

Study on the use of Green Lease Clauses in Europe





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Introduction & recommendations

In the age of global warming people are increasingly turning their attention to the idea that resources should be used carefully and responsibly. This is particularly the case in the real estate sector as the energy consumption of buildings creates greenhouse gases which in turn contribute to global warming. Moreover, the ever-increasing energy prices mean that there is a greater interest in saving energy.

Governments and the European Union are also conscious of the importance of sustainability. As well as signing the Kyoto Protocol obliging all those who signed it inter alia to commit to ensuring the rise in global temperatures stays below 2%, the EU issued directives to pursue the goal of reducing energy consumption in buildings and promoting the use of renewable energy sources. These directives have been transposed into national law by most of the EU Member States (such as Germany, Belgium, Spain and Romania).

In the meantime, many companies have incorporated sustainability into their marketing and image programmes. As part of "Corporate Social Responsibility" firms have developed a growing environmental awareness. Sustainability issues play a key role in the construction of new buildings as well as in the refurbishment and use of existing buildings.

Buildings which are considered to be sustainable are deemed "green buildings" although there is no generally accepted definition of this term. These are buildings, whether under new construction or refurbishment, which have adapted their systems to limit energy and water

consumption, to reduce emissions and the consumption of resources and to use renewable sources of energy.

In this context the focus is shifting more and more towards "green lease" contracts. "Green buildings" on the one hand do not make any sense if the use they are put to cannot be considered "green" at a later point in time while on the other hand they are of significance to prospective tenants because of their vast potential for saving energy and as a proof point for their business' environmental credentials. There is no generally accepted definition of this term either.

As a rule of thumb, lease contracts can qualify as "green lease" contracts if they fulfil stringent and/or mandatory requirements with the aim of improving the energy efficiency of the leased premises. Such green leases typically contain clauses charging operating costs based on consumption via separate metreing, sharing data on energy and water consumption and waste generated by the occupancy of the building on a regular basis or obliging both parties to commit to renewable forms of energy.

Sustainability of a building and the sustained use of the building can be determined by certification. Certification both highlights and promotes the issue of sustainability. The most well-known international certification systems are LEED (USA) and BREEAM (GB) in some countries closely followed by DGNB (GER).

Energy certification plays a role in "green buildings" and "green leases" and provides information on the energy performance of a building, e.g. year of construction, energy consumption, etc.

Recommendations

We have reviewed the legal basis and legal practice in several European countries, summarising them in this study, which led to the following recommendations on how to draft a green lease:

- The green lease should regulate the recording and calculation of operating costs based on consumption (especially heating, refrigeration, electricity, water, etc.); in some countries this has already been prescribed by law.
- The tenant should be obliged by contract to accept the measures undertaken by the landlord (in particular refurbishment) to improve energy efficiency in the building and to promote environmental protection.
- The contract should grant the landlord the right to pass an appropriate amount of the costs of improving energy efficiency and observing environmental principles onto the tenant or to increase the rent by a reasonable amount.
- If a building has been certified as “green”, the tenant should undertake to observe the certification conditions and act accordingly, e.g. only install elements in the building which are made of energy-efficient and eco-friendly materials.
- The parties should agree to act in such a way as to save energy and promote environmental protection (e.g. correct conduct as regards heating or refrigeration, water consumption or recycling waste).
- The landlord should inform the tenant about possible ways to save energy and be environmentally responsible.

We would be pleased to offer you assistance when drafting a green lease.

Austria

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

First of all, please note that in Austria no federal building act exists, rather building laws exist on a provincial basis. In general, all provincial building laws and related regulations set forth that new buildings have to meet certain energy efficiency and heat protection criteria. However, some provincial building laws do have more detailed regulations. For instance, the Styrian building act stipulates that in new buildings with over 1,000 square metres of floor space, alternative systems (i.e. decentralized energy provision systems, solar or thermal systems) need to be implemented as long as such systems are feasible from a technical, ecological and economical perspective.

Further, the provincial building regulations set forth that a permit to construct a new building or to set up overall improvement measures of an existing building is only granted to the applicant (i.e. the constructor), if an energy certificate has been provided to the authority.

Moreover, the provinces provide for certain subsidies linked to energy efficiency measures. In particular, public subsidies are granted both, in order to improve the energy efficiency of an existing building (i.e. replacement of old windows, replacement of heating facility and implementation of alternative systems), and for the construction of new buildings (e.g., in case a building has been constructed by way of a passive-house). In order to be granted a certain subsidy, the constructor is usually bound to strictly defined conditions, such as concrete methods or ways of improving energy efficiency. Please note that each province is entitled to set up different subsidy guidelines.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

It depends. The provision of an energy certificate to the authority is required when applying for a permit in order to build a new building and when applying for a permit in order to set up improvement measures regarding existing buildings. However, most of the specific energy efficiency measures apply to new buildings.

The same applies to subsidies. Based on the purpose, subsidies may affect both, new and existing buildings.

c. Does the market pay any attention to energy certificates?

Although the owners of buildings are obliged to provide the purchaser or tenant with an energy certificate when selling or leasing the building, the private real estate market does not significantly pay attention to the energy certificate. This may be because there are not significant sanctions for not providing an energy certificate.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

Currently the certification of buildings is not very popular and certification systems are not really well known in Austria. The slogan "green building" is usually misused and does not refer to officially acknowledged green building standards, rather it refers to advertisement measures. For instance, only in 2010, the first office building has been granted a LEED-certificate in Austria.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

It depends on the type of the building as well as whether measuring facilities in the rental objects are installed or not.

In case of single or two family houses or buildings with not more than two offices the Austrian Tenancy Act ("Mietrechtsgesetz") is not applicable and the parties, therefore, have to agree in the lease contract upon the operating costs. Usually the lessee has to bear the operating costs.

Also for Apartment houses or office/commercial buildings the Austrian Tenancy Act may be applicable. This act stipulates that the operating costs may be charged to the lessee. If so, each lessee's quota corresponds to its share of the building's total floor space. If measuring facilities for each premises are installed, only the factual consumption is relevant. However, the lessor is not obliged to install such measuring facilities. Nevertheless, it is quite common that measuring facilities for each premises in a building are

installed for measuring electricity and domestic gas consumption. In that case the lessee constitutes a contractual relationship with the power and gas supply companies. The consumption for public areas of the building (e.g. electricity for the corridors etc.) is partitioned to the lessees according to the aforementioned quota.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

It depends again whether the Tenancy Act is applicable or not. This Act is generally applicable if the building consists of more than two self-contained flats or offices. Basically the lessor is not allowed to affect the lessee's right to use.

If the Tenancy Act is not applicable the lessee is obliged to tolerate only necessary maintenance work. Improvements of the energy efficiency of the building or the leased object are not deemed to be necessary in this regard. In this case conflicting interests have to be balanced ("Interessenabwägung"). If the work does not affect the main interests of the Lessee he has to tolerate the improvement but has the right to a reduction in rent for the duration of disturbance (e.g. construction noise or builder's dust).

If the Tenancy Act is applicable the Lessee is obliged to tolerate the work (also in the property) regarding improvement measures (such as improvement of the energy efficiency) on public parts of the building (e.g. the façade, roof or also the windows). As a consequence of the lessee's obligation to tolerate the disturbance he has a right to adequate compensation.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

If the Tenancy Act is not applicable the landlord can only receive reimbursement if this has been provided for in the lease.

If the Tenancy Act is applicable a (partial) reimbursement is only possible in compliance with strict requirements stated in the Tenancy Act: according to sec. 16 of the Tenancy Act a temporary rent increase is allowed when the terms (i.e. the works to be done, the costs, the increase and the duration of the increase) are agreed in advance in the lease contract (or in an amendment).

Beyond that there are several public subsidies for the improvement of energy efficiency of buildings (thermal improvement, solar technology, alternative heating methods like geothermal energy etc.).

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Clauses for reimbursement or rent increase in lease contracts in case of improvements done by a lessor during the lease are not commonly used. This is one of the reasons why lessors do not invest in improvements – because they are not allowed to increase the rent (investor-beneficiary-dilemma – "Investor-Nutzer-Dilemma"). More often it is agreed between the parties that an object or a building has to be renovated or reconstructed before the lessee moves into the leased object and, therefore the lessee (or the lessor) makes a contribution to the renovation costs. Clauses where the lessor contributes to the desired renovation works of the lessee might be:

The Lessor shall grant a subsidy for the improvements of the Lessee for the actual expenses of up to EUR xxx (excl. VAT) for the construction of a [definition of improvements e.g. thermal insulation improvements, new heating, thermic insulated windows, solar technology etc.].

The subsidy shall be paid in advance to the Lessee with regard to an amount of EUR xxx (excl. VAT)

- at the date of making available the Leased Property (see clause x.y.z) – but on the dd.mm.yyyy at the latest – for Lessee improvements, and
- hand over of an invoice entitling the Lessor for input tax deduction.

In case of a delayed delivery, caused exclusively by lessee, Lessor has to pay only such parts of the subsidy, which have already been paid by Lessee to third parties with regard to the construction works at the [building]. After delivery the lessor has to pay the rest as set out above.

The second part in the amount of EUR xxx (excl. VAT) shall be paid by the Lessor immediately after opening the Leased Property to the public on an escrow account of a mutually agreed escrow agent [...].

The final calculation/settlement of the subsidy (first and second part) payment shall be made fourteen days after

- final completion of all improvements,
- proof of the actual expenses incurred by the Lessee, which amount to at least the subsidy amount,
- handover of an invoice entitling the Lessor for input tax deduction, but in any case not earlier than the date at which the first payment of rent falls due for [the Leased Property]. The interest on the escrow amount, after deduction of the costs of the account and the capital gains tax, shall be paid to the Lessor.

VAT in connection with the subsidy shall be settled by way of transfer (Überrechnung). The Lessor shall not be liable for the improvements. Provided the improvements concern the substance of the building the Lessee will transfer warranty and liability claims against third parties to the Lessor.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There are no statutory regulations regarding building materials or energy efficiency etc. According to CEN-Standards and Standards of the Austrian Standards Institute ("Ö-NORMEN") architects, engineers and technicians usually observe the state of the art of science and technology stated in these Standards. However, these Standards are not law and the parties can agree upon older (and cheaper) technical standards.

Nevertheless public subsidies (see point 1.a) and b) above) are usually bound to a concrete method or way of energy efficiency improvement (for example the "THEWOSAN"-restoration of improvement of the thermal insulation of the building).

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

Due to existing public subsidies and rising energy prices the erecting of a "green buildings" or the restoration to that standard is getting more and more attractive. However, much more could be done also in terms of private law, especially in tenant law, in order to mitigate the effects of the investor-beneficiary-dilemma ("Investor-Nutzer-Dilemma").

Belgium

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency

The European Energy Performance of Buildings Directive (EPBD) 2002/91/E of 16 December 2002 has been transposed in Belgium, via 3 energy performance of buildings Acts adopted by the Flemish, Walloon and Brussels Region between 2004 and 2007.

By virtue hereof, a minimum energy performance level ("e-level") which indicates the energy efficiency of a building is imposed. This e-level depends on the type of the building and the underlying transaction. Such e-level is determined by a recognized organism, which must issue an energy performance certificate.

In general, a distinction is made between:

- Construction of new buildings;
- Large renovations of existing buildings;
- Public buildings; and
- Sale or lease of buildings (with a sub distinction between residential and other buildings).

The implementation of the concerned Acts in the 3 regions takes place gradually. Consequently, the status of such implementation is not the same in the three Regions.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

See a) above – the regulations concern both the construction of new buildings and the renovation of large existing buildings.

c. Does the market pay any attention to energy certificates?

Pecuniary and even criminal sanctions can be imposed in the event of non compliance with the applicable EPBD regulations.

Market players are becoming more and more aware the energy performance of buildings and the imposed certification. The regulations set out under 1.a. provide for a phased implementation in the various Regions.

The e-level certificate, which is already imposed for the lease and sale of residential buildings, will also become obligatory for non residential buildings (such as office buildings), and this implies that a considerable number of old and existing buildings will require considerable renovations and investments to meet the imposed e-level. This will most likely influence the market of real estate transactions and create a specific level of competition.

d. How popular is the certification of buildings (LEED, BREEAM, DGNB)?

In recent years it seems that buildings certification has gained popularity, due to inter alia, to rising demand on the market for "green" buildings, and increased awareness and "corporate responsibility" on the level of the investors.

Today, we see that nearly all important real estate projects market their project with green certification. BREEAM certification is mostly applied.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

No legal obligations exist in this respect and parties to a lease contract have the contractual freedom to determine which party bears which cost and how the invoicing/ payment thereof is done.

