

Green Buildings – From Buckminster Fuller to Norman Foster

**Commissions in charge of the Workshop:
Real Estate Commission and Public Law Commission**

Munich 2016

National Report of Spain

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A. INTRODUCTION

1. Objectives

Our workshop in Munich on Green Buildings shall cover all legal aspects of the eco-life cycle of buildings, from design, construction, operation, maintenance, renovation, to demolition. We would like to analyse and discuss current legal developments and standards. The National Reports will help us greatly in setting up our workshop.

2. Approach

We are looking for contributions from all over the world, in order to compare the standards and developments made in the various jurisdictions. Since we are holding a joint workshop, we look for contributions from both commissions, i.e. from Real Estate Law practitioners as well as from Public Law practitioners.

3. Guidelines for answers

Your time is valuable. You are very welcome to answer the questions in a concise fashion. We appreciate your effort and enthusiasm very much. Please send your document by e-mail to the general reporters (see cover sheet) before **31 January 2016**.

B. QUESTIONNAIRE

These questions might help you in drafting your National Report

1. Please shortly describe yourself (what sort of practitioner are you, in which jurisdiction, particularities of that jurisdiction?).

(a) Nils Döhler:

Senior Associate at the Spanish Law Firm “Monereo Meyer Marinello Abogados. S.L.P.” (www.mmmm.es) since 2005 and member of the AIJA since 2009 (Former Vice-President and afterwards President of the Real Estate Commission; currently Member of the Executive Committee). I would describe myself as an enthusiastic German-Spanish lawyer (admitted in Germany and Spain), focused on inbound clients looking for investment or business opportunities in the Spanish Market. My clients mainly are coming from the “German speaking market” (that is Germany,

Austria and Switzerland) as well as from other European countries, including UK. My praxis, in the first place, focuses on Real Estate, Financing and Construction law as well as International Inheritance cases. Further information you'll find under the following link: <http://www.mmmm.es/en/lawyers-spain/nils-dohler-barcelona>

(b) Rosa Isabel Peña Sastre:

Partner at the Spanish Law Firm "ROCA JUNYENT S.L.P." (www.rocajunyent.com) and responsible for the Dutch Desk of the Firm. Member of AIJA since 2011 (currently Co-Chair of the Human Rights Committee, Member of the Executive Committee and co-founder of the Public Law Commission). I would describe myself as a versatile and passionate Spanish lawyer, focused on public and private customers from Spain and abroad. Besides practicing law, I am teaching at the University and I'm Vice-President at the Administrative Law Section at the Barcelona Bar association. My specialty is Public Law, mainly Public Procurement, construction Law, Administrative Law, expropriations and other matters related to land use. However I can provide clients with any other legal advice they may require in Spain, since my Firm serves most legal specialties from in-house. Further information you'll find under the following link: <http://www.rocajunyent.com/en/abogados-lawyer/rosa-isabel-pena-sastre/>

2. How do you define Green Buildings in your jurisdiction?

There is no uniform legal definition with regard to the concept "Green Buildings" in Spain. However, it can be said that the essence of this concept is implicitly included in the Spanish legal system throughout several different legal bodies and laws. As a result "Green Buildings" can be defined as *"all those resource-efficient structures and using processes with special respect and commitment to the environment"*.

This definition goes beyond and expands the classical building concerns of economy, utility, durability and comfort.

As said before, neither the legal regulations with regard to “Green Buildings” are uniform in the Spanish legal system. It is spread over diverse administrative and civil law provisions as well as so called “technical codes” which set minimum standard criteria in specific areas regarding sustainable construction. Later, under point 5, we will explain further those provisions and codes in order to give an overview of the applicable Green Buildings Standards existing in Spain.

3. Can you shortly describe the development within the last decades? What percentage of new construction qualifies as green buildings?

Climate change and shortage in resources have increased the awareness in Spanish citizens, Architects, and Engineers about environmental problems within the last decades.

The concept of green building has been developing in Spain in the last decades, incorporating new concepts and aspects. In recent years, Spain has made great efforts to implement energy efficiency policies aimed at eliminating the distance that has historically separated us from the average energy intensity of the European Union. The new trend tries to save resources, bring more comfort and selecting materials that meet environmental requirements.

It is difficult to give a percentage of new construction that qualifies as green buildings since this is not recorded in any official registry.

