

Green leases crossing borders

ESG and Real Estate – a European Perspective #2

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Green (ESG) leases are at the core of implementing ESG into real estate operations. On the following pages, you can find an overview of topics that are relevant for green leases in various countries across Europe.

Understanding of a green lease

Green leases are a type of lease agreement designed to align tenant and landlord interests around sustainability (e.g. energy efficiency, water conservation and other environmentally friendly measures) in the construction, operation and use of commercial spaces.

There are two approaches for incorporating a green lease: (i) including the green lease as a separate exhibit to the standard lease agreement, or (ii) integrating the green lease language throughout the standard lease agreement. Alternatively, there may be a third form - to include green (ESG) considerations separately in ancillary documents (sometimes referred to as memorandum of understanding “MOU”).

Statutory law / legislation





Most green lease content is not included in statutory law. There are only a few regulations that refer to this area.

Examples of these regulations can be found, for example:

All countries across Europe

Rules for the landlord to provide the tenant with an energy performance certificate (EPC) (see Articles 11 et. seq. of the Energy Performance of Buildings Directive (EPBD) and national laws transposing the provision, and the Energy Performance of Buildings (England and Wales) Regulations 2012)



Germany	<p>Rules for the tenant to tolerate landlord's modernization measures and a three-month-freeze on rent-reduction rights (see Sections 555b et. seq. and 536 para. 1a <i>German Civil Code, Bürgerliches Gesetzbuch, (BGB)</i>)</p> <p>Rules for the landlord to accept structural changes to the leased property for improved accessibility for persons with disabilities and the charging of electrically powered vehicles (see Section 554 BGB)</p>	
Luxembourg	<p>EPCs are mandatory and must be attached to the lease agreement each time there is a change of tenant. Apart from the EPC, nothing mandatory</p>	
Scotland	<p>The Energy Performance of Buildings (Scotland) Regulations 2008 (as amended)</p> <p>The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016</p>	
Spain	<p>The Spanish applicable regulation on Urban Leases has, as its guiding principle for lease contracts, the will of the parties, and as such, it grants a wide margin for negotiation on the establishment and regulation of the green clauses that the parties consider convenient.</p> <p>Energy performance certificates need to be provided by the landlord and attached as an annex to leases of real estate assets, in accordance with the <u>Spanish Royal Decree 390/2021, of 1 June</u>, which approves the basic procedure for the certification of the energy efficiency of buildings.</p>	

We expect further updates, especially also based on the recast of the EPBD (for more information on the recast see [Dentons – Proposed recast of the Energy Performance on Buildings Directive \(EPBD\) – what's going on?](#)).









The Council adopted the rules in April 2024. For more information please click [here](#).

Therefore, it depends on the will of the contracting parties what to include in the lease as well as how they shape the form of rights and obligations to further enable implementation of ESG into building use and management.

Historically, references to building certifications are included

Historically, green leases tended to include or reference building certifications and the requirement of the parties to adhere to the standards of the certificate—to achieve or uphold the intended standard. In fact, very often they still do.








Green Building Certifications means a set of rating systems and tools that are used to assess a building or a construction project's performance from a sustainability and environmental perspective (e.g. BREEAM, LEED, etc.). For example, from what we see in our projects, specified certification systems are typical (but not exclusively) used in the following countries:

England & Wales	More to BREEAM	
Germany	LEED, BREEAM, sometimes WELL, but also the German association standard: DGNB	
Ireland	LEED and BER (Irish EPC) together with other certifications, such as WIRED Score, WELL Score etc.; Primarily LEED rather than BREAAM due to focus on tech-company occupiers by office developers	
Luxembourg	BREEAM, DGNB, LEED, even though BREEAM is the most widely used, more recently WELL	
Netherlands	Mainly BREEAM-NL and WELL	
Romania	Romanian Civil Code – there are no mandatory general clauses to be included in the lease agreements on ESG (apart from EU-driven laws)	
Scotland	BREEAM is the main one we see in Scotland – the others don't seem to be widely adopted here	
Spain	Mainly BREEAM and LEED, but as from 2020, the Spanish Green Building Council implemented a new environmental performance certificate called Green Building Council Certification (GBC), which is being used in certain buildings	

Market standards across various countries

In various countries market participants develop standard clauses based on multidisciplinary dialogue, often accompanied by associations, chambers of commerce or others. These standard or sample clauses are then copied by market participants and trigger further dialogue.

