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IFIEC Europe Comments

on the Proposal for a

Directive of the European Parliament and of the Council on energy efficiency and repealing Directive 2004/8/EG and 2006/32/EG

IFIEC Europe, the Federation of Industrial Energy Consumers, represents companies from energy intensive industries (EII) throughout the EU and thus actors with impressive energy efficiency track records. EII long ago understood the importance of energy efficiency for the success and competitiveness of their businesses and have improved their efficiency drastically in the last decades. IFIEC appreciates the attention given to energy efficiency as it is the low cost option to improve the CO₂ balance if addressed correctly and in the expedient sectors and likes to come up with some ideas to streamline the direction for measures to energy efficiency improvements targeted in the current Proposal:

Monitoring is a lacking element in the efficiency Directive. From the experience gained in energy efficiency policies towards the industry sector in different Member States we must stress that the proposed Directive lacks one important element which is vital in each and every efficiency scheme: a powerful monitoring system. We therefore suggest to expand the Proposal by monitoring regimes to gather both information on a baseline year (necessary to undertake a bottom-up approach based on a sectoral differentiation) as well as on the process in the future years under the Directive's regulation as an element to safeguard and secure the success of the intended efficiency improvements and energy savings.

Energy efficiency is not equal to absolute energy savings. While Art. 1 on the subject matter and scope correctly addresses the promotion of energy efficiency, it is noticeable that the proposed Directive on Energy Efficiency includes a relatively long list of definitions in (Article 2), whereas a definition for the central term it is about – namely energy efficiency – is lacking. And remarkably: throughout the proposed Directive there seems to be a confusion between energy efficiency and absolute energy savings. It is in fact necessary to mirror the absolute target set with the real development as compared to the underlying scenario. Thus the foreseen 368 Mtoe annual energy efficiency saving will not be the adequate target in case of both a (much) lower or (much) higher growth than now assumed for the EU economy. Adaptation during the course of years is necessary in order to streamline the target and the related policy measures. With such adaptation it can be made sure that the focus is set on energy efficiency rather than on pure absolute savings, and that growth is made possible in the EU economy provided that growth is based on highly efficient businesses.

We propose to include definitions on the a.o. central terms as e.g. done in the Directive 2006/32/EC* and to streamline the proposal in the sense that energy efficiency is supported, and – where conflicting – absolute energy savings are not targeted at any cost. In the

* Directive on energy end-use efficiency and energy services, Art. 3:

'energy efficiency': a ratio between an output of performance, service, goods or energy, and an input of energy;

'energy efficiency improvement': an increase in energy end-use efficiency as a result of technological, behavioral and/or economic changes;

'energy savings': an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of one or more energy efficiency improvement measures, whilst ensuring normalization for external conditions that affect energy consumption.

current form where absolute targets are at the heart of the Proposal, the focus is on energy savings, rather than really efficiency. Hence, companies that have succeeded in setting up efficient processes must have the possibility and must even be supported to grow, whereas the Proposal in the current version inhibits any growth be it even the most efficient one.

The Proposal must not go beyond its legal basis: To realise 20% energy efficiency savings until 2020 is the decision taken in the Council and European Parliament in 2007. However, the proposal sets an absolute annual savings target for Member States of 1.5% per year, which is neither limited in time nor in volume. So it goes both in time as well as in volume beyond the above mentioned decision and may lead to an unrealistically decreased energy consumption in the EU. In order to bring the target in line with decisions taken, the absolute saving must be converted into a relative target, the deadline in time of 2020 and a possible change of the 1.5% per year energy efficiency target after 2020 should be included in the EED.

There are also unnecessary and damaging effects by overlapping regulation with the Energy Taxation Directive (ETD). In the latter purposeful exemptions from tax burdens are foreseen to avoid loss of competitiveness. In both Directives, ETS and ETD, burdens installed for climate change policy purposes are linked with certain exemptions and relief for sectors acting under global competition. The carbon leakage discussion around EU ETS has made very clear that EU climate change policies have the risk to be counterproductive with regard to decreasing the global carbon balance, if installed without special schemes of relief for such sectors. The new proposed EED should not stay behind this discussion and the accepted findings and must include respective rules of release. By now, it is an unacceptable weakness of the current proposal that exclusions as in ETD are not applied in the energy efficiency context.

Overlapping regulation between EU ETS and the proposed Directive is unacceptable.

