

## **Common Position on the Proposal for a Directive of the European Parliament and of the Council on energy efficiency and amending and subsequently repealing Directives 2004/8/EC and 2006/32/EC COM(2011) 370 final of 22.6.2011**

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(description of each in Annex with European Commission Register of Interest Representatives identification number)

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### **SUMMARY**

The parties to this Common Position represent the entire European real estate community: owners, landlords, investors, developers and valuers of all types of buildings, residential and commercial, urban and rural. We value the work done by the Commission to prepare this Proposal. However, it would seem that the Directive fails to take into consideration certain key aspects closely interlinked with the complex nature of rental relations. The result is two – probably unintentional – pieces of drafting which, if not corrected, would cause the gravest harm to building owner-occupiers and landlords of all kinds. They concern too-broad definitions of ‘energy distributor’ and ‘energy supply company’ and the failure to subject the smart metering requirements to technical feasibility and cost-effectiveness safeguards.

#### **1. Too-broad definitions of ‘energy distributor’ and ‘energy supply company’**

Directive 2006/32/EC’s definition has been transferred unchanged to this Directive in new circumstances which make it unclear whether landlords simply passing on energy to tenants might not fall under the definitions and be subject to obligations in the new Directive such as achieving annual energy savings in their buildings equal to 1.5% of their energy sales. Such a requirement – that could never have been intended for landlords in the first place, as is confirmed by the Directive’s supporting documentation – could only be met by means of totally untenable and non cost-effective renovations going far beyond the renovation obligations ensuing from the Energy Performance of Buildings Directive.

**We propose** resolving this by restricting the definitions of ‘energy distributor’ and ‘retail energy sales company’ to natural or legal persons *whose main business* is to transport or sell energy to final customers.

*See comments on Articles 2(7) and 2(9).*

## 2. Failure to subject the smart metering requirements to technical feasibility and cost-effectiveness safeguards

### *Technical feasibility*

Technical feasibility of smart metering installation, maintenance and management is a major challenge for certain types of buildings and types of rooms in buildings sometimes compounded by local conditions such as the effect of calcium in water in many areas on meter functioning and longevity.

A major flaw of both the Directive and its impact assessment is the failure to distinguish between electricity and gas on the one hand and the use of heat on the other. The Swedish government has pointed out that *the use of heat in buildings is dependent on the technical construction of the building rather than the behaviour of the end-user.*

**The Directive should** specifically make technical feasibility a condition for application of its provisions.

### *Cost-effectiveness*

It is clear that the Commission's impact assessment never took account of the full scale of costs in smart metering and above all that it viewed cost-effectiveness largely from the point of view of the tenant and energy supplier/distributor without considering the situation of owner-occupiers and landlords who nonetheless in some member states will have to pay for the installation and the ongoing service outlined by the Commission.

For instance, in Germany (for heating) or Sweden the cost would fall directly to the owner. However, in such countries there is no obligation to proceed with metering obligations that are not cost effective. Why should the Energy Efficiency Directive deprive member states of this reasonable flexibility?

**The Finnish government and the Swedish Association of Public Housing Companies have made smart metering cost calculations that merit attention:** more than a billion euros for Finland and, in Sweden, for public housing alone, a 5 billion SKR investment outlay and at least 350 million SKR in operating costs each year.

**Another fundamental flaw of the Directive and Impact Assessment is the failure to grasp the connection and inevitable trade-off between individual heat metering and other energy saving measures.** If smart/individual metering is made a mandatory requirement, it can suboptimise energy savings planning by rendering investments in other energy saving measures with greater potential economically unfeasible.

**The solution is** to instate a cost-effectiveness safeguard similar to the one that the Commission inserted for energy audits, making sure that it covers not only the initial purchase and installation of the meters, but also the related maintenance, management and replacement costs.

*See comments on Article 8*

## **Other Important Matters**

### **Exemption of historic buildings**

The practical and aesthetic difficulties arising from, inter alia, installation of smart metering are generally far greater in historic buildings. For instance, heritage conservation laws often prevent the owner of a historic building from implementing new energy management systems. Member states should be free to decide on a case by case basis, in consultation with the representative experts of cultural heritage in each country, when a specific historic building would require this exemption and the application of a more flexible range of solutions.

The technical difficulties raised for historic buildings by this Directive, in particular concerning the Article 8 metering and informative billing obligations, are far more complex and burdensome than any of the requirements of the Energy Performance of Buildings Directive. For this reason, the exemption from the Energy Efficiency Directive needs to be somewhat broader than the EPBD's proviso for listed buildings, extending to a wider range of historic buildings.

*See proposal for a new Article 1(3)*

### **Energy audits**

***The definition of 'energy audit' should include operational aspects*** as more than 80% of energy use occurs under the management/operational phase of the buildings.

