

Environment - Belgium

Energy Performance of Commercial and Residential Property

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[Flemish Region](#)

[Brussels Region](#)

[Walloon Region](#)

In Belgium, as in many other countries, the issue of energy use in the built environment continues to grow in terms of public awareness and political importance. Greenhouse gas emissions from buildings and the energy efficiency of residential and commercial properties are regulated at regional level. This update reviews the regulatory systems in Belgium's three regions.

Flemish Region

On May 7 2004 the Energy Performance Decree was approved by the Flemish government. It was subsequently replaced by the Decree of December 22 2006. These decrees do not set specific targets to reduce greenhouse gas emissions from buildings. However, the system is clearly intended to reduce emissions. A system of energy performance certificates is gradually being applied to a wider scope of buildings.

On January 1 2006 energy performance standards were introduced for new buildings and for reconstruction work that requires a building permit.⁽¹⁾

Since November 1 2008 a feasibility study has been required for buildings with a useful floor surface of over 1,000 square metres (m²). On the same date an energy performance certificate system was introduced for the sale of residential buildings.⁽²⁾ The documents of sale must state whether a certificate exists and whether it has been presented to the buyer. If no such certificate has been presented, the notary must inform the Flemish Energy Agency. Since January 1 2009 the system has also applied to leases for residential buildings.⁽³⁾ A landlord wishing to rent a residential unit requires a certificate and must present it to the tenant on request. Once the lease agreement has been signed, the landlord must provide the tenant with a copy of the certificate.

Public buildings have been covered by the certification system since January 1 2009.⁽⁴⁾ The most recent extension of the scheme was to the sale and lease of non-residential buildings.⁽⁵⁾ The executive decree is due to enter into force before the end of 2009. However, no executive decree has yet been published.

Non-compliance with the energy performance certificate requirements carries an

administrative fine of up to €5,000 and the possibility of damages claims. However, there are no criminal penalties for non-compliance.

On May 8 2009 the Flemish Parliament passed the Decree on the General Principles of the Energy Policy. Chapter VI of this framework law deals with the energy performance of buildings, but does not add to the existing obligations.

Brussels Region

On June 7 2007 the Brussels Parliament adopted the Ordinance on Energy Performance and the Internal Climate of Buildings. Most of the provisions relating to the energy performance of buildings entered into force on July 2 2008.⁽⁶⁾ The legislation states that:

- work requiring a building permit or an environmental permit must comply with energy performance standards;
- an energy performance certificate must be obtained on completion of the work or when selling or renting a building;⁽⁷⁾
- certain conditions must be complied with when installing a heating or air-conditioning unit; and
- a technical, environmental and economic feasibility study must be prepared for every new building of over 1,000m² or for major renovations to buildings of over 5,000m².

Individuals in breach of these requirements face between eight days' and 12 months' imprisonment and a fine of up to €137,500, as well as possible damages claims. Companies may be fined up to €275,000. The ordinance provides for administrative fines where energy performance standards have not been met. These fines vary according to the degree of non-compliance. The criminal and administrative penalties in the Ordinance of March 25 1999 (which concerns the detection and prosecution of environmental infringements) also apply.

Walloon Region

Book IV of the Walloon Code on Urban Planning and Energy codifies the region's provisions on the energy performance of buildings.

Since December 1 2008 the code's standards have applied to applications for environmental or building permits in respect of existing buildings with a useful floor space of over 1,000m² if significant renovations are to be carried out. The standards also apply in respect of new buildings of the same size, for which a feasibility study must also be carried out. However, a few exceptions and more lenient thresholds apply.

On September 1 2009 the energy performance standards became stricter and an energy performance reporter must now be appointed. An energy performance certificate system is provided for in law, but has yet to enter into force. The requirement to hold an energy performance certificate applies to the owner of a building that is under construction or about to be built. The certificate must be obtained by the time the works are completed. In addition, the requirement applies to

the owner of an existing building (or the holder of a real right therein) upon the preparation of a deed that (i) grants a personal right of possession, or (ii) identifies, transfers or establishes a real right, excluding rights of mortgage or security and involuntary acts or acts of division in the event of succession.

The owner must provide a prospective tenant with a certificate on request. Furthermore, public buildings (as defined in the code) must display a certificate in clear public view.

Failure to comply with these requirements carries an administrative fine of up to €50,000.

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Endnotes

- (1) Executive Decree of December 2 2005.
- (2) Executive Decree of January 11 2008.
- (3) *Id.*
- (4) Executive Decree of April 20 2007. A 'public building' is defined as a building with a total useful floor area of over 1,000m² that is regularly visited by members of the public because it is occupied by a public organization.
- (5) Executive Decree of December 5 2008.
- (6) Executive Decision of June 19 2008 on the entry into force of the ordinance.
- (7) A certificate has been required for new buildings since July 2 2008, but the requirement for existing buildings does not yet apply.

An earlier version of this update first appeared in the *Cross-Border Environment Handbook 2009/10*, published by the Practical Law Company.

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