In practice however, costs for water, electricity and heating will usually be borne as follows:

- if separate consumption meters are available for the let premises, the subscription to these meters is made by the tenant, who pays the costs directly to the various suppliers; and
- if separate meters are not available, a fixed amount is determined as provision for these charges, which is then paid by the tenant to the landlord on a monthly or quarterly basis. At the end of each year, a balance is made between the total costs effectively incurred and the provisions paid. Based on this balance, the provisions may then be adjusted downwards or upwards. In the event of multiple tenants, the participation by the tenant in these costs is determined pro rata the surface let by the tenant in the total building or building site.

For residential leases, the law provides that either party may at any time (independent of what is provided in the lease contract) request before the Justice of the Peace the adjustment of the applied provision for the rental charges or the conversion into the effectively borne costs and charges.

b. Does the landlord have the right to carry out construction related measures in order to improve the energy efficiency of a building (even against the will of the tenant)? Is there a distinction between different types of buildings (e.g. residential, office, commercial etc.)?

According to Article 1724 Belgian Civil Code the tenant must consent to the landlord carrying out urgent repair works when this cannot be delayed until the expiry of the lease contract. This applies even if part of the premises cannot be used by the tenant due to these works. If however the execution of these repair works exceeds 40 days, the lease price is reduced pro rata the duration of these works and the part of the let premises cannot be used by the tenant as a consequence thereof.

In the case of residential leases, Article 1724 provides that, if the execution of such urgent repair works causes the residential building to become inhabitable, the tenant may request the dissolution of the residential lease contract.

Parties are however free to exclude or limit the application of this provision in their lease contract.

For the execution of works which have the intention to increase the energy efficiency of the building, Article 1724 will not apply as in most cases such works will not be considered as “urgent repairs which cannot be delayed until the expiry of the lease”. Consequently, the landlord does not have the right to carry out such works unless this is explicitly provided for in the lease contract.

c. Does the landlord have a right to receive reimbursement of the costs made for the measures under lit. b)? Is there a distinction between different types of buildings (e.g. residential, office, commercial, etc.)?

No, unless specifically provided in the lease contract.

d. If the respective rights mentioned in b) and c) are not provided by statute, but need to be provided in lease contract: does a standard content exist (and what is its content)? Please give examples of typical regulations.

No standard clauses exist, parties have complete contractual freedom.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such obligations exist (and what is its content)? Please give examples of typical regulations.

No legal application. Parties have contractual freedom to provide specific obligations in their lease contract.

3. Allocation of costs; incentives to improve sustainability of buildings or its use

Economical incentives:

- Reduction of the energy costs for the parties with a possible reduction of the rent for the tenant
- Building in a better general state (higher value on the market)
- Compliance with legal requirements

Tax incentives:

By virtue of Article 145.24 of the Belgian Income Tax Code, a tax reduction is granted to the owner, tenant, usufruct holder or emphyteotic lease holder of a residential building, who makes investments for a better rational use of energy:

15% tax reduction

- replacement of boiler
- replacement of water and heating system through solar energy
- installation of photovoltaic panels to transform solar energy in electricity

40% tax reduction

- isolation of the roof
- installation of a double glazing
- energy audit

Bosnia and Herzegovina

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

FBiH: In recent years the Federal Ministry for Physical Planning has introduced a limited number of rulebooks with regards to the energy efficiency (Rulebook on Technical Requirements for Thermal Protection of Buildings and the Rational Use of Energy (the "Rulebook on Technical Requirements") , and the Rulebook on Energy Certification of Buildings ("Rulebook on Energy Certification").

RS: According to the Article 59 Law on Spatial Planning and Building, every building must fulfil safety and technical standards during its construction and use and energy efficiency is prescribed as one of the standards which must be fulfilled.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

FBiH: The technical standards prescribed by the Rulebook on Technical Requirements apply to the construction of new buildings and to the reconstruction of existing buildings. Pursuant to Article 5 of the Rulebook on Energy Certification every new object and every existing object which is a subject to sale or lease must have an energy certificate.

RS: Article 59 Law on Space Planning and Building applies to objects which will be constructed.

c. Does the market pay any attention to energy certificates?

FBiH: The owners of the buildings are obliged to provide an energy certificate to the purchaser or lessee of that particular building or premises. However, implementation of this obligation is still low. According to information obtained from the competent Ministry, they are currently in the process of introducing the relevant parties (real estate agencies, public notaries) to meet these particular obligations.

RS: According to the information from the competent Ministry, the regulations regarding the energy certificate are in the process of being prepared. They are currently

preparing a draft Law on energy efficiency which should be adopted in the following year.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

FBiH: According to our information from the competent energy efficiency improvement agencies the LEED and BREEAM certification standards still have not been introduced in the Bosnian and Herzegovinian real estate market. The aforementioned rulebooks prescribe for other certification standards which are generally in accordance with the EU directives from the particular field (i.e. ISO standards).

RS: Please refer to answer 1.c.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

FBiH/RS: There are two laws which govern the obligations on lease agreements (Law on Obligation Relations and the Law on Lease of Buildings and Premises). The Law on Obligation Relations is a basic law and it applies to the lease of residential premises. The Law on Lease of Business Premises applies to the lease of offices, commercial and business premises. The Law on Lease of Business Buildings and Premises was taken from the previous system and is therefore not very sophisticated, especially in matters regarding energy efficiency. However, pursuant to this law the parties may agree on how operating costs are charged. In the event that the parties have not agreed, the obligation of payment of the operating costs is borne by the tenant.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

FBiH/RS: According to the Law on Lease of Business Buildings and Premises a tenant is obliged to allow the landlord to make reparations on the premises which are necessary. The landlord is obliged to conduct those reparations in time and in a way which will not disturb the tenant and his business activities. Energy efficiency measures are measures which could be considered necessary reparations, therefore the tenant has to allow such works.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

FBiH/RS: If a landlord has carried out energy efficiency measures, it is possible to charge those costs to the tenant through the increase of rent. However, a tenant is not obliged to accept this change of the lease contract unless it has already been agreed (i.e. the parties have agreed that in the case of the improvement of building/premises the landlord has the right to increase the rental fee).

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

FBiH/RS: As we already mentioned the Law on Lease of Business Buildings and Premises is the law that was adopted 30 years ago. Therefore it does not contain any precise provisions regarding energy efficiency. Energy efficiency matters are still in the process of being introduced into Bosnia and Herzegovina's legal system. Therefore the standard for such regulations does not exist. However, as stated above, the parties may contractually agree to establish the right of reimbursement for the improvement of energy efficiency in the particular building or premises.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

FBiH: There is a new law on building materials which was adopted in 2010. As stated above the competent Ministry recently issued the several rulebooks with regards to energy efficiency. However those regulations do not prescribe any obligations on lease contracts, except that every new object and every existing object which is a subject to sale or lease must have an energy certificate.

RS: Please refer to answer 1.c.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

FBiH/RS: The best way to arrange the allocation of costs is to agree upon such costs before the execution of the lease contract. It could be done with an introducing paragraph in the lease contract which will cover the question of allocation of costs and any future changes with regards to these costs.

Bulgaria

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

All developments must be planned, performed and further maintained as per the legislative requirements and the technical specifications for ensuring, among others, the energy efficiency of the construction and heat preservation of buildings (Spatial Development Act 2001).

All buildings (private, state or of municipal ownership) with a total built-up area of more than 1,000 square metres must be certified. The energy efficiency certification of buildings is performed by the Energy Efficiency Act 2008 after an energy efficiency audit under the same Act.

If the examined building does not meet the energy efficiency requirements, the owner(s) of the building must bring the building into compliance with the aforementioned requirements within three years of the date of the acceptance of the results of the energy efficiency examination.

Under the Energy Efficiency Act, the owner of the building must obtain an energy efficiency certificate for the building as of the third year of its "exploitation" (date of operation), and not later than the sixth year. Prior to obtaining such certificate, the energy efficiency of the building is certified by the energy efficiency passport of the building which is part of the building's technical passport.

The energy efficiency certificate of the building is updated upon the performance of any and all activities leading to improvements in the energy efficiency characteristics of the building. The energy efficiency certificate of the building is valid for up to 10 years.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

As mentioned above, all operational buildings with a built-up area of more than 1,000 square metres must be examined under the Energy Efficiency Act.

Exceptions to this rule are provided for in limited cases, for instance:

- buildings and cultural values falling within the scope of the Cultural Heritage Act and the Protected Areas Act;
- places of worship of the legally registered religious denominations in Bulgaria;
- temporary buildings with a planned time of use of two years or less;
- farm buildings of agricultural producers, used for agricultural activity;
- manufacturing buildings;
- residential buildings which are intended to be used as such for less than four months of the year;
- stand-alone buildings with a gross floor area of less than 50 square metres.

c. Does the market pay any attention to energy certificates?

If the lease contract is subject to registration, upon letting of the building or a part of it, the landlord is under an obligation to provide the tenant with a copy of the energy efficiency certificate of the building or with a copy of the building's technical passport. When selling a building it is a legislative requirement that the energy efficiency certificate must be transferred between owners.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

It is not very popular. According to public information there is only one building that has LEED certification. There is no information for buildings certified under BREEAM certification.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

Under the applicable legislation, there is no explicit regulation for the charging of operating costs by the landlord. Such provisions may be included in the lease

contract. Usually, no distinction is made between the different types of buildings.

In general, there are two ways for charging operating costs by the landlord. The first option is for the landlord to transfer all measuring devices and accounts with the operating companies to the tenant and the tenant to pay the operating costs directly to the supply companies.

Alternatively, the landlord and the tenant may agree in the lease contract that the tenant pays a service charge, covering the operating costs. The service charge is usually calculated by the landlord on the basis of the leased area and the current operating costs. The actual amount of the service charge is calculated at the beginning of each year for the previous year and, depending on the real costs, any overpayments are deducted from the next advance payment of the service charge or any underpayments are paid by the tenant.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

Under the applicable legislation, during the lease term the landlord is under an obligation to perform major repairs of the leased premises. The repairs shall not be related to the normal wear and tear of the premises or caused by the tenant wilfully. Also, the landlord must ensure undisturbed use of the leased premises by the tenant during the term. Therefore, any construction measures undertaken by the landlord for the improvement of the energy efficiency of the building which are not considered as major repairs of the building may be performed only with the consent of the tenant.

No distinction is drawn between different types of buildings.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

No such standard exists in Bulgaria.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such standard exists in Bulgaria.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

The applicable spatial development, waste management and other legislation imposes a number of requirements for the construction and operation of buildings. For example, as per the Spatial Development Act, only materials which are in compliance with the technical specifications as determined in the Technical Requirements towards Products Act 1999 may be used in the construction process.

There are no standard regulations when such obligations are regulated by the lease contract.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

No explicit regulations exist in legislation. The parties must agree on this in the lease contract.

Croatia

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

According to Art. 15 of the Spatial Planning and Building Act (Croatian: "Zakono prostornom uređenju i gradnji"; Official Gazette "Narodne Novine" 76/07, 38/09, 55/11 and 90/11) (the "SPB Act") every building needs to fulfil certain energy efficiency requirements and has to be designed, constructed and maintained in a manner that allows the preservation of the required energy efficiency requirements during the term of its use.

The energy efficiency requirements to be met by a building have been determined by means of the By-Laws on Energy Certification of Buildings (Croatian: "Pravilnik o energetska certifikiranju zgrada"; Official Gazette "Narodne Novine" 36/10) (the "By-Laws").

The SPB Act also determines the requirements needed to obtain an energy certificate (Croatian: "certifikat o energetska svojstvima zgrade") prior to obtaining a use permit and prior to the change of ownership or lease of the building.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

According to By-Laws every newly constructed building needs to obtain an energy certificate. The above obligation also refers to existing buildings being sold; rented or obtained on the basis of a leasing (such buildings need to obtain the certificate before the Republic of Croatia becomes a member of the European Union). The By-Laws allow for a number of exceptions (e.g. buildings sold or rented to a spouse or close family members, buildings with surface area of less than 50 square metres, buildings constructed for a two years period of use or less, and buildings of religious significance etc.).

c. Does the market pay any attention to energy certificates?

No, so far not at all.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

According to information received from the Green Building Council of Croatia, not a single building in Croatia has obtained either one of the internationally recognized certificates of energy efficiency, but there are a couple of buildings in the process of obtaining these certificates.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

There is no explicit provision in the Croatian Law providing that the landlord has to charge operating costs. This is usually agreed in the lease contract (along with rent and other matters).

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

The Croatian Obligations Act (Croatian: "Zakon o obveznim odnosima"; Official Gazette "Narodne Novine" 35/05 and 41/08) refers to residential premises, however, does not explicitly mention any repairs concerning energy efficiency. However the SPB Act requires the maintenance of a building in a manner that allows for the preservation of energy efficiency, therefore the following general provision of the Obligations Act may be applied and the landlord is obliged to keep the premises in such state as appropriate for its agreed use and for that purpose the tenant needs to allow repairs. However the landlord is not allowed to make repairs which are not required for the use of the without the consent of the tenant should this obstruct the use of the premises.

