European Commission

JRC TECHNICAL REPORTS

Energy efficiency upgrades in multi-owner residential buildings

Review of governance and legal issues in 7 EU Member States

2018

EUR 29094 EN

Contact information
Name: Marina Economidou
Email: marina.economidou@ec.europa.eu

JRC Science Hub
https://ec.europa.eu/jrc

JRC110289

EUR 29094 EN

PDF ISBN 978-92-79-79347-9 ISSN 1831-9424 doi:10.2760/966263

Luxembourg: Publications Office of the European Union, 2018

How to cite this report: Economidou M et al, *Energy efficiency upgrades in multi-owner residential buildings - Review of governance and legal issues in 7 EU Member States*, EUR 29094 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-79347-9, doi:10.2760/966263, JRC110289.

Contents

Acknowledgements

We would like to warmly thank all national experts for sharing their valuable knowledge with us and helping us develop an understanding of the situation in their respective country. Special thanks also go to all participants to our workshop held in November 2017.

Author list

Marina Economidou, European Commission Joint Research Centre

Each country chapter is authored by the following experts:

Belgium

Professor Vincent Sagaert, University of Leuven

Dr Erik Laes, Flemish Institute for Technological Development

Finland

Moritz Wüstenberg, University of Eastern Finland

Jyrki Kauppinen,

Pentti Puhakka

Petri Pylsy

Germany

Professor Christoph U. Schmid, University of Bremen

Tobias Pinkel, University of Bremen

Poland

Professor Magdalena Habdas, University of Silesia in Katowice

Dr Ryszard Wnuk, Polish National Energy Conservation Agency

Portugal

Professor Sandra Passinhas, University of Coimbra

Spain

Professor Sergio Nasarre Aznar, Universitat Rovira i Virgili

United Kingdom

Professor Susan Bright, University of Oxford

Dr Tina Fawcett, University of Oxford

David Weatherall, Energy Savings Trust

Courtney Peyton, Changeworks Scotland

Dr Frankie McCarthy, University of Glasgow

1 Introduction

Efforts to improve energy efficiency of the European housing stock have gained significant momentum over the past decade. While new developments are built with high energy efficiency standards, retrofitting existing buildings is often viewed as problematic. This is especially true for multi-owner residential buildings, where split incentives and shared governance structures are considered majors barrier to investments in energy efficiency upgrades. The presence of split incentives stems from the misplacement of incentives between different actors, including varying incentives between individual owners and misalignment of incentives between tenants and owners. Apartment ownership models entail complex governance processes, strict rules regulating multi-level decision making procedures and grey areas in legal frameworks, which are all regarded as hurdles discouraging or delaying parties from entering into agreements that facilitate energy efficiency upgrades. The EU Heating & Cooling Strategy describes, inter-alia, the challenges to upscaling energy efficiency upgrades of private buildings and suggests that different building ownership forms require different approaches to drive energy efficient upgrades[1]. The Strategy, inter-alia, recognises the issue of split incentives as a key barrier in deterring owners from making energy efficiency investments in apartment buildings, a significant segment of EU's residential building stock (Figure 1).

Despite this long-lasting barrier, little attention has been drawn on how to resolve it and current public policy interventions have made relatively little progress towards providing effective solutions that align incentives between concerned actors. To help overcome this issue, the Energy Efficiency Directive (Directive 2012/27/EU) includes a provision in its Article 19(1)(a), which calls for Member States to evaluate and if necessary take appropriate measures to remove regulatory and non-regulatory barriers to energy efficiency. In particular, it requests Member States to address the split of incentives between the owner and the tenant of a building or among owners, with a view to ensuring that these parties are not deterred from making efficiency-improving investments. Measures may include rules for dividing the costs and benefits between them and measures regulating decision-making processes in multi-owner properties.

This report reviews the legal, management and administrative obstacles in multi-owner buildings in 7 selected Member States and identifies good practices that help overcome identified issues across these Member States. Given that rental units are also within the scope of this report, single-owner multi-apartment buildings are also covered; this type of ownership is typically found in social housing structures. The information is collected through a questionnaire distributed to legal and energy efficiency experts at national level with the aim to deepen our understanding on the legal implications of the current apartment ownership and management structure in each country and identify energy efficiency policies that encourage investments in this field. A workshop was also organised in November 2017 in Brussels with the aim to discuss these issues in more detail and identify options for revising existing condominium and rental acts to make them more conducive to energy efficiency upgrades and investments in apartment buildings.

