

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (Text with EEA relevance)

## CHAPTER I

### **SUBJECT MATTER, SCOPE, DEFINITIONS AND ENERGY EFFICIENCY TARGETS**

#### *Article 1*

#### **Subject matter and scope**

1 This Directive establishes a common framework of measures for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union's 2020 20 % headline target on energy efficiency and to pave the way for further energy efficiency improvements beyond that date.

It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020.

2 The requirements laid down in this Directive are minimum requirements and shall not prevent any Member State from maintaining or introducing more stringent measures. Such measures shall be compatible with Union law. Where national legislation provides for more stringent measures, the Member State shall notify such legislation to the Commission.

#### *Article 2*

#### **Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (1) 'energy' means all forms of energy products, combustible fuels, heat, renewable energy, electricity, or any other form of energy, as defined in Article 2(d) of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics<sup>(1)</sup>;
- (2) 'primary energy consumption' means gross inland consumption, excluding non-energy uses;
- (3) 'final energy consumption' means all energy supplied to industry, transport, households, services and agriculture. It excludes deliveries to the energy transformation sector and the energy industries themselves;
- (4) 'energy efficiency' means the ratio of output of performance, service, goods or energy, to input of energy;
- (5) 'energy savings' means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;

- (6) 'energy efficiency improvement' means an increase in energy efficiency as a result of technological, behavioural and/or economic changes;
- (7) 'energy service' means the physical benefit, utility or good derived from a combination of energy with energy-efficient technology or with action, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to result in verifiable and measurable or estimable energy efficiency improvement or primary energy savings;
- (8) 'public bodies' means 'contracting authorities' as defined in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>(2)</sup>;
- (9) 'central government' means all administrative departments whose competence extends over the whole territory of a Member State;
- (10) 'total useful floor area' means the floor area of a building or part of a building, where energy is used to condition the indoor climate;
- (11) 'energy management system' means a set of interrelated or interacting elements of a plan which sets an energy efficiency objective and a strategy to achieve that objective;
- (12) 'European standard' means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;
- (13) 'international standard' means a standard adopted by the International Standardisation Organisation and made available to the public;
- (14) 'obligated party' means an energy distributor or retail energy sales company that is bound by the national energy efficiency obligation schemes referred to in Article 7;
- (15) 'entrusted party' means a legal entity with delegated power from a government or other public body to develop, manage or operate a financing scheme on behalf of the government or other public body;
- (16) 'participating party' means an enterprise or public body that has committed itself to reaching certain objectives under a voluntary agreement, or is covered by a national regulatory policy instrument;
- (17) 'implementing public authority' means a body governed by public law which is responsible for the carrying out or monitoring of energy or carbon taxation, financial schemes and instruments, fiscal incentives, standards and norms, energy labelling schemes, training or education;
- (18) 'policy measure' means a regulatory, financial, fiscal, voluntary or information provision instrument formally established and implemented in a Member State to create a supportive framework, requirement or incentive for market actors to provide and purchase energy services and to undertake other energy efficiency improvement measures;
- (19) 'individual action' means an action that leads to verifiable, and measurable or estimable, energy efficiency improvements and is undertaken as a result of a policy measure;

- (20) ‘energy distributor’ means a natural or legal person, including a distribution system operator, responsible for transporting energy with a view to its delivery to final customers or to distribution stations that sell energy to final customers;
- (21) ‘distribution system operator’ means ‘distribution system operator’ as defined in Directive 2009/72/EC and Directive 2009/73/EC respectively;
- (22) ‘retail energy sales company’ means a natural or legal person who sells energy to final customers;
- (23) ‘final customer’ means a natural or legal person who purchases energy for own end use;
- (24) ‘energy service provider’ means a natural or legal person who delivers energy services or other energy efficiency improvement measures in a final customer’s facility or premises;
- (25) ‘energy audit’ means a systematic procedure with the purpose of obtaining adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings;
- (26) ‘small and medium-sized enterprises’ or ‘SMEs’ means enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>(3)</sup>; the category of micro, small and medium-sized enterprises is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million;
- (27) ‘energy performance contracting’ means a contractual arrangement between the beneficiary and the provider of an energy efficiency improvement measure, verified and monitored during the whole term of the contract, where investments (work, supply or service) in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement or other agreed energy performance criterion, such as financial savings;
- (28) ‘smart metering system’ or ‘intelligent metering system’ means an electronic system that can measure energy consumption, providing more information than a conventional meter, and can transmit and receive data using a form of electronic communication;
- (29) ‘transmission system operator’ means ‘transmission system operator’ as defined in Directive 2009/72/EC and Directive 2009/73/EC respectively;
- (30) ‘cogeneration’ means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;
- (31) ‘economically justifiable demand’ means demand that does not exceed the needs for heating or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;
- (32) ‘useful heat’ means heat produced in a cogeneration process to satisfy economically justifiable demand for heating or cooling;

- (33) ‘electricity from cogeneration’ means electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex I;
- (34) ‘high-efficiency cogeneration’ means cogeneration meeting the criteria laid down in Annex II;
- (35) ‘overall efficiency’ means the annual sum of electricity and mechanical energy production and useful heat output divided by the fuel input used for heat produced in a cogeneration process and gross electricity and mechanical energy production;
- (36) ‘power-to-heat ratio’ means the ratio of electricity from cogeneration to useful heat when operating in full cogeneration mode using operational data of the specific unit;
- (37) ‘cogeneration unit’ means a unit that is able to operate in cogeneration mode;
- (38) ‘small-scale cogeneration unit’ means a cogeneration unit with installed capacity below 1 MW<sub>e</sub>;
- (39) ‘micro-cogeneration unit’ means a cogeneration unit with a maximum capacity below 50 kW<sub>e</sub>;
- (40) ‘plot ratio’ means the ratio of the building floor area to the land area in a given territory;
- (41) ‘efficient district heating and cooling’ means a district heating or cooling system using at least 50 % renewable energy, 50 % waste heat, 75 % cogenerated heat or 50 % of a combination of such energy and heat;
- (42) ‘efficient heating and cooling’ means a heating and cooling option that, compared to a baseline scenario reflecting a business-as-usual situation, measurably reduces the input of primary energy needed to supply one unit of delivered energy within a relevant system boundary in a cost-effective way, as assessed in the cost-benefit analysis referred to in this Directive, taking into account the energy required for extraction, conversion, transport and distribution;
- (43) ‘efficient individual heating and cooling’ means an individual heating and cooling supply option that, compared to efficient district heating and cooling, measurably reduces the input of non-renewable primary energy needed to supply one unit of delivered energy within a relevant system boundary or requires the same input of non-renewable primary energy but at a lower cost, taking into account the energy required for extraction, conversion, transport and distribution;
- (44) ‘substantial refurbishment’ means a refurbishment whose cost exceeds 50 % of the investment cost for a new comparable unit;
- (45) ‘aggregator’ means a demand service provider that combines multiple short-duration consumer loads for sale or auction in organised energy markets.