We can though give some examples of the certificated green buildings by LEED which positioned Spain as (i) the third country after Germany and Sweden; (ii) the

third Iberoamerican country after Brazil and México; (iii) the tenth country worldwide.¹

The first LEED building in Europe was certified in Spain in 2005 completed by Spain developer METROVACESA in 2003: the Alvento Business Park project in Madrid, a two-building, 355,000 square foot, seven-story speculative commercial office development. Both buildings were certified at LEED Silver level. Costing \$232 per square foot the building housed nearly 3,000 people and was fully leased within the first year, in an environment where other office buildings were partially vacant. The modeled energy usage was 31 percent less than the usage in a conventional building and water usage was estimated at 44 percent less than the usage in a standard office.²

In 2015 the SPAIN GREEN BUILDING COUNCIL®, SpainGBC®, announced in September 2015 the certification of the TECHNOLOGICAL PARK PALMAS ALTAS, headquarters of ABENGOA in Seville. The buildings received LEED-CSv2.0 PLATINUM, with 54 points as the number 20th LEED PLATINUM certificate in Spain and worldwide record with this punctuation. There are 116 LEED certificated buildings in Spain: 21 PLATINUM, 59 GOLD, 25 SILVER and 11 CERTIFICATE.

The 21 buildings that were granted with a PLATINUM LEED in Spain are the following:

- 2010 – May, STARBUCKS Palace, Madrid – LEED-ID+C
- 2011 – November, POLIDEPORTIVO SAN IGNACIO, City Council of Bilbao, LEED-BD+C
- 2012 – June, TORRE IBERDROLA, Bilbao, LEED-ID+C
- 2012 – October, TORRE IBERDROLA, Bilbao, LEED-BD+C
- 2013 – April, Headquarters of NATURGAS, Bilbao, LEED-BD+C

¹ <http://www.spaingbc.org/detalle-noticia.php?id=86>

² “The Green building revolution” by Jerry Yudelson

- 2013 – May, Offices of CBRE, Madrid, LEED-ID+C
- 2013 – July, CAMPUS REPSOL, Madrid, LEED-BD+C
- 2013 – September, DESIGUAL Nueva Bocana, Barcelona, LEED-ID+C
- 2013 – October, EDIFICIO CARMEN MARTIN GAITE, Carlos III University, Madrid, LEED-BD+C
- 2014 – Juny, BERSHKA Colon, Valencia, LEED-ID+C
- 2014 – Juny, EDIFICIO LUCIA, Valladolid University, LEED-BD+C
- 2014 – August, ZARA Serrano, Madrid, LEED-ID+C
- 2014 – November, MASSIMO DUTTI Serrano, Madrid, LEED-ID+C
- 2015 – February, DATA CENTER INDITEX Poligono de Sabón, La Coruña. LEED-BD+C
- 2015 – February, CENTRO CÍVICO DE BARO DE VIVER, Barcelona City Council, LEED-BD+C
- 2015 – March, AVENIDA SOFIA SITGES HOTEL, Sitges, Barcelona, LEED-BD+C
- 2015 – April, DATA CENTER, Polígono Científico Espinardo, Comunidad de Murcia, LEED-BD+C
- 2015 – April, Headquarters GMP, Madrid, LEED-ID+C
- 2015 – August, Headquarters DISASHOP, Alfareros, La Coruña, LEED-BD+C
- 2015 – September, Headquarters ABENGOA, Seville, LEED-BD+C
- 2015 – October, Headquarters NESTLÉ, Barcelona, LEED-BO&M

In November 2015, the LEED program exceeded the number of 280 registered projects.

With regard to the Spanish Certificate VERDE, it is worth to mention that in 2011 the international association "Green Building Council" issued, for the first time ever in Spain, the certificate VERDE, which recognizes the reduction of the evaluated building's environmental impact by using a standard comparison. This certificate was issued to the first phase of the Center for Aircraft Maintenance "Cessna Aircraft", which was built at the airport of Manises (Valencia). It received three "leaves" of the six "leaves" that the certificate awards for the level that is recognized by the environmental merit of a project.

More information can be found in the websites indicated in answer to question 6.

4. Are there national and/or local objectives with regard to green building?

Yes, there are national objectives with regard to green buildings.

On the one hand, Spain has to comply with the objectives foreseen in the following European Directives:

- 1) European Directive 2010/31/UE of the European Parliament and of The Council of 19 May 2010 on the energy performance of buildings. This directive promotes the improvement of the energy performance of buildings within the Union, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness.

