Fit for 55 package: Recasting the Energy Efficiency Directive

This briefing provides an initial analysis of the strengths and weaknesses of the Commission’s impact assessment (IA) accompanying the above-mentioned proposal, submitted on 14 July 2021 and referred to the European Parliament’s Committee on Industry, Research and Energy (ITRE).

The proposal for a recast Energy Efficiency Directive (EED) is part of the Commission’s ‘Fit for 55’ package that aims to adapt EU law to the new EU objective of a minimum 55% reduction in greenhouse gas (GHG) emissions by 2030. This objective was laid down in the new European Climate Law, adopted in June 2021, which puts the EU on the path to achieving climate neutrality (net zero GHG emissions) by 2050. As originally enacted, the EED (Directive 2012/27/EU) established a common framework for promoting energy efficiency to reach the EU’s 20% energy efficiency target by 2020 (the target was set in the directive itself). The EED was amended by Directive (EU) 2018/2002, which set the more ambitious EU goal of improving energy efficiency by at least 32.5% by 2030 and extended its validity beyond 2020 to help achieve the new goal.

Problem definition

The IA points out that, even with existing technologies, there is still significant scope for investment in energy efficiency and cost-effective savings in Member States’ economic sectors and in society at large. However, under business-as-usual, and even more so as a result of the Covid-19 crisis, this potential for energy efficiency and energy savings would remain largely unexploited; this is mainly due to market and regulatory failures which prevent cost-effective investment and action to achieve energy efficiency from taking place. The IA, referring to the Commission’s Impact Assessment on the climate target plan (CTP), identifies the problem as being that, unless higher levels of energy efficiency are achieved, the EU will not meet its 55% GHG emission reduction target in a cost-effective manner (IA, pp. 13-14).

The IA identifies the following three main drivers to the above problem:

1. insufficient ambition and efforts by Member States;
2. the continued existence of barriers to energy-efficient behaviour, including for investment (the IA details the barriers identified per area, e.g. public sector, industry, heating and cooling, etc.);
3. the lack of systematic information about the impact of energy efficiency measures.

The IA summarises the problem, its drivers and its consequences in a problem tree.

Subsidiarity/proportionality

The legal basis for this proposal is Article 194 of the Treaty on the Functioning of the European Union (TFEU), which sets out the scope of EU energy policies. The IA points out that the issues causing a shortfall in energy savings are the same across the EU and that, for such trans-boundary issues,
Member State action is unlikely to lead to optimal outcomes: ‘In the presence of a higher climate target, which requires a higher energy efficiency target, EU action must supplement and reinforce national and local action’ (IA, p. 27).

As regards EU added value, the Commission states that coordinated EU policies have a better chance of transforming the EU into a climate-neutral continent by 2050. According to the IA, a common EU approach to energy efficiency also enables specific common challenges, such as the alleviation of energy poverty, to be effectively addressed (IA, p. 28).

The Commission explains how the proposed modifications to the EED respect the principle of proportionality and do not go beyond what is necessary to achieve the higher level of ambition for energy efficiency in view of the increased climate target for 2030 (IA, pp. 94-99; proposal, p. 13). The policy options are all assessed against subsidiarity and proportionality (IA, pp. 74-93). The Irish Houses of the Oireachtas and the Czech Senate each submitted a reasoned opinion on the proposal stating that they consider it does not comply with the principle of subsidiarity. The submission deadline for national parliaments was 8 November 2021.

**Objectives of the initiative**

The general objective of the initiative is to revise the EED to further promote energy efficiency and energy savings, thereby contributing, in an optimal and cost-effective way, to achieving the EU’s 55% GHG reduction target by 2030. According to the CTP (IA, p. 29), the EU will need to achieve a 36-37% improvement in energy efficiency by 2030 to fully support this level of emissions reductions.

The specific objectives of the initiative are:

1. **Objective 1**: strengthen incentives in support of ambition and efforts in the Member States to achieve a 36-37% energy efficiency target;
2. **Objective 2**: reinforce the EED to better address market barriers and failures;
3. **Objective 3**: improve understanding of the impact of energy efficiency measures taken by Member States, while optimising the administrative burden through the approach set out in the [Governance Regulation](#).

