

Mr Miguel Arias Cañete  
Member of the European Commission

Brussels, 26 October 2015

Dear Commissioner,

**Revision of the Energy Performance of Buildings Directive and Possible Consolidation of EPBD and the Building-specific Provisions of the Energy Efficiency Directive**

The signatories to this letter represent a vast proportion of the organised European private real estate sector: owners, landlords, developers and investors, residential and commercial, rural and urban as well as the valuation profession (*description of each party in Annex II*). We have worked with Commission, Council and Parliament on energy performance of buildings since the inception fifteen years ago and are proud to have made important contributions to this pillar of EU climate action policy.

Real estate and in particular housing are policy areas that so deeply affect the lives of many tens of millions of European owners and landlords that they place a special obligation on the EU – and in the first instance on the Commission – to do everything possible to ensure that direct costs and administrative burdens for citizens ensuing from EU law are kept to the absolute minimum necessary to achieve the objective of the law. By its closeness and relevance to EU citizens, the property sector can indeed be viewed as the ultimate litmus test of the Juncker Commission's commitment to Better Regulation.

In our view, there are three elements to this obligation when reviewing policy: efficacy/subsidiarity testing, future proofing and accommodating local real estate market particularities:

- Efficacy and subsidiarity testing and in the event of failure, abrogation of the failed provisions: In our considered view, the Directive's provisions on recommendations for building energy efficiency improvements in energy performance certificates (EPCs) have clearly failed this test and should be abrogated.
- Future proofing: By their very nature, given the difficulties of the EU consultation and legislative process, Directives must be designed to last, and in order to last in an age of rapid technological progress they must be future proofed, i.e. the Commission must ensure that its provisions have the flexibility to accommodate easier, less costly and burdensome ways of achieving the same objective when these means become available. Below, we explain that technology already deployed by some member states enables production of an EPC without recourse to an expert.
- More generally, the Commission should positively view revision of the certification provisions as an opportunity to seek ways to render the Directive flexible enough to accommodate local real estate market particularities that enable more cost-effective

certification. We highlight this with a proposal for single EPCs for housing company building complexes.

*In short, the certification articles need to be systematically reviewed to identify all opportunities for EPC simplification.*

We also believe that in reviewing its energy efficiency policy for buildings, the Commission should seize the opportunity to facilitate pan-European commercial property investment and highlight the importance of EU law as the underpinning of the Internal Market for Real Estate. We propose that the next Directive should enable member states to allow the use of the Directive's voluntary common EU certification scheme for the energy performance of non-residential buildings as an alternative to national schemes.

Finally, in the event that the Commission would seek to consolidate EPBD and the building-specific provisions of the Energy Efficiency Directive, the Commission should profit to rebalance the EED's building renovation article to include cost-effective, incremental, step by step energy efficiency improvements as this last minute Trilogue provision completely missed one of the most important means of promoting energy efficiency.

**1. The special obligation on the Commission to do everything possible to ensure that direct costs and administrative burdens for citizens ensuing from EU law are kept to the absolute minimum necessary to achieve the objective of the law**

***1.1 Efficacy and subsidiarity testing and in the event of failure, abrogation of the failed provisions – Proposal to abrogate the Directive's provisions on recommendations for building energy efficiency improvements in EPCs***

One element of EPBD has proven to be a serious mistake, made worse by the recast: the recommendations for building energy efficiency improvements that must be included in the energy performance certificate (EPC). Even the most energy-sophisticated governments have been unable to implement it and it is causing substantial trouble and cost to millions of EU home owners and landlords many of whom are now aware that this burden is of EU origin. *This provision is the main reason for the escalation of certification costs for property owners in those states that actually attempted to implement* (they are what led to the Citizen's Initiative in Finland demanding that the entire EPC obligation simply be withdrawn for detached houses – taken up by the Finnish Parliament and raised by the Housing Minister with your predecessor). It explains why other member states haven't even tried to implement properly and allow €15 EPCs to be sold on eBay.

*This has happened because the legislation is fundamentally flawed:* Buildings are comprised of many systems which interact with each other closely e.g. indoor climate and energy use are interrelated. Energy experts need knowledge and qualifications in many disciplines to be able to make cost-effective suggestions for enhancing energy efficiency in buildings. No expert understands all building systems. Rather, there are experts in different disciplines such as construction, heating, cooling & ventilation experts, expertise in building physics, building economics and more. To expect a single energy expert to master all disciplines and suggest cost effective measures bears no relation to reality. Even in the most energy-sophisticated

states the suggestions made are general and do not correspond to the conditions prevailing in the actual building. The energy certification 'expert' should only establish the requirements for the energy certificate and let the property owner decide whom he wishes to consult for energy efficiency proposals.

