Response to the European Commission's Green Paper on a 2030 Framework for Climate and Energy Policies – COM(2013) 169 final of 27.3.2013

by European Historic Houses Association (EHHA), European Landowners' Organization (ELO), European Property Federation (EPF) and The European Group of Valuers' Associations (TEGoVA)
(description of each in Annex)

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SUMMARY

To achieve its headline energy efficiency goals, the Union should adopt binding targets – without changing the Kyoto 1990 baseline – and harness all the policy instruments at its disposal including to:

- Continue the successful experience of EU/national government/stakeholder energy efficiency administration through the Energy Efficiency Action Plans;

- Review existing energy efficiency legislation with a view to identifying and addressing the inevitable flaws, in particular the vagueness of the concept of cost-optimality, especially with a view to ensuring that energy efficiency investments benefit those who make them, *sine qua non* for serious take-up by stakeholders, but avoiding more detailed requirements;

- Harness all EU policies to the energy efficiency cause, for instance reduced rates of VAT;

- Find innovative ways to overcome the limitations of legislation by Directive by extending EU-guided voluntary solutions such as the EPBD's common voluntary non-residential EPC or other forms of guidelines to other domains such as pan-European reference levels for energy efficient equipment and building components;

- Increase the leverage of the energy efficiency component of EU Economic Governance by promoting:
  - ✓ the longer leases required for cost-effective energy efficiency works
  - ✓ modulating the level of property tax according to the energy performance of the building
  - ✓ effective national energy efficiency financing obligations
  - ✓ simplified administrative procedures for renovation
  - ✓ elimination of national rules punishing energy efficiency investment
  - ✓ inclusion of energy efficiency works among productive investment discounted from economic imbalance calculations;

- Ensure that national support for energy efficiency does not fall victim to EU state aid rules as is the case for example concerning low UK VAT rates for energy efficient building materials;

- Plan for funding up to 2030 because step-change in the real estate and building economy requires confidence in continuing financial support beyond 2020;

- Encourage research to distinguish between building-related and user-related energy consumption.

DETAILED RESPONSE

We acknowledge the strategic necessity of providing a framework for climate action over several decades. In order to attain a largely carbon-free society by 2050, a clearly defined 2030 milestone is needed. This is particularly important for the built environment where change takes time.

We welcome the key choice put forward in the Green Paper: either a legally binding overall target for energy savings/intensity or new sector-specific measures. We believe that the overall target is by far the best suited for the EU for reasons of political efficiency linked to the nature and extreme limits of European power in key climate action-linked areas at this stage in the Union’s political development. Nowhere is this more obvious than for policy targeting the built environment.

Energy Performance of Buildings

The Union has full capacity to set legally binding energy savings/intensity targets as part of its clear climate action powers. On the other hand, action on the energy performance of buildings has already come up against the limits set by the constitutional principles of conferral and subsidiarity. In particular, and most importantly, housing policy is not EU competence – even shared. This has great significance for energy efficiency policy.

It is clear that the Union’s ambitious and legitimate CO_2 reduction goals will not be met without a step change in policy on the energy performance of buildings. The EU played a seminal and essential role in setting the framework for that in, inter alia, the Energy Performance of Buildings Directive (EPBD) and the relevant parts of the Energy Efficiency Directive, the Construction Products Directive, the Renewables Directive and the Ecodesign Directive. But this regulation is reaching its constitutional limits. This is recognised in the Directives themselves. For instance, the Energy Efficiency Directive requires member states to address the split incentive between landlord and tenant concerning energy saving investments but stops short at indicating how this is to be done or even whether it needs to be done in all member states. It has to be this way because split incentives and green leases are at the heart of housing policy and landlord/tenant relations, matters over which the Union has no capacity to legislate.

By definition and inevitably, policy on energy efficiency of the built environment is invasive in the extreme in the lives of citizens: choices on who among landlord and tenant foots the bill for what, specific renovation or appliance-replacement obligations, planning decisions concerning population densities, etc. This does not mean that such policies are not necessary; it means that they require democratic debate and decision at national level and often lower.

