



Before filling in this form, please read '*How to submit a complaint to the European Commission*': https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/
 All fields with * are mandatory. Please be concise and if necessary continue on a separate page.

The Commission can receive emails from a 'certified email service' (e.g. ...@pec.it), but for technical reasons we cannot send replies to a certified email address. You should therefore provide a standard email address and/or postal address in the complaint form, so that we can reply to you.

1. Identity & contact details

	Complainant*	Your representative (if applicable)
Title Mr/Ms/Mrs	Mr	
First name*	Sascha	
Surname*	Müller-Kraenner	
Organisation:	Deutsche Umwelthilfe (DUH) – Environmental Action Germany	
Address*	Hackescher Markt 4	
Town/City *	Berlin	
Postcode*	10178	
Country*	Germany	
Telephone	+49 (0) 30 2400867-0	
E-mail	info@duh.de	
Language*	German, English	
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. How has EU law been infringed?*

	Authority or body you are complaining about:
Name*	Bundesministerium für Wirtschaft und Energie
Address	Scharnhorststr. 34-37
Town/City	Berlin
Postcode	11019
EU Country*	Germany
Telephone	+ 49 (0) 30 18 615 - 0
Mobile	
E-mail	poststelle@bmwi.bund.de

2.1 Which national measure(s) do you think are in breach of EU law and why?*

The Gebäudeenergiegesetz (GEG) failed to adopt the nearly zero-energy buildings (NZEB) standard required by the Energy Performance of Buildings Directive 2010/31/EU (EPBD).

2.2 Which is the EU law in question?

[Energy Performance of Buildings Directive](#) 2010/31/EU (EPBD) specifically Article 9 'Nearly zero-energy buildings'

2.3 Describe the problem, providing facts and reasons for your complaint* (max. 7000 characters):

The complaint concerns the national implementation of the Energy Performance of Buildings Directive 2010/31/EU (EPBD) by Germany. Specifically it wants to raise awareness for the failure to adopt the nearly zero-energy buildings (NZEB) standard into national law.

According to Article 2(2) of the EPBD an NZEB '...means a building that has a very high energy performance, as determined in accordance with Annex I. The nearly zero or very low amount of energy required should be covered to a very significant extent by energy from renewable sources, including energy from renewable sources produced on-site or nearby'.

Article 9(1) of the EPBD requires Member States to 'ensure that: (a) by **31 December 2020**, all new buildings are nearly zero-energy buildings; and (b) **after 31 December 2018**, new buildings occupied and owned by public authorities are nearly zero-energy buildings.'

Germany **failed to adopt this standard** into national law and froze energy efficiency levels of building on the 2014 level, which is significantly lower than the NZEB standard.

Background

The Gebäudeenergiegesetz (GEG), which is in force since November 2020 is the main legislative pillar for building efficiency in Germany. The GEG combines previously separate legislation on energy efficiency and renewable heating into a single law and serves as the main implementation mechanism of the EPBD, including all nZEB provisions.

German legislation (the GEG) does not contain a set of minimum energy performance standards (in kWh/m² per year) that new buildings are required to meet. Instead, the standards are calculated against a set of reference buildings that correspond to a series of building typologies. Buildings that exceed the minimum energy performance standards set by the corresponding reference buildings are generally referred to as KfW-houses (or EH-houses) since they are eligible for funding by the German state-owned investment and development bank (Kreditanstalt für Wiederaufbau – KfW). In consequence a KfW 70 building is a building that uses 70% (or 30% less) of the primary energy consumption of a specific reference building.

According to GEG starting from 2021 the KfW 70 (compared to the 2016 reference building) represents the "NZEB level" in Germany. There is a comprehensive evidence (even in studies commissioned by the ministries themselves) that this level is too low and does not meet the targets set out by the EPBD itself.

In their notification to the commission the German government admits themselves:

"The calculations have shown in relation to the individual types of residential buildings that the **requirement levels of the EH-55 norm are cost-optimal** in a computational sense. Based on the applicable primary energy factor for electricity (1.8), the cost optimum is achieved here through variants including heat pumps, and therefore by using one particular technology. The Federal Government explained in their previous report that a technology-neutral approach is essential for determining cost-optimal levels.

This also applies without limitation to this update. This means that only variants, which can be basically fitted everywhere and supplied with energy in any location qualify as an optimum. In accordance with available information, we can assume that heat pumps cannot be used universally. Bearing that in mind, the current energy standard (Energy Savings Ordinance 2016) meets the criterion for cost optimisation stipulated for this report also as regards residential buildings. In consequence, no further measures are currently needed to achieve cost-optimal levels as regards both residential and non-residential buildings under Article 5 Paragraph 3 of the Directive."

In our opinion we strongly object to this assessment. In general, there is hardly any limit to install heat pumps in new residential buildings and it would be very easy to include some exceptions in the legislative proposal that address these rare cases.

To generally apply lower efficiency standards to all building according to the logic of technology neutrality leads to several severe consequences, which limit the scope of the EPBD in the national context:

1) Consumers are not given access to the cost optimal level

In their own notification the German government admits that for “building types, where the ‘QP55’ level is shown to be cost-optimal within the framework of the examined variants, there is a **significant deviation from the current requirement level**, which according to Recital 14 of the EPBD is above the ‘considerable’ deviation of 15 %.”

This is the case in most residential buildings, which would make additional measures necessary and clearly indicate that current standards are set too low. More so since the German government decided to set their cost-optimal standard according to a microeconomic perspective, so the calculation does not include any external costs such as the newly established CO₂-prices in the heating sector which would no doubt tip the scale in favour of even more ambitious building standards.

