies and measures that exceed the minimum energy performance requirements levels set at Union level (e.g. stricter national building codes and programmes promoting higher classes of appliances). Pricing measures such as the EU ETS²⁹ and the Energy Taxation Directive³⁰ make investments in energy efficiency more financially attractive but do not resolve the market barriers that lead to a sub-optimal level of investments. They therefore complement the energy efficiency legislation but do not replace it.

Before all measures and targets proposed under the 'Fit for 55' Package will fully take effect and relieve European citizens from dependencies from fossil fuels and increasing energy

²⁸ SWD(2021) 623, Annex M.

²⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC.

³⁰ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51–70.

costs, during the transition period some action can lead to significant distributional effects. The extension of the EU ETS to the buildings and transport sectors is expected to result in increasing energy prices as fuel suppliers are likely to pass on carbon costs to consumers, and may thus affect vulnerable customers and final users relying on fossil fuels, or people at risk of energy poverty. Targeted measures to ease the transition both at European and at national level. The 'Fit for 55 Package' proposes specific measures under the EED, and a new funding instrument based on the revenues from the new ETS to mitigate the impact of higher costs for consumers as a result of the introduction of a carbon price in the road transport and building sectors. It is key to ensure that energy efficiency investments take place amongst the most vulnerable in our societies. Support measures to strengthen the energy savings obligation and to empower and protect vulnerable customers, households affected by or at risk of energy poverty, and, where applicable, people living in social housing, can help to mitigate these effects. A combined effect of the proposed measures under the EED and the new funding tool based on the revenues from emissions trading in the new sectors will help addressing the possible negative social effects in an effective manner and in the spirit of solidarity. Revenues from the EU ETS, including from emissions trading in the new sectors, will also remain available to Member States to finance measures intended to improve energy efficiency, district heating systems and insulation, or to provide financial support to lower- and middle-income households.

To address the social impacts arising from the emissions trading for the two new sectors of buildings and road transport, a Social Climate Fund ('the Fund') is created. In order to ensure that the Union budget can sustain the additional expenditure for the Fund, the Commission puts forward in parallel to this Fund Regulation proposals to amend both the Regulation for the Multiannual Financial Framework for the years 2021 to 2027 and Council Decision (EU, Euratom) 2020/2053 ('the Own Resource Decision'). In particular, a part of the revenues from the emission trading for the road transport and buildings will accrue to the Union budget. The Fund should provide funding to Member States to support their measures and investments intended to increase energy efficiency of buildings, to carry out energy efficiency improvements, building renovation, and to decarbonise heating and cooling of buildings, including the integration of energy production from renewable energy sources and to finance zero- and low- emission mobility. Member States could also consider temporary direct support to vulnerable households alongside investments accelerating further structural change.

Moreover, in line with the Renovation Wave Strategy, the Union funding support to energy efficiency and buildings renovation investments that will help addressing or preventing energy poverty, is present in a number of new and existing programmes of the MFF and the Next Generation EU.

Another key source of funding for energy efficiency investments is provided through the Recovery and Resilience Facility, which will make available to Member States a total of 672,5 euro billion between grants and loans. Within the overall target of 37% of the RRF funds to be dedicated to climate actions, Member States plan to spend significant amounts on buildings renovation investments, in line with the guidance from the European Commission, specifically targeting worst performing buildings and energy poor households.

The Cohesion Policy funds, within the overall climate target of 30% and through the thematic concentration on Policy Objective 2, will continue allocating important share of Union budget to energy efficiency and buildings renovation investments, while InvestEU, through the dedicated financial instruments and technical assistance, especially the ELENA Facility, will mobilise at scale private and public investments in the Member States.

The Just Transition Fund, with the overall budget of 17,5 euro billion, will aim to alleviate the social and economic costs resulting from the transition to a climate-neutral economy, including through investments in energy efficiency and buildings renovation that will have the dual benefit of creating local jobs and addressing energy poverty in a durable manner.

