NAVIGATING ENERGY RENOVATIONS IN RENTED PROPERTIES: TACKLING THE SPLIT INCENTIVE DILEMMA

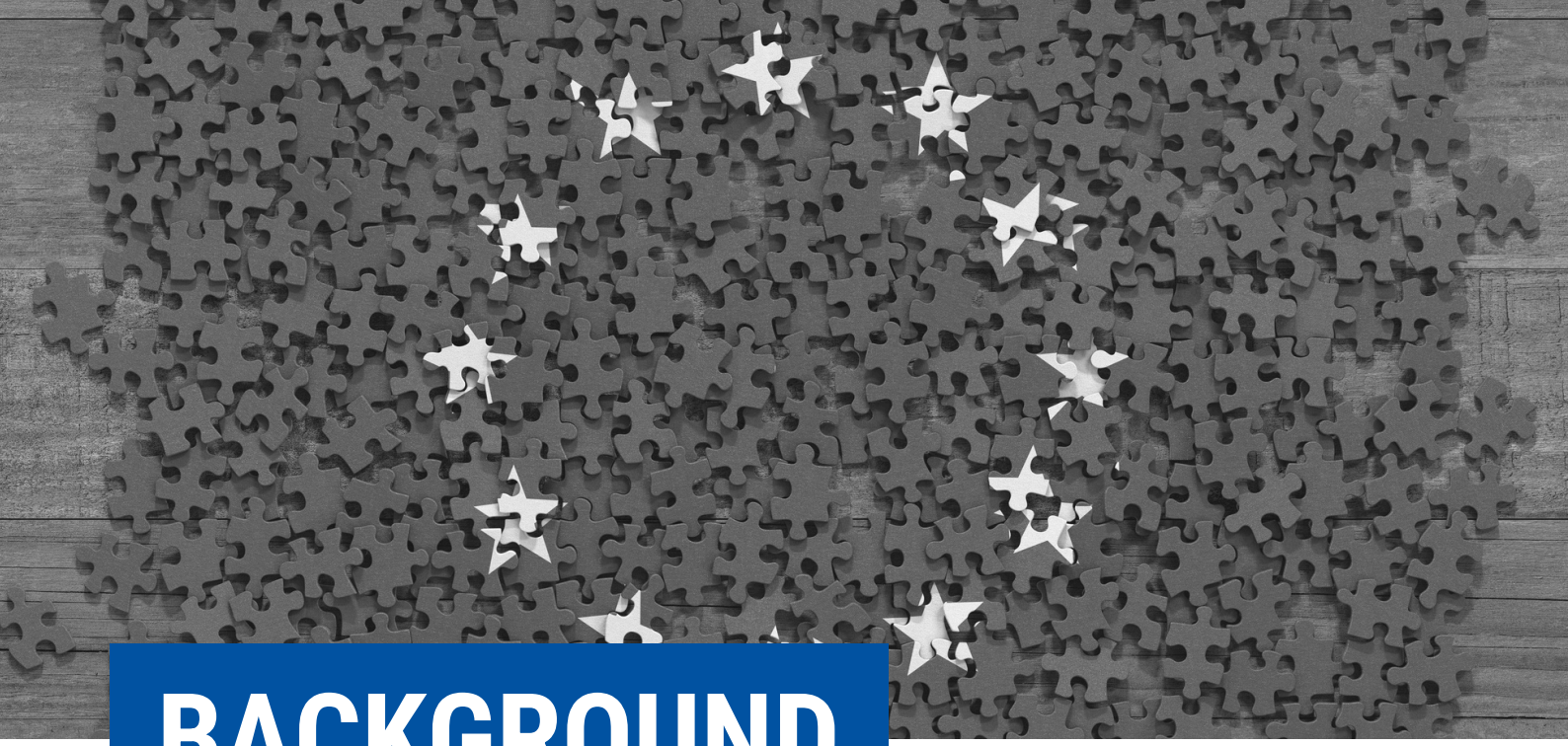
UIPI
INTERNATIONAL UNION OF PROPERTY OWNERS

International Union of Property Owners (UIPI)
24 Boulebard de l'Empereur
BE-1000 Bruxelles
office@uipi.com
www.uipi.com

UIPI 1923 INTERNATIONAL UNION OF PROPERTY OWNERS

Navigating Energy Renovations in Rented Properties: Tackling the Split Incentive Dilemma

INDEX



BACKGROUND

The Recast of the Energy Performance of Buildings Directive (EPBD), a central piece of the European Union's (EU) "Fit for 55" package which entered into force on 28 May 2024, is one of the most impactful pieces of legislation that is going to affect the European building stock in the decades to come. It aims to upgrade the European building stock to Zero Emission Buildings by 2050 as part of the EU's goal of achieving climate neutrality. One of its central aspect's is the Article 9 on Minimum Energy Performance Standards (MEPS) for buildings.

While MEPS are mandatory for the non-residential buildings, they remain a voluntary tool to be used by Member States in reaching the set target for the residential sector, having in mind that at least 55 % of the decrease of the average primary energy use is achieved through the renovation of worst-performing residential buildings. Consequently, it is expected that both the transition to a climate neutral building stock, and where relevant, the possible introduction of MEPS in some Member States or other tools are going to substantially impact homeowners and tenants across Europe.

As such, the conundrum of how to finance different measures has taken central stage in the discourse surrounding these topics. More specifically, how can Europe, on the one hand, decarbonise its building stock through renovation, while, on the other hand, ensure that building owners and tenants are not faced with disproportionate costs? Central to this question is the split incentive dilemma between the landlord and their tenant.

This dilemma refers to a situation where the party responsible for making decisions about investing in energy-efficient upgrades or improvements in a building is not the same party that directly benefits from the resulting energy cost savings. According to the new Energy Efficiency Directive (EED), "split incentives" means the lack of fair and reasonable distribution of financial obligations and rewards relating to energy efficiency investments among the actors concerned, for example the owners and tenants or the different owners of building units, or owners and tenants or different owners of multi-apartment or multi-purpose buildings. The split incentive dilemma arises in rental properties or buildings, where the responsibility for investing

in energy-efficient measures like insulation, heating, and cooling system upgrades or renewable energy lies with the landlord (the property owner). However, the direct beneficiaries of reduced energy consumption and cost savings are the tenants who pay the utility bills.

Consequently, landlords may be reluctant to invest in energy-efficient measures because they do not directly benefit from the resulting savings on utility bills. Conversely, tenants may lack the incentive to invest in such improvements since they are not the property owners and would not enjoy the long-term financial advantages of the upgrades.

Accordingly, European legislators have identified this challenge as one of the main barriers to the acceleration of the renovation rate across Europe. The EPDB refers to split incentives under the market barrier and failure category (Annex II). It identifies MEPS as the essential regulatory tool by means of which to trigger the renovation of existing buildings on a large scale, as they tackle the key barriers to renovation such as split incentives and co-ownership structures, which cannot be overcome by economic incentives (Recital 25).

Also, 'Article 17 on Financial incentives, skills and market barriers' explains that when providing financial incentives to owners of buildings or building units for the renovation of rented buildings or building units, Member States shall aim at financial incentives benefiting both the owners and the tenants. Member States shall introduce effective safeguards, to protect in particular vulnerable households, including by providing rent support or by imposing caps on rent increases, and may incentivise financial schemes that tackle the upfront costs of renovations, such as on-bill schemes, pay-as-you-save schemes or energy performance contracting. Without prejudice to their national economic and social policies and to their systems of property law, Member States shall address the eviction of vulnerable households caused by disproportionate rent increases following energy renovation of their residential building or building unit.

The EED similarly states that without prejudice to the basic principles of their laws on property and tenancy, Member States shall take the necessary measures to remove regulatory and non-regulatory barriers to energy efficiency as regards split incentives between owners and tenants, or among owners of a building or building unit, with a view to ensuring that those parties are not deterred from making efficiency-improving investments that they would otherwise have made by the fact that they will not individually obtain the full benefits or by the absence of rules for dividing the costs and benefits between them (Art. 22 on information and awareness raising, para. 9).

Indeed, despite the references to the split incentive dilemma in EU law, the matter touches upon several competences that fall outside the EU domain, in particular housing and rental law. Rental law in particular plays a pivotal role in the distribution of burdens, in the creation of incentives, and in the overall success of the European policies in this regard. Moreover, every measure with an impact on EU housing markets has different ramifications in terms of cost distribution between tenants and landlords, as well as social fall-back systems for housing. The scale of these ramifications depends on, among others, national housing law, legal regulations on energy-saving measures, and the general significance of the rental market for the respective national housing market. [1]

[1] Federal Institute for Research on Building, Urban Affairs and Spatial Development (BBSR) within the Federal Office for Building and Regional Planning (BBR) (ed.): Tenancy law and energy renovation in European comparison. BBSR-Online-Publikation 14/2016, Bonn, Dezember 2016, p. 2.

Thus, given this context, the International Union of Property Owners (UIPI) chose to explore this further and to better clarify some of the challenges which link national rental law and 'green renovation'.

The purpose of this paper is to collect, systematise, and analyse the main data and information on the general characteristics of rental law in eight European countries, [2] with a particular focus on tenancy law provisions with an impact on energy renovations. The idea is to contextu-alise the data collected in the light of the split incentive dilemma and provide a systematic overview that will be useful for housing professionals in the private housing sector that may be confrontedwith this issue. In doing so, it also illuminates the intricacies of rental law that complicate the fair distribution of costs resulting from renovations.

Within the broad theme of national private rental law, the present paper will deal with both residential and commercial leases, although with different approaches. For greater display clarity, the main analysis will address residential leases, while commercial leases will be discussed in separate subchapters to underline the main differences between the two types.

