

EU

## Policy Brief

The future of Article 7: Status of negotiations

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## ENSMOV Project

ENSMOV is an EU-funded project aiming to support public authorities and key stakeholders in 14 Member States represented by its consortium (Austria, Belgium, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Lithuania, Netherlands, Poland, Romania and the UK- and beyond addressing all 28 MS and accession countries) to monitor, revise, improve and complement the design and implementation of their national energy efficiency policies by developing resources on practical and strategic issues arising from the Article 7 EED. ENSMOV follows on from two other very influential projects that have helped to shape Member State policies to address Article 7 requirements of the EED – IEE ENSPOL ([www.enspol.eu](http://www.enspol.eu)) and H2020 MULTEE (<https://multee.eu/>).

**ENSMOV has the following strategic objectives** that will deliver impacts beyond the duration of the project: a) To ensure that energy efficiency policies do not only promise, but also realize a major, long term contribution to the energy, environmental, economic and security goals of the EU and MS under the Energy Union; and b) To sustain an active platform and community for knowledge exchange of best practices in policy development and implementation of Article 7 EED policies, strengthening cooperation and improving the dialogue between national policymakers and stakeholders across the EU beyond the project period.

## Introduction

Since 2014, Article 7 of the Energy Efficiency Directive (EED) has required EU Member States to achieve energy savings as a result of national energy efficiency policy measures. In 2021, the European Commission proposed a revision of the EED in the context of increased climate ambition. In this proposal, Art. 7 becomes Art. 8 and its impact is increased.

The EU legislators, the European Parliament and the Council of the EU, are currently discussing these proposals (informal trilogue process). This policy brief compares the positions of the three EU institutions and describes what Member States could already do to prepare for the implementation of the new provisions.

## Overview

The Commission proposes the following changes from 2024:

- **An increase in the annual energy savings rate** from 0.8% to 1.5% for all Member States.
- **The introduction of a delivery gap mechanism** in case a Member State does not achieve the amount of cumulative energy savings at the end of an obligation period.
- **The reinforcement of energy poverty provisions** including a definition of priority groups and the introduction of a mandatory share of energy savings to be achieved among these groups.
- **The exclusion of fossil fuel-related energy savings from the obligation**
- **Clarifications on additionality** including in relation to the EU ETS Directive.

- The strengthening of requirements related to **taxation measures**.
- The strengthening of requirements related to **eligibility**

## Increase of annual savings rate

### Position by the three institutions

The Commission proposal increases the annual energy savings rate from 2024 onwards, **from 0.8% to 1.5%**. This increase includes Cyprus and Malta, who since 2021 have been allowed to achieve fewer savings than other Member States (0.24%) [Art.8(1)].

The Council position takes on board the idea of an increase but makes it gradual: **1.1% in 2024-2025, 1.3% in 2026-2027, and 1.5% in 2028-2030**. It maintains a lower rate for Cyprus and Malta (0.45 % from 2024) [Art.8(1)].

The Parliament position increases the annual savings rate from 2024 onwards, from 0.8% to **2%**, including for Cyprus and Malta [Art.8(1)].

The Commission proposal maintains the 1.5% savings rate **after 2030**, for 10-year periods, deleting the requirement for a review. The Council and the Parliament accepts this modification, but to a level of 1.1% for the Council and 2% for the Parliament [Art.8(1)].

### Impact on implementation

It seems likely that Member States will have to **increase the impact of current energy efficiency policies or introduce new policies** to comply with an increased energy savings obligation.

Member States will need to **recalculate their cumulative energy savings requirement** for the 2021-2030 period, considering the increased rate after 2023. The baseline upon

which they will calculate the savings would remain the same as the one used for the current period (most recent three-year period prior to 2019).

The Commission recently listed an increase in the energy savings obligation as a **key measure to deal with the current energy crisis**.<sup>1</sup> As many Member States are reinforcing energy savings measures to help energy users overcome the increases in energy prices, they will likely investigate ways to account for these efforts as part of their energy savings obligations. In doing so, they need to carefully **assess the impact of price increases** on consumer behaviour, in line with the materiality and additionality provisions in the EED.

## Delivery gap mechanism

### Position by the three institutions

The Commission's proposal introduces a delivery gap mechanism. Where a Member State has not achieved the required cumulative energy savings by the end of an obligation period, it shall **achieve the outstanding savings by the end of the following period**, on top of its obligation for this period [Art.8(13)].

The Council and the Parliament accept this amendment. The Council adds that where a Member State has achieved cumulative energy savings above the required level by the end of a period, it shall be entitled to **carry a maximum of 10% of such surplus** into the following obligation period without having the

<sup>1</sup> European Commission. (2022, 18 May). [EU 'Save Energy'](#).

