

# ClientEarth's comments on the Energy Efficiency Directive proposal

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## Acronyms

CEC	Citizen Energy Community
EED	Energy Efficiency Directive (EU) 2018/2002
EE1st principle	Energy Efficiency First Principle
EU	European Union
IEMD	Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity
NECP	National energy and climate plans in accordance with the Regulation (EU) 2018/1999
REC	Renewable Energy Community
Recast EED	Proposal for a Directive on Energy efficiency (recast) COM(2021) 558 final
REDII	Renewable Energy Directive (EU) 2018/2001
RES	Renewable Energy Sources
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

## 1 Introduction

ClientEarth is a not-for-profit environmental law organisation comprising legal, scientific, policy, and communications experts working to shape and enforce the law to tackle environmental challenges.

We welcome the opportunity to comment on the European Commission's proposal for a directive on energy efficiency (recast EED).

The current international context is marked by the latest IPCC report which dramatically underlines the need for action to meet the Paris Agreement objectives, the insufficient commitments of the parties at COP26<sup>1</sup>, the economic and social recovery from the COVID outbreak and the surge in energy prices in Europe.

To meet these challenges and pave the way for achieving the objectives of the Paris Agreement, the EU needs strong energy and climate frameworks.

We generally find that the recast EED is strengthening the existing framework to achieve the new EU climate ambition of cutting carbon emissions by at least 55% by 2030 and the ultimate climate neutrality objective by 2050. In particular, we welcome the inclusion of a new legal basis for the EE1st principle as it is essential for limiting our energy consumption and achieving the energy transition. Setting a higher EU energy efficiency target and make it binding is also a good step forward in achieving the EU energy and climate targets, although it must be accompanied by ambitious and binding national targets. The recast EED also includes interesting provisions to empower and protect end users as well as support a fairer transition, which is of great importance in the context of soaring energy prices.

Nevertheless, the provisions of the recast EED still need to be improved. We recall that the EU already missed its 2020 energy efficiency target<sup>2</sup>. The EU should be more ambitious and send a stronger signal to Member States, regional and local authorities, grid operators, and EU citizens to tap into the full energy savings of the EU in view of achieving climate and energy efficiency targets.

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<sup>1</sup> An analysis from Climate Action Tracker shows that governmental pledges to reduce carbon emissions by 2030 would lead to emissions roughly double the level needed to hold the temperature rise to 1.5°C this century, see: [Global Update - Glasgow's 2030 credibility gap - Nov 2021 \(climateactiontracker.org\)](https://climateactiontracker.org/global-update-glasgow-2030-credibility-gap-nov-2021)

<sup>2</sup> The [Commission's 2020 assessment of the cumulative impact of the 27 NECPs](#) shows that they fall short of the 32.5% target, generating reductions of 29.4% for final energy consumption and 29.7% for primary energy consumption.

## 2 Recommendations

### 2.1 Mainstreaming environmental protection in the recast EED

The recast EED is based on Article 194(2) TFEU, which is the legal basis for energy-related measures and, in particular, for the promotion of energy efficiency and energy saving, one of the goals of the EU's energy policy set out in Article 194(1)(c) TFEU.

As required by Article 7 TFEU<sup>3</sup>, EU measures must be consistent with other provisions of the treaty. This includes in particular:

- Article 37 EU Charter of Fundamental Rights which emphasizes the importance of environmental protection<sup>4</sup>;
- Article 11 TFEU, which lays down an obligation of environmental integration and of mainstreaming environmental policies into EU's policies and activities, in particular to promote sustainable development. It stems clearly from this provision that environmental protection requirements must be taken into account in all EU policies including EU's energy policy<sup>5</sup>;
- Article 3(3) TEU, which makes "*sustainable development that includes a high level of protection and improvement of the quality of the environment*" fully part of the development of the EU's internal market; and
- Article 9 TFEU, which notably promotes a high level of protection of human health.

