LOYENS & LOEFF

DECEMBER 2021

Real Estate Update

In this “green” edition

Introduction

Introduction

Climate change is a societal concern and ESG is high on the agenda of all asset managers and investors. The real estate sector is facing these challenges and has a role to play. In this “green issue” of our Real Estate Update, we inform you about the following topics.

– The upcoming EU Taxonomy: what about real estate activities?
– The renovation obligations in the Flemish Region: the governmental agenda for the period 2020-2050
– The landlord as solar panel developer: solar structuring in 2021 and beyond
– Overview of the energy performance certificates in Belgium

Have a good reading, wishing you a wonderful holiday period and a Happy New Year!

The Loyens & Loeff Real Estate Team

The upcoming EU Taxonomy: what about real estate activities?

ESG is no longer merely a buzz word but has become a driving force behind many developments in the market. The Real Estate sector will not escape that trend. To support genuinely sustainable investments, the EU has developed a classification system of multiple economic activities to enable the identification of activities that are environmentally sustainable. Such classification is embedded in the EU Taxonomy Regulation (Regulation (EU) 2020/852 (Taxonomy) on the establishment of a framework to facilitate sustainable investment) which also imposes additional disclosures obligations that will apply as of 1 January 2022. Only 102 economic activities are yet classified under the Taxonomy Regulation including some Real Estate activities.

The role and position of the European Taxonomy in the ESG regulatory framework

The EU taxonomy is a classification system, establishing a list of environmentally sustainable economic activities. The EU's goal is that this classification system will be the corner stone for the development of sustainable investments and implementation of the European Green Deal. The aim is to fight greenwashing and make sure that significant investments oriented towards sustainable investment serve activities that are genuinely environmentally sustainable.

In addition to the classification, the Taxonomy Regulation extends the existing disclosure obligations under the Non Financial Reporting Directive ('NFRD') and the Sustainable Finance Disclosure Regulation ('SFDR'). As a result, companies and asset managers will have to report the percentage of their turnover, capital expenditures and operational expenditures aligned with the EU taxonomy. Asset managers will also have to report the percentage of their portfolio invested in activities aligned with the EU taxonomy.

The Taxonomy Regulation does not impose any obligation on companies or investors to invest (even partially) in sustainable taxonomy aligned activities. It adopts a comply or explain principle based on disclosure regarding the taxonomy alignment of a company's activities or of financial products. However, it is expected that the EU definition of sustainable investment will become an increasingly important benchmark for future investments. As a matter of example, the existing voluntary standards for Green Loans or Green Bonds, such as LMA or ICMA-standards are not linked to the EU Taxonomy definition of sustainable investment. The EU Commission is currently working on a voluntary EU Green Bond Standard which would require the raised funds to be allocated only to taxonomy aligned projects.

Taxonomy aligned sustainable activities

The Taxonomy Regulation establishes four conditions for an activity to be considered sustainable. The activity:

1. must contribute substantially to at least one of the six environmental objectives defined in Article 9 of the Taxonomy Regulation

Currently, the following six environmental objectives are included in the EU Taxonomy Regulation: (i) climate change mitigation; (ii) climate change adaptation, (iii) sustainable use and protection of water and marine resources, (iv) transition to a circular economy, (v) pollution prevention and control, (vi) protection and restoration of biodiversity and ecosystem.

2. may not significantly harm any other environmental objective listed in 1
3. must meet minimum social standards

For an economic activity to be considered taxonomy-aligned the activity must be caried out in compliance with the minimum safeguards (social standards) laid down in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work, the eight fundamental conventions of the ILO and the International Bill of Human Rights.

4. must comply with the technical screening criteria established by the Commission (the “TSCs”).

Recently, the EU Taxonomy Climate Delegated Act implementing the TSC for the first two environmental objectives has been published in the EU Official Journal. This long-awaited publication was the last requirement preventing the additional disclosure obligations imposed by the Taxonomy Regulation from being applied in practice.

Currently only for the first two objectives there are technical screening criteria available, enabling market participant to in concreto assess for approximately 102 activities whether they meet the required technical standards to substantially contribute to one of the first two environmental objective and / or not significantly harm any of the other objectives. Several Real Estate activities are already included in this first list with TSCs.

What are the Construction and Real Estate activities that are taxonomy aligned?

Draft TSC are available for the following Real Estate activities for which it is therefore possible to assess under which conditions these activities are EU taxonomy aligned:

- construction of new buildings;
- renovation of existing buildings;
- acquisition and ownership of buildings; and
- installation, maintenance and repair of some specific energy related infrastructure such as (i) energy efficiency equipment, (ii) charging stations for electric vehicles in buildings (and parking spaces attached to buildings), (iii) instrument and devices for measuring, regulation and controlling energy performance of buildings, and (iv) renewable energy technologies.