2) Failure to meet climate targets set in the building sector

The country's first national climate law, passed in 2019 and amended in 2021, states annual reduction targets for individual sectors such as transport and buildings until the year 2030. In the first year in action (2020) only one sector failed to meet the necessary target: buildings. The targets were missed by two million metric tons of greenhouse gases, leaving the building sector currently at 120 million metric tons. Projections for this year already point towards higher gaps since the emissions from the sector remain steady.

3) Unnecessary prolongation of the use of fossil fuel-based heating technologies (such as gas boilers) and lock-in effects for consumers

The argument of using a “technology neutral” approach is in our opinion masking the resentment by the German government to exclude fossil-fueled boilers (mainly gas boilers) from being installed in new buildings. In their own calculations, it can be seen that heat pumps and other renewable heating technologies such as pellet boilers succeed meet the cost-optimal level at the efficient KfW-55-building (or even at more ambitious standards). Only gas boilers would require lower efficiency standards since due to their unfavorable primary energy factors they require more building insulation to meet the standards set by the reference building. This of course is driving up the cost of the building in total. Consciously keeping the building standards low to include fossil boiler options is in our view a strong violation of the objectives set by the EPBD to supply the “energy required [...] to a very significant extent by energy from renewable sources”.

4) Misuse of public funding in the building sector

Since the German efficiency standards are set significantly below cost-optimal level public funds that are meant to trigger investments in more ambitious buildings are basically being funneled into Nearly 70%, of all new buildings built in 2020 received government subsidies for going beyond the required NZEB standards and in many cases achieving KfW 55. This money would be better invested in fostering real innovation and pushing building standards beyond the cost-optimal level to move the building stock closer towards climate-neutral levels.

2.4 Does the Country concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?

Yes, please specify below No I don't know

Germany will receive 2.5 billion Euros in grants from the Recovery and Resilience Facility in the 2021-2026 period, which will top up Germany's main funding instrument for energy renovation (*Bundesförderung effiziente Gebäude – Innovationsförderung*).

The proposed Regulation establishing a Social Climate Fund will funnel additional EU funds into energy renovation. According to the proposal, member states will have to design Social Climate Plans to spend a portion of the revenues raised by the proposed new emissions trading system for buildings and transport. This plan shall include national project to “finance measures and investments to increase energy efficiency of buildings, to implement energy efficiency improvement measures, to carry out building renovation, and to decarbonise heating and cooling of buildings, including the integration of energy production from renewable energy sources. (Art. 3(3)).” The volume of this new funding stream is still unclear.

2.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights?

The Commission can only investigate such cases if the breach is due to national implementation of EU law.

Yes, please specify below No I don't know

3. Previous action taken to solve the problem*

Have you already taken any action in the Country in question to solve the problem?*

IF YES, was it: Administrative Legal ?

3.1 Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

3.2 Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?*

IF NOT please specify below as appropriate

- Another case on the same issue is pending before a national or EU Court
- No remedy is available for the problem
- A remedy exists, but is too costly
- Time limit for action has expired
- No legal standing (not legally entitled to bring an action before the Court) please indicate why:

Deutsche Umwelthilfe (DUH) is involved in legal action to ensure that the government is taken appropriate action to reduce CO2-emissions in Germany. With the newly established climate law this also opens the possibility to start legal action to address sector specific failures to comply with climate targets. At this point such procedures are connected with several uncertainties and it is still up for debate if legal actions by third parties are allowed in the context of the climate law.

Independent from these proceedings it is not possible to start specific legal action regarding this specific measure in the national context. Since we consider the efficiency standards as one of the fundamental pillars of climate protection in the building sector we choose the complaint mechanism as most suitable to the failure we identified.

- No legal aid/no lawyer
- I do not know which remedies are available for the problem
- Other – specify

4. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:

- Petition to the European Parliament – Ref:.....
- European Commission – Ref:.....
- European Ombudsman – Ref:.....
- Other – name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)

5. List any supporting documents/evidence which you could – if requested – send to the Commission.

 Don't enclose any documents at this stage.

Study/Documents	Short Summary/Important Findings
Notification by the Government of the Federal Republic of Germany to the Commission of the European Union of 1 August 2018	Official notification from German government to EU Commission stating that KfW 55/ EH 55 is the cost optimal building standard
Kurzgutachten zur Aktualisierung und Fortschreibung der vorliegenden Wirtschaftlichkeitsuntersuchung sowie zu Flexibilisierungsoptionen	Underlying numbers and calculations for the German notification to the commission
EnEV 2017 – Vorbereitende Untersuchungen	Calculations in preparation of German Building Law (GEG) pointing out main discrepancies between cost-optimal levels and German standards
Energy Efficiency Strategy for Buildings	Governments Building Strategy from 2015 recommending KfW 55-building as new mandatory standard for buildings
Reaction German Federal Council (Bundesrat) to GEG	Highlighting that GEG's building standard is too low to meet EU requirements and meet national efficiency and climate targets
Press Release DUH on GEG	Commenting on failure to set sufficient efficiency standards with GEG
Opinion given for parliament by DENEFF regarding GEG	Criticizing low ambition with GEG building standards and pointing towards conflicts with EU legislation mainly EPBD and EED)
Position Paper BUND on GEG	Calling for definition of German nZEB standard highly above KfW 55 (at least KfW 40 or

	passive house)
Brief inquiry by the Greens regarding nZEB implementation	Details on methodologies behind cost-optimal calculation on national level
Report on EPBD implementation in Germany	Claiming that KfW 55 building standard will be adopted in public buildings in compliance with EPBD

6. Personal data*

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

Yes No

 *In some cases, disclosing your identity may make it easier for us to deal with your complaint.*