Under this directive:

- energy performance certificates have to be included in all advertisements for the sale or rental of buildings
 - EU countries must establish inspection schemes for heating and air conditioning systems or put in place measures with equivalent effect
 - all new buildings must be nearly zero energy buildings by 31 December 2020 (public buildings by 31 December 2018)
 - EU countries must set minimum energy performance requirements for new buildings, for the major renovation of buildings and for the replacement or retrofit of building elements (heating and cooling systems, roofs, walls, etc.)
 - EU countries have to draw up lists of national financial measures to improve the energy efficiency of buildings
- 2) European Directive 2012/27/UE of the European Parliament and of The Council of 25 October 2012 on energy, efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and

2006/32/EC. This Directive promotes energy efficiency within the Union in order to ensure the achievement of the Union's 2020 20 % headline target on energy efficiency and to pave the way for further energy efficiency improvements beyond that date. To achieve this goal, the Directive establishes a common framework of measures and lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020.

Under the Energy Efficiency Directive new national measures have to ensure major energy savings for consumers and industry alike. For example:

- Energy distributors or retail energy sales companies have to achieve 1.5% energy savings per year through the implementation of energy efficiency measures
- EU countries can opt to achieve the same level of savings through other means such as improving the efficiency of heating systems, installing double glazed windows or insulating roofs
- The public sector in EU countries should purchase energy efficient buildings, products and services
- Every year, EU governments will carry out energy efficient renovations on at least 3% of the buildings they own and occupy by floor area
- Empowering energy consumers to better manage consumption. This includes easy and free access to data on consumption through individual metering
- National incentives for SMEs to undergo energy audits
- Large companies will make audits of their energy consumption to help them identify ways to reduce it.
- Monitoring efficiency levels in new energy generation capacities.

- EU countries must draw-up long-term national building renovation strategies, which can be included in their National Energy Efficiency Action Plans.

On the other hand and at a national level regulation, Spain has to comply with:

1) The 2014-2020 National Energy Efficiency Action Plan (NEEAP). The purpose of the NEEAP is to satisfy:

- The requirement set forth in Article 24(2) of Energy Efficiency Directive whereby all Member States of the European Union must submit such plans, the first of which no later than 30 April 2014 and then every three years thereafter.
- The requirement set forth in Article 24(1), whereby all Member States shall report on the progress achieved towards national energy efficiency targets by 30 April each year.

Given that the Plan and the annual report for 2014 were submitted before the end of April, the decision was made to integrate both into this 2014–2020 National Energy Efficiency Action Plan.

Meanwhile, in accordance with Article 4 of Directive 2012/27/EU, Spain established a long- term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private. This strategy had to be published before 30 April 2014 and updated every three years thereafter and submitted to the Commission as part of the National Energy Efficiency Action Plan.³

³ [2014-2020 National Energy Efficiency Action Plan](#)

2) Act 8/2013, of June 26th of rehabilitation, regeneration and urban renovation.

This act meant a shift in the state urban legislation, traditionally focused on the development on a new city. Act 8/2013 allows sustaining the operations of urban rehabilitation, regeneration and renewal, in which there are still legal obstacles preventing their implementation or event their own technical and economic viability.

5. Please describe the applicable green buildings standards in your country (insulation, efficiency, water and electricity consumption, waste reduction and recycling, sustainable materials, sustainable alterations and replacement of equipment, management of the building, global environmental impact...).

In Spain, it is mandatory for the promotor or owner of any building (i.e. residential and non-residential) to obtain the Energy Efficiency Certification since 2013 (“*Certificación Energética de Edificios*”, in short **CEE**; Source: Royal Decree 235/2013, of April 5th, approving the basic procedure for certifying the energy efficiency of buildings).

In particular, when it comes to any acquisition or lease process, the CEE must be handed over to the buyer or tenant of the real estate. The CEE basically contains a rating from A to G (where A means the most and G the least efficient) concerning energy efficiency and consumption characteristics of the building or part thereof (housing, office, premises, etc.). The criteria used to determinate the energy efficiency are, for example, the energy demand needed for heating and cooling the building, the demand for domestic hot water and the amount of primary energy consumption and CO₂ emissions. The principal aim of this certification is to *promote* the energy efficiency in all kind of buildings and to provide the buyer or lessee with standard comparison data at the moment of the acquisition or rental process. The Spanish legislation also provides for administrative pecuniary penalties depending on the level of infringement: The range extends from simple infraction of not applying for the certification up to falsification cases, if so.

On the other hand, Spain already in 2007 approved the so called Technical Building Code (“*Código Técnico de la Edificación*”, in short **CTE**; Source: Royal Decree 314/2006, of March 17th, approving the Technical Building Code) in order to improve the often perceived as deficient quality of the Spanish housing construction in comparison to other European standards. The principal aim of the CTE was to set basic requirements for improving certain aspects in the construction process, such as minimum requirements in the field of hygiene, health and environment; energy-saving measures; solar thermal technologies for water heating and photovoltaics and minimum requirements with respect to noise impacts. The CTE also incorporates a large number of European law requirements such as technical building energy-saving measures.