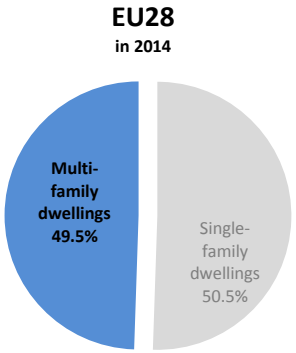
The report is structured as follows. The methodology used to collect information in the selected countries is described in Section 2. The current status of legal, management and administrative framework in multi-owner buildings in Belgium (Flanders), Finland, Germany, Poland, Portugal, Spain and the UK (England, Wales, Scotland) is presented in Section 3. This includes information on the main apartment ownership model, key national terms, actors involved in renovations, legal status of main decision making body, required majority for maintenance & renovations and aspects related to rental contracts. A summary of the main condominium ownership structure in the selected Member States as well as good practices and recommendations are given in Section 4.

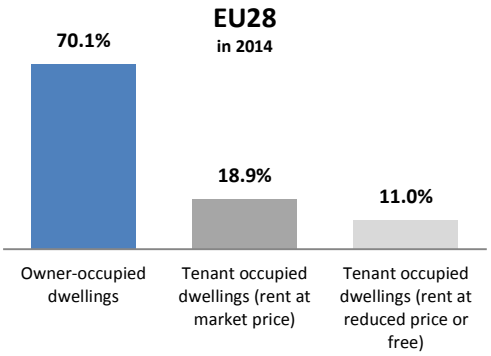
[1] https://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v14.pdf

Figure 1. EU housing stock statistics

ALL DWELLINGS

Source: EU Building Stock Observatory





MULTI-FAMILY DWELLINGS

Source: Various (see below)

	Share of all stock [%]	Dwellings [thousands][1]	Owner-occupied dwellings [%][2]	Privately rented dwellings [%][2]	Social dwellings [%][2]	Other [%][2]
EU	49.5%	123 632				
BE	33.5%	1 766				
BG	50.0%	2 239				
CZ	55.3%	2 639	79%	10%	3%	8%
DK	38.1%	1 138	10%	28%	19%	43%
DE	52.8%	21 754	23%	76%	0%	1%
EE	74.5%	496				
IE	12.8%	219				
EL	45.0%	3 092	84%	12%	0%	4%
ES	70.8%	18 805	86%	14%		
FR	43.8%	14 853	26%	38%	36%	
HR	51.3%	1 005				
IT	79.1%	25 282	51%	26%	2%	21%
CY	36.5%	166	55%	33%	12%	
LV	69.8%	732				
LT	45.1%	581				
LU	45.7%	102				
HU	38.5%	1 706				
MT	62.6%	157				
NL	35.2%	2 613	19%	20%	61%	
AT	54.2%	2 418	22%	53%	17%	7%
PL	34.5%	4 821				
PT	41.0%	2 433				
RO	40.7%	3 597	96%	5%	1%	
SI	39.0%	337	64%	18%	0%	18%
SK	50.6%	1 013				
FI	53.5%	1 561	50%	25%	25%	1%
SE	55.7%	2 825	29%	31%	32%	8%
UK	18.6%	5 279				

[1] Based on data from EU building stock observatory (https://ec.europa.eu/energy/eubuildings) for year 2014

[2] Based on data from ENTRANZE data tool (http://www.entranze.eu/tools). Data are available only for 14 Member States.

2 Methodology

A questionnaire was designed to collect information on the status of property law and current management, governance and decision making arrangements in multi-family residential buildings with a special focus on energy efficiency. The collected information was complemented with an expert workshop organised in November 2017 in Brussels where deeper discussions on specific issues took place.

2.1 Questionnaire

The questionnaire was divided into three parts (Box 1). Part A listed definitions of key terms (Table 1) and gave the opportunity for national experts to comment and provide alternative interpretations if these differ in their national context. Part B focused on the legal framework in the country, covering questions on current apartment ownership models, various management and maintenance aspects related to energy efficiency, including required majority needed for decisions on renovation. Questions on rental contracts and how energy efficiency upgrades were encouraged under current landlord-tenant arrangements were also included. Part C focused on energy efficiency policies (including building codes) and successful programmes concerning apartment buildings.