Those constitutional principles read in conjunction with the objectives of the Green Deal, the new climate ambition of the EU by 2030, the climate neutrality objective by 2050 and other climate-orientated policies and legislation mean **the EU and its institutions are legally bound by carbon reduction objectives**.

This also implies that the EU cannot legitimately allow support to fossil fuels, or other carbon-intensive activity. All new legally adopted provisions – whether or not they are explicitly environmentally-focused – would need to be screened to ensure the minimisation of climate harm.

Hence, ClientEarth calls on the Commission to:

- 1) mainstreaming environmental and climate protection objectives, which are part of EU's constitutional principles, into the recast EED. This includes that **explicit references to Article 37 EU Charter of Fundamental Rights, Article 3(3) TEU and Article 9 TFEU and Article 11 TFEU, shall be made in the preamble of the recast EED**;

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<sup>3</sup> Article 7 TFEU provides that: "*The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.*"

<sup>4</sup> Pursuant to Article 37 CFR: "*A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.*"

<sup>5</sup> This is also confirmed by the CJEU in 2018 concerning the Common Fisheries Policy: "[...] *under Article 11 TFEU, environmental protection requirements must be integrated into the definition and implementation of the European Union's policies and activities, including the CFP. Whilst the European Union must comply with that provision when it exercises one of its competences, the fact remains that environmental policy is expressly referred to in the Treaties as constituting an autonomous area of competence and that, consequently, when the main purpose and component of a measure relate to that area of competence, the measure must also be regarded as falling within that area of competence.*" Judgement of the Court of Justice of 20 November 2018, Commission v Council, Joined Cases C-626/15 and 659/16, ECLI:EU:C:2018:925, paragraph 101.

- 2) **Removing any supportive provisions to technologies** using fossil-fuels, including natural gas, from the recast EED. We refer here to our recommendation below.

## 2.2 Removing provisions in favour of technologies using fossil fuels, including natural gas

To align with the constitutional provisions on environmental protection, and to be on track to meet the EU's climate target, **any provisions favouring fossil-fuels technologies**, especially in connection with regard to high efficiency cogeneration and heating & cooling technologies using natural gas, **should be removed from the recast EED**. The recast EED should instead incentivise **the use of renewables – with the exception of forest biomass**<sup>6</sup>. In this regard, we welcome the Commission's proposal to exclude measures that promote fossil fuels technologies and the energy savings deriving from the use of direct fossil fuel combustion towards the fulfilment of the energy savings obligation.

However, maintaining favourable provision for natural gas in the recast EED will create lock-in effect by promoting incumbent forms of production over clean alternatives and limiting consumers' and industrial users' ability to switch to a cleaner technology at a reasonable cost. This is particularly detrimental in this context of high and volatile energy prices where the EU needs more than ever to reduce its reliance on natural gas and imports from Russia. Reduce energy bills and fight against energy poverty. Therefore, the recast EED should:

- 1) **Delete any favourable provisions to high efficient cogeneration**<sup>7</sup> since this technology uses either fossil fuels (including natural gas) or scarce raw materials (i.e. forest biomass) and its high efficient nature is disputable in practice. Indeed, some studies demonstrate that cogeneration plants in Germany are only around 12% more efficient than plants with separate energy generation without even considering grid losses which amount to around 10%<sup>8</sup>.

<sup>6</sup> i) Scientific evidence shows that burning **forest biomass leads to greenhouse gas emissions** – in addition to deforestation – which contributes to increasing global temperature and climate change. See Duncan Brack, Chatham House, *Woody Biomass for Power and Heat: Impacts on the Global Climate*, 2017; and Sterman, et al., *Does Replacing Coal with Wood Lower CO2 Emissions? Dynamic Lifecycle Analysis of Wood Bioenergy* (2018). See also an article on "When will the biomass bubble burst".

ii) Worse, there is evidence that **carbon emissions per unit of electricity generated from forest biomass are higher than from coal**. European Academies Science Advisory Council "Commentary on Forest Bioenergy and Carbon Neutrality", June 2018; Duncan Brack, Chatham House, *Woody Biomass for Power and Heat: Impacts on the Global Climate*, 2017.