Finally, the centrally managed programmes like LIFE or Horizon Europe will have funding priorities supporting a just and green transition, in line with the specific programmes' objectives and their nature, *i.e.* aiming at technology and market innovation and best practices development in energy efficiency policy implementation. The EU road vehicle CO₂ legislation requires manufacturers to reduce the new vehicle fleet average tail pipe CO₂ emissions from the vehicle mix they sell. Regulations have been put in place for Heavy Duty Vehicles and for passenger cars and light commercial vehicles³¹. These regulations mean that manufacturers must either deploy technology to improve the energy efficiency of the vehicles (for example by reducing their aerodynamic or rolling resistance or powertrain efficiency) or by using an energy source with reduced CO₂ emissions in use. Switching to fully electric powertrains avoids the energy losses from internal combustion engines and leads to a fraction of the final energy use per km. Reduction of energy use in the transport sector as a result of the vehicle CO₂ legislation is reflected in the quantification of the overall EU energy efficiency target. The Energy Efficiency Directive will create synergies with the measures of the Sustainable and Smart Mobility Strategy. While leaving the full flexibility and discretion to the Member States regarding the choice of measures for achieving the reduction in energy use in transport, the Directive will incentivise the uptake of energy efficiency measures in the transport sector. The Circular Economy Action Plan is also complementary to the EED. Designing products and infrastructures for longer lifetimes, or re-using and recycling raw materials, leads to lower energy consumption and GHG emissions along the life-cycle of products and infrastructures. The Renovation Wave Strategy puts focus on ensuring that Europe's buildings are more energy-efficient, less carbon-intensive over their full life-cycle and more sustainable. Circular economy principles can help reduce pollution and materials-related greenhouse gas emissions of building renovation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Proposal is based on Article 194(2) of the Treaty on the Functioning of the European Union, which is the legal basis for measures on energy. The proposed measures aim at improving energy efficiency across sectors and throughout the full energy chain, and thus pursues one of the objectives listed in Article 194, namely, promoting energy efficiency and energy saving in accordance with Article 194(1)(c). As the Treaty contains a specific energy legal basis, it is appropriate to use it.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle is addressed in this Proposal as the Union does not have exclusive competences on energy policy. The Proposal builds on the growing importance of energy efficiency as a political and economic challenge and its close interrelation to the policy areas

³¹ Regulation (EU) 2019/631 of 17 April 2019 of the European Parliament and of the Council setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles

of security of energy supply, climate change, internal market and economic and social development.

The need for EU action

EU action is thus justified on grounds of subsidiarity in line with Article 191 TFEU since coordination at the European level, in fact, enhances energy security and environmental and climate benefits. The underlying problems causing a shortfall in energy savings (compared to the optimal level from the perspective of society) are the same across the EU and are present everywhere.³²

Union level action is needed to ensure that Member States contribute to the EU level binding energy efficiency target and that it is collectively and cost-effectively met. Member States are required to define their own ambition levels, including trajectories that correspond to their national circumstances and context. The nature of the instrument and the fact that the energy efficiency target is not binding at national level respects the principle of subsidiarity. By taking into account the national context and specificities, Member States will retain the same level of flexibility in terms of selecting their policy mix, sectors and the approach to achieve the required energy savings by 2030.

Given the higher climate target, Union action will supplement and reinforce national and local action towards increasing efforts in energy efficiency. The Governance Regulation already foresees the obligation for the Commission to act in case of a lack of ambition by the Member States to reach the Union targets, thus *de facto* formally recognising the essential role of Union action in this context, and EU action is thus justified on grounds of subsidiarity in line with Article 191 TFEU.

The underlying problems causing a shortfall in energy savings (compared to the optimal level from the perspective of society) are the same across the Union and are present everywhere. In view of the external costs of energy consumption (e.g. greenhouse gas emissions, air pollutant emissions, energy security), actions to increase energy efficiency and reduce energy use are likely to lead to benefits beyond national borders. For trans-boundary problems, Member State action is unlikely to lead to optimal outcomes. In the presence of a higher climate target, which requires a higher energy efficiency target, Union action must supplement and reinforce national and local action.

In addition, the nature of the instrument and of the fact that the energy efficiency target is not binding at national level respects the principle of subsidiarity. Member States retain the same level of flexibility in terms of selecting their policy mix, sectors and the approach to achieve the required energy savings by 2030, by taking into account the national context and specificities. However, energy is a policy field with high investment needs.

A coordinated approach at Union level can create trust, reliability and continuity, increasing the likelihood of different actors investing and getting involved. Policies at Union level can also create a just and fair transition for countries and regions with economies that may be significantly impacted by changes in industrial structure or employment as a result of the energy transition towards decarbonisation.

³² SWD(2021) 623, section 2.

Coordinated action at the Union level, furthermore, enables better account to be taken of the different capabilities to act among Member States. An external cost occurs when producing or consuming a good or service imposes a cost (negative effect) on a third party.

EU added value

Energy efficiency policies are a crucial mechanism to reduce greenhouse gas emissions and contributes to bringing environmental, economic and social benefits such as better air quality, reduced energy bills and better health. The Union's energy and climate targets for 2030 are collective targets. In this regard, coordinated Union policies have a better chance of transforming the Union to a climate neutral continent by 2050. A common approach is the most effective way to ensure the fulfillment of international commitments.

Concrete actions to reduce energy consumption need to be carried out at Member States' level. Nevertheless, an effective framework for those actions is needed at Union level. A coordinated and harmonised approach at the Union level will enable and enhance Member States' actions, and ensure the four freedoms. A common Union approach will help, for example, to create larger markets for European suppliers, workers and goods, and ensure that the same obligations and rules apply. This will protect and boost competition. A common approach at Union level will allow consumers to enjoy the same basic rights and to receive comparable and recognisable information across the Union. A common Union approach to energy efficiency will enable addressing specific common challenges such as the need to alleviate energy poverty.

