EUROPEAN COMMISSION

*Brussels, 20.4.2017*
*C(2017) 2442 final*

*Dear President,*

*The Commission would like to thank the Eerste Kamer for its Reasoned Opinion on the proposal of the European Parliament and of the Council amending Directive 2010/31/EU on the energy performance of buildings {COM(2016) 765 final}.*

*The proposal forms part of a broader package of ambitious measures – the Clean Energy for All Europeans package – designed to provide a well-functioning and stable regulatory framework that is flexible enough to adapt to the challenges the European Union is facing. The package addresses key priorities set out in the Energy Union Framework Strategy: triggering investment, fostering innovation, integrating energy markets, empowering consumers and promoting a truly European approach to energy policy.*

*As part of this package, the proposal for an amended Energy Performance of Buildings Directive aims to tap the potential of the European Union building sector in terms of energy efficiency with a view to achieving the European Union's overarching energy efficiency and decarbonisation objectives. To this end, the proposal has a particular focus on three areas: accelerating the renovation rate of existing buildings, making buildings more active energy players ("prosumer" vision) and leveraging smart technologies for efficient operation.*

*The Commission has taken good note of the Eerste Kamer's concerns on subsidiarity, in particular as regards the provisions in Article 8(2) and (6) of the proposal.*

*As a preliminary remark, the Commission would like to stress that it fully supports the ambition behind the Dutch integrated and proactive national strategy as referred to in the Eerste Kamer's Opinion. Together with the other proposals in the Clean Energy for All Europeans Package, the proposal has been designed to complement – and in no way undermine the development of – national strategies adopted by the Member States.*

*Furthermore the Commission, on the basis of the findings from the ex-post evaluation of the current Directive, carefully assessed all options available before drawing up its proposal in order to ensure the respect of the principle of subsidiarity. The explanatory memorandum to the proposal underlines that the suggested targeted amendments respect the principle of subsidiarity by ensuring that Member States will retain the same flexibility as they have today.*

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*The proposal has also been designed so as to be fully in line with the principle of proportionality. In this respect, the explanatory memorandum accompanying the proposal underlines that "European Union policies on energy efficiency have expanded prudently, limiting their intervention to areas where they are necessary to achieve the energy efficiency objectives" and that "the scope of amendments is limited to the aspects that require European Union actions".*

*The Commission wishes to underline that the principles of subsidiarity and proportionality have also been fully taken into account in defining the specific provisions highlighted in the Eerste Kamer's Reasoned Opinion concerning the installation of charging points and the definition of a smartness indicator. These provisions have been introduced following the recognition of regulatory and market failures, which require collective action at European Union level to be properly addressed. The failures identified, the quantified impacts and the rationale for introducing these provisions are outlined in the Impact Assessment accompanying the proposal.*

*With regard to the specific concerns expressed by the Eerste Kamer on Article 8 (2) and (6) of the proposal, the Commission would like to refer to the attached annex.*

*The points made in this reply are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Eerste Kamer and looks forward to continuing the political dialogue in the future. In that regard, the Commission stands ready to give a presentation of the proposals to the members of the Eerste Kamer in order to answer questions that could remain, give additional clarifications and have additional exchanges.*

*Yours faithfully,*

*Frans Timmermans*
*First Vice-President*

*Miguel Arias Cañete*
*Member of the Commission*

*Annex*

*The Commission has carefully considered each of the issues raised by the Eerste Kamer in its Opinion and is pleased to offer the following clarifications.*

*With respect to the provisions in the proposal for the amended Energy Performance of Buildings Directive that aim at supporting electro-mobility, the Commission would like to emphasize that this support for the electrification of the transport sector would greatly enhance its energy efficiency and contribute to its decarbonisation. It supplements and in no way undermines the strategies implemented by Member States towards low-impact transport (e.g. cycling or public transportation).*

*The provision in Article 8(2) of the proposal was introduced to ensure that a minimum share of European Union parking spaces of non-residential areas is equipped with electric vehicle charging points. Accessibility to charging infrastructure is a key issue for consumer acceptance. The Communication that led to the Alternative Fuels Infrastructure Directive*[1] *stated that 8 million charging points were needed in the Union (corresponding to a total number of 4 million electric vehicles) by 2020. However, the deployment of charging points in places that are not publicly accessible is hampered by the fact that, in multi-apartment blocks or in non- residential buildings, installing charging points requires an agreement from the co-owners to intervene on the building infrastructure or to cross private spaces.*