The Commission emphasises that the revision of the EED also needs to consider the broader objectives of the European Green Deal, which aims to leave no one behind and to deliver a sustainable economy (IA, p. 29). The objectives correspond to the problem definition, but do not appear to fulfil all ‘S.M.A.R.T’ criteria (such as being specific and measurable).⁴

**Range of options considered**

The IA considers 34 policy options, in addition to the baseline (IA, pp. 31-57). As is shown in Table 1 below, various policy measures aim to tackle the different problem drivers based on the general objective of reducing GHG emissions by 55% in a cost-effective manner. Some of the options are cumulative rather than alternatives, but this only becomes clear from the section on the preferred policy option (IA, Section 8, pp. 99-105). The Commission’s preferred options are highlighted in green in Table 1 below. The options ‘SUPPORT 3’ and ‘MONITOR 3’ (in light green in Table 1) are mentioned in the IA as only ‘possibly’ being among the preferred options (IA, p. 102), but the IA does not specify what this contingency depends upon. Also, it is not clear how the option ‘SUPPORT 1’ is different from the baseline.

All ‘Fit for 55’ initiatives are considered as one package and use the [EU Reference Scenario 2020](#) (the reference scenario) as the common starting point for energy system modelling (IA, pp. 30-31). The IA explains that the identification of ‘potential measures’ was based on evaluation outcomes, an assessment of the Member States’ national energy and climate plans (NECPs), the support study (see the section on ‘Supporting data and analytical methods used’ below), the results of the stakeholder meetings and the public consultation. These measures were then further assessed in terms of their relevance, feasibility and coherence with the existing framework, and ‘divided into intermediate and higher ambition packages’ (IA, p. 31) (see also Table 1 below).
As pointed out by the Regulatory Scrutiny Board in its first, negative opinion, it is not clear on what basis the different levels of ambition for specific options were chosen. This remark remains valid in the version of the IA that finally accompanies the proposal. Despite including a section (Section 5.3) entitled ‘From options to scenarios that build on the CTP’, the IA does not explain well to the reader how policy options, packages, measures and scenarios relate to one another, with this nomenclature appearing at times to be used interchangeably (see IA, p. 62). The IA discards at an early stage the scenario that contemplates non-regulatory measures by themselves, explaining that such a scenario cannot solve several of the issues underlying the problem.

### Table 1: Overview of the policy options

<table>
<thead>
<tr>
<th>Driver 1: Insufficient ambition and efforts by Member States</th>
<th>Non-regulatory</th>
<th>Regulatory - intermediate ambition</th>
<th>Regulatory - higher ambition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of energy efficiency targets (TARGET)</td>
<td></td>
<td>TARGET 1: binding EU-level energy efficiency targets</td>
<td>TARGET 3: binding national targets</td>
</tr>
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<td></td>
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<td>TARGET 2: indicative national benchmarks</td>
<td></td>
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<tr>
<td>Energy Savings Obligations (ESO)</td>
<td></td>
<td>ESO 1: transport sub-target</td>
<td>ESO 4: replace Article 7 obligation with white certificates scheme</td>
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<tr>
<td></td>
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<td>ESO 2: energy poverty sub-target</td>
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<td>ESO 3: exclude fossil fuel technologies</td>
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<tr>
<td>Energy Efficiency First Principle (EE1st)</td>
<td>EE1st 1: guidance on application of EE1st principle + development of CBA methodology that includes the co-benefits from energy savings</td>
<td>EE1st 2: obligation to implement EE1st + obligation to test energy infrastructure projects against EE1st principle</td>
<td>EE1st 3: obligation to review legislation for coherence with EE1st and establish a body to apply the principle</td>
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<tr>
<th>Driver 2: Continued existence of barriers and weaknesses in main intervention areas</th>
<th>Non-regulatory</th>
<th>Regulatory - intermediate ambition</th>
<th>Regulatory - higher ambition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public sector buildings (BUILD)</td>
<td>BUILD 1: guidance in support of public building renovation</td>
<td>BUILD 2 a) and b): increased annual target and extend scope to all public bodies</td>
<td>BUILD 4: delete alternative method in Article 5, which allows for flexibilities</td>
</tr>
<tr>
<td>Public sector procurement (PROCURE)</td>
<td>PROCURE 1: guidance in support of energy-efficient and green public procurement</td>
<td>PROCURE 2: extend the energy-efficient procurement obligation to all public bodies</td>
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</tbody>
</table>
### Assessment of impacts