In the case of a lease of offices (defined in the Act on Lease and Sale of Office Space (Croatian: "Zakon o zakupu i prodaji poslovnog prostora"; Official Gazette "Narodne Novine" 91/96, 124/97, 174/04 and 38/09)) the lessor has

the right to make repairs for the purpose of lowering energy costs. Three months prior to commencing the repairs, the lessor has to notify the lessee in writing of the repairs and of any change in rent. The lessee is entitled to terminate the lease contract within two months from the day of receiving the notification.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

As stated above, the Obligation Act does not explicitly mention any repairs concerning energy efficiency therefore any reimbursement would have to be contractually agreed.

In the case of offices and commercial spaces if the lessor/landlord has carried out energy efficiency repairs he only has the right to increase the rent and no reimbursement is possible (unless already agreed).

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No standard for such regulations exists.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Art. 14 of the SPB Act provides for only a general rule on the substantial requirements which need to be fulfilled during the planning and construction of a building, which include among other things the saving of energy and thermal protection.

No standard for such regulations exists in Croatia.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

Allocation of costs and incentives to improve sustainability of buildings should be regulated in the underlying lease contract.

Czech Republic

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

Current legislation:

The Czech Republic energy efficiency legal framework is spread across several legal Acts. These give general guidance on the implementing of legislation (Decrees – in Czech vyhlášky) and numerous detailed Czech technical norms (in Czech: normy ČSN). Certain technical norms are legally binding and are therefore mandatory others however are for guidance purposes only; nevertheless they tend to be respected by the industry.

Article 156 of the Construction Code states that the materials used in construction shall be only those which guarantee energy savings and heat insulation. The implementation of the Technical Requirements on Constructions Decree expands the direction given by the Construction Code and states that construction shall be designed and constructed in a way as to minimise energy consumption.

Article 6A of the Energy Management Act implements the Energy Performance of Buildings Directive 2002 (EPBD). This Act sets out the essential requirements of the Energy Performance Certificate. In principle, the owner of the property is obliged to ensure that the energy performance of the building is met. The details are described in several Decrees and Czech technical norms. Once the requirements are met an Energy Performance Certificate is issued. This certificate is mandatory for all new buildings.

Important prospective amendments:

In 2010 the EPBD was amended by the EPBD II, this established ambitious energy saving requirements including the requirement of constructing “almost zero-energy building” by 2020. Amendments to the Energy Management Act, Decrees and Czech technical norms are being prepared to transpose the requirements set out by the EPBD II by summer 2012.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

Regulations applicable under a) affects only new buildings, but only in cases of obtaining the Energy Performance certificate. As of 2009, the certification is obligatory for new and for existing renovated buildings having a total floor area exceeding 1,000m².

c. Does the market pay any attention to energy certificates?

Energy awareness is increasingly growing, nevertheless it is still rather low. There remains a relatively low number of sustainable buildings being constructed, but the market is beginning to see “green” buildings as a possible competitive advantage for the future. Public discussions regarding energy efficiency are becoming more frequent and various industry associations including the Czech Green Building Council have been established, aiming to promote sustainable constructions.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

The certification has become increasingly popular. Recently the first ever office development has achieved LEED Platinum – the highest possible pre-certification, which was also used as a strong marketing tool by the developer. According to the market news the majority of newly prepared projects will be aiming to achieve LEED or BREEAM certification.

As well as LEED and BREEAM the SB Tool CZ certification method has been recently introduced by the Czech experts, having standards adapted to the specific Czech environment and norms.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

A landlord does not have to charge operating costs, but it is usual that it does under the lease contract. Under Czech laws rent and service charges must be separated. In the vast majority of services, the method of charging operating costs (and defining of what is an operating cost) is agreed in the lease contract.

There are small legal differences between the types of buildings (i.e. apartments, commercial premises and other properties), however this does not have a substantial impact on the necessity to state the method of the operating costs charge. In practice, certain residential contracts include use of some services (typically use of water and waste disposal) in the rent, while it is market standard for the tenant in commercial premises to be charged separately for all operating and service costs.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

Generally no, unless an unlikely situation takes place where a building is genuinely endangering safety, health and/or the environment. In such a case the construction office may order the owner to carry-out specific construction measures, which have to observe current construction requirements. In this way the energy efficiency of a building might be improved. Commercial leases usually give a right to the landlord to make improvements, but the works should not hinder the lessees' use of the property.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

No, there is no such legal right for reimbursement. Reimbursement will depend upon the bargaining power of the landlord and tenant as to whether any energy efficiency improvements will be reflected in the increased rent.

d. If the respective rights mentioned in (b) and (c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There are no such regulations. If the landlord carries out energy-saving alterations, we would recommend it to attempt to renegotiate the rent.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There are no other major obligations regarding sustainability other than those outlined above.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

If the landlord wishes to share its efficiency costs with the tenant we would certainly recommend negotiating the details in the lease contract. Unless it has been previously agreed the landlord will not be able to unilaterally share these costs with the tenant.

Property owners can apply for various discretionary subsidies aimed to promote and subsidise energy savings alteration e.g. the Green Savings programme. However, at the moment the eco-subsidies are usually not targeted at commercial (but residential) buildings.

France

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency

The Act of 3 August 2009 ("Grenelle I Act") has set national targets related to environmental policy. In particular, the Grenelle I Act has set an energy consumption reduction target for the building sector, i.e. a reduction by at least 38% between 2012 and 2020.

In accordance with Article 4 of the Grenelle I Act, the Thermal Regulations (the "2012 TR") were adopted in order to limit the consumption of primary energy in new buildings to a maximum of 50 kWhEP/sqm/year, while promoting a material technological and industrial change for all of the construction and related equipment sectors, a satisfactory energy quality level of buildings, regardless of the selected energy system, and a technical and economic balance between the energies used for heating and producing hot water for sanitary purposes.

These national targets were endorsed by the Act of 12 July 2010 (the "Grenelle II Act") which contains a national commitment to the environment.

b. Do the regulations applicable under a) only affect new buildings or do all buildings have to be provided with energy efficiency facilities?

All buildings must comply with a number of energy standards, particularly since the passing of the Grenelle I and II Acts. The 2012 TR shall be applicable to all building permit applications filed with regards to new buildings from the tertiary sector, the public sector and certain residential buildings (effective from November 2011) and with regards to all other types of new buildings (effective from 1 January 2011).

c. Does the market pay any attention to energy certificates?

The market is increasingly attentive to energy consumption and management issues.

An energy performance diagnosis ("EPD") was created and is provided for in Article L.134-3 of the French Construction and Housing Code. It is a requirement that the EPD document must be appended to the sale contract of any properties (since 1 November 2006) and to any lease contract upon its execution or renewal (since 1 July 2007). The EPD is valid for a period of 10 years.

This document is aimed at increasing the value of properties emitting only a small quantity of gases having greenhouse effects. Therefore, the objective is to encourage owners to carry out insulation works and to replace obsolete equipment with new items with greater efficiency (e.g. condensation boiler) or to install renewable energy production equipment (e.g. solar panel, wood burner, etc.).

The EPD document contains the following information: a description of the building's main features and its thermal equipment; an estimate of the annual energy consumption and cost and a classification of the consumption per square metre according to the "energy label" principle (scale from A to G); an indication of the quantity of CO₂ issued because of the said consumption with a classification according to a "climate label" scheme; and recommendations in order to control energy consumption, in particular with respect to the works that might need to be carried out in order to improve the building's energy performance. The reading of the diagnosis is facilitated by a twin label and by a euro-denominated estimate.

Since 1 January 2011 it has been mandatory to display the EPD in advertisements (e.g. in a newspaper, website or in a show window) when selling or renting property.

Non-compliance with the obligations may give rise to criminal sanctions, i.e. the fine applicable to fifth-class offences. However the EPD is not mandatory as regards to the following properties: temporary constructions whose scheduled utilization period is no more than 2 years; self-standing buildings where the gross built area does not exceed 50 square metres; agricultural, crafts or industrial buildings that only require a small quantity of energy for heating, sanitary hot water production or cooling purposes

(the buildings must not be used for residential purposes); and historical buildings and places of worship.

Furthermore, in the case of the rental of properties, the lessor must attach to the lease contract the lead exposure risk report (Articles L.1334-5 and L.1334-7 of the French Public Health Code)and the statement of natural and technological risks (Articles L.125-5, R.125-23 to R.125-27 of the French Code of the Environment). However the obligation to provide a lead exposure risk report applies only to properties used, in whole or in part, for residential purposes and built prior to 1 January 1949.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

The certification of buildings has become increasingly popular and necessary in order to ensure the optimal profitability of new constructions.

In order to seek validation of the ecological nature of the construction or renovation of buildings, project owners may have the projects certified by several approved institutions. There is a certification for each type of building i.e. individual house, collective housing units, and tertiary buildings.

In France, the most popular certifications are as follows:

- the Qualitel certification, which applies to the new housing and grouped (collective and individual) housing sectors, as well as to retirement and student residences;
- the Habitat & Environnement certification, which takes environmental protection into account throughout the housing unit's life cycle. This certification is issued by CERQUAL and applies to new housing projects of grouped collective and individual buildings;
- the Patrimoine Habitat & Environnement certification is reserved for the renovation and rehabilitation of buildings existing for more than ten years;
- the NF individuelle démarche HQE® certification issued by Cequami, which requires a building performance of at least 10% above the regulatory levels or at least 5% above the said standards (in case of reliance on renewable energies);
- the NF Bâtiments tertiaires-Démarche HQE® certification issued by Certivea;

- the NF Logement certification; and
- the Effinergie certification aimed at promoting low-consumption constructions, i.e. either new buildings consuming less than 50 kWh/sqm/year or renovated buildings consuming less than 80 kWh/sqm/year for heating, lighting, ventilation or sanitary hot water production purposes.

2. Issues regarding the use of the building

a. Does there exist an obligation of the landlord to charge operating costs (mainly for electricity, water, heating) following consumption or does that need to be established by the lease contract? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

A landlord is not obliged to charge operating costs (service charges), regardless of the type of building. The landlord and the tenant have to agree upon the service charges in the lease contract.

In the case of a lease of an office, industrial or commercial space they have to agree upon which services the landlord will provide and what price the tenant has to pay. Generally the tenant pays the service charges in advance and each year this amount will be set off with the effective costs.

In case of execution of a residential lease contract governed by the Act of 6 July 1989, only certain expenses, listed in a schedule to the decree of 26 August 1987, may be recovered from the lessee.

In any event, only those expenses expressly referred to may be borne by the lessee, and the clauses related to the service charges are interpreted in favor of the person assuming the obligation, i.e. the lessee.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

Under Article 1723 of the French Civil Code, the lessor may not, during the term of the lease, change the form of the leased premises and may not accordingly carry out any works without the lessee's consent. However, Article 1724 of the French Civil Code provides an exception and enables the lessor to make urgent changes that can not be postponed until the end of the lease contract.

Nevertheless, Articles 1723 and 1724 of the French Civil Code are not mandatory provisions; the parties to the lease contract may expressly depart from the provisions and enable the lessor to carry out works for the improvement of the building's energy performance, without the lessee's express consent.

Furthermore, Article L.125-9 paragraph 2 of the French Code of the Environment states that the lessee shall enable the lessor to access the leased premises, with a view to the completion of the works for the improvement of the building's energy performance. However, no decree has so far been published in order to define the boundaries of the obligation on the lessee.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

If the cost of the works carried out by the lessor were to be borne by the lessee, pursuant to the lease contract, then the lessee must reimburse the cost of the works.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

The cost of the conformance works requested by the administrative authorities must be expressly provided for in the lease contract. If this is not stipulated in the lease contract the cost of the works shall be borne by the lessor.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

From 1 January 2012 it will be necessary to insert an environmental appendix into all lease contracts executed or renewed in respect of premises of more than 2,000 square metres used as offices or retail stores. With regards to current leases, such an appendix shall be mandatory, under the same restrictions, effective from 14 July 2013 (Article L.125-9 of the French Code of the Environment).

Article L.125-9 stipulates that the environmental appendix may provide for obligations applicable to the lessee in order to limit the leased premises' energy consumption. Article L.125-9 refers to an implementing decree that will define the contents of such obligation however this has not yet been published.

3. Allocation of costs-Incentives to improve sustainability of buildings or their use.

The allocation of the costs and works must be provided for specifically in the lease contract.

Germany

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency

The owners of buildings are under a legal obligation to avoid the unnecessary waste of energy with regard to heating and cooling systems. Public authorities also provide financial support for certain measures of energy producing until 2012.

