CERHA HEMPEL

EU Taxonomy

Green Lease

Sustainable Transformation – Vol #4

General

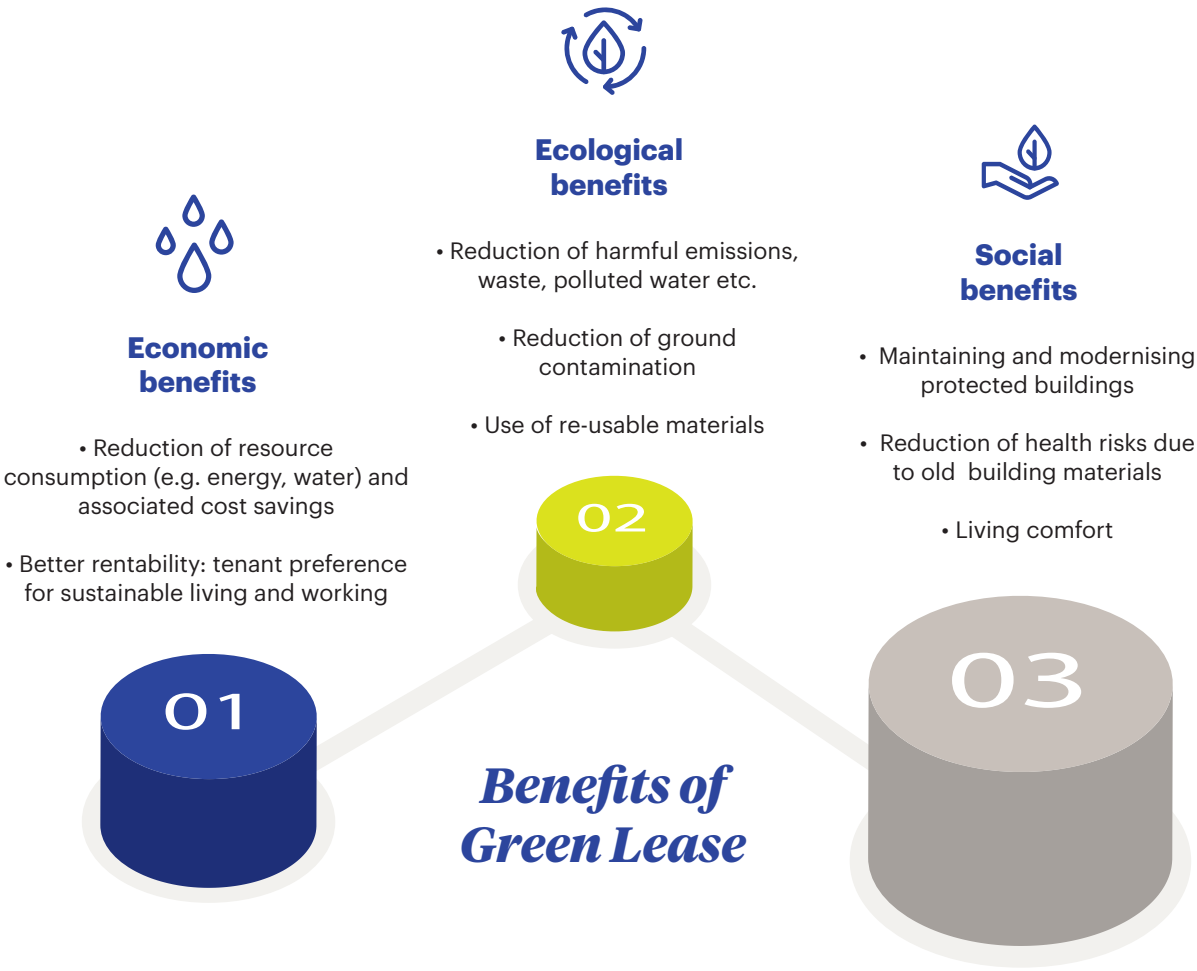
Overview

According to a survey conducted by the European Commission, the real estate sector consumes the most energy in the EU (40%) and is responsible for a significant proportion of CO2 emissions. In addition to political efforts to make this economic sector more sustainable (cue: Taxonomy Regulation), institutional investors within the sector are also making efforts to plan and execute real estate projects and subsequently manage them in a sustainable manner.

While the Taxonomy Regulation (see in detail our Bulletin Sustainable Transformation - Vol #1) aims in particular to ensure real estate is constructed in a sustainable way, the conclusion of so-called „green leases" will ensure that real estate is managed sustainably.

