

Our position

Building blocks for a decarbonised EU



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

AmCham EU welcomes the European Commission (Commission) proposal on Energy Performance of Buildings (EPBD). The draft law outlines a clearer pathway and more concise targets, focuses on innovation and digitisation - two areas central to getting the EU on its pathway to reaching net zero by 2050 - and emphasises the 2030 emission reduction target.

We applaud the Commission's legal proposal, which significantly encourages building renovation in Europe and capitalises on modern technology to advance carbon reduction. However, there remain elements that require clarification and improvement.

Ambition and harmonisation

The proposal calls for annual targets that will be clearly anchored in the EPBD and calls for specific EU harmonised targets for 2030 and 2040. These include a 3% rate of deep and integrated renovation and at least a 6% rate of heating and cooling system replacement. The EPBD asks all Member States to submit a Long-Term Renovation Strategy (LTRS) of sufficient quality and ambition however, it does not allow for harmonised targets to achieve such plans. According to the proposal, Member States will be asked to define specific roadmaps and targets for 2030, 2040 and 2050. They also need to report on several specific factors to achieve the 2050 target. The draft proposal improves the current situation by harmonising the LTRS and the BRAP, and by outlining the final goals for 2050. Nonetheless, **having specific goals for 2030 and 2040 or including yearly goals for deep renovation and heating and cooling replacement would ensure that the final target is achieved.**

The Minimum Energy Performance Standards (MEPS) in article 9 are encouraging, as the roadmap referred to in article 3(1)(b) allows Member States to establish specific timelines for the buildings referred to in this paragraph in order to achieve higher energy performance classes by 2040 and 2050. This is in line with the pathway for transforming the national building stock into zero emission buildings. However, to grant legal certainty, the gradual extension of MEPS to cover more building categories should be clearly indicated by providing compliance timelines for each building type. Additionally, MEPS should require decarbonisation and the most efficient heating and cooling systems. Thus, MEPS should make clear reference to a building's carbon performance next to the energy performance indicators.

Article 2, in conjunction with article 10 (passport), provides a positive introduction of staged deep renovation: The focus on staged deep renovation must not neglect the opportunities for short-term measures with long-term beneficial effects - such as installing heat pumps or building controls - with a staged-renovation approach. The advantages of staged deep renovation should be highlighted to enable consumers to prioritise the type of work that best meets their personal circumstances (eg purchasing power, characteristics of the building, etc.).

Clarification needed for Power Purchase Agreements

The definition of 'zero-emission building' in article 2(2) appears to discourage the use of renewable energy Power Purchase Agreements (PPAs), which conflicts with efforts to promote and expand the use of PPAs under the revision of the Renewable Energy Directive (RED). In particular, the definition of zero emission building prioritises the use of renewable energy from onsite renewable energy, a renewable energy community, or a district heating system. However, many companies in electro-intensive sectors - particularly in the technology sector - have also pursued corporate renewable

energy by purchasing virtual PPAs. These projects enable net new and large-scale renewable energy projects on the grid and allow corporate purchasers to take credit for such purchases through the retirement of Guarantees of Origin. In most cases, this doesn't mean the power that is generated from these renewable energy projects is physically delivered to the building, but the building claims credit for the renewable energy generated from these projects because its owner signed a PPA to enable this carbon-free electricity. This structure is needed because the space required to generate all necessary energy onsite would be impossible for businesses in electro-intensive sectors. The same challenge may exist for factories or warehouses.

The more restrictive definition of zero emission buildings risks limiting the appetite of corporate renewable energy buyers to sign additional PPAs. This would appear to be inconsistent with the EU's existing policy on PPAs, which was included in RED II, is being further strengthened in the revision of RED published by the Commission in 2021 and is under consideration by European Parliament and the Council to the European Union. Clarifications should be included to allow companies to attribute the power generated by PPAs to buildings so that those buildings can be considered zero emission buildings. PPAs and on-site use of renewables should be given equal consideration.