In exceptional cases, owners of new buildings are also under a legal obligation to use some renewable energy. The government agency has the right to control compliance with this obligation.

b. Do the regulations applicable under lit. a) only affect new buildings or do all the buildings have to be refitted?)

Even if the regulations mainly apply to new buildings, there are some obligations concerning existing buildings too. Thus, the owners of existing buildings are under an obligation to save energy in cases of change, further development or construction. They also need to retrofit their buildings subject to certain conditions.

Moreover, the German Federal States have the ability to enact a law concerning the obligation to use renewable energy.

c. Does the market pay any attention to energy certificates?

The energy certificate makes it possible to review the energy consumption of a building, so that the energy certificate could play an important role. This is because energy consumption can have an impact on the market price.

In any case, owners of buildings are under the obligation to provide an energy certificate if the purchaser or tenant demands it.

In 2012 owners of buildings will even have to provide the energy certificate without special request. Furthermore, the new statute will also establish an obligation for owners of public buildings to publish the energy certificate.

d. How popular is the certification of buildings (LEED, BREEAM, DGNB)?

On account of the rising market demand for green buildings and the rising "Corporate Social Responsibility", certifications mainly according to LEED, BREEAM and DGNB are becoming more and more important. This is because they make the "greenness" of buildings visible, which also leads to more prestige.

The most popular certification seems to be the DGNB certification, which is being developed by the German Sustainable Building Council (DGNB) and this is followed by the LEED certification. Similar to the LEED and BREEAM certification, the DGNB certification system does appraise the new building itself as well as the life cycle of the building. This particularly records use by the tenant. Besides that, existing buildings can also be certificated.

2. Issues regarding the use of the building

a. Does is the landlord obliged to charge operating costs (mainly for electricity, water, heating) in line with consumption or does this need to be stipulated in the lease contract? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

In compliance with tenancy laws the landlord of a residential building has the obligation to charge the operating costs according to the tenant's consumption. By contrast, landlords of commercial properties do not have the obligation to do so, except with regard to the heating supply. In this case, the landlord of commercial property also has to calculate the heating cost from 50 to 70% according to consumption, and from 30 to 50% according to the area (i.e. square metres).

b. Does a landlord have the right to perform construction measures to improve the energy-efficiency of a building (also against the will of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

According to tenancy laws the landlord has the right to perform construction measures even against the will of the tenant. In this respect, the tenant has to tolerate every energy-efficient measure. This applies to residential tenancy

as well as to commercial tenancy. But this obligatory tolerance does not apply if the energy-efficiency measure will cause the tenant or his business undue hardship.

c. Does a landlord have the right to receive reimbursement of the costs for the measures under lit. b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

Unlike commercial tenancies, the landlord of a residential tenancy has the right to charge the costs by increasing the rent. Therefore the obligation to bear the cost does not apply to the tenant of a commercial lease.

d. If the respective rights mention in b) and c) do not exist by statute, but need to be stipulated in the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Due to the fact that the commercial landlord has no legal right to charge the tenant for the costs, the landlord has to regulate this by the lease contract. However, there are neither standards nor templates for any such regulations.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management, etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Obligations such as not using polluting building or cleaning materials, encouraging waste separation and the use of renewable energy can be regulated by lease contract as it motivates the lessee to use renewable energy. However, there are no standards for such regulations.

3. Allocation of costs; incentives to improve sustainability of buildings or their use

As set out under 2.c. the landlord of a residential building can allocate the costs caused by improving sustainability to the tenant.

In the case of commercial tenancies allocation can only be arranged with the tenant by mutual agreement and this arrangement applies to the whole term of the lease. The incentives to improve sustainability of a building or its use is based predominately on the fact that additional costs will be minimized, and also the fact, that "green behaviour" is held in high esteem, so it will increase the reputation of both landlord and tenant.

Hungary

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency

Buildings must be designed and constructed in such way to be compatible with the characteristics set out in the legislation with respect to thermal transmittance of doors and windows; the specific heat loss; aggregated energetic parameters; and the risk of overheating during the summer period (Article 3 of the Decree of Minister without portfolio No. 7 of 2006 (7/2006 (V. 24) Tárcanélküli miniszteri rendelet, "Ministerial Decree")

In the case of new buildings where the usable floor space exceeds 1,000 square metres when making the project plans attention must be given to technical, environmental and economic considerations i.e whether it is possible to adopt: a decentralised energy supply systems using renewable energy sources; district heating/cooling systems, or block heating/ cooling systems; and heat pumps (Article 5 of the Ministerial Decree)

In the case of already existing buildings of which the usable floor space exceeds 1,000 square metres, when renovating or modernising compliance with the requirements of the above mentioned Article 3 must be ensured, provided that it is possible after having regard to both technical and economic considerations (Article 6 of the Ministerial Decree).

From 1 January 2012 building owners must hold a valid certificate as to the building's parameters of energy efficiency in the following situations: newly constructed buildings; selling of existing buildings or when leasing them for a lease term exceeding one (1) year (in respect of these actions the requirements are mandatory from 1 January 2012 only); and those state-owned public buildings where the floor space exceeds 1,000 square metres and which are used by public authorities (Article 1 of the Governmental Decree No. 176 of 2008 ("176/2008 (VI.30.) Kormány rendelet, "Governmental Decree").

The provisions of the Governmental Decree are not applicable to the following: buildings where the usable floor space does not exceed 50 square metres; those buildings which are intended to be used for less than four months a year; buildings used for religious purposes; those buildings which are categorised as monuments, as well those which are situated in protected areas; agricultural

buildings; buildings in which the heat gain, due to the applied technology, exceeds 20 W/m³, or during heating season the necessary ventilation is twenty times more; buildings that are used as workshops; and tent systems which are inflated with air and of which the purpose is longer term residency.

b. Do the regulations applicable under a) only effect new buildings or have all the buildings be provided with energy efficiency facilities?

The provisions under the Ministerial Decree mentioned in a) are of general application subject only to the exceptions listed above.

c. Does the market pay any attention to energy certificates?

This is becoming increasingly more important to the market and this will continue once obtaining the certificate becomes mandatory on 1 January 2012. In the absence of the energy certificate the occupancy permit will not be issued and the land registry will not register the transfer of title.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

There are only very few developments in Hungary at the moment due to the economic crisis, however a relatively high proportion of developers seek to obtain LEED or BREEAM qualification.

2. Issues regarding the use of the building

a. Does an obligation of the landlord exist to charge operating costs (mainly for electricity, water, heating) following consumption or does that need to be established by the lease contract? Is there a distinction drawn between different types of buildings (eg. Residential, office, commercial, etc.)?

The tenant must pay rent in the amount and time stated in the lease contract (LXXVIII of 1993 on the regulations of lease and the selling of flats and other premises ("Housing Act"). This is also applied to premises not serving as residential purposes. The Housing Act does not stipulate any obligations on the landlord to charge operating costs following consumption therefore the parties have to agree upon the operating costs in the lease contract.

In the case of a lease of office or commercial space the lease contract usually sets out the list of services the landlord will provide and it is a generally accepted principle that all service costs (including property tax and insurance) of the building are recharged to the tenants proportionately. Generally, the tenant pays the operating costs in advance and in each year the parties make a settlement of the actually incurred costs. Recently big tenants are often able to introduce caps or certain other control mechanisms to the service costs born by them.

In the case of residential premises the operating costs like utilities and minor repairs are in general paid by tenants directly to the service providers. Tenants are obliged to show the landlord the receipt and bills confirming the payments when required by the landlord.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant)? Is there a distinction drawn between different types of buildings (eg. Residential, office, commercial, etc.)?

Under the Housing Act the landlord shall arrange for the maintenance of the building and shall guarantee the working order of the central equipment and shall repair any defects of the equipment serving the common area. Other maintenance and repair works of the building shall be carried out as agreed by the parties. The landlord shall carry out the above works immediately in case of defects which require immediate intervention. The works necessary to avert a threat to life can be performed without advance notice to the other party, but at the same time the other party shall be notified as soon as possible.

In case of renovation measures and failure of the cable system the landlord shall arrange such necessary works in the building. The tenant is obliged to tolerate the works in relation to the maintenance, renovation, restoration, transformation, expansion and modernization of the building and other works for which the landlord is responsible provided that such works do not result in the destruction of building. The landlord is obliged to perform its obligations so that the use of the building, if possible, is not hindered. The tenant shall be notified in advance on the commencement of the work and its expected duration.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (eg. Residential, office, commercial, etc.)?

The Housing Act sets out that the costs arising from the maintenance, renovation and replacement of doors, windows and equipments of the premises shall be borne by the landlord and the tenant in accordance with their individual agreement. In the absence of such agreement the maintenance and renovation costs are to be paid by the tenant while the replacement costs shall be borne by the landlord.

Pursuant to the Housing Act the tenant shall be entitled to claim from the landlord the reimbursement of its costs incurred in connection with urgent works if those have been carried out by the tenant. If the landlord does not perform its obligations in the case of non-urgent works despite the tenant's notice, the tenant shall be entitled to request the court to force the landlord to complete these works or may be entitled to complete the works in the place of the landlord and at the landlord's expense.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There is no specific law or contractual standard which sets forth the rights and obligations in the case of construction measures aimed to improve energy efficiency, it may be stipulated in the lease contract at the parties' discretion. The Housing Act applies to such cases which prescribe the general liabilities and obligations of the parties.

Besides the provisions of the Housing Act described in the above, the landlord and the tenant shall specifically agree as regards the respective rights mentioned in b) and c).

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management, etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such contractual standards or specific rules exist. The parties are free to agree on how to allocate the costs, obligations and responsibilities in connection with sustainability measures.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

Point 2.c) above.

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

The national legal framework regarding energy efficiency of buildings is currently set forth in Legislative Decree no. 192 of 19 August 2005, as subsequently amended and modified (Decree 192/2005). This implemented Directive 2002/91/CE into Italian law.

The provisions of Decree 192/2005 have been further implemented by:

- Presidential Decree no. 59 of 2 April 2009 (DPR 59/2009), setting forth the general criteria, methods of calculation and minimum requirements in relation to energy performance of buildings, heating systems and systems for production of hot water for sanitary purposes ; and
- Ministerial Decree of 26 June 2009, providing guidelines and procedures for the application of energy certification of buildings (the Guidelines).

A third decree, still to be approved, is meant to regulate in detail qualification and independence requirements of certification bodies and professionals. Pending the approval of such decree, those matters continue to be regulated by interim provisions introduced in Decree 192/2005 in 2008 or by regional laws.

Broadly speaking, Italian energy efficiency regulations aims at improving energy performance of building in two ways:

- by requiring compliance with minimum energy efficiency and performance requirements during design and construction. Detailed provisions in that regard were introduced by DPR 59/2009 with regard to insulation, heating systems and hot water production. Additional regulations are still to be issued to set requirements for air conditioning systems and lightning;
- by imposing a requirement to obtain energy efficiency certificates, showing the energy performance of a building or a part thereof (unit, apartment, etc), mainly for new buildings, in case of works on the property or in connection with its disposal.

In addition to the above pieces of legislation, energy efficiency of buildings is also regulated at regional level and most regions have adopted specific laws which may provide for stricter requirements.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

Energy efficiency requirements

Compliance with minimum energy efficiency and energy performance requirements is required for all new buildings (including in case of demolition and reconstruction) as well as for major renovation works of existing buildings.

Part of those requirements would also apply in case of replacement of systems and equipments installed in existing buildings or certain (extra-ordinary) maintenance works.

Except for the above cases, there is currently no general obligation for a property owner to carry out works on an existing building to improve its energy efficiency.

Energy efficiency certificates

According to the Guidelines, energy efficiency certificates (so called Attestati di Certificazione Energetica-ACE) must be obtained in connection with the construction, renovation or disposal of buildings.

In general, with regard to construction or renovation works, ACEs must be obtained in the following cases:

- construction of new buildings;
- demolition and re-construction of existing buildings;
- major renovation works on existing buildings; and
- works on existing buildings which are aimed at improving energy efficiency and for which public subsidies or incentives (including tax allowances) are sought.

ACEs are also required for public buildings (including buildings occupied by public entities) in connection with contracts for management and maintenance of heating or air conditioning systems (contracts entered into or renewed after 1 July 2007). Finally ACEs must be obtained in case of disposal of buildings (or parts thereof: exceptions apply) for a valuable consideration.

The above requirement applies not only to straightforward sales but also to contributions in kind as well as to the creation of rights in rem (excluding mortgages). It should not instead apply to property transactions carried out as share deals.

In the case of disposal of buildings, Decree 192/2005 also requires that specific provisions are included in the relevant contracts confirming that the transferee has received all relevant information and documents regarding the energy efficiency of the property.