Box 1. Main elements of questionnaire on Energy Efficiency in Multi-Owned Apartment Buildings

Part A - Definitions (see Table 1)

Part B – Legal Status

- Most common types of apartment ownership model
- Specific changes in property ownership law that have been introduced to encourage renovation of apartment blocks
- Parts of the building typically considered communal under condominium law
- Distinct issues exist in apartment buildings that are in mixed public/private ownership
- Main actors in charge of apartment management, their role/duties, minimum requirements for how and how often these bodies must convene to discuss maintenance and renovation works
- Required majority needed for decisions, procedure followed when maintenance and major renovation works are carried out and extent to which current typical management arrangement impede EE and RES investments
- Main elements concerning the setting of private and social rental prices, duration of typical contract, and provisions that allow landlords to renegotiated contracts due to renovation and pass costs of energy efficiency upgrades to tenants

Part C – Energy efficiency policies

- Building code obligations to meet (e.g. minimum energy efficiency levels) when renovations are undertaken, specific minimum energy-related requirements to be met in apartment buildings and specific requirements on renewable energy technologies
- Special financial/fiscal incentives that can be combined with investment arrangements in apartment buildings or rented properties and ways of how loan arrangements are made in case of large investments in apartment buildings
- Energy Performance Certificates and impact on potential upgrades if produced at individual flat or building level
- Successful policies, measures and programmes that are in place which specifically target energy efficiency upgrades in apartment buildings and rented properties

2.2 Workshop

A workshop organised in November 2017 in Brussels brought together experts in the field with the aim to discuss these issues in more detail and draw policy recommendations on how to revise existing condominium and rental acts to make them more conducive to energy efficiency upgrades and investments in apartment buildings. The morning sessions focused on gaining a better understanding on the status of property and tenant law as well as current challenges in management, governance & decision making processes in 6 Member States (France, UK-Scotland, Portugal Finland, Germany and Spain). Some successful policies & measures to drive energy efficiency upgrades in apartment buildings were presented in the afternoon session, followed by a panel discussion on policy actions necessary to help overcome hurdles in multi-owner apartment buildings and ways to transform existing condominium laws into energy-efficiency friendly ones.

Table 1. Key definitions used in the questionnaire (JRC)

Unitary Ownership	Unitary ownership refers to an undivided apartment building, of which owners own shares
Composite Ownership	Composite ownership refers to a system where the owners own their apartment and all owners jointly own the common parts and land
Housing association	A housing association is a non-profit making organisation that provides low-cost "social housing" for people in need of a home.
Homeowner association/ community	A community of private homeowners in an apartment building. They may elect a board of directors to represent them. They may or may not have a legal personality.
Building management company	Building management company is an external professional company hired by building owners to carry out maintenance duties and handle day-to-day operations in apartment buildings. They perform duties decided by the board of directors (see below)
Board of directors of homeowners	A group of elected/appointed homeowners of an apartment building whose role is to serve the homeowner community and take decisions regarding the operation and management of common areas of the building
Simple majority	Simple majority refers to majority of those voting that reaches more than half of the total number of votes cast
Qualified majority	Qualified majority refers to majority of those voting that reaches a pre-set threshold larger than 50%
Absolute majority	Absolute majority refers to majority of all members, not just those choosing to vote
Maintenance work	Maintenance work refers to routine and preventive maintenance work required to keep a building, utilities, and grounds in an acceptable and safe operating condition
Major renovation	Major renovation refers to extensive changes/improvements to the property which lead to a significant upgrade that would most likely lead to an impact on the overall value of a property.

3 Current status in selected Member States

3.1 Belgium (Flanders)

3.1.1 Summary

Key statistics	*For all regions of Belgium (based on Eurostat data)* • In 2016, 21.9% of Belgium's population lived in apartments. More than two thirds (68%) of the population in apartments lived in buildings with less than 10 dwellings. • Around a third (30.2%) of Belgium's population lived in an owner-occupied homes in 2016 for which there was an outstanding loan or mortgage, while 41.1% lived in an owner-occupied home without a loan or mortgage. • In the same year, 20% of the population were tenants with a market price rent, and 8.7% were tenants in reduced-rent or free accommodation. • A 9.5% share of the population lived in households that spent 40 % or more of their equivalised disposable income on housing. Of the people living below the at-risk-of-poverty threshold, 37.6% spent 40 % or more of their equivalised disposable income on housing. Housing costs include rental or mortgage interest payments but also the cost of utilities such as water, electricity, gas or heating.
Main apartment ownership model	Composite
Actors involved in renovations	• Homeowner Association • Homeowner Board of Director • Building management company [*syndicus/syndic*"] • Commissioner for the accounts
Legal status of main decision making body	The homeowner association has legal personality if (1) at least one apartment has been sold and (2) the statutes of the association have been registered at the mortgage register (art. 577-4 Civil Code)
Required majority for maintenance & renovations	75% of the present or represented shares 80% of the present or represented shares for major changes in common parts of the building (e.g. if common areas are taken away or incorporated in private units) Unanimity between the co-owners is necessary for decisions that concern destruction and reconstruction of the building or modification of shares
Rental contracts	No provisions that allow landlords to renegotiate existing contracts due to need of renovation or pass costs of energy efficiency upgrades to tenant