### *Article 3*

#### **Energy efficiency targets**

1 Each Member State shall set an indicative national energy efficiency target, based on either primary or final energy consumption, primary or final energy savings, or energy intensity. Member States shall notify those targets to the Commission in accordance with Article 24(1) and Annex XIV Part 1. When doing so, they shall also express those targets in terms of an

absolute level of primary energy consumption and final energy consumption in 2020 and shall explain how, and on the basis of which data, this has been calculated.

When setting those targets, Member States shall take into account:

- a that the Union's 2020 energy consumption has to be no more than 1 474 Mtoe of primary energy or no more than 1 078 Mtoe of final energy;
- b the measures provided for in this Directive;
- c the measures adopted to reach the national energy saving targets adopted pursuant to Article 4(1) of Directive 2006/32/EC; and
- d other measures to promote energy efficiency within Member States and at Union level.

When setting those targets, Member States may also take into account national circumstances affecting primary energy consumption, such as:

- a remaining cost-effective energy-saving potential;
- b GDP evolution and forecast;
- c changes of energy imports and exports;
- d development of all sources of renewable energies, nuclear energy, carbon capture and storage; and
- e early action.

2 By 30 June 2014, the Commission shall assess progress achieved and whether the Union is likely to achieve energy consumption of no more than 1 474 Mtoe of primary energy and/or no more than 1 078 Mtoe of final energy in 2020.

3 In carrying out the review referred to in paragraph 2, the Commission shall:

- a sum the national indicative energy efficiency targets reported by Member States;
- b assess whether the sum of those targets can be considered a reliable guide to whether the Union as a whole is on track, taking into account the evaluation of the first annual report in accordance with Article 24(1), and the evaluation of the National Energy Efficiency Action Plans in accordance with Article 24(2);
- c take into account complementary analysis arising from:
  - (i) an assessment of progress in energy consumption, and in energy consumption in relation to economic activity, at Union level, including progress in the efficiency of energy supply in Member States that have based their national indicative targets on final energy consumption or final energy savings, including progress due to these Member States' compliance with Chapter III of this Directive;
  - (ii) results from modelling exercises in relation to future trends in energy consumption at Union level;
- d compare the results under points (a) to (c) with the quantity of energy consumption that would be needed to achieve energy consumption of no more than 1 474 Mtoe of primary energy and/or no more than 1 078 Mtoe of final energy in 2020.

## CHAPTER II

**EFFICIENCY IN ENERGY USE***Article 4***Building renovation**

Member States shall establish a long-term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private. This strategy shall encompass:

- (a) an overview of the national building stock based, as appropriate, on statistical sampling;
- (b) identification of cost-effective approaches to renovations relevant to the building type and climatic zone;
- (c) policies and measures to stimulate cost-effective deep renovations of buildings, including staged deep renovations;
- (d) a forward-looking perspective to guide investment decisions of individuals, the construction industry and financial institutions;
- (e) an evidence-based estimate of expected energy savings and wider benefits.

A first version of the strategy shall be published by 30 April 2014 and updated every three years thereafter and submitted to the Commission as part of the National Energy Efficiency Action Plans.

*Article 5***Exemplary role of public bodies' buildings**

1 Without prejudice to Article 7 of Directive 2010/31/EU, each Member State shall ensure that, as from 1 January 2014, 3 % of the total floor area of heated and/or cooled buildings owned and occupied by its central government is renovated each year to meet at least the minimum energy performance requirements that it has set in application of Article 4 of Directive 2010/31/EU.

The 3 % rate shall be calculated on the total floor area of buildings with a total useful floor area over 500 m<sup>2</sup> owned and occupied by the central government of the Member State concerned that, on 1 January of each year, do not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU. That threshold shall be lowered to 250 m<sup>2</sup> as of 9 July 2015.

Where a Member State requires that the obligation to renovate each year 3 % of the total floor area extends to floor area owned and occupied by administrative departments at a level below central government, the 3 % rate shall be calculated on the total floor area of buildings with a total useful floor area over 500 m<sup>2</sup> and, as of 9 July 2015, over 250 m<sup>2</sup> owned and occupied by central government and by these administrative departments of the Member State concerned that, on 1 January of each year, do not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU.

When implementing measures for the comprehensive renovation of central government buildings in accordance with the first subparagraph, Member States may choose to consider the building as a whole, including the building envelope, equipment, operation and maintenance.

Member States shall require that central government buildings with the poorest energy performance be a priority for energy efficiency measures, where cost-effective and technically feasible.

2 Member States may decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:

- a buildings officially protected as part of a designated environment, or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- b buildings owned by the armed forces or central government and serving national defence purposes, apart from single living quarters or office buildings for the armed forces and other staff employed by national defence authorities;
- c buildings used as places of worship and for religious activities.

3 If a Member State renovates more than 3 % of the total floor area of central government buildings in a given year, it may count the excess towards the annual renovation rate of any of the three previous or following years.

4 Member States may count towards the annual renovation rate of central government buildings new buildings occupied and owned as replacements for specific central government buildings demolished in any of the two previous years, or buildings that have been sold, demolished or taken out of use in any of the two previous years due to more intensive use of other buildings.

5 For the purposes of paragraph 1, by 31 December 2013, Member States shall establish and make publicly available an inventory of heated and/or cooled central government buildings with a total useful floor area over 500 m<sup>2</sup> and, as of 9 July 2015, over 250 m<sup>2</sup>, excluding buildings exempted on the basis of paragraph 2. The inventory shall contain the following data:

- a the floor area in m<sup>2</sup>; and
- b the energy performance of each building or relevant energy data.

6 Without prejudice to Article 7 of Directive 2010/31/EU, Member States may opt for an alternative approach to paragraphs 1 to 5 of this Article, whereby they take other cost-effective measures, including deep renovations and measures for behavioural change of occupants, to achieve, by 2020, an amount of energy savings in eligible buildings owned and occupied by their central government that is at least equivalent to that required in paragraph 1, reported on an annual basis.

For the purpose of the alternative approach, Member States may estimate the energy savings that paragraphs 1 to 4 would generate by using appropriate standard values for the energy consumption of reference central government buildings before and after renovation and according to estimates of the surface of their stock. The categories of reference central government buildings shall be representative of the stock of such buildings.

Member States opting for the alternative approach shall notify to the Commission, by 31 December 2013, the alternative measures that they plan to adopt, showing how they would achieve an equivalent improvement in the energy performance of the buildings within the central government estate.

7 Member States shall encourage public bodies, including at regional and local level, and social housing bodies governed by public law, with due regard for their respective competences and administrative set-up, to:

- a adopt an energy efficiency plan, freestanding or as part of a broader climate or environmental plan, containing specific energy saving and efficiency objectives and actions, with a view to following the exemplary role of central government buildings laid down in paragraphs 1, 5 and 6;
- b put in place an energy management system, including energy audits, as part of the implementation of their plan;
- c use, where appropriate, energy service companies, and energy performance contracting to finance renovations and implement plans to maintain or improve energy efficiency in the long term.

### *Article 6*

#### **Purchasing by public bodies**

1 Member States shall ensure that central governments purchase only products, services and buildings with high energy-efficiency performance, insofar as that is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, as referred to in Annex III.

The obligation set out in the first subparagraph shall apply to contracts for the purchase of products, services and buildings by public bodies in so far as such contracts have a value equal to or greater than the thresholds laid down in Article 7 of Directive 2004/18/EC.

