VERBAND KOMMUNALER UNTERNEHMEN e.V.

POSITION PAPER

On the revision of the Directive of the European Parliament and of the Council amending Directive 12/27/EU on energy efficiency – COM(2021) 558

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The German Association of Local Public Utilities „Verband kommunaler Unternehmen" (VKU) represents around 1,500 local public utilities in Germany, operating in the sectors of energy, water/waste water, waste management and telecommunication. In 2019, VKU's members, which have more than 283,000 employees, generated a turnover of around 123 billion euro of which more than 13 billion euro were reinvested. In the end-customer segment, VKU's member companies have a market share of 62 percent in the electricity market, 67 percent in the natural gas market, 91 percent in the drinking water sector, 79 percent in heating supply market and 45 percent in waste-water disposal. Every day, they dispose of 31,500 tons of municipal waste through separate collection and take a vital role in ensuring recycling rates of 67 percent, which rate the highest within the EU. Additionally, more and more local public utilities are committed to the deployment of broadband infrastructure. 203 members invest more than 700 million euro every year. When deploying broadband infrastructure, 92 percent of local public utilities rely at least on fibre to the building.

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VKU agrees to a publication of the position statement.
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DIE KOMMUNALEN UNTERNEHMEN

VKU's key positions

On the 14th of July 2021, the European Commission published a number of legislative proposals to adjust the legal structure for climate and energy policy in the EU to the new EU energy and climate goals: the "Fit for 55" package. This package includes among others the amendment of the EU Energy Efficiency Directive (EED). This is necessary with regards to the European Green Deal, which stipulates that by 2030, CO_2 emissions in the EU should be reduced by at least 55 percent compared to 1990. By 2050, climate neutrality should finally have been achieved in the EU. VKU welcomes the revision of the EED in order to adjust the directive to the new climate goals. The main assessments of the EED by VKU are summarised below, followed by propositions for adjustment. The second part of the position statement addresses the assessment in detail.

It is positive that the phrase "efficiency first" is reinforced and should become more significant in the future. However, for the principle to be implemented securely for the future, further criteria must be taken into account when anchoring it in national legislation, such as the lifecycle approach[1]. It is important to preserve both the so-called sustainability triangle and system efficiency, and to avoid mismanagement.

VKU welcomes the fact that it should remain possible for Member States to fulfil their energy-saving obligations through "alternative policy measures". VKU had already pronounced itself in favour of preserving existing regulations during the previous consultations, which the European Commission was able to follow.

It is also positive that in the future, the obligation to implement an energy management system or to conduct an energy audit should depend on the average yearly energy consumption, and no longer on whether a company is not classified as an SME according to the EU recommendation from the 06/05/2003. It is important that the current national exemption regulation for sovereign companies continues to be guaranteed.

VKU also welcomes the fact that the proposal of the EU Commission endorses the establishment of local heating and cooling plans. In our opinion, they are an appropriate means of generating investment security and acceptance for the transformation of the heating network and of accelerating the transition.

VKU opposes energy-saving obligations for individual heating network systems in the absolute sense. In existing buildings that are already connected, heat consumption savings are already made through building efficiency measures. The maintenance of the economic operation of the heating networks requires, from the companies' point of view, the connection of new heating consumers, in order to compensate for the decrease in

[1] The lifecycle approach represents a systematic analysis of the environmental effects and energy footprint of products across their entire lifecycle. This means that as well as the acquisition costs, the costs incurred across the entire lifecycle of the product (incl. all environmental effects such as the carbon footprint or disposal) are included in the assessment. The lifecycle approach can also be applied to projects or services.

heating consumption. In practice, an absolute energy-saving obligation would however prevent the politically enforced new connection of heating consumers.

The newly intended minimum requirements for efficient district heating and district cooling systems is also concerning for VKU. The provision that given minimum proportions must be reached at given times does not take into account the heterogeneity of local heating network systems, the different potentials for renewable energies and site-dependent waste heat. The increased requirements for highly efficient cogeneration plants is also extremely questionable. The addition of a CO_2 threshold value to the established efficiency conditions in the Annex III contradicts the system used until now. Above all, it endangers investments in gas-based cogeneration plants that are absolutely necessary to preserve electricity and heating supply security in Germany and that could be converted to run on hydrogen.

VKU opposes the proposition of the European Commission of a binding definition of the EU energy efficiency goal by 2030 due to parallel binding measures that are already defined. For the same reason, national energy efficiency goals that the Member States are to set for themselves must also remain indicative.