A concrete example from one of the most energy-advanced member states: an audit by the Swedish National Audit Office revealed that property owners get little advice for the money they spend on EPCs. 48% of all certificates do not include any recommendations for measures. In 25% of cases, the building was actually inspected but without any measures being proposed. And in 7% of cases, measures to enhance energy efficiency were proposed in the EPC even though the building had not been inspected. The audit questioned whether the benefit building owners derive from the energy-performance certificate justifies the price they pay for it. And this despite the Swedish approach to revising the regulations after the recast of the Directive and making them more stringent in many ways such as mandatory onsite inspections of the building before the certificate is issued, making the national Board of Housing, Building and Planning responsible for administrating the national register and follow up of the energy declarations and changes in the certification of energy experts. All this has increased the burden on property owners without any significant change in the quality of the certificates.

Politically, the effect is deleterious because it has created popular negativity about EPCs and EPBD in general and not just about the building improvement recommendations at the heart of the problem.

*EU law should never have gone into such technically unfounded prescriptive detail concerning a direct obligation and cost for citizens.*

There is no dishonour for the Commission in recognising that a single element of the EU's world-leading energy efficiency and climate policy is flawed. There is an absolute obligation on Commission, Council and Parliament to do in such circumstances what any national government and legislature would do: abrogate failed law.

The solution is to delete paragraphs 2, 3 and 4 of Article 11 from the next EPBD (*see Annex I*).

### ***1.2 Future Proofing – Enabling elimination of the expert from the EPC production process***

Under the current EPBD, there is an absolute obligation on the owner to ensure that the energy performance certification is carried out by a qualified and/or accredited expert. And yet, if, as proposed above, the EU obligation is restricted to enabling assessment and comparison of performance and not adding on recommendations for improvement measures, it is already possible to produce an operational performance assessment and comparison certificate without recourse to any expert at all.

All that is needed is data on the electricity, heating and cooling used by the building. All three values can be supplied by either the energy company or via internet. They can be sent to a central database – for example, in Sweden, the database owned and managed by the National

Board of Housing, Building and Planning under the Ministry of Industry – and the database generates an EPC on the basis of the calculated values. Today, the expert supplies the values to the database. In future, either the energy company or the owner can supply the values and generate the certificate.

Indeed, the Commission should positively welcome this opportunity to reduce recourse to experts given the increasing evidence of the unreliability of current ‘expertise’ even for the core task of establishing the building’s energy rating. Attached is a just-released German study in which ten different experts were commissioned to produce an EPC for the same building. The energy performance indicators varied from F to C.

The text of the new EPBD should be drafted flexibly enough to accommodate such circumstances when they arise whilst retaining just as strict an obligation to use an expert when these conditions are not in place.

*See the proposed amendments to the Directive’s Article 17 and Annex I(1) in our Annex I*

***1.3 More generally, the Commission should positively view revision of the certification provisions as an opportunity to seek ways to render the Directive flexible enough to accommodate local real estate market particularities that enable more cost-effective certification.***

For example, a large segment of the Nordic housing stock is made up of housing companies with two or more buildings which are coupled with a technical building system or connected to the same energy metering system, e.g. district heating, electricity or gas. These can effectively accommodate a single EPC for the building complex. Experts from our member associations and government ministries can help the Commission to understand the technical aspects and find the wording to adapt the Directive.

*Beyond these three cases, the certification articles need to be systematically reviewed to identify all opportunities for EPC simplification.*

**2. An opportunity to facilitate pan-European commercial property investment and highlight the importance of EU law as the underpinning of the Internal Market for Real Estate – Enabling member states to allow the use of the Directive’s voluntary common EU certification scheme for the energy performance of non-residential buildings as an alternative to national schemes**

Another high priority for the Commission should be to complete the work leading to the adoption of a voluntary common EU certification scheme for the energy performance of non-residential buildings as provided for by Article 11(9) EPBD. The development of the necessary methodology will allow benchmarking of national methodologies, working as a soft tool to pressure member states to enhance their national methodologies and redefine adequate targets. Indeed, apart from benefitting large scale cross-border commercial investors seeking comparability of building performance across member states, a successful commercial scheme may contain broader lessons for the improvement of suboptimal EPCs in some member states.