2 The obligation referred to in paragraph 1 shall apply to the contracts of the armed forces only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces. The obligation shall not apply to contracts for the supply of military equipment as defined by Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security<sup>(4)</sup>.

3 Member States shall encourage public bodies, including at regional and local levels, with due regard to their respective competences and administrative set-up, to follow the exemplary role of their central governments to purchase only products, services and buildings with high energy-efficiency performance. Member States shall encourage public bodies, when tendering service contracts with significant energy content, to assess the possibility of concluding long-term energy performance contracts that provide long-term energy savings.

4 Without prejudice to paragraph 1, when purchasing a product package covered as a whole by a delegated act adopted under Directive 2010/30/EU, Member States may require that the aggregate energy efficiency shall take priority over the energy efficiency of individual products within that package, by purchasing the product package that complies with the criterion of belonging to the highest energy efficiency class.



## Article 7

### Energy efficiency obligation schemes

1 Each Member State shall set up an energy efficiency obligation scheme. That scheme shall ensure that energy distributors and/or retail energy sales companies that are designated as obligated parties under paragraph 4 operating in each Member State's territory achieve a cumulative end-use energy savings target by 31 December 2020, without prejudice to paragraph 2.

That target shall be at least equivalent to achieving new savings each year from 1 January 2014 to 31 December 2020 of 1,5 % of the annual energy sales to final customers of all energy distributors or all retail energy sales companies by volume, averaged over the most recent three-year period prior to 1 January 2013. The sales of energy, by volume, used in transport may be partially or fully excluded from this calculation.

Member States shall decide how the calculated quantity of new savings referred to in the second subparagraph is to be phased over the period.

- 2 Subject to paragraph 3, each Member State may:
- a carry out the calculation required by the second subparagraph of paragraph 1 using values of 1 % in 2014 and 2015; 1,25 % in 2016 and 2017; and 1,5 % in 2018, 2019 and 2020;
  - b exclude from the calculation all or part of the sales, by volume, of energy used in industrial activities listed in Annex I to Directive 2003/87/EC;
  - c allow energy savings achieved in the energy transformation, distribution and transmission sectors, including efficient district heating and cooling infrastructure, as a result of the implementation of the requirements set out in Article 14(4), point (b) of Article 14(5) and Article 15(1) to (6) and (9) to be counted towards the amount of energy savings required under paragraph 1; and
  - d count energy savings resulting from individual actions newly implemented since 31 December 2008 that continue to have an impact in 2020 and that can be measured and verified, towards the amount of energy savings referred to in paragraph 1.

3 The application of paragraph 2 shall not lead to a reduction of more than 25 % of the amount of energy savings referred to in paragraph 1. Member States making use of paragraph 2 shall notify that fact to the Commission by 5 June 2014, including the elements listed under paragraph 2 to be applied and a calculation showing their impact on the amount of energy savings referred to in paragraph 1.

4 Without prejudice to the calculation of energy savings for the target in accordance with the second subparagraph of paragraph 1, each Member State shall, for the purposes of the first subparagraph of paragraph 1, designate, on the basis of objective and non-discriminatory criteria, obligated parties amongst energy distributors and/or retail energy sales companies operating in its territory and may include transport fuel distributors or transport fuel retailers operating in its territory. The amount of energy savings to fulfil the obligation shall be achieved by the obligated parties among final customers, designated, as appropriate, by the Member State, independently of the calculation made pursuant to paragraph 1, or, if Member States so decide, through certified savings stemming from other parties as described in point (b) of paragraph 7.

5 Member States shall express the amount of energy savings required of each obligated party in terms of either final or primary energy consumption. The method chosen for expressing

the required amount of energy savings shall also be used for calculating the savings claimed by obligated parties. The conversion factors set out in Annex IV shall apply.

6 Member States shall ensure that the savings stemming from paragraphs 1, 2 and 9 of this Article and Article 20(6) are calculated in accordance with points (1) and (2) of Annex V. They shall put in place measurement, control and verification systems under which at least a statistically significant proportion and representative sample of the energy efficiency improvement measures put in place by the obligated parties is verified. That measurement, control and verification shall be conducted independently of the obligated parties.

7 Within the energy efficiency obligation scheme, Member States may:

- a include requirements with a social aim in the saving obligations they impose, including by requiring a share of energy efficiency measures to be implemented as a priority in households affected by energy poverty or in social housing;
- b permit obligated parties to count towards their obligation certified energy savings achieved by energy service providers or other third parties, including when obligated parties promote measures through other State-approved bodies or through public authorities that may or may not involve formal partnerships and may be in combination with other sources of finance. Where Member States so permit, they shall ensure that an approval process is in place which is clear, transparent and open to all market actors, and which aims at minimising the costs of certification;
- c allow obligated parties to count savings obtained in a given year as if they had instead been obtained in any of the four previous or three following years.

8 Once a year, Member States shall publish the energy savings achieved by each obligated party, or each sub-category of obligated party, and in total under the scheme.

Member States shall ensure that obligated parties provide on request:

- a aggregated statistical information on their final customers (identifying significant changes to previously submitted information); and
- b current information on final customers' consumption, including, where applicable, load profiles, customer segmentation and geographical location of customers, while preserving the integrity and confidentiality of private or commercially sensitive information in compliance with applicable Union law.

Such a request shall be made not more than once a year.

9 As an alternative to setting up an energy efficiency obligation scheme under paragraph 1, Member States may opt to take other policy measures to achieve energy savings among final customers, provided those policy measures meet the criteria set out in paragraphs 10 and 11. The annual amount of new energy savings achieved through this approach shall be equivalent to the amount of new energy savings required by paragraphs 1, 2 and 3. Provided that equivalence is maintained, Member States may combine obligation schemes with alternative policy measures, including national energy efficiency programmes.

The policy measures referred to in the first subparagraph may include, but are not restricted to, the following policy measures or combinations thereof:

- a energy or CO<sub>2</sub> taxes that have the effect of reducing end-use energy consumption;
- b financing schemes and instruments or fiscal incentives that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption;
- c regulations or voluntary agreements that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption;

- d standards and norms that aim at improving the energy efficiency of products and services, including buildings and vehicles, except where these are mandatory and applicable in Member States under Union law;
- e energy labelling schemes, with the exception of those that are mandatory and applicable in the Member States under Union law;
- f training and education, including energy advisory programmes, that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption.

Member States shall notify to the Commission, by 5 December 2013, the policy measures that they plan to adopt for the purposes of the first subparagraph and Article 20(6), following the framework provided in point 4 of Annex V, and showing how they would achieve the required amount of savings. In the case of the policy measures referred to in the second subparagraph and in Article 20(6), this notification shall demonstrate how the criteria in paragraph 10 are met. In the case of policy measures other than those referred to in the second subparagraph or in Article 20(6), Member States shall explain how an equivalent level of savings, monitoring and verification is achieved. The Commission may make suggestions for modifications in the three months following notification.