The IA provides a quantitative and qualitative assessment of the different policy options. Under the quantitative assessment, the following observations are made:

**On economic impacts,** the IA highlights a significant increase in costs for consumers for all scenarios compared to the previous decade and the reference scenario. Likewise, the average electricity costs are forecast to increase until 2030 (IA, p. 66). An overview of the costs and benefits on ‘who is affected and how’ is provided for the preferred option in
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Annex C of the IA. According to the explanatory memorandum, the proposal has no implication for the Union budget and the amendments would result in ‘moderate administrative costs for public authorities’ (proposal, p. 19).

In terms of investment, the IA emphasises that, in the decade 2021-2030, expenditure in the demand sectors in the policy scenarios increases between 6.9 % and 11.8 % relative to the reference scenario. In supply sectors, investment expenditure is also predicted to increase considerably (IA, p. 68-70). The Commission makes it clear that the increase in investment has a critical impact on the cost of the transition: ‘If financing is available to fund capital costs, additional investments can generate a significant multiplier effect. It is estimated that around 9-20 jobs in manufacturing and construction are created for every million dollars invested in retrofits or efficiency measures in new builds in the EU’ (IA, p. 69).

The IA also states that the impact on European GDP and employment of the climate targets is small in all the cases assessed, and that investment in energy efficiency measures has a positive impact on GDP for the entire economy through multiplier effects (assuming that crowding-out effects are not present) (IA, p. 69-70).

On social impacts, the IA refers to the CTP Impact Assessment. The latter states that, in the absence of mitigating measures, climate policies could have a regressive impact that negatively affects vulnerable consumers: ‘However, not all policies have equal social impacts. Policies based on carbon prices tend to promote fuel switching by increasing the cost of fuels. This could have a negative effect for vulnerable consumers, as lower income households tend to spend a larger share of income on energy services such as heating and electricity consumption. Bottom-up energy efficiency measures, on the other hand, tend to promote investments and renovations’ (IA, p. 70).

The IA also stresses the importance of coherence: any changes to the policy architecture, which are under consideration in this IA would not take place in a vacuum, but ‘would interact with existing and planned policies and measures of a different nature to reach the 55 % climate target, including pricing and non-pricing mechanisms and measures, and policies promoting renewables’ (IA, p. 71).

In its qualitative assessment, the IA evaluates all policy options for their: (1) effectiveness; (2) administrative burden and compliance costs; (3) coherence; and (4) subsidiarity and proportionality (IA, pp. 74-93). It scores the options against these criteria (in rather simplified terms, on a scale ranging from ‘three pluses’ (+++) to ‘two minuses’ (--) (see Table 15, p. 94).

The Commission notes that the effectiveness criterion has been assessed against the three specific objectives of the initiative – i.e. strengthen incentives, address barriers and improve understanding of impacts – and that it aims to identify those measures that would contribute most cost-effectively to achieving the energy efficiency target established by the CTP.

For example, as regards the energy savings obligations, the IA points out that all three options (ESO 1-4) would be effective, but that ESO 4 (EU-wide white certificate scheme) would raise problems of proportionality. Options ESO 1-3 would see a moderate or no increase in administrative burden and would be coherent with existing measures and the ‘Fit for 55’ package. In contrast, ESO 4 would introduce a high additional administrative burden, high compliance costs, and would also raise questions of coherence regarding the EU ETS extension to buildings and transport (IA, p. 77).

Overall, the IA could have explained better to the reader why it assessed the policy options the way it did. For example, while the IA, in its qualitative assessment, appears to take ‘economic impacts’ systematically into account when looking at the administrative burden and compliance costs (IA, p. 74 and Annex N), it does not consistently mention/assess potential social impacts for each policy option.