Energy performance certificates	Energy performance certificates are produced at individual flat level.
Energy-related requirements in apartment buildings	None
Recent law updates in favour of energy efficiency	In 2010, some moderations of the required majority have been introduced. For instance, works affecting private units can be taken with an 80% majority and without consent of the concerned owner if these works are necessary for economic or technical reasons. If works have been decided with the required majority, the modification of the division of shares can be decided with the same majority.
Law references	• Article 577-3 up to 577-14 of the Belgian Civil Code • Act of 20 June 1991 with regard to residential rental agreements • Flemish Decree of 15 July 2007 relating to the Flemish Residential Code

3.1.2 Key national terms

Unitary ownership: Unitary ownership refers, in general, to the right to use a good and to dispose it in the most comprehensive manner, subject to the restriction not to use it in a manner which violates statutory limitations (Art. 544 CC).

Co-ownership[2]:. Apartment co-ownership refers to a form of 'mandatory co-ownership as accessory'. The co-ownership of the common parts and land is accessory to the unitary ownership of the apartment itself (Art. 577-2, §§9-10 Civil Code (general provisions) and Article 577-3 to 577-14 Civil Code (apartment co-ownership)).

Housing association: The constitutional competence with regard to housing associations has, in Belgian law, be deferred to the Regional entities (Art. 6, §1, 4° Special Statute reorganising the Institutions). Housing associations – often called social housing associations – are thus further governed by regional provisions in Flanders, Wallonia and Brussels. They are autonomous corporations which have been recognized by the Regional Government and striving for social housing purposes.

Homeowner association: The JRC definition (Table 1) corresponds to the Belgian one. It has, in Belgian law, legal personality if (1) at least one apartment has been sold and (2) the statutes of the association have been registered at the mortgage register (Art. 577-4 Civil Code).

Building management company: Under Belgian law, the building management company [*syndicus/syndic*] has a large number of powers (enumerated in Article 577-8 Civil Code). Basically, they involve (1) daily management of the common parts of the building and (2) performance of the decision by the general assembly of co-owners. The *syndicus/syndic* is being controlled by the board of directors. It must not necessarily be a company: it can also be one of the co-owners themselves.

Board of directors of homeowners: A board of directors is mandatory if the building has more than 20 apartments.

[2] In Belgian law, the term co-ownership is used instead of composite ownership

Division Deed: Authentic deed, part of the Statutes of the Homeowner Association, which contains a description of the building and its division in private ownership apartments and common parts

Regulation of co-ownership: Authentic deed, part of the Statutes of the Homeowner Association, which contains a description of the general rights and obligations of the co-owners and the organisation of the Homeowner Association

General Assembly: Main organ of the Homeowner Association, organised once a year or at the requests of the Building Management Company or a part of the homeowners.

Commissioner for the accounts: An organ of the Homeowner Association which has a mission to control the annual accounts submitted by the Building Management Company. The commissioner for the accounts can be either a co-owner or a third party professional.

Household Regulation: Non-mandatory instrument which provides for specific regulations in order to ensure peaceful neighbourhood relations in the building.

Statutes: Authentic deed covering both the Division Deed and Regulation of co-ownership

Qualified majority: Qualified majority refers to majority of those voting that reaches a pre-set threshold larger than 50%. Belgian Law acknowledges a 2/3 majority and 3/4 majority. Exceptionally, unanimity between the co-owners is required.

Absolute majority: Absolute majority refers to majority of all members, not just those choosing to vote. In Belgian law, each owner has a number of votes corresponding to his share in the common parts. Absolute majority is reached if more than half of the (re)present(ed) owners vote in favour of the proposal (Art. 577-6, §6 Civil Code). More than half of the co-owners, representing at least half of the shares, or alternatively 3/4 of the shares must be present or represented in order to vote (Art. the first convocation). Invalid votes or abstentions are not taken into account for this calculation (Art. 577-6, §8, par. 2 Civil Code).

