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## EU Real Estate Policy

**October 2011**

- Early European Commission consideration and drafting
- Legislative process between European Commission, European Parliament and Council of Ministers
- Transposition of Directive or Recommendation into national law
- 'Level 2' Commission detailed implementing measures
- Regulation or Decision with direct effect (no transposition into national law required)

Number after indicates position in EU Legislative Flow-chart (pp. 5-6)

Subject	Status
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### 1. EU INTERNAL MARKET FOR REAL ESTATE

1.1.	Alternative Investment Fund Managers Directive (could cover managers of real estate funds and property companies including REITs)	Directive 2011/61/EU of 8 June 2011. Takes effect in July 2013. Level 2 work to flesh out Directive under way with ESMA consultation
1.2.	OTC Derivatives Regulation (could cover real estate interest rate hedging)	Negotiations between Parliament and Council ongoing <b>11-13</b>
1.3.	EU Financial Transaction Tax (AIF and AIFM to be treated as “financial institutions” and REITs as “financial”).	Proposal for a Directive issued 28 September 2011. Managing Committee to discuss on 14 October 2011 <b>10</b>
1.4.	Revision of the Capital Requirements Directive (regulation of mortgage credit – hard tests – liquidity coverage ratio and leverage ratio)	Proposal for a Regulation issued 20 July 2011 <b>10</b>
1.5.	Mortgage Credit Directive (Lending restrictions to home buyers could impact property development)	Proposal for a Directive issued 31 March 2011. EP ECON Committee draft report issued 18 July 2011. ECON Committee vote Nov 2011. New Managing Committee discussion on 14 Oct 2011 <b>10-11</b>
1.6.	Revision of the Insurance Mediation Directive (possible regulation of insurance component of landlords’ service charges)	<b>Following EPF representations to Commission, coverage of landlords apparently no longer on the agenda.</b> Revised IMD to be tabled end 2011 <b>8</b>
1.7.	Commission Retail Services Initiative (seeks to address shopping centre development “market malfunction”)	<b>Following EPF intervention, EESC and EP reports give no support to Commission plans</b> and instruct the Commission to respect subsidiarity and review its property research. EPF experts to meet with Commission on 11 November 2011 <b>7, 8</b>
1.8.	Commission Communication on Services of General Economic Interest (frames the debate on state aid to social housing)	Communication issued 16 September 2011. Final Commission decision end January 2012 <b>3</b>
1.9.	Opening of District Heating Networks to Competition	EPF supported EP Resolution. Commission Energy Efficiency Directive addresses this, but not sufficiently aggressively for EPF (see 6.1.)
1.10.	Commission Enquiry on Tax Obstacles to Cross-border Property Purchase by Individuals	EPF approached by Commission for cases of obstacles. Legislative outcome unclear <b>1</b>
1.11.	Green Paper on the Future of VAT (could affect property tax exemptions and reduced rates)	EPF response to the Commission: 26 May 2011 Commission summary of stakeholder input: 2 <sup>nd</sup> half Oct 2011; Commission Communication setting out proposed directions to follow: late November or beginning December 2011 followed by possible Council Political Statement; Commission



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		legislative proposals in 2012 <a href="#">📁 3</a>
1.12.	EU Legislative Framework Facilitating Cross-border Investment by REITs	EPF, ELO, TEGoVA groundwork with Parliament, Commission and selected governments on hold pending review of opportunities in current legislative environment <a href="#">📁 1</a>
1.13.	EU Passport for Open Ended Real Estate Funds	Commission work halted. Future unclear <a href="#">📁 3a, 4a</a>
1.14.	CEN/TC 348 Standard prEN15221-6: Facility Management – Part 6: Area and Space Measurement of, inter alia, Net Floor Area / Rentable Floor Area (does not include ‘perimeter wall thickness’ and ‘internal columns and piers’)	RABO to undertake comparative study that could lead to EPF guidelines. SIPA working on Nordic measurement index

### 2. CONSTRUCTION

2.1.	Construction Products Regulation (facilitates free movement of construction products in the EU Internal Market)	Regulation 305/2011 of 9 March 2011 <a href="#">📁</a>
2.2.	Preparations for a Commission Communication on the Sustainable Competitiveness of the Construction Sector and its Enterprises (framework for Commission regulatory and other initiatives over several years)	Consultation deadline 15 September 2011. Commission Communication end 2011
2.3.	Development of an EU Construction Information Platform (could have facilitated access to EU policy information relevant to real estate but now likely to fail. EPF expert developed system that could be implemented by EPF and allies)	EPF on Commission Steering Group and providing testing expert who submitted reports to Commission on 6 July and 27 September 2010. Final product on Europa website October 2011

### 3. EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

3.1.	Equal Treatment Directive (anticipatory adaptation of rental housing and other buildings to the needs of the disabled)	Work in Council of Ministers ongoing. <b><i>June 2011 progress review and July 2011 draft leave intact the provision that the Directive shall not require the provider to make structural alterations or to pay for them.</i></b> <a href="#">📁 13</a>
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### 4. PUBLIC HEALTH

4.1.	Council Recommendation on Smoke-free Environments (with no tolerance for designated smoking areas)	Recommendation 2009/C 296/02 of 30 November 2009. Deadline for transposition into national law: 30 November 2012 <a href="#">📁</a>
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### 5. CONSUMER PROTECTION

5.1.	Revision of Directive 2005/29/EC on Unfair Business-to-consumer Commercial Practices (exemption of immovable property under review)	Consultant to deliver study to Commission in February 2012. Commission report to Parliament and Council in spring 2012 <a href="#">📁 1</a>
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### 6. ENERGY AND ENVIRONMENT

6.1.	Energy Efficiency Directive (energy savings targets, intelligent metering, energy audits, competition in district heating, spatial planning for efficiency in heating and cooling, model contracts for energy performance contracting)	COM(2011) 370 final of 22.6.2011. Council, Parliament, EESC and CoR have all begun drafting amendments/opinions and EPF /UEPC and allies have initiated contacts with all of them <b>10</b>
6.2.	Energy Performance of Buildings Directive (recast)	Directive 2010/31/EU of 19 May 2010. Deadline for transposition into national law: 9 July 2012. Deadline for application of the law: 9 Jan. 2013, 9 July 2013 or 31 Dec. 2015 according to article
6.2.1.	EPBD Art. 5(1): Establishment by Commission of a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements	EPF expert role completed. Deadline for completion of Commission work: 30 June 2011 extended into the autumn
6.2.2.	EPBD Art. 11(9): Adoption of a voluntary common EU certification scheme for the energy performance of non-residential buildings	Latest EPF meeting with DG Energy on 21 June 2011. Expected completion around June 2012
6.3.	Renewables Directive (requirements for buildings) and Template for National Renewable Energy Action Plans	<ul style="list-style-type: none"> <li>• Directive 2009/28/EC of 23 April 2009. Deadline for transposition into national law: 5 December 2010 </li> <li>• Decision C(2009) 5174-1 of 30 June 2009 (Template) </li> </ul>
6.4.	EU Funding for Energy Efficiency / Renewables in Housing	Structural Funding in place  European Energy Efficiency Fund launched July 2011. Proposals for new ERDF funding period early autumn 2011.
6.5.	Revision of the Environmental Impact Assessment Directive (Directive 85/337/EEC) (opportunity to streamline developers' obligations)	Proposal to be tabled mid 2012 <b>4b</b>
6.6.	Legislative Initiative on Water Performance of Buildings	2 <sup>nd</sup> consultant's report in consultation with EPF: 2011. Legislative proposal: 2012 <b>4b</b>
6.7.	Extension of EU Eco-label to Buildings (insufficient progress developing criteria for the use-phase of the building)	EPF on Commission/Eco-label Bodies Working Group. Under new leadership of Commission Joint Research Centre: 1 <sup>st</sup> Ad hoc WG 28-29 June 2011, 2 <sup>nd</sup> Ad Hoc WG 8-11 Nov 2011, publication of final criteria April 2012 <b>Commission Decision</b>
6.8.	CEN Work on the Integrated Environmental Performance of Buildings	No deadline
6.9.	Soil Protection Directive	Commission Proposal backed by Parliament but blocked in Council <b>13</b>



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### EU LEGISLATIVE FLOW-CHART

#### Guidance

On the preceding chart, for each piece of legislation, the number after  corresponds to the same-numbered box in the EU Legislative Flow-chart, indicating its position in the legislative process.