VKU is also sceptical of new proposed energy poverty measures, for example through targeted final energy savings in this area. Local energy supply companies already offer varied assistance for low-income households in case of efficient energy use, for example as cooperation partner of the Caritas[2] "StromSparCheck" (power-savings check) or in the "NRW bekämpft Energiearmut" (NRW fights energy poverty) regional project[3]. Support for people affected by energy poverty is however a central task of social policy.

With the amendment of the EED, the future framework of the EU energy efficiency policy is extended until 2030 or even further in some cases. The national implementation options derived from this have a high economic relevance for VKU member companies. VKU therefore requests that the following implementation recommendations/regulation propositions are taken into account in further procedures:[4]

- Widening of the implementation criteria for "efficiency first", for example considering the lifecycle approach (Article 3);

[2] With the project "StromSparCheck", trained recipients of type II unemployment benefits (= power savings helpers) counsel recipients of type II unemployment benefits, social benefits or housing allowances, among others, about savings possibilities.
[3] In the "NRW bekämpft Energiearmut" project, the NRW consumer centre tackles the complex problems associated with energy poverty and energy hold-off, together with local utility providers, with an extensive information and counselling campaign. The project is financed by the Ministry for Environment, Agriculture, Nature and Consumer protection of the region North Rhine-Westphalia and the local energy supply companies (local utility providers).
[4] The EED refers in some places to provisions of the new regulation to be implemented concerning the governance system of the Energy Union. As these provisions are to be discussed directly in the context of the EED amendment, VKU includes these provisions in its position statement.

- No blanket reduction of the total final energy consumption for companies in the water industry (Article 5);

- No binding link between social political tasks and energy savings and energy efficiency goals, as this should be regulated exclusively through social law (Articles 8, 22);

- Exemptions for sovereign companies regarding the obligation to implement an energy management system or conduct an energy audit (Article 11);

- Not to include provisions that do not consider greenhouse-gas-neutral energies as equal to renewable energies or that require rigid minimum amounts of renewables until certain a deadline (Article 24). This also applies to higher demands on cogeneration plants (Annex III). Instead, individual, climate-goal-oriented decarbonisation roadmaps for heating/cooling networks and the preservation of the cogeneration efficiency criteria used until now, completed with the exclusion of "most polluting fuels" if necessary, are to be preferred.

VKU's positions in detail

Regarding Article 3 – Energy efficiency first principle

This article stipulates that the efficiency first principle should be applied systematically in the future for planning and investment decisions. Member States shall be obliged to inform the EU Commission of how they implement this system in the national energy policy, among others.

Recommendation:
For implementation provisions in national law, it should be made clear that investment blocks are to be avoided and the so-called sustainability triangle (climate protection, supply security and competitive energy prices) continues to apply. The system efficiency and future developments, as well as the so-called lifecycle approach, should also be taken into account.

Justification:
VKU welcomes the fact that the efficiency first principle is to be operationalised with the implementation of a separate article and that Member States must therefore take energy efficiency solutions into account for all large planning, policy and large investment decisions, not only in the buildings sector, but also in industry or in the transport sector.

Extending criteria for national implementation
The principle must however be designed in such a way that an excessive cost in the cost-effectiveness comparison does not lead to investment blocks in municipalities and that

the sustainability triangle continues to apply in the further transformation process and does not lead to mismanagement. Equally, the implementation criteria must be designed in such a way that they take into account assessable future developments and system efficiency. If necessary, the implementation of the efficiency first principle could therefore mean that wind and PV projects are only approved if they have a sufficient network capacity. In the context of the expected increase of electricity consumption, such an approach should however be prevented. In order to guarantee the connectivity and the supply capacity of new RE supplies to the distribution network, the inclusion of flexibility and sector combination options is to be ensured in the European legal framework, alongside the development of a network capacity that is appropriate in the long term.

The lifecycle approach should be added to the definition of the criteria for national implementation. The reason for this is that in case of investments, the actual energy consumption is often not caused by the use of the machines, but by their production or replacement rate, as, according to the experience of our members, new, energy-efficient power units are often not as durable as older models. The lifecycle approach takes this state of affairs into account. Furthermore, the efficiency first principle would have an effect on the actual investment procedure.

Regarding Article 4 – Energy efficiency targets

The EED shall stipulate in the future that the Member States should be jointly obligated to reduce the primary and final energy consumption in the EU by at least nine percent compared to the reference scenario in the year 2030, to achieve the binding EU energy efficiency target. To this end, each MS should set a target and determine an indicative process for these contributions.

Recommendation:
The 2030 EU energy efficiency target should not be binding, instead it should remain indicative as it is the case right now. MS should also be able to continue to set indicative national targets.

Justification:
VKU opposes both the binding definition of the EU energy efficiency target for 2030 and a binding national target definition as unproductive, as the directive draft already stipulates a number of binding measures that the EU Commission has partially significantly extended with the present directive draft. A double regulation would represent an unnecessary hardening of the directive in the sense of increased regulation complexity.