iii) Moreover, **burning wood also creates significant air pollution and emission of fine particles** (i.e. NO<sub>x</sub>, PM<sub>10</sub>, PM<sub>2.5</sub> and VOC) particularly toxic for human health. See Capizzi, Das, et al. (2019). Renewable energy in Europe – 2019, recent growth and knock-on effects. (European Topic Centre on Climate Change Mitigation and Energy, 2019/8).

iv) Additionally, the increased demand for biomass **drives biodiversity degradation worldwide** (Cary Institute of Ecosystem Studies, *Wood pellets: Renewable, but not carbon neutral: Turning forests into fuel comes at an environmental cost*, 2018) and has been linked with illegal logging within the EU (Environmental Investigation Agency, *Stealing the last forest: Austria's largest timber company, land rights, and corruption in Romania*, 2015).

<sup>7</sup> The definition provided for in the EED must be reviewed within the ongoing EED revision in particular to address the issues exposed above (e.g. improving comparison methodology to define what is high-efficiency, adding efficiency minimum requirement for small CHP, etc)

<sup>8</sup> See the reports from Prognos AG, Fraunhofer IFAM, Öko-Institut e.V, BHKW-Consult "Evaluierung der Kraftwärme-Kopplung, Analysen zur Entwicklung der Kraft-WärmeKopplung in einem Energiesystem mit hohem Anteil erneuerbarer Energien", 25 April 2019; DPG, "Energie Forschung und Perspektiven", Prognos AG, Fraunhofer IFAM, Öko-Institut e.V, BHKW-Consult, 25 April 2019; DPG, "Energie Forschung und Perspektiven", March 2016

The calculation method of efficiency in the EED is also highly questionable. In the recast EED, the legal requirement for receiving aid to large CHP plants is maintained and aims to save 10% of primary energy compared to the separate production of electricity and heat<sup>9</sup>. However, the choice of comparative plants to assess this energy saving is not adequate and technically obsolete<sup>10</sup>. No efficiency minimum requirement applies to small CHP, which means that any “primary energy savings” qualify them as highly efficient. Although the new legal requirements in Annex III of the recast EED limits the quantity of direct emissions of the carbon dioxide from cogeneration production to less than 270 gCO<sub>2</sub> per 1 kWh of energy output from the combined generation, fossil fuel based cogeneration are nevertheless supported and alternative clean energy production not considered.

In the same vein, the requirement under which the increase in the use of fossil fuels “*other than natural gas*” when a cogeneration unit is built or refurbished is not welcomed either.

- 2) Remove incentive provisions to current district heating and cooling systems using fossil fuels, including natural gas.** As the Commission clearly stated in its opening State aid decision on so-called upgrades of district heating networks with coal-fired and gas-fired boilers in Poland, such systems are inefficient, pollute heavily and lock in fossil fuels. Hence supporting these goes “*against any environmental protection objective*”.<sup>11</sup>

Accordingly, the mention to “*other than natural gas*” shall be removed from Article 24(2)<sup>12</sup>.

- 3) At least, make it binding for Member States to develop or upgrade their cogeneration and use heating and cooling network from waste heat and renewable energy sources - except from forestry biomass.**<sup>13</sup>

In this regard, the wording of Article 23(4) of the recast EED is not stringent enough, since Member States can choose to adopt “*adequate measures for efficient district heating and cooling infrastructure to be developed and/or to accommodate the development of high-efficiency cogeneration and the use of heating and cooling from waste heat and renewable energy sources*” (we underline).

<sup>9</sup> See Annex III of the recast EED.

