

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 the Czech Republic

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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?).

For more than 15 years I have been specialising in providing legal advisory services to international clients transacting in the Czech Republic and in representing local clients abroad. I have extensive experience in real estate, contractual obligations and acquisitions, and in selected aspects of energy law. I regularly lecture on real estate, contractual obligations and energy law.

I have recently managed the sale of an office building in Prague to a leading European investment fund. I also co-lead the team advising Holcim in connection with the divestment of their Czech operations to Cemex.

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

In the Czech legislation the Green Buildings are being regulated through the set of requirements on "energy performance of buildings". The energy performance of

buildings is addressed by Act No 406/2000 on energy management ("Energy Management Act") and implementing legislation, namely Decree No 78/2013 on the energy performance of buildings. Energy Management Act contains both the actual energy performance requirements and also requirements for the certification of the energy performance of buildings and the particulars to be recorded.

Energy Management Act implements in the Czech Republic the EU Directives dealing with Green Buildings, such as Directive 2010/31/EU on the energy performance of buildings, Directive 2012/27/EU on energy efficiency, Directive 2009/28/EC on the promotion of the use of energy from renewable sources, and Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products.

Energy Management Act deals mainly with:

- the cost-optimal level of building energy performance requirements for new buildings, major alterations to completed buildings, non-major alterations to completed buildings and nearly zero-energy buildings;
- the method for calculating a building's energy performance;
- a model for assessing the technical, environmental and economic feasibility of alternative energy supply systems,
- a model for determining recommended measures to improve the energy performance of buildings, and
- requirements for the form and content of a certificate, and for its location in a building.

New buildings must comply with three energy efficiency indicators at the same time: non-renewable energy per year, total energy delivered per year, and average thermal transmittance of the building envelope.

For reconstructed buildings, there is a choice of combinations of indicators that must be complied with in case of major or non-major alterations.

The parameters and values of energy performance of buildings requirements do not apply to nearly zero-energy buildings.

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

Green buildings are to become a standard in Czech Republic.

In the context of the implementation of Directive 2010/31/EU new buildings have to meet the requirements for nearly zero-energy buildings by 2020. Energy Management Act sets out a time frame for meeting this obligation. A building with nearly zero-energy consumption means a building with a very high energy

performance, the energy consumption of which is to a significant extent met from renewable sources.

Another component of this action plan is the long-term building renovation strategy.

Measures that have already been implemented include an amendment to the Energy Management Act in order to transpose the Directive on the Energy Performance of Buildings.

Aside the legal regulation, plenty of private associations and movements are very active in this field. The most renowned among them is the Czech Green Building Council (CZGBC) which integrates companies and organizations from all sectors of the economy related to the real estate market and the construction industry and stimulates the market to transform methods of design, construction, renovation and operation of buildings and urban structures with the aim to create a healthy, prosperous, environmentally and socially friendly built environment that enhances the quality of life.

Unfortunately, I have not found any credible statistics in this respect.

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

The Czech Republic has strongly supported improvements in energy efficiency since 1989. It was quick to liberalize the energy market, delivering a major boost to enhanced energy efficiency.

The Czech Republic, in accordance with the Europe 2020 strategy, promotes the use of significant funding from the future multiannual financial framework for energy efficiency and support for business to help to ensure Europe's competitiveness.

The Czech Republic's national indicative target has been set at 47.94 PJ (13.32 TWh) of new final energy savings by 2020¹.

Therefore, it has been necessary to prepare and implement a major change in the design and implementation of buildings. The basic criterion that must be met will be that of low energy consumption in buildings. This criterion includes not only the energy consumption for heating and hot water preparation, but also other forms of energy use in buildings, such as lighting, ventilation, air-conditioning (AC), operation of building equipment, etc. In the future, it will be possible and especially appropriate to use solar energy as a small power source on the roofs of buildings.

5. Please describe the applicable green buildings standards in your country (insulation, efficiency, water and electricity consumption, waste reduction

¹ Source: National Energy Efficiency Action Plan of the Czech Republic

and recycling, sustainable materials, sustainable alterations and replacement of equipment, management of the building, global environmental impact...).

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

Mainly international BREEAM and LEED certificates are well established and known in the Real Estate sector in the Czech Republic. Especially in the sector of office lease a certificate plays more and more important role in the decision making process of prospective tenants.

In addition, there is a Czech certificate for administrative buildings based on international SBTool (Sustainable Building Tool) certificate developed by an International Initiative for Sustainable Built Environment (iSBE). SBToolCZ certificate has been developed by the Faculty of Civil Engineering (Czech Technical University) in Prague. It respects fully the conditions of the Czech building industry and is in accordance with local legal system. Criteria and their value have been identified by a panel of experts and take into consideration priorities of the Czech Republic.