Below we explore some of the conditions put forward for the above Real Estate activities to be taxonomy-aligned, with a specific focus on the requirements regarding climate mitigation.

Construction of new buildings

Construction of new buildings contributes to climate change mitigation if the new building benefits from a very low energy performance (10% lower than the threshold set for the nearly zero-energy building requirements in national measures) confirmed in an Energy Performance Certificate, testing for airtightness and thermal integrity (and to be disclosed to investors and clients).

Moreover, the new buildings must meet so-called "do no significant harm" criteria in the field of climate adaptation, water, circular economy, pollution prevention and biodiversity.

To substantially contribute to the climate change adaptation objective, new buildings should amongst others implement physical and non-physical solutions ('adaptation solutions') that substantially reduce the most important physical climate risks that are material to that activity. For the physical climate risks that are material a robust climate risk and vulnerability assessment should be performed.

Renovation of existing buildings

To substantially contribute to *climate change mitigation*, a building renovation should comply with the applicable requirements for major renovations as set in the applicable national and regional building regulations for 'major renovation' implementing Directive 2010/31/EU. Alternatively, the renovation must lead to a reduction of primary energy demand (PED) of at least 30%. The 30% improvement results from an actual reduction in primary energy demand (where the reductions in net primary energy demand through renewable energy sources are not taken into account) and can be achieved through a succession of measures within a maximum period of three years.

As far as *climate change adaptation* is concerned, the renovation of a building must meet the same requirements as the construction of a new building.

Acquisition and ownership of buildings

When buying real estate and exercising ownership of real estate, the EU taxonomy requires that buildings built before 31 December 2020 have at least an Energy Performance Certificate (EPC) class A to substantially contribute to climate change mitigation. Properties that belong to the top 15% of the national or regional building stock expressed as operational Primary Energy Demand will also be considered as sustainable. For buildings built after 31 December 2020, the building must meet the criteria as specified for new buildings at the time of the acquisition.

A large non-residential building (with an effective rated output for heating systems, systems for combined space heating and ventilation, air-conditioning systems or systems for combined air-conditioning and ventilation of over 290 kW) is considered as being efficiently operated through energy performance monitoring and assessment.

Installation, maintenance and repair of energy efficiency equipment

Installation, maintenance and repair of energy efficiency equipment contribute to *climate change mitigation* when (i) they comply with minimum requirements set for individual components and systems in the applicable national measures implementing Directive 2010/31/EU and (ii) the installation consists of addition of insulation to existing envelope components, such as external walls (including green walls), roofs (including green roofs), lofts, basements; replacement of existing windows or doors with new energy efficient windows or doors; installation and replacement of energy efficient light sources; installation, replacement, maintenance and repair of HVAC and water heating systems, highly efficient technologies; …

Installation, maintenance and repair of charging stations for electric vehicles in buildings (and parking spaces attached to buildings)

As an "enabling activity" the installation and maintenance of charging stations for electric vehicles in buildings and parking spaces can substantially contribute to climate change mitigation if the activity:

- does not lead to a lock-in of assets that undermine long-term environmental goals, considering the economic lifetime of those assets; and
- has a substantial positive environmental impact, on the basis of life-cycle considerations.

While not required to substantially contribute to climate change mitigation, for this activity to substantially contribute to climate change adaptation the charging stations cannot be installed in buildings dedicated to extraction, storage, transport or manufacture of fossil fuels.

Installation, maintenance and repair of instruments and devices for measuring, regulation and controlling energy performance of buildings.

This activity includes individual measures such as installation, maintenance and repair of:

- zoned thermostats, smart thermostat systems and sensing equipment, including motion and day light control;
- building automation and control systems, building energy management systems (BEMS), lighting control systems and energy management systems (EMS);
- smart meters for gas, heat, cool and electricity; and
- façade and roofing elements with a solar shading or solar control function, including those that support the growing of vegetation.

For the applicable technical requirements, see more information in the EU Taxonomy Compass (see below).

Installation, maintenance and repair of renewable energy technologies

This concerns individual measures such as the installation, maintenance and repair of:

- solar photovoltaic systems and the ancillary technical equipment;
- solar hot water panels and the ancillary technical equipment;
- wind turbines and the ancillary technical equipment;
- heat exchanger/recovery systems;
- …

For the applicable technical requirements, see more information in the EU Taxonomy Compass (see below).

What is the EU Taxonomy Compass?

To make the contents of the EU Taxonomy legislation more accessible, the EU Commission launched the EU Taxonomy Compass. This practical tool provides a visual representation of the contents of the EU Taxonomy.