*See comments on Article 2(12)*

***The frequency of audit renewal should not be less than six years.*** The Proposal's mandatory requirement for three-yearly energy audits is a very burdensome demand on the resources of enterprises and it is unclear what the actual benefit will be, because the new audit will be too similar to the old one after only three years.

*See comments on Article 7(2)*

### **Promotion of efficiency in heating and cooling should be extended to include competition aspects as requested by the European Parliament**

A major bottleneck to the development of district heating is anti-competitive behaviour in member states where grids originally owned and managed by municipalities have been sold to large energy companies which act to maximise profit in a non-regulated monopoly situation where typically a single energy company has total control over 'its' local area. The customers of these companies have little possibility to switch to an alternative source of heating due to costly investments and technical obstacles.

The national heating and cooling plans ensuing from the Energy Efficiency Directive should include an analysis of the competition situation and a plan to address any bottlenecks.

*See comments on Article 10*

**The requirements for planning for efficiency in heating and cooling should not cover new residential zones and should promote competition between alternative energy supply systems rather than buttress district heating monopolies**

EU spatial planning requirements for residential zoning would be too interventionist and prescriptive. They would make it hard for local governments to adapt to demographic evolutions and would endanger the availability of new homes by adversely affecting project viability. There must be no compulsion on planners, owners and developers to choose between CHP or renewables, etc., according to location.

Energy efficiency concerns should cause the Directive to promote competition between alternative energy supply systems (such as heat pumps) rather than buttress district heating monopolies, which is what the Directive does by imposing that residential zones and industrial plants which consume heat in their production processes be connected to the local district heating or cooling network.

*See comments on Annex 7*

**Model contracts for energy performance contracting**

These should be extended to the private sector, as abuse is even more likely there.

Including a provision for a list of penalties for energy service companies failing to achieve guaranteed energy savings would help prevent the problems that have arisen between ESCOs and clients.

*See comments on Article 14 and Annex XIII*

**Energy saving obligation schemes (Annex V)**

Default values and lifetimes should be adapted to different climates, lifetimes of buildings, different legislation on opening hours and, for residential, adapted to vacation homes used only part of the year.

**General framework for reporting (Annex XIV)**

The indicators listed are 'absolute indicators' and therefore do not translate efficiency in a direct form. There should also be another indicator, such as e.g. Total Energy Consumption/GDP, enabling easy comparison of efficiency between member states, i.e. for the same level of GDP, how much each country consumed.

## DETAILED OBSERVATIONS

### Article 1 Subject matter and scope

Commission Proposal	Suggested amendment
<p>1. This Directive establishes a common framework for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union’s target of 20% primary energy savings by 2020 and to pave the way for further energy efficiency improvements beyond that date.</p> <p>It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of national energy efficiency targets for 2020.</p> <p>...</p>	<p>1. This Directive establishes a common framework for the promotion of energy efficiency within the Union, <b><i>taking into account technical feasibility and cost-effectiveness as well as outdoor climate and local conditions and indoor climate requirements</i></b>, in order to ensure the achievement of the Union’s target of 20% primary energy savings by 2020 and to pave the way for further energy efficiency improvements beyond that date.</p> <p>It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of national energy efficiency targets for 2020.</p> <p>...</p> <p><b><i>3. Buildings of special architectural or historical merit shall be exempted from the minimum requirements set by this Directive.</i></b></p>

### Justification

#### Paragraph 1

All terms added here except “technical feasibility” are copied from Article 1 of Directive 2010/31/EU on the Energy Performance of Buildings and they are as necessary here as in that Directive. ‘Technical feasibility’ and ‘cost-effectiveness’ are the most important of all because of the problems raised by the Directive’s provisions for individual metering and billing. See our specific comments on technical feasibility and cost-effectiveness in metering and informative billing (Article 8).

It is also very important that climatic and local conditions be taken into account. For instance, UK work on future performance standards for new homes under the zero carbon policy has shown real variations in the potential energy and carbon saving potential of particular construction details according to local conditions *within the UK*. Clearly the variations in potential will be much greater at the EU level. See our comments on the need to take account of climate variations in energy saving obligation schemes’ default values and lifetimes (Annex V).

**New paragraph 3**

The practical and aesthetic difficulties arising from, inter alia, installation of smart metering are generally far greater in historic buildings. For instance, heritage conservation laws often prevent the owner of a historic building from implementing new energy management systems. Member states should be free to decide on a case by case basis, in consultation with the representative experts of cultural heritage in each country, when a specific historic building would require this exemption and the application of a more flexible range of solutions.

The technical difficulties for historic buildings raised in this Directive, in particular concerning the Article 8 metering and informative billing obligations, are far more complex and burdensome than any of the requirements of the Energy Performance of Buildings Directive. For this reason, the exemption from the Energy Efficiency Directive needs to be somewhat broader than EPBD’s proviso for listed buildings, extending to a wider range of historical buildings.