Term „Green Lease"

There is no generally accepted definition of a green lease. A green lease is understood to be a lease agreement that takes „green" aspects into consideration and is thus aimed at sustainability. By integrating green lease provisions into leases, the aim is to ensure that the lessee's use of the existing property and the landlord's management of the property are sustainable in the long term.



Three-Pillar Model of the ZIA

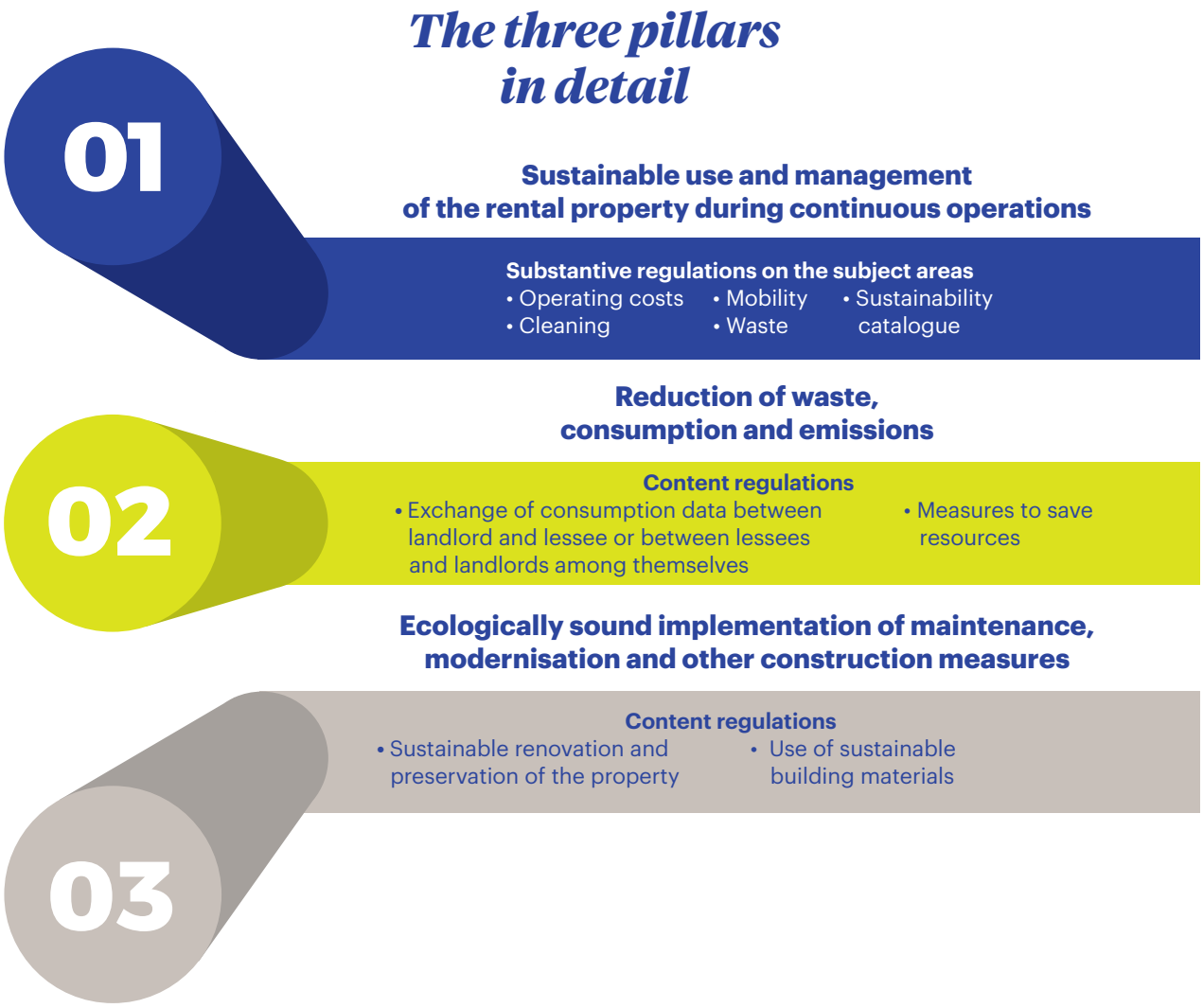
General

The Central Real Estate Committee (ZIA), a German lobby group for the real estate industry, has championed the issue of green leases. ZIA has developed a proposal for the possible content of green leases, including suggestions for „green" lease clauses for commercial real estate in Germany (a so-called „clause catalogue").