Maintenance work: Maintenance work refers to routine and preventive maintenance work required to keep a building, utilities, and grounds in an acceptable and safe operating condition. The Belgian rules on co-ownership do not define maintenance works, contrary to, for instance, the rules on usufruct (606-607 Civil Code) and lease agreements (Art. 1754-1755 Civil Code). However, the Civil Code allows the Building management company to effect acts of conservation and provisional administration (urgent acts to avoid damage or not lose plus value).

3.1.3 Apartment ownership model

The Belgian condominium law is based on the composite model: apartment owners are private owners of their own units, and co-owners of the communal parts (including the land). Under condominium law, the parts of the building which are typically considered communal include roof, façade, entrance hall, lift, staircases and ground. With regard to the roof, façade, etc., they only belong to the communal parts to the extent that the building itself is divided. As the Belgian Condominium Act applies to buildings or groups of buildings, it is feasible that the Act applies in a complex of buildings in which each building belongs to one owner, but shares common infrastructure with other buildings.

Belgian law has traditionally been rather rigid in terms of the decision making regime that concern homeowner associations. All decisions concerning works, such as renovation of the communal parts of the building which entail a disposition or modification of the purpose of common areas, require an 80% majority. With regards to demolition and reconstruction of buildings, including all works which entail a modification of the shares between the parties, unanimity between the co-owners is required. Works affecting private units also require the consent of the owner of that unit. No contractual derogation to these majorities is valid. Belgian condominium law is generally considered to be very rigid. In 2010, some modifications of the regime have been introduced. For instance,

works affecting private units can be taken with an 80% majority, and without consent of the concerned owner, if these works are necessary for economic or technical reasons. Finally, if works have been decided with the required majority, the modification of the division of shares can be decided with the same majority.

The Belgian rules on apartment building management are included in Article 577-3 up to 577-14 of the Belgian Civil Code. These rules have been largely introduced in 1994, and modified in 2010. As this regime is considered to be very rigid, a new initiative[3] has been taken by the Minister of Justice to modify these rules again. This has been approved by the Belgian government but has to pass parliament.

Public ownership in Belgian law is characterized by a distinction between public domain (public property destined to be used by anyone) and private domain (not destined to be used by everyone). Private domain of public authorities can without any problem be object to Statutes, and divided as described. However, it is highly discussed whether public property can be part of an apartment building structure, as public domain is traditionally considered to be exempt from private rights.

3.1.4 Management & maintenance of multi-family residential buildings

The main actors in charge of apartment management include the Homeowner Association, Homeowner Board of Directors, Building management company and Commissioner for the accounts.

The **Homeowner Association** represents legal personality if (1) at least one apartment has been sold and (2) the statutes of the association have been registered at the mortgage register (art. 577-4 Civil Code). Thus, it has an own patrimony (distinguished between an operational account and a reserve account (the latter is only used for large, non-recurrent works). Its principal organ is the general assembly of the Homeowner Association.

The **Homeowner Board of Directors** is denominated in Belgian law as the 'Council of co-owners'. It is composed of a variable number of co-owners. It is not mandatory in small apartment buildings (with less than 20 apartments), but it is mandatory in large apartment buildings (with more than 20 apartments). its function is to control the building management company and to take some more operational decisions in accordance with the building management company in order to execute the decisions of the general assembly.

In Belgian law, the **building management company** [*syndicus/syndic*] has a large number of powers (enumerated in article 577-8 Civil Code). Basically, they involve (1) daily management of the common parts of the building and (2) performance of the decision by the general assembly of co-owners. The *syndicus/syndic* is controlled by the board of directors. It must not necessarily be a company: it can also be one of the co-owners themselves. If a professional party performs activities as building management company in a regular way, then it has to be registered as such with the Belgian Institute for Real Estate Brokers (www.biv.be). Such registration requires some specific conditions.

The **commissioner for the accounts** controls the annual accounts submitted by the Building management company. The general assembly only approves the accounts after obtaining the advice of the commissioner for the accounts. The commissioner for the accounts can be a third party professional or one of the co-owners. the further powers of the commissioner are governed in the Regulation of Co-ownership (art. 577-8/2 Belgian Civil Code).