<sup>10</sup> For example, as a comparison for separate electricity generation, a gas-fired power plant with an electrical efficiency of 53% is stipulated, although gas and steam power plant technology with electrical efficiencies of at least 60% has been state of the art for years. The heat pump, which has been well established for years, is not mentioned as a comparative system for separate heat generation. See for further details: Gerhard Luther, *Wärmepumpe oder KWK – was passt zur Wärmewende?*, pp. 123 and seq.; see also Commission Delegated Regulation (EU) 2015/2402 of 12 October 2015 reviewing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2012/27/EU of the European Parliament and of the Council and repealing Commission Implementing Decision 2011/877/EU, Annex I

<sup>11</sup> Commission decision of 25 October 2019 on State Aid SA.51987 (2018/N) – District heating network – Tarnobrzeg; SA.52084 (2018/N) – District heating network – Ropczyce; SA.52238 (2018/N) – District heating network – Lesko; SA.54236 (2019/N) – District heating network – Dębica; and SA.55273 (2019/N) – District heating network – Ustrzyki Dolne.

<sup>12</sup> Pursuant to Article 24(2), Member States shall ensure that when a district heating and cooling system is built or substantially refurbished, there is no increase in the use of fossil fuels other than natural gas in existing heat sources compared to the annual consumption averaged over the previous three calendar years of full operation before refurbishment, and that any new heat sources in that system do not use fossil fuels other than natural gas.

<sup>13</sup> See footnote 6 and our reply to the Revision of the State Aid Guidelines for Environmental Protection and Energy and exemption rules | ClientEarth, page 10.

Because of their reliance on natural energy (i.e. heat produced comes from the sun, the air and the ground), renewable heating technologies are sustainable and have great potential for decarbonising our energy system. Renewable heating technologies are thus more environmental friendly and flexible than cogeneration, whose general operation usually depends on the production of heat because of the coupling of heat and power production. Moreover, long term energy scenarios by Fraunhofer ISI et al. (2021) show for Germany that large scale heat pumps and heat accumulators will be key technologies in 2050, with less operating hours and a declining role for cogeneration until this date.

- 4) Delete Article 24(11) or clearly indicate the phasing out of State aid support toward cogeneration and district heating and cooling networks, and instead support State aid to renewable heating technologies.** The recast EED must not be the legal basis for granting public support to polluting technologies.

## 2.3 Strengthening the EE1st principle as an overarching principle of the EED

ClientEarth very much welcomes the introduction of the definition of the EE1st principle (Article 2 (2)), of a new legal basis for the EE1st principle in the recast EED, the application of the principle to the new Article 25, as well as the European Commission's recommendation on "Energy Efficiency First: from principles to practice" and its annexed guidelines ("EE1st Recommendation")<sup>14</sup>. In particular, we welcome the holistic approach adopted by the Commission applying the principle to the energy sector and beyond and the fact that it applies in policy, planning and investment decisions in line with Article 2, paragraph 18 of the Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action (the 'Governance Regulation'). The principle is key for ensuring the energy transition, limiting our energy consumption and achieving the energy transition. So far it has been very little implemented by Member States and grid operators.

We believe however that the recast EED should strengthen the principle and its full implementation by Member States and the EU institutions.

The EE1st principle is indeed one key pillar of the Energy Union, aiming to ensure secure, sustainable, competitive and affordable energy supply in the EU.<sup>15</sup> The Commission recognised it as a horizontal guiding principle of European climate and energy governance and beyond, to ensure we only produce the energy we really need.<sup>16</sup> It must be, as per the Governance Regulation, driving the EU institutions' decisions and legislation as well as Member States' energy planning, policy and investment decisions (notably for energy security, energy infrastructure and market integration decisions).<sup>17</sup> In the same vein, the European Climate Law places the EE1st principle as a mandatory criterion to be taken into account by

<sup>14</sup> Commission recommendation of 28.9.2021 on Energy Efficiency First: from principles to practice. Guidelines and examples for its implementation in decision-making in the energy sector and beyond, C(2021) 7014 final.

<sup>15</sup> See [Factsheet on energy efficiency](#).