The experience from the implementation of the Energy Efficiency Directive has shown that a common Union framework is socially just, reduces costs, increases benefits from the internal market and allows national policy-makers to learn from each other. The Energy Efficiency Directive effectively complements and catalyses other national and Union measures. Policies adopted at Union level reflect the close interrelation of the policy areas of climate change, security of supply, sustainability, environment, internal market, social and economic development. Effects on the single market concerning growth, investments and jobs creation can thus be considered when policies and measures are being decided and implemented. This was supported by the Task Force of mobilising Member States efforts to reach 2020 energy efficiency targets, which called for a strong, targeted and common energy efficiency policy framework to attract the necessary investments, ensure the energy savings are achieved in a just and fair way.

Moreover, the Union single market acts as a strong driver for cost-efficiency in achieving GHG emission reductions.

A common Union action will ensure that that the objectives of the policy are achieved collectively at the lowest possible cost. Therefore, to reach the overall targets collectively, the coordinated action at Union level can enable and enhance efforts at national level by ensuring a more harmonised approach, helping to create markets of scale for European suppliers, and ensuring that they are under the same obligations and rules.

An Union-level framework will also provide more investor certainty. It will provide a general impetus across the whole single market to invest in more energy efficient products of all types. The definition of Union and national objectives gives a clear indication on how much efforts are expected in energy efficiency, and it helps defining the size of the market for energy efficient products and services. This will send a signal to suppliers and manufacturers to put more effort into product development in this regard.

Delivering on energy efficiency while empowering consumers requires meaningful, accurate and understandable information on energy use, related costs, and easy access to a competitive market of building construction materials (windows, insulation, etc.), heating and cooling solutions, and other products that help improve energy efficiency.

Sector-specific measures, for example aimed at the heating and cooling sector, to ensure appropriate attention to sectors, where the largest reduction of GHG emissions need to be achieved. Harmonised planning ensures comparable quality of the national policies and measures. It also ensures availability of structured information on the sectoral objectives and plans in Member States, thus helping Member States and market participants to plan their activities. In the case of heating and cooling it helps ensuring a sufficient market with common standards for the suppliers of high efficiency equipment for district heating and cogeneration to lower costs and to motivate them to innovate and improve their offer.

By acting at Union -level, several barriers to public and private investments can be tackled, addressing the lack of coordination between various authorising bodies at national level and stimulating the administrative capacity to implement cross-border projects and support schemes.

The Energy Efficiency Directive essentially sets the overall energy efficiency objective, but leaves the majority of actions to be taken to achieve this objective to the Member States. The application of the 'Energy Efficiency First' principle leaves flexibility to the Member States. The Energy Efficiency Directive sets binding energy efficiency targets at Union level, but will not establish binding targets at national level in the 2020 and 2030 perspective. Member States should establish their contribution to the collective achievement of the Union's energy efficiency target taking into account the formula provided in the Energy Efficiency Directive. An obligation to achieve an annual reduction of the energy consumption in the public sector will ensure that the public sector fulfils its exemplary role, whereas Member States retain full flexibility regarding the choice of energy efficiency improvement measures to achieve the required reduction of the final energy consumption. In addition, the Energy Efficiency Directive will continue providing an annual rate of renovation required related to the floor area of buildings. The scope of this obligation is extended to buildings owned by all public bodies on the territory of a Member State. This measure shall ensure that Member States continue leading by example through upgrading the energy performance of buildings in their spheres, while retaining the flexibility regarding the choice of measures. Furthermore, the Energy Efficiency Directive will provide the necessary framework to ensure high energy efficiency performance of products, services, works and buildings purchased by public bodies, and to consider, where appropriate, wider sustainability, social, environmental and circular economy aspects. A harmonised approach, including considering energy efficiency aspects in tendering processes, will preserve competition, ensure long-term and cost-effective energy savings and allow for continuing markets of scale. The Energy Efficiency Directive will extend the energy savings by increasing the savings rate. Member States should continue achieving new annual energy savings from policy measures across all sectors. Since the energy savings obligation is an effective measure to improve energy efficiency in various sectors, it is also an effective tool to support Member States in the alleviation of energy poverty. Thus, the energy savings obligation will require Member States to achieve an individually calculated share of the total amount of energy savings required towards vulnerable customers and final users, people affected by energy poverty and, where applicable, people living in social housing. A harmonised approach can contribute to a just energy transition for all European citizens. The energy savings obligation retains full flexibility for Member States with regard to the types of policy measures, their size, scope and content. The Energy Efficiency Directive will ensure the same level of basic contractual rights

for all European citizens regarding heating, cooling and domestic hot water. Whereas the Energy Efficiency Directive will require the implementation of certain basic contractual rights of customers, the national competences would not be restricted. One level playing field across the EU is also required with regard to consumer information and awareness raising activities. Member States are required to take appropriate measures, whereas the concrete design of such actions remain at their discretion. The Union -wide impacts of economic and health crisis show that a harmonised approach is also required to empower and protect vulnerable customers and final users and those affected by energy poverty.