For the activities already included in the first EU Taxonomy Climate Delegated Act it enables users to check which activities are taxonomy-eligible activities, to which objectives they substantially contribute and what criteria they have to meet, as well as under which conditions the activity at hand does not significantly harm any of the other environmental objectives.

The EU Taxonomy Compass will be updated to include future delegated acts specifying technical screening criteria for additional economic activities substantially contributing to the climate objectives and the other environmental objectives of the Taxonomy Regulation as soon as the required TSCs are agreed upon.

You can access the EU Taxonomy Compass to check the sustainability conditions applicable to all the Real estate activities listed above at the following weblink.

Vanessa Marquette and Caro Van den Broeck

The renovation obligations in the Flemish Region: the governmental agenda for the period 2020-2050

The Flemish government has been striving for years to optimise the use of energy in buildings. Initially, this was done with all kinds of premiums and incentives. But at the end of 2020, the government changed tack: renovation becomes an obligation. By 2050, houses must have an average energy label A, and non-residential buildings must even be carbon neutral. To this end, the government developed a long-term renovation strategy, a large part of which can be found in a Flemish Government Decree of 9 July 2021.

2020

When selling or renting houses, flats, studios, etc., an energy performance certificate (EPC) must be presented since more than 10 years. An EPC informs the buyer/tenant about the energy performance of the building. This is done using a score or label ranging from A+ (very good) to F (very poor). It also contains specific recommendations to make the building more energy efficient. The EPC must be drawn up by a recognised energy expert and is valid for 10 years.

As of 1 January 2020, an EPC is also mandatory for the sale of full ownership or the granting of a property right as well (usufruct, long-term lease and rental of small non-residential buildings. These are buildings or parts of buildings with a surface area of no more than 500 m². If they are part of a larger building, that building may have a usable floor area of no more than 1000 m². The validity of the certificate is reduced to 5 years.

The energy score must be published when the building (or part of it) is offered for sale or rent.

2022

First modification: when selling, only EPCs that were drawn up from 1 January 2019 onwards will be taken into consideration. Older EPCs will no longer be valid. Certificates that were drawn up when building a house will remain valid.

Second modification: an EPC will also become mandatory for the common parts of an apartment building. However, this will happen in phases:

- For large apartment buildings (at least 15 units), the obligation enters into force on 1 January 2022. As mentioned above, for the individual units, this obligation already exists for some time. The notion “units” include both flats and small non-residential units (shops, medical practices, offices, etc.).
- For medium-sized apartment buildings (5 to 14 units), the obligation will enter into force on 1 January 2023.
- For small apartment buildings (2 to 4 units), the obligation will enter into force on 1 January 2024.

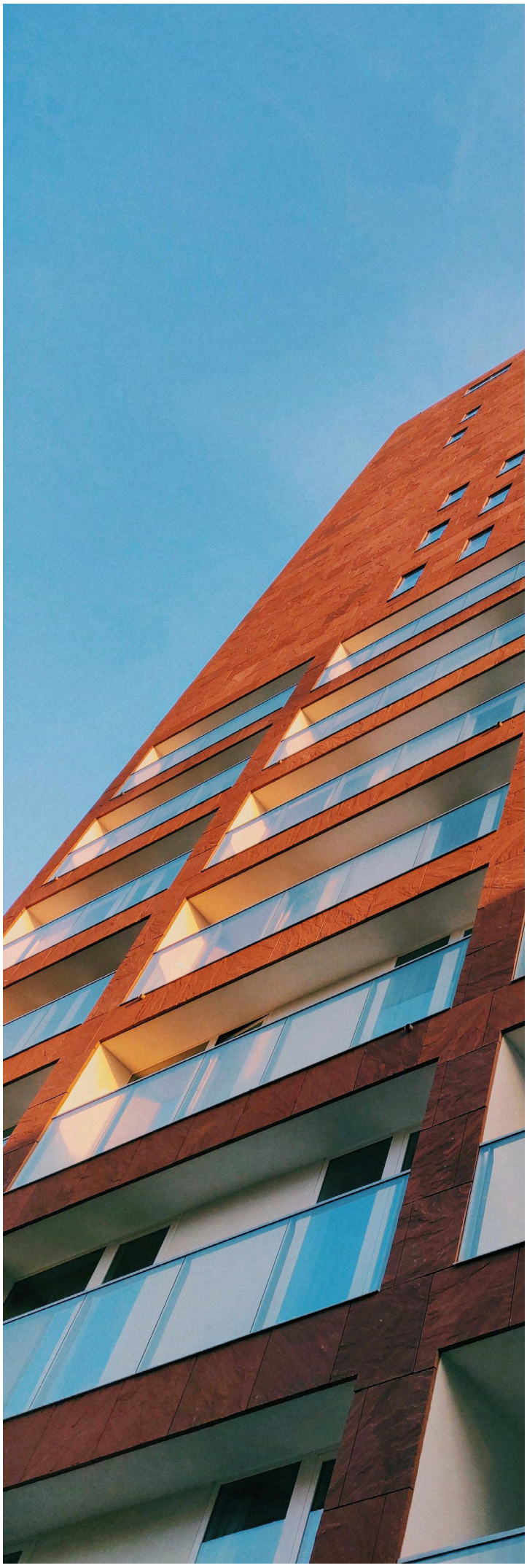
Third modification: the renovation obligation of all non-residential buildings.