According to ZIA's catalogue of clauses, every green lease should contain at least one provision from the following three „pillars":

- Pillar 1: Sustainable use and management of the rental property during continuous operations
- Pillar 2: Reduction of waste, consumption and emissions
- Pillar 3: Ecologically safe implementation of maintenance, modernisation and other construction measures

The catalogue of clauses is divided into „basic green lease" clauses, which correspond to the content of the three-pillar system, and „extended green lease" clauses (additional clauses, e.g. object-specific supplements in the case of the certification of the existing object).



Legal framework for the drafting of green leases

Application of green leases in select European countries

The ZIA model can be used as a starting point when drafting green leases, but use of these model clauses is not easily applicable in other countries. Namely, the model clauses were drafted in accordance with German law and are essentially aimed at B-2-B contracts.

Thus, when drawing up lease agreements, "green" lease clauses must be drafted in accordance with the tenancy law of the respective country.

Green leases in Austria

a) General

In Austria, the following essential preliminary questions should be assessed before drafting green leases:

- **Is the respective agreement an enterprise lease agreement (Pachtvertrag) or tenancy agreement (Mietvertrag)?**
- **If it is a tanancy agreement, is the Austrian Rental Act (fully or partially) applicable?**
- **Does the contract qualify as a "contract form" (i.e. represent general terms and conditions)?**
- **Are the contracting parties entrepreneurs or consumers?**

First of all, it is important to distinguish between an enterprise lease agreement and a (ordinary) tenancy agreement. Whereas a tenancy agreement permits the mere use of an object, an enterprise lease agreement permits the use of an object for the purpose of usufruct (Fruchtziehung). An important criteria for distinguishing an enterprise lease from a tenancy agreement is whether the leased object represents a "going concern". If the agreement is classified as an enterprise lease, the Austrian Rental Act does not apply; instead, the relevant provisions of the Austrian Civil Code, which is more flexible, apply. Probably the most prominent example of an enterprise agreement in the real estate industry is one relating to business premises in a shopping center; it is argued that the leased object is not merely a space to sell goods and services but is considered part of the enterprise of the shopping center.

In the case of a tenancy agreement (in a B-2-B environment most probably related to offices), it must be determined whether (based on the leased object) it is subject to the full or partial scope of the Austrian Rental Act or whether it is completely excluded from its scope. In the case of the partial application of the Austrian Rental Act, only the selected provisions mentioned in Section 1 para 4 Austrian Rental Act apply, in particular the restrictions on termination and the provisions relating to security deposits. In those cases where the Austrian Rental Act is fully applicable, a number of mandatory provisions (in particular regarding the rent cap, maintenance obligation, conclusive catalogue of operating costs, etc.) must be observed when drafting the contract for a green leases.

Furthermore, it should be noted that many tenancy agreements are based on standard (template) contracts, which usually constitute contract forms (i.e. general terms and conditions). As such, a clause – which under normal conditions would be permissible – could be null and void if it deviates from the law to the detriment of the tenant. A contract form is characterized by the fact that it is pre-formulated, used for a large number of cases and has not been negotiated in detail. In order to avoid such control of the content, a clause must be negotiated in detail with the tenant. In practice, case law has ruled that the passing on of unlimited maintenance costs to the tenant in tenancy agreements (without the tenant being granted an adequate consideration) is grossly disadvantageous and, hence, null and void if used in a contract form. When drafting green leases – and especially when passing on obligations to the tenant in relation to the sustainable management of a property – it is therefore always necessary to consider whether the agreement qualifies as a contract form.

b) Possibility to pass on the operating costs and costs of (sustainable) investments to tenants

An essential feature of the sustainable use of a building is the ability to cut back on or save energy costs through resource-efficient use. However, this may involve costs that are not typical operating costs incurred in other buildings (e.g. costs of energy monitoring). As mentioned before, the possibility to pass on such costs to tenants depends on whether the agreement is subject to the (full) application of the Austrian Rental Act or not.

Full application of the Austrian Rental Act: In this case it should be noted that only the operating costs listed in Section 21 et seq. of the Austrian Rental Act can be passed on to the tenant; these are essentially the costs of water supply, costs relating to the calibration, maintenance and reading of consumption measuring devices, costs relating to chimney sweeping, sewer cleaning and pest control, energy costs for common parts, insurance, administrative costs, building management costs and public charges. Any costs beyond these cannot be effectively passed on to tenants. Therefore, any other costs including those related to energy monitoring, certification costs, etc. cannot be passed on to the tenant.