The flow-chart concerns the normal legislative procedure. Therefore it does not concern:

*(n° references are to policies in preceding chart)*

- Commission or Parliament competition or state aid activity (1.8.) the Construction Information Platform (2.3.) as these are not legislation;
- delegated acts (1.1.), (6.2.1) & (6.2.2.) as these are fast-track procedures designed to avoid a full legislative process.
- the activity of CEN, the European standards body (1.14. & 6.8.).

The sequence of early drafting is usually as set out on page 5, but it can vary slightly. For instance, in the case of the EU passport for open-ended real estate funds, the report by the expert group (Flow-chart step 4a) came before the Commission public hearing (step 3a).

A piece of legislation usually does not go through the full 39 steps. In the early drafting stage, steps can be skipped. None of steps 2 to 4b are obligatory, nor is step 6. Often some will be skipped, but seldom all unless there is big political time pressure. ***Above all, Council and Parliament are increasingly doing deals at stage 11-15, in which case the whole process ends there.***

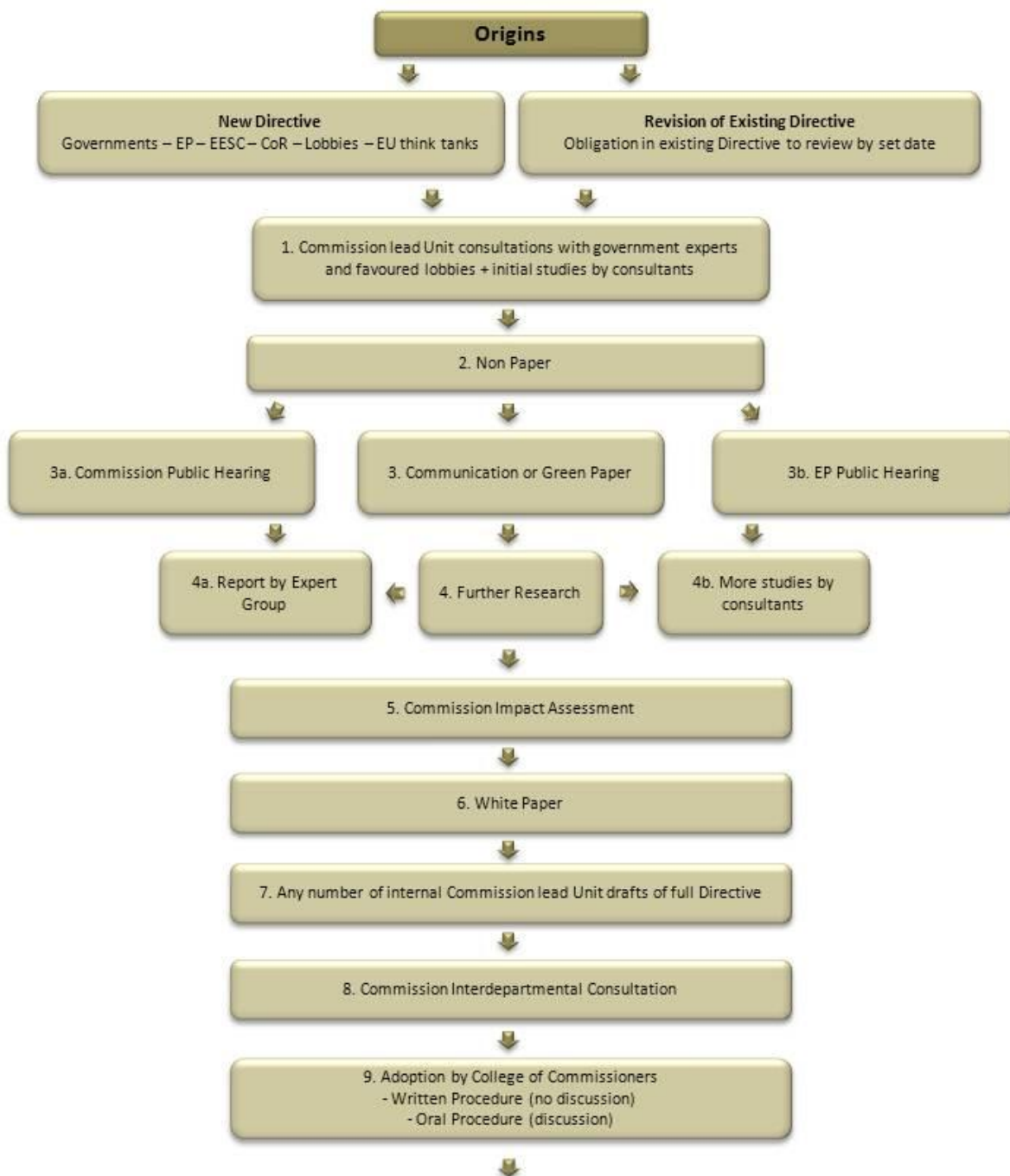
‘Commission Interdepartmental Consultation’ (step 8) means that the lead Commission DG has to consult with other DGs that have a legitimate interest. For instance, the Energy Performance of Buildings Directive emanated from DG Energy, but at stage 8 they had to consult with DG Environment, DG Enterprise and Industry (Construction Unit), DG Competition, etc. This can be a lobbying opportunity.

NB: The first page of the Flow-chart was conceived by the EPF Secretariat. The second page is a Secretariat adaptation and improvement of a Commission chart.