With regard to leases, the current provisions of Decree 192/2005 do not require the landlord, when entering into a new lease, to obtain an ACE for the property. However, if an ACE had been (or should have been) already obtained for other reasons (e.g. renovation works, earlier acquisition of the property), the landlord is required to provide to the tenant with the same information and documents regarding energy efficiency of the property that would be required in the case of disposal and a specific provision to that effect must be included in the lease contract.

It should be noted, that further to the national legislation discussed above, that regional laws may impose stricter requirements and, for instance, require, in relation to leases, that ACEs are obtained and delivered to the tenant in any case. Applicable regional laws and regulations should therefore always be considered to ensure full compliance of contracts with all applicable provisions of law.

c. Does the market pay any attention to energy certificates?

Because of the requirements described above, there is a greater awareness of energy efficiency issues, not only amongst developers, investors, professionals and other real estate industry operators but also by the general public. Energy efficiency and the “green building” concept are in fact becoming more and more popular selling points, in particular for new developments.

Awareness of energy performance of properties is likely to grow further as property agents will be required, from 1 January 2012, to include in their adverts information on level of energy efficiency of properties, as resulting from ACEs.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

LEED certification was recently introduced in Italy through the establishment, in 2008, of the Green Building Council Italia, a branch of Green Building Council. According to the

GBC online database, in Italy there are currently 7 certified projects and almost 70 registered projects.

A number of national certificates and certification protocols have also been developed, including in particular ITACA, energy efficiency measurement protocols developed by ITACA, the Italian institute for procurement transparency and environmental compatibility, along with CNR, the National Research Committee and iISBE Italia.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

Although specific provisions regarding costs for utilities are included in lease contracts, this matter is also regulated by statutory provisions of law. In particular, Article 9 of Law no. 392/1978 (“Lease Law”) outlines a list of utilities (including water and electricity supply, heating, air conditioning) whose service charges are to be borne by tenants of any type of property (replacement and extraordinary repair costs would instead be typically borne by landlords).

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

In general, unless specific provisions are included in the lease contract, a landlord is not entitled to carry out works to improve the energy efficiency of a property during the course of the lease, if they interfere with the occupation and use of the property by the tenant, unless they are required to ensure that the property remains suitable for occupation or other urgent reasons (see paragraph c. below). However, the landlord may refuse to renew the lease contract upon expiry of the first term of 4, 6 or 9 years, depending on the type of property, for the purposes of, inter alia, carry out renovation works (which may include measures aimed at improving the energy efficiency of the property).

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

According to Article 23 of Lease Law on extraordinary maintenance and repair, when works are carried out on a property that are of an urgent nature and required to ensure that the property may continue to be used for the intended purpose or to prevent major damages affecting its use or however material repair works are carried out, the landlord is entitled, after the works, to seek a rent increase not exceeding the amount determined by applying the legal interest rate (currently 1.5% p.a.) to the cost of such works.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Both matters are regulated by statutory provisions.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

According to Legislative Decree no. 28 of 3 March 2011 on promotion of energy from renewable sources (Decree 28/2011), implementing in Italy Directive 2009/28/EC, from 31 May 2012 projects for new buildings or major renovation works must provide for use of renewable energy to cover energy needs in relation to heating, electricity and air conditioning (from 20% in 2012 to 50% after 1 January 2017. Regional law may impose stricter requirement and higher percentages).

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

A number of programs have been launched at national or local level to improve energy efficiency of buildings and in general their sustainability.

For instance:

tax incentives are available for works aimed at improving the energy efficiency of buildings. In particular, a tax credit (equal to 55% of costs incurred, spread over 10 years) is currently available for:

- works on the outer structure of existing buildings;
- installation of solar panels for production of hot water for domestic or industrial use;
- replacement of air conditioning systems;
- energy improvement works on whole buildings, provided that the resulting energy performance of the building exceeds certain minimum legal requirements;
- ad hoc premiums, on top of so called feed-in tariffs, are available in case of installation of photovoltaic plants on buildings combined with adoption of systems for a more efficient use of energy (requirements and conditions apply).

The Netherlands

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

Article 13 and 15 Housing Act (in Dutch: Woningwet): the owner of an existing building is obliged to carry out energy efficiency facilities, if the local government considers this necessary. It can even enforce these facilities.

Article 2.15 Activity Decree (in Dutch: Activiteitenbesluit): the operator of an establishment is obliged to take cost-effective energy saving measures.

Section 5.3 Buildings Decree (in Dutch: Bouwbesluit): new buildings require a certain energy performance. Builders have to fulfil this requirement.

b. Do the regulations applicable under a) only affect new buildings or do all the buildings have to be provided with energy efficiency facilities?

- All buildings have to meet certain energy efficiency standards.
- The regulations mentioned in the Housing Act are applicable on existing buildings.
- The regulations mentioned in the Building Decree apply to new buildings.
- The regulations mentioned in the Activity Decree apply to new and existing buildings.

c. Does the market pay any attention to energy certificates?

No, not seriously. Although the owners of buildings are obliged to provide the purchaser or tenant with an energy certificate when selling or leasing the building, this obligation is not enforceable. In the future, on 9 January 2013 at the latest, there will be legal sanctions to enforce the delivery of the energy certificate. One of the sanctions will be that the tenant does not have to pay rent if the energy certificate is not handed over.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

Certification of buildings becomes more and more popular. The Dutch Green Building Council (DGBC), supported by the Building Research Foundation (in Dutch: Stichting Bouw Research) (SBR) has been working on a new real estate certification system since September 2009, BREEAM-NL. This is a Dutch version of the international BREEAM standard, which was originally developed in England. Sustainability is measured not only on the basis of the building itself, but also on the characteristics of the building's environment and its use by the tenant. This integrated approach to sustainability is based on nine main criteria: management, health, energy, transport, water, equipment, waste, land use and ecology and pollution. The BREEAM-NL standard applies exclusively to new constructed buildings. Certification has been possible since April 2010. In April 2011, 1 million square metres of floor area was registered for certification.

Since 8 June 2011 a certification method for existing buildings became available, the BREEAM-IN USE-NL.

2. Issues regarding the use of the building

a. Does there exist an obligation of the landlord to charge operating costs (mainly for electricity, water, heating) following consumption or does that need to be established by the lease contract? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

A landlord is not obliged to charge operating costs (service charges), regardless of the type of building. The landlord and the tenant have to agree upon the service charges in the lease contract.

In the case of a lease of an office or industrial space they have to agree upon which services the landlord will provide and what price the tenant has to pay. Generally the tenant pays the service charges in advance and each year this amount will be set off with the effective costs.

In the case of residential premises the rules regarding the service charges are prescribed by (mandatory) law. According to the law the service charges have to be reasonable. The landlord is obliged to provide a statement of the service charges each year.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

In two situations a landlord has the right to perform construction measures to improve the energy efficiency of a building, even without the cooperation of the tenant. Firstly, where the landlord carries out “urgent repairs” (energy efficiency measures prescribed by the government are “urgent repairs”). Secondly, where the landlord presents a reasonable “renovation” proposal and the tenant or, in the case of a building complex, a majority of the tenants accepts this proposal.

In the case of residential premises a tenant can request the court to force the landlord to take the following energy efficiency measures: thermal isolation of external dividing constructions, thermal isolation of the dividing construction of the crawl space and install a new central heating boiler with 80% output in case the old boiler is at least 10 years old. The court can only refuse the request of the tenant if the tenant is not prepared to pay a rent increase (article 7:243 of the Dutch Civil Code). A tenant of business premises cannot ask the court to enforce these energy efficiency measures. In the case of business premises only the government can enforce these measures (article 7:305 Dutch Civil Code).

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

If the landlord has carried out the energy efficiency measures mentioned under b) it has the possibility to charge the costs by increasing the rent. If a tenant does not accept the rent increase the court or the rent assessment committee (in case of residential premises) can determine the increase.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

In the case of business accommodation other than office space it is only possible to increase the rent in the cases prescribed by law (thermal isolation of external dividing constructions, thermal isolation of the dividing construction with the crawl space and install a new central heating boiler with 80% output in case the old boiler is at least 10 years old) (7:305 Dutch Civil Code).

In the case of residential premises it is only possible to increase the rent in the cases prescribed by law (thermal isolation of external dividing constructions, thermal isolation of the dividing construction with the crawl space and a central heating boiler with 80% output in case the old boiler is at least 10 years old) (7:243 Dutch Civil Code) or in case of a renovation proposal.

In the case of office space it is possible to establish a reimbursement regarding energy efficiency measures in the contract. The standard office accommodation contract of the Council for Real Estate Matters (‘Raad voor Onroerende Zaken’) does not have such regulations.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There is no standard available in the Netherlands.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

It is best to arrange the allocation of costs between landlord and tenant at the start of the lease contract. Change of the lease contract is only possible if both parties agree (except in the case mentioned at 2.c.). Allocation of costs and incentives to improve sustainability of buildings or its use can be regulated in a “green paragraph” which is part of the contract.

Poland

Note: With respect to lease of residential premises we limited our remarks to privately-owned premises. Leases of State-owned premises are regulated differently.

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

A building, together with its associated facilities, must be designed and constructed taking into account its projected time of use in the manner prescribed in applicable provisions of law, including technical building regulations, and in accordance with building expertise and know-how, and so as to ensure that the building meets energy performance requirements and rational consumption of energy (Article 5.1.1.f of the Polish Building Code).

The technical building regulations concerning energy efficiency and thermal isolation are contained in Chapter 10 of the Ordinance by the Minister of Infrastructure dated 12 April 2002.

When a building, apartment or unit designed for separate use in a block is sold, an energy performance certificate must be given by the owner to the prospective buyer. An appropriate energy performance certificate must be made available to any prospective tenant. In both cases the document cannot be issued by the owner of the building, apartment or unit. Certificates for residential premises may be drawn on the basis of the certificate for the building with common heating system or on the assessment of another representative apartment in the same block (Article 5.4-5.5b of the Polish Building Code).

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

Energy efficiency standards apply to new buildings (and must be met during design and construction phase). Changes in energy efficiency requirements usually do not apply to existing buildings.

c. Does the market pay any attention to energy certificates?

The obligation to provide an energy performance certificate when selling or leasing a building or apartment does not attract any sanctions and does not affect the validity of the

sale or lease. The consequences of breaching the law by failing to provide or make available the energy performance certificate is uncertain under current regulations. If an energy performance certificate has been provided upon the sale or lease of a building or premises but contains false information regarding the amount of energy, this constitutes a physical defect under the provisions of the Civil Code in relation to the statutory warranty for faults. The purchaser/tenant would be entitled to rescind the agreement or to claim a price/rent reduction.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

Very few buildings in Poland are certified, though a number of projects are advertised as aiming to obtain LEED or BREEAM certification. Interest in green building certification is certainly growing. Once obtained, certificates are used to attract buyers and tenants.

The Polish Green Building Council has recently signed a memorandum of understanding with BRE to adapt the BREEAM system to the Polish market. The Council is also negotiating with USGBC to adapt the LEED system.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

A landlord is not obliged to charge operating costs, regardless of the type of building. The landlord and the tenant have to agree upon recharging of operating costs in the lease contract. It is possible to agree that the operating costs are paid by the tenant directly to the suppliers. In the case of office and commercial space, operating costs can be part of the service charge, which is usually paid monthly and reconciled once a year against the actual operating costs incurred by the landlord. The tenant is usually charged a share of the operating costs of the building in addition to the operating costs of the leased space.

In the case of residential premises, the landlord must provide a payment specification and justification for every increase of the operating costs.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

To perform improvement works during the lease period the landlord must ensure such right in the lease contract. Works required under mandatory provisions of law (eg. measures to improve the energy efficiency of a building which does not meet statutory standards) do not require the tenant's consent.

The tenant cannot force the landlord to take energy efficiency measures but can terminate the contract if the condition of the building is dangerous to life or does not comply with the lease contract. However, in practice, lease contracts do not oblige the landlord to ensure energy efficiency to a specified level.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

In general, a landlord has the possibility to increase the rent. Rent increases can be used also to receive a reimbursement of the costs for the measures under b). However, in the case of office and commercial space the right to increase the rent is usually excluded in the lease contract. In the case of residential space, a rent increase is possible only if provided for in the lease contract. If a tenant does not accept the rent increase, the lease is terminated or the tenant can dispute the amount of the increase in court.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such standard exists in Poland.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such standard exists in Poland.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

The allocation of costs between a landlord and a tenant should be agreed in the lease contract. Afterwards, it can be changed only if both parties agree. Incentives to improve sustainability of buildings or their use are not a practice in Poland.

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

A building owner is required to obtain an energy performance certificate for the construction, sale or rental of all buildings with the exception of protected monuments, religious buildings, temporary buildings, industrial sites, workshops and non-residential agricultural buildings with low energy demands (Law 372/2005 regarding the energy performance of buildings).

For the renovation of old buildings where the useful area exceeds 1,000 square metres the owner is obliged to take measures to improve, to the extent possible, the energy performance of the building.

