
TRIS NOTIFICATION 2016/624/A

Dear Sir/Madam,

On behalf of UPEI, representing Europe's independent fuel suppliers, I would like to submit for your urgent consideration our concerns with regards to TRIS notification 2016/624/A concerning an amendment to the Lower Austrian Building Code 2014, notably paragraph 60 which introduces the following provision:

“(1a) The placement and installation of heating boilers of central heating systems for liquid fossil or for solid fuels is prohibited in new buildings for which the building permit has been granted after 31 December 2018.”

This provision constitutes a direct ban on the installation in new buildings of heating systems (boilers) using liquid and solid fossil fuels from 2019. The justification for this measure refers to meeting the “requirements of the Climate Protection Act, the Climate and Energy Programme of Lower Austria and the climate protection goals of the EU”. The authorities argue that heating oil, coal and coke are currently among those fuels which are damaging to the environment, with the highest CO2 emissions.

UPEI believes that this measure is in conflict with a number of principles upheld by the European Union, notably:

1. The principle of the free movement of goods within the EU (article 34 and 36 of the Treaty on the Functioning of the European Union).

Whilst article 36 allows for certain exemptions to this principle, the explanation of the authorities in this case cannot be deemed sufficient to justify such a measure.

2. The principle of proportionality¹ requires that “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”.

This principle is one of the cornerstones of the EU legal system and has been the object of a wide corpus of decisions by the Court of Justice of the EU and case law which requires that when there is a choice between several appropriate measures, recourse must be had to the least onerous.

¹ article 5(4) to the Treaty on the European Union

Alternative measures can be identified in pursuit of the objectives identified by Lower Austria which would be less disruptive and discriminatory. In particular, oil and gas, both fossil fuels, should be allowed to compete on an equal basis in terms of energy efficiency and greenhouse gas emissions, encouraging innovation in a sector where there is no one-size fits all solution.

3. The principle of technology neutrality which is repeatedly confirmed in the European Union's climate and energy policy

The proposed measure discriminates against technologies based on liquid and solid fossil fuels without substantiation and without appreciation for the innovation that has already taken place and is ongoing. This innovation has resulted in significant efficiency gains and increasing integration of new fuel types (bio) as well as renewable energies. The principle of technology neutrality permits all technologies to compete on an equal basis towards a given objective. This is an essential principle to uphold in order to allow the further evolution of liquid fuel based heating technologies, in order to offer solutions for new buildings but, more importantly, existing customers – especially those who currently have no alternative to oil heating.

It does not recognise the sector's success in contributing significant emission reductions through improved technology and significant efficiency gains and its ongoing efforts to achieve even better results through continued research and innovation. New alternative fuels (bioliquids and synthetic fuels based on renewable electricity) are being increasingly integrated into and compatible with technology that was traditionally used only for liquid fossil fuels. These are significant developments in the ongoing transition to a low-carbon economy.

Approximately 17% of households in the EU are today reliant on oil heating. This is a significant number. In many cases, these households have no alternative to oil heating due to their remote locations and lack of grid connections. Other consumers opt for oil heating because of the competitive advantage and independence that this brings. The challenge that the oil heating sector is engaged in is to ensure that this technology is the most efficient possible in terms of fuel use and emissions. The sector is committed to offering solutions which meet the EU's low carbon objectives to its existing customers as well as developing technologies which can compete on the market for new buildings.

Discriminatory measures such as the one proposed by Lower Austria will be highly detrimental to any further innovation and investment, including the integration of renewables which is already a reality, be it in its infancy.

UPEI believes that the policy objectives which Lower Austria is addressing through this measure can be achieved through less disruptive and discriminatory measures and urgently call on the European Commission to address these concerns in the context of the above mentioned TRIS notification.

I take this opportunity to refer to the UPEI brochure "[Oil Heating - An efficient option for consumers](#)", which gives an overview of the situation in the EU as well as the advances that have been made in the technology used, which mean that *modern* oil heating technologies have a role to play in reducing Europe's emissions in the sector.

Please be assured of our availability for any clarification or further information which you may need in this context.

Yours sincerely



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UPEI represents European importers and wholesale/retail distributors of refined petroleum products and their alternatives, supplying Europe's customers, independently of the major petroleum producers.

Independent suppliers, covering more than a third of Europe's demand, play a crucial role in an evolving market by bringing competition which is vital to the economy. Their independence enables them to respond rapidly to changes in terms of market structure, products and services, contributing to security of supply on a local, regional and national level.

UPEI was created in 1962 with the aim of ensuring a level playing field for the supply of energy on the European market and safeguarding a competitive approach. The organisation brings together national associations and suppliers across Europe.

Today, **UPEI** also acts as an informed and responsible partner to Europe's decision-makers on the risks and opportunities involved in the transition to a genuine European Energy Union.