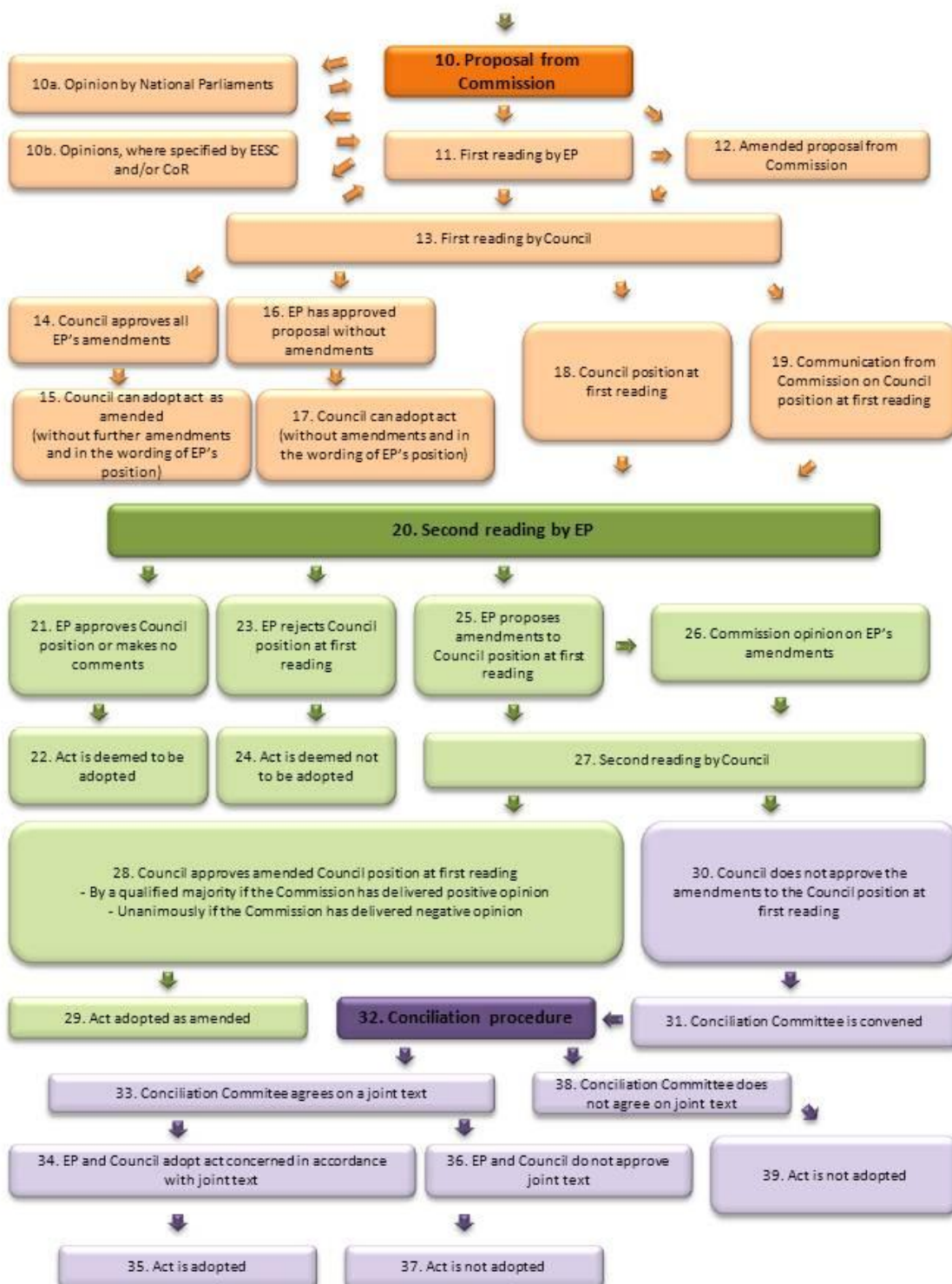
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## EU Legislative Flow-chart





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October 2011

### 1. EU INTERNAL MARKET FOR REAL ESTATE

#### 1.1. Alternative Investment Fund Managers Directive

*Impact:* EU ratio legis is that effective management of the cross-border dimension of investment risk demands a common understanding of the obligations of AIFMs, a coordinated approach to the oversight of risk management processes, internal governance and transparency and clear arrangements to support supervisors in managing these risks, both at domestic level and through effective (i.e. mandatory) supervisory cooperation and information sharing at EU level. There is as yet no consensus on whether REITs, other listed property companies or private property companies fall within the scope, or whether the 'AIF' definition picks up wholly owned subsidiaries of a fund vehicle such as property SPVs, and uncertainty about how the term 'joint venture' should be understood. The text of the Directive may be flexible enough to enable member state financial authorities to accommodate many types of real estate.

*Status:* Directive 2011/61/EU of 8 June 2011. Takes effect in July 2013. Level 2 work to flesh out Directive under way with ESMA consultation. See *epf11-78 of 12.08.11*

#### 1.2. OTC Derivatives Regulation (would cover real estate interest rate hedging) 11-13

*Impact:* In its representations to Parliament Rapporteur Werner Langen, EPF explained that exposing property companies to margining requirements would create an estimated cash requirement of more than €60 billion. EPF insisted that property companies should not be treated as 'financial counterparties' falling under the scope of the Regulation because the business of real estate development and investment is intrinsically non-financial. Non-financial businesses (including real estate) must not be treated as financial simply by virtue of the fact that they are owned by a fund whose manager is regulated under the AIFM Directive. Where real estate businesses are treated as non-financial, risk mitigation requirements should recognise collateral provided in the form of security over underlying real estate. AIFMD flexibility may have favourable knock-on effect for this Regulation's coverage of real estate.

*Status:* Negotiations between Parliament and Council ongoing.

#### 1.3. EU Financial Transaction Tax 10

*Impact:* As yet uncertain. The two main (related) areas of interest concern scope: the definitions of financial instruments and financial institutions (as it is transactions in financial instruments which would be taxed where an EU established financial institution is a party to them). AIF and AIFM are proposed to be treated as "financial institutions". The Commission considers REITs are "financial".

*Status:* Proposal for a Directive on a common system of financial transaction tax and amending Directive 2008/7/EC. EPF Managing Committee to discuss at its meeting of 14 October.

#### 1.4. Revision of the Capital Requirements Directive 10

*Impact:* The proposed regulation of mortgage credit (hard tests) liquidity coverage ratio and leverage ratio seem to be going in the right direction, although the full set of technical requirements will only be known in the next couple of years (to be drafted by the new European Banking Authority (EBA)). See *Article 119 – Exposures secured by mortgages on immovable property; Article 120 – Exposures fully and completely secured by residential property; and Article 121 – Exposures fully and completely secured by mortgages on commercial immovable property (in Part I of the Proposal for a Regulation on Prudential Requirements for Credit Institutions and Investment Firms)*. The Managing Committee has decided that EPF will take the following stand on the liquidity coverage ratio 1) enabling covered bonds to be included in the definition of high liquid assets if certain technical criteria are fulfilled; 2) enabling mortgage credit banks to include self-issued bonds in the required liquidity; and 3) enabling covered bonds with a maturity of less than one year to be treated as stable funding, all as set out in a



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paper by the Association of Danish Mortgage Banks. Whereas point 1) seems to be off to a good start because, *in the Regulation's Part III*, Article 404 (Reporting on liquid assets), paragraph 2(a)(ii) states (we simplify a contrario) that *shall be* considered as liquid assets “bonds as defined in Article 52(4) of Directive 2009/65/EC”, i.e. covered bonds, uncertainty still prevails regarding points 2) and 3). Here, too, the details will be worked out by the EBA, and EPF will be able to take part in that.

*Status:* Proposal for a Regulation on Prudential Requirements for Credit Institutions and Investment Firms – COM(2011) 452 final of 20.7.2011.

### 1.5. Mortgage Credit Directive 10-11

*Impact:* If the Directive unnecessarily restricts lending to potential home buyers, or imposes unnecessary regulations and costs on lenders, there will be an adverse effect on the residential development industry.

*Status:* Proposal for a Directive on Credit Agreements Relating to Residential Property – COM(2011) 142 final of 31.3.2011. Draft EP Report by Rapporteur Antolín Sánchez Presedo issued 18.7.2011. New Managing Committee discussion at its meeting of 14 October 2011.

### 1.6. Revision of the Insurance Mediation Directive 8

*Impact:* In the context of its revision of IMD, the Commission has taken an interest in the relationship between landlords, tenants and the insurance for the building: to what extent the landlord's insurance 'offer' is binding on the tenant and what the tenant's options are. The Commission is heading toward an obligation on all landlords to disclose conditions, commissions, etc. In its representations to the Commission during its early drafting, EPF pointed out that, due to the way in which landlords purchase insurance for their properties – i.e. on behalf of themselves and not on behalf of their tenants (although recouping the cost of doing so from them) – they should not be classified as insurance intermediaries for the purposes of IMD2 and should not therefore be covered by it. If the landlord is the end customer of the insurance, he cannot be acting as an insurance intermediary and should not be regulated as such. Furthermore, insurance is only one component of the landlord's package of service charges to the tenant, which typically includes energy, taxes, and diverse other charges. There is no legal or economic rationale for separating the insurance part of the service charge and legislating on that part in particular.