To ensure the same level of protection and empowerment, the Energy Efficiency Directive requires to implement and finance energy efficiency improvement measures as a priority among those people, which will also support Member States in mitigating distributional effects. Network of experts will facilitate Member States' actions in this regard and should be established in all Member States. While requiring mandatory energy audits for large enterprises, as energy savings can be significant, Member States will retain flexibility to develop programmes to encourage SMEs to undergo energy audits. Regarding the heating and cooling sector, Member States retain their competences to carry out a comprehensive assessment of the potential for high-efficiency cogeneration and efficient district heating and cooling, and may grant exemptions in the area of waste heat recovery through high-efficiency cogeneration or by supplying a district heating or cooling network. The Energy Efficiency Directive will allow Member States to introduce measures and procedures to promote cogeneration installations. To contribute to the creation of a single market, all Member States, National Regulatory Authorities, transmission and distribution system operators should apply the 'Energy Efficiency First' principle and remove all regulatory, technical and non-regulatory measures for energy efficiency improvements in the operation of energy networks. The development of a market for energy services to ensure the availability of both the demand for and the supply of energy services would remain subject to Member States' discretion. The Energy Efficiency Directive would retain the flexibility for Member States to take action to identify and address regulatory and non-regulatory barriers for energy efficiency improvements. Member States and regions would be encouraged to make full use of the Structural and Investments Funds and other financing facilities to trigger investments in energy efficiency improvement measures, to alleviate energy poverty, and to mitigate any distributional effects on vulnerable customers and final users, people affected by energy poverty, and those living in social housing.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality**

Based on the accompanying Impact Assessment³³ and in accordance with the principle of proportionality, overall the proposed modifications do not go beyond what is necessary to achieve the objectives to reach the higher energy efficiency ambition in view of the increased climate target for 2030. As regards the energy efficiency targets, the amendments are proportional to the required Union ambition in line with the increased climate target of at least 55% GHG emissions reduction as proposed by the Climate Target Plan. Several amendments set specific targets and obligations for public administrations to achieve energy savings in certain areas – public sector and energy poverty, which will be overall proportionate. Regarding the energy savings obligation for the public sector, public bodies are defined in the

³³ SWD(2021) 623.

Public Procurement Directive 2014/24/EU (contracting authorities). Member States would need to establish a database with public bodies, including their annual energy consumption. The proposed energy consumption reduction obligation leaves significant flexibility to Member States as to where and how energy savings could be achieved. Given the cost-benefits that would accrue from implementing savings measures, this effort is considered effective and not excessive. The Proposal also aims to address distributional impacts from the extension of emission trading to buildings and transport. Setting definitions and obligations notably in relation to heating and cooling would be proportionate to the additional energy savings and synergies with the other instruments that could be achieved in this sector. Proportionality of additional monitoring and reporting requirements depend on the balance between increased cost and savings achieved due to a better understanding of the impacts of relevant measures.

The level of constraint imposed is thus proportionate to the objective.

- **Choice of the instrument**

The instrument chosen is a Directive that has to be implemented by the Member States. A Directive is the appropriate instrument as it clearly defines the Union objectives to be reached, while leaving sufficient flexibility to Member States to implement it in the way that suits their particular national circumstances.

The proposal combines a codification and an amendment of the Energy Efficiency Directive. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them. The proposal entails a substantive amendment to the Energy Efficiency Directive, which has been amended several times.

To align the two processes, the revision and the codification processes, the Commission proposes a Recast of the Energy Efficiency Directive. The recasting technique contributes to simplifying Union legislation by allowing the adoption of a single legislative text, which simultaneously makes the desired amendment, codifies that amendment and previous ones the unchanged provisions of the earlier act, and repeals that act and previous amending acts. Therefore, a recast Directive is the appropriate instrument and is in line with the Commission's commitment under paragraph 46 of the Inter-institutional Agreement on better law-making³⁴. The new legal act will replace and repeal the earlier act 2012/27/EU.

Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex XVI to the recast Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

³⁴ OJ L 123, 12 May 2016, p.1.

- **Ex-post evaluation of existing legislation³⁵**

The Energy Efficiency Directive remains relevant in delivering increased energy efficiency in the Union and contributing to an increased climate target of 55%. It also reaps other benefits such as decreasing dependence on energy imports and spur innovation and competitiveness. Evaluation has shown that it is for the Energy Efficiency Directive to ensure that Member States adequately undertake actions in specific energy consuming areas. Various studies carried out by the Commission, as well as evidence from stakeholders³⁶, show that, even with existing technologies, there is still significant scope for energy efficiency investments and cost-effective savings in Member States' economic sectors and in the society at large.

However, under business-as-usual, and even more so as a result of the adverse socio-economic impacts and income losses due to Covid-19 crisis, a large share of this energy efficiency and energy saving potential would remain unexploited, including due to market and regulatory failures, which prevent cost-effective energy efficiency investments and actions from taking place. Given the significant energy savings potential, further promotion of energy efficiency actions and the removal of continued existence of barriers to energy efficient behaviour, including for investments, are necessary.