[3] The integral version of the new Draft Act can be found at:
http://cib.files.mi.addemar.com/files/a_cib/data/File/CIB_Nieuws/beleidsaanbeveling_NL

The general assembly of co-owners must **convene once a year** in an ordinary general assembly, during a two week period which is determined in the Regulation of co-ownership (art. 577-6 Belgian Civil Code). However, an extraordinary general assembly can be convoked if the Building Company assesses that an urgent decision has to be taken. Moreover, a general assembly must convene at the request of co-owners which have at least 1/5 of the shares in the common parts. The other organs have no minimum requirements as to their meetings. In principle, the decision relating to works affecting the common parts requires 75% of the present or represented shares. If however, common parts are taken away or incorporated in private units, a 4/5 majority is necessary. For the destruction and reconstruction of the building or for the modification of the shares, unanimity between the co-owners is necessary. However, the Building management company can decide to take all measures concerning the conservation of the building and can decide themselves to take those measures in order to urgently avoid degradation of the building.

Maintenance work which can be decided upon by the Building management company are the works of conservation and urgent works. These only cover small works meant to keep the common parts clean and operational. For instance: cutting the grass of the common garden, cleaning the floor of the common parts, replacing the defective lamp in the common entrance hall, replacement of the entrance door if it has been broken, etc. If the building management company can decide, no majority is required: the general assembly of co-owners does not intervene. To the extent that the general assembly has to decide: 3/4 majority of the present or represented shares. If the destination is modified or common parts are incorporated in the private units, 4/5 is necessary. If a modification of the shares is necessary or destruction and reconstruction is decided upon, unanimity between all co-owners is required.

To the extent that the works are urgent or aim at the conservation of the building, the Building management company can take the measure itself. Within the patrimony of a Homeowner Association, a distinction is made between the "operational account", meant to pay the daily or at least periodical works and consumption, and the "reserve account" meant to pay gross works which are not periodical. The co-owners contribute to the composition of both accounts. A Royal Decree determines how the accounting of the patrimony of the Association of Co-Owners has to take place. This can be done in a simplified manner in the small associations of homeowners (less than 20 private units), but must fully complied with in the large homeowner associations. There is no legal obligation to contribute to an operational account. Hence, co-owners decide themselves about the total amount of the contributions necessary in order to maintain the daily operation.

Major renovations, on the other hand, are works requiring relatively large investments, such as the replacement of windows, cleaning of the facade, reconstruction or renovation of the balconies, major reparation of the roof, etc. Majority of votes required to approve works can be 3/4, 4/5 or even unanimity, depending on the nature of the works. All majorities are calculated on the number of (re)present(ed) shares. In such cases, the general assembly decides upon the works. Of course, the Building management company, and possibly the Board of Directors, will have to intervene in order to execute the decision.

The funding procedure of major renovations is similar to the one of maintenance works. It should be added that, up to now, the Homeowner Association decides autonomously whether it constitutes gradually a reserve account in order to pay unexpected or large works at a later moment. However, there is a pending proposal for a new Apartment Act which would oblige co-owners to constitute a reserve account by imposing that 5% of the contributions of the co-owners would be directed towards this account. In the current state of Belgian law, there is no legal obligation to contribute to a 'reserve account'. Co-owners decide themselves whether they compose a fund destined at major renovation works. In the draft proposal mentioned above, a minimum share of 5% of the total contribution of the previous year should be contributed to the reserve account.

The Belgian Apartment Act is considered to be very rigid. The mandatory nature of the provisions with regard to apartment co-ownership means that parties cannot derogate from the statutorily required majorities. For major works affecting the common parts of the building, strict majorities are required. Moreover, a building developer cannot suffice with buying a number of private units corresponding to that majority as it will be blocked by the limitation that no owner can vote for more than the half of the votes.

3.1.5 Rental contracts

There is no automatic indexation of the rental price for private tenants. However, parties can agree that such indexation will apply, in which case the indexation is only permitted once a year and only according to the development of the consumer index (art. 1728bis Civil Code). A residential rental contract can exceptionally have a duration which is shorter than three years. However, such agreement is typically entered into for a period of nine years. However, the lessor has the possibility to terminate the agreement at each moment if he aims to occupy the building himself, if he gives a notification period of 6 months. The lessee has the possibility to terminate the agreement at each moment if he takes into account a notification period of 3 months. At the end of 3 years and 6 years, larger possibilities to terminate the agreement come into effect. See article 3 of the Act of 20 February 1991 on residential rental agreements.

For social rent, the Flemish government determines the conditions under which a social rental agreement can be entered into, and provides for a model agreement, from which no contractual derogation is possible except in the cases provided in Ministerial Decree. As to the price, article 38 of the Flemish Government Decree of 12 October 2007 provides that the market value is reduced with the social discount to which the lessee can apply. The market value has to be determined by a public notary, and is readjusted each year. In Flanders, rental agreements are in the social market entered into for an undetermined period of time and can only be terminated if the lessee does not comply with his contractual obligations anymore.

