



Bundesministerium
für Wirtschaft
und Technologie



Bundesministerium für
Wirtschaft, Familie und Jugend

Günther Oettinger
European Commissioner for Energy
European Commission
Rue de la Loi 200
B - 1049 Brussels
Belgium

28th November 2012

Dear Commissioner Oettinger,

First, we would like to thank you for your support and constructive approach during the preparation of the Energy Efficiency Directive (EED). However, a new issue has arisen which we would like to bring to your attention regarding Article 7 of the Directive. DG Energy has come up with a new interpretation of this Article that would massively discriminate against Member States opting for the alternative approach to fulfill the energy saving target in comparison to those Member States that have introduced energy efficiency obligation schemes.

Our common understanding is and always has been that the aim is to create a level playing field concerning the calculation of energy savings, regardless of whether "an obligation scheme" or "other policy measures" are being used to meet the energy saving target set in Article 7. During the negotiations the Commission underlined the equivalence of these two options several times.

However, after the adoption of the EED by the European Parliament and the Council, it has become clear, to our great surprise, that DG Energy has given up this equivalence by re-interpreting paragraph 7 c of Article 7, allowing Member States with energy efficiency obligation schemes to calculate energy savings in a very different way than those Member States using the alternative approach.

This results in a massive “discount” of up to 60 % in the level of annual energy savings for Member States with obligation schemes. Instead of having to achieve 1.5 % annual energy savings, these Member States would be able to meet their target with around 0.5 %.

We cannot accept DG Energy’s *new* interpretation for the following reasons:

- Equal and fair treatment was an extremely important precondition for the Member States to agree on this Directive in the Council.
- The level of ambition of the Directive would be substantially reduced and the fulfillment of the EU’s 20 % energy efficiency target by 2020 jeopardized. Taking into account all the effort to maintain the level of ambition during the negotiations, it would be absurd and unjustified if paragraph 7 c were now allowed to be used as an accounting trick to significantly lower the ambition of the Article 7 target for some Member States.
- In addition to the fact that paragraph 7 c has been in the text since the beginning of EED negotiations but in a totally different meaning, DG Energy’s *new* interpretation contradicts paragraphs 2 and 3. There, it is clearly stated that no matter which alternative is chosen by the Member State, energy savings resulting from measures taken prior to 2014 can only reduce the target by up to 25%.

We have written this letter to ask you to seriously reconsider and correct the Commission’s interpretation of Article 7 paragraph 7c. To our understanding, returning to the original interpretation is the only way to take this displeasing situation off the table.

We need to ensure a level playing field for Member States to reach the target set in Article 7. Also, we need to maintain the level of ambition of the EED in order not to threaten the EU’s 20 % energy efficiency target by 2020. In the future, the majority of Member States might not be willing to compensate for a knowingly permitted discount given to a few Member States by making additional efforts. Therefore future initiatives of the Commission in the field of energy efficiency could become complicated.

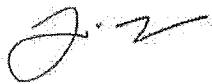
We sincerely thank you for your understanding and look forward to receiving your response in the near future regarding this important political issue which has far-reaching implications for energy efficiency in the EU.

For more technical details (including an illustrative calculation example) of this important issue, please find some additional information attached to our letter.

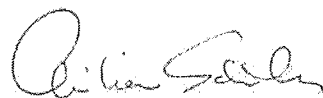
Yours sincerely,



Stefan Kapferer
State Secretary
Federal Ministry of Economics and Technology
Germany



Jouni Hakala
State Secretary
Ministry of Employment and the Economy
Finland



Christian Schönbauer
Director-General, Energy and Mining
Federal Ministry of Economy, Family and Youth
Austria

Annex:

In the current version (29.10.2012) of its interpretative note on Article 7 EED, DG Energy (Unit C3) states in paragraph 41:

"Furthermore, paragraph 7, point (c), provides an additional opportunity for Member States who use energy efficiency obligation schemes. They can count, in addition to the 25% bundle under Article 7, paragraphs 2 and 3, the energy savings coming from individual actions carried out within such schemes from 1 January 2010 until 31 December 2013 and individual actions that are to be carried out from 1 January 2021 until 31 December 2023 as if they had been carried out within the obligation period. (...) It is to be noted that this possibility is available only for Member States that have in place or establish energy efficiency obligation schemes. (...) For Member States which opt to take other policy measures instead of an energy efficiency obligation scheme, this opportunity does not exist (...)."

In practical terms, this would lead to extreme differences for Member States in counting energy savings to reach the target set in Article 7 EED, as demonstrated in the two following tables (in both examples, the flexibility mechanisms of paragraph 2 including energy savings from so-called "early actions" are not taken into account): As a result, Member States with energy efficiency obligation schemes would be able to achieve their cumulative energy savings target by annual savings of 0,42, whereas Member States without obligation schemes would have to achieve savings of 1. This "discount" of almost 60 % is further increased because Member States with obligation schemes are also allowed to count energy savings from years 2021 to 2023 to reach their 2020 target.

Table 1: Energy savings that Member States without energy efficiency obligation schemes are allowed to count to reach the target set in Article 7

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	cumulative savings of the programme
					1						1	1
					1	1					1	2
					1	1	1				1	3
					1	1	1	1			1	4
					1	1	1	1	1		1	5
					1	1	1	1	1	1	1	6
					1	1	1	1	1	1	1	7
												Total cumulative savings = 28 Mtoe

Table 2: Energy savings that Member States with energy efficiency obligation schemes are allowed to count to reach the target set in Article 7 (energy savings in "red" equal the discount because of the Commission's interpretation of Article 7 paragraph 7c).

Year:	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	cumulative savings of the programme
	1											1
	1	1										2
	1	1	1									3
	1	1	1	1								4
	1	1	1	1	1							5
	1	1	1	1	1	1						6
	1	1	1	1	1	1	1					7
	1	1	1	1	1	1	1	1				8
	1	1	1	1	1	1	1	1	1			9
	1	1	1	1	1	1	1	1	1	1		10
	1	1	1	1	1	1	1	1	1	1	1	11
	Total cumulative savings = 66 Mtoe											

