

European Mortgage Federation-European Covered Bond Council (EMF-ECBC)

Amendment Suggestions for the Council of the EU pertaining to the Proposal for a Directive of the European Parliament and of the Council on the Energy Performance of Buildings (recast)

27 September 2022

Executive Summary

- The EMF-ECBC recognises the strategic importance of the Energy Performance of Buildings Directive (EPBD) and supports the overall ambition of achieving a zero-emission building stock by 2050, as evidenced by its efforts since 2015 to mobilise the EU mortgage industry through the Energy Efficient Mortgages Initiative.
- *Mortgage Portfolio Standards:* Standards of this kind could have the contrary effect of limiting consumer access to mortgage finance, as lending institutions favour the financing of the EU's best performing buildings in order to meet 'targets' which are hard-wired into legislation. A much more appropriate way to achieve the objective of this article is by introducing voluntary mechanisms according to which mortgage lenders define the path of their mortgage portfolios towards 2030 and 2050 with a view to supporting potential clients in making their properties more energy efficient.
- *Minimum Energy Performance Standards:* While we recognise the need to put in place measures to achieve climate neutrality in buildings, targets must be realistic and achievable. Against a background of a rise in the price of materials (inflation), a shortage of materials and labor, we are concerned that the feasibility of meeting the targets proposed by the European Commission is seriously challenged and that there is a serious risk of stranded assets.
- *Databases for Energy Performance of Buildings:* In order for financial institutions to support the financing of the climate transition, it is imperative that they are granted access to the energy performance data of buildings necessary to determine EU Taxonomy alignment and the permission to process that data.

Introduction

1. The EMF-ECBC recognises the strategic importance of the Energy Performance of Buildings Directive (EPBD) and supports the overall ambition of achieving a zero-emission building stock by 2050. In this context, since 2015 the EMF-ECBC has been mobilising the EU's mortgage and covered bond industries through the market-led and EU-funded Energy Efficient Mortgages Initiative (EEMI) and the EEM Label (EEML), as well as the market-led Covered Bond Label. Indeed, the EU's mortgage and covered bond industries will be instrumental in helping the EU meet its ambitious renovation targets and are fully committed to channelling private finance to support the Renovation Wave, NextGenerationEU and RePowerEU.

2. We acknowledge the ambition aimed at reducing energy poverty, decreasing the EU's dependence on fossil fuels, and helping meet the EU's climate targets and also recognise the emphasis placed on finance to stimulate the Renovation Wave. As indicated above, the EMF-ECBC has long recognised the transformative role of the mortgage industry in financing the improvement of the EU's building stock and therefore in supporting the climate transition, as evidenced by its efforts through the EEMI, EEM Label and Covered Bond Label. However, it is imperative that policy ambitions are consistent with the realities and the challenges of the real economy, as well as the capabilities, roles, responsibilities and regulatory and supervisory landscape of and for the banking industry, and the mortgage industry more specifically. Against this background, we would like to highlight the following considerations:

Specific Considerations

Mortgage Portfolio Standards

3. The concept of 'Mortgage portfolio Standards' presupposes that mortgage lenders (and other financial market participants) can themselves improve the energy performance of the properties pledged as collateral for mortgage loans. However, lenders are not the owners of the underlying buildings in their loan portfolios. Rather the decision to improve the energy efficiency of properties is the choice and responsibility of borrowers, as owners, supported by lenders via specific instruments, such as energy efficient mortgages. Emulating other industry portfolio standards, for example car fleet emission standards where the car manufacturer is both the manufacturer and the owner of the vehicle, represents an oversimplification. This could have the contrary effect of limiting consumer access to mortgage finance, as lending institutions favour the financing of the EU's best performing buildings, rather than the worst performing ones, in order to meet 'targets' which are hard-wired into legislation.
4. We would like to caution that standards of this kind in their current form will hinder the Industry's ability to support the Renovation Wave as already underway via the EEMI, EEM Label and EEM 'ecosystem' described above. We believe that a much more appropriate way to achieve the objective of this article is by introducing voluntary mechanisms according to which mortgage lenders define the path of their mortgage portfolios towards 2030 and 2050 with a view to supporting potential clients in making their properties more energy efficient. Our proposal is outlined below. Specific public guarantee schemes, fiscal incentives and preferential supervisory rules can furthermore support the development of the market in energy efficient mortgages and the financing of the Renovation Wave.