However, this does not mean that listed buildings cannot be more energy-efficient; as a matter of fact these may often already be better insulated than modern buildings (thicker walls made of stone). It is suggested that an increased energy efficiency for these types of buildings be achieved through the smarter use and management of existing systems (heating, lighting, insulation) and – where technically feasible and cost-effective – the implementation of low-impact technologies which would not compromise the aesthetic and historical value of the building itself.

*Article 2*  
**Definitions**

<b>Commission Proposal</b>	<b>Suggested amendment</b>
7. ‘energy distributor’ means a natural or legal person, including a distribution system operator, responsible for transporting energy with a view to its delivery to final customers or to distribution stations that sell energy to final customers;	7. ‘energy distributor’ means a natural or legal person, including a distribution system operator, <b>whose main business is</b> responsible for transporting energy with a view to its delivery to final customers or to distribution stations that sell energy to final customers;
9. ‘retail energy sales company’ means a natural or legal person who sells energy to final customers;	9. ‘retail energy sales company’ means a natural or legal person <b>whose main business is to sell</b> energy to final customers;
12. ‘energy audit’ means a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identify and quantify cost-effective energy savings opportunities and report the findings;	12. ‘energy audit’ means a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identify and quantify cost-effective energy savings opportunities <b>including operational aspects</b> and report the findings;

## *Justification*

### Articles 2(7) and 2(9)

Across Europe, energy is billed to tenants in many different ways. In many places, it is billed directly to the tenant by the energy supply company, but in others, it is the landlord who bills, either solely for the energy or as part of an overall service charge comprising many elements which, again according to local practice, may be more or less separated and itemised.

The purpose of these amendments is to provide complete legal certainty that landlords billing tenants for the energy supplied to the building are not caught up in Directive-imposed obligations that could never have been intended for them.

The most extreme example is the Article 6 obligation on energy distributors and retail energy sales companies to achieve annual energy savings equal to 1.5% of their energy sales. Obviously, the only way that landlords could achieve this would be via energy performance renovations which of course must only be imposed by law when the owner/landlord chooses to undertake a major renovation as provided for under the Energy Performance of Buildings Directive.

The Article 6(8) exemption for small energy distributors and small retail energy sales companies does not constitute a sufficient safeguard, as it is only a faculty open to member states (“ ‘may’ exempt ”), whereas landlords need unambiguous protection outright – without member states having to undertake any ‘exemption’ – from what would be for them an unfeasible, costly and wasteful obligation going far beyond the EPBD.

*The Directive’s supporting documentation suggests that it was never the intention to cover landlords:*

In none of the Directive’s supporting documentation is there mention of landlords being the intended targets for the obligations of the Directive. Indeed, footnote 33 on page 12 of the Impact Assessment refers to “energy companies” as the umbrella term for “energy distributors, distribution system operators and retail energy sales companies”. This suggests that these definitions are meant to mean Energy Companies rather than anything else.

Similarly, in the introduction to the Directive itself, under “Legal Elements of Proposal – Summary of Proposals” (page 3) it is explained that the Directive places “a series of requirements on **energy companies** regarding metering and billing.” There is no mention of landlord requirements.

This would confirm that the obligations in the Directive are intended for energy companies and this simply needs to be better clarified in the Directive.

### Article 2(12)

Operational aspects are some of the most effective aspects of energy savings. More than 80% of energy use occurs under the management/operational phase of the buildings. Furthermore, with regard to addressing the ‘split incentives’ issue raised by Article 14(1)(a), it is important that there be operational information and recommendations for the landlord to share with the tenant. Finally, including operational aspects in the definition means that all companies tendering to do the audit will have to take them into account, whereas today, tenderers that propose to cover operational aspects can be undercut by competitors that don’t.

*Article 7*  
**Energy audits and energy management systems**

Commission Proposal	Suggested amendment
<p>...</p> <p>2. Member States shall ensure that enterprises not included in the second subparagraph of paragraph 1 are subject to an energy audit carried out in an independent and cost-effective manner by qualified or accredited experts at the latest by 30 June 2014 and every three years from the date of the previous energy audit.</p> <p>...</p>	<p>...</p> <p>2. Member States shall ensure that enterprises not included in the second subparagraph of paragraph 1 are subject to an energy audit carried out in an independent and cost-effective manner by qualified or accredited experts at the latest by 30 June 201<u>5</u> and every <u>six</u> years from the date of the previous energy audit.</p> <p>...</p>

*Justification*

**Paragraph 2**

**Date of initial subjecton to an audit:** Given that the Directive will not be approved until well into 2012, an extra year is needed. Lessons should be learnt from the too-tight implementation deadlines of the Energy Performance of Buildings Directives and the original Energy Services Directive, which were an important contributory cause of shortcomings in national implementation law that led to greater delays down the line. Experience shows that countries that have the most effective implementation require sufficient time for investigations and to enable national regulatory bodies to produce the right requirements and proper guidelines.