Regarding Article 5 – Public sector leading on energy efficiency

Member States shall ensure that the total final energy consumption of all public bodies combined is reduced by at least 1.7% each year, when compared to the year X-2. This

could affect operations in the wastewater management or waste management sectors, for example.

Recommendation:
VKU is fundamentally opposed to a blanket reduction of the total final energy consumption in this form. If this amendment were to be kept, the blanket approach in particular for the field of wastewater management would at least have to be concretised, for example through the implementation of a reference value, or alternatively prolongated through the extension of the annual average to the last five to ten years, in order to compensate for fluctuations in the total final energy consumption.

The EED must also bear in mind and ensure that local companies that are in competition with private third parties are not disadvantaged compared to their competitors (”level playing field”).

Justification:
The new regulation fundamentally also affects local companies in the fields of waste management, wastewater management or public swimming baths. However, the concrete implementation of the demand of a yearly reduction of the energy consumption is incumbent upon the MS and not the individual companies.

No blanket reduction of the total final energy consumption for companies in the water industry
In principle, the leading role of the public sector, particularly in wastewater management, is to be welcomed. However, the blanket approach selected here of a joint saving of 1.7 percent of the final energy consumption of all public institutions and public corporations compared to the year X-2 is practically impossible.

The approach of a 1.7 percent yearly reduction of energy consumption is not feasible for a treatment plant in particular, and therefore practically impossible to implement. Even a specific reduction amounting to this value could not be realised. According to experience of past years, the total energy consumption of treatment plants is subject to obvious and constant fluctuations that can often not be controlled directly by the plant operator. Increasing wastewater flows, for example due to heavy rainfall events, change the wastewater loads (high loads from construction sites, plants etc.) and lead to technical adjustments and renewals, such as installation conversions, failures or revisions, and in many cases to increased energy consumption. VKU therefore pronounces itself in favour of the observance of a specific energy consumption remaining an upstream goal to start with. The blanket approach for the field of wastewater management would thus have to be concretised, for example through the implementation of a reference value, or alternatively prolonged through the extension of the annual average to the last five to ten years. Even using these approaches however, fluctuations of the total energy consumption can occur, for example through legal changes for treatment centres (see statements on the so-called EU local wastewater directive further below).

Due to the increasing requirements for local wastewater treatment plants, energy savings are often practically balanced out by inversely increased consumption. Local wastewater disposal companies must rise to the current challenges, such as urbanisation with consequently growing cities and increasing land sealing or the demographic transition with more problems concerning trace substances. These developments require the development of plants and the introduction of new technologies, which imply increased energy consumption.

In addition, VKU points out the fact that the revision of the EU local water directive has also been announced in the context of the European Green Deal, meaning that further provisions concerning water and environmental protection for local wastewater management are to be expected. The measures resulting from this, such as the strengthening or extension of treatment plants to improve cleaning performance, will imply increased energy consumption. The conflicting goals arising from this should be taken into account in the amendment of this EED and avoided if possible.

Beyond this, VKU remarks upon the fact that further optimisations to increase energy efficiency sometimes imply considerable investments, which will also affect the costs and thus the taxes.

No blanket reduction of the total final energy consumption for waste management companies
A large part of the energy consumption in waste management centres serves to fulfil legal environment and health protection requirements, particularly to prevent immission. Natural catastrophes can lead to a sudden increase in waste disposal needs and thus also in energy consumption. A binding 1.7 percent yearly reduction of energy consumption would therefore not be realistic for many waste management companies and would even be counter-productive to their task.

Regarding Article 6 – Exemplary role of public bodies' buildings

According to this article, each Member State shall ensure that at least 3 % of the total floor area of heated and/or cooled buildings having a total useful floor area over 250 square metres owned by public bodies is renovated each year to at least be transformed into nearly zero-energy buildings in accordance with Article 9 of Directive 2010/31/EU on the energy performance of buildings. Where public bodies occupy a building that they do not own, they shall exercise their contractual rights to the extent possible and encourage the building owner to renovate the building to a nearly zero-energy building in accordance with Article 9 of Directive 2010/31/EU.

Recommendation:
The EED should ensure that local companies providing services in a competitive market are not being disadvantaged compared to competing private third parties from the outset ("level playing field").

Justification:
Public companies recognise their exemplary role. However, it must be ensured that local companies in competition with private third parties are not disadvantaged compared to their competitors. See also our statements regarding Article 6 (last paragraph).