Within the full scope of application of the Austrian Rental Act, the landlord has a duty of maintenance, which includes the obligation to maintain the common parts, repair serious damage to the building and remove serious health hazards caused by the leased object (see Section 3 of the Austrian Rental Act). Consequently, the landlord is generally not under any obligation to improve or modernise the leased object or the building as long as the facilities are still functional and not defective. However, the landlord is entitled to carry out maintenance work, in particular the installation of technically suitable common facilities to reduce energy consumption, provided that the necessary costs are in an economically reasonable proportion to the general condition of the building and the expected savings (see Section 3 para. 2 no. 5 Austrian Rental Act). According to the case law, such common facilities include, for instance, the installation of full thermal insulation and the installation of new windows.

The landlord is entitled to increase the main rent for such maintenance work under the conditions set out in Section 18 of the Austrian Rental Act if the rent reserves for the current year and the last ten years are insufficient to cover the costs and it is not expected that the main rent income will cover the costs during the expected maintenance period. Furthermore, Section 16 para. 10 of the Austrian Rental Act allows the landlord to enter into an agreement with the tenants for the purpose of financing maintenance work (i.e. increasing the rent).

Partial and non-application of the Austrian Rental Act: Outside the full scope of the Austrian Rental Act, the landlord has considerably more freedom to pass on operating costs and maintenance costs. Generally, the landlord has to bear all costs and charges (see Section 1099 of the Austrian Civil Code) under the lease (i.e. operating costs) and is obliged to maintain the leased object in its original condition (see Section 1098 of the Austrian Civil Code). These provisions are dispositive, which is why the operating costs and the maintenance costs are usually passed on to the tenant.

When using contract forms, one must still ensure that maintenance costs are not passed on without limitations, which could be qualified as a gross disadvantage and may therefore be unenforceable. The same applies to the passing on of unspecified maintenance costs as part of the operating costs. Therefore, if maintenance costs are passed on to tenants in the framework of a contract form, it is important to ensure that such costs are made predictable. When passing on operating costs to tenants, the landlord is required to operate the building in a commercially reasonable manner. Therefore, only customary local costs can be passed on to the tenant. If, for reasons of sustainability, special services are to be used that exceed the usual costs, this should be explicitly stated in the lease and negotiated in detail with the tenant (e.g. the purchase of more expensive green electricity, more expensive environmentally friendly consumables, etc.).

c) Construction works which tenants are obliged to tolerate

In order to improve a building, e.g. to increase energy efficiency, it is necessary to carry out works that may affect the tenant's leased object. Therefore, the tenant's obligation to tolerate such works should already be agreed in the lease agreement. In order to avoid clauses being too far-reaching and therefore potentially ineffective, there are a number of limitations to consider.

Full application of the Austrian Rental Act: According to Section 4 para. 4 of the Austrian Rental Act, useful improvements to the leased object require the tenant's consent. If work is required relating to the common parts of a building or other improvements for which the leased object must be used or which impair its use, Section 8 of the Austrian Rental Act (obligation of the main tenant to tolerate improvement work) applies, which imposes an obligation on a tenant to tolerate such improvement works.

Measures to improve energy efficiency and other measures to enable a more sustainable use of a leased object generally constitute improvements within the meaning of Section 8 of the Austrian Rental Act. In the event of maintenance or improvement works on general parts of the building, the tenant has to tolerate access to and alteration of the leased object (including permanent alteration) in connection with such works on general parts of the building, insofar as the intervention is necessary or appropriate. In the case of work to improve other leased objects, a tenant only has to tolerate access to or the alteration of his own leased object to the extent that the work is necessary, appropriate and reasonable. When assessing the reasonableness, a comprehensive balancing of interests has to be carried out, during which the economic interests of the landlord (e.g. better rentability) must also be taken into account.

Partial and non-application of the Austrian Rental Act: According to Section 1098 of the Austrian Civil Code and case law, it is the tenant's duty to tolerate reasonable interference with its tenancy rights, as long as the exercise of its tenancy rights is not significantly hindered or affected and the improvement works are absolutely reasonable. In assessing the reasonableness, the interests of all parties involved must be weighed against each other.

If contractual clauses are used in contract forms, such clauses should only limit the tenant's obligation to tolerate improvement works by the landlord to the extent that such works are necessary and reasonable for the tenant. It is therefore important that the obligations to tolerate works being carried out are negotiated in detail in the lease and not unilaterally imposed by the landlord.