An owner must obtain an energy performance certificate for all new buildings and this will be included in the documentation for the reception (i.e. occupancy permit) upon termination of construction works (Methodological Norms regarding energy performance of buildings dated 1 October 2007). The Certificate is valid for 10 years from issuance.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

In the case of old buildings, a certificate should be obtained, but only for the purpose of sale, rental or renovation of a building in the case mentioned in a) above.

New buildings (with the exceptions mentioned at item a) above must have an energy performance certificate. Obtaining a certificate has been compulsory since 1 January 2007 for all buildings, except for the sale/rental of apartments occupied by a single family in a block of flats for which the regulations became applicable from 1 January 2011.

c. Does the market pay any attention to energy certificates?

Law 372/2005 was adopted on 19 December 2005 in order to implement EC Directive 2002/91/CE and was scheduled to enter into force on 1 January 2007.

Initially, motivated by the shortage of authorised auditors who could issue such certificates, the entry into force of some of the provisions (i.e. the mandatory obligation to obtain a certificate for the purpose of the sale or renting of sale/rental of apartments occupied by a single family in a block of flats) was postponed until 1 January 2010 and then until 1 January 2011.

Due to divergent interests in the market, it has long been disputed as to whether the certificate was mandatory. With this in mind, the National Union of the Romanian Public Notaries issued decision no. 335/2010 with the purpose to create a single practice. When public notaries are called to authenticate the agreements for sale/rental transactions they must proceed with the authentication of the transaction documents only after the seller has declared that he provided the certificate to the purchaser, who will in turn confirm receipt. If the certificate has not been transferred, the public notary may only authenticate the transaction documents if after explaining to the parties the provisions of Law 372/2005, the parties then state that they acknowledge the obligation of the owner to provide such a certificate and that the purchaser/ lessee understands and agrees to conclude the transaction bearing the risk and undertaking any possible consequences.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

The certification of buildings is becoming increasingly popular in Romania. BREEAM Accreditation Services has started to gain the attention of investors. Some buildings have received LEED/ BREEAM accreditation since 2009.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

In the case of residential buildings rent for the flats should cover: the administration; maintenance and repair costs; taxes on buildings and land; and the recovery of investment and a profit as negotiated by the parties (Article 31 of Law 114/1996 regarding flats). Nevertheless, the parties may also agree within the lease contract that the tenant shall pay separately from the rent all costs related to the use of the premises.

In the case of the lease of office, commercial or industrial space the parties have to agree upon the services that the landlord will provide and the costs that the tenant will pay. Generally, the tenant pays the service charges in advance and each year this amount will be settled against the actual incurred costs. Utilities are usually paid separately based on the exact consumption of the tenant; upon receipt of the invoice from the utility provider the landlord will recharge the tenant on a non-profit basis.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

In the case of residential premises the owner has the obligation to consolidate and modernise the building, perform energy rehabilitation and enhance the energy efficiency of the building (Article 16 of Law 230/2007 regarding owners' associations). However, a landlord must take care to ensure that a tenant continues to make use of the leased premises without any hindrance (Article 1420 (3) of the Civil Code). Therefore, (whether in residential or in office, commercial or industrial leases) a landlord may perform the works required to improve the energy efficiency of the building provided that such works do not hinder the use of the leased space by the tenant. Unless the parties expressly agreed in the lease contract, the landlord cannot modify the rent due until the expiration of the contract term following the performance of such improvements.

There are no similar provisions with respect to other types of premises (office, commercial etc.), therefore, it will be a matter of contractual agreement.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

If not previously agreed with the tenant, the landlord of residential premises cannot charge the costs for the measures under (b) by increasing the rent. Upon the expiry of the term of the contract, it can request the current tenant or the new tenant to pay an increased rent to take into consideration the added value following the energy efficiency measures that was performed.

In the case of an office/commercial lease such costs may be included and therefore reimbursed from the service charges based on specific contractual provisions.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such standard exists in Romania however the allocation of costs and incentives to improve sustainability of buildings or its use can be regulated in a "green paragraph" which is part of the contract.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Council Directive 75/442/EEC on waste, Council Directive 91/689/EEC on hazardous waste and Directive 2006/12/CE on waste were transposed into Romanian law through Emergency Ordinance no. 78/2000 approved by Law no. 426/2001. However, EU Directive 2008/98/EC on waste repealed the aforementioned Directives and the Romanian Environmental Ministry published a draft law in April 2011 in response as a means to implement EU Directive 2008/98/EC into Romanian law.

No such standard exists in Romania. However, as a typical regulation, the use and sale of products containing asbestos are forbidden according to Government Decision no. 124/2003 on prevention, reduction and control of asbestos environmental pollution.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

In the case of residential premises, there are a series of programmes meant to improve sustainability of buildings or their use by allocation of different categories of funds for the benefit and use of the owners of such buildings. As such, the costs for the works for the increase of energy performance of the buildings may be either partially or totally reimbursed to the owners by local councils from the budgets of the territorial and administrative units (Article 12 of the Emergency Ordinance no. 18/2009); paid by the owner with the help of a bank loan secured by a the Government's guarantee (Article 8 of the Emergency Ordinance no. 69/2010); or the programme "Green House" (through the Environmental Fund) provides RON 6,000 (apprx. EUR 1,425) for the acquisition of solar panels and RON 8,000 (apprx. EUR 1,895) for heat pumps.

In the case of office/commercial buildings, there are no such programmes. Therefore, the allocation of costs should be established within the lease contract between landlord and tenant in a "green paragraph".

Russia

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

The Energy Efficiency Law encourages energy efficiency in buildings, and imposes obligations on the owner to maintain and increase of energy efficiency.

Articles 13, 31, and 36 of Technical Regulation on the Safety of Buildings Law sets out the requirements for energy efficiency in buildings.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

The above mentioned regulations are applicable to both, existing buildings and buildings under construction. New buildings should be put into operation only provided an appropriate level of the energy efficiency is met. Existing buildings should be improved to conform to energy efficiency requirements within the prescribed period. Certain buildings with specific purposes or characteristics (religious, classified as cultural, individual housing construction, temporary and subsidiary constructions, etc.) are exempt from the energy efficiency requirements.

c. Does the market pay any attention to energy certificates?

Introduced on 1 January 2009, the Energy passport is an obligatory document which is compiled based on an energy examination of the building. The building cannot be put into operation without an Energy passport. There are also legal sanctions for the failure to present an Energy passport. However, since the relevant regulations have been adopted relatively recently, there have been a limited number of new buildings on the market and the period for existing buildings to conform to energy efficiency requirements has not yet expired. Therefore, the Energy passport regulations are not in the main focus for market players at this stage.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

Currently the certification of buildings in Russia is underdeveloped. There are energy efficiency requirements approved by Government Decree which contain the rules for determining the energy efficiency class of residential buildings.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

There is no obligation for the landlord to charge operating costs, regardless of the type of building. The service charges should be fixed in the lease contract.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

According to the Energy Efficiency Law, as a general rule, the owner of the building is obliged to improve the energy efficiency of a building. Thus the landlord (the owner of a building) should perform such measures independently of the will of the tenant. Article 12 of the Energy Efficiency Law provides that the obligation to improve the energy efficiency of a residential building can rest with a managing company.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

As the legislation regarding the energy efficiency was adopted at the end of 2009, there is no established practice relating to the reimbursement of the costs for the above measures. At the same time, the lease contract may

provide for the increase of the rent or additional payments relating to the improvement of the energy efficiency of a building if it is agreed by the parties.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There is no such standard in Russia.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Parties may agree upon the maintenance of the building. If the contract does provide for the maintenance of the building, the landlord has a duty to perform a general overhaul, and the tenant is obliged to carry out current repairs and maintain the building and to keep it in good condition. There is also a law containing requirements of waste management and operation of buildings.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

The best way to allocate costs is to specify it in the lease contract. Residential buildings with a high energy efficiency rating benefit from a 3 year tax exemption.

Serbia

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

Further to the general rules contained in the Law on planning and construction which came into force at the end of 2009 (in Serbian: Zakon o planiranju i izgradnji ("Official Gazette of RS", no. 72/2009, 81/2009, 64/2010, 24/2011)), two new bylaws have recently been enacted:

- Bylaw on energy efficiency of buildings, Official Gazette of RS, no.61/2011, (in Serbian: Pravilnik o energetske efikasnosti zgrada), which will come into force on 30 September 2011 (the "Bylaw on Energy Efficiency"); and
- Bylaw on the conditions, the content and method for issuing certificates on energy performance of buildings, Official Gazette of RS, no.61/2011, (in Serbian: Pravilnik o uslovima, sadrzini i nacinu izdavanja sertifikata o energetskim svojstvima zgrada), which will also come into force on 30 September 2011 (the "Bylaw on Issuing Certificates on Energy Performance").

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

The Bylaw on Energy Efficiency applies both to the new buildings and reconstruction, upgrading, renovation, remodeling, reparation and energy recovery of existing buildings.

However, when it comes to ensuring the efficient use of energy in buildings, different factors are taken into account. These factors include: the lifetime of the building; climate location; position and orientation of the building; its purpose; the conditions of comfort; materials and elements of the building structure and envelope; technical systems and embedded devices; energy sources and cogeneration; and the ability to use renewable energy sources. Therefore old and the new buildings are not expected to be treated in the same way.

Furthermore, the Bylaw on Energy Efficiency excludes certain types of buildings from the scope of its application. Excluded buildings include: buildings that do not require a building permit; buildings that are being built with temporary building permits; buildings that are built based on the building permit for preparatory works, such as

workshops, manufacturing halls, industrial buildings that are not heated or air conditioned; and buildings that are occasionally used during the winter and summer season (less than 25% of the time duration of the winter or summer season).

c. Does the market pay any attention to energy certificates?

The energy certificates have just been officially introduced to this market by enactment of the Bylaw on Issuing Certificates on Energy Performance. Although the market is already familiar with the energy certificate, it is expected that its presence will significantly increase when the Bylaw on Issuing Certificates on Energy Performance comes into force. This is due to the fact that the Bylaw prescribes that all new buildings and buildings that are being reconstructed, upgraded, renovated, remodeled, repaired and energy recovered need to have an energy certificate (the so called 'energy passport'). Again, certain temporary types of buildings are excluded.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

Given that there is a lack of applicable regulatory framework at the moment we could only confirm that the market is to a certain extent aware of the certification of buildings.

According to several sources, it seems that there are currently no buildings in Serbia which possess one of the certificates such as LEED, BREEAM, etc.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

If nothing particular is agreed upon, the operating costs (electricity, water, heating) are borne by the tenant. It is possible to agree that the operating costs are charged by the landlord in advance, i.e. before consumption, in which case the tenant would need to make the advance payment. No distinction in this respect is made between different types of buildings.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

There is still no applicable legal framework in this respect. In general, if carrying out the changes on the building hampers the usage of the building by the tenant, the landlord cannot make such changes without the consent of the tenant. Should carrying out of the changes reduce the volume of the usage of the building, the rent has to be reduced to the same proportion.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

There is still no applicable legal framework in this respect. In general, the landlord is obliged to maintain the building in a proper state, to carry out all necessary repairs in that respect and to bear all costs arising from this. The costs of minor repairs that are caused by the ordinary usage of the building (as well as the costs of the usage itself) are borne by the tenant.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No applicable legal framework exists.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No applicable legal framework exists.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

As to the allocation of costs, if nothing particular is agreed upon, the costs associated to the usage of the building and the costs of minor repairs that are caused by the ordinary usage of the building are borne by the tenant. The landlord on the other hand is obliged to maintain the building in proper state and to bear the costs of all repairs necessary for maintaining the building in the proper state.

With regards to the incentives for improvement of sustainability of building or its use, there is still no applicable legal framework.

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

Act No. 555/2005 Coll. on energy performance of buildings, as amended (the "Act") transposed EU Directive 2002/91EC on Energy Performance of Buildings which sets out the requirements related to energy efficiency of new building and buildings which will be sold or leased by their owners.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

Energy efficiency standards apply to new buildings (if permitting proceedings are initiated after 1 January 2008), buildings which have undergone major renovation and existing buildings which will be subject to sale or lease (after 1 January 2008). Other than the aforementioned the standards are only voluntary. The Act also stipulates several categories of buildings which are excluded from the standards e.g. churches or monuments.

c. Does the market pay any attention to energy certificates?

Energy awareness is growing; nevertheless it is still rather low. There are however legal sanctions under the Act for those failing to provide a valid energy performance certificate.

It is an administrative tort and the Slovak Energy Inspection shall impose a fine between Euro 166 – Euro 996 to an owner of a residential building or non-residential building if it leases an apartment, room or non-residential premises in it and does not hand over the valid energy performance certificate to a new owner on the sale of the building or certified copy of the energy performance certificate to the tenant on the lease of all or part of the building.