*Status:* New Commission consultation document, results of public hearing and talks with officials all indicate that **the Commission has decided not to include landlords in the scope**. Proposal for Revised IMD to be tabled end 2011. *See epf10-117 of 15.12.10*

### 1.7. Commission Retail Services Initiative 7, 8

*Impact:* The Commission's 'Retail Market Monitoring Report' intended to test the waters for future legislation was predicated on a deep misunderstanding of the most basic mechanics of the property market and shopping centre development that caused EPF to raise four fundamental objections:

1. Cross-border shopping centre development does not cause “market malfunction”.
2. The Commission's fundamental misconception about the Internal Market aspects of retail property development is compounded by a series of errors of economic analysis that EPF highlighted one by one.
3. The Commission policy options are characterised by further erroneous analysis in its review of competition policy and encroachment on national and local sovereignty concerning rental contracts, planning rules and local taxes. The Commission's comments on policy monitoring indicators go a long way to explaining the inadequacies of its economic analysis.
4. The fundamental problem: A Commission 'Monitoring Report' imbued with a political ideology that – whether one agrees with it or not – should not be propounded by the EU civil service and should not be the justification for regulation or 'guidance' at EU level.

EPF and members engaged in a sustained effort of explanation to the Internal Market Commissioner and the Rapporteurs and key Members of Parliament and of the European Economic and Social Committee. As a result, neither the EESC Report nor the EP Report take up any of the Commission's





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property-relevant ideas and indeed they encourage the Commission to respect subsidiarity in matters of accessibility and concentrate on other priorities such as abuse of dominant position in the food supply chain.

*Status:* EPF experts to meet with Commission on 11 November 2011. *EPF representations to Commissioner Barnier under epf10-85corrigendum of 17.09.10. Letter of support for EPF from EP Internal Market Committee Vice Chairman Eija-Riitta Korhola sent to Commissioner 6 Oct. 2010. EPF Secretariat report on draft EESC Study Group Opinion under epf10-119 of 16.12.10. EPF Secretariat report on 2<sup>nd</sup> EP Roundtable under epf11-05 of 27.01.11. Draft EP Report, final EESC Report and EPF Secretariat analysis under epf11-28 of 28.03.11*

### 1.8. Commission Communication on Services of General Economic Interest 3

*Impact:* The question of state aid to social housing companies competing with private developers and landlords for middle income tenants is part of a wider debate on Services of General Economic Interest (SGEI: a Treaty term for economic interests that have the right to special treatment to the extent necessary to carry out particular social tasks assigned to them). This issue fuelled the No vote in the French and Dutch referenda on the European Constitution, and in Dutch national elections around that time, a fifth of seats were won by a Maoist party one of whose main slogans was to ‘Take Social Housing Back from the EU’. The Commission has promised to review the question. The draft Decision in the Commission’s 16 September Communication package is promising, as the exemption from notification obligation applies to: “compensation for the provision of services of general economic interest meeting essential social needs as regards ... *social housing ... This paragraph only applies where compensation is granted to undertakings whose activities are limited to one or more of the services referred to in this paragraph...*”. This would seem to give no latitude to social housing companies using their state aid to finance the development or letting of housing for middle income tenants.

EPF/UEPC and CECODHAS/IUT (European social housing and tenants federations) are currently working to reach a common understanding.

*Status:* Commission Communication issued 16 September 2011 to be followed by open debate organised by Commission and/or Parliament. European Economic and Social Committee conference on 10 October. Final Commission decision end January 2012. *EPF Secretariat report under epf11-94 of 19.09.11. EPF Position under epf11-102 of 04.10.11*

### 1.9. Opening of District Heating Networks to Competition

*Impact:* Energy producer/distributor district heating network monopolies on several EU markets cause building owners and occupiers to pay too-high energy bills. This is why EPF wrote to the Commission in support of a European Parliament Resolution asking the Commission to ensure that its coming Energy Efficiency Directive covered measures to address anti-competitive behaviour on EU district heating markets.

*Status:* Commission Energy Efficiency Directive addresses this, but not sufficiently aggressively for EPF (see 6.1.)

### 1.10. Commission Enquiry on Tax Obstacles to Cross-border Property Purchase by Individuals 1

*Impact:* In September 2010, a Commission official researching tax obstacles to cross-border property purchase by individuals approached EPF for any cases of obstacles its members might have encountered. The EPF Secretariat responded that the Federation had already noted with satisfaction the Commission’s and ECJ’s actions on subjects such as Flemish stamp duty, taxation of housing-related capital gains or the transfer tax exemption for Berlin housing. However, the EPF itself had not yet been approached by any of its members on any concrete problem. Its only intervention at this level had been to inform the Commission in 1999 that harmonising the application of VAT to the property sector was not necessary to facilitate cross-border property purchases, even by individual EU citizens.



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Status: Very early Commission feelers. No decision yet on any action and hence no timetable.

### 1.11. Green Paper on the Future of VAT 3

Impact: VAT exemptions: The Commission is considering no longer exempting transactions involving hotel, industrial or commercial premises and limiting the exemption to 1) the letting of houses to private individuals, 2) supplies of buildings that are not new and where the supplier has not recovered input VAT on the building's acquisition, and 3) supplies of land other than building land. EPF experts are leaning toward leaving things unchanged because the Commission ideas would cause market distortions and undermine anti-avoidance regimes. **Reduced rates:** The Commission is considering no reduced rates (or a very short list) or a compulsory and uniformly applied EU reduced VAT rates list [the current list is optional]. EPF experts oppose uniformity as they see no risk of distortion of competition in the event of reduced VAT rates varying from state to state. EPF is also strongly urging the Commission to reintroduce the option for Member States to have a reduced rate on rental of housing contained in its 2003 Proposal for a Directive (Annex H – 10 “The rental of housing insofar as this service is not exempted under Article 13”). In the particular case of housing rental, notwithstanding rationalisation and simplification concerns, the Commission should seize this opportunity to give Member States an optional tool for boosting housing offer on the many markets where this is an increasing problem and where Economic and Monetary Union has deprived Eurozone Member States of many of their traditional housing policy instruments. **Increasing the minimum level of the reduced rate:** The Commission view is that Article 99 of the VAT Directive sets out the principle that reduced rates are fixed at a level which is high enough to ensure that taxable persons, in general, do not end up in a constant repayment situation when offsetting their deductible VAT (with expenses at the standard rate) against their VAT due (at a reduced rate). Increasing the minimum level of the reduced rate, set at 5 % in the VAT Directive, might be a way to uphold this principle. EPF experts believe that increasing the 5% figure risks forcing those member states that have not increased the standard rate to put the relevant sectors into a regular payment position, just because other countries have increased the standard rate. This does not seem right. The answer is to require the reduced rate in any Member State to be (say) at least a quarter the level of the standard rate (possibly retaining the minimum 5% as well). This resolves the problem for countries with relatively low standard rates, and also means that this issue does not have to be revisited in a few years if standard rates continue to move upwards.

Status: EPF response to the Commission under epf11-57 of 26.05.11 Commission summary of stakeholder input: 2<sup>nd</sup> half October 2011; Commission Communication setting out proposed directions to follow: late November or beginning December 2011 followed by possible Council Political Statement; Commission legislative proposals in 2012.

### 1.12. EU Legislative Framework Facilitating Cross-border Investment by REITS 1

Impact: Would enable a property company to operate across the EU without losing its national REIT status. Would reduce distortions of competition, buttress market safety and security, enable all types of savers to invest in prime real estate everywhere, promote international property investment in all regions, reduce property companies' resort to tax havens and boost investment specialisation requiring European scale. No changes required for national REITs investing solely in the home member state.

Status: EPF, ELO, TEGoVA groundwork with Parliament, Commission and selected governments on hold pending review of opportunities in current legislative environment. On EPF website: 1) report on “The EU REIT and the Internal Market for Real Estate; 2) legislative blueprint “REITs and Cross-border Property Investment – Opening up the Internal Market for Real Estate and promoting market safety and security”

### 1.13. EU Passport for Open Ended Real Estate Funds (OEREFs) 3a, 4a

Impact: Would enable a national OEREF to not just buy real estate abroad, but also finance its investments by collecting public savings EU-wide.