Sadly, on this matter the Commission – the Institution Treaty-bound to ensure the application of EU law – has missed the Article 11(9) deadline of 2011 for completion of its own work and is still bogged down in studies and consultancy contracts despite the encouragement and assistance that we have offered from the inception. *We remain available to demonstrate that this exercise is much more straightforward than the Commission's external experts contend.*

A common EU EPC for commercial buildings is so attractive both politically and technically in terms of combining energy efficiency certification with commercial real estate practice that the next Directive should enable member states to allow the use of this scheme/methodology as an alternative to national schemes (*see our proposed new version of Art. 11(9) in Annex I*).

**3. In the event that the Commission would seek to consolidate EPBD and the building-specific provisions of the Energy Efficiency Directive, the Commission should profit to rebalance the EED's building renovation article to include cost-effective, incremental, step by step energy efficiency improvements**

At the midnight hour in the Trilogue negotiations, EED Article 4 on Building renovation was agreed in order to compensate Parliament for Council's watering down of the provisions on quantitative renovation of the public building stock. The quality of Article 4 suffers from this 'pressure cooked' drafting.

The Article sets forth a long-term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private, that encompasses, inter alia: "policies and measures to stimulate deep renovations of buildings, including staged deep renovations".

It was a serious mistake not to give cost-effective, incremental, step by step energy efficiency improvements the same status in this provision, as they are the only way of achieving substantial short- to medium-term energy efficiency gains, especially in the housing stock.

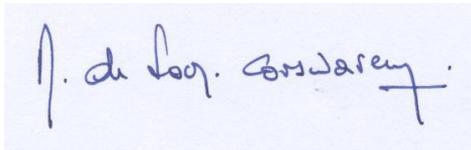
Another reason for promoting cost-effective, incremental, step by step improvements is the political and economic constraints on any further EU foray into deep renovation. A deep renovation requirement is likely to trigger a massive increase in compulsory energy efficiency renovation by vastly augmenting the number of renovations that top the EPBD 'percentage of building value' threshold. It is politically unacceptable for EU regulation to directly impose massive deep renovation at direct cost to EU citizens when even leveraged EU funding can't come near to covering the cost. It is also economically counterintuitive and counterproductive because the works will not be done, or the owners will spread the investment over time in order to avoid compulsory obligations. When EU law generates an entire 'avoidance culture' it is a sure sign that it has overreached.

Cost-effective, incremental, step by step improvement is also often the best way of approaching energy efficiency in the vast European historical housing stock. The upkeep of these pillars of European culture and tourism causes a specific form of poverty to the owners and by their nature historic homes are less receptive to deep renovation, staged or not. Strategies must be developed to underpin this sector as well.

EED Article 4 has led to a whole process by which Commission and member states examine, compare and test the components of national strategies. This should include national strategies for facilitating cost-effective, incremental, step by step energy efficiency improvements to the vast building stock that inevitably can only be renovated gradually.

We would be grateful for the opportunity to meet with you to discuss our proposed reforms, all of which we are convinced will help make buildings legislation as attractive to EU citizens as the rest of EU climate action policy.

Yours sincerely,



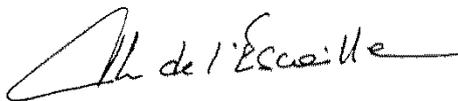
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Chairman  
The European Group of Valuers'  
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## *Annex I*

### **Proposed amendments to Directive 2010/31 EU on the Energy Performance of Buildings and, in the event of consolidation of the Directive with the building-specific parts of Directive 2012/27/EU on Energy Efficiency, proposed amendments to EED Article 4 on Building Renovation**

#### *Article 11 EPBD*

#### **Energy performance certificates**

1. Member States shall lay down the necessary measures to establish a system of certification of the energy performance of buildings. The energy performance certificate shall include the energy performance of a building and reference values such as minimum energy performance requirements in order to make it possible for owners or tenants of the building or building unit to compare and assess its energy performance.

The energy performance certificate may include additional information such as the annual energy consumption for non-residential buildings and the percentage of energy from renewable sources in the total energy consumption.

~~2. The energy performance certificate shall include recommendations for the cost-optimal or cost-effective improvement of the energy performance of a building or building unit, unless there is no reasonable potential for such improvement compared to the energy performance requirements in force.~~

~~The recommendations included in the energy performance certificate shall cover:~~

~~(a) measures carried out in connection with a major renovation of the building envelope or technical building system(s); and~~

~~(b) measures for individual building elements independent of a major renovation of the building envelope or technical building system(s).~~

~~3. The recommendations included in the energy performance certificate shall be technically feasible for the specific building and may provide an estimate for the range of payback periods or cost-benefits over its economic lifecycle.~~