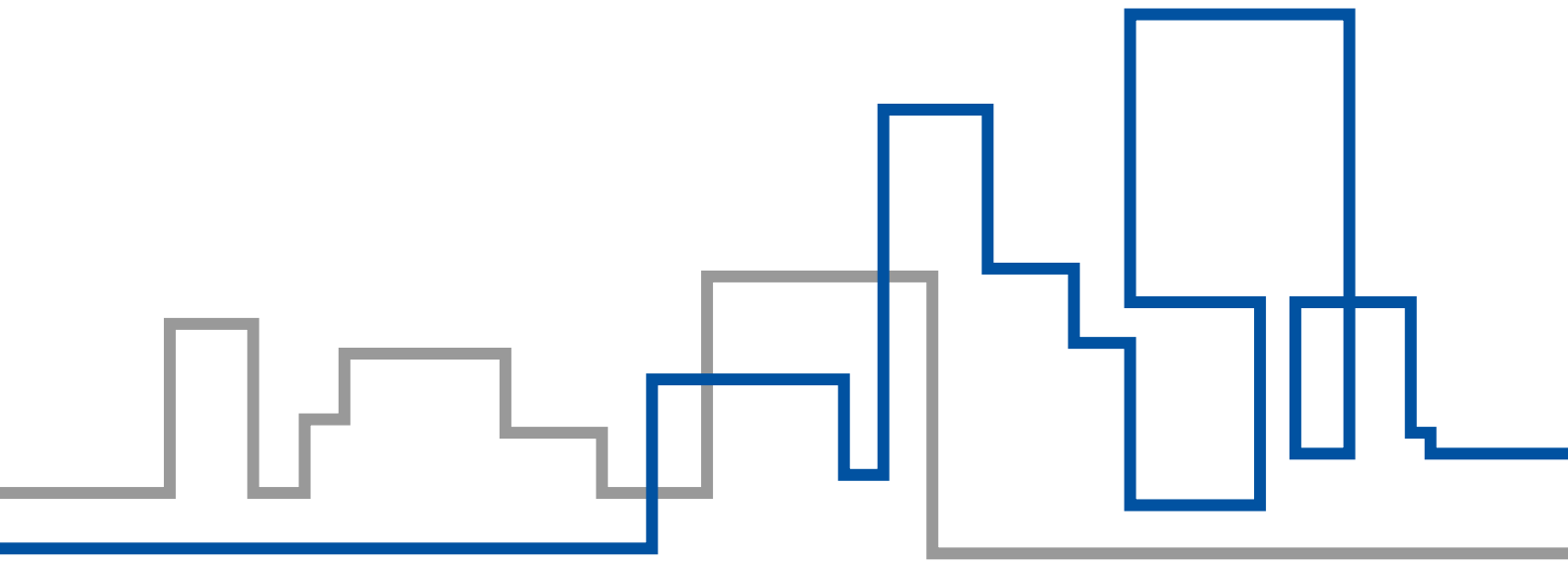
From a methodological point of view, this desk research on national rental law and green renovation-related national policies has been coupled with a collaboration with several UIPI members. While the aim of the report is not to delve into the details of each national legislation, but to point out some patterns and good practices, as well as sometimes difficulties, that could contribute to the discussions on EPBD's implementation during its transposition process.

The first chapter covers the current legislative framework (last update May 2024) concerning the general provisions of tenancy law of the eight countries analysed. In particular, it examines and compares the permitted types of rental contracts, the rules on the determination of the rent, and the legislation on termination of rental contracts.

The second chapter focuses on special tenancy law provisions for energy efficiency and the deployment of renewable energy sources. It includes examples of regulation of rent increase in relation to energy renovation measures and other special rules regarding cost distribution between tenants and landlords, as well as other direct or indirect incentives for renovation.

---

[2] Austria, Belgium, France, Greece, Germany, Italy, Spain, and Sweden.



LEGISLATIVE FRAMEWORK: GENERAL PROVISIONS OF TENANCY LAW

2.1 INTRODUCTION

The common perception of 'renting' is a contractual agreement whereby the ownership and the use of a property is separated between two parties; the landlord and the tenant. As a result, a tenancy can be seen as gaining the temporary use of a property. In many countries, this concept is known as a 'lease'. [3]

The purpose of this analysis is to focus on the aspects of a tenancy in eight case study countries: **Austria, Belgium, France, Germany, Greece, Italy, Spain** and **Sweden**. It explores the rental legal framework in both the residential and commercial sectors hoping to open a debate on the best provisions for contemporary, effective, and stable private rental regulation. However, it is important to note that the emphasis of rental legislation in the residential sector is focused on the main residence of the tenant, which is due to the existence of considerably diverse rules regarding other forms of tenancies.

2.2 RENTAL LEGISLATION IN THE RESIDENTIAL SECTOR

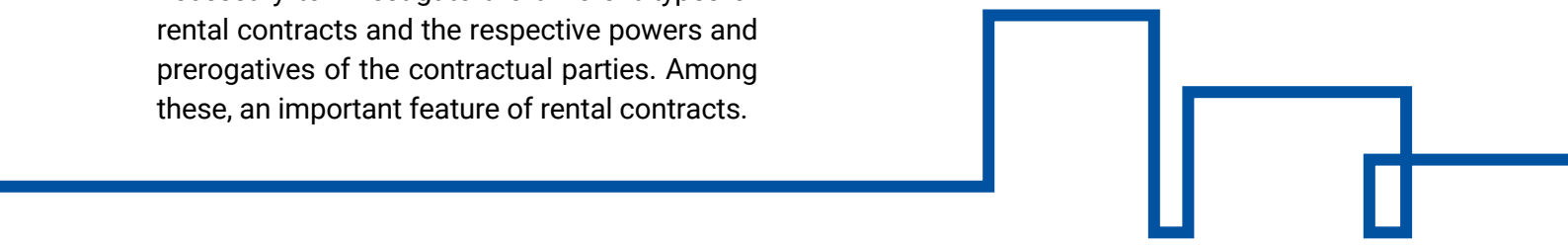
2.2.1 Permitted types of rental contract

In order to be able to assess the cost distribution of energy renovation of buildings between tenant and landlord, it is first necessary to investigate the different types of rental contracts and the respective powers and prerogatives of the contractual parties. Among these, an important feature of rental contracts.

The ability to freely regulate the duration of tenancy agreements should be considered a key contractual freedom. However, in the majority of Member States there are quite strict regulations on the duration of tenancy contracts.

The most extreme cases in this sense are found in **Germany** and **Sweden**. In **Germany** it is deemed unlawful to agree on a contract for a limited period since the contract must be of an unlimited duration. Fixed-term rental contracts are only exceptionally permitted and a time limit requires a justifiable reason. Otherwise, the contract is regarded as open-ended. [4] The law gives the landlord three possible justifications: self-use, housing is required for a service provider, or the rented rooms should be demolished or substantially renovated. In **Sweden**, open-ended contracts are used almost exclusively. Even if parties agree on a contract for a limited period, the tenant can always terminate the contract with three months' notice. The same applies if the tenant requests a change of terms.

Conversely, in the majority of the analysed countries, the parties are less bound in determining the duration of the contract. In these Member States, landlords and tenants are free to set the duration for either a limited period (subject to certain limitations such as a minimum duration) or for an indefinite period of time.



[3] Note: The contractual nature of a lease is subject to debate with the theoretical difference between a civil law and a common law lease. Although 'a lease' in civil law countries is nothing more than a contractual arrangement between two parties, 'lease' or 'leasehold' in the UK's common law system has a full proprietary effect comparable to ownership.

[4] There is no maximum period for 'limited' agreements, but they are in theory not renewable. See more at: https://www.globalpropertyguide.com/Europe/Germany/Landlord-and-Tenant.

Country	Rental contract's characteristics		
	Fixed-term rental contracts	*Open-ended rental contracts*	*Limits of duration*
AUSTRIA	YES	YES	If the Tenancy Act applies, minimum duration of 3 years for fixed-term written tenancy agreements for apartments, otherwise not enforceable. Extension possible, but not for less than 3 years, 'silent continuation' possible.
BELGIUM	YES	NO	Two types of contracts: minimum duration of 9 years (for standard contracts), maximum duration of 3 years (for short-term contracts).
FRANCE	YES	NO (but de facto open-ended tenancy agreements, because the reasons for the termination are strictly regulated)	Minimum duration of 1 year (furnished apartment), 3 years (if landlord is an individual), 6 years (if landlord is a company). Automatic renewal for the same duration as the initial contract, provided that no termination notice was given by the landlord.
GERMANY	NO (only exceptionally permitted: a time limit requires a justifiable reason which must be communicated in writing at the time of conclusion of the contract)	YES (standard contract)	No minimum duration or automatic renewal. A minimum duration can be agreed by contract.
GREECE	YES	YES (except for tenant's main residence)	Minimum duration of 3 years if the property is the tenant's main residence.
ITALY	YES	NO	Minimum duration of 4 years (or 3 years for subsidised tenancies). Unless terminated, renewals are possible for either a further two or four years.
SPAIN	YES (5 or 7 years standard contracts)	YES	Minimum duration of 5 years if the property is the tenant's main residence.
SWEDEN	YES (but no practical relevance, only the landlord is bound)	YES (standard contract)	The tenant can always terminate the lease with three months' notice, even if it is fixed-term.

In **Spain**, the duration of rental contracts is freely agreed by the parties. However, a mechanism of mandatory annual extensions is established for the landlord in those cases in which the agreed duration is less than 5 years, if the landlord is an individual, or less than 7 years, if the landlord is a legal entity, unless the tenant notifies the landlord of their wish not to continue with the yearly extensions. Thus, if the contract is agreed for a period shorter than 5 or 7 years, it will be at the tenant's discretion to comply fully with these terms. These yearly extensions (up to 5 or 7 years) cannot be waived. Such a clause would be null and void, as it constitutes a right for the tenant. This, therefore, sets up a *de facto* minimum duration of the contract.

