



**CONCERTED ACTION
ENERGY EFFICIENCY
DIRECTIVE**

Transposition of energy audit obligation for large enterprises

Executive Summary Report 5.3

Core theme 5 - Energy services and ESCOs, energy auditing, solving administrative barriers

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1 Summary

The majority of the participants in the Concerted Action for the Energy Efficiency Directive have indicated that their Member States (MS) are making progress towards transposition of Article 8 of the Directive. A number of Member States have developed more detailed thinking and planning, consultation documents and drafts of legislation. Some Member States have indicated that they will be introducing more detailed regulations and/or guidance in due course to support organisations in complying with the Article 8 audits obligation.

Several Member States also have existing incentive/obligation schemes in place, which they are adapting to meet the requirements of Article 8.

Transposition of energy audit obligation

Only a minority of Member States have provisions already in place which mostly meet the requirements of Article 8. Energy audit obligations for enterprises (and in some cases also for other sectors) are present in Bulgaria, Croatia, the Czech Republic, Portugal, Romania and Slovakia.

Analysis of MS draft papers and consultation documents indicates that a range of different approaches to implementation of Article 8 are proposed, reflecting national circumstances. In some MS, there are proposals to go beyond the requirements, such as the extension of the obligation to medium-sized enterprises (this has been proposed by a particular MS but not welcomed by stakeholders in that country).

The consumption data and the results of energy audits are, at the moment, considered sensitive in most of the MS, but there are some proposals to disclose them partially, either for specific subjects or for managing the energy audit framework.

Member States agreed that it is important to involve the enterprise's board after the audit in order to promote implementation of the energy audit recommendations. Some schemes already require management involvement and others are considering it.

Options considered to fulfil the energy audit obligation, and incentives

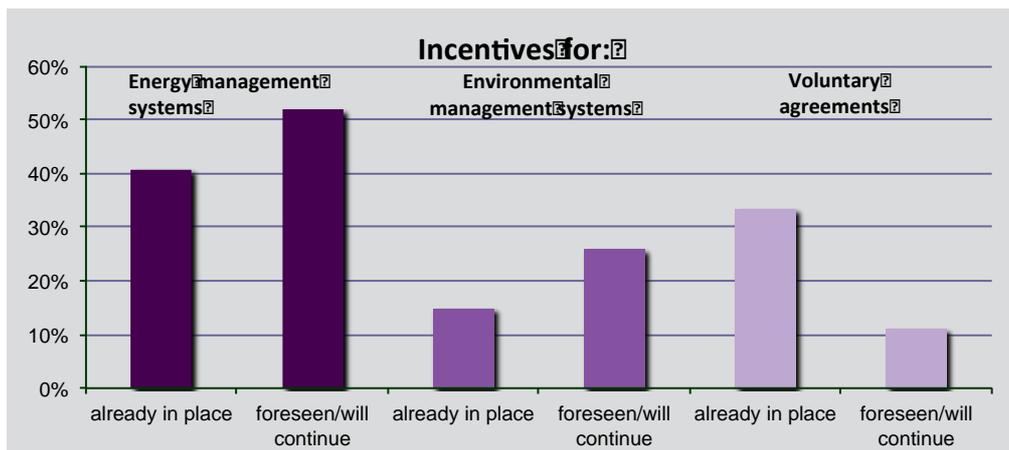
A significant majority of MS intend to allow large enterprises to comply via a certified Energy Management System.

During the discussions, it was noted that, where the qualification and/or quality control of the energy audit providers is left mostly to the market, the energy management systems seem to give more guarantees of quality/results, due to the presence of the accreditation – certification chain.

Just over half of MS are considering allowing environmental management systems as a route to compliance. A number of MS observed that environmental management systems would not always be implemented in a way which meets the minimum requirements of Annex VI to the Directive.

Only around a third of MS intend to use voluntary agreements as a route to compliance. This lower share is linked to the higher complexity of the framework, but probably also to the state aid issues arising in some MS. Furthermore, in some cases voluntary agreements are not welcomed by the boards of the enterprises. For some, there is a risk that failure to fulfil the obligation means that incentives have to be returned; in other cases, if the risk is low, it can be difficult to justify in front of the shareholders.