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*Status:* Following temporary closures of up to 12 months for several OEREFs, the Commission is prioritising EU controls on real estate fund managers (see 1.1. above). Future unclear. EPF and allies have raised valuation and tax issues.

### **1.14. CEN/TC 348 Standard prEN15221-6: Facility Management – Part 6: Area and Space Measurement of, inter alia, Net Floor Area / Rentable Floor Area**

*Impact:* Subsection 5.8 of the CEN draft concerns Net Floor Area and states that “According to this standard, the Rentable Floor Area (RFA) is equal to the Net Floor Area”. The problem with this standard is that it does not include ‘perimeter wall thickness’ and ‘internal columns and piers’, whereas other standards or codes such as BOMA’s (US Building Owners and Managers Association) do include them, and the difference equates to up to 10% less space to rent under the CEN standard.

*Status:* At its meeting in Budapest on 23 May 2011, the Managing Committee considered the possibility of some form of EPF guidance on this. They agreed that if the Romanian Association of Building Owners could pull together a comparison of the various national situations, they could see if there is the basis for a commonality which could translate down the line into some form of EPF booklet or booklet with EPF imprimatur. Meanwhile, the Scandinavian International Property Association is working on its own Nordic measurement index.

## **2. CONSTRUCTION**

### **2.1. Construction Products Regulation (CPR)**

*Impact:* Lays down harmonised conditions for the marketing of construction products; provides more clarification of the concepts and the use of CE marking; introduces simplified procedures, which will reduce the costs incurred by enterprises, in particular SMEs. The Commission hopes that, by imposing new and stricter designation criteria to bodies involved in the assessment and the verification of construction products, the CPR will also increase the credibility and reliability of the whole system.

*Status:* Regulation 305/2011 of 9 March 2011

### **2.2. Preparations for a Commission Communication on the Sustainable Competitiveness of the Construction Sector and its Enterprises (framework for Commission regulatory and other initiatives over several years)** **1**

*Impact:* The second attempt by Commission DG Enterprise’s Construction Unit to develop an overarching EU strategy for construction competitiveness seems as doomed as the previous one in 1997, at least if it follows the recommendations of the Ecorys Study that it commissioned. The objective proposed by the Study is the same as in 1997: pulling together national regulators and European and national construction and real estate interests to collectively figure out the best ways of improving overall European construction competitiveness, with sub-strategies tailored to local situations, all on a voluntary basis. However, as nobody paid any attention to the non-binding Commission/stakeholder guidance churned out in 1997, the 2011 Ecorys solution is to create a new bureaucracy by which DG Enterprise coordinates the other Commission departments, the national ministries and the construction and real estate interests in a series of cascading fora. Commission inter-departmental rivalries should keep this from taking off, but if it does, it will be detrimental to EPF interests because of the unbalanced emphasis on construction.

*Status:* Ecorys Study, Commission Consultation and EPF Secretariat analysis under epf11-72 of 21.07.11. Consultation deadline 15 September 2011. Commission Communication planned for end 2011.

### **2.3. Development of an EU Construction Information Platform**

*Impact:* A Commission consultant is completing the design of an information platform intended to enable anyone to access information on EU construction policy more easily than is the case today.



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*Status:* The EPF Secretariat is on the Steering Group to get Commission and consultants to focus on real estate issues as well as construction. However, the pilot is disappointing, both for construction and real estate. As Commission experts, we have tested it in many different ways and find it systematically inferior to Google. EPF members can try for themselves:

<http://www.constructioninformationplatform.eu/>

EPF testing expert submitted reports to Commission on 6 July and 27 September 2010. Final product on Europa website October 2011.

### 3. EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

#### 3.1. Equal Treatment Directive 13

*Impact:* The Commission's original Proposal was for nothing less than the adaptation of rental housing and other buildings to the needs of the disabled by *anticipation*. EPF dealt with this in two campaigns:

November 2009 – February 2010: In response to the first campaign, Council limited the scope of the Directive to the common parts of multi-unit buildings and extended the implementation period for housing to twenty years. Yet this was nowhere near good enough because of the cost of generalised anticipatory change to the common parts of multi-tenant residential buildings.

September – October 2010: EPF obtained the following new Article 4a(3): ***“In the provision of housing, paragraphs 1 and 2 shall not require the provider to make structural alterations to the premises or to pay for them. Subject to paragraphs 1 and 2, the provider shall accept such alterations, if they are funded otherwise.”***

**It remained to be seen whether all this would survive the overall progress review planned for June 2011. It did, in both the June review and in the subsequent July Council draft.**

In the July draft, Article 4a(3) remains unchanged. In Recital 20a on ‘reasonable accommodation’, there is a [tentative, no consensus yet] new phrase according to which ***“Physical alterations to premises or equipment can be required if the contractual or other relationship between the provider and the person with a disability is long-term.”*** But this is a dud for two reasons:

1. The term “can be” is too soft, leaving member states free to do whatever they want (including nothing).
2. The recital has no connected article, i.e. this ‘wish’ does not materialise as a binding obligation in an article.

Furthermore, 20a has become a general recital, the specific housing recital being displaced to 20aa, which is practically unchanged: ***“In the provision of housing, reasonable accommodation includes the duty of the provider to adjust or modify practices, policies and procedures that may represent barriers to persons with disabilities. The provider should not be required to make structural alterations to the premises or to pay for them, but should accept such alterations, if they are funded otherwise.”*** **N.B:** All this is recital language. What matters is the binding obligation of the articles, and here ‘should’ remains ‘shall’: ***“shall not require the provider to make structural alterations”***.

*Status:* Now that all these provisions have survived the general review, it is unlikely that there will be any backtracking in the future. The only potential long-term cloud is that ***“Member States shall progressively take the necessary measures to ensure that sufficient housing is accessible for people with disabilities”*** (Article 4(7); not new). More old people and less government funds make it fairly predictable that landlords will be increasingly ‘solicited’, but deleting Article 4(7) is not a realistic option. *See epf11-80 of 16.08.11*

### 4. PUBLIC HEALTH

#### 4.1. Council Recommendation on Smoke-free Environments

*Impact:*

- No tolerance for designated smoking areas.



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- Responsibility for compliance should be placed on the owner, manager or other person in charge of the premises and includes a duty to take reasonable specified steps to discourage individuals from smoking on the premises. There have to be at least monetary penalties for violations.
- Recommendation contains deadline for implementation and process for working with the Commission to achieve outcome as well as monitoring of progress by both the member state and Commission.

*Status:* Recommendation 2009/C 296/02 of 30 November 2009. Deadline for transposition into national law: 30 November 2012. *EPF Secretariat report under epf10-13 of 01.03.10*

### 5. CONSUMER PROTECTION

#### 5.1. Revision of Directive 2005/29/EC on Unfair Business-to-consumer Commercial Practices

1

*Impact:* The Directive ensures minimum harmonised consumer protection rules across the EU concerning misleading and aggressive commercial practices (not business-to-business practices, only business to consumer). Article 3(9)'s exemption of real estate is a key part of the review. The consultant preparing a study that will inform the Commission's report to Parliament and Council has put a series of questions to EPF, inter alia:

- Are you aware of any gaps in the Directive with regard to immovable property?
- Is enforcement of Directive and national legislation with respect to unfair commercial practices in the field of immovable property adequate? If not, why?
- What are your conclusions regarding the exemption for immovable property in Article 3(9) of the Directive? Should it be kept? Is other regulatory action at European Union level needed?

*Status:* Consultant to deliver study to Commission in February 2012. Commission report to Parliament and Council in spring 2012. EPF experts undergoing interviews with consultant. *EPF Secretariat report under epf11-85 of 02.09.11*

### 6. ENERGY AND ENVIRONMENT

#### 6.1. Proposal for a Directive on Energy Efficiency 10

*Impact: (Summary of ELO, EPF/UEPC, TEGoVA, UEHHA, UIPI Common Position):* The Proposal fails to take into consideration certain key aspects closely interlinked with the complex nature of rental relations. The result is two – probably unintentional – pieces of drafting which, if not corrected, would cause the gravest harm to building owner-occupiers and landlords of all kinds. They concern too-broad definitions of 'energy distributor' and 'energy supply company' and the failure to subject the smart metering requirements to technical feasibility and cost-effectiveness safeguards.