On the other hand, once the term of 5 years (if the landlord is an individual) or 7 years (if the landlord is a legal entity) has elapsed, the contract will be extended annually up to a maximum of 3 more years, unless the landlord informs the tenant, 4 months in advance, of their wish not to renew the contract. The contract will also not be renewed if the tenant informs the landlord, with 2 months' notice, of their intention to vacate the rented property.

Spanish law only protects the tenant of a habitual and permanent dwelling with this system of mandatory extensions. Consequently, these are not applicable in the case of a rental contract for a use other than that of the habitual residence.

Moreover, with the entry into force of the Law on the Right to Housing, two new extensions have been established for rental contracts concluded after 26 May 2023:

- In rental contracts in which the 5 years (mandatory extensions) or 3 years (legal tacit extension) end, the tenant may demand an extraordinary extension of 1 year, if they can prove a situation of economic vulnerability and provided that the landlord has the status of large housing holder.
- Under the same terms and conditions as above, the tenant may request an extraordinary extension of 3 years from the landlord if the property is located in an area with a stressed residential market.

Finally, "indefinite" contracts are not allowed in Spain. Civil legislation, which is supplementary to the special law, indicates that, in the renting of things [5], one of the contracting parties is obliged to give the other party the enjoyment or use of such thing for a set period of time and at a certain price.

In **Italy**, only fixed-term rental contracts are permitted. [6] Parties may enter into tenancy agreements for a minimum of four years, which are then renewed every four years unless terminated. [7] This provision applies to 'free' or market-rent tenancy agreements. However, Italian law provides for 'subsidised' tenancies as an alternative. Such tenancies have a pre-determined rent, contractual terms, and tenancy duration based on local agreements between the representative bodies of landlords and tenants. These tenancies cannot be for less than three years, [8] although certain short-term contracts can be agreed on where there is a specific and temporary requirement. [9]

___

[5] The civil code speaks of leases of "things" and "services or works" in a generic way.

[6] However, the tenant's lifetime is also a permissible time limit.

[7] The contract is automatically renewed once after the first four years, if it is not terminated. As usual, the reasons for the termination by the landlord are limited.

[8] In this case, any renewal is automatically fixed at two years.

[9] Such as student tenants or where a property owner is moving for work for a short period and wants to rent out their home until they return.

In **Greece**, the minimum tenancy for a tenant's main residence is three years, after which the contract is considered to be "unlimited", meaning that either party can bring the contract to an end without any compensation or notification. For tenancy agreements relating to properties which will not become the tenant's main residence, such as secondary residences and student accommodations, there are no limitations placed on the duration of the contract.

The longest minimum tenancy period in our case study countries exists in **Belgium**, which has a duration of nine years. However, landlords in Belgium can choose to create a short-term contract which has a shorter duration, but it can only be terminated by either party under specific conditions. Short-term contracts can be prolonged or renewed on the same terms and upon agreement by both parties in writing. Nevertheless, the total length of the tenancy (combining the initial term and any renewals) cannot exceed three years. If a tenant remains in a rented property on a short-term contract for longer than three years, the contract will automatically become a nine-year tenancy (that will be deemed to have begun at the start of the initial short-term contract).

In **Austria**, both fixed-term and open-ended rental contracts are permitted. In case the Austrian Tenancy Act is fully or partly applicable, fixed-term rental contracts for apartments must be concluded in writing and for a period of at least three years, otherwise, the time limit would not be enforceable against the tenant. [10] If the tenant "silently continues" to use the property after this period and the landlord does not oppose, the tenancy agreement continues for a one-off period of three years. If the landlord does not act within this time frame, the tenancy becomes unlimited.

[10] The scope of the Tenancy Act, Mietrechtsgesetz (MRG) in German, is regulated in § 1 Austrian MRG; The legal basis for rental objects is the (Austrian) Tenancy Act and the Austrian Civil Code (ABGB); § 1 MRG regulates which rental objects are fully or partially covered by the Tenancy Act. In addition, the WGG applies to rental objects that were erected by a non-profit building association in its own name and are or were owned by a non-profit building association. Non-profit building associations have the advantage of being tax-privileged. The Tenancy Act is fully applicable to e.g. nonsubsidised rental objects in buildings erected before 1 July 1953 (as far as the building is not divided into condominiums), rented condominium objects in buildings erected before 9 May 1945, certain subsidised rental apartment houses and certain subsidised condominium buildings and partly applicable to, e.g., hire items that are located in buildings that have been newly constructed without the aid of public funds on the basis of a building permit issued after 30 June 1953; hire items which are located in a converted attic or a superstructure for which a building permit was issued after 31 December 2001; hire items that have been newly built through an extension based on a building permit issued after 30 September 2006; rented condominium objects, if the rented objects are located in a building that was newly constructed on the basis of a building permit issued after 8 May 1945.

Concluding an unlimited rental contract within the scope of the Tenancy Act entails a great risk for the landlord. The landlord can only terminate the lease agreement for reasons under art. 30 Tenancy Act. The landlord bears the litigation risk and the enforcement can take years. In addition, certain persons listed in the Act possess "Eintrittsrechte", which allow them to take over the contract, without the landlord's explicit consent, which can deprive the landlord and his legal successors of the possibility to freely dispose of the rental property over decades. Such "Eintrittsrechte" can exist for commercial leases when the Tenancy Act applies in its full scope.

In **France**, minimum durations are 1 year (for furnished apartments), 3 years (for unfurnished apartments if the landlord is an individual), and 6 years (for unfurnished apartments if the landlord is a company). However, the tenant can leave at any time with prior notice. Automatic renewal is possible for the same duration as the initial contract, provided no termination notice was given by the landlord 6 months before the end date of the contract. Open-ended tenancies in theory are not possible, but de facto renewals are quite easy to obtain because the reasons for termination are strictly regulated.

In **Sweden**, open-ended contracts are the norm as a fixed-term contract provides no added value for the landlord (the tenant can always terminate the lease with three months' notice, even if it is fixed-term) or the tenant (as they have the same security of tenure in fixed-term contracts as in open-ended contracts).

From this first analysis, it is not easy to find a common pattern on the permitted types of rental contracts, except for a tendency to regulate a lot of aspects related to the duration. Except in **Austria,** for the reasons above, the preference for fixed-term or open-ended rental contracts does not seem to have much practical relevance, given the duration of the lease is mainly dependent on other terms of the contract such as the rights of renewal, the minimum/maximum duration rules and the rights to termination. [11]

[11] Moreover, in the commercial lease the situation is often reversed as individual landlords are faced with large companies as tenants, with a clear disproportion in terms of bargaining power.

2.2.2 Termination

There are many different legal regimes which regulate the termination of tenancy contracts across Europe. The most common method for a tenancy to end is, as seen in the previous section, the expiration of a fixed-term contract. However, this type of contract can often be extended by the tenant upon expiration.

In **Spain**, there are different forms of unilateral cancellation or termination of the contract:

a) The tenant of a habitual residence may withdraw from the rental contract after the first 6 months of the contract, if they inform the landlord at least 30 days in advance. The contracting parties may agree in the contract that, in this case, the tenant shall compensate the landlord with an amount equivalent to one month's rent for each year remaining to be completed. In the event that the tenant withdraws before the first 6 months, although some court rulings have condemned the tenant to pay the remaining rents until the 6 months have been covered, more and more courts are leaning towards another type of legal figure, which is breach of contract and not termination.

b) The tenant may also withdraw in cases in which a contract term of less than 5 or 7 years has been agreed. In these cases, once the agreed period has expired, the tenant may notify the landlord of their wish to terminate the contract, giving 30 days' notice before the start of each legal extension.

c) The landlord may terminate the contract if there is a breach of the contractual obligations on the part of the tenant and, specifically, for the following reasons:

- For non-payment of the rent or of any amount whose payment has been contractually assumed.
- For failure to pay the amount of the deposit or additional guarantee agreed.
- For subleasing or unauthorised assignment.
- If the tenant causes damage to the property or carries out unauthorised works.
- If annoying, unhealthy, harmful, noxious, dangerous or illicit activities take place.
- If the use of the property is modified.

d) Non-compliance by the landlord consisting of the non-performance of necessary works in the dwelling, or of disturbances made in the use of the dwelling, also constitute causes for termination of the contract.

e) Finally, rent of the habitual residence granted by a usufructuary or by someone with a similar right will be terminated at the end of the landlord's right.

In **Greece**, fixed-term contracts can only be terminated at the end of the fixed term. Landlords cannot request the property back before and tenants cannot abandon the property without providing compensation to the landlord amounting to the value of all the rent due under the tenancy. The lease expires automatically as a result of the expiry of the term of the contract (for primary residence this is valid after the three initial years). Free terminations of open-ended contracts are possible only if they are not primary residence rentals. Here, the landlord can terminate the lease by terminating the contract without stating reasons only if there is a serious breach of the contract or the law. For example, termination is always possible on the grounds of rents arrearage.

In **Italy**, during the first four-year contractual term, a landlord may only refuse to renew a contract for reasons expressly permitted in the law [12] and by notifying the tenant in writing at least six months before the tenancy is due to expire.

---

[12] These reasons are expressly stated under Article 3 of Law 431/1998. They include: personal needs, core restraint which is not possible while the accommodation is occupied, and the planned sale of the rental property.

Therefore, the reasons for refusing to renew a contract are here more important than the reasons to terminate a contract. Moreover, during the term of the rental contract, the tenancy cannot be ordinarily terminated, except for specific permissible reasons for termination.