**Frequency of audit renewal:** A mandatory requirement for three-yearly energy audits is a significant and potentially very burdensome demand on the resources of enterprises and it is unclear what the actual benefit will be, because the new audit will be too similar to the old one after only three years.

Audits cover both management issues and structural issues. Management changes are relatively easy to implement, but structural changes (floors, roofs, changing function of the building, heavy materials) are expensive and time consuming, especially as implementation of the audit's recommendations requires a cost-benefit study and an executive study preparing a bid with its exact parameters and a budget. On top of these constraints, permits are often required, considerably lengthening the renovation process.

For all these reasons, a minimum six-year gap between audits is necessary so that the follow-up on the audit's recommendations is more likely to coincide with a major renovation. It is of course possible for an enterprise to conduct an audit voluntarily in between the six-year period if it is deemed of value.

*Article 8*  
**Metering and informative billing**

<b>Commission Proposal</b>	<b>Suggested amendment</b>
<p>1. Member States shall ensure that final customers for electricity, natural gas, district heating or cooling and district-supplied domestic hot water are provided with individual meters that accurately measure and allow to make available their actual energy consumption and provide information on actual time of use, in accordance with Annex VI.</p> <p>...</p> <p>2. In addition to the obligations resulting from Directive 2009/72/EC and Directive 2009/73/EC with regard to billing, Member States shall ensure, not later than 1 January 2015, that billing is accurate and based on actual consumption, for all the sectors covered by the present Directive, including energy distributors, distribution system operators and retail energy sales companies, in accordance with the minimum frequency set out in Annex VI(2.1). Appropriate information shall be made available with the bill to provide final customers with a comprehensive account of current energy costs, in accordance with Annex VI(2.2).</p> <p>...</p>	<p>1. Member States shall ensure that, <i>where technically feasible and cost-effective for the investor, including consideration of maintenance, management and replacement costs</i>, final customers for electricity, natural gas, district heating or cooling and district-supplied domestic hot water are provided with individual meters that accurately measure and allow to make available their actual energy consumption and provide information on actual time of use, in accordance with Annex VI.</p> <p>...</p> <p>2. In addition to the obligations resulting from Directive 2009/72/EC and Directive 2009/73/EC with regard to billing, Member States shall ensure, not later than 1 January 2016, that billing is accurate and, based on actual consumption, for all the sectors covered by the present Directive, including energy distributors, distribution system operators and retail energy sales companies, in accordance with the minimum frequency set out in Annex VI(2.1). Appropriate information shall be made available with the bill to provide final customers with a comprehensive account of current energy costs, in accordance with Annex VI(2.2).</p> <p>...</p>

*Justification*

**Paragraph 1(1)**

**The principle of encouraging submetering in tenant demises is to be welcomed. The key questions here are technical feasibility and cost-effectiveness for the investor, including consideration of maintenance, management and replacement costs.**

## 1. Technical feasibility

For the existing building stock, the parameters of the existing Energy End-use Efficiency and Energy Services Directive<sup>1</sup> are there for good reason, avoiding the problems raised by the Commission's new text which is too rigid, depriving member states of the power to adapt metering requirements to local conditions and practices and taking no account of the difficulties raised in many existing buildings. In many cases, there is different piping on every floor, affecting even hot water metering. In many cases, if there is no or insufficient isolation between offices or apartments, some tenants can lower their heating and 'steal' heat from tenants setting higher temperatures. Flow and radiator metering cannot overcome this problem. Temperature metering can, but can lead to difficulties in maintaining the desired temperature.

Installation of intelligent metering can raise significant problems in certain buildings or parts of buildings. Accurate measurement requires space throughout the piping, because a curving pipe creates turbulence which undermines the meter's accuracy. Bathrooms, for instance, do not have this space. The photograph below illustrates the difficulty of installing metering in an existing bathroom. It shows a flow water meter in a trunk switched bathroom, where the meter did not fit into the cassette and therefore special solutions and increased costs were entailed, not to mention the aesthetic factor.



IMD svenskabo

For commercial property, the drawbacks are particularly obvious: How is individual metering to be undertaken in shopping centres or in office buildings where individual tenant space is being modified all the time? But in fact, the fundamental problems of varied piping and poor isolation are at least as strong in residential apartment complexes.

<sup>1</sup> Directive 2006/32/EC Article 13(1): "Member States shall ensure that, in so far as it is technically possible, *financially reasonable and proportionate in relation to the potential energy savings*, final customers for electricity, natural gas district heating and/or cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use."

A major flaw of both the Directive and its impact assessment is the failure to distinguish between electricity and gas on the one hand and the use of heat on the other. **The Swedish government's view merits attention:**

“Sweden welcomes requirements on individual metering and billing of energy use in cases where it makes sense. Electricity and gas are two energy carriers where it makes sense for all end-users, except the smallest ones, since the use of electricity and gas is usually dependent on the behaviour of the end-user. On the contrary, *the use of heat in buildings is dependent on the technical construction of the building rather than the behaviour of the end-user.*

Requirements for individual metering of heat at all end-users would devalue the importance of the recently recast directive on energy performance of buildings. This is the directive that provides for requirement of energy efficiency standards of buildings.