Energy Efficiency Funding

Furthermore, funding is key, and, whilst we acknowledge the effort made concerning the substantial energy efficiency / housing renovation element of Structural Funding for the 2014-2020 period, it is clear that as long as the total EU budget covers only 1% of combined member state GDP, the Union will never be a significant contributor to the massive funding effort that accelerated transformation of the building stock requires.

These parameters should not discourage the European Commission but rather guide it in a two-pronged strategy: A) proposal of a legally binding overall target for energy efficiency/intensity, and B) full exploitation of the many policy resources at the Commission's disposal.

A. Proposal of a legally binding overall target for energy efficiency/intensity

This is much better adapted to the building sector. Existing EU building legislation can and should be regularly reviewed, refined and improved, but more detailed energy efficiency building or renovation requirements are not suited to the EU level of government (see above).

In setting these targets up to 2030 it is essential that there be no change to the Kyoto 1990 baseline so as to ensure security and continuity and not discriminate against member states that have already taken substantial measures.

B. Full exploitation of the many policy resources at the Commission's disposal

1. Accompanying and Facilitating National Enactment of Newly Approved Directives

The constant dialogue with member states as part of the EU-directed National Energy Efficiency Action Plans – and the Commission's laudable sharing of the working documents with civil society – is a very positive development which should be built on.

2. Reviewing Energy Efficiency Legislation for Buildings

Regular review of the existing Directives is needed as these ground breaking laws are inevitably flawed and improvable. The first step in any successful review is detailed analysis of what has been achieved by the existing Directives and the obstacles encountered during implementation. The importance of this analysis cannot be underestimated as the lessons learnt are the bedrock of future EU policy. In particular, proper evaluation will not fail to reveal unintended barriers as side effects and these too will need to be addressed.

Future Directives will need to focus on correcting flaws rather than producing more detailed requirements because of the major conferral and subsidiarity considerations described above and because huge national and local bureaucracies have been created to administer the legislation. Indeed, future revisions of the Directives must be submitted to forensic subsidiarity tests.

We would stress that a seriously engaged review process can have substantial carbon saving impacts:

- In particular, it is possible to improve the EU framework for ***creating proper incentives for stakeholders***, for instance ***by addressing the problem of the vagueness of the concept of 'cost-optimality'*** in EU energy efficiency law. The Commission must not underestimate the need for incentives in this field of economic activity. A lot of investment property is funded by debt. The industry has limited returns that could be channelled into energy efficiency. (See also Section 5, EU Economic Governance). It is important to note that currently the value of property remains unaffected by improvements to its energy performance, save in respect of the intrinsic value of the fabric or service improvement. Still further, in properties which are rented, the investment in energy efficiency by the property owner will a) likely be irrecoverable from the tenant whether through rent or other means and b) will benefit that tenant directly through savings on their energy bill.

- There may also be room for a ***revamp of the EPBD provisions on Energy Performance Certificates***. It is clear that the varying quality of certificates is a problem. In the next round it will be necessary to take good account of the fact that energy certificates/labels in the best circumstances are only an indicator of real energy consumption (Dutch research shows that often there is no correlation between the label and the real energy use, for example because of other-than-calculated user behaviour, as does a recent report by Jones Lang LaSalle[1]). Real use must be taken into account as well.

- ***EPBD Article 10 on Financial Incentives is very weak***, Parliament's bold amendments having been watered down by Council. This needs to be redressed at the next review which means working to forge member state government consciousness and consensus before the review proper.

3. Scanning all EU Policy Areas to Harness Their Energy Efficiency Potential

If addressing climate warming and promoting energy efficiency are truly a top political priority, then all available means must be used to reach the objective as this is the only way to achieve critical mass. Incentives through taxation are an obvious and key part of the policy mix, in particular that part of tax policy over which the EU has most control: VAT.

The option for a reduced rate of VAT on restoration work of residential buildings, including historic buildings, should be maintained, because renovating an existing property obviates the need for construction of a new house, which would be likely to entail the consumption of more resources and the release of more CO_2 into the atmosphere. This also fits well with the EU objective of combining climate action with growth and jobs because renovation promotes local employment and often leads to ripple effects for the surroundings, in particular when listed and non-listed heritage buildings and areas are concerned (tourism, social and economic regeneration, cultural activities, etc. which can generate VAT revenues that far exceed the – modest – revenue reduction due to a lower VAT rate on renovation of buildings).