Likewise, çlandlords in **France** need to provide reasons why they intend to terminate the contract (or do not intend on renewing a contract) and must give the tenant at least six months written notice. Legitimate reasons include when the landlord wishes to use the property as theirs (or a member of their family's) main or primary residence or when they plan to sell the property. [13] In case of sale, the landlord is obliged to offer the tenant the opportunity to buy the property at the same time as giving notice (except for furnished tenancies). Nevertheless, even if there is a reason for giving notice, a landlord cannot give notice without offering an alternative accommodation solution to a tenant who is over 65 and has low income, unless the landlord themself is over 65 or has low income.

Two specific situations might occur when dealing with tenancy renewals in France. [14] Firstly, if the landlord takes no action, the tenancy will renew automatically; neither the landlord nor the tenant will need to sign any additional documents and the tenancy will renew on the same terms and conditions. Secondly, the landlord may propose a rent increase under certain conditions, in particular after justifying that the current rent is significantly below market rents. If the tenant refuses to accept the rent increase, then the landlord must refer the matter to a specialised joint committee, which will attempt to bring the parties to an agreement. If no conciliation is reached, the landlord should refer the matter to the judge for the purpose of setting the new rent. As regards the tenant's ability to terminate, in ordinary circumstances, a tenant must give three months' notice. However, in certain situations such as a job transfer or the loss of a job, health conditions or in some thirty urban areas identified as being under housing need pressure, the tenant is allowed to provide one month's notice. Moreover, whilst a landlord is only allowed to terminate a tenancy at the end of the contract, a tenant can do so at any point during the tenancy.

In **Germany**, a notice of termination of three to nine months (depending on the length of the rental contract) is permissible only on the grounds of a legitimate interest of the landlord in terminating the tenancy agreement. [15] On the contrary, tenants can terminate the contract at any time without giving reasons, they only have to observe the notice periods.

Under the Tenancy Act in **Austria**, the tenant of a fixed-term lease may terminate the lease after the expiry of one year by giving three months' notice without giving any reason. The tenant may terminate an open-ended lease at any time without stating reasons. The landlord may only terminate a fixed-term or an indefinite lease agreement in court for the specific reasons provided for by law. They can only terminate the tenancy by court order if, for example, the demolition of the rented house has been approved by the authorities (according to the Vienna Building Code, this is only approved in exceptional circumstances) and the tenant is provided with a replacement apartment. In the few instances where the Tenancy Act does not apply (e.g. short-term rental or properties with two or less individual

[1] Of course, a legitimate reason is also a serious breach by the tenant.

[2] 'Landlords in Europe, a Comparative Analysis', UIPI, September 2013, p. 24.

[15] This includes, in particular, serious breaches of duty by the tenant (such as the failure to pay the rent), the landlord's own need to use the dwelling, and the hindrance to appropriate economic exploitation. However, termination for the purpose of rent increases is expressly excluded.

apartments), the law allows both parties to terminate the open-ended lease at any time without giving reasons. If the lease agreement was signed for a certain term, both contracting parties are generally bound to this agreed term. However, an early termination right may be agreed upon in the fixed-term lease. Furthermore, the Austrian Civil Code provides that for all rental properties, whether subject to the Tenancy Act or not, the landlord and the tenant may demand the earlier cancellation of the contract for a few important reasons stated in the law [16].

Belgian law allows tenants to terminate the nine-year contract at any time by providing three months' notice. [17] However, if the tenant terminates the contract during the first three years, they are liable to pay compensation of three-, two- or one-month's rent depending on whether the tenancy ends in the first, second, or third year. This rule only applies if the tenancy has been registered. If it has not been registered despite formal notice to the landlord, the tenant is free to terminate the contract at any point and is not liable for any compensation. Landlords can terminate a tenancy agreement at any time if they or a member of their family need to occupy the property personally, provided they give six months' notice. At the end of each three-year period, a landlord can also give six months' notice if they intend on undertaking works (reconstruction, renovation, conversion) and where the costs of the works will be equivalent of three years rental income. If the renovation works concern several rented properties in the same building, the cost of works element is reduced to two years' rent. Every three years, landlords may also terminate the contract without reason but will be liable to pay compensation equivalent to either six- or nine-months rent depending on whether there are three or six years left on the tenancy. The situation is slightly different for short-term contracts where three months' notice applies to both parties.

In **Sweden**, renewals of contracts are rare. Contracts are open-ended by default with some minor exceptions. For these rare long-term contracts, as well as open-ended contracts, an extraordinary termination by the landlord is only possible in case of a serious breach of contract. Permissible reasons for termination are provided for by law and must be proven by the landlord in court. [18]

The tenant, in compliance with the due notice periods, is always free to terminate the contract and often enjoys a right of renewal subject to limited exceptions. On the contrary, the landlord is more restricted: the specific reasons for which they can terminate the lease are quite similar in all the countries examined and can be summarised in the concepts of serious breaches of contract by the tenant (the neglecting of caring for the apartment, rent arrearage, damages, subletting without permission from the landlord, etc.) and legitimate interests of the landlord (mainly the landlord's own need to use the dwelling). [19] Energy building renovation measures do not regularly form part of these justifications.

---

[16] §§ 1117, 1118 ABGB

[17] 'Landlords in Europe, a Comparative Analysis', UIPI, September 2013, p. 25.

[18] Examples of permissible reasons are the neglecting of caring for the apartment or payment of rent. Another example is the demolition or reconstruction of the building if the landlord can provide another apartment for the tenant.

[19] Similar considerations are valid for the limited landlord's power to deny renewals of fixed-term contracts, since the termination of a tenancy by the end of the term is equivalent to a termination and can have comparable effects. Here again, as seen above, the landlord can put an end to the lease mainly for special personal needs related to a different use of the building, the justifications listed being usually the same as for the legitimate interest to terminate the contract.

However, the possibility of termination due to building renovation (including energy renovation) exists in some countries, as we have seen for example in Belgium. Nevertheless, the serious dilapidation or uninhabitability of the building is often assumed during renovation work, but that is not always the case with purely energy renovations.

The last feature that needs to be analysed to better understand the basic rental law dynamics is the determination of the rent fee. This aspect is crucial for the purpose of our research, as wide flexibility in regulating the rental fee can have a substantial impact on the cost distribution of the burden stemming from green renovation.

2.2.3 Determination/regulation of the rent

In most countries, the initial amount of the rent can be freely agreed between the landlord and the tenant, even though recently there is a tendency to impose rental caps for specific areas. Conversely, the determination of future rent increases (or decreases) on existing tenancies or new tenancies differs from country to country and is often restricted by legislation.

In **Belgium**, parties set the rent amount when they agree on the contract. [20] Annual changes ('indexation') are provided for as of right once a year in line with changes in the cost of living. However, it only applies to leases where the lessor decides to exercise its right to apply it. [21] Nevertheless, a redetermination of the rent can be then requested by either the landlord or the tenant between the sixth and ninth month before the end of each three-year period of a nine-year tenancy. If there is a disagreement between the parties, a civil judge, the "juge de paix", has the authority to settle any dispute [22] and the judge can order either an increase or decrease of between 10–20 % of the rent previously agreed upon [23] taking account of the factual circumstances.

In **Spain**, limits have been set on updating rent. Traditionally, such increases were linked to the Consumer Price Indexes, in a clause which had to be agreed in the rental contract. The national Government, however, has been issuing regulations limiting rent updates in current contracts. Thus, in 2023 the maximum limit of increase was 2% and in 2024, 3%. For 2025, a new reference index is expected to be approved, which will serve as a system for updating rents.

In **Italy**, there are two different types of lease contracts, both open to private negotiation: either the landlord freely determines the rent in agreement with the tenant, or the rent must be

---

[20] At this point, there is only an indicative rent reference grid but there is a political will (especially in Brussels) to regulate the rents.

[21] Once a year, on the anniversary of the tenancy, a proportional adjustment of the rent may be applied by the landlord if stated in the contract and is based on the cost of living index for the month preceding the annual due date according to the following formula: basic rent x new index / basic index (the index of the month during which the agreement was signed).

[22] This applies to both increases and decreases in the rent and can invoked by either party.

[23]https://www.globalpropertyguide.com/Europe/Belgium/Landlord-and-Tenant.

Country	Determination of Rent	
	Regulation on increasing the rent amount on existing tenancies	*Regulation on setting the rent amount on new tenancies*
AUSTRIA	YES (only if parties agree on a value protection agreement, if Tenancy Act applies, cannot exceed statutory rent)	YES (if the Tenancy Act applies, there is a strict rental cap and concerning contracts with a limited period a 25% time limit discount is applied; if partial application of the Tenancy Act, rent can be freely agreed upon)
BELGIUM	YES (annual increases are automatic if rent indexation is agreed in the lease. A new rent determination is possible at the end of each three-year period in a tenancy of nine years, or that has become a tenancy of nine years, subject to certain conditions.) [24]	NO
FRANCE	YES (tenancies have an annual rent increase clause based on indexation. Rent can also be increased upon renewal of a contract where the landlord can demonstrate that the current rent is below market value)	YES (subject to considerable limitations)
GERMANY	YES (subject to general limitations + 'rent brake' specific limitations, index-linked limitations are less common)	YES (subject to general limitations + 'rent brake' specific limitations, index-linked limitations are less common)
GREECE	NO (but if there is no agreement for the second and third year, the landlord is entitled to ask for an increase equal to three-quarters of the annual official Consumer Price Index)	NO
ITALY	NO (in short and medium term, a rent increase is excluded during the term of the rental contract including the first extension by the landlord)	NO
SPAIN	YES (Before 31/12/2024, a Reference Index will be published for the annual update of housing lease contracts, which will be set as a limit for such update)	YES (If the property is located in a stressed area, there are limits to the determination of the rent: either the rent of the contract in force for the previous 5 years, updated, or a reference index of rental prices)
SWEDEN	YES (annual rent increases are collectively negotiated between landlords and the Union of Tenants)	YES (initial rents are negotiated between the landlord and the Union of Tenants)

[24] It is not possible for landlords to increase the rent where existing tenants renew or prolong short term contracts.

agreed upon in accordance with parameters established by negotiations between landlords' and tenants' organisations. In the short and medium term, a rent increase is not possible during the duration of the lease contract, as such a possibility is not stipulated in the law, which is also applicable for the first renewal by the landlord. Therefore, the rent level depends on what is allowed by the market (or by agreements for subsidised contracts).