However, individual metering of heat (from central heating or district heating) makes sense for households in single family houses, but less so for households in multi-family houses. Decisions on renovation and improvement of the construction are made by the owner of the building. In single family houses, the household is usually equal to the owner, whilst in multi-family houses the household is usually not the owner of the building.”

“Sweden's remarks to the Energy Efficiency Plan and the forthcoming Energy Efficiency Directive” – Non-paper (available on request)

## 2. Cost-effectiveness

**Smart meters can be cost-effective for tenants and energy distributors, but very often not for owner-occupiers and landlords who nonetheless in some member states will have to pay for the installation and the ongoing service outlined by the Commission.**

The proposed Directive defines objectives or obligations concerning individual meters but does not allocate responsibility for their installation, maintenance and replacement. In some member states, these costs will be assumed by the distribution system operator as part of its operational activities. In other member states, the obligations will fall to the building or home owners, be they landlords or owner-occupiers.

For instance, in Germany or Sweden the cost would fall directly to the owner. However, in such countries there is no obligation to proceed with metering obligations that are not cost effective. In Germany, the Heating Cost Ordinance (“Heizkostenverordnung”) requires metering and pricing of heating and domestic hot water consumption to actual consumption if centralised heating and domestic hot water systems exist. But § 11 of the Heating Cost Ordinance comprises some exceptions e.g. *if the consumption based statement causes unreasonably high costs*. The consumption based cost allocation is in general deemed unreasonable if the costs for the installation of the meters, the maintenance costs and meter reading and the preparation of the statement are higher than the energy cost savings achievable (10 year comparison). Energy consumption is mainly subject to the Energy Industry Act (“Energiewirtschaftsgesetz” /“EnWG”). Since 2010 metering point operators have been obliged to install so called “smart meters” for electricity and gas in new buildings and in case of complete refurbishments, reflecting actual energy consumption and actual consumption time, *if technically possible and economically reasonable* (§ 21 b EnWG). *Why*

*should the Energy Efficiency Directive deprive member states of this reasonable flexibility?*

In the UK, the roll out of smart meters to homes and SMEs is the responsibility of the utility providers. If this was the case for the obligations as set out in this directive, utility companies would have to install sub meters where they do not already exist, upgrade existing sub metering to comply with this directive's requirements, and connect them to a management system to be able to provide the information that is requested. It is likely that if the obligations to install sub metering, and provide the monitoring and billing services as set out in the directive fall to the landlord, the landlord may be able to pass on the costs of the monitoring and billing services via the service charge. However it is not clear as to whether the landlord could pass on the cost of the installation.

If the decision on who is to carry such costs is not to be decided at EU level, the Directive should at least establish safeguards to ensure that individual meters will only be installed when it is cost-effective to do so.

**The calculation of cost-effectiveness should include not only the initial purchase and installation of the meters, but also the related maintenance, management and replacement costs.** Examples:

- In many parts of Europe, hot water contains calcium which blocks meters. This augments maintenance and management costs and reduces the meters' lifespan.
- In district heating buildings with centralised heating, in many apartments there can be four or five pipes common to different rooms. In each different room a separate intelligent meter would be required.

It is because of factors like this that some of the most cutting-edge energy efficient countries like Sweden will suffer from the blanket imposition of the individual metering requirements for the most complex and expensive meters in a planning and building environment where other ways of achieving high energy efficiency results are preferred. Recent experiments with individual metering and billing of heat and water by three large private and municipal housing companies (Swedish Housing, Family Housing & Stockholmshelm) have encountered significant installation problems in existing buildings with potential energy savings not covering operating and investment costs.

**It is clear that the Commission's impact assessment never took account of the full scale of smart metering costs and above all that it viewed cost-effectiveness largely from the point of view of the tenant and energy supplier/distributor without considering the situation of owner-occupiers and landlords.** The impact assessment's vague references to building owners are highly ambiguous and seem to blithely pass the financial responsibility to local authorities with statements such as "*since local residents may not always be financially capable of paying for such up-front investments [NB: maintenance, management and replacement costs are not even considered], such a roll-out [of individual heat meters and electronic heat cost allocators] may require additional public support*" (Commission Impact Assessment SEC(2011) 779 final, paragraph bridging pp.44-45).