In accordance with the Energy Performance of Buildings Directive from 2010 (Source: Directive 2010/31/EU of the European Parliament and of the Council, of May 19th 2010, on the Energy Performance of Buildings), Spanish law is also pre-setting that all new constructed buildings from December, 31st 2020 on will be almost with “zero” energy consumption. The minimum requirements to be met by those buildings will be determined by new regulations concerning the CTE.

6. Is there a certification for green buildings in your jurisdiction? What is the process?

Apart from the international recognized certifications such as BREEAM and LEED (Source: <http://breecam.es/>; <http://www.usgbc.org/leed>), Spain has an own evaluation method and certification in relation to environmental friendly buildings called “*Certificación VERDE*” (means: GREEN Certification), if the building meets the predetermined criteria (Source: <http://www.gbce.es/es/pagina/certificacion-verde>). This certification is issued by the Green Building Council España (in short **GBCE**) and represents an autonomous organization, associated with the “World Green Building Council” (**WGBC**: <http://www.worldgbc.org/>). This method is

often used to generally improve the sustainability of offices, residential and commercial buildings.

The evaluation system is based on a performance method in accordance with the philosophy of the previous mentioned CTE (*“Código Técnico de la Edificación”*) and the European directives. One of the main purposes is to promote the bio-architecture and the environmentally friendly buildings, compatible with the surroundings and the high levels of comfort and life quality for their users.

The rating goes from 1-5 green leaves (*“Hojas verdes”*): A construction with 5 leaves represents the least possible environmental impact.

The parameters which are taken into account for the evaluation process are the following:

- Impacts that are not generated by the building itself, but related to the plot on which such building is located: For example, the reduction of light pollution or the optimization of the irrigation system.
- Impacts generated by energy consumption in all its forms: For example, reduction of the conventional energy consumption and production of energy from renewable sources.
- Impact on natural resources: For example, reduction of water consumption or construction materials with less impact on the environment.
- Impact on the interior of the building: For example, installation of a good illumination or acoustic insulation.
- Impact on social and economic aspects: For example, creation of rest and leisure places.
- Service quality aspects: For example, space efficiency or accurate maintenance management plans.

In sum, the process in order to obtain the described “GREEN Certification” is the following:

- 1.- Registration of the building in GBC España
 - 2.- Evaluation of the building by an technical expert
 - 3.- Application for the GREEN Certification
 - 4.- Technical supervision of the application process
 - 5.- Draft certification and final decision
 - 6.- Issue of the certification
7. Are there differences for residential and non-residential (e.g. hotels, office buildings, schools/hospitals, industry) buildings?

In general, there are no major differences between residential and non-residential buildings concerning Green Building regulations, since they apply to both equally. However, the Spanish law provisions with regard to the CEE make an exception in case of industrial buildings. There is no need for this document in such cases (logistic & industrial buildings).

8. Does it cost more to build a green building?

It is often said that constructing a green building is more expensive than a conventional building. In fact, this is frequently not the case: At first glance, it seems that Green Buildings are more expensive than conventional buildings, but according to several studies the upfront costs of Green Buildings are only between 1-3% higher than the cost for a conventional building.

[Some sources:

http://www.worldgbc.org/files/1513/6608/0674/Business_Case_For_Green_Building_Report_WEB_2013-04-11.pdf

<https://bloomington.in.gov/green-building-costs>

<http://www.calrecycle.ca.gov/greenbuilding/design/costbenefit/report.pdf>

<http://www.usgbc.org/Docs/News/News477.pdf>]

However, the return of the higher investment cost is almost immediate, between 2-5 years, because of several circumstances, such as the reduction of the energy consumption between 50% up to 80%.

In addition, several studies found out that the buildings would yield savings of over ten times the initial investment after 20 years – see further comments related to economic and other benefits of Green Buildings under question no. 11.

[Sources:

[http://www.worldgbc.org/files/1513/6608/0674/Business Case For Green Building Report WEB 2013-04-11.pdf](http://www.worldgbc.org/files/1513/6608/0674/Business_Case_For_Green_Building_Report_WEB_2013-04-11.pdf)

<http://www.calrecycle.ca.gov/greenbuilding/design/costbenefit/report.pdf>

<http://www.usgbc.org/Docs/News/News477.pdf>]

9. Are there any public financial incentives (subsidies) for green construction?
Yes. Financial incentives are mainly focused to the energy rehabilitation of the existing buildings.