The evaluation shows that there seems to be a reluctance in the public sectors to include energy efficiency requirements systematically in procurement, mainly because purchase price. Thus, there is a scope for strengthening and streamlining the Energy Efficiency Directive so that it contributes to achieving the higher climate target and the European Green Deal objectives. Furthermore, there is a potential for the Energy Efficiency Directive to better tackle socio-economic challenges like protecting and empowering vulnerable customers and final users and alleviating energy poverty. Regarding industries, the evaluation shows that a key barrier is likely to be that most businesses do not have the expertise to know what technical energy saving opportunities are available, or what their economic benefits might be for the business.

In terms of effectiveness, the Energy Efficiency Directive has led to energy efficiency improvements across the Union thanks to its targets (notably Article 3 and Article 5) and binding measures (notably Article 7 on energy savings obligations), even though the progress in achieving the Union energy efficiency targets for 2020 was not sufficient. Achieving the necessary level of energy efficiency improvements relies largely on Member States' ambition when setting objectives, and their efforts when developing and implementing energy efficiency measures at national level. Although the Energy Efficiency Directive sets final and primary energy consumption limits for the Union as a whole, and the Governance Regulation provides for further Union measures if the targets are not met, the indicative nature of the target does not support its achievement. Article 7 remains an effective measure responsible for generating energy savings mostly in the buildings sector. Obligations for public sector (Articles 5 and 6) proved key to demonstrate the exemplary role of central governments in promoting energy efficiency via renovations and public procurement. However, the measures were implemented at a limited scale, and a number of limitations prevent reaping energy savings potential in the public sector. The Energy Efficiency Directive was also key to promoting the use of energy audits across the Union (Article 8). However, important

³⁵ SWD(2021) 623.

³⁶ See e.g. https://www.eiif.org/sites/default/files/2020-12/Eiif_White%20paper_2020_REV.15.pdf.

limitations remain such as follow up to audits and challenges related to application of the SMEs definition, lack of requirements and incentives for implementing energy management systems. The requirements of Article 14 on heating and cooling, in particular the requirement to establish comprehensive assessments, helped to increase the overall importance and awareness of heating and cooling in all Member States. However, the analysis showed that the overall impact had rather been low, in particular due to the lack of follow up given to the findings from the comprehensive assessments carried out in line with Article 14, and the wide use of exemptions allowed. The Energy Efficiency Directive largely contributed to the development of energy services markets and energy performance contracting (Article 18). However, important barriers still remain to be tackled.

In terms of efficiency, overall, the Energy Efficiency Directive has contributed to achieving energy savings in the Union in a cost-effective manner. Several provisions subject to 'conditionalities' (e.g. in Articles 5, 6, 9-11, 14) required to act, if it is cost-effective/economically or technically feasible. It gave significant flexibility to Member States to choose measures. However, Member States have not always demonstrated how the feasibility was established. There are no indications for significant differences in the magnitude of costs amongst the Member States for most of the provisions of the Energy Efficiency Directive, except for Article 7 (the costs depend on the design and scope of the measure).

In terms of coherence, the Energy Efficiency Directive is overall coherent with broader energy and climate policies, however, the increasing interlinkages with renewable energy and the EU ETS require proper streamlining and closer look at reducing administrative burden. In addition, the Energy Efficiency Directive provisions need to be adapted to support the decarbonisation and zero pollution objectives in the context of the initiatives under the European Green Deal.

In terms of Union added value, Union intervention was key to achieve energy efficiency improvements across the Union. It is clear that without the EU level target and binding measures it would not have been achieved to the scale observed. However, there is scope for strengthening and streamlining some provisions to ensure that the Energy Efficiency Directive delivers the required efforts in view the higher Union climate target of at least 55% for 2030.

- **Stakeholder consultations**

The evaluation roadmap/ inception impact assessment was published on 3 August 2020 and was available until 21 September 2020.

The Commission received 189 replies, and 99 stakeholders submitted supplementary statements and information to their replies. The largest number of replies were received from business associations (80 replies), followed by companies (36 replies) and NGOs (26 replies). In addition, nine dedicated stakeholder meetings were organised in the period from September to October 2020 with targeted stakeholder groups on specific topics, and a dedicated Energy Efficiency Directive expert group meeting was held on 10 November 2020. The Commission also launched the internet based public consultation from 17 November 2020 until 9 February 2021, in line with the Commission Better Regulation rules. The survey contained multiple choice and open questions covering a wide range of aspects concerning the ex-post evaluation and options for the revision of the Energy Efficiency Directive. In total 344 replies were received. The largest group of respondents covered was business associations (132 replies), individual businesses and companies (92 replies), followed by NGOs (34 submissions). 21 respondents submitted replies as individual citizen. 24 public authorities replied, including

national authorities from 9 Member States (Cyprus, Czechia, Estonia, Finland, France, Lithuania, Netherlands, Spain, and Sweden).

A clear majority of stakeholders (86% of respondents) expressed views that energy efficiency should play a key role in supporting more ambitious climate targets for 2030 and in view of achieving the Union's carbon neutrality by 2050. Stakeholders largely supported the strengthening of the Energy Efficiency Directive in this regard. A majority of stakeholders (53%) favoured binding energy efficiency targets, including at national level (47%). Stakeholders believed that additional energy efficiency efforts are needed in buildings (76%) and transport (62%), followed by industry (52%) and ICT (40%).