Regarding Article 7 – Public procurement

This regulation is addressed to public contracting authorities, sector contracting authorities and conceding authorities when concluding public contracts and concessions with a value equal to or greater than the proposed thresholds. The efficiency first principle in particular is to be strictly applied. The provisions concerning public procurement shall not only apply to central governments in the future, instead they shall apply to all levels of state.

Recommendation:
It is also important in this regard that local companies subject to competition are not disadvantaged compared to their competitors. As before, it should be at the discretion of these companies, for example publicly controlled energy supply companies, to determine whether energy efficiency criteria are used in a specific procurement process.

Justification:
As well as energy consumption and energy efficiency, a procurement framework should take into account lifecycle costs, total carbon footprint and sustainability (key words rare earths, regionality, etc.).

Regarding the future application of the efficiency first principle, see our statements regarding Article 3.
As opposed to Articles 5 and 6, Article 7 also applies to sector contracting entities and thus also local energy supply companies, which are fully subject to competition. It is therefore important to design public procurement obligations in a competition-neutral way, or at least to minimise the effect on the competition.

A regulation that stipulates optional provisions concerning energy consumption in the context of procurement processes for the entities that are subject to competition and that must also apply procurement law would be preferable. It could also be worth considering an obligation to take energy consumption and corresponding circumstances into account for procurements, but not an obligation to procure exclusively “high energy efficiency performance” services. The stipulated obligation to procure these services could namely, in individual cases, lead to either no corresponding service being procured or to procurement costs that would be considerably higher than those for corresponding conventional services. In any case, the new provisions of Article 7 would represent a noticeable burden for the affected companies for individual procurements.

This is why it is necessary to create an exemption, for example in a new paragraph 2a, for procurements by public bodies. A derogation should be possible in any case where a procurement in accordance with the provisions of Article 7 is disproportionate in the individual case.

Regarding Article 8 – Energy savings obligations

This article stipulates that Member States (MS) shall ensure that people affected by energy poverty, children requiring protection or, where applicable, people living in social housing are given priority by the programs or measures implemented based on energy efficiency obligation systems or alternative political measures. MS shall also ensure that the political measures implemented in accordance with this article do not have any disadvantaging effect on these groups of people.

Implementation recommendation:
The parts of the text regarding energy poverty in Article 8 paragraph 3 of the present directive draft should be removed.

Justification:
Socially securing the subsistence level available for living, including energy costs, is a social policy task of the State, which should be solely regulated by social law and adjusted social benefits. It is the State's obligation to calculate and adjust the rates accordingly. VKU does not see a binding association of social policy tasks and energy savings and efficiency goals as feasible. Equally, the voluntary financing of energy savings and energy efficiency measures for the target-oriented relief of low-income households, for example through targeted support of renovating social housing to reduce energy consumption, should be possible. Existing collaborations with regional housing companies can also often be identified and converted. However, identifying customers who are affected by energy poverty without violating data protection rights represents a hurdle.

If socially weak households are negatively influenced by energy savings and energy efficiency measures, it is the task of social policy to relieve the affected households in a targeted way through the adjustment of the corresponding rates for households in need, in the context of the German social legislation.

Regarding Article 11 – Energy management systems and energy audits

The draft version of the EED stipulates that the obligation to implement an energy management system or to conduct an energy audit should depend, in the future, on the average energy consumption of the last three years.

Energy audits should continue to be conducted every four years. The results of the energy audits including the recommendations from these audits must be transmitted to the management of the enterprise. Member States shall ensure that the results and the

implemented recommendations are published in the enterprise's annual report, where applicable.

Owners and operators of all data centres with a significant energy consumption must publish this consumption as of the 15/03/2024, in accordance with the provisions of Annex VI, point 2.

Recommendation:
Companies that provide service of general interest to fulfil must continue to be exempt from the obligation to implement an energy management system or to conduct an energy audit.

For the publication of the results and implemented recommendations, it must be ensured that company secrets are preserved. The decision of which implemented recommendations are to be published in the company's annual report must therefore be at the discretion of the company in question.

Furthermore, the "European or international standards" according to which the energy management systems are to be certified should be clearly defined.

Justification:
VKU welcomes the fact that the European Commission followed its proposition to link the obligation to implement an energy management system or to conduct an energy audit to the company's energy consumption in the future. VKU is of the opinion that the chosen threshold values are appropriate.

Exemption from the obligation for public local utilities providing services of general interest
Until now, companies that primarily provide services of general interest, such as wastewater management and waste management companies, and partly water suppliers too, are exempt from the energy audit obligation under the current EED. This exemption regulation must continue to be possible. Reason being, these companies lack an economic activity, as they act in their capacity of bearers of public authority. This is always the case when the activity in question is a task belonging to the essential duties of the State or is linked to these duties in terms of its nature, its aims or the provisions that apply to it. If no market mechanisms are introduced in the areas in question, activities that are an inseparable part of the privileges of an authority and are exercised by the State thus do not represent any economic activity in general.[5] The new proposal also does not consider the large fluctuations in the energy consumption of wastewater management companies into account (see also the statements regarding Article 5).

