

Paul Hodson
Head of Unit C.3 - Energy Efficiency
European Commission
1049 Brussels,
Belgium

Open reply to the letter from Paul Hodson DG ENER on 3 April 2017 concerning complaint CHAP(2016)2516 of 27 July 2016

April 24th 2017

Dear Mr. Hodson,

Thank you for your efforts in addressing the issue we have raised in our complaint to the European Commission on the failure of Germany to comply with Article 7 of the Energy Efficiency Directive.

We are seriously concerned by the approach the Commission appears to be choosing when enforcing the EU's most central obligation on Member States to increase energy efficiency and deliver energy savings. We therefore urge you to reconsider your decision to close the case for the following reasons:

1. Calculating the baseline for determining the 1.5% savings

Regarding the significant impact on the savings ambitions resulting from the deductions made by the German government (14%), we would like to receive a transparent and detailed answer on why the adjustments undertaken by Germany are acceptable for the Commission and to know how concerns expressed in our complaint have been addressed. We are not convinced that 'broadly satisfactory' evidence is sufficient to ensure a correct application of the law but are worried that this allows room for politically motivated maneuvers. In our view this response sets a very dangerous precedent for other Member States.

2. Eligibility of savings

Your decision to consider the HGV Toll and Aviation Tax as eligible "in principle" is deviating from the Commission's interpretation of eligibility as set out in the Guidance Note for article 7 as published in the EU's Official Journal. You justify your decision by being 'pragmatic' and making the case that a number of Member States chose similar measures. In our opinion, this suggests that the Commission ignores its own legal interpretations and prefers to follow a majority view of Member States in applying EU law. This position is in our view a violation of the Commission's mandate to ensure the correct legal application of EU treaties and laws. Under the rule of law it shouldn't be the majority which has primacy but the law itself. Only that can ensure legal certainty and consistency, especially considering the fact that a number of Member States have attempted to follow the Guidance Note.

We disagree with your argument that it eventually does not matter whether measures are intended to deliver energy savings or not, as long as they deliver energy savings. This is not in line with the stated objective of EED Article 7 or Annex V, which is quite clear on this matter.



Member States are to put in place “policy measures” such as obligation schemes or alternative measures, in order to reach 1.5% new energy savings each year.

The definition provided by Article 2 (18) EED is clear: the purpose of policy measures must be to support, require or incentivize the provision or purchasing of energy services “and” to undertake other energy efficiency improvements. A tax or toll which is put in place to finance transport infrastructure, which the HGV toll definitely is, is certainly not related to energy efficiency improvement, nor is it designed to incentivize the provision or purchasing of energy services “and” to undertake other energy efficiency improvements. From our point of view therefore any savings that may result from a tax or toll, which is highly unlikely, wouldn’t be eligible. Furthermore, these measures are not in line with Article 7 (9) paragraph (a), as they don’t have the effect of reducing end-use energy consumption and it can’t be assumed that they lead to the application of energy-efficient technology (b). Being steadfast in this interpretation we believe is essential to ensure materiality and implementation of the Directive which will deliver targeted policy measures rather than an arbitrary collection of savings that occur as a byproduct from unrelated policies.

This clear interpretation is needed to ensure a regular, consistent and verifiable growth of markets for energy efficiency products and services. Otherwise, this is tantamount to allowing eligibility for savings from such completely extraneous events as, for example, price increases in airline tickets during the holiday season, which in theory could also reduce energy demand and lead to savings.

3. *Your intention to obtain further clarification regarding ETS and Renewable Energy Heating Act*

With interest, we note that your work seems to be ongoing on these points and therefore we can’t understand why the case should be closed before obtaining further clarification. Nevertheless, if you choose to close the case, we would like to obtain from you information on the further clarifications from the German government.

In conclusion, and for the reasons mentioned above, we object to the closing of our complaint. We publicize this letter exchange in order to ensure transparency, political responsibility and accountability for your decisions, given the very high political stakes in energy efficiency and in delivering tangible benefits to citizens, as intended by the Energy Union.

In order to clarify the raised issues and exchange our points of view on an effective and ambitious implementation of the EED, we would be delighted to continue this dialogue in a personal conversation in Brussels or Berlin.

Yours sincerely,

Sascha Müller-Kraenner
Deutsche Umwelthilfe e.V. (DUH)

Antje von Broock
Bund für Umwelt und Naturschutz Deutschland
(BUND)