The views of the stakeholders as expressed in the public consultation and during the workshops have been taken into account when elaborating the various policy options on the respective policy areas in the Impact Assessment.

In June, the European Commission hosted a hearing with European social partners on the 'Fit for 55 Package'. European social partners were asked to share their initial reactions on this package and to express their view on which accompanying measures and mechanisms could be put in place to make sure nobody is left behind. The need for stronger interactions between the European Pillar of Social Rights and the European Green Deal were raised and explained that the objectives of both dimensions should be the two faces of the same coin.

- **Collection and use of expertise**

The COWI support study was the only contract explicitly intended to directly support the preparation of the Impact Assessment. Many other reports have provided relevant information. In the case of the energy audit requirements there was a specific assessment of the problems of implementing the definition used in Article 8(4) of the EED.

- **Impact assessments**

The overall energy saving ambition and the level of the energy saving obligations are consequences of a cost-effective approach to achieve the overall 55% GHG saving ambition. The measures explored in the impact assessment³⁷ are additional elements to support and enable energy saving measures that will facilitate investments in energy efficiency improvements and thus reduce the overall cost of achieving the energy saving and the GHG reduction targets.

Measures were considered in ten different areas that are not mutually exclusive. These vary and cover non-regulatory and regulatory measures. Different regulatory measures of varying stringency were explored. The identification of the preferred option requires a judgement about the optimal impact for each area contrasted with the regulatory effort and administrative burden.

The main impact of the measure will be that the Union uses less energy without affecting the delivering of desired services. This reduction in energy use will be accompanied by co-benefits such as improved energy security and reduced environmental impacts. The lower environmental impacts are primarily due to around 8% lower emissions of air pollutants, but there are also expected to be environmental benefits from the reduced need for fuel supply,

³⁷ SWD(2021) 623.

reduced infrastructure needs and lower emissions to water, for example from flue gas clearing equipment. Appropriately targeted public support for building renovations can also bring substantial social benefits thanks to alleviation of energy poverty and commensurate improvements in human health.

In all areas, the energy savings are mainly expected to be delivered by energy saving investments that return the capital cost in a few years. Information on the expected payback times is provided by sector and type of investment.

- **Regulatory fitness and simplification**

The revision is a Recast of the Directive. The Impact Assessment³⁸ identified possibilities for simplification of the existing legislation and reduction of regulatory costs while aiming at effectiveness of the proposed modifications. Removal of the alternative approach to renovation of public bodies' buildings will simplify the provisions as it would focus on renovations only. Specific technical aspects in relation to public buildings and certain exemptions are deleted given that they are regulated under the Energy Performance of Buildings Directive. Removing conditionalities of cost-effectiveness, technical or economic feasibility as regards energy efficiency requirements in public procurement will simplify the implementation of the energy efficiency requirements, as they will apply equally to all public authorities. IT development and procurement choices will be subject to pre-approval by the European Commission Information Technology and Cybersecurity Board.

Ensuring that energy audit efforts are focussed on larger energy users will lead to proportionately higher energy savings, which would result in a substantial reduction in burden for businesses with a lower energy use, as well as simplifying the burden on public administrations, since they would have a simpler criterion to assess the need for audits as well as a smaller number of businesses to verify. The increased compliance costs for those businesses remaining under the scope of the provision would be expected to be paid back through increased uptake of cost-effective improvement measures.

Amendments will strengthen the existing monitoring and reporting requirements notably regarding measures targeting energy poverty under energy savings obligation (Article 8) and building renovations for public sector, which would ensure a more effective outcomes, but will also result in a higher administrative burden for public authorities. Requiring additional monitoring and reporting requirements as regards public procurement and energy performance contracting would further improve the effectiveness of these provisions, but may increase administrative burden to some extent on businesses and public authorities.

Providing further guidance and support in view of Member States' actions, e.g. on awareness raising will result in a short-term increase of administrative burden, as the different information campaigns, knowledge exchanges or support schemes would have to be set up by Member States, but this is expected to be cost-effective in the medium term due to increased energy savings.

³⁸ SWD(2021) 623.

The additional reporting and monitoring requirements will not create any new reporting systems but would be subject to the existing monitoring and reporting framework under the Governance Regulation (EU/2018/1999).

- **Fundamental rights**

The Proposal is in line with Article 37 of the Charter of Fundamental Rights of the European Union, which requires that a high level of environmental protection and the improvement of the quality of the environment be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

4. BUDGETARY IMPLICATIONS

The Proposal has no implication for the Union budget. The amendments would result in moderate administrative costs for public authorities.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

After the adoption of this Recast Directive by the co-legislators, during the transposition period, the Commission will undertake the following actions to facilitate its transposition:

- Drafting of a correlation table that serves as transposition check-list for both Member States and the Commission.
- Organisation of meetings with Member States' experts in charge of transposing the different parts of the Directive to discuss how to transpose them and solve doubts, either in the context of the Concerted Action for Energy Efficiency Directive (CA-EED) or in a committee format.
- Availability for bilateral meetings and calls with Member States in case of specific question on the transposition of the Directive.
- After the transposition deadline, the Commission will carry out a comprehensive assessment of whether Member States have completely and correctly transposed the Directive.

Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action established an integrated energy and climate planning, monitoring and reporting framework, to monitor progress towards the climate and energy targets in line with the transparency requirements of the Paris Agreement. Member States had to submit to the Commission their integrated national energy and climate plans by the end of 2019, covering the five dimensions of the Energy Union for the period 2021-2030. Member States must report biennially on the progress made in implementing the plans and in addition, by 30 June 2023 they must notify the Commission of their draft updates of the plans, with the final updates due on 30 June 2024. This update would cover any new targets agreed in the revision of EED. This reporting system under the Governance Regulation is considered to have been effective in monitoring Member States' progress towards the Union and national level energy efficiency energy contributions.

New provisions, mainly related to setting national contributions, gap filling mechanisms and reporting obligations, have been provided with this proposal. These proposals should be transferred and streamlined with the Governance Regulation (EU) 2018/1999, once it is

revised to avoid overlapping requirements. Some provisions of the Governance Regulation might also need to be reassessed in view of the changes proposed in this Directive.

An evaluation of the ambition level of Articles 4, 5, 6 and 8 is proposed in Article 33 of this recast Directive.

- **Explanatory documents (for directives)**

The EED introduces a new article (Article 3) on the Energy Efficiency First principle to ensure that the principle is applied where relevant and properly monitored across the board. The Directive does not specify how this should be done given the wide scope of application of the principle. To facilitate the implementation of the Energy Efficiency Directive provisions, the European Commission will issue a recommendation to Member States including a guidance how the principle should be interpreted and applied in various contexts. This guidance document should help make the principle more operational.

Following the ruling of the European Court of Justice in *Commission vs Belgium* (case C-543/17), Member States must accompany their notifications of national transposition measures with sufficiently clear and precise information, indicating which provisions of national law transpose which provisions of a directive. This must be provided for each obligation, not only at 'article level'.

- **Detailed explanation of the specific provisions of the proposal**

The main provisions which substantially change Directive 2012/27/EU or add new elements are the following:

Articles 1 and 4 set an increased Union binding energy efficiency target for final and primary consumption, as well as indicative national energy efficiency contributions and provides a formula to Member States to calculate their contributions. The Union targets are set in terms of the level of final and primary energy consumption to be achieved in 2030 and the level of ambition is expressed by comparing these levels to the 2020 Reference Scenario projections for 2030. The level of ambition expressed in such way reflects additional efforts compared to the efforts that are in place or indicated in the National Energy and Climate Plans. Comparisons to the previous baseline that is the 2007 Reference Scenario projections for 2030 and historical values from 2005 are kept in the recitals.

National contributions remain indicative given strong opposition by the majority of Member States towards binding national targets expressed in the public consultation and in other fora. However, benchmarks and new delivery gap mechanisms are proposed complementing those that were proposed in the Governance Regulation.

Article 3 introduces a new provision on the Energy Efficiency First principle, to provide the legal basis for the application of the principle, while minimising the administrative burden. It includes an obligation to consider energy efficiency solutions in policy and investment decisions in energy systems and non-energy sectors, including social housing.

Article 5 introduces an obligation for the public sector to reduce its energy consumption for public services and installations of public bodies. This can be reached in any subsector of the public sector, including transport, public buildings, spatial planning and water and waste management amongst others.

Article 6 broadens the scope of the renovation obligation. The obligation will now be applied to all public bodies at all administration levels and in all sectors of public bodies' activities,

including healthcare, education and public housing, where the buildings are owned by public bodies. This will bring the benefits of public buildings renovation closer to all people in all Member States and it will multiply the renovations in the public sector. Article 6 aims at renovations meeting the Near Zero Energy Buildings (NZEB) standard, which is an enhanced cost effective standard for renovations. The renovation rate remains at least 3%, which is the lowest common denominator for a minimum renovation rate, while it is recognised that some Member States, regions and cities have already adopted higher renovation requirements and standards in the public sector. Finally, the alternatives that allowed Member States to reach similar energy savings through other measures than renovations are deleted. Such measures can continue counting for the energy savings obligations under Article 8 and contribute to the achievements of the obligation under Article 8. Article 6 aims at renovations in line with the Renovation Wave Strategy.

Article 7 strengthens the public procurement provisions by extending the obligation to take into account the energy efficiency requirements by all public administration levels, and by removing conditionalities with regard to cost-effectiveness, technical and economic feasibility. The amendments will include a provision that Member States may require that public bodies consider where appropriate circular economy aspects and green public procurement criteria in public procurement practices. Member States will be required to support public bodies by providing guidelines and methodologies on the assessment of lifecycle costs, and by putting in place competence support centres and encouraging using aggregated procurement and digital procurement. Member States would be required to publish information on winning tenders (in line with the thresholds set out in the public procurement directives).