In the event of a transfer or granting of a property right (ownership, usufruct, long-term lease right, right to build), the following measures must be complied with within 5 years from the notarial transfer deed (for both small and large non-residential buildings):

- If the minimum R-value of 0.75 m²K/W for roof insulation is not achieved, roof insulation with maximum U-value of 0.24 W/m²K must be installed.
- If there is single glazing, it must be replaced with glazing with a maximum U-value of 1 W/m²K.
- All central generators for space heating that are older than 15 years must be replaced, unless you can demonstrate that the installation meets the minimum installation requirements for renovation. If there is a natural gas network in the street, a fuel oil boiler may not be replaced by a new fuel oil boiler.
- All cooling systems older than 15 years that use cooling agents based on ozone-depleting substances or cooling agents with a GWP value of 2500 or higher must be replaced by cooling systems that do not use these harmful cooling agents.

The renovation obligation does not have to be met if the unit is part of a building that will be demolished within 5 years from the transfer deed. The obligation also does not apply if the transfer is the result of a merger or (partial) demerger of a company.

In addition to the renovation obligation, a small non-residential building must achieve Energy Label C or better. This only applies if the transfer concerns the building in its entirety. If it appears that this energy label has not been obtained after 5 years from the notarial deed, an administrative penalty of EUR 500 to EUR 200,000 may be imposed. This penalty is not exonerating: the competent authority sets a new deadline by which the obligation must be met.



2023

As mentioned above, for medium-sized apartment buildings (5 to 14 units), the obligation to have an EPC for the common parts will enter into force on 1 January 2023. Large non-residential buildings must, from 1 January 2023 onwards, achieve a minimum renewable energy share of 5% within 5 years from its transfer.

From 1 January 2023, an EPC for sale and rental of large non-residential buildings will be mandatory

2024

In 2024, the EPC requirement for the common parts of an apartment building is extended to the small apartment buildings (2 to 4 units).

2025

The decree of 9 July 2021 also introduces an EPC for non-residential buildings (EPC-NR). This EPC can be drawn up for a non-residential unit regardless of its size.
From 2025 onwards, all large non-residential buildings with heating or cooling capacity must permanently have a valid energy performance certificate. For small non-residential buildings, owners can decide which EPC they prefer (the new one or the small non-residential EPC). This will be the standard EPC for non-residential buildings.

2028

The Flemish government also intends to set a good example and foresees that its buildings will achieve the minimum label by 2028. What “level” the buildings must meet is still to be determined.

2030

From 2030 onwards, large non-residential buildings too must reach a minimum label (to be determined).

2050

The existing residential buildings must achieve a level of energy performance in 2050 that is comparable to that of new homes for which planning permission was obtained in 2015. To achieve this, the average energy performance level of the entire housing stock must be reduced by 75%. As part of the greenhouse gas reduction for residential buildings, there must be a shift towards making the remaining electricity and heat demand more sustainable, combined with managing energy consumption through digitalisation.

For non-residential buildings, the government also aims to achieve a carbon-neutral building stock for heating, sanitary hot water, cooling and lighting by 2050.

Ariane Brohez and Stijn Paulissen

The landlord as solar panel developer: solar structuring in 2021 and beyond

The share of renewable energy has increased significantly over the last decade in Belgium, with 2020 being a record year for renewables. A significant proportion of renewables comes from photovoltaic solar installations. The total solar photovoltaic capacity in Belgium went up from 3,887 MW at the end of 2019 to 4,788 MW at the end of 2020.

A large part of that PV solar capacity comes from large and medium-sized rooftop-mounted installations. In recent years more and more real estate developers have equipped warehouses and other buildings with solar panels (often subcontracting installation, maintenance and operation works to a specialized energy company). One group of real estate developers becoming more active in the solar business are landlords who let warehouses and other (large) buildings with solar panels.

In combination with efficient heating, cooling, lighting and insulation, solar panels can be a way for a landlord to achieve a favourable (sometimes mandatory) energy performance score and offer a "sustainable building". Depending on the role that a landlord is willing to take on, operating solar panels can also generate additional income in addition to lease fees.

