Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Moderation of energy demand is one of the five dimensions of the Energy Union Strategy established by the Commission communication of 25 February 2015 entitled ‘A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy’. Improving energy efficiency throughout the full energy chain, including energy generation, transmission, distribution and end-use, will benefit the environment, improve air quality and public health, reduce greenhouse gas emissions, improve energy security by reducing dependence on energy imports from outside the Union, cut energy costs for households and companies, help alleviate energy poverty, and lead to increased competitiveness, more jobs and increased economic activity throughout the economy, thus improving citizens' quality of life. This is in line with the Union commitments made in the framework of the Energy Union and global climate agenda established by the 2015 Paris Agreement on climate change following the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change[(4)] (the ‘Paris Agreement’), committing to keep the increase of the global average temperature to well below 2 °C above pre-industrial levels and to pursuing efforts to limit the temperature increase to 1,5 °C above pre-industrial levels.

(2) Directive 2012/27/EU of the European Parliament and of the Council[(5)] is an element to progress towards the Energy Union, under which energy efficiency is to be treated as an energy source in its own right. The energy efficiency first principle should

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be taken into account when setting new rules for the supply side and other policy areas. The Commission should ensure that energy efficiency and demand-side response can compete on equal terms with generation capacity. Energy efficiency needs to be considered whenever decisions relating to planning the energy system or to financing are taken. Energy efficiency improvements need to be made whenever they are more cost-effective than equivalent supply-side solutions. This ought to help exploit the multiple benefits of energy efficiency for the Union, in particular for citizens and businesses.

(3) Energy efficiency should be recognised as a crucial element and a priority consideration in future investment decisions on the Union's energy infrastructure.

(4) Reaching an ambitious energy efficiency target requires barriers to be removed in order to facilitate investment in energy efficiency measures. One step in that direction is the clarification provided by Eurostat on 19 September 2017 on how to record energy performance contracts in national accounts, which removes uncertainties and facilitates the use of such contracts.

(5) The European Council of 23 and 24 October 2014 supported a 27 % energy efficiency target for 2030 at Union level, to be reviewed by 2020 having in mind a Union-level target of 30 %. In its resolution of 15 December 2015 entitled ‘Towards a European Energy Union’, the European Parliament called on the Commission to assess, in addition, the viability of a 40 % energy efficiency target for the same timeframe. It is therefore appropriate to amend Directive 2012/27/EU, in order to adapt it to the 2030 perspective.

(6) The need for the Union to achieve its energy efficiency targets at Union level, expressed in primary and/or final energy consumption, should be clearly set out in the form of a target of at least 32,5 % for 2030. Projections made in 2007 showed a primary energy consumption in 2030 of 1 887 Mtoe and a final energy consumption of 1 416 Mtoe. A 32,5 % reduction results in 1 273 Mtoe and 956 Mtoe in 2030 respectively. That target, which is of the same nature as the Union's 2020 target, should be assessed by the Commission for the purpose of revising it upwards by 2023 in the case of substantial cost reductions or, where needed, to meet the Union's international commitments for decarbonisation. There are no binding targets at Member State level in the 2020 and 2030 perspectives, and the freedom of Member States to set their national contributions based either on primary or final energy consumption or primary or final energy savings, or on energy intensity, should continue not to be restricted. Member States should set their national indicative energy efficiency contributions taking into account that the Union's 2030 energy consumption has to be no more than 1 273 Mtoe of primary energy and/or no more than 956 Mtoe of final energy. This means that primary energy consumption in the Union should be reduced by 26 %, and final energy consumption should be reduced by 20 % compared to the 2005 levels. A regular evaluation of progress towards the achievement of the Union's 2030 targets is necessary and is provided for in Regulation (EU) 2018/1999 of the European Parliament and of the Council[6].

(7) The operational efficiency of energy systems at any given moment is influenced by the ability to feed power generated from different sources — with different degrees of inertia and start-up times — into the grid smoothly and flexibly. Improving that efficiency will enable better use to be made of renewable energy.

(8) Improvement in energy efficiency can contribute to higher economic output. Member States and the Union should aim to decrease energy consumption regardless of levels of economic growth.

(9) The obligation on Member States to establish long-term strategies for mobilising investment and facilitating the renovation of their national building stock and notify them to the Commission is removed from Directive 2012/27/EU and added to Directive 2010/31/EU of the European Parliament and of the Council[(7)] where that obligation fits in with long-term plans for nearly zero energy buildings (NZEBs) and the decarbonisation of buildings.

(10) In view of the climate and energy framework for 2030, the energy savings obligation established by Directive 2012/27/EU should be extended beyond 2020. That extension would create greater stability for investors and thus encourage long-term investments and long-term energy efficiency measures, such as the deep renovation of buildings with the long-term objective of facilitating the cost effective transformation of existing buildings into NZEBs. The energy savings obligation has an important role in the creation of local growth and jobs, and should be maintained to ensure that the Union can achieve its energy and climate objectives by creating further opportunities and to break the link between energy consumption and growth. Cooperation with the private sector is important to assess the conditions on which private investment for energy efficiency projects can be unlocked and to develop new revenue models for innovation in the field of energy efficiency.

(11) Energy efficiency improvement measures also have a positive impact on air quality, as more energy efficient buildings contribute to reducing the demand for heating fuels, including solid heating fuels. Energy efficiency measures therefore contribute to improving indoor and outdoor air quality and help achieve, in a cost effective manner, the objectives of the Union's air quality policy, as established in particular by Directive (EU) 2016/2284 of the European Parliament and of the Council[(8)].