The entities that grant the incentives and subsidies are:

- Instituto para la Diversificación y Ahorro de la Energía (IDAE)
<http://www.idae.es/index.php/id.858/relmenu.409/mod.pags/mem.detalle>
- Institut Català d'Energia of Catalunya (ICAEN)
<http://icaen.gencat.cat/ca/index.html>

10. Does green construction give any advantage in the permit process (faster process, exceptions such as higher utilisation etc.)? Or are there even obligations (stick and carrot)?

There is no advantage in the permit process for a green construction.

Green construction has to meet the technical requirements of the elements, which will be included in the building.

11. Do green buildings offer other advantages (such as long-term economic benefits, better chances on the market, higher rent, public image...)?

Green Buildings, apart from less energy consumption, have more benefits than people might think. Studies have shown that Green Buildings, both commercial and residential, have a better merchantability and can command up to 30% higher selling prices and rental incomings than conventional buildings. This is attributed to the attractiveness of those buildings to prospective tenants and buyers in terms of their superior indoor environment, lower operating costs and enhanced marketability.

[Source

http://www.worldgbc.org/files/1513/6608/0674/Business_Case_For_Green_Building_Report_WEB_2013-04-11.pdf]

Green Buildings are also easier to maintain and require fewer repairs. Moreover, its materials are easily removable and reusable. This substantially lowers the maintenance cost of the building and contributes to a quicker return of the initial higher investment, as stated in question 8.

Some experts argue that the effects a Green Building has on its occupants are just as important as the economic benefits. They create a much healthier environment than conventional buildings because of the incorporation of better air conditioning,

lighting and materials. Residents or workers may not realize the effects on a daily basis or at the beginning, but they definitely have a significant impact on a person's physical and mental health, increasing that their life quality.

[Sources:

<http://dirt.asla.org/2010/03/01/green-buildings-are-healthier/>

<http://www.usgbc.org/articles/healthy-buildings-and-healthy-people-next-generation-green-building>

<http://permaculturenews.org/2015/10/06/are-green-buildings-healthier-buildings/>]

Finally, some insurance entities even award owners of Green Buildings with more attractive insurance policy conditions because of their lower risk level for the insurer. It is also common that insurance policies offer green upgrades in the event of a loss, albeit at a slightly increased price to reflect the higher upfront cost.

12. Can you think of contractual issues on green building (in contracts between owners/developers and design professionals and general contractors, in lease agreements, in hotel-management contracts...)? Do you have any recommendations to make such clauses effective?

Yes. When drafting rental agreements between the owner of a green building and the tenant, special attention has to be taken to:

- The obligations of maintenance of green installations
- The obligations to implement changes in the installations due to a legislative change.

To avoid future discussions on this matter, it should be very clear in the contract who will assume this obligation and maximum cost.

13. Do you have an example of litigation in relation with green buildings (e.g. water performance issues for the project owner/the design professional/the prime contractor, and third-party claims)?

Yes. Case law procedure 589/2009, ended by judicial resolution 2/2012, of Contentious administrative Court nº 13 of Barcelona, dated on January 10th 2012. The object of the procedure was the resolution of a Municipality that denied the license requested by the plaintiff to install solar panels in a building. The reason to deny the license was that the installation on the building exceeded the maximum height allowed when installing these panels.

The Court considered that:

- the solar panels met the requirements to be considered as (i) infrastructural installations and (ii) essential service;
- Urban and planning rules of the municipality did not foresee any restriction to these installations.

Due to that, the Court concluded that urban and planning requirements regarding the maximum height of the buildings were not applicable to these installations and (i) annulled the resolution of the City Council and (ii) ordered the municipality to grant the license.

14. Do you want to tell us a personal story or achievement in relation to green buildings?

C. FURTHER INFORMATION

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STYLES

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- If you need to display a list, you may use bullet points or letters in lowercase.
- For the use of footnote, you can use the style available here⁴.

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Heading 1, Font: Garamond, Size 14, Bold

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- b. et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat.
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or with bullet points:

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You can also use indentation to add extra levels to your lists.

⁴ This is a footnote.

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BIBLIOGRAPHY

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- Doe, John B. *Conceptual Planning: A Guide to a Better Planet*, 3d ed. Reading, MA: SmithJones, 1996.
- Doe, John B. *Conceptual Testing*, 2d ed. Reading, MA: SmithJones, 1997

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