

France accelerates its energy transition on commercial and industrial buildings



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In a quick succession, two recently adopted legislations will boost the transition towards more environmentally friendly C&I buildings. A brief insight.

I. New standards for energy efficiency in “tertiary” buildings

As for buildings in the “tertiary” sector (which includes hotels, shopping centres, office buildings), the Decree of July 23, 2019 “regarding the duties to undertake actions of reduction of the final energy consumption in tertiary buildings” sets up new standards for the reduction of final energy consumption in already existing “tertiary” buildings. The aim is to reduce the final energy consumption by at least 40 % in 2030, 50 % in 2040 and 60 % in 2050 in comparison with 2010. The goal can also be reached by bringing the final energy consumption to the level of a newly built facility of the same category.

The essential criterion for the application of this legislation is the floor surface, which shall be at least 1,000 sq. meters.

The duties to reduce the final energy consumption of tertiary buildings has entered into force since October 1<sup>st</sup>, 2019.

Actions to be undertaken shall target the building’s energy efficiency in general, the installation of high-performance equipment and of control and management devices of this

- The draft of the Ministerial order being adopted pursuant to the “tertiary decree” (“tertiary order”) specifies that the reference energy consumption is established “on the basis of invoices and consumption data for the different types of energy consumed”.
- These objectives were set out in Article 175 of the “ELAN” Law (Law n° 2018-1021 of 23 November 2018 “on the evolution of housing, development and digital technology”, currently Article L. 111-10-3 of the Construction and Housing Code). The draft of “tertiary Ministerial order” specifies that the results can be “shared” on the scale of several buildings forming part of the same property.

equipment, the operating procedures of the equipment, the adaptation of the premises to a more energy-efficient use and the behaviour of the building's tenants.

The Government shall specify in an implementation order (*“arrêté”*), for each economic sector, the objectives in terms of reduction of the final energy consumption according to *“indicators of use intensity”* (*“indicateurs d'intensité d'usage”*). This implementation order was presented a few days ago by the Government and should be published soon.

The Decree provides for several *“modulation”* possibilities of the abovementioned objectives, taking into account adverse impacts of the measures on other environmental or economic interests. This *“modulation”* shall be requested by the owner and/or the tenant of the concerned building.

The Decree introduces a new obligation for the owner or the tenant of the building to declare on a state-controlled computer platform, among other, the annual energy consumption of the building, the building sections or a building complex, and even the *“indicators of use intensity”* related to the activities carried out in the building.

Information should be given to the employees in the building regarding the final energy consumption and the consumption targets.

In case the landlord/tenant does not comply with the declaration duty and/or does not undertake actions to achieve the targets of reduction of the final energy consumption, the local state authority (*“Préfet”*) can order the landlord/tenant to rapidly submit . Otherwise, or if the actions of the program submitted are not undertaken, the *“Préfet”* can decide to make it public (*“name and shame”* mechanism) and a fine can be imposed on the landlord/tenant, though of a relatively small amount (1,500 € for a natural person, 7,500 € for a legal person).

- According to the draft of the "tertiary Ministerial order", these indicators are the "reference parameters that pertinently characterize the situation of an activity and their impacts on energy consumption".

- The „tertiary Ministerial order“ determines the content of the technical file to be submitted in order to benefit from the exemption.

- The question arises whether all the obligations of the "tertiary decree" will ultimately be borne by the landlord or the tenant. The tertiary decree and the tertiary Ministerial order do not provide any clarification on this point. Lessor and tenant must therefore agree on this point in the lease agreement.

II. C&I buildings: New obligation to integrate a power production system from renewable energy in exchange for the authorization to conduct trade operations

According to the new article L. 111-18-1 of the Land Planning Code (“Code de l’Urbanisme”), which is part of the recently passed Law on Energy and Climate (“Loi relative à l’Energie et au Climat”), the delivery of the required “*authorisation to conduct trade operations*” (“*autorisation d’exploitation commerciale*”) for new commercial and industrial buildings with a surface area of more than 1,000 sq. meters is subject to the installation of either:

- A “*process of production*” of renewable energy, or
- A “*roof greening system*” that shall guarantee a high level of thermal insulation and benefit biodiversity, or
- Any other system “*achieving the same results*”.

The same duty shall apply to new premises for industrial or craft use, hangars that are not open to the public, logistic centres and covered parking facilities available to the public without any condition as to the created surface area. It shall be noted that, still according to the Law on Energy and Climate, the authority in charge of the delivery of the “*authorisation to conduct trade operations*” may decide to exempt the authorisation applicant from the abovementioned obligation if:

- The process, systems or devices required to comply with the obligation can increase a risk, or
- Their installation reveals a technological difficulty that cannot be overcome at all or under non-acceptable economic conditions, or
- The new building is located in a specifically protected area (notably the areas of historical monuments).

The new buildings may also be granted an exemption or benefit from specific arrangements, subject to the legislation regarding “*classified facilities*” (“*installations classées pour la protection de l’environnement*”). The Law refers to a Decree that shall be published in the coming weeks by the Ministry in charge of these facilities.

- Article L. 111-18-1 of the Land Planning Code specifies that the obligation may be waived for buildings classified as ICPE (“Installations Classées for the Protection of the Environment”). A draft implementing order currently completely excludes the application of this obligation to buildings containing dangerous substances or mixtures.
- Although this is not expressly stated, photovoltaic or even thermal solar energy is the most obvious “process”. Specific rules for the installation of photovoltaic plants on certain buildings classified as ICPE are contained in Annex I of the draft implementing order.

The Law specifies that this new obligation shall apply to all requests for “*authorisation to conduct trade operations*” that will be submitted after the entry into force of the Law, which has just been published in the *Journal Officiel*.

In view of the considerable changes brought by these new legislations, it is of utmost importance that owner of works, asset managers, architects and building design offices should quickly familiarise themselves with the new rules to anticipate their application and their specific consequences.

We stay at your disposal to conduct any feasibility assessment and for any question related to your energy efficiency projects in light of the new legislation.