The article also supports the definitions of nearly zero-energy building (NZEB) and ZEB (zero emission building) to reflect science and ensure a proper and secure decarbonisation of buildings. The term 'emission' should cover more than CO₂ arising at local level during the operation of buildings. Consumers should not be misled on the true environmental performance of buildings via oversimplification. We support the introduction of whole life-cycle greenhouse gas emissions for new buildings as per Annex III and the inclusion in the energy performance certificate (EPC) (Article 16,[4]). The EPC shall include recommendations for the cost-effective improvement of the energy performance and the reduction of operational greenhouse gases emissions of a building or building unit, unless the building or building unit already complies with the relevant zero emission building standard.

Coherence with the Ecodesign measures

The objective of the EPBD must be pursued and the performance of the equipment must remain the central requirement to ensure decarbonisation of the building stock (Annex I, 2). The energy needs and energy use for space heating and cooling, domestic hot water, ventilation, lighting and other technical building systems shall be calculated by using hourly or sub-hourly intervals. This will account for varying conditions that significantly affect the operation and performance of the system and the indoor conditions, thus, to optimising health, indoor air quality and comfort levels defined by Member States at national or regional level. Where product-specific regulations for energy-related products adopted under Regulation 2009/125/EC include specific product information requirements for the purpose of the calculation of energy performance under this Directive, national calculation methods should not require additional information. Other sustainability considerations and criteria should not impact the energy performance and efficiency requirements.

Data exchange (article 14)

In order to develop smart buildings, data sharing provisions need clarification to ensure such provisions work in practice, are based on interoperability standards that are accepted by the marketplace and aligned with EU competition law standards.

Member States shall ensure that the **customer** can have authorised user direct access to their technical building systems' data. At their request, the access or data shall be made available to a third party **subject to the existing contractual agreements**. Member States shall facilitate the full interoperability of services and of data exchange within the Union in accordance with paragraph 5.

For the purpose of this Directive, building systems data shall include at least all **raw** data from meters and sensors related to the energy performance of building elements, the energy performance of building services, building automation and control systems and charging points for e-mobility. Sharing data that could infringe the intellectual property of energy service providers should be prevented.

Energy service providers usually have contractual obligations to one party (ie owner, tenant or manager), with which there exists a contractual relationship. The use of the term 'customer' clarifies the party that is entitled to freely access and share their data and allows this person to request sharing of their data. Data sharing with third parties can incur additional costs to energy performance service providers in the form of multiple data access level management, security considerations and others. These costs can be stipulated through existing contractual agreements between the energy service providers and the customers and should be left up to the market. Member States should not interfere with the free market and disrupt competition risking damaging the energy performance service business model.

To ensure the protection of the intellectual property of the service providers, only raw metered data should be set as the minimum in this article. Additionally, a provision for the protection of the intellectual property of service providers should be included. As the data to be shared is not strictly defined, the requirements risk infringing intellectual property rights in buildings where data aggregation and analysis services are provided.

When laying down the rules regarding the management and exchange of data, Member States or - where a Member State has so provided - the designated competent authorities, **shall follow the harmonised Union rules set out in the implementing acts as specified in paragraph 5 and other applicable Union legal framework**.

To ensure the preparedness of national authorities, building owners, service providers and Technical Building System manufacturers and installers, the work on implementing acts should begin as soon as possible and involve a broad array of stakeholders to ensure wide acceptance and ease of implementation. There should also be an indicative timeline for the adoption of these implementing acts.

There should be a common EU building data management framework in line with the applicable EU legal framework. This would facilitate the delivery of products and services across borders in the Single Market. Given the variety of stakeholders in the building sector – many of which are temporarily involved in a building's lifecycle which has diverse needs, the roles and rules for data sharing should be clearly defined according to the EU strategy for data. The Commission should create a data framework that is acceptable to all players at the EU level and foster quality, trust and cooperation between market roles.