In this context, it is also important to note Section 1096 of the Austrian Civil Code, which grants a tenant the right to reduce the rent if the use of the leased object is disturbed. The right to reduce the rent cannot be excluded in advance (irrespective of the applicability of the Austrian Rental Act). Therefore, if the tenant’s use of the leased object is impaired by work carried out by the landlord, the tenant has a right to reduce the rent. This also applies to "sustainable" improvement works, e.g. to increase energy efficiency.

d) Enforceability of (sustainable) construction works by tenants

In the case of existing lease agreements, the question arises on the one hand as to which energy modernisation measures a tenant may demand that the landlord implement and on the other a tenant has to accept if the landlord wants to carry out such measures.

As already mentioned above, within the full scope of application of the Austrian Rental Act, the landlord has a duty of maintenance according to Section 3 of the Austrian Rental Act. An obligation on the part of the landlord to carry out maintenance measures requires a limitation of functionality, usability or an existing defect.

Within the scope of application of the Austrian Civil Code (i.e. if the Rental Act is not or only partially applicable), the landlord is obliged to maintain the leased object in its original condition at the beginning of the term; however, this obligation is usually waived or limited in lease agreements to the detriment of the tenant.

However, under certain conditions and only within the full scope of application of the Austrian Rental Act, tenants may demand that technically suitable common facilities be installed to reduce energy consumption or they may demand other measures be implemented (e.g. thermal insulation of the façade) to reduce the energy consumption of the building (see Section 3 para. 2 no. 5 of the Austrian Rental Act). In order to enforce the carrying out of such works, the majority of the tenants must file a respective application with the court. Still, a prerequisite for the landlord's obligation to carry out such work is that the related costs are economically reasonable in relation to the overall state of maintenance and the expected savings.

If the Austrian Rental Act does not apply, there are no similar enforcement mechanisms for tenants to enforce the implementation of energy saving measures.

Green leases in Bulgaria

a) General

Leases are governed by the Obligations and Contracts Act. The landlord is generally obliged to hand over the property in a condition which corresponds to the purpose for which it is leased. If the property is not in a condition that corresponds to the intended use, the tenant may terminate the agreement or bring the property into a suitable condition at the landlord's expense. These tenant rights also apply if the property gets damaged and the landlord refuses to carry out repairs.

Although these are the only repair situations explicitly regulated under Bulgarian lease law, it gives parties considerable leeway to determine the details of their obligations as they see fit, and specific green obligations/improvements and cost sharing can be included in the lease agreement.

b) Possibility to pass on the operating costs and costs of (sustainable) investments to tenants

Bulgarian law does not regulate "green leases" specifically. However, the general rules on leasing a property should be considered when drafting "green" leases.

For example, in the absence of a specific contractual arrangement between the landlord and the tenant, the general case law principles apply with regard to the allocation of the costs of "green" improvements. Accordingly, a tenant who has carried out improvements is entitled to compensation only if (and to the extent that) such improvements result in the unjust enrichment of the landlord. Thus, landlords would generally not be required to compensate the full amount of the renovation expenses but only the amount corresponding to the respective value increase of the property. In addition, without an express agreement, a tenant is not entitled to require the landlord to make improvements that increase the sustainability of the leased object.

While the applicable legal framework regulates numerous aspects of the lease, including improvements to the property and cost allocation matters, the relevant provisions are not mandatory and the parties enjoy substantial flexibility when it comes to deviating from the statutory default rules, which allows for greater flexibility when designing and drafting a "green lease". Thus, the parties to a lease agreement are generally free to negotiate sustainability related clauses and annexes in their contract and to arrange the respective modalities at their discretion.

Despite this relative flexibility, drafting a "green lease" always requires careful examination of the specifics of each individual case, including in particular the intended use of the property, the duration of the contract, and the question of whether one or both parties are entrepreneurs. Such prior analysis is essential to ensuring the adequacy of the individual sustainability provisions and their enforceability.

c) Construction works which tenants are obliged to tolerate

The parties may agree on various obligations that the tenants must respect and tolerate. However, in the absence of such arrangements, the tenant generally has the choice of whether or not to tolerate construction activity. If the landlord decides to carry out construction works on the property during the lease, unless it is to repair damage, it is at the tenant's discretion whether it decides to tolerate such construction works. However, the law grants the parties a wide margin of discretion, and they may expressly stipulate in the lease agreement what construction work may be carried out during the term of the lease.

d) Enforceability of (sustainable) construction works by tenants

The Bulgarian legislation does not specifically regulate the enforcement of sustainable construction works. Based on the general enforcement rules, construction works may be enforced if they are agreed by the parties.

