



Legal obligation to reduce final energy consumption for commercial buildings in France: “*décret tertiaire*”



November 2021

dwfgroup.com



1. Setting objectives



The purpose is to ensure the implementation of actions aimed to reduce final energy consumption of commercial buildings. These actions may take the form of:

- improving energy performance by carrying-out works;
- installing technical facilities having a better energy performance;
- optimising the use of existing technical facilities;
- using buildings in a more economical and responsible way.



All building, part of building or building complex subject to these obligations, must reach, for each of the years 2030, 2040 and 2050 the following goals:

- 1° either a level of final energy consumption reduced by 40% (for 2030), 50% (for 2040) and 60% (for 2050) compared to an energy consumption of a "reference year" which cannot be prior to 2010;
- 2° or a level of final energy consumption fixed in absolute value per category of building.



Monitoring of implementation of the Legal obligation is entirely dematerialized and will be done through the OPERAT platform, set up by the French Agency for the Environment and Energy Management (ADEME).

<https://operat.ademe.fr>

2. Buildings and entities subject to the Legal obligation



1,000 sqm



Commercial buildings: offices, retail, education, healthcare, sports, cultural, logistics, etc.).

Commercial buildings, parts of buildings or building complexes of more than 1,000sqm are subject to the Legal obligation.

N.B.: the decree specifies that when tertiary activities that were originally carried out cease, owners or tenants who continue to carry out tertiary activities there, remain subject to the "tertiary decree" even if the surface area falls below 1,000 m².

Entities subject to the Legal obligation are primarily the owners (or co-owners), regardless of their legal form.

However, owners are allowed to transfer their obligations to reduce consumption to their tenants (within the limits of the legal regulations relating to the allocation of service charges).

N.B.: the modalities linked to a partial transfer of the obligations are still to be defined.

Exempt commercial buildings:

- temporary constructions;
- buildings used for religious purposes; and
- buildings housing an operational activity for national defence, civil security or national internal security purposes.

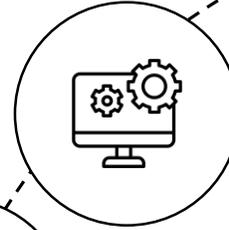
3. Implementation

30 September 2022:

Deadline fixed by the 10 April 2020 ministerial decree for reporting the first annual consumptions declaration over a period of 12 consecutive months or "*Reference Year*".

N.B.: the declaration of consumptions will be possible as from 31 December 2021.

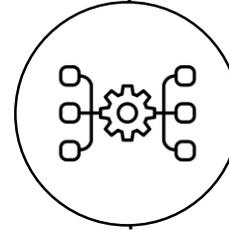
Creation of a user account on the platform



30 September of each year:
Annual energy consumptions declaration



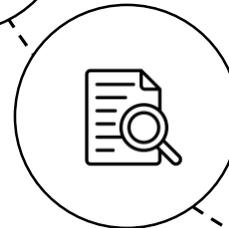
Calculation by OPERAT of the final energy consumption objectives.



Reporting of information in the form of an annual certificate completed by an "*Éco Énergie Tertiaire*" rating



31 December 2031/2041/2051:
Verification by OPERAT of the achievement of the objectives



OPERAT
Observatoire de la Performance Énergétique
de la Rénovation et des Actions du Tertiaire

4. Tool box

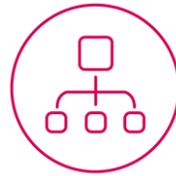
Tool box for rationalising the determination of objectives and allowing greater management's flexibility.



MODULATION

The objectives of reduction in energy consumption may be modulated in the presence of:

- technical, architectural or property constraints;
- a change in the activity operated within the building;
- manifestly disproportionate costs of actions compared to the expected benefits.



POOLING

Owners or, where applicable, tenants, will be able to pool the results of their actions to reduce energy consumption across all or part of their properties subject to the Legal obligation.

N.B. : the precise terms of pooling remain to be defined.



DELEGATION

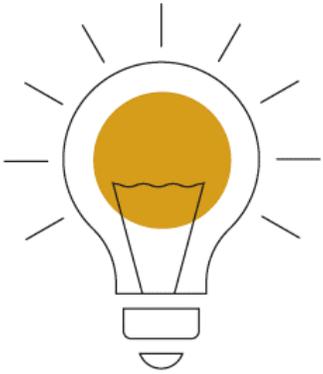
Owners or, where applicable, tenants, will be able to delegate some of the obligations to third-party contractors (ex: annual declarations of consumptions, realization of the works).



EVALUATION

Evaluations (progress report on the achievement of the objectives, delivery of additional ratings) may be requested *via* an application on the OPERAT platform.

Going further ...



Legal references (as of 13 October 2021)

- Article L. 174-1 of the Construction and Housing Code (resulting from the law n°2018-1021 dated 23 November 2018 also known as the « ELAN » law)
- Decree n°2019-771 dated 23 July 2019 also known as the « *tertiary decree* », as modified by decree n°2021-1271 dated 29 September 2021 (codified at articles R. 174-22 to R.174-32 of the Construction and Housing Code)
- Ministerial order dated 10 April 2020 concerning the obligations of actions of reduction of final energy consumptions in tertiary buildings, as modified by ministerial orders dated 24 November 2020 and 29 September 2021

Your contacts



Pierre-Nicolas Sanzey

Partner
Real Estate

T +33 (0)1 40 69 26 68
M +33 (0)6 87 13 97 68
E PN.Sanzey@dwf.law



Samuel Dufeal

Senior Associate
Real Estate

T +33 (0)1 40 69 26 69
M +33 (0)6 79 14 98 44
E S.Dufeal@dwf.law



DWF is a leading global provider of integrated legal and business services.

Our Integrated Legal Management approach delivers greater efficiency, price certainty and transparency for our clients.

We deliver integrated legal and business services on a global scale through our three offerings; Legal Advisory, Mindcrest and Connected Services, across our eight key sectors. We seamlessly combine any number of our services to deliver bespoke solutions for our diverse clients.

© DWF 2021, all rights reserved. DWF is a collective trading name for the international legal practice and multi-disciplinary commercial business comprising DWF Group plc and all of its subsidiaries and subsidiary undertakings of which, the entities that practice law are separate and distinct law firms. Please refer to the Legal Notices page on our website located at dwfgroup.com for further details. DWF's lawyers are subject to regulation by the relevant regulatory body in the jurisdiction in which they are qualified and/or in which they practise.

This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein.

dwfgroup.com