<sup>16</sup> As outlined in the European Green Deal, the EU strategy on Energy System Integration, and the EU Renovation Wave. See Communication from the Commission, A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives, COM/2020/662 final

<sup>17</sup> Recital (64) and Article 2(18) of the Governance Regulation.



the Commission when proposing the Union 2040 climate target.<sup>18</sup> The Energy System Integration Strategy also insists on applying the EE1st principle consistently across the whole energy system.<sup>19</sup>

As recognised by the EE1st Recommendation (recital 19), the current surge of energy prices makes the application of this principle by the relevant authorities even more crucial.

Hence, ClientEarth wishes to make the following recommendations:

- 1) Extending the principle to all planning, policy and investment decisions.** Article 3, paragraph 1 of the recast EED restricts the scope of the principle to “*major investment decision*”, whereas the definition of the EE1st principle in the Governance Regulation covers all types of planning, policy and investment decisions<sup>20</sup>. Moreover, there is no legal definition of the term “major” in the recast EED. Recital 14 only refers to “*large-scale investments with a value of more than 50 euro million each or 75 euro million for transport infrastructure projects*”. Not only does this risk significantly limit the scope of the principle to very large projects, but it also creates legal uncertainty as to its implementation. Hence, we recommend deleting the reference to “major” to cover all types investment, including for small and middle-size projects.
- 2) Making Article 3 of the recast EED more precise to ensure legal certainty.** The provision remains vague and lacks clarity. More precision included in the recast EED will strengthen the principle and make it more operational, especially if those elements are already in the EE1st Recommendation. For example, the Commission should explicitly specify:
  - The type of non-energy sectors which have an impact on energy consumption and energy efficiency as referred by Article 3, paragraph 1, b) of the recast EED. We understand from the EE1st Recommendation that those encompass information and communications technology (ICT), transport, agriculture and water sectors. For the sake of clarity and legal certainty for the national transposing authorities, those sectors should be explicitly mentioned in the recast EED, while possibly leaving this list open (in case other sectors not yet considered yet might be relevant);
  - Standard requirements for the cost-benefit assessments and strengthen the obligation for Member States to use them. Under Article 3 paragraph 3, b), Member States shall “promote and, where cost-benefit assessments are required, ensure the application of cost-benefit methodologies” (we underline). Again this wording lacks of clarity on how Member States will have to promote such assessments. Furthermore, there is no clear obligation for them to apply cost-benefit assessment, let alone apply a specific one where it is required at national level. The EE1st Recommendation provides some examples in this regard. However, the risk is that Member States apply various types of methodologies with different level of quality and completeness. This might create a lack of harmonization in terms of assessment of the benefits of energy efficiency solutions from the societal perspective at EU level.

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<sup>18</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), Article 4, para. 5.

<sup>19</sup> Communication from the Commission, Powering a climate-neutral economy: An EU Strategy for Energy System Integration, COM(2020) 299 final, page 5.

<sup>20</sup> Article 2, paragraph 18 of the Governance Regulation.

- The content of the Member States' reporting of their progress in implementing the principle as part of their NECPs. This is to avoid poor reporting which would not sufficiently assess whether Member States have complied with Article 3 of the recast EED. For example, a set of common indicators referring to the detailed quantification of the broader benefits of energy efficiency could be included, to better monitor implementation's efforts and ensure a certain degree of comparability across Member States;
  - The definition of the relevant authorities referred to in Article 3, paragraph 2;
- 3) Extending the scope of the EE1st principle to EU institutions and bodies, as well as regional and local authorities.** Article 3 only focuses on Member States, while the EE1st Recommendation make it clear that the principle aims at policy makers and regulators at European, national and local levels. The European Commission's proposal for a TEN-E Regulation also applies the EE1st principle to ACER and ENTSOs.
- 4) In accordance with the recognition of the EE1st principle in EU law and policy: **mainstreaming the EE1st principle in every relevant piece of EU legislation, and at least in the upcoming gas legislative package, the future EPBD<sup>21</sup>, and the State aid framework** (including the CEEAG<sup>22</sup> and the GBER<sup>23</sup> currently under review).**

## 2.4 Making the EU target more ambitious and national energy efficiency target binding

The sixth assessment report of the IPCC dramatically underlines that unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions at global scale, limiting warming to close to 1.5°C or even 2°C will be beyond reach. In November 2019, the European Parliament already adopted a resolution declaring a state of climate emergency.<sup>24</sup>

In this context, we believe that the EU should be as ambitious as possible in terms of limiting carbon emissions and lead the way for achieving the Paris agreement's objectives.

