

AGFW-Position Paper

Energy Efficiency Directive

Frankfurt, 19th November 2021

AGFW is the German energy efficiency association for heating, cooling and cogeneration. We represent more than 550 utility companies (national and regional), energy service providers as well as industrial companies of the sector across Germany and Europe. As rule-setting body we represent over 95 % of Germany's DHC market.

AGFW Position Paper on the revision of the Energy Efficiency Directive – Executive Summary

General appreciation

As a strong proponent of energy efficiency – the key pillar of the energy transition - AGFW welcomes the revision of the Energy Efficiency Directive as an important step in the transformation of Europe's energy system in view of our common 2030 targets. Against this background, AGFW wishes to submit several amendments to the Commission's current proposal in order to further substantiate our shared ambitions 2030.

Amending the future definition on efficient district heating and cooling

The future definition on efficient district heating and cooling proposed in the revised Art. 24 provides the most important trajectory for the decarbonisation of our industry and therefore remains a critical regulatory tool to promote the further integration of highly efficient cogeneration, electricity, waste heat and climate neutral fuels. For this reason, AGFW advocates for a full alignment of the timeline for our industries decarbonisation pathway proposed in Art. 24 with the general trajectory of our common climate targets for 2030 and 2050 respectively. Moreover, AGFW wishes to emphasize that only a full appreciation of highly efficient cogeneration and in particular the use of climate neutral waste heat beyond 2035 (as the only way to decarbonize heating and cooling in densely populated urban areas where renewable sources are of limited availability) will enable the sector to facilitate its efforts to decarbonize. There must be increasing investments into hydrogen or carbon neutral fuel ready gas plants and long-term waste heat recovery projects in order to reach our decarbonization goals. This requires a technology neutral approach with a clear focus on efficient carbon reduction is needed to reach the overall level of ambition currently proposed in Art. 24.

Annex III: Methodology for determining the efficiency of cogeneration processes

Although the carbon intensity of energy generation is not technically relatable to the efficiency of the respective generation process, AGFW acknowledges the introduction of a carbon threshold into the calculation methodology as a step to facilitate the phase out of the most polluting energy carriers such as hard coal, lignite and oil products from cogeneration in view of our 2030 targets. In this regard, AGFW wishes to put forward an approach that explicitly focuses on excluding these most polluting fuels - hard coal, lignite and oil products – as an alternative to the carbon threshold criterion proposed by the Commission.

Excluding these most polluting fuels from the high efficiency methodology would provide a clear cut benchmark for both regulators and the industry, strengthen the legislative coherence between the fit-for-55 package and complementing legislation such as European State aid control and sharpen our shared ambition on facilitating the fuel transition of cogeneration. Secondly, AGFW emphasizes the need to link the methodology for the determination of

cogeneration efficiency with a suitable support framework to promote the development of this efficiency standard in particular with respect to the advancement of hydrogen and climate neutral fuel readiness.

Art. 20: Developing a targeted approach to consumer protection in the heating sector

AGFW has been a longstanding proponent of strengthening consumer welfare across the heating and cooling sector. Today, district heating and cooling as the by far most popular heating solution in Germany, is an important contributor to improving consumer welfare across the sector by ensuring low and stable prices, while simultaneously enabling further carbon reductions. Single heating solutions for single houses are generally less efficient and affordable. In this regard, AGFW calls for a broadening of the discussion that addresses the entire heating sector at large encompassing the various technological appliances to reach a balanced and equal level of protection. Moreover, AGFW advocates for a better appreciation of the contract design in district heating and cooling which usually does not establish a contractual relationship between the network operator and the final user.

Proposed Amendments to the Energy Efficiency Directive

Article 2: Definitions

Position

AGFW advocates for a clear legal definition of the “final customer” to achieve a consistent separation with the “final user” terminology. Therefore, to avoid an overlapping of the terminologies the revised “final customer”-definition should not include a reference to the “individual end use” criterion similarly to the “final user” definition.

Proposal

‘final customer’ means a natural or legal person who ~~purchases energy for own end use~~; who is the last receiving party in a contractual relationship to receive energy.

Article 6: Exemplary role of public bodies’ buildings

Position

AGFW in principle supports the leading and exemplary role of the public sector building stock in advancing the decarbonisation of Europe’s heating and cooling sector. However, as the paragraph directly addresses the buildings energy performance, the article should be transposed to the European Energy Performance of Buildings Directive (EPBD) in order to strengthen the overall legal coherence and consistency of the fit-for-55 package.

Article 8: Energy savings obligation

Position

Since the proposed revision of the definition for efficient district heating cooling according to the new Art. 24 (see below) seeks to implement a stronger focus on decarbonisation and renewable integration, its future role as a benchmark to assess the efficiency of energy consumption becomes less important. Therefore, AGFW advocates to appreciate district heating and cooling systems as being *prima facie* contributors to energy efficiency.