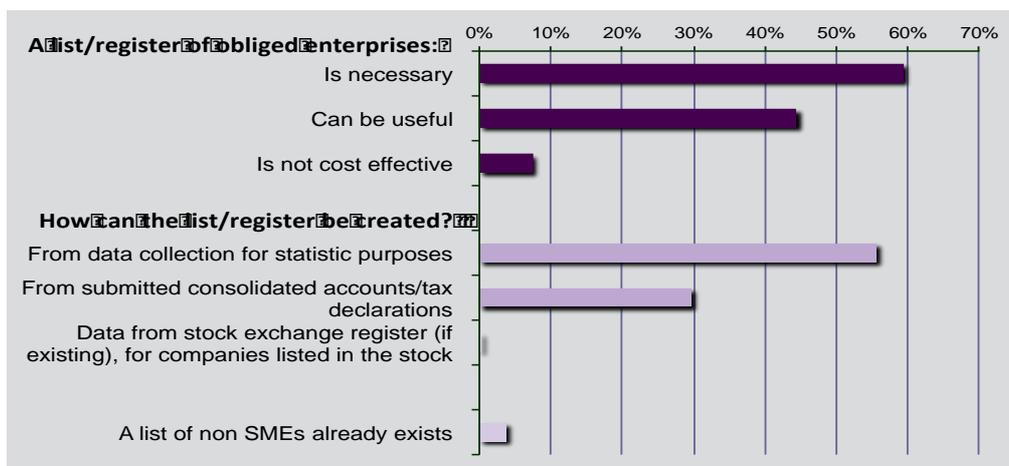
Figure 1 Incentives for energy management systems, environmental management systems and/or voluntary agreements



A number of MS currently provide support for companies to undertake energy audits. However, in most cases the existing incentive and/or obligation schemes will be affected by the energy audit obligation. Many of the comments on subsidies for energy audits in large industries clarified that the subsidies will cease for large enterprises when energy audits become obligatory. The non-eligibility of mandatory audits was also underlined on different occasions by DG ENER. However, it will be possible to subsidise large enterprises to undertake more frequent (i.e. non-mandatory) energy audits, energy management systems, implementation of recommendations etc.

List or register of enterprises obliged to undergo energy audit

Figure 2 List or register of the obliged enterprises



Statistical data are useful to evaluate the number of obliged subjects. However, various MS said that it was not possible to obtain other information essential for the creation of the list (e.g. names and addresses of enterprises) from national statistics agencies.

It is a challenging task to create a list of large enterprises that will be required to comply with the energy audit obligation. During the discussions, it was highlighted that it is not cost effective to consider SMEs (Small and Medium-Sized Enterprises) which are part of large enterprises abroad. There are different approaches to assuring proportionality for those SMEs: one is to “sensibly interpret” the provision; another to establish (for this specific case only) that the energy performance of building certificate fulfils the requirements of Article 8 and Annex VI (from point 9 of Commission Guidance note on Article 8).

Measures considered to ensure that large enterprises carry out energy audits on a regular basis

Around 75% of MS considered that penalties are a necessary backstop to ensure compliance with Article 8. Around 20% of MS intend to check compliance with the obligation through other processes – such as voluntary agreements, incentives, permitting, etc.

Control and sanctions are already transposed in France: first, a notice (that can also be made public) to comply within a specified time. If the enterprise still does not comply, a fine is issued, which is proportionate (seriousness of the infringement, damage and the benefits derived, etc.) and not exceeding 2% of revenue excluding taxes in the last financial year. This is increased to 4% in the event of a further infringement of the obligation.

Scope and quality of the energy audit

There are a wide range of different approaches / technical standards being considered by MS. The majority of MS who made comments set out that they do not intend to go beyond the requirements of Annex VI. Where MS intend to include more detail in guidance / requirements, this is generally to outline good practice in energy auditing or to give further explanation to the requirements set in Annex VI.

A concrete approach to Annex VI is the draft document on minimum requirements presented¹ by Austria. Regarding data storage, the data from the last two energy audits has to be available. Similar provisions are also present in other MS's proposals.

Other drafts also require that the energy audit following the first one include an assessment of the recommendations/findings of the previous one(s).

Several MS intend to require energy audits to meet the standard set by EN 16247-1, though use of a range of other methodologies is also implied. With regard to ISO 50002², some MS are already oriented to use it when published, while others are more cautious since the standard is still under development.

In some of the draft transpositions or draft guidelines, there are specific provisions for transport³. Finland illustrated its approach⁴ for air, ship and rail transport, fields where existing international reporting schemes, some of which also have compulsory requirements, already match the minimum requirements of Annex VI.

Regarding the boundaries of energy audits, in the draft/consultation documents, there are indications about a certain minimum threshold for consumption to be identified or the "*de minimis*" that can be used to focus audits on the most significant aspects of energy consumption. In the discussions, the concept was welcomed, but there was no consensus on whether a specific percentage of an organisation's total energy consumption to be audited should be set in law. A fixed percentage provides certainties for business and helps focus audits on key areas, but limits the field of action of the energy auditor. In the latter case, the auditor has more freedom, though this creates the risk of poor quality audits, therefore a thorough quality check must be in place.

