

NON-PAPER ON THE IMPLEMENTATION OF THE ENERGY EFFICIENCY DIRECTIVE (2012/27/EU) IN THE ENERGY COMMUNITY

Background

The Ministerial Council of the Energy Community adopted on 24 October 2013 a Recommendation to implement the Energy Efficiency Directive (2012/27/EU) in the Energy Community with certain adaptations. The Ministerial Council also requested the Secretariat of the Energy Community to commission an impact assessment in order to be able to see the effects of the proposed Directive and its adaptations in the Energy Community. Taking into account this work, the Commission envisages making a formal proposal to adopt the EED in the Energy Community in 2015.

To this end the Secretariat of the Energy Community has formulated its view regarding a draft proposal of the text of the legislation to be implemented, an accompanying Impact Assessment and an explanatory note outlining the reason underlying their views.

The Secretariat, in the main, follows the letter of the EED as adopted by the European Union. There are, however, some notable exceptions, which concern Articles 3, 5, 7(2) and 24(7) – 24(11).

The present non-paper deals with Article 3 and Article 24(7) in order to explain the rationale and methodology used for the EED in the EU and presents the Commission's opinion on the draft proposal. This non-paper then identifies a way forward that will allow the Commission to present its formal proposal in the Ministerial Council meeting in Tirana in October.

The proposed modifications of Article 5 (2% renovation rate instead of 3%), and of Article 7 (commitment period running until 2030 instead of until 2020) will not be discussed in this paper.

The 20% objective on energy efficiency and Article 3 of the Energy Efficiency Directive

In 2007 European Council adopted the 20-20-20 targets to be reached by the European Union by 2020 for reducing greenhouse gases emissions, increasing the use of renewables and reducing energy consumption.

With the adoption of the Directive on Energy Efficiency in 2012, the overall and overriding EU 20% energy efficiency target was for the first time quantified in legislation. In fact, Article 3 of the EED states that "the Union's 2020 energy consumption has to be no more than 1483 Mtoe of primary energy or no more than 1086 Mtoe of final energy"¹. On the Union level, these data are based on projections made in 2007 showing a business-as-usual primary energy consumption in 2020 of 1853 Mtoe.

¹ These figures were updated in 2013 to reflect the accession of Croatia to the European Union.

It is worth stressing that the reduction of energy consumption is a target for the whole of the European Union.

Article 3 of the EED goes beyond the quantification in Mtoe of the 20% EU energy efficiency target by 2020. It also requires each Member State to set an indicative national energy efficiency target. These targets can be expressed in the Member State's preferred units - as either primary or final energy consumption, primary or final energy savings, or energy intensity – but must, in addition, be expressed in terms of an absolute level of primary energy consumption and final energy consumption in 2020, with an explanation of how, and on the basis of which data, this has been calculated.

Furthermore, Article 3, together with Article 24(7), sets out the modalities for the Union to check progress towards the target. Article 3(2) requires that, by a given date (30 June 2014), the Commission "shall assess progress achieved and whether the Union is likely to achieve energy consumption of no more than 1483 Mtoe of primary energy and/or no more than 1086 Mtoe of final energy in 2020". According to Article 24(7), this assessment shall be submitted to the European Parliament and the Council accompanied, if necessary, by proposals for further measures. The Commission complied with this requirement by adopting, on 23 July 2014, the Communication on Energy Efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy (COM(2014) 520 final).

It should also be added that Article 24 also includes requirements for Member States and the Commission to follow up on specific other articles in the EED by certain dates, thereby also strengthening the governance of energy efficiency at Union level.

The provisions of Article 3 and Article 24 are as such the overriding basis on which the Commission can prepare proposals for new measures, for instance by proposing to strengthen implementation of existing measures or by concluding that progress is on track.

Articles 3 and 24 seen in conjunction therefore constitute an essential change from the modalities of the methodology in previous EU legislation regarding energy efficiency:

- In the Energy Services Directive there was no overall target that the Member States at the Union level were collectively aiming to meet by a certain date;
- Neither was there in the Energy Services Directive a requirement that the Commission review the effectiveness of the legislation within a certain time period (Article 3(2) EED), with a view to propose further measures (Article 24 (8) EED).

The proposal of the Energy Community to adapt Articles 3 and 24 of the Energy Efficiency Directive

The Secretariat supports transposition of the main body of text from the EED into the Energy Community without changes. However, the Secretariat expressed the view to adapt Article 3 to require each Contracting Party to set a national energy efficiency target of at least 18% by 2025 and 25% by 2030, based on final energy consumption. The adjusted Annex XIV would suggest that the Contracting Parties must calculate and report this target in terms of energy savings.

The Commission notes that such transposition would imply that there is no baseline and there is no overall target for the Energy Community as a whole. Moreover, there is no requirement that the individual Contracting Parties should commit to an energy efficiency target by a certain date. Furthermore the proposal would imply that the adapted Article 24 also foresees no review to track progress toward a target at the level of the Energy Community, neither are there provisions for follow up of other specific articles in the implementation period.

In effect, this approach suggests maintaining the most important features of methodology of the Energy Services Directive (2006/32/EC), namely that targets are expressed in terms of energy savings rather than absolute levels of consumption; there is no midterm review, no commitment to an energy savings target at the Energy Community level and no commitment by the Contracting Parties to individual consumption targets expressed in terms of primary and final energy. This is notwithstanding the fact that implementation of the rest of the EED would be positive compared to the *status quo*.

The negative effect of all of this is to remove the opportunities the new EED methodology offers to ensure that energy efficiency targets are set in a manner that can improve energy efficiency governance at the level of the Energy Community, and not taking the chance to mirror the political ambitions for improved energy efficiency that the Energy Efficiency Directive represents for the EU.

Way forward

The starting point for the calculation of the target for the EU was a set of forecasts for primary and final energy consumption in 2020 made using the Primes model in 2007. The Primes model is an energy market modelling system that simulates a future energy market equilibrium solution, and which is used by the European Commission to model reference scenarios and impacts of policies. The model is maintained by the Technical University of Athens.

The modelling done in Primes in 2007 also includes the majority of what are now the Contracting Parties of the Energy Community, with the exceptions of Ukraine and Moldova).

It would therefore appear possible and appropriate as to use the same basis used for the EU for the calculation of an overall target for 2020 for the Energy Community, making appropriate adjustments to include Ukraine and Moldova.

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The above could provide the basis for a discussion at the upcoming Permanent High-Level Group (PHLG) meeting on 26 March 2015, and would be an basis for the Commission to prepare a draft formal proposal for the following PHLG meeting (24 June 2015) and a formal proposal for adoption of the EED in the Energy Community *acquis* during the Ministerial Council in Tirana in October 2015.

A proposal should also include a review date.

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