Renewable energy certificates

A first revenue stream for investments in solar panels is government support. The Flemish, Walloon and Brussels regions have their own support systems for solar projects. While there are significant differences, a common trait is the use of tradable "renewable energy certificates" to support large and medium-sized projects.

Renewable energy certificates are granted to the producer of green electricity and can be sold either to the grid operator (at a price guaranteed by law) or to a purchaser on the market (at a freely negotiated price). Electricity suppliers are required to surrender a certain number of certificates at zero price (the "certificates quota"). If a supplier fails to surrender the required number of certificates, it is liable to an administrative penalty. This creates market demand for certificates.

A landlord with solar panels can (subject to certain administrative steps such as – depending on the region – registration of a certificates trading account) enter this market for renewable energy certificates and so generate substantial additional income.

In the Brussels and Flemish regions, over the last two years, the average price at which renewable energy certificates are traded has been around EUR 93 per certificate (note however that this represents a higher subsidy in Brussels, where more certificates are granted per MWh than in Flanders). In the Walloon region, the last two major auctions of renewable energy certificates (in February and September 2021) resulted in a price of between EUR 65 and EUR 68 per certificate.

In all three regions, the combination of revenues from renewable energy certificates and payments from tenants has proven adequate to secure financing, at least for sufficiently large buildings.

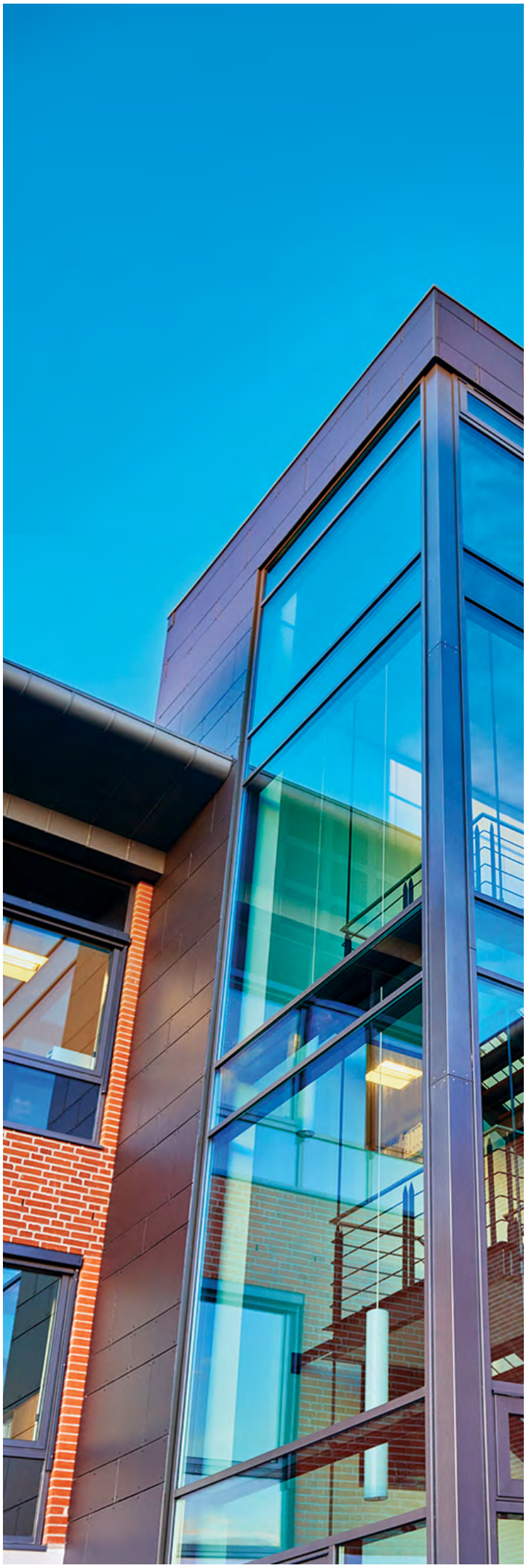
Remuneration for electricity or for the use of the solar panels

A landlord with solar panels can in addition to trading renewable energy, also earn revenue from the production of electricity.

This can be done via various kinds of fees charged to a tenant. Tenants might be willing to pay a landlord for the use of a solar installation or for the electricity produced by such installation, based on what they would otherwise need to pay on the electricity supply market.

This revenue stream is expected to become more and more important for landlords in the business case to install solar panels. Generally, electricity prices have been on the rise in Belgium, with significant price peaks over the last months of 2021. While in 2020 a Belgian business would have paid around EUR 10,000 or less for 50 MWh of electricity (total bill, excl. VAT), that same company would pay around EUR 14,000 for the same 50 MWh offtake in October 2021. This may create momentum to install solar panels as a way of reducing a tenant's energy costs.