**The Finnish government and Swedish Association of Public Housing Companies (SABO; housing companies owned and operated by municipalities) have calculated what this means in real euros and crowns:**

“Apartment-specific heat consumption metering would mean that, **in Finland**, more than a million meters would need to be installed in residential apartments, offices and other accommodation. If implemented using the technology allowed by the Directive, this would lead to **total costs of more than a billion euros.**”

Finnish Ministry of Employment and the Economy – Press Release 166/2011 of 11.8.2011

In Sweden, concerning the municipal housing company stock, about 60 companies have introduced individual metering and charging (IMD) in some form. The number of companies with IMD for heating is about 40 out of approximately 14,000 apartments. IMD for hot water: 55 out of 18,000 apartments. The cost of the introduction of IMD for heating and hot water is estimated at between 6-9 000 SKR per apartment in the existing portfolio. The cost of administration and operation is estimated to be at least 500 SKR per apartment per year (usually more). This means a total installation cost for IMD in SABO member companies of around 5 billion SKR. In addition, an operating cost of at least 350 million SKR annually.

**Another fundamental flaw of the Directive and Impact Assessment is the failure to grasp the connection and inevitable trade-off between individual heat metering and other energy saving measures.** If smart/individual metering is made a mandatory requirement, it can suboptimise energy savings planning by rendering investments in other energy saving measures with greater potential economically unfeasible, in particular from a building owner's point of view.

Certainly, for the distribution system operators, the cost-effectiveness threshold can easily be reached. Investments in smart meters are expected to considerably reduce operational expenditures, through elimination of meter reading costs, reduction of power theft, remote activation and deactivation of service, faster detection of power outages, improved management of bad payers and the provision of dynamic pricing for consumers. For example, in Italy, where the roll-out of smart metering has already been achieved with the Telegestore project, Enel has gained approximately €500 million in yearly savings, with a five year payback period and a 16% internal rate of return (see the Joint Research Centre's Reference Report on Smart Grid projects in Europe: lessons learned and current developments, 2011: [http://publications.jrc.ec.europa.eu/repository/bitstream/11111111/22212/1/smartgridproject\\_s-report\\_final\\_pubsy.pdf](http://publications.jrc.ec.europa.eu/repository/bitstream/11111111/22212/1/smartgridproject_s-report_final_pubsy.pdf)).

An appropriate cost-effectiveness safeguard in the Directive would protect building owners from being obliged to make unsuitable investments, while allowing the scale element of the installation to be taken into consideration. For example, a large UK property company recently installed a management system to interpret and analyse the data received from a building's sub meters. The cost of the management system alone was around £50,000. This kind of investment may not be disproportionate in larger buildings with high energy use and thus the potential to make considerable savings through operation and behavior changes, but for smaller properties this may not be the case. **This is why having a 'cost-effectiveness' safeguard in this Article is as important as in Article 7 on energy audits where it finally appeared after having been absent from previous Commission drafts.** Omission of cost-effectiveness in Article 8 may be an unfortunate oversight.

We would suggest that in instances after 2016 where metering is not technically feasible or cost-effective that member states should consider the provision of benchmarks for non domestic building performance so that where floor area reallocation is used for billing purposes that it is at least more closely aligned with energy use (e.g. taking account of the intensity of occupation, hours of use, special uses such as data centres) rather than a straight floor area allocation. In fact, such benchmarks would also help to ensure that energy audits are more meaningful and could be produced as part of the national occupational standards for energy auditors assuming that energy audits are conducted in an independent manner by qualified or accredited experts as provided for in Article 7(1).

**Paragraph 2(1)**

**Implementation deadline:** Same remarks as in “Date of initial subjection to an audit” under Article 7(2).

*Article 10 (combined with Annex VII)*  
**Promotion of efficiency in heating and cooling**

<b>Commission Proposal</b>	<b>Suggested amendment</b>
<p>1. By 1 January 2014, Member States shall establish and notify to the Commission a national heating and cooling plan for developing the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, containing the information referred to in Annex VII. ...</p> <p>...</p> <p>8. Member States shall adopt authorisation or equivalent criteria to ensure that industrial installations with a total thermal input exceeding 20 MW generating waste heat that are built or substantially refurbished after [the entry into force of this Directive] capture and make use of their waste heat.</p> <p>Member States shall establish mechanisms to ensure the connection of these installations to district heating and cooling networks. They may require these installations to bear the connection charges and the cost of developing the district heating and cooling networks necessary to transport their waste heat to consumers.</p>	<p>1. By 1 January 2014, Member States shall establish and notify to the Commission a national heating and cooling plan for developing the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, <b>including competition aspects</b>, containing the information referred to in Annex VII. ...</p> <p>...</p> <p><b>See note below</b></p>

## Justification

### Paragraph 1

Parliament's Resolution of 18 November 2010 on revision of the EEAP contained the following:

“Underlines that district heating and cooling networks contribute to achieve a energy-efficient economy by 2050 and stresses that an explicit and comprehensive strategy for heat generation and use (industrial heat, domestic heating, cooling) is needed (including a method of multi-fuel benchmarks for district heating and cooling networks) that builds on synergies between sectors; calls on the Commission to undertake an inquiry on increasing their efficiency; ***stresses that these networks must be open to competition***; notes that improvements to the energy efficiency of the housing stock will lead to a reduction in heat demand which should be factored in when assessing district heating capacity;” (Paragraph 16)

It is important that Parliament's Resolution be given substance in the Energy Efficiency Directive.