Austria presents a mixed picture. [25] For dwellings that fall under the full scope of application of the Tenancy Act, inter alia rental property in unsubsidised apartment buildings with a building permit from before 8 May 1945, the tenant is protected by strict legal rent caps. In addition, in the case of a fixed-term tenancy, a discount of 25% must be applied to the main rent. This does not apply to the free main rent. A value protection can be agreed, whereby there is a legal regulation for the value protection for the statutory rent. [26] In recent years, the indexation provided for by law has been suspended several times in favour of tenants and a further restriction has been introduced by means of a statutory rent cap.

Germany has many regulations relating to the amount of the rent a landlord can charge. Although initial rents can be freely negotiated and agreed upon between the parties (unless the regulations of the rent brake apply), landlords can face criminal charges for demanding a rent in excess of 20% above the rent charged for comparable premises. [27] In tenancies of indefinite duration, tenants are required to accept rent increases to a level comparable with similar properties in the area, provided that no rent increase occurred in the last 15 months and this would not lead to a rent increase greater than 20% within the last three years (15% in areas with a 'rent price brake'). For energy renovations, which are to be distinguished from maintenance renovations, an additional increase of the annual rent by 8% of the modernisation costs is permissible (however not more than €2 or €3 per square meter respectively). If both modernisation and maintenance works take place, the apportionment is only permitted for the modernisation component.

If the contract contains an 'indexation' clause, the landlord benefits from annual rent increases but cannot raise the rent within the initial 12 months of a tenancy and must comply with other obligations. Other rent increases are excluded, which regularly include increases due to modernisation. As a result, such clauses are not commonly used.

Moreover, for dwellings in areas where the 'rental price brake' (Mietpreisbremse) applies, the rent of a new contract may be a maximum of 10% above the standard local rent. This assumes that the rental property is located in a region with a tight housing market, as defined by Federal State regulation. By the end of 2020, provincial governments were authorised to provide a statutory ordinance for a maximum period of five years designating the areas with tense housing markets in which this rent limitation applies. The rent brake does not apply to the rental of new buildings (first occupancy from October 2014) and the

---

[25] The legal basis for rental objects is the (Austrian) Tenancy Act (MRG) and the Austrian Civil Code (ABGB); § 1 MRG regulates which rental objects are fully or partially covered by the MRG. In addition, the Non-Profit Housing Act (WGG) applies to rental objects that were erected by a non-profit building association in its own name and are or were owned by a non-profit building association. Non-profit building associations have the advantage of being tax-privileged.

[26] Richtwert- Kategoriemietzins, § 45 Mietzins

[27] 'The Private Rented Sector in the New Century – A Comparative Approach,' Med dansk sammenfatning, University of Cambridge, September 2012, p. 142.

first re-letting after a comprehensive modernisation of the rental property. In addition, the previously requested rent (pre-rent) can also be requested if this is above the rental rate limitation. [28]

In **France**, rent increases during a tenancy cannot exceed the increase in the Rent Reference Index (IRL). However, parties can agree on a fixed date from which the indexation will be calculated or alternatively agree for it to take place at the end of each contractual year. Rents for re-rentals and renewals are regulated in 28 urban areas (in particular, except in the case of works, no increase is possible when there is a change of tenant). When the contract is renewed and the same tenant stays in the property, the rent is linked to the IRL and the only way for a landlord to avoid this limitation is to prove that the property is undervalued when compared with equivalent dwellings in the locality. [29] This regulation is combined, in several cities such as Paris, Montreuil, Lille, Lyon, Bordeaux, Montpellier (and soon Grenoble and all the Basque Country), with a maximum rent that cannot be exceeded (both for old and new housing). In these cities, when renewing the contract, the landlord can ask (six months in advance) to apply the applicable rent ceiling without having to demonstrate that the current rent is below market levels.

Greek law does not regulate initial rents or rent increases. For existing tenancies any agreement between parties is valid. If there is no agreement for the second and third year, the landlord is entitled to ask for an increase equal to 3/4 of the annual official Consumer Price Index.

Finally, a peculiar case of rent regulation is **Sweden**. The Swedish regulation consists of collectively negotiated rents based on utility value. Here, landlords are bound by regulations which have been collectively negotiated on a local level between the landlords and the Union of Tenants and have been declared universally binding at the municipal level. If no agreement is reached, it can be referred to the relevant Court.

[28] 'Tenancy law and energy renovation in European comparison', op. cit., p. 79.

[29] The owner must provide evidence that the property is undervalued. Depending on the level of the increase, this evidence must demonstrate that the property has been undervalued for a period of time (up to 10 years). In addition, there are specific rules applicable in Paris in order to prevent rent increases in the capital.

This brief examination makes it clear that none of the models examined presents a complete liberalisation of rent increases, which is more typical of the Anglo-Saxon areas, characterised by a low level of regulation. On the contrary, most of the countries considered regulating the rental price in existing rental contracts through automatic annual increases in accordance with indexation changes to the Consumer Price Index. The automatism of this instrument is sometimes mediated by the opportunity to have annual agreements or indexation clauses which the parties can include in the contract (like in Germany).

2.3 RENTAL LEGISLATION IN THE COMMERCIAL SECTOR

In most case-study countries, the rules on commercial leases are considerably more liberal as the perceived need to protect the weaker party is not required for business-to-business transactions. [30] Instead, both landlord and tenant are seen as equally strong partners. It is presumed that both parties understand the law and have equal power when negotiating the terms and conditions of the agreement.

However, this liberal approach does not exist in all the models examined. **France**, **Greece**, **Italy**, and **Austria** for example, have legislation which protects commercial tenants in the same way as residential tenants. [31] **Belgium** has a special legislation that protects commercial tenants, and another special one for residential tenants. In Belgium, the tenancy has a minimum duration of nine years and tenants are entitled to request up to three renewals (i.e. up to 36 years). Landlords have the right to refuse to renew their leases, subject to certain conditions. In the case of commercial leases, the procedures for renewing or refusing to renew and for revising the rent are subject to specific rules applicable to these leases. These strict rules also apply to rent reviews and annual increases.

Other analysed countries are more directed towards freely agreed new rentals and the gradual deregulation of existing tenancies. The landlord and tenant are usually free to negotiate all of the terms and conditions of the tenancy. There are no restrictions on the length of a tenancy. Increases for renewals are usually not limited. Neither the landlord nor the tenant need to provide reasons or meet any regulatory requirements to terminate a tenancy and the notice periods are the same for both parties.

[30] See 'Landlords in Europe, a Comparative Analysis', UIPI, September 2013, p. 28 and ff.

[31] In Austria, commercial leases that fall within the full scope of application of the Tenancy Act, the appropriate rent applies; in addition, there is a statutory right to enter into the tenancy relationship without the landlord's consent, fixed-term discount of 25% is mandatory; in contrast to the residential tenancy agreement, however, the fixed term can be freely chosen. In the case of partial application or full exemption of the Tenancy Act, a free rent can be agreed and there is no statutory right of entry in this case. Commercial leases within the scope of the Tenancy Act may only be terminated by court order for the reasons listed in the Act, and indexation must be agreed; it is usually agreed in accordance with the consumer price index.

SPECIAL TENANCY LAW PROVISIONS FOR ENERGY EFFICIENCY AND RENEWABLES

3.1 INTRODUCTION

As it has been demonstrated at the beginning of this study, the green transition reinforces the Split Incentives Dilemma. Significant investments are needed to put in practice the ambition of the Renovation Wave in Europe. This will mark a significant challenge in terms of rental law, its limits, and flexibilities. While for property owners there might be situations where it is not financially viable to proceed with the upgrades, tenants do not necessarily want to invest in a property that is not theirs. The overall question of renovation works, with their schemes and frameworks, will be examined through several questions.