It is an offence and a fine of up to €664 may also be imposed on the owner of the building if it does not hand over a valid energy performance certificate to a new owner on the sale of the building or certified copy of the energy performance certificate to the tenant on a lease of all or part of the building.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

There are 16,503 certified buildings in the Slovak Republic (as of 19 August 2011). However, the internationally recognised certifications of buildings, such as LEED, BREEAM or DGNB are only slowly gaining popularity. There is no building with a BREEAM or LEED certification in the Slovak Republic, although a number of projects are advertised as aiming to obtain it. There is one Slovak project which has already gained DGNB's Silver pre-certification.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

Although the right to charge operating costs is not expressly established by any statute the practice is quite common. However the reimbursement of operating costs is usually stipulated in the lease contract and the costs are paid by the tenant.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

In the case of residential premises a landlord has, in general, the right to perform construction measures only with the tenant's consent. However, the tenant may withhold his consent but only if he has serious reasons for doing so. A tenant can not refuse consent if a landlord carries out construction measures upon the requirement of the competent authority of state administration. In this event the tenant shall be liable for damages arising as a result of the violation of this duty, if he continues to refuse consent.

In the case of the non-residential premises a tenant is obliged to enable the landlord to perform necessary repairs. The consent of the tenant is not required where the construction measures are for the purposes of improving energy efficiency.

There are no specific regulations for other types of buildings or situations therefore the requirements will depend on what was agreed in the lease contract.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

In the case of residential premises, unless the lease contract stipulates otherwise, under the Civil Code only small repairs connected to the use and costs connected with usual maintenance shall be covered by the tenant.

In the case of non-residential premises the tenant is obliged to cover the costs connected with usual maintenance (Act No. 116/1990 Coll. on lease and sublease of commercial premises, as amended).

In cases which are not covered by any of the abovementioned regulations the right to receive reimbursement of costs should be stipulated in the lease contract.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such standard exists in the Slovak Republic.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There are several obligations regarding construction of new buildings, e.g. those contained in Act No. 442/2002 Coll on public water supply and sewerage, as amended and Act No. 476/2008 on efficiency in energy. However, none of the obligations need to be imposed in the lease contract.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

The allocation of costs between a landlord and tenant should be agreed in the lease contract. Once initially agreed, it can be changed only if both parties agree otherwise.

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

Pursuant to Article 9 of the Construction Act (Zakon o graditvi objektov, ZGO-1 Official Gazette of the Republic of Slovenia no. 14/2005 et al.) all buildings have to be constructed in such a way that their purpose, inter alia, fulfil technical requirements on energy-saving and heat retention.

Pursuant to Article 48 of the Construction Act it is necessary during project design to consider also measures for health protection, public safety and protection of property, health and safety at work, fire safety, environmental protection and energy efficiency.

Rules on efficient use of energy in buildings (Pravilnik o učinkoviti rabi energije v stavbah, Official Gazette of Republic of Slovenia, no. 47/2009 et al.) stipulates technical requirements for thermal installation, heating, ventilation, cooling, air conditioning, preparation of hot drinking water, lightning, renewable energy systems and methodology for calculating the energy characteristic of buildings.

Pursuant to Article 4 of the Slovenian Energy Act (Energetski zakon, EZ, Official Gazette of the Republic of Slovenia no. 27/2007 et al.) buildings must have an energy performance certificate. The certificate is an official document which includes data on the energy performance of a building, including recommendations for improving energy efficiency.

Pursuant to Article 93a of Energy Act all condominium owners of buildings must provide a measurement of heat consumption for each building. This is important, because in Slovenia there is a very high percentage of condominium ownership.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

Energy performance certificate of building is required for all new buildings, some of already existing public buildings and for other existing buildings when they are sold or given on lease.

Article 93a of Energy Act is applicable to new and old condominium buildings.

The Construction Act is applicable to new buildings and, in the case of renovation and other interventions which require a building permit, and to already existing buildings.

The rules on efficient use of energy in buildings are applicable to all new buildings and some buildings under the reconstruction. The rules are not applicable to buildings such as tanks, agricultural, storage, religious, cemetery, industrial buildings, etc.

c. Does the market pay any attention to energy certificates?

The issue of energy certificate is not yet carried out in practice due to lack of qualified personnel. It is currently foreseen that the first qualified experts start their work in November-December 2011, with the first certificates being delivered about 3 months later. However, impending national elections might cause this to be further delayed.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

Certification of buildings is not carried out yet however it is envisaged in the near future.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

There is no explicit provision providing that the landlord has to charge operating costs. This is usually agreed in the lease contract (along with rent and other matters). In the case of residential premises, the tenant is normally obliged to pay operating costs in addition either to the landlord or directly to the service provider. The landlord and the tenant have to determine the payment method (including operating costs in rent or paid in addition to rent). Agreement on cost-sharing is one of the essential components of the lease

contract.

In the case of office buildings and business premises, the tenant has to pay rent and cost for the use of common areas and common services, if the lease contract does not state otherwise. Usually the parties to the contract determine the costs that are not included in the rent and the method of payment.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

In the case of residential premises, the owner can carry out work which will improve the energy efficiency of a building, unless this might provide the tenant or his family overload, which is caused due to the extent and duration of works, consequences of work, increased costs of rent and the previous tenant's own investment in improving housing exceeds the reasonable benefit of the owner and any other owners and tenants in the building.

In the case of office buildings and business premises, during the lease term the landlord should not make changes without the consent of tenant if this would prevent its use.

The landlord has a right to perform construction measures to improve the energy efficiency of a building if this is agreed in the lease contract.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

If the landlord has performed construction measures mention under b) he is not entitled to charge the costs and is therefore not entitled to increase the rent. Any reimbursement would have to be contractually agreed. This applies to all types of buildings.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

The rights mentioned in b. and c. need to be established by the lease contract. No standard for such regulations exists.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Technical requirements on mechanical resistance and stability have to be fulfilled during construction and planning.

No standard for such regulations exists.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

The best way to provide allocation of costs between landlord and tenant is to arrange this at the start of the lease contract. Any changes in the lease contract have to be agreed between the parties and must be annexed to the lease contract.

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

The Energy Performance of Building Directive ("EPBD") was transposed in Spain by means of three royal decrees:

- Royal Decree approving the Technical Building Code ("CTE"), approved by the Council of Ministers on 17 March 2006;
- Royal Decree on the Basic Procedure for Energy Performance Certification of new buildings, approved by the Council of Ministers on 17 January 2007. The regulation for existing buildings is pending approval as explained below; and
- Royal Decree approving the review of the current Regulations for thermal installations in Buildings ("RITE"), which was approved by the Council of Ministers on 20 July 2007.

A fourth decree will be further added to the above, to legislate on the energy certification of existing buildings, and which will complete the transposition of the EPBD to the Spanish legal system. It is expected to be approved during 2011. Nevertheless, according to the current legislation, existing buildings must comply with the same minimum requirements as new ones, i.e. when building rehabilitation, enlargement or renovation is carried out on a building with a useful area in excess of 1,000 square metres.

The format of the energy performance certificate for new buildings is published in Royal Decree 47/2007. It displays the annual primary consumption of energy of the building and, apart from the energy rating achieved, its CO₂ global emissions.

The energy rating scale in Spain ranges from A (very high performance, involving a high contribution of renewable energies in the building consumption) to G (which represents low performance).

b. Do the regulations applicable under a) only affect new buildings or do all the buildings have to be provided with energy efficiency facilities?

As explained above, the current regulation affects new buildings and certain building rehabilitation, enlargement or renovation of existing buildings. Nevertheless, a decree will be further approved to legislate on the energy

certification of existing buildings. It is expected to be approved during 2011.

c. Does the market pay any attention to energy certificates?

No, not seriously.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

The certification of buildings systems LEED, BREEAM, etc. are not popular in Spain.

2. Issues regarding the use of the building

a. Does there exist an obligation of the landlord to charge operating costs (mainly for electricity, water, heating) following consumption or does that need to be established by the lease contract? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

According to Spanish Law 29/1994 on Leased Property, in the case of a residential lease, there is an obligation of the lessee to assume electricity, water and heating costs as established by the metre. In the event of a lease for a purpose other than a residential building (offices, commercial premises, etc.), this must be determined by the lease contract. Nevertheless, it is commonplace for the tenant to pay for electricity, water, etc. according to consumption.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

In the case of residential leases according to Spanish legislation, the landlord has the right to perform construction measures to improve the energy efficiency (including when this is against the intention of the tenant) which cannot reasonably be postponed until the termination of the lease contract. The landlord must inform the tenant about these improvement measures to be carried out, and the latter has the right to terminate the lease contract if the measures substantially affect the

dwelling. A tenant who endures the works will have the right to a reduction of the rent proportionally to the part of the residential building affected by the works.

In the case of leases for a different purpose from that of a residential building (offices, commercial premises, etc.) according to Spanish legislation, the rules for residential leases shall be applicable (as explained above) unless otherwise established in the lease contract. Therefore, the parties are entitled to establish in the lease contract that the landlord cannot carry out any improvement measures, however in our experience, this is not common and the landlord has the right to carry out improvement works such as energy efficiency works.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

In the case of residential leases according to Spanish Law 29/1994 on Leased Property, the landlord has the right, unless otherwise agreed by the parties in the lease contract, to raise the rent with certain limits.

In the case of leases for a different purpose from that of a residential building (offices, commercial premises, etc.) according to Spanish Law 29/1994 on Leased Property, the rules for residential leases shall be applicable unless otherwise established in the contract.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

As explained above, these rights do exist.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No such standard exists in Spain.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

Apart from the aforementioned, we consider that it is advisable that allocation of costs and incentives to improve sustainability of buildings or its use be regulated in an additional clause which is part of the contract.

Switzerland

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

The Swiss Federal Energy Act (“Energiegesetz”) states that the Cantons (i.e. Federal States) are in charge of enacting specific legislation regarding, inter alia, the maximum allowed percentage of non-renewable energies for coverage of heating and warm water, provisions regarding new installations and replacement of stationary electric resistance heating, target agreements with major energy consumers, and consumption-based heating and hot water billing for new buildings and for “substantial renovations” of existing buildings.

According to article 11a of the Swiss Federal Energy Ordinance (“Energieverordnung”) “Substantial renovations” also include total renovations of the heating and hot water system, as well as, under certain circumstances, energetic renovations if they affect over 75 percent of the building’s shell.

The different cantonal energy statutes provide for different provisions regarding building requirements in terms of energy efficiency. However, often new buildings of a certain size are required to install metres for the measurement of individual usage of heating and hot water. Some Cantons also provide for a maximum allowed percentage of non-renewable energy for heating and hot water. A unification process of the cantonal energy statutes is also underway and should be completed by the end of 2011 (see www.greenbuilding.ch). This unification process will bring stricter rules in terms of energy efficiency. The long-term objective of the increasingly stricter regulations regarding energy efficiency is the zero-energy-house (“Nullenergiehaus”) – a house that can provide its own energy for heating and hot water and is thus not dependent on external energy – as a Swiss standard.

b. Do the regulations applicable under a) only affect new buildings or do all the buildings have to be provided with energy efficiency facilities?

As indicated above, old and new buildings are generally treated differently (and also differently within the different Cantons). While new buildings tend to have to adhere to more economic and ecological standards from the beginning, old buildings are mostly affected by the stricter requirements only when being renovated (e.g. energetic renovations or larger structural changes).

c. Does the market pay any attention to energy certificates?

Yes, corporate actors do consider energy certificates more and more. In a residential context, the urban regions tend to pay more attention to them than rural areas. The official cantonal energy certificate (“Gebäudeausweis der Kantone”-GEAK®) is only mandatory if the cantonal provisions provide for it to be mandatory.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

In Switzerland, the most popular energy certificate is Minergie® (including its sub-categories Minergie, Minergie A, Minergie P, Minergie-Eco, Minergie-P-Eco, and Minergie-A-ECO) with approximately 22,000 certified buildings in Switzerland (see www.minergie.ch). LEED certified buildings are also present in Switzerland. However, only two buildings have been certified as yet; two are in the process of being certified. LEED certification mainly tends to be asked for by international tenants. BREEAM does not seem to be present on the Swiss market and the German Certificate DGNB, thus far, has only one certified building in Switzerland.