To ensure that the energy efficiency measures initiated by the proposed Directive are effective, it is essential to avoid duplication of effects from different angles of climate change policy. In fact, duplication does not result in additional benefits but – to the contrary – undoes the initiated benefits. This effect is especially obvious between the proposed Directive and the EU's central climate change policy instrument: the EU Emissions Trading Scheme (ETS). The sector industry is already obliged to take great efforts in order to meet the ETS target to 2020. Our calculations have shown: If the complete fuel consumption in the ETS industry would be switched to gas, the fuel which is taken as the basis in the whole ETS-benchmark exercise, there is still a gap to be filled to meet the CO₂ target. If one recalculates this CO₂ gap into Mtoe to be saved by energy efficiency measures, the result is 30 Mtoe energy efficiency obligation for EU industry set by EU-ETS. This is three times the volume to be saved additionally by the EED as shown for industry in the impact assessment. That means: there is no need to tackle industry additionally by this Directive. It would have no additional effects, however, negative interference into a working policy measure. To avoid offsetting ETS incentives and to ensure this leading policy framework, it is crucial that the Energy Efficiency Directive targets only the sectors outside ETS. The ETS must be the leading framework for covered sectors.

ETS is a market-based system which gives actors the choice to invest in carbon reduction measures. It ensures that improvement takes place that the most cost efficient abatement measures are chosen and the scarce resource of capital is used rationally and purposefully. An overlap of the two policy instruments thus makes energy efficiency improvements more expensive.

Furthermore, maintaining the EU ETS as the leading policy framework is necessary because lower GHG emissions can in various cases lead to a decrease in energy efficiency. Well

known examples are the use of biomass, carbon capture and sequestration (CCS) and end-of-pipe solutions for other GHGs than CO₂.

The proposed Directive adopts a straight top-down approach by setting a target and not taking the existing potentials and meaningful areas of action into the focus. We oppose that. One should first evaluate the potentials and existing measures as well as possible harm of further actions in order to really strengthen energy efficiency by going the bottom-up way to achieve a goal oriented policy without risking accidental victims. For these purposes, rigorous energy efficiency monitoring is the crucial element to be added to the Proposal

Detrimental effects on the liberalised energy markets should be avoided. The proposed direction of policy action towards absolute energy savings would seriously thwart an EU policy priority: the development of liberalised, competitive internal energy markets. The objective to build a market of choice and flexibility for consumers is, today, far from realised especially for industrial consumers. The market has not yet delivered a variety of contractual options nor competitive prices. The effect of the proposed Directive would further narrow market options for consumers and be a harsh backlash to the development of competitive internal energy markets.

This is because delivering energy to a consumer which has already undertaken great efforts in the past to improve energy efficiency (typical and proven in EII) would be to any potential supplier a burden rather than a business opportunity: the supplier would know that the potential customer, while representing a substantial proportion of his overall supply portfolio, will be an important obstacle to meet the energy efficiency obligation set by the proposed Directive (Art. 6 (1)). This will substantially weaken the negotiating power of the customer compared to today's situation. The situation is even worse for successful (efficient) companies with a growth strategy. Such customers will only be able to find a supplier, if they are willing to pay the cost of potential penalties (Art. 9) – or not to grow. This means that the proposed Directive will first and foremost lead to another fee to consumers on energy consumption – and first of all to the most efficient ones. This is not acceptable for European energy-intensive companies facing global competition and is likely to lead to an investment stop and consequent loss of market share to third countries. This is similar to the carbon leakage effect of ETS.

A second negative impact on a competitive market would be that a supplier would just be hindered to act competitively by going for a growing market share at the cost of incumbents.

All these negative impacts will be avoided when the EED is turned into a real energy efficiency approach, based on thorough bottom-up analyses per sector and sub-sector and supported by a rigorous monitoring system instead of a macro-economical model-based approach such as applied through the PRIMES model (although useful for a first insight).

Industrial companies should not be obliged to publish sensitive data. By being forced to give highly sensitive information on the efficiency level of manufacturing processes and strategies to utilities, companies fear leakage of privileged and confidential data. This would lead to a disadvantage vis-à-vis their international competitors. In any case, we oppose that such sensitive data of energy intensive industries will have to be handed over to utility companies. If given to other institutions (including aggregation of data prior to its publication), like governmental institutions, high confidentiality standards are necessary to make such transfer of data a realistic and acceptable option.

