



May 2017  
AK Position Paper

EU-Energy Package „Clean Energy for All Europeans“:  
Directive on energy efficiency and  
Directive on the energy performance of buildings

## About us

**The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske  
President

Christoph Klein  
Director

## Executive Summary

The European Union's existing legislation is based on an energy efficiency target of 20% by 2020. This target is now to be reset for the period to 2030. In 2014, the European Council agreed on a figure of at least 27% by 2030 and called on the Commission to examine this target with a view to potentially increasing it to 30%. The proposal that has now been presented by the EU Parliament and EU Council envisages a binding **energy efficiency target of 30% by 2030**.

The BAK believes that increasing energy efficiency is the corner stone to meeting energy and climate change targets. Energy efficiency also plays a supporting role in achieving objectives such as alleviating energy poverty, improving the competitiveness of industry, and ensuring security of supply.

With regard to this proposed revision, the BAK would like to begin by referring to the corresponding Directive 2012/27/EU on energy efficiency, on which the BAK stated its position on 5 August 2011. The statements and proposals made at that time remain valid. The BAK takes the view that it is unacceptable for the transport sector, which is one of the largest energy consumers and greenhouse gas emitters, to be excluded from the calculation basis for 2020. The proposed amendments for 2030 also do not provide for the compulsory inclusion of this sector. According to the European Environment Agency the transport sector (excluding international air and sea transport) was responsi-

ble for 21% of total EU-28 emissions in 2014. In Austria, the transport sector is the largest energy consumer, with a share of 34.5% (2014). Without this sector, the Directive is in danger of being ineffective. **Therefore, BAK strongly urges for the compulsory integration of the transport sector when setting the targets for 2030.** EU legislation on the reduction of CO<sub>2</sub> emissions from cars and light commercial vehicles does not represent a workable alternative to including road transport in the Energy Efficiency Directive because it does not contribute to improving energy efficiency. There is now evidence that more and more vehicle manufacturers have been undermining the targets through manipulative practices.

However, the BAK takes a positive view of the fact that the present proposal provides for a **binding EU-wide increase in energy efficiency of 30% by 2030**, expressed in the form of an absolute energy-saving target, measured in primary and final energy. This is of key importance because absolute targets are needed to prevent rebound effects. Otherwise, improvements in energy efficiency will be cancelled out by increased consumption.

However, it is regrettable that for 2030 – as for 2020 – **no binding targets have been set at Member State level** and a complicated governance system is supposed to coordinate and monitor the measures in the Member States. Experience with comparable programmes shows that the targets will not be met

through voluntary measures. Binding targets provide legal certainty, safeguard investments, and are a positive driver in the market for energy efficiency services.

For the first time, the **alleviation of energy poverty** is made a priority, something that is expressly welcomed by the BAK. The Austrian Energy Efficiency Act of 2012 already includes comparable provisions, many of which have been included as a result of the BAK's demands.

From a consumer perspective the planned improvements to metering arrangements represent a step in the right direction. However, the BAK opposes the Commission's proposals on the provision of individual smart meters for measuring heating consumption. These entail high costs but provide individual consumers with few or no benefits. This particularly applies to passive houses and low-energy buildings, where heating costs may be lower than the cost of metering them. **The BAK categorically rejects the compulsory introduction of remotely readable meters and cost allocators from 1 January 2020.**

# The AK's position in detail

## Article 3 – Energy efficiency targets

As previously stated, **the BAK is in favour of setting binding and absolute targets for 2030, including at Member State level.** This will ensure that every Member State makes its contribution to achieving the EU-wide energy efficiency targets without complicated governance and monitoring mechanisms and, in this way, supports broader objectives such as ensuring security of supply, strengthening the European Economic Area, and achieving sustained reductions in energy costs for private households and businesses. Setting such targets for every Member State would ensure that the targets are reached at aggregate level, despite the application of potential exemptions in certain areas of energy saving obligations.

## Article 7 – Energy savings obligation

As already applies to the period 2014 to 2020, the Member States are required to achieve savings of 1.5% of the annual energy sales to end customers in the period 2021 to 2030. In order to do this, they can either use energy efficiency obligation schemes, alternative measures, or a combination of the two. However, this target is massively diluted by the fact that Member States will be allowed to wholly or partially exclude energy consumption in the transport sector from this calculation. **The BAK is strongly opposed to the exclusion of the transport sector.**

Furthermore, Member States can reduce their savings obligation by 25%, for ex-

ample by removing energy from the calculation for the **energy saving obligation that is produced through the installation of renewable energy technology** on or in buildings (e.g. photovoltaics and biomass). **The BAK is particularly critical of this option:** Energy efficiency relates to energy savings and represents a target in its own right. The expansion of renewable energy technology is supported by the EU Renewables Directive. It is not sensible to mix up targets, as this can lead to them being watered down. The BAK argues that this option should be removed. **The BAK rejects the option of reducing the energy saving obligation by taking into account early actions** because these energy efficiency measures have already been taken into account as early actions in the period from 2014 to 2020. This exception should not apply to the period to 2030.