SBToolCZ indicates the level of building quality regarding principles of sustainable construction. SBToolCZ examines and certifies the influence a building has on the environment, its social and cultural aspects, functional and technical quality, economical aspects, management and location of the building.²

An independent SBToolCZ certification is carried out by two certification bodies – TZÚS Praha, s.p. (Technical and Test Institute for Construction Prague) and VÚPS – Certifikační společnost, s.r.o. (Research Institute for Buildings – Certification Body). Both have a long-term experience in the field of testing, certifying and assessing construction products and in management system certification.

7. Are there differences for residential and non-residential (e.g. hotels, office buildings, schools/hospitals, industry) buildings?

Yes, there are. For example, the maximum values of primary energy consumption are lower for residential than values for non-residential buildings. While the primary energy consumption of the residential building should not exceed 75 – 80 % of the primary energy consumption of a reference building, the maximum value of primary energy consumption of the non-residential building is 90 % of the primary energy consumption of a reference building.

² Source: <http://www.czgbc.org/certification/sbtoolcz>

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

Yes, it is for sure more expensive to build a green building.

However, there are many financial incentives available (see below).

In addition, and as far as I understand (whereas we, the lawyers, are fully authorized to have just a very limited knowledge in this area, though) reliable investors do not underestimate the role of expected future savings and higher attractiveness of their buildings for prospective tenants or buyers.

9. Are there any public financial incentives (subsidies) for green construction?

There is vast variety of financial incentives of available to households, condominiums, industry as well as local authorities.

As a matter of example, a subsidies' program called New Green Savings, managed by the Ministry of the Environment and administered by the State Environmental Fund, is a very successful tool focused on energy savings and renewable energy sources in family houses. The program's objective is to improve the environment by reducing greenhouse gas emissions through the improved energy efficiency of buildings, the support of residential development with very low energy performance and the efficient use of energy sources.

The main instrument for the implementation of energy-saving measures in industry will be the Operational Program Enterprise and Innovation for Competitiveness. The two main types of measures supported are the improvement of the energy performance of buildings and the increasing of the energy efficiency of technologies.

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)?

No, it does not give any advantage. I would even say the contrary might be the case as not all the staff employed by building authorities has sufficient knowledge in the sector.

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

Yes, for sure. It is an overall trend that mainly in the area of lease of retail and office spaces plays an important role. It is quite simple mathematics: in Green

Building the tenants pay lower service charges whereas not the entire amount of increased investment costs can be reflected in the rent (due to competition). Therefore, even old office and retail buildings are investing into the green technologies and apply for various certificates.

In addition, the Czech government is considering tax exemption for nearly zero-energy building for the real estate tax.

Finally, all the investments into the reconstructions and modernization of buildings have very positive macroeconomic impact on the Czech economy as a whole.

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, with respect to lease of an old building (office or retail) I will pay a lot of attention to the service charges and their composition. The goal would be to avoid any possibilities of the landlord to put in the SC budget additional costs spend in improvements or certification process of the building (which should be classified as CAPEX). The open book policy should not be underestimated as well.

In new buildings, plenty of tenants are preoccupied by various issues related to malfunctions of new – and not always reliable – technologies (such as overheating of "green" premises in the summery and cold in winter, leakages etc.) and our practice confirms that this is very often the case. Plenty of new technologies are not well tested or not implemented by skilled people and the negative impact on the use of the premises can be of high importance.

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)?

No, I do not have such example.

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

A client of mine, the insurance company Kooperativa pojišťovna, a.s., Vienna Insurance Group, has recently moved to a new beautiful 10-storey building called Main Point Karlín which obtained Platinum, the highest level of certification in the LEED system and won the first place in the architectonic competition MIPIM Awards in 2012 (and many others). Great emphasis has been put on the quality of the inner environment and the building offers offices with abundance of light while noiseless induction units provide a sophisticated ventilation system. The garden on the roof of the building offers a resting area for the employees.

The building uses a number of approaches in its sustainable design, among them, use of the River Vltava's water throughout the summer for building cooling, eliminating the need for compressors and chillers; cooling is further naturally regulated by the colored fibreC elements on the facade which are not only aesthetic but serve to reduce heat gains from sunlight penetration.

Nevertheless, everyone involved in the development and construction of this building missed the fact that any use of surface water is taxed by a specific environmental tax. The tax base is the volume of water which goes through the building's system (irrespective whether it is summer or winter). Since the amount of the water is huge and cannot be regulated, our client shortly realized that the tax would increase its costs to astronomical levels. Finally, the client reached an agreement with the tax authority which demonstrated very positive approach towards this green building and the client has been partially exonerated from its tax liability...

C. FURTHER INFORMATION

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STYLES

- There are two different levels of headings you may use. See example below.
- Your body text needs to be Garamond, Size 12.
- 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 here³.

- **Headings**

³ This is a footnote.

Heading 1, Font: Garamond, Size 14, Bold

Heading 2, Font: Garamond, Size 12, Bold

- **Body text**

Read here your body text in Garamond, Size 12.

- **Lists**

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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.

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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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