The option should continue to concern all forms of renovation and restoration, not just major renovation, in order to fully exploit all energy efficiency improvements, even when modest, as these incremental energy efficiency gains are ever more frequent now that the Construction Products Regulation and Eco-design Directive cause more and more energy efficient and eco-friendly products to hit the market.

See also in Section 6 comments on counterproductive Commission action on the UK reduced VAT rate on energy efficient materials

[1] http://www.betterbuildingspartnership.co.uk/download/bbp-jll---a-tale-of-two-buildings-2012.pdf

4. *Innovative Solutions to Overcome the Limitations of Legislation by Directive*

There are major problems caused by legislating by Directive, creating 28 different national energy efficiency situations.

One partial but promising solution has been Article 11(9) of the EPBD providing for a voluntary common European Energy Performance Certificate for commercial buildings. The Commission's failure to adopt this by the Directive's deadline of 2011 is not only illegal, it has deprived the Union of a major energy efficiency tool which pan-European property investment companies are impatient to apply to their building stock. This is a unique opportunity to achieve pan-European transparency and comparability that, given the EU's international environmental reach, could well end up as a global benchmark.

Commission-guided voluntary solutions are an innovative way of overcoming the obstacles presented by 28 national enactments of Directives. The Commission should investigate further areas where such solutions might be envisaged such as pan-European reference levels for energy efficient equipment and building components.

5. *EU Economic Governance*

Economic governance is a remarkable and versatile tool because it can set goals for the whole Union and issue specific instructions adapted to the particular situation of each country.

All-EU guidance

The Annual Growth Survey, which is already very property-focussed, could promote:

- the longer leases required for cost-effective energy efficiency works – with leases averaging, say, 5.3 years (UK) there will not be enough payback on energy efficiency investments to incite the landlord to take the risk;

- modulation of the level of property tax according to the energy performance of the building;

- the establishment of effective national energy efficiency financing obligations.

Country-specific instructions

The Commission has done extremely well to include energy efficiency improvements in its country-specific Economic Governance arsenal. The instructions to Portugal could well apply in many more member states.

Portugal – Administrative procedures for renovation
"The Government will adopt legislation to simplify administrative procedures for renovation. [Q3-2011] In particular, the specific measures will: i) ***simplify administrative procedures for renovation works***, safety requirements, authorisation to use and formalities ***for*** innovations that

benefit and enhance the building's quality and value (such as ***energy savings measures***). The majority of apartment owners will be defined as representing the majority of the total value of the building; ii) ***simplify rules for the temporary relocation of tenants*** of building subject to rehabilitation works with due regard to tenants' needs and respect of their living conditions; …"
MoU of 17 May 2011, p. 31

And there is much more to be done:

1. National ***rules punishing energy-efficient investment should be identified and reviewed***. For example:

   - In several member states: reductions on the price of fossil energy for bulk consumers

   - Romania: The property tax paid to the municipality is directly proportional to the value of the investment. In practice it is 1.5% of the book value for the first three years of the existence of the new or newly refurbished building and afterward it is proportional to the market value. This means that an *energy-efficient investment causes an increase in the taxable value of the property when the objective should have been the opposite*. 1.5% out of 7 to 9% average yield for the property income is a huge amount from the operational point of view for the developer/owner. *If the municipality lowers the tax, this will be regarded as state aid under current EU law*, another EU state aid impediment to energy efficiency (see also Section 6).

2. Economic governance is evolving toward friendlier consideration of national government spending on productive investment. In this context, ***energy efficiency funding by governments should be discounted from EU budgetary equilibrium requirements***.

   For example, the energy efficiency-friendly tax solutions propounded in the Romanian case above still carry the risk of running afoul of EU Economic Governance rules as they would be viewed as a deficit-increasing problem due to the reduced future income to the consolidated budget. EU Economic Governance should have the flexibility to contribute to the Union's headline energy efficiency goal and not detract from it.

   Indeed, the European authorities would be well inspired to welcome innovative tax initiatives that both promote energy efficiency and kick-start the construction economy in these deflationary times. For instance, by paying back to the developer as a performance prize a certain percentage of the tax generated by the energy efficient development.

