



# Eerste Kamer der Staten-Generaal

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*betreft* Subsidiarity check proposal COM(2008)780

Dear Mrs. Wallström,

The Senate of the States General of the Kingdom of the Netherlands has checked the proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast) (COM(2008)780) by reference to the principles of subsidiarity and proportionality. In doing so it has applied Article 5 of the EC Treaty and Protocol 30 to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

The Senate of the States General has concluded in this connection that the legal basis chosen for the measures is adequate and that the proposal meets the subsidiarity requirement of the EC Treaty. European action and coordination are necessary in the field of climate change, and the objective of the directive, namely to improve the energy performance of the built environment, is in keeping with such measures.

In the opinion of the Senate of the States General, the proportionality of the proposed measures has not yet been established. The proposal for a directive contains a number of obligations whose direct effect in relation to the objectives is, on the basis of the information currently available, unclear, but which are bound to lead to an increase in administrative expenditure.

Although the European Commission has taken account in the Impact Assessment of 13 November 2008 of previous observations on this subject by the Impact Assessment Board (SEC(2008)2864, p. 17), the Senate of the States General agrees with the Dutch government that there is a need for further substantiation and explanation of the effectiveness of the proposed measures and the accompanying administrative and operational expenditure. Only then will it be clear whether the proposed compulsory measures in the proposal for a directive are preferable to other – non-compulsory – instruments which the Member States could themselves utilise to attain the objectives of the proposal for a directive.

The Senate of the States General looks forward with interest to receiving the requested information from the European Commission.

Yours sincerely,

Mrs Yvonne E.M.A. Timmerman-Buck  
President of the Senate of the States General

An identical letter has been sent to the presidents of the Council of the European Union and the European Parliament and to the Dutch government and the secretariat of COSAC.