(12) Member States are required to achieve cumulative end-use energy savings for the entire obligation period 2021 to 2030, equivalent to new annual savings of at least 0,8 % of final energy consumption. That requirement could be met by new policy measures that are adopted during the new obligation period from 1 January 2021 to 31 December 2030 or by new individual actions as a result of policy measures adopted during or before the previous period, provided that the individual actions that trigger energy savings are introduced during the new period. To that end, Member States should be able to make use of an energy efficiency obligation scheme, alternative policy measures, or both. In addition, various options, including whether energy used in transport is included, in whole or in part, in the calculation baseline, should be provided in order to give Member States flexibility in how they calculate the amount of their energy savings,

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whilst ensuring that the required cumulative end-use energy savings equivalent to new annual savings of at least 0,8 % are reached.

(13) It would, however, be disproportionate to impose such a requirement on Cyprus and on Malta. The energy market of those small island Member States exhibits specific characteristics which substantially limit the range of measures available to meet the energy savings obligation, such as the existence of a single electricity distributor, the absence of natural gas networks and of district heating and district cooling systems, as well as the small size of petroleum distribution companies. Those specific characteristics are compounded by the small size of the energy markets of those Member States. Therefore, Cyprus and Malta should be required only to achieve cumulative end-use energy savings equivalent to new savings of 0,24 % of final energy consumption for the period 2021 to 2030.

(14) Where they use an obligation scheme, Member States should designate obligated parties among energy distributors, retail energy sales companies and transport fuel distributors or retailers on the basis of objective and non-discriminatory criteria. The designation or exemption from designation of certain categories of such distributors or retailers should not be understood to be incompatible with the principle of non-discrimination. Member States are therefore able to choose whether such distributors or retailers or only certain categories thereof are designated as obligated parties.

(15) Member States' energy efficiency improvement measures in transport are eligible to be taken into account for achieving their end-use energy savings obligation. Such measures include policies that are, inter alia, dedicated to promoting more efficient vehicles, a modal shift to cycling, walking and collective transport, or mobility and urban planning that reduces demand for transport. In addition, schemes which accelerate the uptake of new, more efficient vehicles or policies fostering a shift to better performing fuels that reduce energy use per kilometre are also capable of being eligible, subject to compliance with the rules on materiality and additionality set out in Annex V to Directive 2012/27/EU as amended by this Directive. Such measures should, if appropriate, be consistent with Member States' national policy frameworks established pursuant to Directive 2014/94/EU of the European Parliament and of the Council[(9)].

(16) Measures taken by Member States pursuant to Regulation (EU) 2018/842 of the European Parliament and of the Council[(10)] and which result in verifiable, and measurable or estimable, energy efficiency improvements can be considered to be a cost-effective way for Member States to fulfil their energy-saving obligation under Directive 2012/27/EU as amended by this Directive.

(17) As an alternative to requiring obligated parties to achieve the amount of cumulative end-use energy savings required under Article 7(1) of Directive 2012/27/EU as amended by this Directive, it should be possible for Member States, in their obligation schemes, to permit or require obligated parties to contribute to an Energy Efficiency National Fund.

(18) Without prejudice to Article 7(4) and (5) as introduced by this Directive, Member States and obligated parties should make use of all available means and technologies to achieve the cumulative end-use energy savings required, including by promoting sustainable technologies in efficient district heating and cooling systems, efficient heating and

cooling infrastructure and energy audits or equivalent management systems, provided that the energy savings claimed comply with the requirements laid down in Article 7 of and Annex V to Directive 2012/27/EU as amended by this Directive. Member States should aim for a high degree of flexibility in the design and implementation of alternative policy measures.

(19) Long-term energy efficiency measures will continue to deliver energy savings after 2020 but in order to contribute to the Union's 2030 energy efficiency target, those measures should deliver new savings after 2020. On the other hand, energy savings achieved after 31 December 2020 should not count towards the cumulative end-use energy savings required for the period from 1 January 2014 to 31 December 2020.

(20) New savings should be additional to 'business as usual', so that savings that would have occurred in any event should not count towards the achievement of the energy savings requirements. In order to calculate the impact of the measures introduced, only net savings, measured as the change of energy consumption that is directly attributable to the energy efficiency measure in question, should be counted. To calculate net savings, Member States should establish a baseline scenario of how the situation would evolve in the absence of the measure in question. The policy measure in question should be evaluated against that baseline. Member States should take into account the fact that other policy measures may be carried out in the same time frame which may also have an impact on the amount of energy savings, so that not all changes observed since the introduction of a particular policy measure being evaluated can be attributed to that policy measure alone. The actions of the obligated, participating or entrusted party should in fact contribute to the achievement of the energy savings claimed in order to ensure the fulfilment of the materiality requirement.

(21) It is important to consider, where relevant, all steps in the energy chain in the calculation of energy savings in order to increase the energy savings potential in the transmission and distribution of electricity.

(22) The effective management of water can make a significant contribution to energy savings. The water and wastewater sectors account for 3,5 % of electricity use in the Union and that share is expected to rise. At the same time, water leaks account for 24 % of total water consumed in the Union and the energy sector is the largest consumer of water, accounting for 44 % of consumption. The potential for energy savings through the use of smart technologies and processes should be fully explored.

(23) In accordance with Article 9 of the Treaty on the Functioning of the European Union, the Union's energy efficiency policies should be inclusive and should therefore ensure accessibility to energy efficiency measures for consumers affected by energy poverty. Improvements to the energy efficiency of buildings should, in particular, benefit vulnerable households, including those affected by energy poverty, and, where appropriate, those living in social housing. Member States can already require obligated parties to include social aims in energy-saving measures in relation to energy poverty and this possibility should be extended to alternative policy measures and Energy Efficiency National Funds and should be transformed into an obligation, while allowing Member States to retain full flexibility with regard to their size, scope and content. If