In Section 8 on the preferred option, the IA highlights the interlinkages between the initiatives of the ‘Fit for 55’ package. It also explains the internal coherence of the measures within the preferred
option and the coherence in finalising the package (the IA mentions on p. 106 that ‘a complementary document to the full set of individual impact assessments looking at the effectiveness, efficiency and coherence of the final package will accompany the “Fit for 55” proposal’; however, no reference/link to this document is provided).

SMEs/Competitiveness

The Commission conducted an SME Test, in line with its Better Regulation Guidelines. It points out that the majority of the measures explored in the IA do not directly address SMEs: ‘The main measures place obligations on the Member States that might lead to changes in the situation for businesses. This will depend on the measures that Member States implement and could not be assessed in the Impact Assessment.’ The Commission highlights that, to the degree that the measures envisaged in the IA will have an impact on SMEs, they are likely to be beneficial for them. It further states that the most likely of any of the measures assessed to have a direct impact on SMEs is the change to the definition for obligatory energy audits (Annex O - SME Test, p. 138). The importance of competitiveness in this field is highlighted by the Commission under ‘impacts on the industrial sector and on renewables’ (see Annex E, pp. 68 and 77).

Simplification and other regulatory implications

The Commission points out that it identified possibilities for simplifying the existing legislation and reducing regulatory costs, while aiming for the proposed modifications to be effective. In particular, according to the Commission, ensuring that energy audit efforts are focused on larger energy users will lead to proportionately higher energy savings and will also simplify the burden on public administrations. The increased compliance costs for those businesses remaining under the scope of the provision would be expected to be paid back through increased uptake of cost-effective improvements. Moreover, amended monitoring and reporting requirements, notably for measures targeting energy poverty under the energy savings obligation and building renovations for the public sector, would ensure more effective outcomes. However, the Commission acknowledges that such requirements would also result in a higher administrative burden for public authorities (proposal, p. 18).

Monitoring and evaluation

The Commission plans to monitor progress towards the objectives on the basis of the mechanism embedded in the Governance Regulation, which is based on integrated NECPs, covering a ten-year period from 2021 to 2030, regular progress reports by the Member States and integrated monitoring arrangements by the Commission. The IA also envisages putting in place monitoring tools for each specific objective, and details key indicators. Examples of monitoring tools include reporting by Member States under the Governance Regulation, the EU Energy Poverty Observatory, and regular Joint Research Centre (JRC) assessments. In addition, the proposal includes a review clause.

Stakeholder consultation

The Commission made significant efforts to consult widely on this initiative and has integrated the stakeholder feedback well throughout the IA. It identified the main stakeholders, including the EU institutions, national authorities, different interest groups affected by the implementation of the EED (such as companies, including SMEs, regional and local public bodies, private organisations and industry associations, several of the European social partners, and NGOs), as well as wider interest groups (including civil society and academia) (IA, Annex B).

The Commission conducted a variety of stakeholder consultation activities. These included an open public online consultation from 17 November 2020 to 9 February 2021, which received 344 replies. The questions in the consultation addressed aspects concerning the ex-post evaluation and options for revising the EED and specific modification of articles, and the Commission points out that these questions were formulated on the basis of its Better Regulation Guidelines. In addition, nine
stakeholder workshops and one EED expert group meeting were organised; the IA includes a stakeholder feedback summary (IA, Annex B).

**Supporting data and analytical methods used**

This IA builds on the CTP Impact Assessment (see Annex D on ‘Key CTP findings input to the “Fit for 55” IAs’). The Commission also emphasises that the findings of the EED ex-post evaluation helped to inform the IA; frequent references are indeed made to these findings. Other key sources are the Member States’ NECPs and the Commission’s assessment of them, the 2020 EED progress report, JRC reports and the work of the Task Force on Mobilising Efforts to Reach the EU Energy Efficiency Targets for 2020. The Commission also mentions a ‘support study’, but no reference/link to this study is provided in the IA (IA, Annex A). Likewise, it mentions a ‘forthcoming technical publication’ on the impact on Member States of the scenario results but gives no further details about it (IA, p. 64).