2. Issues regarding the use of the building

a. Does there exist an obligation of the landlord to charge operating costs (mainly for electricity, water, heating) following consumption or does that need to be established by the lease contract? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

Ancillary costs must only be paid if the lessee specifically agreed to this with the lessor (article 257a Swiss Code of Obligations, the “CO”) and they must be separately disclosed. No distinction is drawn between residential and commercial buildings in this regard. Swiss law does not dictate a special method of how these costs are to be distributed amongst the tenants. However, only the actual expenditures by the lessor for performances which are connected with the use the building are considered ancillary costs. Ancillary costs may also be charged in form of a flat rate.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

No distinction is made between different types of buildings in this context. The landlord has the right to such construction measures. However, according to article 260 CO, the lessor may renovate or modify the object only if the work may reasonably be imposed upon the lessee and if notice of termination of the rental relationship has not been given.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

No distinction is made between different types of buildings in this context. The landlord may increase the charged rent after value-enhancing investments. Energetic improvements are considered value-enhancing investments according to article 14 of the Swiss Federal Ordinance regarding the rent and lease of residential and commercial space (“Verordnung über die Miete und Pacht von Wohn- und Geschäftsräumen”).

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Not applicable, statutory regulation exists in Switzerland (see above b) and c)).

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Some cantonal energy ordinances refer to being “state of the art” (“Stand der Technik”) when setting building measures. Often, “state of the art” is then specified to include certain standards of the Swiss Society of Engineers

and Architects (SIA) such as SIA standard 380/1 regarding thermal energy in building construction (“Thermische Energie im Hochbau”). No specific standards exist for contractual obligations. However, corporate or private individuals may wish to set out specific obligations regarding energy efficient and sustainable buildings. The obligation to build according to the standards of such contractual obligations may be combined with the requirement to also adhere to building standards such as Minergie or LEED. More and more, especially in commercial lease contracts, the parties agree to adhere to certain standards, i.e. the landlord commits to build according to a specific standard and the tenant agrees to comply with such standards in connection with the tenant’s fit-out.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

There are possibilities to profit from cantonal incentive programmes in connection with building according to certain certified ecological building standards. Further, energetic improvements are tax deductible on federal and -depending on the Canton – fully or at least partially deductible on the cantonal level.

Ukraine

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

Despite the growing interest and capacity of Ukraine in carrying out the energy efficiency measures (in particular, according to the Tax Code of Ukraine 50% of profit received from sale of energy efficient projects is tax-exempt), there are very few requirements under public building law regarding energy efficiency.

The Energy Conservation Law contains general provisions on energy conservation standards, energy consumption, and economic incentives for energy saving as well as provides for financial liability for energy wasting. However, the Energy Conservation Law has declaratory nature since incorporation of general provisions leading to further implementation in the statutory and delegated legislation by relevant government agencies and local authorities is required. In many cases there has been no development of supporting regulations and some provisions of the Energy Conservation Law still have limited application.

According to Article 31 of the Town Planning Law the design and project documentation in respect to the buildings of certain degree of complexity should be subject to comprehensive state examination, which includes inter alia energy control examination.

Furthermore, construction of buildings has to meet certain State Construction Norms (in Ukrainian "DBN") governing energy efficiency measures, in particular DBN B.2.6-31:2006 "Buildings structure. Thermal isolation of the buildings" (the "DBN B.2.6-31:2006").

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

The regulations mentioned in Town Planning Law and DBN B.2.6-31:2006 apply to construction of the new buildings. There are no energy efficiency requirements in respect to the existing buildings.

c. Does the market pay any attention to energy certificates?

No, not seriously. There are no requirements with regard to the obligatory energy certification of the buildings in

Ukraine. However, some of the municipal and local authorities use the system of energy certification supported by the European voluntary energy certification system "Display", which was elaborated in 2003 by the experts representing 18 European countries and with financial support of the European Commission.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

The certification of buildings according to LEED, BREEAM and other standards is not popular in Ukraine. According to the information provided by the Public LEED Project Directory there are only two real estate objects (business center in Kyiv and residential complex in Mykolayiv) certified under LEED standard in Ukraine.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

A landlord is not obligated to charge operating costs from the tenant, irrespective of the type of the building. The parties of a lease contract are free to agree on the payment of operating costs. Therefore, usually the obligation of the tenant to pay operating costs is provided in the lease contract.

The operating costs are usually charged in Ukraine in accordance with the invoices issued to the tenant by the landlord. The payable amount is determined pursuant to the metres readings installed in the building or based on the invoices issued monthly by local municipal exploitation organisations (where no metres readings are installed in the building). The consumption of water, gas, heating and electricity is calculated by such organisations pro rata to the total amount of services consumed by the companies and individuals in the district.

It may also be provided in the lease contract that the tenant pays the operational costs directly to the respective service providers on the basis of the mentioned metres readings or invoices from the local municipal exploitation organisations.

Generally the operating costs are paid monthly. However, advance payment with subsequent set off is also often practicable.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

The Ukrainian law does not provide clear regulation to this matter. A landlord does not have statutory right to perform construction measures to improve the energy efficiency of the building despite the tenant's intent.

According to Article 776 of the Civil Code of Ukraine the landlord is responsible for conducting of the capital repair of the building unless otherwise is provided in the lease contract. The capital repair should be carried out within the term established by the lease contract, except for urgent cases, when capital repair should be carried out within reasonable time.

Therefore, the parties to a lease contract are free to define the scope of the capital repair, and to agree on the provision of energy efficiency measure.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

Since this matter is not regulated by the Ukrainian law the parties may provide for such reimbursement in the lease contract, otherwise the landlord shall have no entitlement to such reimbursement.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

There is no standard for such regulation available in Ukraine. The parties are free to agree on any arrangement they prefer.

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease contract: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No other obligations regarding sustainability exist. There is no standard for such regulation in Ukraine.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

Article 776 of the Civil Code of Ukraine provides that capital repair of the building shall be carried out at the costs of the landlord unless otherwise provided in the lease contract. The costs of the current repair shall be borne by the tenant, unless the parties to the lease contract agree otherwise. Hence, the allocation of costs may be agreed between landlord and tenant when concluding a lease contract.

No legislatively established incentives to improve sustainability of buildings or its use exist. The parties may contractually agree on measures for improvement of sustainability of building or its use.

United Kingdom

1. Issues regarding the building itself

a. Requirements under public building law regarding energy efficiency.

The main requirements relating to energy efficiency are now contained within the building regulations regime for new developments or alterations to buildings. The relevant local authorities would seek to ensure some energy efficiency measures through the approval process for building works. The legislative detail is set out below:

ENGLAND & WALES

Governing Regulations for energy efficiency are the Building Regulations (as amended) 2000, Part L.

Advice is also issued by central government (Department of Communities and Local Government) in four Approved Documents under Part L, split into four categories of building: new dwellings; existing dwellings; new non-domestic buildings; existing non-domestic buildings. The current versions of "Approved Document L" are:

- Approved Document L1A: Conservation of fuel and power (New Dwellings) (2010 edition).
- Approved Document L1B: Conservation of fuel and power (Existing Dwellings) (2010 edition).
- Approved Document L2A: Conservation of fuel and power (New buildings other than dwellings) (2010 edition).
- Approved Document L2B: Conservation of fuel and power (Existing buildings other than dwellings) (2010 edition).

In some areas, there may also be policies which require improvements that cut energy and emissions beyond the statutory minimum standard. Examples of these are the Code for Sustainable Homes, Ecohomes and local policies.

SCOTLAND

Governing Regulations are the Building (Scotland) Regulations 2004.

A set of Technical Handbooks is published by the Scottish Building Standards Agency. These provide guidance on how to comply with the Building (Scotland) Regulations 2004.

Energy Efficiency is covered in Technical Handbook 6 (2009).

NORTHERN IRELAND

Governing Regulations are the Building Regulations (Northern Ireland) 2000.

In Northern Ireland, the Department of Finance and Personnel publishes technical guidance for complying with the Building Regulations (Northern Ireland) 2000. Guidance on energy matters is in Technical Booklet F.

Further Government incentives are through the energy performance certificates regime under which on any sale or letting of any building (residential or commercial) an energy performance certificate together with a recommendation report is required to be provided by the seller/landlord. This sets out an energy rating for the building as well as some recommendations on how the energy rating can be improved (in other words how the building can be made more energy efficient). Implementation of the recommendations is, however, voluntary. In relation to public buildings, there is also a requirement to display an energy performance certificate at the building showing its energy rating. This is intended to encourage public buildings and public authorities to take a lead in improving energy efficiency within the buildings that they occupy.

The governing regulations are The Energy Performance of Buildings Regulations (Certificates and Inspections) (England and Wales) Regulations 2007 (as amended).

Similar provisions apply in Scotland and the relevant governing regulations are The Energy Performance of Buildings Regulations (Certificates and Inspections) (Scotland) Regulations 2007 (as amended).

Finally there is (although currently under review) a CRC Energy Efficiency Scheme levy that has been introduced for all large energy users (those that use more than 6,000 megawatt hours of electricity a year). This requires scheme participants to purchase allowances from the Government by reference to the amount of energy consumed by them. Currently, the cost of the allowances will increase if participants use more energy than they forecast.

The governing legislation is The CRC Energy Efficiency Scheme Order 2010.

b. Do the regulations applicable under a) only affect new buildings or must all buildings be provided with energy efficiency facilities?

The building regulations will apply to any new buildings as well as to any alterations of any structural nature to any existing buildings.

Energy Performance Certificates are required for all new buildings and all existing buildings where there is a sale or a letting.

The CRC Energy Efficiency Scheme applies to the consumer of the energy rather than the building itself, although any energy consumed in relation to the occupation of residential buildings will be discounted from the calculations. However, the owners of any large commercial buildings are likely to automatically qualify as a result of the energy used in that building, as will any large users of energy, regardless of the types of buildings they own.

c. Does the market pay any attention to energy certificates?

The market requires these to be produced where required on lettings or sales. Implementation is, in our view, not as widely carried out as the Government might hope.

d. How popular is certification of buildings (LEED, BREEAM, etc.)?

BREEAM certification is very popular in relation to new developments. This can attract better letting terms from occupiers keen to show their green credentials. It is not so relevant on existing buildings, other than perhaps some extensive refurbishments.

2. Issues regarding the use of the building

a. Can the landlord push on the operating costs (mainly for electricity, water, heating) to the tenant following consumption or does that need to be established by the lease? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

In the main this will be a matter for contract between the parties. For residential buildings the landlord would usually pay the water rates. Otherwise all electricity and heating costs will generally be passed to the tenant.

b. Does a landlord have the right to perform construction measures to improve the energy efficiency of a building (also against the intention of the tenant). Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial etc.)?

Generally the landlord will not have a right to perform any construction measures to improve the energy efficiency unless it does so at its own cost and with the agreement of its tenants. The landlord may have rights to carry out improvements in the shared or common parts of the building. Some of those costs may be chargeable to tenants where the works are necessary to carry out repairs or maintenance (and the improvement is ancillary) but unlikely otherwise. More modern leases might seek to provide for the landlord to be able to improve the energy efficiency of a building and charge this cost through the service charge to the tenants. Where significant works have been carried out to residential buildings then the landlord must also follow a statutory regime of notifying the tenants, obtaining appropriate quotes and selecting an appropriate contractor.

c. Does a landlord have the right to receive a reimbursement of the costs for the measures under b)? Is there a distinction drawn between different types of buildings (e.g. residential, office, commercial, etc.)?

The landlord will only have the ability to recover costs where there is a contractual right to recover those costs under the terms of the relevant lease. Residential leases are less likely to include such a right to recover compared to office and other commercial leases. In more modern commercial leases the landlord may seek to encourage, or compel, the tenant to have regard to energy efficiency when carrying out any alterations that the tenant wishes to make to the building.

d. If the respective rights mentioned in b) and c) do not exist by statute, but need to be established by the lease contract: Does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

No specific standard has yet been agreed or established in the UK market. Wording generally follows an open discussion type approach. Some landlords are seeking to agree a non-legally binding "memorandum of

understanding” with tenants with a view to implementing detailed measures under those although this is not yet widespread market practice. Copies of an example memorandum of understanding can be supplied on request.

Although these measures are not yet widespread, there is considerable market interest in the energy efficiency of commercial buildings. Since 2007, a collaboration of leading London commercial property owners, the Mayor of London and the Greater London Authority, known as the Better Buildings Partnership is working to develop solutions (including providing a template for a memorandum of understanding) to increase energy efficiency in commercial buildings.

www.betterbuildingspartnership.co.uk

e. Which other obligations regarding sustainability (building materials, energy efficiency, waste management etc.) exist? If they need to be imposed by the lease agreement: does a standard for such regulations exist (and what is its content)? Please give examples of typical regulations.

Comments are as in d above.

3. Allocation of costs; incentives to improve sustainability of buildings or its use.

Apart from any contractual arrangements landlords will seek to recover costs of improvements from tenants, through the service charge, there is no general trend for landlords to seek to improve the energy efficiency of buildings at their own cost. There are also therefore no particular incentives to improve the sustainability of the buildings or their use other than during construction or refurbishment where the landlord will often implement measures which he will occasionally do even though the cost is higher but otherwise where it makes economic sense to do so.

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