Proposal

(c) count towards the amount of required energy savings in point (a) and (b) of the first subparagraph of paragraph 1, energy savings achieved in the energy transformation, distribution and transmission sectors, including ~~efficient~~ district heating and cooling infrastructure, as a result of implementing the requirements set out in Articles 23(4), point (b) of Article 24 (4), and Article 25 (1) to (10). Member States shall inform the Commission about their intended policy measures under this point for the period from 1 January 2021 to 31 December 2030 as part of their integrated national energy and climate plans. The impact of those measures shall be calculated in accordance with Annex V and included in those plans;

Article 11: Energy management systems and energy audits

Position

The Energy Efficiency Directive should strengthen the regulatory connection between the national development of heating and cooling networks and efficient energy management on enterprise level. AGFW therefore advocates to formulate a binding requirement to include an assessment of technical and economic feasibility of connection to an existing or planned district heating or cooling network as part of an energy audit within paragraph 9.

Proposal

9. *Energy audits may stand alone or be part of a broader environmental audit. Member States **may shall** require that an assessment of the technical and economic feasibility of connection to an existing or planned district heating or cooling network shall be part of the energy audit.*

Article 20: Basic contractual rights for heating, cooling and domestic hot water

Position

With respect to the ramifications of basic contractual rights for heating and cooling AGFW wishes to highlight the importance of differentiating the contractual relationships between private households (private consumers) and housing companies (business customers). AGFW proposes to reserve the foreseen contractual protection clauses to final customers who qualify as natural persons to underline their special need of contractual protection. Moreover, AGFW advocates to strengthen the rights of private households in their role as final users of heat and cool vis a vis their contractual counterparty such as housing and real estate companies.

Proposal Art. 20

1. *Without prejudice to Union rules on consumer protection, in particular Directive 2011/83/EU of the European Parliament and of the Council¹¹² and Council Directive 93/13/EEC of the European Parliament and of the Council¹¹³, Member States shall ensure that final customers and, where explicitly referred to, final users are granted the rights provided for in paragraphs 2 to 8 of this Article.*

2. The district heating operator makes the information available to the natural or legal person party to the contract. The contractual party is obliged to make the information which was provided by the district heating operator available to the final user.

23. *Final customers **who qualify as natural persons** shall have the right to a contract with their supplier that specifies:*

(a) the identity and address of the supplier;

(b) the services provided and the service quality levels offered;

(c) the types of maintenance service offered;

(d) the means by which up-to-date information on all applicable tariffs, maintenance charges and bundled products or services may be obtained;

(e) the duration of the contract, the conditions for renewal and termination of the contract and services, including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;

(g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 21;

(h) information relating to consumer rights, including information on complaint handling and all of the information referred to in this paragraph, which is clearly communicated on the bill or the undertaking's web site.

Conditions shall be fair and known in advance. In any case, this information shall be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this paragraph shall also be provided prior to the conclusion of the contract.

Final customers and final users shall be provided with a summary of the key contractual conditions in a comprehensible manner and in concise and simple language.

3. Final customers **who qualify as natural persons** shall be given adequate notice of any intention to modify contractual conditions. Suppliers shall notify their final customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect.

4. Suppliers shall offer final customers **who qualify as natural persons** a ~~wide~~ choice of payment methods **according to common national contractual practice**. Such payment methods shall not unduly discriminate between customers. Any difference in charges related to payment methods or prepayment systems shall be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of a specific payment method or a prepayment system, in line with Article 62 of Directive (EU) 2015/2366 of the European Parliament and of the Council¹¹⁴.

5. Pursuant to paragraph 6, household customers who have access to prepayment systems shall not be placed at a disadvantage by the prepayment systems.

6. Suppliers shall offer final customers ~~and final users~~ fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods. Final users shall be provided access to these general terms and conditions upon request. Final customers and final users shall be protected against unfair or misleading selling methods. Final customers with disabilities should be provided all relevant information on their contract with their supplier in accessible formats.

7. Final customers and final users shall have the right to a good standard of service and complaint handling by their suppliers. Suppliers shall handle complaints in a simple, fair and prompt manner.

Art 23: Heating and cooling assessment and planning

Position

AGFW fully supports the proposed changes to Art.23 to strengthen the common framework for the national heating and cooling assessments. In order to incentivize Member States to achieve greater consistency between their national support and investment programs and their comprehensive planning assessments Art. 23 should foresee for an evaluation of the potential of State aid as means to overcome identified market barriers.