## Article 7a – Energy efficiency obligation schemes

The BAK believes that energy efficiency schemes that oblige energy traders and suppliers to implement energy saving measures are the most effective. Austria has decided in favour of meeting the provisions of Directive 2012/27/EU for this scheme, and energy traders are obliged to put in place energy efficiency measures. The BAK believes this scheme is the most effective method as long as it is correctly implemented and effectively monitored.

**The BAK explicitly welcomes the fact that the Member States are obliged to include social criteria in their obligation**

**schemes.** Until now, this has been done on a voluntary basis. The BAK believes that increasing energy efficiency and hence sustained reductions in energy consumption and energy costs is one of the most effective ways of preventing energy poverty.

### Article 9 – Metering for gas

In the gas sector, the Member States should provide individual meters that record actual energy consumption and time of use. However, this obligation only exists if it is technically feasible, financially reasonable and proportionate in relation to the potential energy savings. The exact meaning of the term “individual meters” remains unclear. Smart meters fulfil these criteria, but, strictly speaking, so do conventional analogue meters, which measure their gas customers’ annual consumption, mostly on an individual basis.

The installation of a meter does not lead to energy savings per se, but it increases the transparency of consumption and costs. This may result in a change in behaviour among gas customers. Most energy-saving options are well known (adjusting temperature, correct ventilation, etc.). Factors such as outside temperature, the location of the dwelling, and the condition of the building are beyond the control of household customers, apart from those who are owner-occupiers. Therefore, in most cases, the criterion of the proportionality of measures for private households is not met. For these reasons the **BAK rejects the general introduction of meters for heating, as they are linked to high costs and few benefits.**

It is not clear why the assessment criteria of technical feasibility, financially reasonableness and proportionality are

not to be applied to new and renovated buildings. New and recently renovated buildings have relatively low energy consumption, so these criteria should be used to assess whether it makes sense to install expensive metering systems.

### Article 9a – Metering, submetering and cost allocation for heating and cooling and domestic hot water

The Commission also proposes the use of a metering system to measure individual consumption with regard to district heating, district cooling and domestic hot water. The BAK thinks the Commission has misunderstood the characteristics of this market, particularly the fact that most Member States do not regulate the market for supplying heat to buildings (including hot water) and the way it is metered. This means that, at 120 to 130 euros, the annual cost of individual metering systems for space heating for private households in Austria is much higher than the costs incurred by customers with gas meters (28 euros p.a.). Whereas gas customers have the right to change their supplier, heating customers do not have this option. In most cases it is neither technically feasible, financially reasonable nor legally possible to switch to another heating system. **Therefore, the BAK rejects the general introduction of individual meters for space heating and hot water, unless customers expressly wish to have a meter installed.** In addition, metering systems for district heating, district cooling and hot water supply and for central supply should be subject to the same assessment criteria as metering systems for gas (technical feasibility, financial reasonableness and proportionality).

As already stated with regard to Article 9, the BAK does not understand why it is proposed that new and recently reno-

vated buildings with relatively low energy consumption should be obliged to use individual meters without checking whether these measures are cost-effective based on the criteria of technical feasibility, financial reasonableness and proportionality. The obligation to use individual heating meters should generally be waived for passive houses and low-energy buildings because heating consumption in these kinds of buildings is per se very low and heating is not provided through building heating but through “passive” sources such as solar radiation or waste heat produced by people and technical equipment. In these cases, occupants do not benefit from individual heating meters because the metering costs can often be higher than the cost of the heating supply.

With regard to the aforementioned problems affecting the heating market (including monopolistic structures, high and unregulated meter costs, and over-proportionate increases in living costs), the BAK categorically rejects the proposal of the Commission that remotely readable meters and cost allocators should be compulsorily introduced from 1 January 2020. The BAK does not believe the measure is appropriate because of the major differences between heating supply systems and the closely linked residential market, and the different technical and legal conditions that apply in the individual Member States. In this respect, the BAK also rejects the proposal that meters that have already been installed but which are not remotely readable should be provided with this capability or be replaced with remotely readable devices by 1 January 2027. Exceptions will only be made if a Member State can prove that this is not cost-effective.