There are no provisions that allow landlords to renegotiate existing contracts due to need of renovation and it is not possible for a landlord to pass the costs of energy efficiency upgrades to the tenant. In the private rental market, an adaptation of the lease price is possible at the end of the first or second three year period, if the market price has meanwhile increased or dropped with more than 20%. Since 2007, the lessor in the private market must deliver to the lessee a house which complies with all minimum standards of salubrity, liveability and security. If these standards, as specified by the government are not fulfilled, the lessee can choose between the termination of the agreement with additional damage or the execution of the necessary works at the expense of the lessor. No contractual derogation is permitted, with the exception that parties can impose this obligation on the lessee if the works can be executed within a reasonable time schedule, in which case (1) is exempted from paying the lease price during the period of these works and (2) the lease price is adapted, the lessor waives the right to adapt the rental price or waives the right to terminate the agreement ('renovation rental agreement').

In the private rental market, the intention of the lessor to execute major renovation works is however a possible ground for termination of the agreement after 3 or 6 years, taking into account a 6 months notification period. The question which works are at charge of the lessee and which works are at charge of the lessor is mandatorily regulated in Belgian law: gross works are for the lessor, maintenance works for the lessee. Parties cannot contractually derogate from that.

3.1.6 Energy efficiency policies

In the case of thorough renovations (renovations that need a building permit), building code obligations regarding thermal insulation, energy performance (net energy needs

and renewable energy production), and building climate (ventilation, avoidance of overheating) are imposed. These are performance-based requirements[4]. In the case of 'energetic' renovations (i.e. renovations aiming specifically to significantly improve the energy performance of the building), a specific requirement of 10 kWh/year renewable energy production (per m²) applies.

In case of large investments, each owner must take separately an individual loan. Cheap (1% interest rate) government loans for energy-efficient renovations are available for certain target audiences. As of 1 October 2017, cooperatives will also be part of the target audience.

Some financial support that can be combined with investment arrangements in apartment buildings or rented properties is also currently available. The so-called "burenpremie" ("neighbour grant") aims at facilitating collective renovation projects (individual houses or apartments). At least 10 individual owners can apply for a 'neighbour grant', which is used to pay for a 'renovation coach' who takes care of the entire project (looking for offers, comparing them, giving advice, applying for individual renovation grants, etc.).

Energy performance certificates are produced at individual flat level.

[4] Specific requirements are described in detail on the website https://www.energiesparen.be/epb/welkeeisen

3.2 Finland

3.2.1 Summary

Key statistics	*Based on EUROSTAT data* • In 2016, 34.2% of Finland's population lived in apartments. In total, 95% of the population in apartments lived in buildings with 10 or more dwellings. • Over one quarter (29.5%) of Finland's population lived in an owner-occupied homes in 2016 for which there was an outstanding loan or mortgage, while 42% lived in an owner-occupied home without a loan or mortgage. • In the same year, 13% of the population were tenants with a market price rent, and 15.4% were tenants in reduced-rent or free accommodation. • A 4.4% share of the population lived in households that spent 40 % or more of their equivalised disposable income on housing. Of the people living below the at-risk-of-poverty threshold (which is set at 60 % of the national median equivalised disposable income) 19.5% spent 40 % or more of their equivalised disposable income on housing.
Main apartment ownership model	Housing Company model (primary) Real Estate Company model (secondary)
Required majority for maintenance & renovations	Simple majority (primarily)
Actors involved in renovations	• Board of Directors of Housing Company • Manager • General Meeting
Legal status of main decision making body	The Housing Company has legal personality
Rental contracts	The cost of energy efficiency upgrades can indirectly be shifted to the tenant through a new agreement, but it cannot be shifted directly.
Energy performance certificates	Energy performance certificates are produced at building level
Specific energy-related requirements in apartment buildings	None

Recent law updates in favour of energy efficiency	None
Law references	• Act on Residential Leases (481/1995) • Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans (2001/604) • The Limited Liability Housing Companies Act (LLHC Act), • Land Use and Building Act • National Building Code of Finland • Other regulations concerning construction products, e.g. Electrical Safety Act

3.2.2 Key national terms

Limited Liability Housing Company (LLHC): A limited liability housing company is a limited liability company whose purpose, provided in its Articles of Association, is to own and control at least one building or part thereof in which at least half of the combined floor area of the apartment or apartments is reserved in the Articles of Association for use as residential apartments possessed by the shareholders. On its own or combined with other shares, each share of the limited liability housing company provides the right of possession to the apartment or other part of the building or real estate as provided in the Articles of Association, within the building or real estate in the possession of the housing company.