[5] See Merkblatt für Energieaudits nach den gesetzlichen Bestimmungen der §§ 8 EDL-G (data sheet for energy audits according to the legal requirements of §§ 8 of the German law on energy services), Federal Office of Economics and Export Control, p. 7.

At this point, VKU would however like to add that regardless of the little influence they can have, local wastewater plants are intensely committed to increasing energy efficiency (through aerator renewal and lighting, just to name a few). Un-sealing measures to reduce rainwater volumes have also been consistently followed for years.

Minimising bureaucracy and costs through use of existing systems
In order to minimise the implementation effort for companies, when implementing an energy management system they should be able to draw upon the administration technology of existing quality and environment management systems that are already present in the companies, such as DIN EN ISO 9.001 or DIN EN ISO 14.0001, and only have to create the lacking documentation or analyses. If a new energy management system had to be introduced, this would cause considerable and unnecessary bureaucracy and costs.

Definition of standards
The implemented energy management systems should be certified by independent offices according to European or international standards. In order to minimise (large) differences between Member States and limit bureaucracy for the implementation of European activities, the standards to be chosen should be clearly defined.

Preserving company secrets in case of publication obligations
The present draft should also be adjusted so that company secrets are preserved with the required publication of results and implemented decisions. Competitors should not obtain a source of information that they would not have had without this publication. The decision of which implemented recommendations are published in the annual report should therefore be at the discretion of the company in question. This also applies to the planned energy monitoring for data centres, which is based on existing data and would thus lead to a low and therefore reasonable additional effort in the opinion of the VKU.

Concretisation of exceptional circumstances
VKU sees a need to concretise which companies can conclude a so-called “energy performance contract”, according to Article 11 paragraph 7 in conjunction with Annex XIV, under which conditions and with which institutions, and can thus be exempted from the implementation of an energy management system or the execution of an energy audit. It is important that this offer is open to all companies, i.e. to local companies too, on the basis of transparent regulations. Local companies must also be able to implement these contracts as energy service providers.

It is also unclear whether “energy performance contract” means an energy savings contract. In the opinion of VKU, a simple energy savings contract that usually applies to a plant cannot replace an energy management system or an energy audit that addresses the entire company – buildings and plant. This means that the sensible order would be: 1. Identifying efficiency potentials; 2. Inversely implementing energy efficiency potentials, as an energy savings contract represents an efficiency measure that should be based on an energy management system or an energy audit, and not the other way around. VKU

opposes an alternative regulation like this. With the exemption from the energy audit or energy management obligation defined in Article 11 paragraph 7, there would otherwise be a risk of the identification of further efficiency potentials or investments in further energy efficiency measures being abandoned.

Regarding Article 12 – Metering for natural gas

Member States shall ensure that, in so far as it is technically possible, financially reasonable, and proportionate to the potential energy savings, for natural gas final customers are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.

Recommendation:
The provisions should take into account the fact that the provisions/requirements already in place in the MS should continue to apply. In Germany for example, new gas meters must be connectable to a Smart-Meter-Gateway (SMGW) of the Federal Office for Information Security (BSI) in accordance with the German Measuring Point Operation Act (MsbG).

Justification:
The BSI-certified SMGW is the secure communication platform of which the implementation is already binding in the electricity sector and that should therefore be used for further media/sectors (synergy, efficiency, costs).

Regarding Article 13 – Metering for heating, cooling and domestic hot water

Member States shall ensure that, for district heating, district cooling and domestic hot water, final customers are provided with competitively priced meters that accurately reflect their actual energy consumption. Where heating, cooling or domestic hot water is supplied to a building from a central source that services multiple buildings or from a district heating or district cooling system, a meter shall be installed at the heat exchanger or point of delivery.

Implementation recommendation:
The new provisions should ensure that the provisions/requirements already in place in the MS continue to apply. In Germany for example, new heating, cooling or hot water meters/devices must be connectable to an SMGW of the BSI in accordance with the MsbG. Concretely, this means that there must be a technical possibility of connection, but the connection does not have to be realised.

Justification:

The BSI-certified SMGW is the secure communication platform of which the implementation is already binding in the electricity sector and that should therefore be used for further media/sectors (synergy, efficiency, costs).