A major bottleneck to the development of district heating is anti-competitive behaviour in member states where grids originally owned and managed by municipalities have been sold to large energy companies which act to maximise profit in a non-regulated monopoly situation where typically a single energy company has total control over 'its' local area. The customers of these companies have little possibility to switch to an alternative source of heating due to costly investments and technical obstacles.

Opening district heating networks to competition would give several substantial improvements:

- Competition will make district heating even more attractive as an important method of making the EU more energy efficient and less dependent on fossil fuels.
- As a result of competition, the incentives to use industrial heat (waste heat) in district heating systems will improve. That, too, will lead to higher energy efficiency and reduce the use of primary energy within the Union.
- As a result of increased use of district heating the EU will improve its efforts in lowering its green house gas emissions by 2020.
- Consumers' position will be strengthened, increasing their pressure on energy companies to be more cost effective, environmentally friendly and innovative.

***The national heating and cooling plans ensuing from the Energy Efficiency Directive should include an analysis of the competition situation and a plan to address any bottlenecks.***

### Paragraph 8

Note that in some countries the monopolistic situation does not enable the connection between industrial plants and district heating to happen. This, too, should be part of the competition analysis in the national plan.

**ANNEX VII**  
**Planning for efficiency in heating and cooling**

Commission Proposal	Suggested amendment
<p>...</p> <p>3. Urban spatial plans shall be designed to ensure that:</p> <p>...</p> <p>b) new residential zones or new industrial plants which consume heat in their production processes are located in sites where a maximum amount of their heat demand will be met by the available waste heat, as identified in national heating and cooling plans. To ensure an optimal matching between demand and supply for heat and cooling, spatial plans shall favour the clustering of a number of industrial plants in the same location;</p> <p>c) thermal electricity generating installations, industrial plants producing waste heat, waste incineration plants and other waste-to-energy plants are connected to the local district heating or cooling network;</p> <p>d) residential zones and industrial plants which consume heat in their production processes are connected to the local district heating or cooling network.</p>	<p>...</p> <p>3. Urban spatial plans shall be designed to ensure that:</p> <p>...</p> <p>b) <del>new residential zones or</del> new industrial plants which consume heat in their production processes are located in sites where a maximum amount of their heat demand will be met by the available waste heat, as identified in national heating and cooling plans. To ensure an optimal matching between demand and supply for heat and cooling, spatial plans shall favour the clustering of a number of industrial plants in the same location;</p> <p><i><b>new c) taking into account the scale of the new residential development, consideration is given to taking advantage of the supply of available waste heat where compatible with wider planning policy considerations for housing.</b></i></p> <p>d) thermal electricity generating installations, industrial plants producing waste heat, waste incineration plants and other waste-to-energy plants are connected to the local district heating or cooling network;</p> <p><del>d) residential zones and industrial plants which consume heat in their production processes are connected to the local district heating or cooling network.</del></p>

*Justification*

The obligatory imposition at EU level of spatial planning requirements concerning residential zoning is too interventionist and prescriptive. It would make it hard for local governments to adapt to demographic evolutions and would endanger the availability of new homes by adversely affecting project viability. There must be no compulsion on planners, owners and developers to choose between CHP or renewables, etc., according to location.

It should also be borne in mind that future new homes are likely to have a low requirement for conventional space heating due to their high levels of fabric energy efficiency arising from the performance standards necessary to comply with the revised Energy Performance of Buildings Directive.

Furthermore, imposing the location of new residential zones near existing energy-generating facilities might risk exacerbating the phenomenon of ‘urban sprawl’.

Finally, energy efficiency concerns should cause the Directive to promote competition between alternative energy supply systems (such as heat pumps) rather than buttress district heating monopolies, which is what paragraph d) does by imposing that residential zones and industrial plants which consume heat in their production processes be connected to the local district heating or cooling network.

*Article 14 (combined with Annex XIII)*  
**Energy Services**

<b>Commission Proposal</b>	<b>Suggested amendment</b>
<p>Member States shall promote the energy services market and access for small and medium-sized enterprises to this market by:</p> <p>...</p> <p>b) providing model contracts for energy performance contracting in the public sector; these shall at least include the items listed in Annex XIII;</p> <p>...</p>	<p>Member States shall promote the energy services market and access for small and medium-sized enterprises to this market by:</p> <p>...</p> <p>b) providing model contracts for energy performance contracting <b><i>in the public sector</i></b>; these shall at least include the items listed in Annex XIII;</p> <p>...</p>

*Justification*

b) Abuse is even more likely in the private sector.