3.2 RENTAL LEGISLATION IN THE RESIDENTIAL SECTOR

3.2.1 Tenant Security of Tenure and Landlord Renovation Rights

The justification for renovations must generally be based on separate requirements of the tenant tolerating the measures. It should be noted that in none of the analysed cases, the landlord is entitled to a special termination right so that the renovation measure is subsequently possible in the vacated building. [32]

In practice, does the landlord have the right to perform renovations?	
The landlord is entitled to carry out improvements on his property: the tenant must, in principle, tolerate both maintenance and modernisation measures	**AUSTRIA** [33] **GERMANY** **FRANCE** And subject to certain reservations and conditions **BELGIUM** [34]
The tenant is to tolerate maintenance measures: improvement measures must only be tolerated by the tenant if the construction work and the effects of the renovation are not an undue burden on the tenant	**SWEDEN** **ITALY** **SPAIN** **AUSTRIA** [35]
The tenant has the absolute right to refuse any improvements in the rented property	**GREECE** **AUSTRIA** [36]

[32] On the contrary, this possibility is envisaged in other countries, such as England.
[33] Within the framework of § 18 proceedings (rare); prerequisite: court application is approved; however, the rent increase is limited in time.
[34] Specifically regulated at regional level.
[35] In case the Tenancy Act (MRG) is fully applicable, the landlord is legally obliged or has the right to carry out certain maintenance and improvement measures specified in the law at his expense. (§§ 3, 4 MRG); useful improvements in the rented property generally require the tenant's consent (§ 4 (4) MRG).
[36] Outside the scope of the Tenancy Act (MRG), § 1096 ABGB applies. According to this provision, the landlord is obliged to hand over and maintain the leased property in a usable condition at their own expense. This statutory obligation can in principle be derogated from, with the limit of gross disadvantage or immorality laesio enormis, and the agreement cannot breach the Consumer Protection Act, if applicable. In addition, the Non-Profit Housing Act (WGG) applies to rental property that was built by a non-profit housing association in its own name and is or was owned by a non-profit association. Rules similar to MRG apply in the WGG regarding maintenance and improvement; non-profit building associations have the advantage that they are tax-privileged

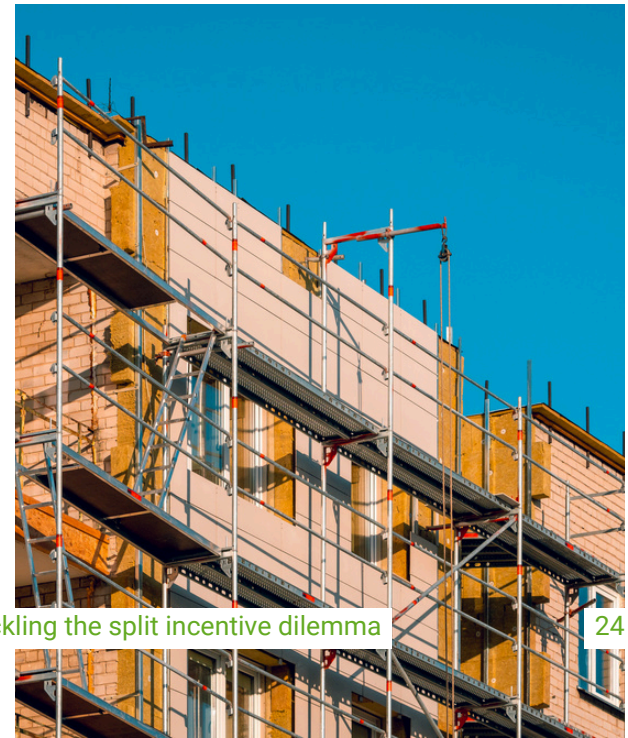
In **Italy**, the tenant has to tolerate maintenance measures, while improvement measures must only be tolerated by the tenant if the construction work and the effects of the renovation are not an undue burden on them. For the remainder, Italian tenancy law does not regulate renovation measures in detail. Given the minimum contract term of 4 + 4 years within which the contract cannot be terminated, reno-vation measures can only be implemented in the long term, after the expiry of the rental contract. [37]

In **Spain**, the landlord is obliged to carry out all necessary works to ensure that the property is in a good state of repair and may not increase or pass on any costs to the rent. The landlord may carry out improvement works in the property, the execution of which cannot reasonably be postponed until the end of the rental contract. The tenant has the option to withdraw from the contract. In the first case, if the work lasts more than 20 days, the rent shall be reduced in proportion to the part of the dwelling of which the tenant is deprived. In the second case, the tenant is entitled to the same reduction without the 20-day limit and, in addition, they may seek compensation for any expenses incurred due to the works.

In **Sweden**, the landlord has to obtain approval from the tenant before renovating, if the renovation means raising the standard of, or altering, the apartment. [38] Most renovation projects are approved without court proceedings, but there is still a significant number of instances which involve court proceedings. The court then rules whether the landlord has a valid cause for modernisation of the building or apartments. [39]

In **Greece**, the tenant has the absolute right to refuse any improvements in the rented property, for the full duration of the contract. In such a case, the landlord can only wait until the end of the contract to recuperate the property. In practice, the tenant would generally deny any renovation works in the rented property, unless promised some serious financial concessions by the landlord.

In **Austria**, if the Tenancy Act is applied in full, the landlord is legally obliged or has the right to perform certain maintenance and improvement measures specified by law at his expense (§§ 3, 4 Tenancy Act) and the tenants have to tolerate these. If the tenant does not agree to the maintenance and improvement works provided for by law, the landlord may file an appropriate order with the court (or arbitration board). However, useful improvements in the rented property generally require the tenant's consent (§ 4 (4) Tenancy Act). If the tenant has rented the rental property with a certain equipment, for example with a certain heating system, the landlord can hardly enforce a change in the heating system. If the Tenancy Act does not apply in full scope, the Austrian Civil Code applies. According to the latter, the landlord shall generally bear the costs of renovation, unless the parties agree otherwise. However, this is only possible to a limited extent, as provisions protecting the tenant must be complied with in the agreement.



[37] Unless in the contract there is an obligation to tolerate renovation.
[38] The tenant must, in principle, tolerate both maintenance and renovation when there is no alteration.
[39] In 85% of the cases landlords win. It should be noted that, at his stage, rent after renovation is not discussed. The new rent price will be discussed after the renovation is completed since, as rents are set using utility value system, they cannot be negotiated until the apartment is renovated.

Unlike other analysed countries, **Germany** and **France** have recently created special regimes which link the possibility of renovating to the opportunity to share the economic burden between landlord and tenant. [40] For the purpose of this chapter, it can be said that both countries provide in general a possibility to renovate, although governed by strict rules.

In **Germany**, landlords are entitled to carry out improvements on their property and tenants must, in principle, tolerate both maintenance and modernisation measures. [41] However, tenants can avert the modernisation measure if it would cause a hardship which cannot be justified even in light of the legitimate interests of the landlord and other tenants in the building as well as the interests of energy saving and climate protection. [42] The tenant can claim a rent reduction if the use of the rented property is considerably restricted by the construction work. In the case of energy modernisation, a rent reduction is ruled out for the first three months of construction.

In **France**, tenants must tolerate energy renovation measures, [43] if the construction work and the effects of the renovation are not an undue burden on them. [44] If the tenant cannot occupy the apartment during the renovation, he is entitled to a special right of termination. When construction measures are not in compliance with the notice, are abusive, or lead to the possibility or risk of the rented property becoming uninhabitable, a renovation may be prohibited by a court decision at the tenant's request. In practice, the tenant taking the matter to court, landlords are generally advised to relocate tenants at their own expense if the property becomes unfit for habitation during the works. It should be noted that the legislator introduced a new right to give notice of termination to carry out energy-efficiency renovations, before this was censured by the Constitutional Council on procedural grounds.

Finally, in **Belgium**, the landlord's right to renovate is specifically regulated and limited at regional level. In Brussels, for example (i.e. a lease of at least 9 years), regional law allows the landlord to carry out work to improve the energy efficiency of the premises once every 3 years. The landlord must then carry out the work within 60 days. The work must not restrict the tenant's residential enjoyment and must be carried out while the premises are occupied. If the work takes longer than 60 days, the tenant is entitled to a rent reduction.

3.2.2 Rent Increases for Energy Renovations: Exploring Regulation Models, Cost Distribution and Compensation

It is now necessary to investigate the extent to which energy renovations may permissibly result in rent increases. To achieve this, countries have been divided into three groups. A first group is formed by countries for which no rent regulation or reasonable rent increases are permitted on a regular basis. In this sense, in **Greece**, the general rule is that the possibility of rent increases depends solely on the market situation, and there is no specific regulation connecting energy renovation to rent increase. In Italy, the situation is similar. In **Spain**, improvement works by the landlord [45] entitle them to an increase of the rent, after 5 or 7 years of signing the contract (depending on whether the landlord is a natural or legal person).

[40] See chapter 2.2.4.
[41] §§ 555a para. 1, 555d para. 1 BGB.
[42] § 555d para. 2 BGB.
[43] Article 7 lit. e, Law n° 89-462 of 1989).
[44] In addition, compensation is due beyond a certain period of inconvenience.

[45] Improvements carried out by the landlord are those that are not strictly necessary for the proper habitability of the property, as are repair or conservation works. Some examples would be, laying parquet flooring, pre-installing air conditioning, installing a hydromassage bathtub...).

This increase will be made by applying the legal interest rate existing at the time of completion of the works to the capital invested in the improvement, increased by 3 points, without exceeding the increase of 20% of the rent in force at that time. In order to make this calculation, public subsidies obtained to carry out the work must be deducted. Notwithstanding the above, the law allows the landlord and tenant to agree to carry out the improvement works, increasing the rent of the contract under the same terms and conditions as those described in the previous paragraph.

Sweden represents a different category. As already mentioned above, the regulation of the rent amount is the general rule and it also affects renovations issues. It consists of negotiated rents based on utility value and it applies for all rented apartments. If the renovation means raising the standard of, or altering, the apartment, the landlord has to obtain approval from the tenant before renovating. However, the approval is only for the renovation works and not for the increase of rent. [46] A different bargaining will take place later, after the completion of the renovation. In most cases, the possibility of rent increases depends on an agreement between landlords' and a tenants' organisation with which a collective agreement exists. As rents are set using an 'utility value system', a new rent cannot be negotiated until the apartment is renovated. [47]

Is there a regulation of rent modification in relation to energetic renovation measures?	
Is there a regulation of rent modification in relation to energetic renovation measures?	**AUSTRIA** [48] **GREECE** **ITALY** **SPAIN** [49]
Regulation of the rent amount is the general rule and it also affects renovations issues	**SWEDEN**
Special rules for rent modification in case of renovation	**AUSTRIA** [50] **BELGIUM** **GERMANY** **FRANCE**

[46] This often goes to court proceedings, as approvals are hard to obtain. The court then rules whether the landlord has valid cause for modernisation of the building and apartments. In 85% of the cases, landlords win. However, at this stage, the after-modernisation rent is not discussed.
[47] Therefore, the state has no influence on the incentive structure for energy renovation measures. In practice, tenants' and landlords' organisations do not pursue explicit climate policy goals.
[48] Outside the full application area of the Austrian Tenancy Act.
[49] As already seen in chapter 1.2.2, in Spain the only regulated rent increase is the one in accordance with the Consumer Price Index.
[50] If the Austrian Tenancy Act is fully applicable.