Regarding Article 14 – Sub-metering and cost allocation for heating, cooling and domestic hot water

In multi-apartment and multi-purpose buildings with a central heating or central cooling source or supplied from a district heating or district cooling system, individual meters shall be installed to measure the consumption of heating, cooling or domestic hot water for each building unit, where technically feasible and cost effective in terms of being proportionate in relation to the potential energy savings. Where the use of individual meters is not technically feasible or where it is not cost-efficient to measure heat consumption in each building unit, individual heat cost allocators shall be used to measure heat consumption at each radiator.

Implementation recommendation:
The new provisions should ensure that the provisions/requirements already in place in the MS continue to apply. In Germany for example, new sub-metering meters/devices must be connectable to an SMGW of the BSI in accordance with the MsbG. Concretely, this means that there must be a technical possibility of connection, but the connection does not have to be realised.

Justification:
The BSI-certified SMGW is the secure communication platform of which the implementation is already binding in the electricity sector and that should therefore be used for further media/sectors (synergy, efficiency, costs).

Regarding Articles
12 – Metering for natural gas
13 – Metering for heating, cooling and domestic hot water,
14 – Sub-metering and cost allocation for heating, cooling and domestic hot water

According to the articles listed above, Member States shall ensure that, for district heating, district cooling and domestic hot water, final customers are provided with competitively priced meters that accurately reflect their actual energy consumption.

Where meters or heat cost allocators are installed, billing and consumption information should be accurate and based on actual consumption. Member States shall ensure that final customers receive all their bills and billing information for energy consumption free of charge and that final customers have access to their consumption data in an appropriate way and free of charge.

Implementation recommendation:
In the context of the design of the Articles 13, 17, 19, it must be clarified how the costs of the meter installation incurred by the supplier should be borne by the supplied customer and on what legal basis. It must thereby be ensured that the installation of individual/intelligent meters is oriented according to the feasibility of the installation procedure, as described in Article 12 point 1 sentence 1, and that it is economically reasonable. For German states in which special billing of water consumption is already planned due to regional regulations, it should be verified whether an exception can be made here to the remote reading obligation for reasons of cost-efficiency (separate billing of heating and hot water).
For the provision of billing information to the end customer, the largest possible degree of freedom should be allowed. The "remote reading" provision should also be interpreted so that already installed meters/devices are modified to become "connectable to a Smart-Meter-Gateway" of the BSI in accordance with the German Measuring Point Operation Act (MsbG).

Justification:
Alongside the technical challenge of the development, implementation and IT connection of district heating, district cooling and domestic hot water meters that can be read remotely according to standardised requirements, other questions remain open, particularly regarding the bearing of the costs. These must be clarified in the context of the further directive design.

An essential point in this context is the question of the bearing of the costs of the meters by the supplied customer. The notion of competitive prices should be precisely defined. The EED should include more concrete framework conditions for national implementation on this matter.

The following should thereby be taken into account: Where the use of individual meters to measure the heating or cooling consumption is not technically possible or cost-efficient, alternative, cost-efficient metering methods must be used. In the German Measuring Point Operation Act (MsbG) mentioned above, there is a possibility of so-called bundle offers for the housing industry when installing intelligent metering systems in apartment buildings. Since the 01/01/2021, this makes it possible, subject to certain conditions, to negotiate directly with the subscriber (the property owner) (see § 6 of the MsbG) and to determine the measuring point operation for the subscriber (tenant). In the opinion of VKU, the energy provider should have free choice of the medium used to provide the bill or billing information. For example, online provision of bills or billing information should also be an acceptable variant, in order to keep costs as low as possible.

Regarding Article 15 – Remote reading requirement

This article shall stipulate in future that remote reading should be possible for newly installed metering systems. This obligation shall apply to existing systems with an

obligation to retrofit by the 01/01/2027. With the present directive draft, the regulation shall no longer only apply for systems installed after the 25/10/2020, but for all new installations.

Implementation recommendation:
The provision regarding "remote reading" should ensure that the provisions/requirements already in place in the MS continue to apply. In Germany, already installed meters/devices are being modified to become "connectable to a Smart-Meter-Gateway" of the BSI (Federal Office for Information Security) in accordance with the German Measuring Point Operation Act (MsbG).

Justification:
To provide additional and added-value services, the possibility of wide remote reading access is an important condition.

Regarding Article 22 – Empowering and protecting vulnerable customers and alleviating energy poverty

With this newly added article, Member States shall be obliged to implement various measures to alleviate energy poverty, including energy efficiency improvement measures and energy efficiency information measures, in particular those set out in Article 21, as a priority among customers affected by energy poverty. Furthermore, they are to implement energy efficiency improvement measures to protect customers affected by energy poverty from negative effects of other policy areas and to support them especially. They are also to establish a network of experts for the development of a strategy to support decision makers in implementing energy efficiency improvement measures that alleviate energy poverty.