- **Article 2 – paragraph 1 – point 36**

Text proposed by the European Commission	EMF-ECBC's Amendment
Article 2 – paragraph 1 – point 36 36. 'mortgage portfolio standards' means mechanisms <i>incentivising mortgage lenders to increase the median energy performance of the portfolio of buildings covered by their mortgages and to encourage</i> potential clients <i>to make their property</i> more energy-performant along the Union's decarbonisation ambition and relevant energy targets in the area of energy consumption in buildings, relying	Article 2 – paragraph 1 – point 36 36. 'mortgage portfolio standards' means voluntary mechanisms <i>according to which mortgage lenders define the path of their mortgage portfolios towards 2030 and 2050 with a view to supporting</i> potential clients <i>in making their properties</i> more energy performant along the Union's decarbonisation ambition and relevant energy targets in the area of energy consumption in buildings, relying on the

on the definition of sustainable economic activities in the EU Taxonomy.	definition of sustainable economic activities in the EU Taxonomy.
--	---

Minimum Energy Performance Standards

5. We recognise the need to put in place measures to achieve climate neutrality in buildings and support an approach with an initial focus on the worst performing buildings. However, in a number of European countries, a majority of residential and commercial real estate has an energy performance class G. Unless all of these residential and buildings are renovated by the cut-off dates proposed by the European Commission, their market value will be greatly compromised. Particularly, residential buildings with an energy performance class G or F will have to be renovated by the proposed cut-off dates comprised in the EPBD recast proposal or will otherwise risk having a market value equal to “zero”. The energy renovations required by the proposal for a recast Directive will therefore necessitate huge investments and will affect not only building owners but society as a whole. Indeed, even with public support mechanisms and regardless of any limit to public indebtedness, there is a significant risk of the creation of stranded assets —as investments might not correspond to the increase in value— with negative social and financial implications for borrowers (especially where renovation is not economically viable (often the case for the most fragile households)) as well as financial institutions, that could undermine social and financial stability.
6. It is furthermore necessary that Member States take on the task of making building owners aware of the consequences of the EPBD and its minimums energy performance standards and make it possible for building owners to act on informed grounds and carry out the necessary renovations. Therefore, Member States shall at the latest by 31 December 2025 make building owners aware of the energy performance certificate of individual buildings including buildings where there are no certificate. Moreover, as indicated above, with the proposed minimum energy performance standards there is a risk that renovations that are neither economically viable for building owners nor society are carried out. This should be avoided. In order to secure an optimal level of energy renovations, it is important that Member States facilitate renovations where they are not economically viable for the individual building and where they are expected to lead to a decrease in the overall emission of GHG from a life cycle perspective.
7. A careful balance should be struck between measures needed to achieve the climate goals and measures that are practicable. Minimum standards should also be realistic and achievable. This is further underpinned by the latest developments across European and international markets, most particularly the rise in the price of materials (inflation) and a shortage of materials and labour. The proposed EMF-ECBC amendments as outlined below extend the deadlines proposed by the European Commission for residential buildings and introduce a requirement to ensure that these standards apply only where a renovation is deemed economically viable, in order to mitigate the potential social consequences of the minimum energy performance standards. To make it operational, building owners should not be required to carry out renovations which are not economically feasible for the building owners.
8. Finally, we propose a new paragraph 8 to Article 9 aims to ensure that the minimum energy performing standards are aligned with the EU Taxonomy’s Technical Screening Criteria. When renovations fulfilling the EPBD requirements result in a 30% reduction in primary energy demand, the entire building and thus the entire loan, also for its acquisition and ownership, should be considered EU Taxonomy compliant. If the entire loan is not considered EU Taxonomy compliant it is necessary to split loans which will increase costs for the borrower. Higher costs can decrease demand for green loans and green funding.

- **Recital 26a (new)**

Text proposed by the European Commission	EMF-ECBC's Amendment
	Recital 26a (new) <i>The minimum energy performance standards in Article 9(1) must be aligned with the operability of the EU Taxonomy and the Technical Screening Criteria for construction and real estate enshrined in European Commission Delegated Regulation (EU) No 2021/2139. When renovations fulfilling the EPBD requirements result in a 30% reduction in primary energy demand, the entire building and thus the entire loan for its acquisition, renovation and ownership should be considered EU Taxonomy compliant.</i>