**ANNEX XIII**

**Minimum items to be included in energy performance contracts *with the public sector***

- Clear and transparent list of the efficiency measures to be implemented.
- Guaranteed savings to be achieved by implementing the measures of the contract.
- ***Clear and transparent list of penalties applicable if the guaranteed savings are not achieved.***
- Duration and milestones of the contract, terms and period of notice.
- Clear and transparent list of the obligations of each contracting party.
- Reference date(s) to establish achieved savings.
- Clear and transparent list of steps to be performed to implement a measure and associated costs.
- Obligation to fully implement the measures in the contract and documentation of all changes made during the project.
- Regulations specifying the inclusion of third parties (subcontracting).
- Clear and transparent display of financial implications of the project and distribution of the share of both parties in the monetary savings achieved (i.e. remuneration of the service provider).

- Clear and transparent provisions on measurement and verification of the guaranteed savings achieved, quality checks and guarantees.
- Provisions clarifying the procedure to deal with changing framework conditions that affect the content and the outcome of the contract (i.e. changing energy prices, use intensity of an installation).
- Detailed information on the obligations of each of the contracting parties.

### *Justification*

For the extension of the provision's scope to the private sector: These minimum items are even more necessary in the private sector.

For the list of penalties if savings are not achieved:

There has been a lot of trouble between energy service companies and their clients. Reasons were weak contractual arrangements, unfair share between ESCO and client and guarantees which in the end could not be exercised. The provision under the Directive of penalties for ESCOs when the (guaranteed) energy savings are not met could protect customers of those services and will prevent part of the problems.

## **ANNEX V** **Energy saving obligation schemes**

### **3. Default values, and 4. Default lifetimes**

Should be adapted to different climates, lifetimes of buildings, different legislation on opening hours and, for residential, adapted to vacation homes used only part of the year.

## **ANNEX XIV** **General framework for reporting**

The indicators listed are 'absolute indicators' and therefore, in our view, do not translate efficiency in a direct form. There should also be another indicator, such as e.g. Total Energy Consumption/GDP, enabling easy comparison of efficiency between member states, i.e. for the same level of GDP, how much each country consumed.



## ANNEX

### About the Parties to the Common Position

*Name followed by Commission Register of Interest Representatives identification number*

#### **European Landowners' Organization (ELO) 36063991244-88**

Created in 1972, ELO promotes a prosperous and attractive European Countryside. ELO is a unique federation of national associations from the EU27 and beyond which represents the interests of landowners, land managers, rural entrepreneurs and family businesses. It targets its actions on land use and housing, via seven major areas of European importance: environment, renewable energy, agriculture and rural development, status of private property and companies, forest, enlargement and trade. [www.elo.org](http://www.elo.org)

#### **European Property Federation (EPF) 36120303854-92**

EPF represents all aspects of property ownership and investment: residential landlords, housing companies, commercial property investment and development companies, shopping centres and the property interests of the institutional investors (banks, insurance companies, pension funds). Its members own property assets valued at € 1.5 trillion, providing and managing buildings for the residential or service and industry tenants that occupy them. Through its member the **European Union of Developers and House Builders (UEPC)**, it represents more than 30.000 developer and house building companies that annually build and develop several million m<sup>2</sup> of offices and shopping centres as well as more than 1.000.000 new homes. [www.epf-fepi.com](http://www.epf-fepi.com) / [www.uepc.org](http://www.uepc.org)

#### **International Union of Property Owners (UIPI) 57946843667-42**

UIPI is an international not-for-profit association founded in 1923 that defends the interests of private individual property owners in Europe. Through its 27 national member organisations, the UIPI represents about 5 million private homeowners & landlords, owning 15 to 20 million dwellings in 25 European countries. The UIPI is involved in many issues, including general housing; taxation and inheritance concerns; technical matters and new regulations such as energy saving in buildings; the private rented agenda; as well as universal consumer rights and social responsibilities. The UIPI also supports property restitution and defends the fundamental human right to own property. [www.uipi.com](http://www.uipi.com)

#### **The European Group of Valuers' Associations (TEGoVA)**

TEGoVA is the European umbrella organisation of national valuers' associations, covering 45 professional bodies from 27 countries comprising specialist consultancies, major private sector companies and government departments both local and national. Its main objectives are the creation and spreading of harmonised standards for valuation practice, for education and qualification as well as for corporate governance and for ethics for valuers. It speaks with a common voice on valuation to European legislators and policy makers. [www.tegova.org](http://www.tegova.org)

#### **Union of European Historic Houses Associations (UEHHA) 65788865841-25**

UEHHA is an umbrella organisation for national historic houses associations, promoting the interests of Europe's privately-owned historic houses, parks and gardens and their contents. It represents about 50.000 major historic houses across Europe. The UEHHA promotes European cooperation in the conservation of historic houses and gardens, and participates actively on several European issues such as culture and education, environment, tourism, security, energy and VAT. [www.uehha.org](http://www.uehha.org)