~~4. The energy performance certificate shall provide an indication as to where the owner or tenant can receive more detailed information, including as regards the cost effectiveness of the recommendations made in the energy performance certificate. The evaluation of cost effectiveness shall be based on a set of standard conditions, such as the assessment of energy savings and underlying energy prices and a preliminary cost forecast. In addition, it shall contain information on the steps to be taken to implement the recommendations. Other information on related topics, such as energy audits or incentives of a financial or other nature and financing possibilities may also be provided to the owner or tenant.~~

5. Subject to national rules, Member States shall encourage public authorities to take into account the leading role which they should play in the field of energy performance of buildings, inter alia, by implementing the recommendations included in the energy performance certificate issued for buildings owned by them within its validity period.
6. Certification for building units may be based:
  - (a) on a common certification of the whole building; or
  - (b) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building.
7. Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate.
8. The validity of the energy performance certificate shall not exceed 10 years.
9. ~~The Commission shall, by 2011, in consultation with the relevant sectors, adopt a voluntary common European Union certification scheme for the energy performance of non-residential buildings. That measure shall be adopted in accordance with the advisory procedure referred to in Article 26(2). Member States are encouraged to recognise or use the scheme, or use part thereof by adapting it to national circumstances.~~ ***Member States may allow adoption by non-residential building owners of the voluntary common European Union certification scheme for the energy performance of non-residential buildings adopted under Commission Decision n° ... of ... as an alternative to their national certification schemes.***

#### Article 17 EPBD

#### Independent experts

***Unless a government-approved databank exists enabling energy performance certification without the intervention of an expert,*** Member States shall ensure that the energy performance certification of buildings and the inspection of heating systems and air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts, whether operating in a self-employed capacity or employed by public bodies or private enterprises.

Experts shall be accredited taking into account their competence.

Member States shall make available to the public information on training and accreditations.

Member States shall ensure that either regularly updated lists of qualified and/or accredited experts or regularly updated lists of accredited companies which offer the services of such experts are made available to the public.

### *Annex I EPBD*

Common general framework for the calculation of energy performance of buildings  
(referred to in Article 3)

1. The energy performance of a building shall be determined on the basis of the calculated or actual annual energy that is consumed in order to meet the different needs associated with its typical *or operational* use and shall reflect the heating energy needs and cooling energy needs (energy needed to avoid overheating) to maintain the envisaged temperature conditions of the building, and domestic hot water needs.

### *Article 4 EED*

#### **Building improvement and renovation**

Member States shall establish a ~~long-term~~ strategy for mobilising investment in the *improvement and* renovation of the national stock of residential and commercial buildings, both public and private. This strategy shall encompass:

- (a) an overview of the national building stock based, as appropriate, on statistical sampling;
- (b) identification of cost-effective approaches to renovations relevant to the building type and climatic zone;
- (c) policies and measures to stimulate *cost-effective incremental step by step energy efficiency improvements and* deep renovations of buildings, including staged deep renovations;
- (d) a forward-looking perspective to guide investment decisions of individuals, the construction industry and financial institutions;
- (e) an evidence-based estimate of expected energy savings and wider benefits.

A first version of the strategy shall be published by 30 April 2014 and updated every three years thereafter and submitted to the Commission as part of the National Energy Efficiency Action Plans.



## *Annex II*

### **About the Parties to this Letter**

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

#### **European Historic Houses Association (EHHA) 594015610806-90**

An umbrella organisation for national historic houses associations, promoting the interests of Europe's privately-owned historic houses, parks and gardens and their contents. The organisation promotes European cooperation in the conservation of historic houses which are most of the time SME's. The Association brings together 18 national members and represents more than 50,000 historic houses in Europe and supports actively its members' interests on several European issues such as culture and education, VAT, energy and environment, tourism, and security.

[www.europeanhistorichouses.eu](http://www.europeanhistorichouses.eu)

#### **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. Owing to the rural nature of property ownership and as a result of planning restrictions in member countries, the ELO is acutely aware of issues linked to Solid Walled properties. [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. [www.epf-fepi.com](http://www.epf-fepi.com)

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

UIPI is a pan-European not-for-profit association comprising 30 organisations from 28 countries. Jointly, they represent more than 5 million private property owners and some 20 to 25 million dwellings. Founded in 1923, the UIPI aims at protecting and promoting the interests, needs and concerns of private landlords and owner-occupiers at national, European and international levels. 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. [www.uiipi.eu](http://www.uiipi.eu)

#### **The European Group of Valuers' Associations (TEGoVA) 070444714545-60**

TEGoVA is the European organisation of national valuers' associations, covering 63 professional bodies from 34 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)

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