The third group includes all countries that envisage special rules for rent increase in case of renovation. In **Austria**, the possibility of increasing the rent in case of renovation by law depends on whether the Tenancy Act is fully applicable or not. [48] In principle, the rent cannot be increased for reasons of renovation without the tenant's consent (unless within the framework of the §18 procedure). If the Tenancy Act is fully applicable and the legal requirements are met, a court can approve a rent increase for a maximum of 10 years at the landlord's request to finance major maintenance or improvement measures enshrined in the Tenancy Act. However, the so-called "§18 Verfahren" is very complex, and tenants can delay the decision for years by filing appeals. For this reason, the number of proceedings has drastically decreased in recent years. [49] Alternatively, within the scope of Section 16(10) Tenancy Act, landlord and tenant may agree on a (voluntary) temporary rent increase to cover the costs of maintenance and useful improvement works or the costs of subsidised renovation measures. [50]

In **Belgium**, special rules for rent modification in case of renovation are foreseen at regional level. [51] In Brussels, for example, where the law is currently being amended, regional law allows the landlord to carry out energy efficiency improvements to the premises once every 3 years. The landlord must carry out the work within 60 days. The work must not restrict the tenant's residential enjoyment and must be carried out while the premises are occupied. If the work takes longer than 60 days, the tenant is entitled to a rent reduction.

If the work takes longer than 60 days, the tenant is entitled to a rent reduction. The parties may agree that the work will result in an increase in rent if they reach an agreement on this matter at least 1 month before the work is carried out. [52]

In order to encourage landlords to renovate, **French** legislation sets minimum standards to be reached to permit the passing of some of the renovation costs to the tenants with the so-called "Troisième ligne de quittance". This mechanism, introduced in 2009 under the "Loi Boutin", authorises landlords to carry out energy-saving work, but only with the agreement with their tenants, to request a monthly contribution from their side. The system is twofold advantageous since it allows the lessor to recover part of their investments and the tenant to recover part of their benefit from cost savings; which have to be greater than the new contribution which the tenant must comply with. [53]

This law establishes the legal conditions for the redistribution between landlords and tenants of savings made on energy costs following energy-efficient renovations. When energy-saving renovations are undertaken by a landlord within the private and/or common parts of a dwelling, a contribution for sharing the saved energy costs can be asked of the tenant of the relevant dwelling as from the end of the renovations, provided that the tenant directly benefits from the renovations made and that these have been explained to him.

---

[48] See 'Tenancy law and energy renovation in European comparison', op. cit., p. 101.

[49] See before on §18 procedure.

[50] According to §16 Paragraph 1 Z 5 of the Tenancy Law (MRG), in the case of open-ended tenancies, if more than a year has passed since the rental property was handed over, the landlord and tenant may agree in writing on a voluntary rent increase up to and limited by reasonableness. In any case, the landlord has no legal claim to conclude such voluntary agreements (§ 16 (1) z 5 MRG and § 16 (10) MRG).

[51] See also chapter 2.2.1.

[52] It should be noted that the above-mentioned Belgian rules, while giving a wide margin of manoeuvre to the landlord on the opportunity to renovate, they do not give many guaranties in terms of possibility of increasing the rent.

[53] Art. 23-1 of the Act of 6 July 1989.

This contribution can however only be asked if substantial work has been carried out or if the dwelling reaches a minimum level of energy performance. This participation, limited to 15 years maximum, is specified in the rental agreement and cannot exceed 50% of the energy saving made. If the tenant changes during the period of contribution, then, before concluding a new rental contract with a new tenant, the landlord has to justify the energy saving renovations made and the maintenance of this contribution until the agreed deadline.

After recent reforms, the implementation of the "Troisième ligne de quittance" must be accompanied by an energy performance contract (CPE) guaranteeing the energy savings that the tenant will benefit from. This guarantees the gains for the tenant and thus opens up the possibility of imposing the sharing of the gains made during the energy saving work on the "Troisième ligne de quittance". The tenant therefore no longer has the possibility of refusing as provided for in the Boutin law. This profit-sharing also makes it possible to get out of the technical conditions provided for by the Boutin law, as it is handled directly by the CPE without either the tenant or the lessor having to go into detail to take up this arrangement. However, no doubt because the procedure remains technical, owners still rarely use it.

In the last years, the **German** Federal Government has adopted a comprehensive action plan for national energy efficiency. The Tenancy Amendment Act of 2013 implemented rather far-reaching provisions for housing and commercial leases alike. In particular, *"a concept of so-called energy improvement was introduced (i.e. refurbishment of a building or apartment that results in less consumption of end-use energy). Tenants' legal powers to oppose such refurbishment and/or to reduce rent on statutory grounds have been curtailed, thus, minimising the landlords' cost risks in connection to energy improvements. Notably, a statutory rent raise of up to 11% of the refurbishment costs has become available to the*

landlord after successful completion of works. The law furthermore provides that shifting to energy contracting in an existing lease does not require tenant's consent, even if the tenant pays the contracting fees under the lease as operating costs". [57]

Moreover, the German Tenancy Law Amendment Act, which was passed at the end of 2018, was meant to provide for better protection of tenants against disproportionate burdens through modernisation measures. The modernisation levy pursuant to §559 German Civil Code was therefore reduced from 11% to 8% nationwide and a six year cap on modernisation costs was introduced. This now only allows a rent increase of a maximum of 2 euros per m² of living space if the basic rent is less than 7 euros per m² and a maximum of 3 euros per m² of living space if the basic rent is higher. For the installation of a heating system operated with 65 percent renewable energy, the rent may be increased by a maximum of 50 cents per square meter.

[57] See Overcoming the split incentive barrier in the building sectors, p. 22 ss., https://www.researchgate.net/publication/322570925_Overcoming_the_split_incentive_barrier_in_the_building_sector_Unlocking_the_energy_efficiency_potential_in_the_rental_multifamily_sectors.

3.2.3 Renewable Energy and Renovations: Rights to Perform and Impact on Rent Increase

When talking about renovation it is important to understand what is included in this definition. For example, it is not always clear whether the generation of renewable energy can be considered as part of renovation. In **Belgium**, **France**, and **Germany** renewables are considered part of renovation in this sense, hence the content of chapter 2.2.1 remains valid.

On the contrary, in Greece and Sweden, renewable energy is perceived as a different issue. In **Greece** this differentiation is not of great importance for our purpose, given that neither renovation nor renewables give a special right to perform to landlords. In **Sweden**, conversely, the fact that renewables are not included in the rent regulation system means that they always need the consent from the tenant.

In **Austria**, the tenant's consent is generally also required, except in the case of a § 18 procedure (see explanations in point 3.2.1.).

In **Spain**, the law does not distinguish the type of improvement. In practice, the generation of renewable energy is covered only if the owner can carry out the necessary works for the use of the property in perfect condition.

Also, with regard to the link between renewables and the possibility of rent increase, the situation in Europe does not seem to be homogeneous. However, a general trend can be found in the sense of not considering renewable energy as part of renovation in terms of rent increase, with some nuances. Among the analysed countries, only **France** seems to clearly consider the generation of renewable energy as part of renovation in terms of rent increase.

In **Austria**, it generally has no effect on the rent. In the scope of full application of the Tenancy Act, a temporary rent increase is only possible within the statutory requirements. The consent of the tenant is required unless the rent increase is carried out within the framework of the §18 procedure by application to the court (or an arbitration board). However, the increase according to §18 Tenancy Act or the increase in case of fixed-term leases is only possible for a limited period of time. If the Tenancy Act applies only in part or not at all, voluntary contributions within a transparent agreement are in principle possible. However, it often fails due to the tenant's consent. [58]

___

[58] The limits of permissible agreements are e.g. gross disadvantage, laesio enormis, consumer protection act.

[59] Renewables don't affect the utility value and thus not the rent.

Is the generation of renewable energy considered part of renovation in terms of rights to perform?	
Yes	**BELGIUM, FRANCE GERMANY**
No, these are two different issues	**GREECE, SPAIN SWEDEN**
Only in part	**AUSTRIA, ITALY**

Is the generation of renewable energy considered part of renovation in terms of rent increase?	
Yes	**FRANCE**
No, these are two different issues	**GREECE, ITALY SPAIN, SWEDEN** [59]
Only in part	**AUSTRIA, BELGIUM GERMANY**

In **Germany**, there are some complexities regarding the relationship between renewables and energy improvements. The generation of renewable energy can be included within the concept of energetic improvements and an energy modernisation if the measure results in sustainable end-energy saving. Replacing a fossil fuel heating system with a heat pump with an annual performance factor of 2.5 is a modernisation which entitles the tenant to a rent increase. However, the monthly rent may not be increased by more than 50 cents per m². While it is possible to increase the rent because of energy improvements, this is not the case for the installation of devices to generate renewable energy not used for the operation of the building but, for instance, for feeding it into the grid. The landlord can offer this electricity to his tenants for a fee, however, since he cannot contractually oblige its long-term use, such an investment is not undertaken due to the great cost risk.