Mandatory audits for large companies can be led by internal energy audits. Energy audits may disclose remaining efficiency potentials and are a reasonable measure. However, highly bureaucratic requirements do not make audits more effective. Therefore,

audits should be allowed to be carried out by qualified in-house experts as already foreseen in recital 20 which should be explicitly repeated in Art. 7 of the draft directive. Major companies have often already implemented a workable and practicable mechanism to follow energy performances of their processes. External energy auditors with new approaches to be followed could be a tremendous cost increase. Furthermore the mandatory use of external experts would produce huge administrative burden and costs.

Penalties for energy distributors will add an “efficiency fee” on top and penalise customers - not utilities. The proposed Directive will add an “efficiency fee” on top of the already high fees and taxes on energy costs mainly relating to different climate change policies. It is likely that such an additional fee will be comprehensively spread over all customers, regardless of their individual energy saving achievements; the effectiveness for promoting efficiency is therefore questionable and such new surcharge will especially be harmful for industries in global competition. This is another reason to exempt EU ETS energy intensive industries.

The obligation for new and refurbished industrial activities to capture all waste heat and export this heat for useful purposes would block any industrial growth and even modernisation of industrial manufacturing plants. Due to the significant long term (theoretical) energy efficiency (exergy) potential in industry, there is a considerable amount of waste heat, even in the most up to date industrial processes, up to 85% of energy inputs. A short-term (2020 or 2030) obligation for using (all) waste heat from new or refurbished plants is therefore not realistic. If industry would be required to bear the connection costs and the costs for developing the district heating and cooling networks (Art. 10 (8)) any industrial growth and modernisation of industrial manufacturing plants would be fully blocked.

The idea of encouraging the use of waste heat from industrial processes is positive, but the needed investments should not be put on the shoulders of industry. This would immediately create investment carbon leakage and would turn European industry after 10-20 years in a graveyard of inefficient processes due to the economic inability to modernise existing manufacturing plants. The proposed exemption clauses are no structural solution but would only create unacceptable investment insecurity.

CHP shall not lead to extra costs. It is essential that combined heat and power (CHP) stays a benefit and real option for the energy supply in a variety of manufacturing industries and that it does not become a financial burden on EII. CHP is a highly efficient technology, especially in industrial contexts. However, it will not be very helpful for the further diffusion and proliferation of CHP, if the obligatory approach and high requirements regarding technology, location etc. as foreseen in the Proposal would apply. A plan economy approach in the intensity demonstrated in the proposed Directive towards CHP must be avoided. If the EU really wants to support CHP, then it would be crucial to soften and minimising the disadvantages given to this technology by other policy instruments (e.g. ETS) rather than shooting with new rather damaging policy weapons. Freedom of choice to use this technology or not should be given, since not all industries can use heat generated during operation of CHP (e.g. metal industries) and it is a complex set of conditions and arguments in each and every industrial context (technical and economic) which determines a respective investment decision.

No overflow of delegated acts. The Proposal foresees a huge number of open questions and issues to be regulated based on Delegated acts by the Commission. We feel this to be overstressing the Commission’s competencies. We here talk about important issues which are decisive for many actors on their options of further activity or even growth. We see that whenever such highly important issues are to be determined than this should be done according to a proper democratic process with the participation of the relevant bodies, or

where appropriate decisions could rather be taken at MS level, especially, where one could build on existing processes and obligations at national levels.

The Emissions Trading Regime needs visibility and stability. A set-aside, i.e. a retrospective change in the volumes included, would mean to change the market assessment which the actors have taken as the basis for acting in this special market (buying, selling, or investing). This is a too radical intrusion into the scheme, which would give the signal of non-reliability to the whole world. Followers which could also install such regime, would be more than discouraged and a global climate change policy based on global carbon markets would become less realistic. Instead, any future revision of the EU ETS Directive should tackle the remaining fundamental shortcomings, e.g. the lack of an ex-post adjustment to actual production (inhibiting industrial growth and the root cause of the overhang of allowances due to the crisis, which led to the debate about the set-aside), an indirect allocation of allowances as alternative for the inherent unstable financial compensation for the CO₂ effect in the electricity prices and the application of the stringent top 10% benchmarks for industry in 2020 instead of immediately in 2013.

Conclusion

IFIEC Europe supports the EU to adopt an Energy Efficiency Directive and to take further action in this field of low cost energy and carbon savings. However, the approach taken in the current Proposal cannot convince. We propose to revise it by:

- Including a monitoring scheme
- Take a bottom-up approach by analysing sectors' potentials and existing regulations
- Implement tailor-made sectoral measures.