There are still uncertainties on how to deal with externalised services (heating, transport, etc.), since considering them could potentially lead to double auditing/counting. One of the possible approaches is to assign the consumption to whoever pays for the energy.

Qualification and certification of energy audit providers

Having suitable qualifications for audit providers is fundamental to ensuring high quality energy audits. There are different approaches, such as authorisation/certification vs. market⁵. Moreover, in the workshop on EED Article 8⁶, representatives of multinational enterprises expressed their concerns at the possible difficulties if internal energy auditors have to be recognised/certified in different MS. Usually, multinationals have an internal team of energy auditors, which they claim leads to higher specialisation, confidentiality, easier comparison of plants in different countries, etc. The Directive does not address specifically the qualification of internal experts to conducting audits, so it is up to the MS to decide.

Some MS already have mutual recognition of audit providers, but it seems difficult to extend to all MS, since in some cases audit providers can be only a physical person, whilst in others they can also be companies. Moreover, the qualification criteria are different; thus it would be difficult to ensure mutual recognition and safeguard audit quality. An idea would be to develop a common course curriculum, but this would require time.

¹ www.ca-eed.eu See presentation and good practice fact sheet

² ISO 50002 Energy audits - Requirements with guidance for use

³ AT: in the draft document on minimum requirements there are lists of data to be collected and recommendations to be considered in addition to the EN 16247-1.

ES: enterprises with an energy management system are exempted from the obligation to conduct the audit on the transportation only if they have transport plans to the workplace, courses on efficient management of fleets or efficient driving, etc.

RO: organisations holding more than 25 vehicles were required to develop monitoring programs and management of fuel consumption

⁴ See in this document, **Practical Examples** at page 5

⁵ the topic was also debated in WG 5-6.1 (see the WGR and the presentation of SE)

⁶ Energy Audits and Energy Management Systems under Energy Efficiency Directive Article 8 Workshop, 20-21/3/2014 Madrid, <http://iet.jrc.ec.europa.eu/energyefficiency/workshop/energy-audits-and-energy-management-systems-under-energy-efficiency-directive-article-8#!prettyPhoto>

Concerns were raised about the compatibility of the certification/accreditation of energy audit providers with the 2006/132/EC Bolkestein Directive. This point has to be further investigated, but is probably linked to national transposition or interpretation, since some CA EED participants were not aware of this.

2 Conclusions

Member States were at different stages in their development of Article 8 transposition. While a small number were finalising detailed guidance, a number of MS would only have enabling legislation in place by 5 June.

Many MS were concerned as to whether they would have enough suitably skilled auditors to meet the demand from industry.

A number of CA EED participants highlighted the need for auditors to have the skills to effectively 'sell recommendations' to businesses in addition to identifying cost-effective recommendations.

MS agreed that it is already a challenge to identify and engage large enterprises. The issue of how to identify SMEs from large companies abroad requires a pragmatic interpretation of the definitions referred to in the Directive.

There were different views as to how to interpret the requirements of Annex VI. However, there was consensus that where MS did not specify detailed audit requirements then this necessitated a greater focus on audit support tools and 'auditing the auditors' to ensure that audits met the standards required by the Directive and added value to business.

In the transposition of the energy audit obligation, there is a huge diversity within MS. On the one hand, there is the challenge of ensuring that businesses are not at a competitive disadvantage because of different approaches to implementation. On the other hand, the diversity of approaches offers the opportunity to see what works and to learn from each other. In the transposition phase, this curiosity is accentuated; everyone wants to know more about what other MS are doing, almost waiting to see who moves first.

3 Practical Examples

Finnish approach to ship, air and rail transport

There are already reporting schemes (some of which have compulsory requirements)

Air: IATA + global reporting initiative (voluntary)

- EEI (energy efficiency index, it is mandatory for new ships)

Shipping: - IMO (under IMO there is MARPO, for reporting on pollution, and should be mandatory too).

Based on MARPO, there are EEI and SEEMP

- SEEMP (energy efficiency management programme, mandatory from next major maintenance).

[Major maintenance twice every five years]

Rail: International RR association with reporting requirements

Road: (rubber wheels) more difficult (small companies and no international approach)

All companies are in international competition and face requirements which already comply with art. 8. (same level playing field)

Common to all the companies: all information on energy use and cost is strictly confidential, so it would be difficult to have external energy auditors.

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The Concerted Action for the Energy Efficiency Directive (CA EED) was launched by Intelligent Energy Europe (IEE) in spring 2013 to provide a structured framework for the exchange of information between the 29 Member States during their implementation of the Energy Efficiency Directive (EED).

For further information please visit www.eed-ca.eu or contact the CA EED Coordinator Lucinda Maclagan at lucinda.maclagan@rvo.nl



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