10 Without prejudice to paragraph 11, the criteria for the policy measures taken pursuant to the second subparagraph of paragraph 9 and Article 20(6) shall be as follows:

- a the policy measures provide for at least two intermediate periods by 31 December 2020 and lead to the achievement of the level of ambition set out in paragraph 1;
- b the responsibility of each entrusted party, participating party or implementing public authority, whichever is relevant, is defined;
- c the energy savings that are to be achieved are determined in a transparent manner;
- d the amount of energy savings required or to be achieved by the policy measure are expressed in either final or primary energy consumption, using the conversion factors set out in Annex IV;
- e energy savings are calculated using the methods and principles provided in points (1) and (2) of Annex V;
- f energy savings are calculated using the methods and principles provided in point 3 of Annex V;
- g an annual report of the energy savings achieved is provided by participating parties unless not feasible and made publicly available;
- h monitoring of the results is ensured and appropriate measures are envisaged if the progress is not satisfactory;
- i a control system is put in place that also includes independent verification of a statistically significant proportion of the energy efficiency improvement measures; and
- j data on the annual trend of energy savings are published annually.

11 Member States shall ensure that the taxes referred to in point (a) of the second subparagraph of paragraph 9 comply with the criteria listed in points (a), (b), (c), (d), (f), (h) and (j) of paragraph 10.

Member States shall ensure that the regulations and voluntary agreements referred to in point (c) of the second subparagraph of paragraph 9 comply with the criteria listed in points (a), (b), (c), (d), (e), (g), (h), (i) and (j) of paragraph 10.

Member States shall ensure that the other policy measures referred to in the second subparagraph of paragraph 9 and the Energy Efficiency National Funds referred to in

Article 20(6) comply with the criteria listed in points (a), (b), (c), (d), (e), (h), (i) and (j) of paragraph 10.

12 Member States shall ensure that when the impact of policy measures or individual actions overlaps, no double counting of energy savings is made.

### *Article 8*

#### **Energy audits and energy management systems**

1 Member States shall promote the availability to all final customers of high quality energy audits which are cost-effective and:

- a carried out in an independent manner by qualified and/or accredited experts according to qualification criteria; or
- b implemented and supervised by independent authorities under national legislation.

The energy audits referred to in the first subparagraph may be carried out by in-house experts or energy auditors provided that the Member State concerned has put in place a scheme to assure and check their quality, including, if appropriate, an annual random selection of at least a statistically significant percentage of all the energy audits they carry out.

For the purpose of guaranteeing the high quality of the energy audits and energy management systems, Member States shall establish transparent and non-discriminatory minimum criteria for energy audits based on Annex VI.

Energy audits shall not include clauses preventing the findings of the audit from being transferred to any qualified/accredited energy service provider, on condition that the customer does not object.

2 Member States shall develop programmes to encourage SMEs to undergo energy audits and the subsequent implementation of the recommendations from these audits.

On the basis of transparent and non-discriminatory criteria and without prejudice to Union State aid law, Member States may set up support schemes for SMEs, including if they have concluded voluntary agreements, to cover costs of an energy audit and of the implementation of highly cost-effective recommendations from the energy audits, if the proposed measures are implemented.

Member States shall bring to the attention of SMEs, including through their respective representative intermediary organisations, concrete examples of how energy management systems could help their businesses. The Commission shall assist Member States by supporting the exchange of best practices in this domain.

3 Member States shall also develop programmes to raise awareness among households about the benefits of such audits through appropriate advice services.

Member States shall encourage training programmes for the qualification of energy auditors in order to facilitate sufficient availability of experts.

4 Member States shall ensure that enterprises that are not SMEs are subject to an energy audit carried out in an independent and cost-effective manner by qualified and/or accredited experts or implemented and supervised by independent authorities under national legislation by 5 December 2015 and at least every four years from the date of the previous energy audit.

5 Energy audits shall be considered as fulfilling the requirements of paragraph 4 when they are carried out in an independent manner, on the basis of minimum criteria based on Annex VI, and implemented under voluntary agreements concluded between organisations of stakeholders and an appointed body and supervised by the Member State concerned, or other bodies to which the competent authorities have delegated the responsibility concerned, or by the Commission.

Access of market participants offering energy services shall be based on transparent and non-discriminatory criteria.

6 Enterprises that are not SMEs and that are implementing an energy or environmental management system - certified by an independent body according to the relevant European or International Standards - shall be exempted from the requirements of paragraph 4, provided that Member States ensure that the management system concerned includes an energy audit on the basis of the minimum criteria based on Annex VI.

7 Energy audits may stand alone or be part of a broader environmental audit. Member States may require that an assessment of the technical and economic feasibility of connection to an existing or planned district heating or cooling network shall be part of the energy audit.

Without prejudice to Union State aid law, Member States may implement incentive and support schemes for the implementation of recommendations from energy audits and similar measures.

### *Article 9*

#### **Metering**

1 Member States shall ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity, natural gas, district heating, district cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.

Such a competitively priced individual meter shall always be provided when:

- a an existing meter is replaced, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term;
- b a new connection is made in a new building or a building undergoes major renovations, as set out in Directive 2010/31/EU.

2 Where, and to the extent that, Member States implement intelligent metering systems and roll out smart meters for natural gas and/or electricity in accordance with Directives 2009/72/EC and 2009/73/EC:

- a they shall ensure that the metering systems provide to final customers information on actual time of use and that the objectives of energy efficiency and benefits for final customers are fully taken into account when establishing the minimum functionalities of the meters and the obligations imposed on market participants;
- b they shall ensure the security of the smart meters and data communication, and the privacy of final customers, in compliance with relevant Union data protection and privacy legislation;
- c in the case of electricity and at the request of the final customer, they shall require meter operators to ensure that the meter or meters can account for electricity put into the grid from the final customer's premises;

- d they shall ensure that if final customers request it, metering data on their electricity input and off-take is made available to them or to a third party acting on behalf of the final customer in an easily understandable format that they can use to compare deals on a like-for-like basis;
- e they shall require that appropriate advice and information be given to customers at the time of installation of smart meters, in particular about their full potential with regard to meter reading management and the monitoring of energy consumption.

3 Where heating and cooling or hot water are supplied to a building from a district heating network or from a central source servicing multiple buildings, a heat or hot water meter shall be installed at the heating exchanger or point of delivery.

In multi-apartment and multi-purpose buildings with a central heating/cooling source or supplied from a district heating network or from a central source serving multiple buildings, individual consumption meters shall also be installed by 31 December 2016 to measure the consumption of heat or cooling or hot water for each unit where technically feasible and cost-efficient. Where the use of individual meters is not technically feasible or not cost-efficient, to measure heating, individual heat cost allocators shall be used for measuring heat consumption at each radiator, unless it is shown by the Member State in question that the installation of such heat cost allocators would not be cost-efficient. In those cases, alternative cost-efficient methods of heat consumption measurement may be considered.

Where multi-apartment buildings are supplied from district heating or cooling, or where own common heating or cooling systems for such buildings are prevalent, Member States may introduce transparent rules on the allocation of the cost of thermal or hot water consumption in such buildings to ensure transparency and accuracy of accounting for individual consumption. Where appropriate, such rules shall include guidelines on the way to allocate costs for heat and/or hot water that is used as follows:

- a hot water for domestic needs;
- b heat radiated from the building installation and for the purpose of heating the common areas (where staircases and corridors are equipped with radiators);
- c for the purpose of heating apartments.