Regulation proposition:
Article 22 should be removed.

Justification:
See statements regarding Article 8 in this position statement.

Regarding Article 24 – Heating and cooling supply

This article proposes that district heating and cooling systems will have to fulfil certain criteria in the future regarding the proportion of renewable energies, waste heat and cogeneration heat. These proportions are staggered according to the year and continually increased.

It also stipulates that a cost-benefit analysis is to be carried out, regarding waste heat use or connectivity to district heating networks among other things, where data centres > 1 MW are newly planned or substantially refurbished.

Recommendation:
The systematic delimitation of the EED and the Renewable Energy Directive currently being revised (RED III) should be maintained. Individual, climate goal-oriented decarbonisation roadmaps are preferable to blanket provisions specifying minimum proportions and periodical steps. For minimum proportions, no difference should be made between waste heat and renewable energies. The definition of renewable energies must include heat from high-capacity heat pumps, power-to-heat and green hydrogen. The separate cost-benefit analysis where data centres > 1 MW are newly planned or substantially refurbished should be removed.

Justification:
Maintaining the systematic delimitation between EED and RED III
The new definition of efficient heating and cooling networks focuses much more strongly than before on the use of renewable energies. The efficiency criteria that was central until now, the proportion of cogeneration, is completely removed as of 2035 (regarding cogeneration, see also statements about Annex III). Instead, a minimum proportion of renewable energies is introduced. The proposed definition therefore does not fit the focus of the EED on energy efficiency. It would be systematically correct if the proposed definition referred to provisions in the RED III or if the definition in the RED II was copied over. The orientation of the directives should continue to be clearly separated.

Individual, climate goal-oriented decarbonisation roadmaps are preferable to fixed rates specifying minimum share of renewable and their periodical increase
Fundamentally, heating network systems, and consequently their transformation paths, are very heterogenous. Binding them to deadlines therefore does not seem reasonable. Instead, VKU proposes a voluntary commitment of the supplier to create decarbonisation roadmaps, oriented towards achieving the climate goals for the years 2030, 2040 and 2045.

If binding deadlines are retained, it should be kept in mind that a tightening of the definition for efficient district heating or cooling is already planned for 2026. With regard to the 2030 climate goal, this causes an inconsistency in the time frames. In this case, we therefore recommend delaying the planned steps for five years, in order to achieve synchronisation.

Equal status for greenhouse-gas-neutral energies and renewable energies
Greenhouse-gas-neutral energies, such as waste heat, energy from waste and wastewater and mine-gas are to be considered durably equal to renewable energies. This also means heating or cooling created as a side product in a thermal waste treatment plant. The priority of recycling is ensured by waste legislation; low-value recyclable waste with a relevant calorific value must be used for its energy. The energy won back is far more climate-friendly than fossil energy, for example.

With an eye towards individual heating network systems primarily supplied with greenhouse-gas-neutral energies, particularly waste heat, increasing RE minimum proportions cannot be sensible. This applies all the more for the fact that waste heat shall and shall only be permitted to rely on ever decreasing proportions of fossil energy sources, until GHG neutrality in the EU in 2050.

New and secondary heating networks shall also be developed more from waste heat sources in the future. It would not be appropriate to impose an increasing minimum proportion of renewable energy on such existing, generic waste heat networks in the future, insofar as the waste heat potential has not yet been made fully usable as a heating supply.

In an energy system fully operated with renewable energies or other greenhouse-gas-neutral fuels and heating fuels, any waste heat would automatically also be renewable, or at least CO_2-neutral. A differentiation between RE and waste heat or other greenhouse-gas-neutral energies does not make any sense when this goal is considered.

The definition of Renewable Energy must include heat from high-capacity heat pumps, power-to-heat, waste energy recovery and green hydrogen
Heating generated by high-capacity heat pumps, Power to Heat applications, in waste management plants and green hydrogen must be considered renewable heat, insofar as corresponding certificates of origin for the electricity used are acquired and invalidated after use.

Removal of the cost and benefit analysis for data centres > 1 MW
Alongside energy efficiency in their operation, there are considerable efficiency potentials in data centres in the further use of the waste heat for supplying building heating or to be injected into the heating network. Local multi-sector companies are already pioneers in this and predestined for it due to their local anchoring.

The planned implementation of a cost and benefit analysis for data centres > 1 MW where systems are newly planned or where systems installed after the 05/06/2014 are substantially refurbished, regarding waste heat usage and connectivity to a district heating network among other things, should be removed in the opinion of VKU. The reason for this is that equivalent economic analyses are already conducted in the context of the new construction/refurbishment planning. The analyses required in the future would therefore generate no additional information, instead only additional effort and thus also costs.