*The Commission carefully assessed its approach on Article 8(2) of the proposal. Considering that by 2030 there would be around 78 million parking spaces in buildings with more than ten parking spaces, installing one charging point in 10 % (one every ten) of these parking spaces would make a contribution to meeting the 8 million charging point target. The target of 1 out of 10 parking spaces would ensure that only larger buildings, of a sufficient size, are targeted.*

*In addition, the impact assessment identified different barriers to e-vehicles in the residential and in the non-residential area, which resulted in different regulatory approaches. Pre-cabling is a more effective measure for the residential area: pre-equipping the building for later installation of electricity plugs in all parking spaces, when and if the need arises, significantly decreases the costs for installing charging points for individual apartment owners while preventing potential resistance of other co-owners. For non-residential buildings, usually owned by a single entity, the objective is to ensure that charging points are actually installed and available for electric vehicle users. Typical targeted non-residential buildings would be office buildings (where drivers could charge their electric vehicle while at work).*

*Based on this approach, various options for the scope have then been assessed. The analysis showed that it was necessary for the non-residential area to target not only new buildings and major renovations, but also existing buildings which, over a ten-year period, would lead to the deployment of 90% of the total number of recharging points mandated by the provisions. The provisions in Article 8(2) of the proposal, which target non-residential buildings, are estimated to lead alone to the deployment of 3.11 million charging points. This*

[1] COM(2013) 18 final.

*is significant and would give a major contribution to achieving the 8 million recharging points needed by 2030, but still leaves a large margin to Member States for implementing additional targeted national strategies to cover the remaining gap and possibly, to show higher ambitions. In addition, Article 8(4) of the proposal allows for the exemption of public buildings which are already covered by the Alternative Fuels Infrastructure Directive. Furthermore, it is stated in Article 8(2) of the proposal that Member States would also have the possibility to exempt smaller businesses (i.e. buildings owned and occupied by small and medium-sized enterprises) from the obligation to deploy recharging points. Article 8(6) of the proposal requires Member States to introduce smartness indicators for buildings. That measure results from the recognition of the benefits that European Union buildings users and owners can reap from smart technologies. It has been established that smart technologies are among the most cost-effective approaches to building energy efficiency improvement: they have low upfront costs and short payback periods. In addition to optimizing building energy, they enhance the awareness of users and increase the level of comfort in buildings. The introduction of the smartness indicator would ensure that building users and owners are aware of the added value of smart technologies. The measure itself has a very low cost (estimated to EUR 20 per building) and could be implemented effectively through existing energy performance certification schemes. Conversely, the potential impact on energy savings and expenditures is very significant: it has been evaluated to respectively 8 to 10 million of tonnes of oil equivalent and EUR 8 to 10 billion per year by 2030, compared to the baseline where the smartness indicator measure is not implemented.*

*The proposed smartness indicator has also links to other parts of the Clean Energy for all Europeans package, in particular with the legislation on the energy efficiency of products. The Commission is currently exploring whether ecodesign or energy labelling measures could be developed for smart appliances. This focuses in particular on how household appliances, such as washing machines and dish washers, but also heating and ventilation systems, charging stations for electric vehicles and battery storage systems, could support demand response services. In the same context, with the adoption of the Ecodesign Working Plan 2016-2019 as part of the Clean Energy for All Europeans package on 30 November 2016, the Commission has also committed to investigate Building Automation and Control Systems for possible measures under the scope of the ecodesign or energy labelling Directives.*

*Lastly, also in relation with Article 8(6) of the proposal, the Commission would like to emphasize that the definition of the smartness indicator through delegated acts would allow for a thorough and broad involvement of experts and interested parties. The Commission intends to lead an 18-month technical study that will include a detailed state-of-the-art assessment and intensive consultations (stakeholder meetings, consultation forum, consultation of expert groups from Member States) in order to ensure that the smartness indicator is defined in a transparent way, with the involvement of all interested parties. In addition, the adoption of related delegated acts would be controlled by the European Parliament and the Council and be subject to their right to object.*