#### *Article 10*

#### **Billing information**

1 Where final customers do not have smart meters as referred to in Directives 2009/72/EC and 2009/73/EC, Member States shall ensure, by 31 December 2014, that billing information is accurate and based on actual consumption, in accordance with point 1.1 of Annex VII, for all the sectors covered by this Directive, including energy distributors, distribution system operators and retail energy sales companies, where this is technically possible and economically justified.

This obligation may be fulfilled by a system of regular self-reading by the final customers whereby they communicate readings from their meter to the energy supplier. Only when the final customer has not provided a meter reading for a given billing interval shall billing be based on estimated consumption or a flat rate.

2 Meters installed in accordance with Directives 2009/72/EC and 2009/73/EC shall enable accurate billing information based on actual consumption. Member States shall ensure

that final customers have the possibility of easy access to complementary information on historical consumption allowing detailed self-checks.

Complementary information on historical consumption shall include:

- a cumulative data for at least the three previous years or the period since the start of the supply contract if this is shorter. The data shall correspond to the intervals for which frequent billing information has been produced; and
  - b detailed data according to the time of use for any day, week, month and year. These data shall be made available to the final customer via the internet or the meter interface for the period of at least the previous 24 months or the period since the start of the supply contract if this is shorter.
- 3 Independently of whether smart meters have been installed or not, Member States:
- a shall require that, to the extent that information on the energy billing and historical consumption of final customers is available, it be made available, at the request of the final customer, to an energy service provider designated by the final customer;
  - b shall ensure that final customers are offered the option of electronic billing information and bills and that they receive, on request, a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption;
  - c shall ensure that appropriate information is made available with the bill to provide final customers with a comprehensive account of current energy costs, in accordance with Annex VII;
  - d may lay down that, at the request of the final customer, the information contained in these bills shall not be considered to constitute a request for payment. In such cases, Member States shall ensure that suppliers of energy sources offer flexible arrangements for actual payments;
  - e shall require that information and estimates for energy costs are provided to consumers on demand in a timely manner and in an easily understandable format enabling consumers to compare deals on a like-for-like basis.

### *Article 11*

#### **Cost of access to metering and billing information**

1 Member States shall ensure that final customers receive all their bills and billing information for energy consumption free of charge and that final customers also have access to their consumption data in an appropriate way and free of charge.

2 Notwithstanding paragraph 1, the distribution of costs of billing information for the individual consumption of heating and cooling in multi-apartment and multi-purpose buildings pursuant to Article 9(3) shall be carried out on a non-profit basis. Costs resulting from the assignment of this task to a third party, such as a service provider or the local energy supplier, covering the measuring, allocation and accounting for actual individual consumption in such buildings, may be passed onto the final customers to the extent that such costs are reasonable.

### *Article 12*

#### **Consumer information and empowering programme**

1 Member States shall take appropriate measures to promote and facilitate an efficient use of energy by small energy customers, including domestic customers. These measures may be part of a national strategy.

2 For the purposes of paragraph 1, these measures shall include one or more of the elements listed under point (a) or (b):

- a a range of instruments and policies to promote behavioural change which may include:
  - (i) fiscal incentives;
  - (ii) access to finance, grants or subsidies;
  - (iii) information provision;
  - (iv) exemplary projects;
  - (v) workplace activities;
- b ways and means to engage consumers and consumer organisations during the possible roll-out of smart meters through communication of:
  - (i) cost-effective and easy-to-achieve changes in energy use;
  - (ii) information on energy efficiency measures.

#### *Article 13*

#### **Penalties**

Member States shall lay down the rules on penalties applicable in case of non-compliance with the national provisions adopted pursuant to Articles 7 to 11 and Article 18(3) and shall take the necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 5 June 2014 and shall notify it without delay of any subsequent amendment affecting them.

### CHAPTER III

#### **EFFICIENCY IN ENERGY SUPPLY**

#### *Article 14*

#### **Promotion of efficiency in heating and cooling**

1 By 31 December 2015, Member States shall carry out and notify to the Commission a comprehensive assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, containing the information set out in Annex VIII. If they have already carried out an equivalent assessment, they shall notify it to the Commission.

The comprehensive assessment shall take full account of the analysis of the national potentials for high-efficiency cogeneration carried out under Directive 2004/8/EC.

At the request of the Commission, the assessment shall be updated and notified to the Commission every five years. The Commission shall make any such request at least one year before the due date.

2 Member States shall adopt policies which encourage the due taking into account at local and regional levels of the potential of using efficient heating and cooling systems, in



particular those using high-efficiency cogeneration. Account shall be taken of the potential for developing local and regional heat markets.

3 For the purpose of the assessment referred to in paragraph 1, Member States shall carry out a cost-benefit analysis covering their territory based on climate conditions, economic feasibility and technical suitability in accordance with Part 1 of Annex IX. The cost-benefit analysis shall be capable of facilitating the identification of the most resource- and cost-efficient solutions to meeting heating and cooling needs. That cost-benefit analysis may be part of an environmental assessment under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment<sup>(6)</sup>.

4 Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 identify a potential for the application of high-efficiency cogeneration and/or efficient district heating and cooling whose benefits exceed the costs, Member States shall take adequate measures for efficient district heating and cooling infrastructure to be developed and/or to accommodate the development of high-efficiency cogeneration and the use of heating and cooling from waste heat and renewable energy sources in accordance with paragraphs 1, 5, and 7.

Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 do not identify a potential whose benefits exceed the costs, including the administrative costs of carrying out the cost-benefit analysis referred to in paragraph 5, the Member State concerned may exempt installations from the requirements laid down in that paragraph.

5 Member States shall ensure that a cost-benefit analysis in accordance with Part 2 of Annex IX is carried out when, after 5 June 2014:

- a a new thermal electricity generation installation with a total thermal input exceeding 20 MW is planned, in order to assess the cost and benefits of providing for the operation of the installation as a high-efficiency cogeneration installation;
- b an existing thermal electricity generation installation with a total thermal input exceeding 20 MW is substantially refurbished, in order to assess the cost and benefits of converting it to high-efficiency cogeneration;
- c an industrial installation with a total thermal input exceeding 20 MW generating waste heat at a useful temperature level is planned or substantially refurbished, in order to assess the cost and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network;
- d a new district heating and cooling network is planned or in an existing district heating or cooling network a new energy production installation with a total thermal input exceeding 20 MW is planned or an existing such installation is to be substantially refurbished, in order to assess the cost and benefits of utilising the waste heat from nearby industrial installations.

The fitting of equipment to capture carbon dioxide produced by a combustion installation with a view to its being geologically stored as provided for in Directive 2009/31/EC shall not be considered as refurbishment for the purpose of points (b), (c) and (d) of this paragraph.

Member States may require the cost-benefit analysis referred to in points (c) and (d) to be carried out in cooperation with the companies responsible for the operation of the district heating and cooling networks.