Regarding Article 25 – Energy transformation, transmission and distribution

This article is meant to ensure that the national energy regulatory authorities apply the energy efficiency first principle in accordance with Article 3 of this Directive when carrying out their regulatory tasks in the electricity and gas domestic markets. Furthermore,

Member States shall ensure that gas and electricity transmission and distribution network operators apply the energy efficiency first principle in their network planning and development.

Recommendation:
It must be ensured that the application of the efficiency first principle does not hinder future-oriented network development.

Justification:
The obligation of the national energy regulation authorities (paragraph 1) must not lead to the result that future-oriented network developments are no longer possible, with an eye on the renewable energy plants that will become increasingly prevalent in the future, because they contradict the efficiency first principle according to Article 3. The same applies to the obligation of the gas and electricity transmission and distribution network operators to apply the efficiency first principle in their network planning and development (paragraph 2). This principle must also not lead to the result that a future-oriented development and conversion of the distribution network for the upcoming requirements is hindered – see also our statements about Article 3 in this position statement.

Regarding Article 31 – Delegated acts

If implemented the European Commission would be empowered to establish, after having consulted the relevant stakeholders, a common Union scheme for rating the sustainability (sustainability indicator) of data centres located in its territory (among other things, this should define the minimum thresholds for significant energy consumption in data centres).

Recommendation:
The introduction of a sustainability indicator should be voluntary.

Justification:
The intention of establishing a common Union scheme for rating the sustainability of data centres is fundamentally welcomed. However, such a system should not – for example due to information provision obligations – lead to additional burdens for the operators and should therefore remain optional for data centres. Furthermore, there is an excess demand for data centres. It can therefore be assumed that when choosing a data centre, companies will not base their decision on this indicator, instead only acknowledging it as additional information.

Regarding Article 33 – Review and monitoring of implementation

This article proposes that by 31 October 2022, the European Commission shall assess whether the Union has achieved its 2020 headline targets on energy efficiency.

Regulation proposition:
It must be ensured that all relevant national measures that are taken to implement the EED can be comprehensively taken into account when measuring the result, such as the first phase of the energy efficiency networks initiatives.

Justification:
Member States have taken a number of different efficiency measures to implement energy savings obligations (Article 7 of the current version of the EED), some of which continue to apply beyond 2020. This is the case in Germany for example with the energy efficiency networks initiatives, some of which have operating periods running beyond 2020 or 2022. The first phase of the energy efficiency networks initiatives ran from 03 December 2014 to 31 December 2020. All networks that were created during this phase count towards the goal of this phase. The duration of a network usually amounts to three years. This means that a network created in 2020 may run until 2022 or 2023. Only once this phase is complete will the achieved savings of the network be determined. It is important that these measures also count towards the 2020 goals.

If the network savings made in the first phase cannot be thoroughly counted for the EED 2020, it should therefore at least be ensured that they count towards the 2030 EED goals (with regard to Article 7 of the current version).

Regarding Annex III – Methodology for determining the efficiency of the cogeneration process

This draft stipulates additional criteria applied to define highly efficient cogeneration, with a CO_2 threshold of 270 g CO_2 per kWh among other things.

Recommendation:
Instead of a CO_2 threshold value, the focus should be on the energy sources used and efficiency provisions applied until now. The threshold value should at least be chosen so that new, urgently necessary natural-gas-based cogeneration plants can fulfil the high efficiency criteria.

Justification:
The EED targets increased efficiency. Cogeneration is among the most efficient generation processes. It is therefore appropriate for the EED to contain efficiency provisions for cogeneration. The proposition of introducing a CO_2 threshold value for cogeneration is contrary to this principle. It is also inconsistent that no similar threshold value is introduced for separate generation. Cogeneration is thus disadvantaged for no good technical reason, and further removed from a “level playing field”.

Cogeneration plants are already subject to CO_2 pricing (EU-ETS; German Fuel Emissions Trading Act) and thus to increasing pressure to limit emissions. An additional regulation with threshold values is therefore not appropriate.

If the aim of introducing a CO_2 threshold value is to exclude the use of certain energy sources, the term “most polluting fuels” could be used, introduced by the European Commission in the Climate, Energy and Environmental Aid Guidelines (section about district heating/cooling systems, point 347). With the connection to this term, the transformability of the cogeneration – from coal to natural gas to hydrogen – could be taken into account.

If the threshold value of 270 g per kWh of energy output is retained for direct CO_2 emissions, it must be chosen so that it can be fulfilled by new gas and steam cogeneration or block heating plants based on natural gas. The extra capacity of these natural gas cogeneration plants is absolutely necessary to preserve supply security.

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