The structure to generate revenue is however to a large extent driven by the regulatory framework, which is significantly different in the various regions.



Structuring in the Flemish region: lease agreement or "supply structure"

In the Flemish region, a landlord let its solar panels, but can also sell electricity "behind the meter" (i.e., without using the public electricity grid).

In general, such sales are made via a power purchase agreement between the tenant and the landlord (or a "solar special purpose vehicle" created by the latter – which is also often done). Provided such supply does not invoice using the public grid, the landlord will in principle not require a specific "electricity supply license", nor be subject to the (burdensome) regulatory duties of a supply license holder.

For supplies "behind the meter", in principle no grid tariffs will apply for the MWh offtaken by a tenant. This may be a considerable cost saving for the tenant compared to offtake from an energy supplier via the grid (where the grid costs are included in the energy supplier's electricity invoice).

Structuring in the Walloon and Brussels region: "non-supply structure"

The options for structuring solar projects are somewhat more limited in the Walloon and Brussels region.

There, a landlord selling electricity to a tenant (whether "behind the meter" or via the public grid) in principle automatically qualifies as an "energy supplier". That brings with it certain regulatory obligations including a requirement for electricity supply license.

That does not mean that landlords cannot become active in the solar business. Many landlords have invested in solar panels in Brussels and Wallonia and there is a very real business case for such projects. The regulatory framework has however resulted in "non-supply structures" being the usual approach in those two regions. Under a "non-supply structure" a tenant pays the landlord not for the supply of electricity, but for the use of solar panels.

A "non supply" structure can for example be implemented via an (equipment) lease agreement between the landlord (or a special purpose vehicle created by the latter) and the tenant. Careful drafting is however essential to avoid regulators classifying the lease as a supply agreement, triggering a requirement for a supply license payment under the (equipment) lease agreement be fixed (e.g., a certain amount per year) and not based on electricity produced. A fee per produced MWh or per produced kWh generally trigger a supply arrangement and hence a requirement for a supply license.

It is also important that certain project risks continue to be borne by the tenant. In the Walloon region, the energy regulator has provided guidance on the key elements for a "non-supply structure". These include the tenant remaining subject to "most industrial risks", having access to the solar panels, and bearing operation and maintenance costs and risks (see CWAPE's guidance notes, available at Lignes directrices de la CWaPE | CWAPE).

Given that in a "non-supply" structure, the landlord will often no longer be considered the producer of electricity, certain points will leave to be agreed between the tenant and the landlord. It is advisable to agree upfront who will receive the renewable energy certificates, but this does generally require the conclusion of a specific mandate between landlord and tenant or at least specific wording in the lease.

Alternative: “supply structure” in the Walloon and Brussels region

While a “non-supply” structure is more common in the Walloon and Brussels region for landlord-tenant solar projects, it is also possible to structure solar projects with a “supply-structure”.

The landlord can for example install solar panels which are operated by a duly licensed energy supplier. A list of supply license holders is published by the different energy regulators (see for the Walloon region at Fournisseurs | CWAPE and for the Brussels region at Brugel - Liste des fournisseurs (FR) or Brugel - Lijst van de leveranciers (NL)).

It is also possible for a landlord to apply for an electricity supply license himself. This allows the landlord to charge the tenant a price for each offtaken kWh of electricity. For supplying a limited amount of electricity or a limited number of customers, a landlord can apply for a “simplified” (in Brussels) or “limited” (in the Walloon region) electricity supply license. In general however, even with these alternatives to a “full” electricity license in place, the status of electricity supplier still brings with it certain obligations that are often deemed less core-business for a landlord and certain regulatory burdens. As a result, landlords mostly prefer a “non-supply structure”.

Bram Devlies

Overview of the energy performance certificates in Belgium

Energy performance certificates (EPC) have their legal basis in Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings. In Belgium, the implementation of this directive is a regional competence, so the effective application of the directive differs from one region to another.

The main purpose of an EPC is to express the energy score of a building in an understandable way. The energy score is calculated based on a series of data of the building such as the type of dwelling, surface area of the dwelling, year of construction, building materials, ...

Initially, governments saw the EPC as a form of information for the private buyer or tenant. But more and more, the EPC is used as a tool to measure the extent to which the region is meeting its climate objectives and as a measurement tool to oblige individuals and companies to improve the energy performance of their buildings.

What are the main rules regarding the EPC in the three regions?