With respect to the involvement of municipalities, AGFW wishes to propose a more stringent set of measures that ensure a greater emphasis on the development of communal district approaches and on identifying existing barriers to local infrastructure investments.

Proposal Art. 23

*(4) Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 identify a potential for the application of high-efficiency cogeneration and/or efficient district heating and cooling whose benefits exceed the costs, Member States shall take 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 in accordance paragraph 1 and Article 24(4) and (6). **In particular, Member States shall assess the potential of State aid as a means to overcome existing market barriers***

Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 do not identify a potential whose benefits exceed the costs, including the administrative costs of carrying out the cost-benefit analysis referred to in Article 24(4) paragraph 5, the Member State concerned may exempt installations from the requirements laid down in that paragraph.

*(6) Member States shall **encourage establish appropriate frameworks** for regional and local authorities to prepare local heating and cooling plans at least in municipalities having a total population higher than 50.000. Those plans should at least:*

(a) be based on the information and data provided in the comprehensive assessments carried out pursuant to paragraph 1 provide estimate and mapping of the potential for increasing energy efficiency, including via waste heat recovery, and renewable energy in heating and cooling in that particular area;

(b) include a strategy for the use of the identified potential pursuant to paragraph 6(a);

(c) be prepared with the involvement of all relevant regional or local stakeholders and ensure participation of general public;

(d) consider the common needs of local communities and multiple local or regional administrative units or regions;

(e) include the monitoring of the progress of implementation of policies and measures identified.

(f) identify existing barriers for the development of heating and cooling infrastructure

(g) include the development of a district approach strategy

Member States shall ensure that the public is given the opportunity to participate the preparation of heating and cooling plans, the comprehensive assessment and the policies and measures.

*For this purpose, Member States shall develop recommendations – **such as national guidelines on the development of heating and cooling district approaches** -supporting the regional and local authorities to implement policies and measures in energy efficient and renewable energy based heating and cooling at regional and local level utilizing the potential identified. Member States shall support regional and local authorities to the utmost extent possible by any means including financial support and technical support schemes.*

Art. 24: Heating and cooling supply

Position

The common European definition on efficient district heating and cooling is the most important regulatory steering tool to modernize the sector. Therefore, AGFW recognizes the proposed changes in the definition as important steps towards our common climate ambitions. In this regard however, AGFW wishes to emphasize that a greater chronological coherence between the envisioned decarbonisation track of Article 24 and our 2030 objectives is indispensable. AGFW thus proposes a full synchronization of the definition with the 2030 and 2050 to underline the contribution of the sectors commitments including an increase of the projected ambition after 2030.

Secondly, AGFW wishes to advocate in favor of adopting a more flexible approach that takes into account the widely differing starting positions across Europe's district heating networks and their individual decarbonisation tracks while safeguarding the sectors 2030 commitments at the same time. Instead of meeting static annual composition quotas, AGFW proposes to oblige operators to draw up decarbonisation roadmaps in cooperation with their national authority to meet the 2030 target. This would not only create consistent and verifiable transition pathways, but also help to identify existing barriers to decarbonisation. Additionally, such an approach would also widen the potential steering effect of the provision, as it would likewise address efficient and non-efficient networks. That way Art. 24 would be able to unfold greater leverage on the decarbonisation of the sector at large. Lastly, it should be emphasized that although high efficiency cogeneration will be excluded from the definition of Art. 24 after 2035 or 2040 respectively, the scope of "efficient district heating" must nonetheless continue to count non-biogenic waste incineration, including incineration from cogeneration, towards the share of waste heat as part of the "efficient district heating and cooling" definition.

Lastly, AGFW supports the importance of increasing waste heat recovery from the tertiary sector and in particular data centers. Nevertheless, AGFW wishes to emphasize that the implementation of mandatory cost-benefit analyses (CBA) does not improve the economic viability of waste heat projects per se as they do not address existing investment barriers. Therefore, in order to increase the economic efficiency of waste heat utilization the extension of CBA- requirements should always be backed by a removal of regulatory obstacles and especially targeted subsidy programs.

Proposal new Art 24 (Definition of efficient district heating and cooling)

Heating and cooling supply

1. In order to increase primary energy efficiency and the share of renewable energy in heating and cooling supply, an efficient district heating and cooling system is a system which meets the following criteria:

a. until 31 December ~~2025~~ **2029**, a system using at least 50% renewable energy, 50% waste heat, 75% cogenerated heat or 50% of a combination of such energy and heat;

b. from 1 January ~~2026~~ **2030**, a system using at least 50% renewable energy, 50% waste heat, 80% ~~of heat from~~ high-efficiency **cogeneration** or at least a combination of such thermal energy going into the network where the share of renewable energy is at least ~~5~~ **10%** and the total share of renewable energy, waste heat or **heat from** high-efficiency cogeneration ~~ed~~ heat is at least ~~50~~ **55%**

c. from 1 January ~~2035~~ **2040**, a system using at least ~~50~~ **60%** renewable energy and waste heat, where the share of renewable energy is at least ~~20~~ **25%**;

~~d. from 1 January 2045, a system using at least 75% renewable energy and waste heat, where the share of renewable energy is at least 40%;~~

e. from 1 January 2050, a system using only renewable energy **and or** waste heat, ~~where the share of renewable energy is at least 60%.~~

By 31 December 2025 the operator draws up a decarbonisation roadmap to be submitted to the competent authority and published for transitioning away from fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target.