Although we welcome the legally binding nature of the EU energy efficiency objective and the increase in the target by 2030 to a 36% reduction of energy consumption for final energy and 39% for primary energy, we call for reinforced and legally binding targets at both EU and national levels. Those can send strong signals to investors and contribute to the path for achieving the new EU climate ambition by 2030 and the Paris agreement's objectives.

We therefore make the following recommendations:

- 1) the EU should be more ambitious and raise this target to at least 45%** (compared to the EU Reference Scenario 2007 or of at least 20% compared to the EU Reference Scenario 2020)<sup>25</sup>;

<sup>21</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.

<sup>22</sup> [Guidelines on State aid for climate, environmental protection and energy 2021](#).

<sup>23</sup> [The General Block Exemption Regulation](#).

<sup>24</sup> [European Parliament resolution of 28 November 2019 on the climate and environment emergency \(2019/2930\(RSP\)\)](#)

<sup>25</sup> We refer to the contribution of CAN Europe.

2) Although the energy efficiency target at EU level depends on national progress, the recast EED provides national contributions which are not mandatory for Member States to tap into the full energy savings potential of Member States. We recall that the EU already missed its 2020 energy efficiency target. National contributions need therefore to be strong and enforceable. The new formula indicated in Annex I for determining national contribution is certainly not sufficient in this regard. We call on the Commission to **adopt a stronger national target framework by imposing:**

- **mandatory national targets** (called “contributions” in the recast EED); or at least
- **a binding formula for determining the level of national contribution;** and
- **binding milestones on the national trajectory** that the Commission will check through the “gap filler mechanism” (Article 4.3). The recast EED needs indeed a strong governance system to ensure the achievement of the EU and the national energy efficiency and climate objectives. The proposed “gap filler mechanism” (Article 4.3) is already a good step forward, although it is weakened by the fact that it is based on indicative trajectories and should be reinforced. Under the mechanism, if the Commission finds that a Member State's progress are insufficient and above its indicative trajectory communicated as part of its NECP, the Member State has to implement additional measures within one year following the Commission's assessment to get back on track. The trajectories set by Member States are therefore important elements of the mechanism.

## 2.5 Strengthening the public procurement's provision

ClientEarth welcomes the Commission proposal to strengthen the public procurement provisions of the EED. In particular, we welcome the extension of the obligation to purchase products, services, buildings and works with high energy-efficiency performance to all contracting authorities and contracting entities and the fact that the application of the EE1st principle has been proposed to be imposed when concluding public contracts and concessions.

We also welcome the recognition of the need for more transparency, the requirement to address barriers, including barriers related to annual budgeting and accounting application, the expressed will to improve the application of the EU green public procurement criteria as well as the obligation to provide support to contracting authorities through clear rules and guidelines.

However, we think that these provisions should still be reinforced. Two elements are particularly of our concern.

- 1) We think that it is absolutely necessary to **create a better link between the policy objectives and public procurement** and consider public procurement an important tool contributing to the achievement of policy goals (in particular the EU climate goals). We appreciate the fact that the Commission included a paragraph relevant to the Union's decarbonisation and zero pollution objectives. However, the relevant proposal is far too light and insufficient for this purpose.
- 2) We also think that it is not sufficient to require Member States' action on public procurement but consider that **certain issues should be addressed at the EU level**.

## 2.6 Clarifying and reinforcing the provisions on energy communities

ClientEarth welcomes the new proposed provisions in favour of vulnerable consumers and energy communities in the recast EED. As recognised by the Commission in recital 92 and in the EE1st Recommendation<sup>26</sup>, “*at local level, cities, towns and local communities in general are best placed to implement energy efficiency measures, working closely with citizens, consumers and energy communities*”. It is crucial to empower citizens through energy communities especially in the context of high energy prices that they have not been prepared to face. The recast EED provisions are already a good step forward in encouraging this. However, in line with the spirit of the REDII and the IEMD, we believe that the recast EED could go further by providing stronger incentives and clarifications for Member States to promote energy communities.