Walloon Region

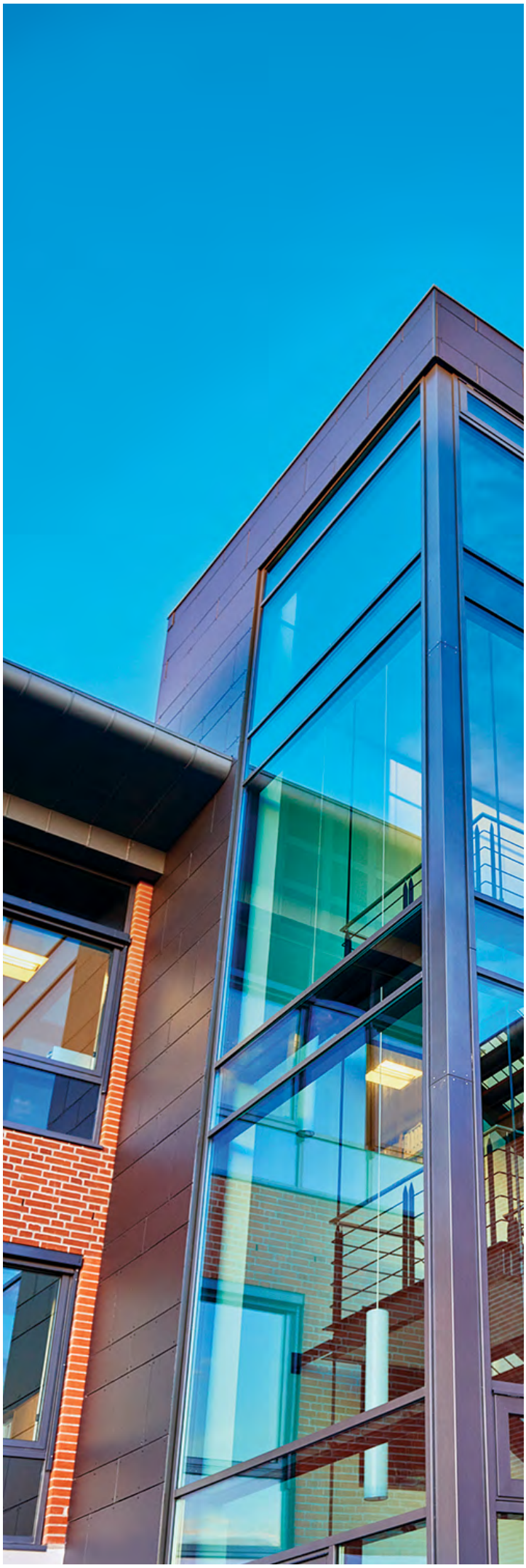
Type of building	Energy Performance Certificate	Validity
Residential	For sale, transfer and granting of property rights and rental	10 years
Non-residential	No	N/A

- In the Walloon Region, an EPC is mandatory for the sale, the transfer and granting of property rights (usufruct, long-term lease right and right to build) and rental of an existing residential building. This means any building intended for individual or collective housing with permanent or temporary occupation.
- An EPC is not required for a building that will be demolished (and for which you already have a demolition permit).
- The EPC certificate must be enclosed to the transfer deed or the lease agreement. The seller/landlord is also obliged to mention the certificate's details in advertisements for sale or rent.
- In the Walloon Region, in the event of sale or rental of a flat in an apartment building, an EPC certificate must also be issued for the common installations.
- A certificate must also be drawn up for new buildings. This obligation, too, only applies to single-family houses and flats.
- The certificate must be issued by an inspector accredited by the Walloon Region.
- Anyone who does not have an EPC when selling or renting out a property incurs a penalty of EUR 1,000. A sanction of EUR 500 is applicable if the EPC is not published or transferred as legally required.

Brussels Capital Region

Type of building	Energy Performance Certificate	Validity
Residential	For sale and when renting, but also in case of the transfer of usufruct, long-term lease or building right	10 years
Non-residential	For sale, transfer of a right in rem and for lease of office buildings with a surface area of more than 500m²	10 years

- In the Brussels Capital Region, you must also have an EPC drawn up when selling or renting (for more than 2 months) a residential building with a surface area of more than 18m². For office buildings with a surface area of more than 500m² an EPC must also be drawn up when selling or renting.
- The Brussels legislation explicitly stipulates that an EPC must be drawn up upon the transfer of the usufruct of a (residential or non-residential) property or upon the establishment of the usufruct, a long lease or a building lease.
- A certificate is not required, for example, for a donation or the establishment of an easement. Nor is a certificate required for the common parts of an appartment.
- The information on the certificate must be disclosed in advertisements for the sale or rental of the building. The potential buyer/landlord may request a copy of the EPC certificate. The information on the certificate must also be included in the deed of sale/lease agreement.
- In Brussels, an EPC must also be drawn up for new buildings.
- The certificates may only be issued by EPB certifiers. These are experts who are trained and recognised by Brussels Environment.
- In the event of a breach, the competent authority can impose an administrative penalty of EUR 62.50 to EUR 2,500. But the public prosecutor can also decide to institute criminal proceedings with fines ranging from EUR 25 to EUR 25,000 and prison sentences of 8 days to 12 months.