##### 1. Too-broad definitions of 'energy distributor' and 'energy supply company'

Directive 2006/32/EC's definition has been transferred unchanged to this Directive in new circumstances which make it unclear whether landlords simply passing on energy to tenants might not fall under the definitions and be subject to obligations in the new Directive such as achieving annual energy savings in their buildings equal to 1.5% of their energy sales. Such a requirement – that could never have been intended for landlords in the first place, as is confirmed by the Directive's supporting documentation – could only be met by means of totally untenable and non cost-effective renovations going far beyond the renovation obligations ensuing from the Energy Performance of Buildings Directive.

**We propose** resolving this by restricting the definitions of 'energy distributor' and 'retail energy sales company' to natural or legal persons whose main business is to transport or sell energy to final customers.

##### 2. Failure to subject the smart metering requirements to technical feasibility and cost-effectiveness safeguards

*Technical feasibility*





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Technical feasibility of smart metering installation, maintenance and management is a major challenge for certain types of buildings and types of rooms in buildings sometimes compounded by local conditions such as the effect of calcium in water in many areas on meter functioning and longevity.

A major flaw of both the Directive and its impact assessment is the failure to distinguish between electricity and gas on the one hand and the use of heat on the other. The Swedish government has pointed out that *the use of heat in buildings is dependent on the technical construction of the building rather than the behaviour of the end-user.*

**The Directive should** specifically make technical feasibility a condition for application of its provisions.

### ***Cost-effectiveness***

It is clear that the Commission's impact assessment never took account of the full scale of costs in smart metering and above all that it viewed cost-effectiveness largely from the point of view of the tenant and energy supplier/distributor without considering the situation of owner-occupiers and landlords who nonetheless in some member states will have to pay for the installation and the ongoing service outlined by the Commission.

For instance, in Germany (for heating) or Sweden the cost would fall directly to the owner. However, in such countries there is no obligation to proceed with metering obligations that are not cost effective. Why should the Energy Efficiency Directive deprive member states of this reasonable flexibility?

**The Finnish government and the Swedish Association of Public Housing Companies have made smart metering cost calculations that merit attention:** more than a billion euros for Finland and, in Sweden, for public housing alone, a 5 billion SKR investment outlay and at least 350 million SKR in operating costs each year.

**Another fundamental flaw of the Directive and Impact Assessment is the failure to grasp the connection and inevitable trade-off between individual heat metering and other energy saving measures.** If smart/individual metering is made a mandatory requirement, it can suboptimise energy savings planning by rendering investments in other energy saving measures with greater potential economically unfeasible.

**The solution is** to instate a cost-effectiveness safeguard similar to the one that the Commission inserted for energy audits, making sure that it covers not only the initial purchase and installation of the meters, but also the related maintenance, management and replacement costs.

### **Other Important Matters**

#### **1. Exemption of historic buildings**

The practical and aesthetic difficulties arising from, inter alia, installation of smart metering, are generally far greater in historic buildings. For instance, heritage conservation laws often prevent the owner of a historic building from implementing new energy management systems. Member states should be free to decide on a case by case basis, in consultation with the representative experts of cultural heritage in each country, when a specific historic building would require this exemption and the application of a more flexible range of solutions.

The technical difficulties raised for historic buildings by this Directive, in particular concerning the Article 8 metering and informative billing obligations, are far more complex and burdensome than any of the requirements of the Energy Performance of Buildings Directive. For this reason, the exemption from the Energy Efficiency Directive needs to be somewhat broader than the EPBD's proviso for listed buildings, extending to a wider range of historic buildings.

#### **2. Energy audits**

***The definition of 'energy audit' should include operational aspects*** as more than 80% of energy use occurs under the management/operational phase of the buildings.

***The frequency of audit renewal should not be less than six years.*** The Proposal's mandatory requirement for three-yearly energy audits is a very burdensome demand on the resources of enterprises and it is unclear what the actual benefit will be, because the new audit will be too similar to the old one after only three years.



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### **3. Promotion of efficiency in heating and cooling should be extended to include competition aspects as requested by the European Parliament**

A major bottleneck to the development of district heating is anti-competitive behaviour in member states where grids originally owned and managed by municipalities have been sold to large energy companies which act to maximise profit in a non-regulated monopoly situation where typically a single energy company has total control over 'its' local area. The customers of these companies have little possibility to switch to an alternative source of heating due to costly investments and technical obstacles.

The national heating and cooling plans ensuing from the Energy Efficiency Directive should include an analysis of the competition situation and a plan to address any bottlenecks.

### **4. The requirements for planning for efficiency in heating and cooling should not cover new residential zones and should promote competition between alternative energy supply systems rather than buttress district heating monopolies**

EU spatial planning requirements for residential zoning would be too interventionist and prescriptive. They would make it hard for local governments to adapt to demographic evolutions and would endanger the availability of new homes by adversely affecting project viability. There must be no compulsion on planners, owners and developers to choose between CHP or renewables, etc., according to location.

Energy efficiency concerns should cause the Directive to promote competition between alternative energy supply systems (such as heat pumps) rather than buttress district heating monopolies, which is what the Directive does by imposing that residential zones and industrial plants which consume heat in their production processes be connected to the local district heating or cooling network.

### **5. Model contracts for energy performance contracting**

These should be extended to the private sector, as abuse is even more likely there.

Including a provision for a list of penalties for energy service companies failing to achieve guaranteed energy savings would help prevent the problems that have arisen between ESCOs and clients.

### **6. Energy saving obligation schemes (Annex V)**

Default values and lifetimes should be adapted to different climates, lifetimes of buildings, different legislation on opening hours and, for residential, adapted to vacation homes used only part of the year.

### **7. General framework for reporting (Annex XIV)**

The indicators listed are 'absolute indicators' and therefore do not translate efficiency in a direct form. There should also be another indicator, such as e.g. Total Energy Consumption/GDP, enabling easy comparison of efficiency between member states, i.e. for the same level of GDP, how much each country consumed.

*Status:* Council, Parliament, EESC and CoR have all begun drafting amendments/opinions and EPF /UEPC and allies have initiated contacts with all of them. *Full text of ELO, EPF/UEPC, TEGoVA, UEHHA, UIPI Common Position under epf11-86 of 07.09.11.*

### **6.2. Energy Performance of Buildings Directive (Recast)**

**Impact: All major, and most minor, concerns and goals of EPF and allies have been met, as requested:**

**1)** Member states no longer "striving to ensure transparent pricing in the field of construction and renovation"; **2)** Energy performance certificate (EPC) will not have to be available in languages of owner and tenant; **3)** No triggering of the energy performance renovation obligation when renovation costs 20% of the value of the building. Trigger stays at 25%; **4)** obligation on Commission to adopt common EU EPC for commercial build (see 6.2.2.) **5)** Exemptions from energy efficiency renovation requirements retained for historic buildings and secondary residences; **6)** For technical building systems, requirements to be applied only in so far as they are technically, *economically* and functionally feasible; **7)** Targets for "very low" energy buildings, not "zero" energy; **8)** No adding of information on energy saving potential and investment costs to the EPC's recommendations; **9)** *Shopping centre investors and developers who offer shops for sale or rent in advance of planning*



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*permission will not be obliged to produce an EPC until completion of the project; 10) It will be mandatory to mention the building's energy performance indicator in any advertising.*

**Partial successes:** **1)** The obligation on owners and tenants of commercial buildings to exchange information regarding actual energy consumption has been moved from the Articles to the recitals and thus becomes non-mandatory ("should be encouraged"). EPF would have preferred a binding obligation, but this was too prescriptive under EU law; **2)** Parliament managed to partially reinstate its amendment adding information on available fiscal and financial incentives and financing possibilities to the EPC's recommendations. EPF had asked Council to reject this, initially successfully. However, contrary to Parliament's original amendment, which made it mandatory, it is now only an option; **3)** Parliament managed to partially reinstate its amendment forcing public authorities to implement the EPC's recommendations for their own public buildings. EPF had asked Council to reject Parliament's original amendment, initially successfully. However, this had been mandatory in Parliament's original amendment whereas now it is just an option for member states.