#### **Article 10a – Billing and consumption information for heating and cooling and domestic hot water**

In principle, **the BAK welcomes the increase in transparency through improved billing and consumption information, but from a consumer rights perspective and data protection it requires the following amendments:**

Paragraph 1: With regard to meter-reading options, from a consumer rights point of view it should be stated that **along with reading the meter by the customer (self-reading) the energy supplier should also carry out regular readings**, as is currently the case in the electricity and gas sectors. The customer is often disadvantaged by the alternative of billing based on estimated consumption or a flat rate in the event that the customer does not supply the meter reading to the energy supplier on time.

Paragraph 2(a): From a data protection point of view, it should only be possible **to pass on data to third parties with the express consent of the consumer**. The BAK requests corresponding clarification on Paragraph 2(a) in order to avoid a quasi-automatic transmission of energy bills to third parties. The BAK believes the current formulation also violates data protection law.

#### **Article 11a – Cost of access to metering and billing information for heating and cooling**

In the case of multi-apartment buildings, Paragraph 2 makes it possible for landlords to pass on the cost of metering and billing to the end customer if the landlords assign this task to a third party such as a contractor. This is extremely problematical from a consumer rights perspective as it relates to

contracts at the expense of third parties, concrete to the user of the apartment (e.g. the tenant). This kind of cost transfer is not permitted in Austria: At present the Austrian Heizkostenabrechnungsgesetz (HeizkG, Heating Costs Billing Act) determines which costs may be passed on, and the Mietrechtsgesetz (MRG, Tenancy Act), Wohnungseigentumsgesetz (WEG, Property Ownership Act) and Wohnungsgenossenschaftsgesetz (WGG, Housing Association Act) also restrict cost transfers. This proposal by the Commission therefore interferes with existing Austrian law and could significantly weaken tenant protection laws. **Therefore, the BAK is opposed to this transfer of costs.**

#### **Article 23 – Exercise of delegation**

**BAK rejects the tacit agreement to extend the Commission’s power to adopt delegated acts as contained in Paragraph 2.** From a democratic point of view, this power should continue to be limited to five years.

## EU Directive on the energy performance of buildings

The main objective of the European Commission's proposed review of Directive 2010/31/EU on the energy performance of buildings is to accelerate the renovation of buildings in order to help increase energy efficiency and reduce greenhouse gas emissions in light of the European Union's energy and climate targets for the period to 2030. The proposal also seeks to include provisions relating to the future adaptation of the infrastructure to meet the increased use of electric vehicles. On the other hand, it proposes a substantial lifting of inspection requirements for heating and air-conditioning systems.

BAK believes it makes sense to pursue a "long-term renovation strategy" (Art. 2a). This was previously standardised in the Energy Efficiency Directive and the current proposal states that it should be transferred to the Directive. On a positive note, it should be highlighted that the alleviation of energy poverty is specifically mentioned as an objective in this respect. However, BAK believes that the provisions of the proposed Art. 2a(3) are too detailed and potentially mean that risks will be socialised while profits are privatised. This paragraph should therefore be deleted.

The revised Art. 8(2) and (3) propose that Member States should be obliged to ensure that buildings have recharging points for electric vehicles or make provisions for them to be installed at a later date. Overall BAK welcomes the objective, but the very detailed and binding regulation proposed goes against the subsidiarity principle. Paragraphs (2) to (4) should therefore be deleted; if necessary they could be replaced by obliging the Member States to develop a strategy

for expanding the recharging infrastructure for electric vehicles.

The proposed Art. 8(5) introduces the obligation that when a technical building system is installed, replaced or upgraded, the overall energy performance of the complete altered system should be assessed and documented. In accordance with para (6) the Commission should be empowered to adopt delegated acts with an indicator of the 'smartness' of buildings and how this would be provided as additional information to prospective new tenants or buyers. BAK rejects these provisions as it believes they go too far.

In the proposed Art. 10(6), the Member States should be obliged to link their financial measures for energy efficiency improvements to the energy savings achieved due to such renovation. For many years, BAK has been calling for the cost-effective use of public funds, therefore it supports this proposal.

In accordance with proposed Art. 14(1) and (2), and proposed Art. 15(1) and (2), the existing requirement to carry out regular energy efficiency inspections of heating and air-conditioning systems is largely removed. However, the impact assessment does not state what benefits this would bring. Therefore it seems appropriate to keep the inspection requirements in place.

Should you have any further questions  
please do not hesitate to contact

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