Below is an overview of some of those standards and names of associations / other publishers across different countries:

England & Wales	The Better Buildings Partnership relaunched its updated Green Lease Toolkit in 2024, providing a range of lease clauses that can be incorporated depending on parties' sustainability ambitions.	
Germany	See especially the green lease clauses from the German Property Foundation ZIA – ZIA Green Lease 2.0 (recast March 2024 after ZIA Green Lease (1.0) from 2018); for more detail, please see Dentons alert on ZIA Green Lease 2.0 .	
Ireland	<p>Standards tend to come from the London market into the Irish market but with some crossover with Germany due to the high number of German investors.</p> <p>The PSL Forum in Dublin (comprising real estate PSLs in the large law firms) has collaborated to set a standard green lease.</p> <p>The PSL Forum lease is approx. 12 months old but was developed from existing documents.</p>	
Netherlands	The Dutch Real Estate Council of the Netherlands (ROZ) adopted a new template lease agreement for retail space leasing at the end of 2022, updating the 2012 version. Several aspects were amended, including various clauses relating to green leases and sustainability. Adopted in December 2022, the template is intended for the lease of retail space and other business premises, including hotels, restaurants, and retail space. The parties may amend the provision at their discretion.	
Romania	Green buildings and certificates for green buildings (such as LEED, DGNB, BREEAM, ÖGNI) are often considered by the tenants.	
Scotland	<p>Property Standardisation Group (PSG) produces standardized leases, "kilted" from the MCL ones in England and Wales and these contain some green lease clauses.</p> <p>There are also resources, which are not Scottish specific (although the Better Buildings Partnership has Scottish versions of the clauses) which we would turn to for drafting, to supplement what is in the PSG lease, if required.</p> <p>PSG (and also to a lesser extent Chancery Lane Project and Better Buildings Partnership green lease toolkit).</p>	
Spain	No association using this type of toolkit. Most active investors in Spain origin from other countries in Europe or US and, as they have defined their standards, they try to apply them to the leases when they enter Spain.	

Shift – why address this now? What are the changes?

Green lease is not a new topic—discussions have been ongoing for quite a while already. Still, market participants faced several challenges connected with harsh market conditions or the regulatory jungle.

There has been significant movement to implement green lease (ESG) standards into leases across the globe, and especially across Europe.

Some reasons for that we've encountered:

- New sustainable finance legislation from the EU and other regions. It includes, for example, obligations for reporting and disclosure and especially for providing data.
- No difference in the pace of rule-setting for England and Wales despite Brexit.
- Legislative changes require compliance with laws relating to environmental and other sustainability objectives, for example relating to the laws on energy standards and renewables.
- Stakeholders—investors, financiers—raising expectations which lead to green lease standards; a rise of sustainable finance and for this area especially sustainability-linked finance.

Consumptions and emissions at the center, and putting data first

Provisions relating to consumption and emissions (of energy, water, other resources) appear to be at the center of standards.

Due to the more rigorous and detailed reporting obligations, the provision of data on consumption and emissions seems to be at the center. For those starting with a very limited amount of green lease clauses, this will be a must-have topic to cover.

Also, increased use of renewables for electricity and heating is essential.

The EPC-rating is also very often at the core of the green lease clauses—especially in those countries where an EPC-rating is required in order to use the space. For example:

England & Wales

In England and Wales, landlords cannot let or continue to let properties that fall below certain minimum energy efficiency standards (MEES) (unless specific exemptions apply). At present, this is an "E" rating, but there are proposals to increase the minimum threshold to a "C" and then a "B" rating over the next few years. Investors are reducing purchase offers accounting for the capital expenditure required to meet and maintain these MEES, and landlords are therefore very keen to ensure that lease provisions prevent any deterioration in the energy performance rating of a building.



Netherlands

As of 1 January 2023, it is mandatory for all office buildings to have a "C" energy label (equivalent to an energy - index (EI) of 1.3 or better).



Light to dark green (endeavors to binding obligations), incentives and penalties

It's a common practice that market participants start with lighter clauses. They will have to review against their regulatory background on a case-by-case basis whether they may limit their standards to light green leases, or whether they require binding clauses on their contract partners to meet their own obligations, such as reporting requirements.