The IAs accompanying several of the legislative proposals included in the ‘Fit for 55’ package, including the IA of the proposal for the revision of the EED, rely on a common analytical framework, which aims at ‘ensuring consistency of the analysis across all initiatives’ (IA, Annex E). This framework is embedded in several modelling tools with a proven track record in supporting EU policymaking, which are used to produce a common baseline (the EU Reference Scenario 2020) and a set of core scenarios (REG, MIX, MIX-CP), complemented by specific variants developed for the individual ‘Fit for 55’ initiatives. These modelling tools are publicly available in the Modelling Inventory and Knowledge Management System of the European Commission (MIDAS), including PRIMES and GEM-E3 (see factsheet). The modelling work is based on socio-economic and technology assumptions regarding the evolution of the European population, GDP growth, international energy prices, and the development of technologies, in terms of performance and costs. The assumptions are provided in Annex E of the IA, p. 38. Overall, the IA appears to be transparent as regards limitations.

The IA explains, in relation to the quantitative assessment, that using an energy system model does not allow for a detailed analysis by policy measure. The Commission states that ‘all models require large amounts of data and assumptions as inputs and yet there may not be precise econometric data for all variables needed’ (IA, p. 64; see also Annex E on analytical methods).

**Follow-up to the opinion of the Commission’s Regulatory Scrutiny Board**

The Commission’s Regulatory Scrutiny Board (RSB) first issued a negative opinion on the draft IA on 19 April 2021, followed by a positive opinion ‘with reservations’ on 28 May 2021. The RSB noted ‘significant shortcomings’ in its first, negative opinion, flagging: (1) the lack of clear options (which does not allow for a proper assessment of their impact, feasibility, EU added value and proportionality); (2) the lack of impact analysis (qualitative or quantitative) of the specific measures complementing modelling results for the different levels of ambition; (3) unclear links between the identified problems, objectives and options to achieve them.

In its second opinion, the RSB noted some improvements while still highlighting shortcomings, particularly as regards subsidiarity and proportionality. The shortcomings observed by the RSB relate to, inter alia: (1) insufficient justification of the need for specific sectoral energy savings obligations, with the RSB remarking that their added value for the global savings obligation and other ‘Fit for 55 initiatives’ is unclear; (2) insufficient justification for introducing further measures at EU level for heating and cooling; (3) the lack of clear evidence of the need for, and added value of, the transport options; (4) the need for further clarification regarding the choice and feasibility of the preferred options for buildings; and (5) the unclear interplay between the measures included in the preferred options.

It appears that most of the RSB’s comments have been addressed in the final IA report (see IA, Annex 2 on how the IA was modified).
Coherence between the Commission’s legislative proposal and IA

Overall, it appears that the Commission’s legislative proposal corresponds to the preferred option.

The Commission outlines well the problem at stake, explaining that, unless higher levels of energy efficiency are achieved, the EU will not meet its 55% GHG emission reduction target in a cost-effective manner. The IA is based on a wide range of evidence, including an ex-post evaluation, the CTP Impact Assessment and other key sources, as well as several stakeholder consultations. It would have been helpful if the Commission had provided a reference to the support study, which underpins the IA. The IA considers 34 policy options, in addition to the baseline, but does not explain well how the options, packages, measures and scenarios relate to one another, and it seems that this nomenclature is used interchangeably at times. The Commission made an effort to assess different impacts based on a quantitative and a qualitative analysis, but could have explained better why it assessed the options the way it did.

ENDNOTES

4 ‘S.M.A.R.T’ criteria refer to objectives being specific, measurable, achievable, relevant and time-bound.
5 ‘Crowding out’ refers to a situation where rising interest rates decrease the initial private total investment spending.
6 See also Heflich, A. and Saulnier, J., EU energy system transformation, Cost of Non-Europe Report, EPRS, European Parliament, October 2021.
7 The Commission published a second progress report, COM(2020) 954, which is not explicitly referenced in the IA.
9 The proposals for revision concern the following areas: ETS; ESR; LULUCF; CO₂ emission standards for cars and vans; energy efficiency; and renewable energy.

This briefing, prepared for the European Parliament’s Committee on Industry, Research and Energy (ITRE), analyses whether the principal criteria laid down in the Commission’s own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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