**Failures:** **1)** Neither Parliament nor Council took on EPF's request to include "risk and transaction costs" in the definition of "cost optimal levels" to be achieved in the setting of energy performance requirements; **2)** Neither Parliament nor Council accepted EPF's request to drop thermal bridges from the list of aspects that the methodology for calculating the energy performance of buildings has to take into consideration.

*Status:* Directive 2010/31/EU of 19 May 2010. Deadline for transposition into national law: 9 July 2012. Deadline for application of the law: 9 Jan. 2013, 9 July 2013 or 31 Dec. 2015 according to article. *Directive in all EPF languages and final EPF Secretariat analysis under epf10-58 of 28.06.10*

### **6.2.1. EPBD Art. 5(1): Establishment by Commission of a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements**

*Impact:* The Directive's obligation on member states to ensure minimum energy performance requirements for buildings or building units stipulates that the requirements must be set "with a view to achieving cost-optimal levels". Member states must calculate cost-optimal levels of minimum energy performance requirements using this comparative methodology framework. Since March, EPF has participated in the Commission expert workshops developing the framework, its representative being Patrick Brown (BPF), Member of the EPF Energy & Environment Committee. His views on the direction the work has taken:

#### **Positive Developments**

- The Commission has listened to feedback and has left it for the member states to define the estimated lifecycle of buildings and/or building elements, the appropriate cost for energy carriers, products, systems, maintenance, operational and labour costs, primary energy conversion factors and the discount rate to be used. In respect of the discount rate, this should enable member states to vary the discount rate in respect of situations where buildings are separately owned and occupied (to overcome split incentives associated with energy efficient retrofit) and also enables member states to **choose** whether to adopt a societal or a rational investor perspective in respect of setting minimum energy performance requirements. The Commission has, however, reserved the right to institute a common calculation period, the starting year for calculations and the cost categories to be considered when applying the cost optimal methodology. Slightly more positive is that the Commission has agreed to vary the calculation period for housing and public buildings (30 years) and non-domestic buildings (20 years).
- In respect of the requirement to establish reference buildings, member states will have to set in place reference buildings for single family buildings, apartment blocks and multi family buildings and office buildings. Member states may have to deliver further reference buildings but this will depend upon whether energy performance requirements for other non-residential buildings have been established in that member state. This is an improvement on the previous



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draft Regulation, where member states were asked to pick from a list of non-residential building types and to undertake ‘at least two’ reference buildings. I think the approach the Commission has taken here, in balancing the diverse approaches of the member states toward EPBD implementation with seeking to establish a common methodology, is fairly pragmatic.

- There is no reference to a demolition threshold (a cost optimal threshold of energy efficiency after which demolition becomes the optimal outcome). We were supportive of its removal in the previous draft and it has not made an unwelcome return.
- It looks as though the Commission may have relented on excluding costs such as scaffolding from consideration under the methodology as the definition of ‘initial investment’ includes ‘installation and commissioning processes’.

### Less Positive News

- In calculating the energy performance of the building, on-site generated energy is subtracted from the overall final energy of the building. I think we would have liked to see near-site directly connected renewable energy also included.
- The reporting requirements upon member states remain onerous (see Reporting Template at Annex III).
- The methodology remains complex and opaque.

*Status:* Delegated Act = fast-track procedure. Deadline for completion of Commission work: 30 June 2011 extended into the autumn but only for consultations between Commission departments. EPF’s useful role is over. Commission expert workshops on 16 March and 6 May 2011. *Draft Commission Regulation and Guidelines under epf11-79 of 11.04.11; final EPF input under epf11-54 of 20.05.11*

### 6.2.2. EPBD Art. 11(9): Adoption of a voluntary common EU certification scheme for the energy performance of non-residential buildings

*Impact:* On 21 June, Commission DG Energy met with an EPF delegation led by Ricardo Sá of APCC/Sonae Sierra to discuss an EPF blueprint for the scheme. They understood that 27 different national building energy performance certificates do not meet the need of pan-European property investors to be able to compare the assets in their portfolios on the basis of a single EU certificate, and they understood the potential usefulness for companies of being able to market globally their ‘EU A Grade’ assets. Major stumbling blocks were discussed such as how to organise quality assurance (EPF suggested that outsourcing to ISO quality assurance accredited institutions would be better than relying on national certifiers). Or again avoiding LEED-type complexity. Or again, dealing with the complexity of covering the vast spectrum of ‘non-residential’ buildings. For all these questions, EPF provided answers that the Commission found reasonable. Much work on methods and standards needs to be done over the next six months.

*Status:* In autumn 2011, the Commission will start a process of formal ‘stakeholder’ consultation beyond EPF. Expected completion around June 2012.

### 6.3. Directive on Energy from Renewable Sources – Building Requirements and Decision Setting Template for National Renewable Energy Action Plans

*Impact:*

- Directive: Requirement for minimum levels of energy from renewable sources in new or refurbished buildings. Directive does not set harmonised levels.
- Template: Sets member states’ fulfilment of obligations in tight framework with milestones

*Status:*

- Directive 2009/28/EC of 23 April 2009. Deadline for transposition into national law: 5 December 2010
- Template: Decision C(2009) 5174-1 of 30 June 2009

*Directive, Template and EPF Secretariat analysis on EPF intranet*





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### 6.4. EU Funding for Energy Efficiency/Renewables in Housing

**Impact:** New EU budgetary line in EU Structural funding package for energy efficiency improvement and use of renewable energy in low-income housing in all member states (and not just the new ones as previously). **However, in the current funding period running to 2013, in practice it looks very difficult for housing, especially private housing, to benefit from this:**

- There is not one eurocent of new money, simply the possibility to reallocate up to 4% of the existing package to housing.
- *Reallocation means that, in order to spend on housing, member states will have to reduce spending on other priorities, and past and present experience augurs badly:* The new member states, despite their terrible housing problems, have spent only 0,77% of their allocation on housing. For the “old” member states, *Structural Funding has been cut in half* so as to give more to the new member states, which means 4% of half the sum, with all the pressure that implies for saving existing, non-housing, projects.
- *The sums and percentages involved (€ 7.8 billion; 4%) concern the total ERDF allocation for the period 2007-2013. Member states have already done all the bureaucracy of preparing for this spending* (operational programmes). The operational programmes are usually flexible enough for member states or the regions handling the funds to be able to insert housing expenditure, so housing’s late arrival is not determinant, but certainly a handicap.
- *The accent on social cohesion* does not mean that the money is reserved for the very poor or social exclusion, but it obviously gives an advantage to social and municipal housing.
- *Bureaucracy:* The Commission is stressing that it has increased advance payments and reduced administrative burdens, for instance by introducing a limited amount of flat-rate costing. Even so, for the most part each euro of grant must still correspond to at least 1 € of justified paid expenditure, based on invoices and other accounting documents showing what has actually been done, easily amounting to hundreds of documents. Not to the taste of most EPF members.

#### **European Energy Efficiency Fund**

The Commission’s March Energy Efficiency Plan, apart from giving a preview of different elements of the Energy Efficiency Directive, also announced new EU funding for energy efficiency, particularly in buildings. At that time the European Economic Recovery Programme was already funding an “Energy-efficient buildings” public-private partnership, providing € 1 billion for research methods and technologies to reduce the energy consumption of new and renovated buildings. But the March Plan also announced that the Commission was working with the European Investment Bank (EIB) to set up “a dedicated investment fund using unspent funds from the European Economic Recovery Programme to support energy efficiency and renewable energy projects”.