Also, on a case-by-case basis, penalty clauses are used to avoid certain behaviors and incentive schemes are used to incentivize certain behaviors.

What's to take from this? Next steps

There does not seem to be a way back but rather only one step forward towards the implementation of ESG into the real estate business, with green (ESG) leases being essential for operations.

Where Dentons can assist

Dentons can assist you on various aspects related to the topics covered, such as:

- Implementation of Green (ESG) Leases across various countries
- ESG and real estate investment
- Renewables and Real Estate
- E-mobility
- Data protection

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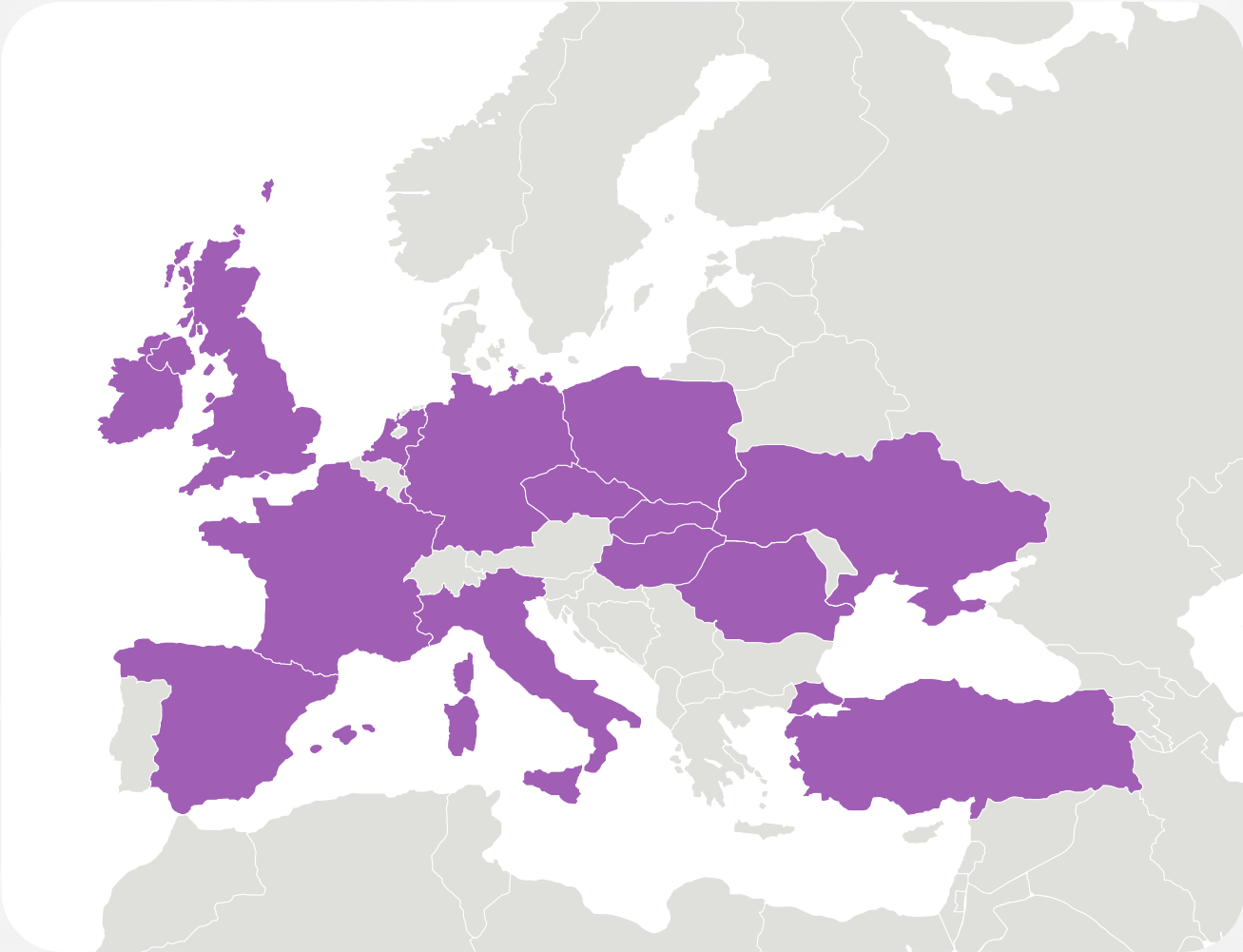


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