Green leases in the Czech Republic

a) General

The Civil Code regulates tenancy law in the Czech Republic. In general, tenancy law differentiates between residential and non-residential leases.

In the case of a non-residential lease (including a lease of business premises), there is a wide range of possible arrangements, including an almost unlimited possibility to delegate responsibility for repairs, maintenance and renovations to the other party, and this therefore extends to the obligations that can be imposed on tenants under a green lease. This is significantly restricted in the case of residential leases, where clearly disproportionate arrangements are deemed null and void. Therefore, parties can only agree on green lease obligations which are not disproportionate for the tenant. Disproportionate arrangements could include, for example, expecting a tenant to perform repairs or renovations, which exceed the statutory limit, which are outside the scope of the tenant's expertise or require a tenant to pay for repairs or renovations, which are the result of normal wear and tear and should be the responsibility of the landlord.

Czech law does not regulate the term "Green Lease", and therefore the specific rights and obligations that may arise from a green lease depend on what is agreed between the parties in each individual case. The annexes to Commission Delegated Regulation ((EU) 2021/2139) can serve as one of the main guidelines in this respect, setting out the minimum requirements that a property owner should comply with in order to meet the requirements set out in the Taxonomy Regulation for "green" or "sustainable" investments. However, given the meaning and purpose of tenancy law, only a certain part of the regulated activities may be used for green lease agreements, such as: installation, maintenance and repair of instruments and devices for measuring, regulating and controlling the energy performance of buildings; and acquisition and ownership of buildings.

In the context of green leases, it is important to note that the legislation does not impose strict obligations on landlords, but merely provides a legal framework for landlords to label their investments as "green" or "sustainable". In the case of non-residential leases, there should be no problem in incorporating these soft requirements from European legislation into non-residential leases.

In the case of residential leases, even the Taxonomy Regulation may not be sufficient to support all "green" obligations for tenants, especially if such an obligation is deemed to be a disproportionate arrangement. Therefore, any green lease agreement should be subject to a prior proportionality review. Whether sustainable obligations are considered disproportionate would depend on the specific circumstances and context. In general, sustainable obligations are actions or investments that help to reduce the environmental impact of a building or property, such as installing energy-efficient appliances or making the building more airtight.

b) Possibility to pass on the operating costs and costs of (sustainable) investments to tenants

In the case of non-residential leases, Czech legislation does not limit the possibility to pass on the costs of sustainable investments to tenants. For residential leases, this possibility is limited. In the case of non-residential leases, tenants may be motivated to carry out the improvements themselves. According to the Czech Income Tax Act, tenants can claim tax depreciation for technical measures that lead to an increase in the landlord's property.

As regards residential leases, according to Section 2247 of the Czech Civil Code, only such operating costs that are related to the use of the apartment may be passed on to tenants. This relates in particular to such services as water supplies, heating, lighting or the maintenance of chimneys or elevators. The key factor that decides whether the operation costs may be passed on to tenants is whether it relates to a service, which is necessary. Services that may be deemed necessary in this context include those that are required for the safe and proper functioning of the rental property. It may be possible that operating costs that help to reduce the environmental impact of a building could be seen as necessary and required for the safe and proper functioning of the rental property, depending on the specific circumstances and context.

With regard to the possibility of increasing the rent in the case of residential leases, Section 2250 of the Czech Civil Code allows the landlord to increase the rent in the case of the improvement of the utility value of the dwelling or the living conditions of the building, or in the case of the improvement of permanent energy or water savings. In terms of green lease, therefore, there is a possibility to increase the rent in case of measures leading to water or energy savings. Such rent increases are limited. If at least two-thirds of the tenants in the building agree to the investments, the rent can be increased by 10% of the reasonable costs incurred, and only by 3.5% if no such agreement is reached.

c) Construction works which tenants are obliged to tolerate

The parties may agree on various obligations, which the tenants must respect and tolerate. However, in the absence of such an agreement, the scope for development under residential leases is limited.

Tenants are obliged to tolerate such renovations/improvements which do not reduce the residential value of the property and which can be carried out without major inconvenience to the tenant, or in other important situations (e.g. by decision of a building authority or where there is a risk of serious damage). In other cases, the tenant's consent is required.