- 6 Member States may exempt from paragraph 5:
- a those peak load and back-up electricity generating installations which are planned to operate under 1 500 operating hours per year as a rolling average over a period of five years, based on a verification procedure established by the Member States ensuring that this exemption criterion is met;
  - b nuclear power installations;
  - c installations that need to be located close to a geological storage site approved under Directive 2009/31/EC.

Member States may also lay down thresholds, expressed in terms of the amount of available useful waste heat, the demand for heat or the distances between industrial installations and district heating networks, for exempting individual installations from the provisions of points (c) and (d) of paragraph 5.

Member States shall notify exemptions adopted under this paragraph to the Commission by 31 December 2013 and any subsequent changes to them thereafter.

- 7 Member States shall adopt authorisation criteria as referred to in Article 7 of Directive 2009/72/EC, or equivalent permit criteria, to:
- a take into account the outcome of the comprehensive assessment referred to in paragraph 1;
  - b ensure that the requirements of paragraph 5 are fulfilled; and
  - c take into account the outcome of cost-benefit analysis referred to in paragraph 5.

8 Member States may exempt individual installations from being required, by the authorisation and permit criteria referred to in paragraph 7, to implement options whose benefits exceed their costs, if there are imperative reasons of law, ownership or finance for so doing. In these cases the Member State concerned shall submit a reasoned notification of its decision to the Commission within three months of the date of taking it.

9 Paragraphs 5, 6, 7 and 8 of this Article shall apply to installations covered by Directive 2010/75/EU without prejudice to the requirements of that Directive.

10 On the basis of the harmonised efficiency reference values referred to in point (f) of Annex II, Member States shall ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria laid down by each Member State. They shall ensure that this guarantee of origin complies with the requirements and contains at least the information specified in Annex X. Member States shall mutually recognise their guarantees of origin, exclusively as proof of the information referred to in this paragraph. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. Member States shall notify the Commission of such refusal and its justification. In the event of refusal to recognise a guarantee of origin, the Commission may adopt a decision to compel the refusing party to recognise it, in particular with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.

The Commission shall be empowered to review, by means of delegated acts in accordance with Article 23 of this Directive, the harmonised efficiency reference values laid down in Commission Implementing Decision 2011/877/EU<sup>(6)</sup> on the basis of Directive 2004/8/EC by 31 December 2014.

11 Member States shall ensure that any available support for cogeneration is subject to the electricity produced originating from high-efficiency cogeneration and the waste heat being

effectively used to achieve primary energy savings. Public support to cogeneration and district heating generation and networks shall be subject to State aid rules, where applicable.

### *Article 15*

#### **Energy transformation, transmission and distribution**

1 Member States shall ensure that national energy regulatory authorities pay due regard to energy efficiency in carrying out the regulatory tasks specified in Directives 2009/72/EC and 2009/73/EC regarding their decisions on the operation of the gas and electricity infrastructure.

Member States shall in particular ensure that national energy regulatory authorities, through the development of network tariffs and regulations, within the framework of Directive 2009/72/EC and taking into account the costs and benefits of each measure, provide incentives for grid operators to make available system services to network users permitting them to implement energy efficiency improvement measures in the context of the continuing deployment of smart grids.

Such systems services may be determined by the system operator and shall not adversely impact the security of the system.

For electricity, Member States shall ensure that network regulation and network tariffs fulfil the criteria in Annex XI, taking into account guidelines and codes developed pursuant to Regulation (EC) No 714/2009.

2 Member States shall ensure, by 30 June 2015, that:

- a an assessment is undertaken of the energy efficiency potentials of their gas and electricity infrastructure, in particular regarding transmission, distribution, load management and interoperability, and connection to energy generating installations, including access possibilities for micro energy generators;
- b concrete measures and investments are identified for the introduction of cost-effective energy efficiency improvements in the network infrastructure, with a timetable for their introduction.

3 Member States may permit components of schemes and tariff structures with a social aim for net-bound energy transmission and distribution, provided that any disruptive effects on the transmission and distribution system are kept to the minimum necessary and are not disproportionate to the social aim.

4 Member States shall ensure the removal of those incentives in transmission and distribution tariffs that are detrimental to the overall efficiency (including energy efficiency) of the generation, transmission, distribution and supply of electricity or those that might hamper participation of demand response, in balancing markets and ancillary services procurement. Member States shall ensure that network operators are incentivised to improve efficiency in infrastructure design and operation, and, within the framework of Directive 2009/72/EC, that tariffs allow suppliers to improve consumer participation in system efficiency, including demand response, depending on national circumstances.

5 Without prejudice to Article 16(2) of Directive 2009/28/EC and taking into account Article 15 of Directive 2009/72/EC and the need to ensure continuity in heat supply, Member States shall ensure that, subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria set by the competent national authorities, transmission system operators and distribution system operators when they are in charge of dispatching the generating installations in their territory:

- a guarantee the transmission and distribution of electricity from high-efficiency cogeneration;
- b provide priority or guaranteed access to the grid of electricity from high-efficiency cogeneration;
- c when dispatching electricity generating installations, provide priority dispatch of electricity from high-efficiency cogeneration in so far as the secure operation of the national electricity system permits.

Member States shall ensure that rules relating to the ranking of the different access and dispatch priorities granted in their electricity systems are clearly explained in detail and published. When providing priority access or dispatch for high-efficiency cogeneration, Member States may set rankings as between, and within different types of, renewable energy and high-efficiency cogeneration and shall in any case ensure that priority access or dispatch for energy from variable renewable energy sources is not hampered.

In addition to the obligations laid down by the first subparagraph, transmission system operators and distribution system operators shall comply with the requirements set out in Annex XII.

Member States may particularly facilitate the connection to the grid system of electricity produced from high-efficiency cogeneration from small-scale and micro-cogeneration units. Member States shall, where appropriate, take steps to encourage network operators to adopt a simple notification 'install and inform' process for the installation of micro-cogeneration units to simplify and shorten authorisation procedures for individual citizens and installers.

6 Subject to the requirements relating to the maintenance of the reliability and safety of the grid, Member States shall take the appropriate steps to ensure that, where this is technically and economically feasible with the mode of operation of the high-efficiency cogeneration installation, high-efficiency cogeneration operators can offer balancing services and other operational services at the level of transmission system operators or distribution system operators. Transmission system operators and distribution system operators shall ensure that such services are part of a services bidding process which is transparent, non-discriminatory and open to scrutiny.

Where appropriate, Member States may require transmission system operators and distribution system operators to encourage high-efficiency cogeneration to be sited close to areas of demand by reducing the connection and use-of-system charges.

7 Member States may allow producers of electricity from high-efficiency cogeneration wishing to be connected to the grid to issue a call for tender for the connection work.

8 Member States shall ensure that national energy regulatory authorities encourage demand side resources, such as demand response, to participate alongside supply in wholesale and retail markets.

Subject to technical constraints inherent in managing networks, Member States shall ensure that transmission system operators and distribution system operators, in meeting requirements for balancing and ancillary services, treat demand response providers, including aggregators, in a non-discriminatory manner, on the basis of their technical capabilities.

Subject to technical constraints inherent in managing networks, Member States shall promote access to and participation of demand response in balancing, reserve and other system services markets, inter alia by requiring national energy regulatory authorities or,

where their national regulatory systems so require, transmission system operators and distribution system operators in close cooperation with demand service providers and consumers, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of demand response. Such specifications shall include the participation of aggregators.