Clarification needed for backup generators

The revision of the EPBD is surely not intended to create overlapping regulations on the operation of data centres. Clarification is needed to provide data centre operators with greater certainty. Specifically, the requirement that new commercial buildings are zero emission after 2030 does not clearly exempt backup generators. Data centres rely on backup generators, not as a primary power source, but as an emergency backup power supply to maintain operations during unexpected power outages on the electricity grid. Backup generators do not alter the day-to-day energy performance of the building itself (the intended focus of the EPBD), but are critical infrastructure for data centre operators and other industries that require uninterrupted power supplies (eg certain healthcare settings). Data centres provide essential services across Europe such as supporting government agencies, financial institutions, health care institutions and communications infrastructure across Europe. Due to the important role that data centres play in Europe's economy, security, and society; they need a reliable supply of electricity to ensure service remains continuous. Such backup generators are already subject to EU regulations, including the Industrial Emissions Directive and the Emissions Trading Scheme, and should not be further regulated under the EPBD.

It is important to note that several data centre operators are committed to reach net zero carbon objectives and reduce their environmental impact through investments in new clean energy technologies that may eventually replace backup generators. Unfortunately, these technological developments have not matured and become market-ready with the reliability and certainty that is required by the data centre sector. Therefore, a clarification is needed to ensure that data centres have certainty that a requirement for zero emission buildings is not intended to include backup generators.

Net zero emission building certification

The Directive should seek to align with international initiatives. For instance, working to identify certification schemes which could be considered as offering equivalent assurances of net zero emissions as the EU's NZB framework, such as the International Living Future Institute (ILFI)'s Zero Carbon Certification. Specifically, achieving the zero-emission building qualification should be automatic if buildings have already been certified as net zero through these schemes to avoid double certification requirements.

Financial Incentives to implement EU policy

In light of the invasion of Ukraine, it is increasingly important to rapidly speed up the implementation of the EU's Fit for 55 package. Buildings can **'REPower EU'** and can play a central role for the security of supply and deployment of renewables including heat pumps and charging infrastructure connected to buildings. All these solutions can positively contribute to accelerating the energy transition in the EU.

Phasing out fossil fuels in heating and cooling is a step in the right direction and will create a consumer centred clean energy transition that encourages building renovation and puts an end to financial incentives for fossil fuel boilers. However, decarbonisation of heating and cooling, including through district heating and cooling will require significant financial support. Therefore, the wording in the proposal regarding the inclusion of renovation considerations in public and private financing rules for EU Member States should be strengthened.

Increased funding will also be required to have a higher share of renewables supported by heat pumps building technology and energy services. In this regard, EU Member States should link their national financing schemes to their energy and climate strategies and align with public sector accounting rules and financing priorities.

Government (recovery) funding needs to be allocated to support this shift. With energy prices continuing to rise, it will be critical to ensure social justice and ensure that voters can afford the systematic change. We call for greater deployment of economic models such as green mortgages and general funding. A shift to energy efficient buildings must be affordable to building owners and occupants alike.

The new EPBD offers clearer interlinkage with national building renovation plans, more integration with the national energy and climate plans as well as roadmaps for phasing out fossil fuels in heating and cooling by 2040 at the latest. However, the Commission should be aware that implementation and enforcement of EU policy has been very slow in the buildings sector and that transposition of the EU legislation still lacks in important EU Member States. Therefore, there should be increased emphasis on planning, reporting measures and enforcement of EU policies.

Infrastructure for mobility

The increased targets for electric vehicle (EV) charging infrastructure and pre-cabling as well as the inclusion of smart technologies and bi-directional charging, is welcome. Integration of smart charging with other building management system technologies will contribute to the uptake of electromobility and a reduction of emissions in the transport sector. However, there should be further analysis surrounding the inclusion of EV charging infrastructure in existing buildings.

Conclusion

While the EPBD proposal presents significant opportunities for decarbonisation of the building sector, there remain areas that require further evaluation by the Commission. Targets should be harmonised to reach overarching climate goals. Additional clarification is required for several areas including, PPAs, data exchange and the operation of backup generators. Net zero building certification should also aim to align with international standards. Furthermore, there needs to be enhanced coherence with other policy areas including the EU's proposed ecodesign measures. Finally, it will be critical that financial incentives are increased to facilitate better implementation of the Directive and there is further analysis EV charging infrastructure.

AmCham EU members remain committed to the dialogue on EPBD and are convinced that the above recommendations can support the EU in achieving its climate objectives in the sector and beyond.