On the other hand, the tenant may not carry out any renovations/improvements without the landlord's prior consent, except in the case of alterations for the assistance of disabled persons living with the tenant.

d) Enforceability of (sustainable) construction works by tenants

The Czech legislation does not include special obligations for the landlord to ensure sustainable building measures. However, where related construction works are agreed by the parties, they may be enforced, provided they are compliant with construction law.

Green leases in Hungary

a) General

In Hungary, there are no specific civil law provisions for sustainable real estate development or improvement projects, so the general rules apply to the conclusion and modification of lease agreements, the rights and obligations of the parties in connection with new projects, and the maintenance/renovation of rented premises in accordance with green requirements. The main issues related to these matters are regulated by two comprehensive acts: the Hungarian Civil Code Act and the Housing Act.

b) Possibility to pass on the operating costs and costs of (sustainable) investments to tenants

According to the Housing Act, landlords are obliged to ensure the maintenance of their buildings, to ensure that their central equipment is operational at all times, and to restore any deterioration in the condition of common areas and to repair all fixtures, fittings and equipment. Landlords have to bear the costs of such activities. The fulfilment of other obligations relating to the building or to a specific tenant's leased object and common areas is governed by the agreement between the tenant and its landlord. The parties must also agree on the extent to which the tenant may claim rent reduction in the event that the tenant performs obligations assumed from the landlord.

Meanwhile, the costs of maintenance, renovation and replacement of floor and wall coverings, doors, windows, fixtures, fittings and equipment in the leased object can also be regulated in the parties' agreement. Lacking such agreement, the tenant is responsible for these maintenance and renovation costs, while the landlord is responsible for the replacement costs. In this case, maintenance and repair means carrying out minor preventive maintenance and repair works necessary to keep the leased object in a good state of repair and to ensure that it is fit for its intended use.

In general, it appears that the costs of green, sustainability improvement projects cannot be treated as operating or maintenance costs and cannot be passed on to tenants as such, unless otherwise agreed between the landlord and the tenant on a case-by-case basis. This is due to the nature of operation and maintenance costs. Funds spent on a tenant's leased object can only be classified as maintenance costs if their sole purpose is to maintain or repair the condition of the premises as specified in the lease agreement or to ensure the day-to-day operation of the leased object. Improvements made primarily for sustainability purposes are unlikely to fall into these categories and therefore their costs cannot normally be passed on to tenants as maintenance costs.

c) Construction works which tenants are obliged to tolerate

tInterestingly, neither the Housing Act nor the Civil Code contain a clear rule on whether and to what extent a tenant is obliged to tolerate the landlord carrying out work related to the building. This also applies to any technical work carried out to ensure compliance with environmental requirements. Nevertheless, it can be deduced from the principle of cooperation that the tenant is obliged to tolerate the landlord's maintenance work.

According to the Civil Code, a tenant is only (expressly) obliged to tolerate the landlord carrying out works that are necessary to preserve the state of the relevant leased object – which does not include all types of renovation. Such maintenance and, if necessary, renovation of the leased object is the objective responsibility of the landlord. The tenant, on the other hand, is not obliged to tolerate work necessary for the modernisation of the premises if the use of the leased object would be significantly restricted taking into account the work to be carried out, the architectural consequences and the tenant’s projected expenses. The landlord must inform the tenant in writing of the planned work and its expected duration before it begins. The tenant may terminate the lease agreement by the last day of the month following receipt of the notice.

It should also be remembered that, under the Civil Code, a landlord must ensure and warrant that the premises leased by him are and will remain fit for the purpose stated in the lease throughout the term of the lease. Carrying out unnecessary and unsolicited works (whether for sustainability purposes or otherwise), which restrict the tenant's use of the premises in accordance with the lease agreement may be considered a breach of this warranty by the landlord. As a result, the tenant could be entitled to a rent reduction or, ultimately, termination of the lease agreement.

Both landlords and tenants must carry out any work for which they are responsible in such a way that, as far as possible, it does not interfere with the proper and intended use of the relevant premises. The tenants concerned must be notified of the start and expected duration of the work in advance.

If the works related to maintenance, renovation, restoration, conversion or extension of a building can only be carried out if the tenant temporarily moves out beforehand, the lease will be suspended for the duration of the works. Whether such suspension will take place, and if yes, its duration, must be determined by agreement between the landlord and the tenant or, in the event of a dispute, by a court. The landlord is obliged to offer the tenant replacement premises in the same municipality. During the suspension, the tenant will only be prevented from exercising tenancy rights that are affected by the works, i.e. the right to occupy and use the premises, and they will also be exempted from obligations such as proper use of the premises, maintenance, etc.