9 When reporting under Directive 2010/75/EU, and without prejudice to Article 9(2) of that Directive, Member States shall consider including information on energy efficiency levels of installations undertaking the combustion of fuels with total rated thermal input of 50 MW or more in the light of the relevant best available techniques developed in accordance with Directive 2010/75/EU and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control<sup>(7)</sup>.

Member States may encourage operators of installations referred to in the first subparagraph to improve their annual average net operational rates.

## CHAPTER IV

### HORIZONTAL PROVISIONS

#### *Article 16*

#### **Availability of qualification, accreditation and certification schemes**

1 Where a Member State considers that the national level of technical competence, objectivity and reliability is insufficient, it shall ensure that, by 31 December 2014, certification and/or accreditation schemes and/or equivalent qualification schemes, including, where necessary, suitable training programmes, become or are available for providers of energy services, energy audits, energy managers and installers of energy-related building elements as defined in Article 2(9) of Directive 2010/31/EU.

2 Member States shall ensure that the schemes referred to in paragraph 1 provide transparency to consumers, are reliable and contribute to national energy efficiency objectives.

3 Member States shall make publicly available the certification and/or accreditation schemes or equivalent qualification schemes referred to in paragraph 1 and shall cooperate among themselves and with the Commission on comparisons between, and recognition of, the schemes.

Member States shall take appropriate measures to make consumers aware of the availability of qualification and/or certification schemes in accordance with Article 18(1).

#### *Article 17*

#### **Information and training**

1 Member States shall ensure that information on available energy efficiency mechanisms and financial and legal frameworks is transparent and widely disseminated to all relevant market actors, such as consumers, builders, architects, engineers, environmental and energy auditors, and installers of building elements as defined in Directive 2010/31/EU.

Member States shall encourage the provision of information to banks and other financial institutions on possibilities of participating, including through the creation of public/private partnerships, in the financing of energy efficiency improvement measures.

2 Member States shall establish appropriate conditions for market operators to provide adequate and targeted information and advice to energy consumers on energy efficiency.

3 The Commission shall review the impact of its measures to support the development of platforms, involving, inter alia, the European social dialogue bodies in fostering training programmes for energy efficiency, and shall bring forward further measures if appropriate. The Commission shall encourage European social partners in their discussions on energy efficiency.

4 Member States shall, with the participation of stakeholders, including local and regional authorities, promote suitable information, awareness-raising and training initiatives to inform citizens of the benefits and practicalities of taking energy efficiency improvement measures.

5 The Commission shall encourage the exchange and wide dissemination of information on best energy efficiency practices in Member States.

#### *Article 18*

### **Energy services**

1 Member States shall promote the energy services market and access for SMEs to this market by:

- a disseminating clear and easily accessible information on:
  - (i) available energy service contracts and clauses that should be included in such contracts to guarantee energy savings and final customers' rights;
  - (ii) financial instruments, incentives, grants and loans to support energy efficiency service projects;
- b encouraging the development of quality labels, inter alia, by trade associations;
- c making publicly available and regularly updating a list of available energy service providers who are qualified and/or certified and their qualifications and/or certifications in accordance with Article 16, or providing an interface where energy service providers can provide information;
- d supporting the public sector in taking up energy service offers, in particular for building refurbishment, by:
  - (i) providing model contracts for energy performance contracting which include at least the items listed in Annex XIII;
  - (ii) providing information on best practices for energy performance contracting, including, if available, cost-benefit analysis using a life-cycle approach;
- e providing a qualitative review in the framework of the National Energy Efficiency Action Plan regarding the current and future development of the energy services market.

2 Member States shall support the proper functioning of the energy services market, where appropriate, by:

- a identifying and publicising point(s) of contact where final customers can obtain the information referred to in paragraph 1;

- b taking, if necessary, measures to remove the regulatory and non-regulatory barriers that impede the uptake of energy performance contracting and other energy efficiency service models for the identification and/or implementation of energy saving measures;
- c considering putting in place or assigning the role of an independent mechanism, such as an ombudsman, to ensure the efficient handling of complaints and out-of-court settlement of disputes arising from energy service contracts;
- d enabling independent market intermediaries to play a role in stimulating market development on the demand and supply sides.

3 Member States shall ensure that energy distributors, distribution system operators and retail energy sales companies refrain from any activities that may impede the demand for and delivery of energy services or other energy efficiency improvement measures, or hinder the development of markets for such services or measures, including foreclosing the market for competitors or abusing dominant positions.

#### *Article 19*

### **Other measures to promote energy efficiency**

1 Member States shall evaluate and if necessary take appropriate measures to remove regulatory and non-regulatory barriers to energy efficiency, without prejudice to the basic principles of the property and tenancy law of the Member States, in particular as regards:

- a the split of incentives between the owner and the tenant of a building or among owners, with a view to ensuring that these parties are not deterred from making efficiency-improving investments that they would otherwise have made by the fact that they will not individually obtain the full benefits or by the absence of rules for dividing the costs and benefits between them, including national rules and measures regulating decision-making processes in multi-owner properties;
- b legal and regulatory provisions, and administrative practices, regarding public purchasing and annual budgeting and accounting, with a view to ensuring that individual public bodies are not deterred from making investments in improving energy efficiency and minimising expected life-cycle costs and from using energy performance contracting and other third-party financing mechanisms on a long-term contractual basis.

Such measures to remove barriers may include providing incentives, repealing or amending legal or regulatory provisions, or adopting guidelines and interpretative communications, or simplifying administrative procedures. The measures may be combined with the provision of education, training and specific information and technical assistance on energy efficiency.

2 The evaluation of barriers and measures referred to in paragraph 1 shall be notified to the Commission in the first National Energy Efficiency Action Plan referred to in Article 24(2). The Commission shall encourage the sharing of national best practices in this regard.

#### *Article 20*

### **Energy Efficiency National Fund, Financing and Technical Support**

1 Without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union, Member States shall facilitate the establishment of financing facilities, or

use of existing ones, for energy efficiency improvement measures to maximise the benefits of multiple streams of financing.

2 The Commission shall, where appropriate, directly or via the European financial institutions, assist Member States in setting up financing facilities and technical support schemes with the aim of increasing energy efficiency in different sectors.

3 The Commission shall facilitate the exchange of best practice between the competent national or regional authorities or bodies, e.g. through annual meetings of the regulatory bodies, public databases with information on the implementation of measures by Member States, and country comparison.

4 Member States may set up an Energy Efficiency National Fund. The purpose of this fund shall be to support national energy efficiency initiatives.

5 Member States may allow for the obligations set out in Article 5(1) to be fulfilled by annual contributions to the Energy Efficiency National Fund of an amount equal to the investments required to achieve those obligations.

6 Member States may provide that obligated parties can fulfil their obligations set out in Article 7(1) by contributing annually to the Energy Efficiency National Fund an amount equal to the investments required to achieve those obligations.

7 Member States may use their revenues from annual emission allocations under Decision No 406/2009/EC for the development of innovative financing mechanisms to give practical effect to the objective in Article 5 of improving the energy performance of buildings.