<sup>2</sup> <https://ensmov.eu/recording-dealing-with-additionality-in-the-context-of-article-7-eed->

target commitment being increased [Art.8(13)].

### Impact on implementation

If it is introduced, a carryover of surplus savings would mean that a Member State can do less in the next period. It would therefore benefit from a **proper evaluation** of the energy savings stemming from the period where the surplus was achieved, to confirm the validity of these savings. Such an evaluation would also be crucial in case a Member State is not reaching its target. In that case, it would also be important that the evaluation assesses the reasons why policies have not delivered enough savings. Member States can build on existing evaluation practice.<sup>2</sup>

## Energy poverty

### Position by the three institutions

The Commission's proposal requires Member States to implement policy measures as a priority among several groups. These groups are people affected by energy poverty, vulnerable customers and, where applicable, people living in social housing. The Commission also proposes that a **minimum share of the cumulative energy savings** is achieved among these groups. If accepted, this share shall at least equal the proportion of households in energy poverty as assessed in National Energy and Climate Plans. For those Member States that had not notified this information, the Commission proposes a methodology to calculate the mandatory share [Art.8(3)].

[experiences-about-monitoring-and-energy-savings-calculations/](#). See also: <https://epatee.eu>.

The Commission also proposes that Member States shall also ensure that policy measures have **no adverse effect** on those priority groups [Art.8(3)]. They shall also determine distributional effects of taxation and equivalent measures on priority groups and show the effects of mitigation measures implemented [Annex V(4)(e)].

The Council and the Parliament agree with the mandatory share proposal. The Council adds **“financially weak households”** to the priority groups, while the Parliament adds **“low-income households”**. The Parliament proposes a **change in the methodology** that Member States would use to calculate the mandatory share if their NECP does not include enough information [Art.8(3)].

The Council proposes that Member States might estimate the energy savings of priority groups based on engineering estimates **using standardised occupancy and thermal comfort conditions or parameters**, such as parameters defined in national building regulations. The way comfort is considered for buildings actions should be reported together with the explanations about their methodology [Annex V(1)(d)].

### Impact on implementation

Member States will likely need to notify and report on the impact of their policies on priority groups and achieve a minimum share of energy savings among these groups. If nothing is in place yet, a first step would be to **identify the priority groups** considering national circumstances and to **calculate the mandatory share** of energy savings. **Assessing**

<sup>3</sup> ENSMOV & SocialWatt. (2021). *The Energy Efficiency Directive energy savings obligation and energy poverty alleviation*.

**the distributional impacts of the existing policy mix** is another important step to implement the “do not harm” principle proposed by the Commission.

These provisions might require Member States **to redesign some of their policies**. Amongst Member States with Energy Efficiency Obligation Schemes, France and Ireland have experience of implementing minimum shares for priority groups.<sup>3</sup>

## Exclusion of fossil fuel-related savings

### Position by the three institutions

The Commission proposes that policy measures and energy savings regarding the use of **direct combustion of fossil fuel technologies should not be permitted** to fulfil the energy savings obligation **as from 1 January 2024** [Annex V(2)(g), (h) & (k)].

Both the Council and Parliament propose to **introduce more flexibility related to this ban**. The Council proposes a derogation for energy intense enterprises in the industry sector. This derogation would apply during the 2024-2030 period under strict conditions. The Parliament proposes to postpone the fossil fuel exclusion to mid 2028, except for the residential sector where it would apply from 2024 [Annex V(2)(g) & (ga)]. The Parliament however caps the use of fossil-fuel related savings between 2024 and 2028 (1/4 of the obligation) [Annex V(2)(g)].

The Council [Annex V(2)(h)] and the Parliament [Annex V(2)(ga)] propose that for policy

<https://ensmov.eu/policy-guide-the-eed-energy-savings-obligation-and-energy-poverty-alleviation>

measures promoting combinations of technologies, the share of energy savings related to the fossil fuel combustion technology is not eligible.

### Impact on implementation

Regardless of the starting date and possible derogations, Member States will likely need to phase out individual actions involving the placement of a fossil-fuel equipment. Member States can prepare the implementation by **reviewing all policies** and identifying these individual actions. They can start developing plans on how to replace them. For example, individual actions involving the placement of a gas condensing boiler can be phased out while the Member State accelerates efforts to deploy electricity-based heat pumps.