~~3. Member States shall ensure that as from 1 January 2025, and every five years thereafter, operators of all existing district heating and cooling systems with a total energy output exceeding 5 MW and which do not meet the criteria set out in paragraph 1(b) to (e), prepare a plan to increase primary energy efficiency and renewable energy. The plan shall include measures to meet the criteria set out in paragraph 1(b) to (e) and shall be approved by the competent authority.~~

...

11. Member States shall ensure that any available support for cogeneration is ~~subject to the electricity produced~~ originating from high-efficiency cogeneration and the waste heat being effectively used to achieve primary energy savings. Public support to cogeneration and district heating generation and networks shall be subject to State aid rules, where applicable.

Annex III: Methodology for determining the efficiency of cogeneration process

Position

Although carbon intensity is not a metric of generation efficiency per se, AGFW acknowledges and supports the Commission's ambition to incorporate the promotion of low carbon solutions within the proposed methodological framework for the determination of cogeneration efficiency. However, AGFW argues that the inclusion of a fixed emission threshold would not be a suitable solution to incentivize the necessary underlining fuel switch. Furthermore, AGFW wishes to emphasize that the integrated energy systems of the future will require cogeneration facilities to act as flexible demand side responders in order to support the increasing role of renewables in the energy supply. A fixed emission benchmark as proposed by the Commission would however favor plants to run on full capacity and thus thwart their flexible operation necessary for the further integration of renewable energy. Moreover, the proposed emission benchmark would be a regulatory instrument foreign to current European energy legislation and especially to the Energy Efficiency Directive's present framework, thus potentially jeopardizing the Directive's legal coherence.

AGFW therefore proposes to replace the proposed emission benchmark with an explicit exclusion of the most polluting fuels which has already been implemented in the new proposed European State aid regulations. Such an explicit exclusion of highly carbon intensive fuels would not only strengthen the legal coherence between the various dossiers of the Fit for 55-package, but also establish a clear baseline for the facilitation of the sectors' commitment to implement the phase-out of those fuels.

Proposal Annex III METHODOLOGY FOR DETERMINING THE EFFICIENCY OF THE COGENERATION PROCESS

Values used for calculation of efficiency of cogeneration and primary energy savings shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use.

(a) High-efficiency cogeneration

For the purpose of this Directive high-efficiency cogeneration shall fulfil the following criteria:

– cogeneration production from cogeneration units shall provide primary energy savings calculated according to point (b) of at least 10 % compared with the references for separate production of heat and electricity;

– production from small-scale and micro-cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration;

~~– direct emissions of the carbon dioxide from cogeneration production that is fuelled with fossil fuels, are less than 270 gCO₂ per 1 kWh of energy output from the combined generation (including heating/cooling, power and mechanical energy).~~

– cogeneration production is not using the most polluting fuels such as coal, lignite, oil and diesel,

– When a cogeneration unit is built or substantially refurbished, Member States shall ensure that 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.

Annex V: COMMON METHODS AND PRINCIPLES FOR CALCULATING THE IMPACT OF ENERGY EFFICIENCY OBLIGATION SCHEMES OR OTHER POLICY MEASURES UNDER ARTICLES 8, 9 AND 10 AND ARTICLE 28(11)

Position

In order to safeguard the development of energy efficient infrastructure such as district heating as an important measure to improve the efficiency of energy consumption, Annex V should provide for a caveat to keep such measures as part of the national energy savings calculations.

Proposal

*2 (e) Member States cannot count reduced energy use in sectors, including the transport and building sector, that would have occurred in any event as a result of emission trading pursuant to the EU ETS Directive towards the fulfilment of the energy savings obligation pursuant to Article 8(1) **except if they fall within the scope of Art. 8 (8) c**. If an entity is an obligated party under a national energy efficiency obligation scheme under Article 9 of this Directive and under the EU Emissions Trading System for buildings and road transport [Reference to proposal], the monitoring and verification system shall ensure that the carbon price passed through when releasing fuel for consumption [according to Article XX of Directive XX] is taken into account when calculating and reporting the energy savings of its energy saving measures.*

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