#### *Article 21*

### **Conversion factors**

For the purpose of comparison of energy savings and conversion to a comparable unit, the conversion factors set out in Annex IV shall apply unless the use of other conversion factors can be justified.

## CHAPTER V

### **FINAL PROVISIONS**

#### *Article 22*

### **Delegated acts**

1 The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to review the harmonised efficiency reference values referred to in the second subparagraph of Article 14(10).

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to adapt to technical progress the values, calculation methods, default primary energy coefficient and requirements in Annexes I, II, III, IV, V, VII, VIII, IX, X and XII.



### Article 23

#### **Exercise of the delegation**

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 22 shall be conferred on the Commission for a period of five years from 4 December 2012.

3 The delegation of power referred to in Article 22 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 22 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

### Article 24

#### **Review and monitoring of implementation**

1 By 30 April each year as from 2013, Member States shall report on the progress achieved towards national energy efficiency targets, in accordance with Part 1 of Annex XIV. The report may form part of the National Reform Programmes referred to in Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union<sup>(8)</sup>.

2 By 30 April 2014, and every three years thereafter, Member States shall submit National Energy Efficiency Action Plans. The National Energy Efficiency Action Plans shall cover significant energy efficiency improvement measures and expected and/ or achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use, in view of achieving the national energy efficiency targets referred to in Article 3(1). The National Energy Efficiency Action Plans shall be complemented with updated estimates of expected overall primary energy consumption in 2020, as well as estimated levels of primary energy consumption in the sectors indicated in Part 1 of Annex XIV.

The Commission shall, by 31 December 2012, provide a template as guidance for the National Energy Efficiency Action Plans. That template shall be adopted in accordance with the advisory procedure referred to in Article 26(2). The National Energy Efficiency Action Plans shall in any case include the information specified in Annex XIV.

3 The Commission shall evaluate the annual reports and the National Energy Efficiency Action Plans and assess the extent to which Member States have made progress towards the achievement of the national energy efficiency targets required by Article 3(1) and towards the

implementation of this Directive. The Commission shall send its assessment to the European Parliament and the Council. Based on its assessment of the reports and the National Energy Efficiency Action Plans, the Commission may issue recommendations to Member States.

4 The Commission shall monitor the impact of implementing this Directive on Directives 2003/87/EC, 2009/28/EC and 2010/31/EU and Decision No 406/2009/EC, and on industry sectors, in particular those that are exposed to a significant risk of carbon leakage as determined in Decision 2010/2/EU.

5 The Commission shall review the continued need for the possibility of exemptions set out in Article 14(6) for the first time in the assessment of the first National Energy Efficiency Action Plan and every three years thereafter. Where the review shows that any of the criteria for these exemptions can no longer be justified taking into account the availability of heat load and the real operating conditions of the exempted installations, the Commission shall propose appropriate measures.

6 Member States shall submit to the Commission before 30 April each year statistics on national electricity and heat production from high and low efficiency cogeneration, in accordance with the methodology shown in Annex I, in relation to total heat and electricity production. They shall also submit annual statistics on cogeneration heat and electricity capacities and fuels for cogeneration, and on district heating and cooling production and capacities, in relation to total heat and electricity production and capacities. Member States shall submit statistics on primary energy savings achieved by application of cogeneration in accordance with the methodology shown in Annex II.

7 By 30 June 2014 the Commission shall submit the assessment referred to in Article 3(2) to the European Parliament and to the Council, accompanied, if necessary, by proposals for further measures.

8 The Commission shall review the effectiveness of the implementation of Article 6 by 5 December 2015, taking into account the requirements laid down in Directive 2004/18/EC and shall submit a report to the European Parliament and the Council. That report shall be accompanied, if appropriate, by proposals for further measures.

9 By 30 June 2016, the Commission shall submit a report to the European Parliament and the Council on the implementation of Article 7. That report shall be accompanied, if appropriate, by a legislative proposal for one or more of the following purposes:

- a to change the final date laid down in Article 7(1);
- b to review the requirements laid down in Article 7(1), (2) and (3);
- c to establish additional common requirements, in particular as regards the matters referred to in Article 7(7).

10 By 30 June 2018, the Commission shall assess the progress made by Member States in removing the regulatory and non-regulatory barriers referred to in Article 19(1). This assessment shall be followed, if appropriate, by proposals for further measures.

11 The Commission shall make the reports referred to in paragraphs 1 and 2 publicly available.

## Article 25

### **Online platform**

The Commission shall establish an online platform in order to foster the practical implementation of this Directive at national, regional and local levels. That platform shall support the exchange of experiences on practices, benchmarking, networking activities, as well as innovative practices.

## Article 26

### **Committee procedure**

1 The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

## Article 27

### **Amendments and repeals**

1 Directive 2006/32/EC is repealed from 5 June 2014, except for Article 4(1) to (4) thereof and Annexes I, III and IV thereto, without prejudice to the obligations of the Member States relating to the time-limit for its transposition into national law. Article 4(1) to (4) of, and Annexes I, III and IV to Directive 2006/32/EC shall be repealed with effect from 1 January 2017.

Directive 2004/8/EC is repealed from 5 June 2014, without prejudice to the obligations of the Member States relating to the time-limit for its transposition into national law.

References to Directives 2006/32/EC and 2004/8/EC shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex XV.

2 Article 9(1) and (2) of Directive 2010/30/EU is deleted from 5 June 2014.

3 Directive 2009/125/EC is amended as follows:

(1) the following recital is inserted:

(35a) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings<sup>(9)</sup> requires Member States to set energy performance requirements for building elements that form part of the building envelope and system requirements in respect of the overall energy performance, the proper installation, and the appropriate dimensioning, adjustment and control of the technical building systems which are installed in existing buildings. It is consistent with the objectives of this Directive that these requirements may in certain circumstances limit the installation of energy-related products which comply with this Directive and its implementing measures, provided that such requirements do not constitute an unjustifiable market barrier.;

(2) the following sentence is added to the end of Article 6(1):

This shall be without prejudice to the energy performance requirements and system requirements set by Member States in accordance with Article 4(1) and Article 8 of Directive 2010/31/EU..

#### *Article 28*

### **Transposition**

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 June 2014.

Notwithstanding the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4, the first subparagraph of Article 5(1), Article 5(5), Article 5(6), the last subparagraph of Article 7(9), Article 14(6), Article 19(2), Article 24(1) and Article 24(2) and point (4) of Annex V by the dates specified therein.

They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 29*

### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 30*

### **Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 25 October 2012.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

A. D. MAVROYIANNIS

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**Status:** This is the original version (as it was originally adopted).

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- (1) OJ L 304, 14.11.2008, p. 1.
- (2) OJ L 134, 30.4.2004, p. 114.
- (3) OJ L 124, 20.5.2003, p. 36.
- (4) OJ L 216, 20.8.2009, p. 76.
- (5) OJ L 197, 21.7.2001, p. 30.
- (6) OJ L 343, 23.12.2011, p. 91.
- (7) OJ L 24, 29.1.2008, p. 8.
- (8) OJ L 191, 23.7.2010, p. 28.
- (9) OJ L 153, 18.6.2010, p. 13.?’;