6. National Support for Energy Efficiency Should Not Fall Victim to EU State Aid Rules

Article 98 and Annex III (10) of the VAT Directive (as amended) allow a reduced VAT rate to apply to "provision, construction, renovation and alterations of housing, as part of a social policy". The UK applies a reduced rate for the purpose of increasing energy efficiency in buildings.

The Commission recently announced that it is taking the UK to Court over its alleged contravention of the VAT Directive in applying a reduced rate of VAT to the supply and installation of energy saving materials. The UK believes it complies with Annex III of the Directive, since the 5 per cent rate on energy efficiency measures was a parallel policy adapted to a 5 per cent reduced rate of VAT on fuel which was designed to alleviate rising energy costs. The removal of the reduced VAT rate on energy efficiency measures, if the 5 per cent rate of VAT on fuel is retained, might encourage profligacy in the use of energy among building occupiers. Here too, just as we saw in Section 3 that low VAT rates for renovation promote not only energy efficiency but also other high EU policy objectives, so here, *a contrario*, the scrapping of the 5% VAT rate for energy saving materials would negatively impact multiple aspects of EU and UK social policy, including the provision of affordable energy and warm homes and efficient workplaces.

7. It is Crucial to Plan for Funding for the Entire Period Up to 2030

At EU level, for the 2014-2020 Financial Framework, the Structural Funding for energy efficiency including housing renovation is very welcome, but EU funding priorities tend to be fashion victims – high-speed rail networks yesterday, energy efficiency today. ***Securing step-change in the real estate and building economy (10-12% of EU GDP) requires that the entire building chain have confidence in continuing financial support up to 2030.*** If this is not done, if operators do not quickly see a horizon beyond 2020, energy efficiency project planning will come to a halt.

The Commission must make clear the permanence of its funding commitment to energy efficiency beyond 2020 and must publicise this.

Equivalent behaviour is required of member states. One opportunity would be the next review of the Energy Performance of Buildings Directive (see Section 2, 3rd indent – EPBD Art. 10 on financial incentives). Another is EU Economic Governance (see Section 5, 3rd indent under “All-EU guidance”).

8. Research

The Commission should encourage research to distinguish between building-related and user-related energy consumption. This is key to finding a solution to the split incentive problem as mandated by Article 19(1)(a) of the Energy Efficiency Directive.

ANNEX

About the Parties to the Response

Name followed by Commission Register of Interest Representatives identification number

European Landowners' Organization 36063991244-88

Created in 1972, ELO promotes a prosperous and attractive European Countryside. ELO is a unique federation of national associations from the EU27 and beyond which represents the interests of landowners, land managers, rural entrepreneurs and family businesses. It targets its actions on land use and housing, via seven major areas of European importance: environment, renewable energy, agriculture and rural development, status of private property and companies, forest, enlargement and trade. www.elo.org

European Property Federation 36120303854-92

EPF represents all aspects of property ownership and investment: residential landlords, housing companies, commercial property investment and development companies, shopping centres and the property interests of the institutional investors (banks, insurance companies, pension funds). Its members own property assets valued at € 1.5 trillion, providing and managing buildings for the residential or service and industry tenants that occupy them. www.epf-fepi.com

The European Group of Valuers' Associations

TEGoVA is the European umbrella organisation of national valuers' associations, covering 53 professional bodies from 30 countries comprising specialist consultancies, major private sector companies and government departments both local and national. Its main objectives are the creation and spreading of harmonised standards for valuation practice, for education and qualification as well as for corporate governance and for ethics for valuers. It speaks with a common voice on valuation to European legislators and policy makers. www.tegova.org

The European Historic Houses Association 594015610806-90

An umbrella organisation for national historic houses associations, promoting the interests of Europe's privately-owned historic houses, parks and gardens and their contents. The organisation promotes European cooperation in the conservation of historic houses which are most of the time SME's. The Association brings together 18 national members and represents more than 50,000 historic houses in Europe and supports actively its members' interests on several European issues such as culture and education, VAT, energy and environment, tourism, and security. www.uehha.org