

Delivering expert knowledge
to global counsel



Commercial Property - Austria

Energy performance certificates revisited: toothless tiger learns to bite

Contributed by **Graf & Pitkowitz Rechtsanwälte GmbH**

September 07 2012

Introduction

EPC requirements

Seller and landlord obligations

Legal consequences

Construction law

Comment

Introduction

The Act on the Presentation of Energy Performance Certificates 2012 implements the EU Energy Performance Directive (2010/31/EC), which replaced EU Directive 2002/91/EC.

The act introduces:

- disclosure requirements for advertisements in commercial media;
- more stringent sellers' and landlords' obligations for the presentation and handing over of energy performance certificates (EPCs) to prospective buyers or tenants; and
- an effective regime of administrative penalties that will apply not only to the respective seller or landlord, but also, under certain circumstances, to real estate agents.

The act applies to all property sales and leases concluded from December 1 2012 onwards; transactions coming into effect before this date will be tested against the current regime. EPCs furnished before December 1 2012 remain valid within the respective validity period, up to a maximum of 10 years.

EPC requirements

Under the new regime, an EPC may relate to the respective apartment, a comparable object within the same building or the whole building. EPCs must not be older than 10 years. For single family houses, the EPC may be furnished on the basis of evaluation of a comparable building of a similar structure, size and energy efficiency. In the latter case, the similarity of the buildings (including factors such as location and climate) must be confirmed in the EPC.

The EPC can be based on general assumptions (eg, thermal transmittance values of a certain type of window); actual measurements within the building need not be taken.

Seller and landlord obligations

Under the act, when buildings or apartments are offered for sale or for rent in newspapers or online media, both the heating requirements and the energy performance indicator of the building or apartment must be stated in the advertisement. The obligation applies not only to sellers and landlords offering properties, but also to any real estate agents involved.

When buildings or building units are sold or rented out, the EPC must be presented to the prospective buyer or tenant in a timely manner before execution of the agreement. A complete copy of the EPC, including annexes, must be handed to the buyer or tenant within 14 days of conclusion of the contract.

The act contains an exhaustive list of exemptions from the duty to provide an EPC, including the following properties:

- buildings that are merely kept frost-free;
- buildings that are regarded as condemned, provided that the building was described as condemned in the respective advertisement and a supposition has been included in the respective sales agreement that the building will be condemned within three years of conclusion of the contract;
- buildings used as places of worship and for other religious activities;
- temporary buildings with a time of use of two years or less;
- industrial sites, workshops and non-residential agricultural buildings, where the main part of the energy necessary for climate control is drawn from waste heat within the building;
- residential buildings that are intended to be used for a limited time annually and with an expected energy consumption of less than 25% of that expected from all-year use; and
- standalone buildings with a total useful floor area of less than 50 square metres.

Legal consequences

Classifications shown in EPCs are binding for the seller or landlord. The buyer or tenant may rely on the reference numbers within the EPC. Where the energy performance of the respective object is lower than the indicator shown in the EPC, the buyer or tenant can assert warranty claims against the seller or landlord. Furthermore, the author of the EPC is directly liable with respect to the buyer or tenant for the correctness of the certificate.

If the seller or landlord does not present an EPC, the building is deemed to have the same energy performance as that typical for buildings of a similar age and type. If the building in question performs below this average, the buyer or tenant may assert warranty claims against the seller or landlord. In addition, the buyer or tenant can either request an EPC from the seller or landlord or claim adequate costs for undertaking the creation of an EPC itself. The respective provision is mandatory and parties cannot agree on differing terms.

A violation of the act triggers an administrative penalty of up to €1,450. Real estate agents are also liable for this penalty, unless they can prove that their respective clients have not provided them with the data, despite being duly instructed to do so by the agent.

Construction law

As construction law falls within the jurisdiction of the provinces, each of Austria's nine provinces can lay down a separate set of rules in relation to the EPCs that must be presented in that province when applying for a building permit. These may include a different set of exceptions from those laid out in the act.

Comment

The practical importance of EPCs has arguably been enhanced by the act for two main reasons. First, under the previous regime, each of Austria's nine provincial governments was responsible for laying down its own exceptions from the obligation to provide an EPC. The list of exceptions was so extensive that the obligation to provide an EPC could be considered the exception rather than the rule. Under the new act, this is no longer the case.

Second, the consequences of failure to provide an EPC are no longer limited to contract law (which proved ineffective under the previous regime), as administrative penalties will also be triggered. This mechanism has proven effective in the past - for example, in the context of the obligation to phrase newspaper advertisements in a gender-neutral way.

For further information on this topic please contact [Martin Foerster](#) at [Graf & Pitkowitz Rechtsanwälte GmbH](#) by telephone (+43 1 401 17 0), fax (+43 1 401 17 40) or email (foerster@gpp.at). The [Graf & Pitkowitz Rechtsanwälte GmbH](#) website can be accessed at www.gpp.at.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Martin Foerster



© Copyright 1997-2012 Globe Business Publishing Ltd

Online Media Partners