As part of the exemplary role of the public sector Article 7 also includes a provision that contracting authorities may require that tenders disclose a Global Warming Potential of new buildings (numeric indicator in kgCO₂e/m² (of useful internal floor area) for each life cycle stage averaged for one year of a reference study period of 50 years), in particular for new buildings above 2000 square meters. It is linked to a provision aimed at increasing awareness to circular economy and whole life-cycle of carbon emissions in public procurement practices.

Amendments to Article 8 increase the annual energy savings obligation to 1.5% for all Member States (including Cyprus and Malta), and includes specific requirements for the alleviation of energy poverty. It requires to implement policy measures as a priority among vulnerable customers and final users, people affected by energy poverty and, where applicable, people living in social housing, and to make best possible use of public funding and, where applicable, to consider the use of revenues of ETS allowances. Article 8 requires Member States to ensure that national policy mix has no adverse effects on vulnerable customers and final users, people affected by energy poverty and, where applicable, people living in social housing and that those policies effectively alleviate and reduce energy poverty. Article 8 requires Member States to achieve a share of the total amount of required end-use energy savings among vulnerable customers and final users, people affected by energy poverty and, where applicable, people living in social housing. Article 8 establishes a delivery gap mechanism regarding the required amount of energy savings to be achieved in a given obligation period. The energy savings obligation does not foresee the application of the flexibilities to calculate the required amount of energy savings alternatively as of 1 January 2024 (Article 8(6) to (9)). Article 9 includes transmission system operators as potential obligated parties, and allows Member States to require obligated parties to achieve an amount of energy savings among vulnerable customers and final users, people affected by energy poverty and, where applicable, people living in social housing. Annex V excludes the accountability of energy saving from policy measures regarding the use of direct fossil fuel

combustion technologies, and clarifies that a reduction of the energy use through measures under the ETS Directive cannot count towards the fulfilment of the energy savings obligation, and strengthens the additionality requirement regarding taxation measures.

Article 11 shifts the criterion for energy audits and energy management systems from the type of enterprises to the levels of energy consumption and requires a sign off of the audit recommendations by the management of the company. It also requires energy management systems for the largest energy using companies, which are likely to be more effective at ensuring that more cost saving energy saving investments will be made while probably having a lower overall cost burden on the company. Finally, the Article introduces an obligation for the monitoring of the energy performance of data centres with the aim of later establishing a set of “data centre sustainability indicators”.

Article 20 strengthens the protection of consumers introducing basic contractual rights for district heating, cooling and domestic hot water, in line to the rights that the Directive (EU) 2019/944 introduced for electricity.

Article 21 strengthens the obligations towards consumers, in particular the availability and provision of information, the awareness raising measures and the technical and financial advice or assistance offered. Creation of one-stop shops, single points of contact and out-of-court mechanisms for the settlement of disputes are structures that will significantly help to empower customers and final users. Finally, the Article includes obligations to identify and lift barriers relevant to the split incentives between tenants and owners or among owners.

Article 22 refers to the concept of vulnerable customers, which Member States should establish pursuant to Articles 28 and 29 of Directive (EU) 2019/944 and Article 3(3) of Directive 2009/73/EC. Article 22 requires Member States to establish that concept by taking also into account final users, who have no direct or individual contract with energy suppliers.

Article 22 introduces an obligation for Member States to implement energy efficiency improvement measures as a priority among vulnerable customers, people affected by energy poverty and, where applicable, people living in social housing, to alleviate energy poverty. Member States are required to implement energy efficiency improvement measures to mitigate distributional effects from other policies and measures, such as taxation measures implemented according to Article 9 of this Directive, or the application of emissions trading under the EU ETS Directive, and to foster the roll-out of enabling funding and financial tools. Article 22 strengthens the role of expert networks.

Articles 23 and 24 lay down stricter planning and follow up of comprehensive assessments on heating and cooling, including the promotion of local and regional levels. The Articles introduce minimum requirements for efficient district heating and cooling systems, broader cost-benefit requirements and obligations on reuse of waste heat. Minimum requirements for the efficient district heating will be gradually increased with a view to ensure fully decarbonised heat or cooling supply in efficient district heating or cooling systems by 2050. The requirements for the high-efficiency cogeneration will be complemented with a criterion on direct emissions of the CO₂ from cogeneration, when this is not fuelled with renewables or waste.

Article 25 clarifies and enhance the role of National Regulatory Authorities in implementing the ‘energy efficiency first’ principle in the planning and operation of energy networks. It also makes use of the knowledge of ENTSO-E, ENTSG and the EU DSO Entity for monitoring progress. Due to the very high number of system operators, an indirect approach is preferable.

Article 26 clarifies and reinforces the provisions on availability on qualification, accreditation and certification schemes for different energy services providers, energy auditors, energy

managers and installers. New provisions will require Member States to assess the schemes every four years starting as of December 2024.

Article 27 introduces additional requirements to increase the uptake of energy performance contracting.

Article 28 introduces a requirement for Member States to report on energy efficiency investments, including on energy performance contracts concluded (as part of Governance Regulation). Member States will be required to set up project development assistance mechanisms at national, regional and local levels to promote energy efficiency investments to help reaching the higher energy efficiency targets.