## Additionality

### Position by the three institutions

The Commission's proposal **clarifies several points related to additionality**. Measures promoting energy efficiency improvements in the public sector (Art. 5 and Art. 6 of the new EED) [Annex V(2)(c)] and measures taken pursuant to Regulation (EU) 2018/842 (effort sharing) [Annex V(2)(d)] may be eligible. The Commission also specifies that Member States cannot count reduced energy use in sectors, including the transport and building sector, that would have occurred in any event as a result of emission trading pursuant to the EU ETS Directive [Annex V(2)(e)]. Member States must provide evidence, including calculation methodologies, that where there is an overlap in the impact of energy or carbon taxation measures or emission trading according to the EU ETS Directive, there is no double counting of

energy savings [Annex V(4)(f)]. They must also provide evidence, their assumptions and their calculation methodology to show additionality to the Union's new vehicle CO<sub>2</sub> requirements and product requirements [Annex V(2)(f)].

The Parliament does not modify these provisions, while the Council introduces some changes. The Council position states that Member States would be allowed to count energy savings that would have occurred in any event as a result of emission trading (EU ETS and national ETSs) provided that they have implemented complementary policy measures (EEOs or alternative measures) [Annex V(2)(e)]. The Council also proposes that Member States should provide "justification" rather than "evidence" to show additionality to the Union's new vehicle CO<sub>2</sub> requirements [Annex V(2)(f)].

### Impact on implementation

Member States will likely need to further **increase the transparency** related to the implementation of the additionality principle. For example, it would be interesting for Member States to share practice on how they consider the new vehicle CO<sub>2</sub> requirements in transport measures. The amendments related to the ETS reinforce the need for Member States to consider the **impact of prices on free ridership** in their programmes.

## Taxation

### Position by the three institutions

The Commission proposal **reinforces the requirements related to taxation measures**. When reporting a taxation measure, Member States shall demonstrate how they have ensured the **effectiveness of the price signal**,

such as the tax rate and the visibility over time, in the design of the measure. Where there is a **decrease in the tax rate**, Member States shall justify how the taxation measures still result in new energy savings [Art.10(4)].

The proposal makes the use of **short-run price elasticities the default option**. These elasticities shall represent the responsiveness of energy demand to price changes and shall be estimated based on **recent and representative official data sources** which are applicable for the Member State, and, where applicable, based on accompanying studies from an independent institute. If a different price elasticity is used, Member States shall explain how energy efficiency improvements due to the **implementation of other Union legislation** have been included in the baseline used to estimate the energy savings, or how they have avoided a double counting of energy savings from other Union legislation [Annex V(4)(b) & (d)].

The Council does not amend these provisions. The Parliament reinforces the requirement to use short run elasticities [Annex V(4)(d)]. They shall be end-user segment specific, including income classes, company types and size [Annex V(4)(b)]. Credit shall be given only for energy savings from taxation measures and parafiscal levies designed with the purpose to generate energy savings according to the definition in Article 2, point 7 [Annex V(4)(aa)].

### Impact on implementation

Member States can already review the implementation of tax policies in line with these new requirements.

## Eligibility

### Position by the three institutions

The Commission proposes that Member States shall demonstrate that they have implemented the policy measure **for the purpose of fulfilling the energy savings obligation and achieving end-use energy savings**. They shall provide evidence and their documentation that the energy savings are caused by a policy measure, including voluntary agreements [Annex V(2)(a)]. They shall also demonstrate that policy measures are eligible and appropriate to ensure the achievement of the required amount of cumulative end-use energy savings by the end of each obligation period [Art.8(14)(c)].

The Parliament does not modify these provisions. The Council amends this proposal, stating that Member States shall demonstrate that one of the objectives of the policy, whether new or existing is the achievement of end-use energy savings [Annex V(2)(a)].

### Impact on implementation

Member States can already review the implementation of policies in line with these new requirements.

## Other provisions

### Position by the three institutions

The Commission also proposes several clarifications:

- Member States may designate **transmission system operators** as obligated parties [Art.9(2)].
- The ambient heat captured by **solar thermal technologies** can be excluded



from their end-use energy consumption [Annex V(2)(j)].

The Commission also introduces some other requirements:

- Member States shall demonstrate how energy savings achieved **contribute to achieving their national energy efficiency contribution** pursuant to Art. 4 [Art.8(14)(b)].
- Regarding alternative measures, Member States shall report on the **measurement, control and verification systems** put in place, including but not limited to methods used, issues identified and how they were addressed [Art.10(3)].
- Member States shall notify how energy savings will be phased over the obligation period [Annex V(5)(b)].

The Council and the Parliament positions do not modify the meaning of these provisions.

## Impact on implementation

Member States can already consider these new options and requirements.

## References

European Commission. (2021, 14 July). [Proposal for a Directive of the European Parliament and of the Council on energy efficiency \(recast\)](#).

Council of the European Union. (2022, 27 June). [Outcome of proceedings. Proposal for a Directive of the European Parliament and of the Council on energy efficiency \(recast\)](#).

European Parliament. (2022, 13 July). [Compromise amendments](#).