

the previous editions of the survey (31% in September 2009), garnered 14% of responses. The industrial construction segment (industrial plants, production halls, etc.) was mentioned by 11% of respondents.

While in the corresponding period of 2009 the construction of sports and recreational

facilities was recognised to be the most attractive sector of the construction market by one-third of respondents, only 7% of respondents to the latest survey mentioned sports and recreational facilities, due to the highly advanced stage of most stadiums' construction.

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## Building energy performance certificates – consequences of lack of a certificate or errors in the certificate

It is now nearly two years since the building energy performance certificate, commonly known as the energy certificate, became a feature of Polish regulations and enforced new standards on the Polish construction market. Imposed by Directive 2002/91/CE of the European Parliament and Council of 16 December 2002 on the energy performance of buildings (OJ L 1, 04.01.2003, pp. 65-71), it was adopted into Polish construction law with the amendment in the act of 19 September 2007 (Dz.U. 07.191.1373), which came into force on 1 January 2009. Since that date, the relevant regulations on the building energy performance certificate have already been slightly amended, in the act of 27 August 2009 (Dz.U. 2009.161.1279), most of which came into force on 15 October 2010 ("the Act").

All those with an interest in the matter, whether of their own volition or out of necessity, have by now learned that the energy performance certificate is a document issued solely by the authorised experts and indicating the amount of energy actually consumed or estimated to meet the different needs connected with the standardised use of a given building. The above is assessed with reference to permanent building features: its purpose, standard, location and above all the technical characteristics and installations in

it. The energy performance profile is a body of data indicating the energy requirements for heating, hot water, air-conditioning and lighting. If the above indicators show that the building does not meet the energy-saving requirements set down in the construction law, the expert issuing the certificate will include their suggestions regarding work that could be done to improve the cost-effectiveness of the building energy profile.

### Main obligations connected with the introduction of energy performance certificates

The obligation to be in possession of an energy certificate essentially applies to all new buildings approved for occupancy. It has also been extended to apply to existing buildings, residential premises and parts of buildings constituting an independent whole in terms of technology and usage where these are being released for sale or rent, and also where their previous energy performance profile has changed as a result of alterations or renovations. As this shows, the requirement to be in possession of a certificate essentially applies to all buildings and parts thereof (the few exceptions are listed in Article 5 para. 4

(b) in fine and para. 7 of the Act) in use on a day-to-day basis, regardless of whether they are for professional or residential use.

In the case of buildings whose construction has been completed, the investor is obliged to attach a copy of the building's energy performance certificate to the notification on completion of the construction works or to the application for a occupancy permit. Failure to discharge this obligation may engender consequences in the form of objection raised by the authorities as for commencing the occupancy of the building, or even refusal to issue an occupancy permit.

In respect of existing buildings being released for sale or rent, the owner of the building must ensure that an energy certificate for the building is drawn up where its ten-year period of validity is expiring, and also where the building's energy performance profile has changed as a result of alterations or renovations. The amendment of 15 October 2010 to the energy certificate regulations abolished the option of the vendor or lessor of an existing building or premises of whether to provide an energy performance certificate (Article 63a was struck out). Pursuant to the current wording of the regulations, the vendor gives the buyer, and the lessor provides the lessee with access to the relevant energy performance certificate. Although the voluntary element of this matter has been abolished, the act does not provide for any sanctions if these obligations are not observed, and hence does not render the execution of the sale or lease contract impossible. In practice the parties to a given contract decide whether or not the lack of an energy certificate for the building is a hindrance to concluding the contract.

### Badly drawn up certificate

Something akin to a warranty for drawing up the energy certificate fully and with integrity

is imposed on the experts who draw them up, in the form of the obligations listed in Article 52 para. 1 of the Act, i.e. the obligation, over and above performance of all the necessary tasks with all due care, in particular taking account of technical developments and changes in the law, to take out personal liability insurance against damage inflicted in connection with drawing up an energy performance certificate. The consequences of failure to have a certificate drawn up or of a badly drawn up certificate may be very severe for the investor, vendor or lessor of a building. This is closely connected with the law that rules an energy performance certificate containing false information on energy consumption to be a physical defect in the sense of the Civil Code on warranty for faults. In such a situation the contracting party may withdraw from the contract or demand a reduction in

the price. The only way of avoiding such consequences is to have the defect removed immediately, which in the case of an inaccurate energy certificate could involve the necessity of adjustment of the technical parameters of the building or premises accordingly, and thus entail unforeseen costs. Establishing the extent of liability, the scope of the damage, its impact on the contract executed, and the claims resulting therefrom is not something that can be done schematically, and the outcomes would undoubtedly be different for every individual case. The relatively short history of regulations on energy certificates has not yet provided the opportunity for development of solutions to the above problems by Polish jurisprudence. Nevertheless, this does not alter the fact that only as accurate an energy performance profile of a building as possible can help to save energy – which is what the intro-

duction of building energy performance certificates was, after all, designed to do.

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