Hence, ClientEarth wishes to make the following recommendations:

- 1) **Strengthening the role of energy communities within the energy saving obligation.** Article 8, paragraph 1, (3) of the recast EED seems to imply that Member States shall promote energy communities solely when designing energy saving obligation measures targeting energy poverty. While energy communities certainly have a role to play in alleviating energy poverty, they also have other objectives. According to the definition in the REDII (Article 2 paragraph 16) and the IEMD (Article 2 paragraph 11), the primary purpose of energy communities is “*to provide environmental, economic or social community benefits for its shareholders or members or for the local areas where it operates, rather than financial profits*”. This means that their objective is much broader than the fight against energy poverty. Therefore, we recommend the following:
  - **the recast EED shall provide a general requirement for Member States to encourage energy communities when implementing their energy saving obligation** (insertion of a new paragraph following Article 8, paragraph 1, (4)). To make it more effective and enforceable, we call on the Commission to provide guidance and clarify how Member States shall apply this proposed obligation and promote the role of energy communities under Article 8. On this point we refer to our recommendation 3) below;
  - **Energy savings achieved by energy communities should be able to contribute to the required amount of cumulative end-use energy savings.** To estimate this share, Member States shall include information about the indicators used, the arithmetic average share and the outcome of policy measures established in their (updated) integrated NECP. Accordingly, this would require Annex V to be adapted, detailing the type of information Member States must include in the notification referred to Annex V, point 5 (e.g. policy measures, share and the amount of energy savings to be achieved among energy communities, indicators applied, the arithmetic average share and the outcome of policy measures).
- 2) **The recast EED shall also recognize the role that energy communities can play in helping obligated parties as mentioned in Article 9 paragraph 2 to achieve their energy efficiency obligations.** Some energy communities are already working with obligated helping them reach citizens for fulfilling their energy efficiency obligations<sup>27</sup>.

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<sup>26</sup> Annex to the EE1st Recommendation, page 22.

<sup>27</sup> We refer here to the contribution of Rescoop.eu.

- 3) For the sake of clarity and coherence with the REDII and the IEMD, **one specific provision shall be dedicated to energy communities under chapter IV of the recast EED**. The aim is not to create a new category of energy community but to clarify and make more concrete the role that energy communities can play towards the objective of the EED. So far, not all Member States have correctly transposed the RECs and CECs related provisions into their national legislation<sup>28</sup>, although the deadlines for transposing the REDII and the IEMD are already behind us. The definitions and the enabling frameworks established in these directives are complex and Member States need proper guidance. This will send a strong signal to Member States and help them to understand the potential of energy communities to deliver energy efficiency projects, especially in terms of raising awareness about change in consumption behaviours for consumers. A specific article on energy communities in the recast EED would also help to distinguish between the concept of energy communities and the fight against energy poverty, which is not clear from the recast EED.

Therefore, this specific provision could:

- **highlight the specificity of energy communities developing energy efficiency projects** and their added value in terms of information and awareness raising on consumption behaviour;
- **describe the types of energy efficiency activities RECs and CECs can develop**. In our view, this point is not enough explicit in Article 22 REDII and Article 16 IEMD;
- **clarify the enabling framework for energy communities within the EED**, including characteristics of:
  - the relationship between them and obligated party as referred to in Article 9 paragraph 2;
  - the collaboration between local authorities and energy communities under Article 5;
  - types of policies and measures for supporting them in playing an active role in raising awareness about change in energy consumption behaviours among local authorities and citizens;
  - the requirement to take them into account when designing State aid support schemes aiming at achieving national energy efficiency contribution.

<sup>28</sup> See the [transposition tracker developed by Rescoop.eu](#)