Flemish Region

Type of building	Energy Performance Certificate	Validity
Residential	For sale and rental	10 years
Non-residential	Small non-residential building (max. surface area 500m²)	10 years

- In the Flemish Region, an EPC must be drawn up when selling or renting (for more than 2 months) a house, flat, studio, etc. Since 1 January 2020, an EPC must also be present when selling/renting a small non-residential building. A small non-residential unit has a usable floor area of no more than 500 m². If the unit is part of a contiguous non-residential unit, the total may not exceed 1,000 m².
- An EPC is not required if the sale or lease is arranged mutually without written publicity (advertisements or notices on paper or online, posters, etc.). For example, in the case of a lease or sale between relatives.
- The EPC must be present as soon as the building is offered for sale or lease. Certain details of the EPC must be disclosed in advertisements. The EPC must also still be valid at the time when the notarial deed of sale is drawn up or the lease is signed. When selling, the notary has to check whether the EPC is valid. When renting out the property, an EPC must be made available to the tenant.
- From 1 January 2022, an EPC must also be drawn up for the common parts of an apartment building. This obligation will be introduced gradually. In 2022, it will only apply to large apartment buildings (more than 15 units). An EPC must be drawn up independently of any transfer or lease.
- The validity period of an EPC is still 10 years, but after 1 January 2022 the EPC must date from after 1 January 2019 when selling (not when renting). Older certificates are then no longer valid, unless they were drawn up when the building was constructed.
- An EPC must also be drawn up for new buildings.
- The certificates can only be drawn up by a certified energy expert type A.
- The Flemish regulation provides for sanctions for failure to correctly report the start of works, for example, or for not handing over an EPC (on time). The sanctions can range from EUR 250 to EUR 5,000. Penalty payments of EUR 250 per day are also possible.

Olivia Oosterlynck

About Loyens & Loeff

We are an international law and tax firm with cross-border expertise in a wide range of sectors. Our specialists in Belgium, Luxembourg, The Netherlands and Switzerland are recognised for their in-depth knowledge and unique approach, integrating tax and legal advice.

A unique approach

Tax and law are heavily intertwined. That is why we integrate these fields of expertise as much as needed. It results into high-end, extremely efficient solutions for our clients. As an independent full service law firm we assist multinationals, SME's, entrepreneurs and private clients internationally and locally. We offer our clients integrated tax and legal solutions. Our clients inspire us. And that makes the difference.

Independent cross-border expertise

Our international focus results into cross-border expertise. We advise our clients in implementing their business objectives in order to create tax and legal efficiencies. Consequently it empowers them to grow their business. Additionally we maintain excellent relationships with the most prominent law practices worldwide, and we are highly regarded for being able to work seamlessly together with them on cross-border matters.

In-depth knowledge of business sectors

We have long-lasting and in-depth knowledge of practically all business sectors. As soon as we believe we have developed a thorough and an exhaustive expertise related to a specific industry sector, we build a dedicated team to further expand those specific competencies and know-how. By combining this knowledge with our international focus and tax and legal expertise, we provide our clients the best advice on a local and a global level.

Authors of this edition

Ariane Brohez: ariane.brohez@loyensloeff.com
Vanessa Marquette: vanessa.marquette@loyensloeff.com
Caro Van den Broeck: caro.van.den.broeck@loyensloeff.com
Bram Devlies: bram.devlies@loyensloeff.com
Olivia Oosterlynck: olivia.oosterlynck@loyensloeff.com
Stijn Paulissen: stijn.paulissen@loyensloeff.com

Responsible publisher

Christophe Laurent, Avenue de Tervueren 2 / Tervurenlaan 2, B-1040 Brussels.

Don't hesitate to get in touch with your usual contact person for more information on the topics covered.

LOYENS & LOEFF

LOYENSLOEFF.BE

As a leading firm, Loyens & Loeff is the logical choice as a legal and tax partner if you do business in or from the Netherlands, Belgium, Luxembourg or Switzerland, our home markets. You can count on personal advice from any of our 900 advisers based in one of our offices in the Benelux and Switzerland or in key financial centres around the world. Thanks to our full-service practice, specific sector experience and thorough understanding of the market, our advisers comprehend exactly what you need.

Amsterdam, Brussels, Hong Kong, London, Luxembourg, New York, Paris, Rotterdam, Singapore, Tokyo, Zurich

BE-21-07-REU