- **Article 9 – Paragraph 1 – Points a & b – Points i & ii**

Text proposed by the European Commission	EMF-ECBC's Amendment
Article 9 – Paragraph 1 – Points a & b – Points i & ii 1. Member States shall ensure that (a) buildings and building units owned by public bodies achieve at the latest (i) after 1 January 2027, at least energy performanceclass F; and (ii) after 1 January 2030, at least energy performanceclass E; (b) non-residential buildings and building units, otherthan those owned by public bodies, achieve at the latest (i) after 1 January 2027, at least energy performanceclass F; and (ii) after 1 January 2030, at least energy performanceclass E; (c) residential buildings and building units achieve at the latest (i) after 1 January 2030, at least energy performanceclass F; and after 1 January 2033, at least energy performance class E;	Article 9 – Paragraph 1 – Points a & b – Points i & ii 1. Member States shall ensure that (a) buildings and building units owned by public bodies achieve at the latest (i) after 1 January 2027, at least energy performanceclass F; and (ii) after 1 January 2030, at least energy performanceclass E; (b) non-residential buildings and building units, otherthan those owned by public bodies, achieve at the latest (i) after 1 January 2037, at least energy performanceclass F; and (ii) after 1 January 2040, at least energy performanceclass E; (c) residential buildings and building units achieve at the latest (i) after 1 January 2040, at least energy performanceclass F; and after 1 January 2043, at least energy performanceclass E;

- **Article 9 – Paragraph 7 (new)**

Text proposed by the European Commission	EMF-ECBC's Amendment
	Article 9 – Paragraph 7 (new) <i>(7) The minimum energy performance standards in Article 9 paragraph 1 subparagraph c shall apply if renovations are technically, functionally and economically feasible for the building owner and society and if they lead to a decrease in the overall emission of GHG from a life cycle perspective.</i> <i>The building owner is not required to carry out renovations which are not economically feasible for the building owner.</i> <i>Where energy renovations are not economically feasible for the building owner but are economically feasible for society, Member States may facilitate and economically support renovations enabling buildings to achieve the required energy performance class.</i> <i>Member States shall make the consequences of the Directive clear for building owners and lay down a clear path to comply with the Directive as part of their national building renovation plans.</i> <i>By 31 December 2025 at the latest Member States shall make building owners aware of the energy performance certificate of individual buildings, including where there is no certificate at the time of application of the Directive.</i>

- **Article 9 – Paragraph 8 (new)**

Text Proposed by the European Commission	EMF-ECBC's Amendment
	Article 9 – Paragraph 8 (new) <i>(8) When building renovations fulfilling the requirements of Article 9 paragraph 1 of this Directive result in a 30% reduction in primary energy demand, the entire building and thus the entire loan for its acquisition, renovation and ownership will be considered compliant with Sections 7 of Annex I and</i>

Databases for Energy Performance of Buildings

9. In order for financial institutions to fulfil their role in financing the Renovation Wave of buildings in Europe, it is imperative that financial institutions are granted access to the energy performance data of buildings necessary to determine EU Taxonomy alignment and the permission to process that data.
10. Indeed, data on the energy performance of buildings are essential for lenders to correctly assess the creditworthiness of a green or energy efficient mortgage or renovation loan and to determine alignment with the building related elements of the EU Taxonomy for sustainable activities. Unfortunately, as a result of different interpretations in the implementation of the GDPR, in some European countries access to EPC databases is prohibited for lenders.
11. To determine Taxonomy compliance, from a data protection perspective:
 - a. the data would need to be present in the relevant EPBD IV national database, i.e. the database would need to be permitted to collect and store that data
 - b. the database would need to be permitted to disclose that data to mortgage lenders in order for mortgage lenders to determine EUT of mortgage loans
 - c. the mortgage lender would need to be permitted to collect that data
 - d. the mortgage lender would need to be permitted to process that data to determine EU Taxonomy compliance.
12. It is also vital that financial institutions have access to data beyond that which is included in EPCs. Indeed, with regard to the EU Taxonomy's Technical Screening Criteria (for mitigation and adaptation), as well as the Do No Significant Harm Criteria, the EPC is insufficient to determine the building related elements of EU Taxonomy alignment. The data required to determine and demonstrate alignment is relevant for new and existing portfolios of mortgage lenders (e.g. for green mortgage loan, green bond and reporting purposes). It is relevant for renovation loans and for new construction loans.
13. With these considerations in mind, the EMF-ECBC proposes revisions to the following articles of the European Commission's proposal in the following manner. It should be noted that these amendments safeguard the privacy interests of mortgage borrowers and the GDPR continues to apply in full:

- **Recital 46**

Text proposed by the European Commission	EMF-ECBC's Amendment
Recital 46 (46) Financial mechanisms, incentives and the mobilisation of financial institutions for energy renovations in buildings should play a central role in national building renovation plans and be actively promoted by Member States. Such measures should include encouraging energy efficient mortgages for certified energy efficient building renovations,	Recital 46 (46) Financial mechanisms, incentives and the mobilisation of financial institutions for energy renovations in buildings should play a central role in national building renovation plans and be actively promoted by Member States. Such measures should include encouraging energy efficient mortgages for certified energy efficient building renovations,

promoting investments for public authorities in an energy efficient building stock, for example by public-private partnerships or energy performance contracts or reducing the perceived risk of the investments.

promoting investments for public authorities in an energy efficient building stock, for example by public-private partnerships or energy performance contracts or reducing the perceived risk of the investments. ***Such measures should also enable financial institutions to collect and to process the energy performance data in respect of the buildings that these financial institutions finance necessary to determine alignment with the building related elements of the EU taxonomy for sustainable activities.***

- **Article 14, paragraph 1**

Text proposed by the European Commission	EMF-ECBC's Amendment
Article 14, paragraph 1 1. Member States shall ensure that the building owners, tenants <i>and</i> managers can have direct access to their building systems' data. At their request, the access or data shall be made available to a third party. Member States shall facilitate the full interoperability of services and of data exchange within the Union in accordance with paragraph 6.	Article 14, paragraph 1 1. Member States shall ensure that the building owners, tenants, managers <i>and the controllers of article 19 national databases for energy performance of buildings</i> can have direct access to their building systems' data. At their request, the access or data shall be made available to a third party. Member States shall facilitate the full interoperability of services and of data exchange within the Union in accordance with paragraph 6.

- **Article 16 – Paragraph 3**

Text proposed by the European Commission	EMF-ECBC's Amendment
Article 16 – Paragraph 3 3. Member States shall ensure the quality, reliability and affordability of energy performance certificates. They shall ensure that energy performance certificates are issued by independent experts <i>following an on-site visit.</i>	Article 16 – Paragraph 3 3. Member States shall ensure the quality, reliability and affordability of energy performance certificates. They shall ensure that energy performance certificates are issued <i>digitally in a clear, consistent and easily legible manner and in a machine-readable format that enables their comparability by relevant stakeholders across the European Union.</i> Energy performance certificates shall be issued by independent experts.

- **Article 19, paragraph 1**

Text proposed by the European Commission	EMF-ECBC's Amendment
Article 19 – Paragraph 1 1. Each Member State shall set up a national database for energy performance of buildings which allows data to be gathered on the energy performance of the buildings and on the overall energy performance of the national building stock. The database shall allow data to be gathered related to energy performance certificates, inspections, the building renovation passport, the smart readiness indicator and the calculated or metered energy consumption of the buildings covered.	Article 19 – Paragraph 1 <i>1. Each Member State shall set up a national database for energy performance of buildings which allows data to be gathered on the energy performance of the buildings and on the overall energy performance of the national building stock.</i> <i>Each Member State shall provide that the database shall allow data to be gathered from all relevant sources related to energy performance certificates, building systems, inspections, the building renovation passport, the smart readiness indicator and the calculated or metered energy consumption of the buildings covered.</i>

- **Article 19, paragraph 2**

Text proposed by the European Commission	EMF-ECBC's Amendment
Article 19 – Paragraph 2 2. The database shall be publicly accessible, in compliance with Union and national data protection rules. Member States shall ensure access to the full energy performance certificate for building owners, tenants and managers, and to financial institutions as regards the buildings in their investment portfolio. For buildings offered for rent or sale, Member States shall ensure access to the full energy performance certificate for prospective tenants or buyers.	Article 19 – Paragraph 2 <i>2. The database shall be publicly accessible, taking into account Union and national data protection rules. Member States shall ensure access to the full energy performance certificate for building owners, tenants, managers, and to financial institutions, as well as, for the latter, access to and permission to process data required in connection with Sections 7 of Annex I and Annex II of Commission Delegated Regulation (EU) No 2021/2139 as regards the buildings in their investment portfolios or to be financed to determine alignment with the building related elements of the EU taxonomy. For buildings offered for rent or sale, Member States shall ensure access to the full energy performance certificate for prospective tenants or buyers.</i>