July saw the launch of the European Energy Efficiency Fund:

<http://www.eib.org/about/press/2011/2011-098-european-energy-efficiency-fund-eeef-launched.htm>

What’s good is:

- the money: an initial € 265 million provided by the Commission, the EIB, Cassa Depositi e Prestiti and Deutsche Bank (the Fund’s investment manager), set to reach € 800 million with new investors.
- one of the main investment areas will be energy saving measures in public and *private* buildings (for the first time, without any ‘social cohesion’ caveat)

However, the potential beneficiaries [direct recipients of the funds] are “public authorities (e.g. municipalities), preferably at local and regional level, **and public or private companies acting on behalf of those public authorities**, such as local energy utilities, ESCOs, CHP companies...”.

Not, therefore, very promising in terms of direct access by property associations or companies.

**The future may be more promising, as the Commission will make proposals for support for energy efficiency to become an overarching budget priority for the Structural Funding period 2014-19.**

**Status:** Regulation 1080/2006 amended in April 2009. *EPF Secretariat report on intranet. For European Energy Efficiency Fund, see epf11-83 of 24.08.11.* Commission to make proposals for new ERDF funding period early autumn 2011.





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### 6.5. Revision of the Environmental Impact Assessment Directive (Directive 85/337/EEC) 4b

*Impact:* Following wide consultation including EPF, the Commission is considering:

- ***imposing time limits for reaction by the planning authority to the request by the developer***, possibly even a harmonised EU minimum time limit. For instance, it commonly takes authorities up to two months to respond. They envisage that the revised EIAD could set a time limit of one month. This could possibly be restricted to small Annex II projects (projects for which EIAD leaves the authority the freedom to decide whether an EIA is needed or not) or to specific categories of projects (for which the Commission would want examples from EPF).
- ***a one-stop-shop authority or a coordinating authority***. Developers can face multiple reporting and authorisation requirements to multiple authorities: assessments under EIA to the environment authorities, under the Habitats Directive to the nature authorities, water assessment obligations to the water authorities, etc. and a final development consent from a further authority.
- adapting the provisions of the EIAD and the Strategic Environmental Assessment Directive so that ***projects reported at SEA level wouldn't need to be reported again***.
- ***the possibility of developing an easily applicable mechanism for screening out small developments***

**NB:** The debate between Commission and stakeholders has shown that all these reforms can be perfectly well carried out at national or sub-national level. It is not clear whether all member states or EPF members will be happy to transfer power over these matters to EU level, even in exchange for lightening developers' burdens.

*Status:* Proposal for Directive to be tabled mid 2012. *Consolidated version of current Directive, Commission report, COWI study and first EPF Secretariat analysis under epf10-72 of 05.08.10; latest EPF Secretariat report under epf10-120 of 20.12.10*

### 6.6. Legislative Initiative on Water Performance of Buildings 4b

*Impact:* The Commission has asked a consultant to consider:

- Minimum water efficiency requirements for water-using products
- Mandatory or voluntary water performance rating/auditing of buildings
- Minimum water performance requirements of buildings
- Voluntary certification scheme for water reuse and harvesting
- Financial incentives (for the purchase of water-efficient devices, water meters, or the installation of water reuse systems)
- Information and education campaigns targeting consumer behaviour, public perception and dissemination of best practices

***On 8 September 2011, at the first meeting between Commission, consultant and stakeholders, EPF made the following points:***

**1. Ratio legis:** Unlike energy efficiency, water scarcity may well not be a pan-European concern. For Northern European countries it could be a non-problem which could make any binding EU legislation hard to justify. The Commission Head of Unit said that this can be dealt with by legislation containing a provision that the Directive's requirements are only triggered in areas where the water basin reaches a certain specific low level. One participant said that water use requires energy, so this is a pan-European problem requiring binding legislation. EPF answered that the amount of effort and cash that can be devoted to energy efficiency being finite, the energy consumption parameters of water performance may be too marginal to merit special EU legislation.

**2. Water performance certificates:** nobody wants multiple certificates, and in a single certificate the energy component may be so dominant that the water element becomes of little use. EPCs are not working well in many places and this is a reason why much more time is needed to see how EPCs pan out before doing anything about water performance certificates which should anyway be voluntary and limited to commercial property.

*Status:* Commission consultants currently asking EPF for quantitative data to support the impact assessment of the potential policy options. Completion of the consultants' report to be followed by



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wider consultations. If the Commission opts for legislation, it will be for end 2012. *EPF Secretariat report on 8 September meeting containing consultants' discussion document and request for data under epf11-92 of 16.09.11. EPF initial written comments to the Commission consultants under epf11-96 of 23.09.11*

### 6.7. Extension of the EU EcoLabel to Buildings Commission Decision

*Impact:* EPF, which has been a European Commission consultee in respect of the EcoLabel for buildings from the inception, has in previous responses on the EcoLabel criteria sought to encourage the Commission to lend its support to existing ratings or tools or initiatives under the aegis of the flower label. Since the last draft of the criteria, there has been a concerted effort to refer to international standards, but EPF still holds concerns that the EcoLabel criteria are borrowing heavily from existing rating tools, whilst at the same time not clearly articulating the rationale for the creation of an EcoLabel for buildings when those existing tools are performing well. Furthermore, a comprehensive building assessment method including all environmental factors with a potential impact on people and the environment is going to have relatively high assessment costs. Therefore EPF considers that it might be fruitful to distinguish between a tool for environmental analysis of buildings and a tool for environmental rating of buildings. An analysis tool can be more complex and suitable for professionals and academic purposes, while a rating tool has to be more understandable and suitable for market communication. An analysis tool must be strong in the area of calculating environmental impact, while the rating tool has to focus more on assessment efficiency, environmental trends and building technology. Development of a rating tool should therefore:

- restrict the number of indicators to those which are the most important for its product type;
- find easy ways to assess indicators and thereby keep costs low and attract wider attention; and
- avoid weighting, which creates an ambiguity that afflicts most existing systems.

EPF's response to the latest Commission working document contained general comments on green public procurement criteria, scoring system, the rationale for starting with offices, the relationship between sustainability performance and value and application of EcoLabel criteria in the property lifecycle as well as specific comments on criteria relating to energy use, use of materials, water consumption, waste management, indoor air quality and facilities and energy consumption of users.

*Status:* Under new leadership of Commission Joint Research Centre: 1<sup>st</sup> Ad hoc WG 28-29 June 2011, 2<sup>nd</sup> Ad Hoc WG 8-11 Nov 2011, publication of final criteria April 2012. *EPF observations on the June 2011 AHWAG meeting under epf11-101 of 30.09.11*

### 6.8. CEN (European Standards Body) Work on the Integrated Environmental Performance of Buildings

*Impact:* Should enable single performance certification for buildings rather than separate energy, water, etc., but work is stretching into areas such as social and economic performance of the building.

*Status:* No deadline. EPF had two Liaison Members but is retrenching because of high demand on resources with no end to CEN work in sight. *Sonae Sierra report on EPF intranet*

### 6.9. Soil Protection Directive 13

*Impact:* Soil sealing restrictions, inventories of contaminated sites, remediation strategies. EPF main concern: soil status report. EPF wants this obligation to be exclusively on the owner so as to avoid a reporting obligation for the prospective buyer. End result: to accommodate the UK and its 'buyer beware approach', the Directive would still allow member states to choose between owner and prospective buyer, but the Commission informed EPF that probably all member states except the UK will place obligation on owner.

*Status:* Commission Proposal backed by Parliament but blocked in Council. *Proposal and EPF Position on EPF intranet*