While the above provisions expressly apply to residential leases, the same provisions are generally applicable to the rights and obligations of the parties in the case of non-residential leases, with the exceptions provided for in Part Two of the Housing Act. Under Part Two, the rights and obligations of landlords and tenants in connection with the maintenance and renovation are governed by the agreement of the parties in the case of non-residential leases

d) Enforceability of (sustainable) construction works by tenants

If there are defects, which do not require immediate intervention and the landlord, despite the tenant's request, fails to comply with its obligation to repair such defects when the landlord is otherwise carrying out maintenance or renovation work on the building, the tenant can seek a court order requiring the landlord to repair the defect or carry out the work instead of the landlord and at the landlord's expense.

Green leases in Romania

a) General

In Romania, as there are no statutory provisions regulating green leases, the general rules governing lease agreements set out by the Romanian Civil Code apply. Therefore, in the absence of specific contractual provisions agreed between the parties in lease agreements, the rules provided by the Romanian Civil Code will apply in relation to sustainable (green) investments/improvements made to the leased object.

b) Possibility to pass on the operating costs and costs of (sustainable) investments to tenants

According to the Romanian Civil Code, the landlord is obliged to keep the leased object in good condition and suitable for the purpose agreed in the lease agreement during the entire lease period and to carry out all necessary repairs in this respect, while the tenant is responsible for those repairs that are necessary as a result of the normal (usual) use of the property (current maintenance repairs).

If, after the conclusion of the lease agreement, the need for repairs arises for which the landlord is responsible, and the landlord, although informed, does not immediately take the necessary measures, the repairs can be carried out by the tenant. In this case the landlord is obliged to pay interest on the sums advanced by the tenant for the repairs. In case of emergency, the tenant may notify the landlord even after he has started the repairs.

With regard to the improvements made to the leased object by the tenant, the landlord has the right to keep the additional and autonomous works, carried out on the property during the rental period, and cannot be obliged to pay any compensation to the tenant, unless such works have been carried out by the tenant with the prior consent of the landlord. If the improvements have been carried out by the tenant without the landlord's prior consent, the landlord may, at his discretion, require the tenant either to restore the leased object to its original condition or to pay compensation for any damage caused to the leased object by the tenant.

In general, the responsibility for carrying out sustainable works (such as energy efficiency upgrades, installation of renewable energy systems, etc.) depends on the terms of the lease agreement. If the lease agreement does not specify who is responsible for sustainable works, then the landlord is typically responsible for maintaining the leased property in good condition and suitable for the purpose agreed in the lease agreement, which may include carrying out sustainable works.

However, given that most of the legal provisions regulating lease agreements are not mandatory, the parties to a lease agreement are free to include obligations related to sustainable investments in the lease agreements, various provisions may be included in the lease agreements, e.g. the landlord's/ tenant's right/obligation to supply the rented premises with sustainable energy (electricity, heating, cooling) or to use only sustainable cleaning products; the tenant's obligation to collect waste separately, to use recyclable products or to equip the rented premises with durable products; requirements related to the fitting-out of the rented premises or to the fitting-out materials used in such cases, etc. Furthermore, the parties to a lease agreement can agree on who will bear the costs of the repair works.

c) Construction works which tenants are obliged to tolerate

According to Romanian law, the tenant is obliged to tolerate certain repair works. For example, emergency repairs: If the lease object requires immediate repairs to prevent damage or danger to the lease object or its occupants, the tenant is generally obliged to tolerate the landlord carrying out these repairs, even if it results in temporary restrictions on the use of the property.

With regard to the tenant's obligation to tolerate the landlord carrying out repairs, if the property requires repairs that cannot be postponed until the end of the rental period, or if postponement would expose the property to the risk of destruction, the tenant has to accept the necessary restriction on the use of the property caused by these repairs. However, if the repairs take more than 10 days, the rent will be reduced in proportion to the time and the part of the property that the tenant has been deprived of. The tenant may also terminate the lease if the repairs are of such a nature that the property becomes unsuitable for the agreed use while the repairs are being carried out.

d) Enforceability of (sustainable) construction works by tenants

Save for the specific provision mentioned under letter b) above (i.e. if, after the conclusion of the lease agreement, there appears the need for repairs that are the responsibility of the landlord, and the latter, although informed, does not immediately take the necessary measures, the repairs can be made by the tenant, at the expense of the landlord), the (sustainable) construction works made by the tenants may be enforced in case they have been agreed by the parties to the lease agreements.

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