3.2.4 Incentives for Residential Rental Renovations

State intervention through tax benefits or direct subsidies can significantly impact the incentive distribution between landlords and tenants in the rental market, especially when the market itself lacks sufficient motivation for energy renovations or excludes weaker participants due to rent increases resulting from renovations. This chapter provides an overview of the main subsidisation mechanisms used in various countries for energy renovations. The support measures can be classified as direct (e.g. loans, grants) or indirect (e.g. tax benefits) and may include deduction regulations related to energy efficiency standards.

Direct subsidies are by far the most widely used measure. In Austria, there is a system of annuity subsidies and non-repayable investment cost subsidies for general refurbishments and individual energy-related refurbishment measures.

Similarly, in **France** there are grants for comprehensive energy renovation measures and interest-free loans for individual energy renovation measures up to EUR 30 000, while the amount of assistance depends largely on the owner's income.

The **Spanish** legislation has a programme for rehabilitation in residential environments under the Recovery, Transformation and Resilience Plan, which aims to boost the rehabilitation of residential buildings. The distribution of Next Generation EU funds is channelled through the Autonomous Communities that receive the funds from the Government. The aim of the Programme of aid for actions to improve energy efficiency in dwellings is to finance actions or works to improve the energy efficiency of dwellings that constitute the habitual and permanent residence of the owners, usufructuaries or tenants. The overall objective of the actions is to reduce non-renewable energy consumption in homes by at least 30% and to decarbonise and reduce heating and cooling demand by at least 7%.

In **Italy**, alongside low-interest loans and repayment grants for general renovation, there are grants for the purchase of dwellings after energy renovation.

In **Germany**, direct subsidies consist of low-interest loans and redemption subsidies or, alternatively, investment grants for energy-saving investments through building renovation programmes. In addition, there are grants for the supply of energy from solar panels, biomass plants, and energy-efficient heat pumps.

In **Greece**, a scheme called “Saving at Home”, was announced in 2011. The support consists of a grant covering up to 70% of the cost (depending on the applicant’s income) of energy upgrades on the building’s exterior, windows, heating and hot water supply systems. The remaining 30% must be covered

by a loan, whereby the interest is fully subsidised. The scheme is available for buildings with an EPC score of D or lower, located in socially vulnerable areas. After the renovation, the building should achieve a higher EPC class or at least 30% energy savings.

The only exception seems to be **Belgium** with no system of either direct or indirect incentives if the dwelling is rented, except when rented through social associations. When direct subsidies are granted (if the dwelling is occupied by the owner or rented through social associations), they are very limited and strictly defined.

Is there a system of direct or indirect incentives for renovation of the residential rental stock?	
Direct subsidies	**AUSTRIA, FRANCE GERMANY, GREECE ITALY, SPAIN**
Value added tax benefits	**AUSTRIA, FRANCE ITALY**
Income tax and corporate income tax benefits	**AUSTRIA, FRANCE GERMANY, GREECE ITALY, SWEDEN**
Other	**BELGIUM**

Other incentives consist of value added tax benefits.

For example, in **France**, the normal tax rate of 20% is reduced to 10% for general renovation measures (same as in Italy) and 5,5% for energy renovation. Furthermore, in **Italy**, the VAT on the purchase of homes varies from 4% (first home purchase) to 22% (standard rate).

Another type of incentive is represented by income tax and corporate income tax benefits.

In **Greece**, there is a refund of 40% (10% for each year of a four-year period) of the amount paid to professionals (plumbers, electricians, etc.) for their building renovation services. In **Sweden**, landlords can deduct part of the costs for general renovation measures. [60]

In **Austria**, expenses for the thermal-energetic renovation of buildings and the replacement of a fossil heating system with a climate-friendly heating system ("boiler replacement") can be taken into account as special expenses by way of an eco-special expenses lump sum. [61] Similar measures are present in **France**.

In **Italy**, alongside the traditional system of tax incentives for home renovations in effect (with various subsequent modifications) since 1 January 1998, the "Superbonus" regime introduced in 2020 will still be in place for another 2 years. This is a tax deduction (initially set at 110%, then reduced: to 90% for 2023; to 70% for 2024; to 65% for 2025) on expenses for energy and seismic renovations of homes, to be spread over 5 years for expenses incurred in 2020-2021 and over 4 years for expenses from 2022, and over 10 years starting from 2024, without income requirements (but with limits related to property categories and the number of properties to be renovated). The tax deduction could initially be converted into a tax credit or invoice discount; from 2023, it can only be used (except for specific cases and exemptions) by the beneficiary. The tax incentives for home renovations will return to a 36% rate from 1 January 2025, which will decrease to 30% for the five-year period 2028-2033.

———

[1] 'Tenancy law and energy renovation in European comparison', op. cit., p. 105.

[2]https://www.bmf.gv.at/themen/steuern/arbeitnehmerinnenveranlagung/was-kann-ich-geltend-machen/Sonderausgaben/oeko-sonderausgabenpauschale.html

Regarding the recipients of the incentives, several approaches can be noted. In **Spain**, aid is targeted at owners, usufructuaries and tenants. **Austria**, **France**, and **Italy** provide for incentives directed to both landlords and tenants. In **Belgium**, the few existing subsidies are usually to the benefit of owner-occupiers. Similarly in **Greece**, while landlords also receive some benefits, homeowners remain at the centre of the support measures. Finally, in **Germany**, the incentives are directed to the person who actually pays for the renovation; usually this is the homeowner and sometimes, but not always, the landlord.

To whom are these incentives primarily directed?	
Landlords	-
Tenants	-
Both landlords and tenants	**AUSTRIA, FRANCE ITALY, SPAIN**
Other	**BELGIUM** [62] **GERMANY** [63] **GREECE** [64]

[62] Only to homeowners.
[63] To the person who orders and pays; usually this is the owner and landlord, but it can also be the tenant if he has the landlord's permission.
[64] Mainly homeowners, landlords only in rare cases.

3.3 RENTAL LEGISLATION IN THE COMMERCIAL SECTOR

With regard to the impact of the specific renovation rules on commercial leases, there does not seem to be a significant difference in the level of security of tenure in most countries. However, as already seen in chapter 1.3, what emerges is that commercial leases benefit from more contractual freedom than residential leases. As mentioned above, in **Austria**, almost the same regulations apply to commercial leases as to residential leases.

Moreover, while for residential leases the general trend is to have special rules for rent increases in case of renovation, for commercial leases no regulation of the rent or reasonable rent increases are permitted on a regular basis. The possibility of rent increases depends solely on the market situation (**Belgium**, **France**, **Sweden**). Such a market freedom is perceived as beneficial by the parties and it would be welcomed also in the residential sector.

Regarding the cost distribution between tenants and landlords or rights to compensation in case of building renovation, we have already seen that for residential leases only **France** and **Germany** have specific schemes. Of these two, only the German model applies also to commercial leases. Similarly, considering direct and indirect incentives for renovation, most of the aid discussed in the previous chapters is provided only for residential housing (reduced rate VAT, zero-rate loans, tax credit, etc.), while this does not exist for business premises.

CONCLUSION

This paper provides a comprehensive overview of the relationship between national rental law and green renovations in the context of the split incentive dilemma. By doing so, it establishes a comparison of the many complexities characterising this topic. Thus, **it demonstrated how rent increases or evictions resulting from renovations are often either heavily regulated or not possible at all. Moreover, whether renovations could take place is often dependent on the approval by sitting tenants.** However, tenants often do not have a clear incentive to accept or request energy renovation due to e.g. the length of their contract. In this sense, both direct and indirect subsidy measures seem to be of great importance in overcoming this dilemma.

If the EPBD wishes to fulfil its promise while also taking social cohesion into consideration, there must be extensive awareness among European and national legislators concerning the presence and variations of the split incentive dilemma. This guide will then provide a strong tool for housing professionals to be used in advocacy measures or to inform the many Europeans that will potentially be affected by Minimum Energy Performance Standards (MEPS) or other tools a Membre State will choose to ensure that the EPBD's climate neutrality goals are reached.

EDITORIAL TEAM

International Union of Property Owners (UIPI)
Layout and design: Ander Jimenez

LIST OF CONTRIBUTORS

Thank you to Nadja Strobl and Friedrich Noszek from *Zentralverband Haus und Eigentum* (Austria), Marianne Palamides and Patrick Willems from *Syndicat National des Propriétaires et Coporpriétaires* (Belgium), Alain Lucien Sicre et Frédéric Zumbiehl from *Union Nationale des Propriétaires Immobiliers* (France), Inka-Marie Storm from *Haus & Grund Deutschland* (Germany), Stratos Paradias from *Πανελλήνια Ομοσπονδία Ιδιοκτητών Ακινήτων* (Greece), Giovanni Gagliani Caputo from *Confedilizia* (Italy), Agustin Pujol and Anna Gracian Zahonero from *Confederación de Cámaras de la Propiedad Urbana y Asociaciones de Propietarios de Fincas Urbanas* (Spain), and Martin Lindvall from *Fastighetsägarna* (Sweden).

About UIPI

The International Union of Property Owners (UIPI), the largest pan-European non-profit association of both home owners and private landlords. UIPI comprises 31 organisations from 28 countries, which, jointly, represent more than 5 million private property owners and around 25 million dwellings all over Europe.

The interests of the sector we represent correspond to the concerns and needs of a substantial part of the European population. As shown by Eurostat, almost 70% of EU citizens are owner-occupiers, whereas almost another 20% of the population is housed in the private rented sector.

European Commission's Transparency Register No. 57946843667-42

www.uipi.com

International Union of Property Owners (UIPI)

@UIPI_EU

@UIPIPropertyOwners

UIPI 1923 INTERNATIONAL UNION OF PROPERTY OWNERS