Board of Directors : According to the Limited Liability Housing Company Act (LLHC Act) the housing company shall have a Board of Directors. There shall be between one and five regular Members of the Board of Directors, unless otherwise provided in the Articles of Association. If there are several Members of the Board of Directors, a Chairperson of the Board of Directors shall be elected. The Board of Directors shall elect the Chairperson, unless it has been otherwise decided when the Board of Directors is appointed or unless it is otherwise provided in the Articles of Association. The Manager may be elected the Chairperson of the Board of Directors only on the condition that it is so provided in the Articles of Association or all shareholders consent to that. Typically the Members of the Board are selected amongst the shareholders.

General Meeting: The shareholders shall exercise their power of decision at the General Meeting, unless the power of decision has been bestowed upon the housing company's Board of Directors on the basis of legislation or the Articles of Association (LLHC Act, Chapter 6, para 1).

Manager: Typically a certified professional employed by a Building Management Company. One Manager typically works with several Housing Companies.

Building management company: A building management company is hired by the Housing Company and performs duties defined in the contract signed by the Manager. The Board of Directors normally approves the contract.

Residents Meeting and Committee: According to the Act on Joint Management of Rental Buildings the purpose of joint management of rental buildings by residents and owners is to give residents decision-making power and an opportunity to influence matters related to their own housing conditions, to increase comfort and satisfaction and to promote the upkeep and maintenance of rental buildings. The residents and other possessors of dwellings of a building or buildings belonging to a rent determination unit exercise their right in accordance with the Act in a residents' meeting. The residents' meeting is entitled to elect a residents' committee or several residents' committees.

Unanimity (100% of shares): Based on the LLHC Act some matters can be agreed upon without a General Meeting if there is an absolute unanimity, e.g. Chapter 7, para 7: "If the shareholders are unanimous, they may make decisions on matters which the Board of Directors may submit to the General Meeting for decision-making."

Qualified majority: Qualified majority refers to majority of those voting that reaches a pre-set threshold larger than 50% . In Finland the threshold is at least 2/3 of the votes cast and the shares represented at the meeting. For example a principle amendment to the articles of the association requires qualified majority calculated from the votes cast as well as represented in the General Meeting.

3.2.3 Apartment ownership model

The Finnish model for apartment ownership is different from other Member States in that shareholders neither own the property collectively nor own parts of it. "Limited Liability Housing Company (LLHC, hereafter "Housing Company") is a limited liability company whose purpose, provided in its Articles of Association, is to own and control at least one building or part thereof in which at least half of the combined floor area of the apartment or apartments is reserved in the Articles of Association for use as residential apartments possessed by the shareholders. Shareholders represent persons "owning" apartments. On its own or combined with other shares, each share of the limited liability housing company provides the right of possession to the apartment or other part of the building or real estate as provided in the Articles of Association, within the building or real estate in the possession of the housing company. Shareholders are responsible for the interior surfaces. The ceilings and the inner frame of windows may be the responsibility of the shareholder, but all other parts are owned and maintained by the Housing Company.

In addition to the above model, a secondary form of ownership is based on the involvement of Real Estate Companies. This is a typical form when the apartment building has one owner, e.g. municipality in case of social housing. In this model, all residents are tenants. In Finland, "social housing" is primarily provided by the municipalities. For this purpose, the apartments are mainly leased by real estate companies owned by the municipalities. Such real estate companies operate on a non-profit basis.

A mixed public/private ownership of shares does not affect to the operation and decision making of the housing companies.

3.2.4 Management & maintenance of multi-family residential buildings

The main actors in charge of apartment management are the Board of Directors of the Housing Company and the Manager.

Housing Companies must have a Board of Directors (LLHC Act, Chapter 7, para. 1). The key obligations of the board of directors are the management of the property and related activities. The board of directors consists of 3-5 permanent members which are selected by the General Meeting of the shareowners. At least one of the board members must reside in the EEA.

Building Management Companies are responsible for those operations, maintenance works and services defined in the contract between the Building Management Company and the Housing Company. Normally the Building Management Company is selected through competition and the contract is under the civil law. Standard lists for services exist, but contracts are negotiated case by case. The Housing Company is free to choose and decide how matters are organised.

The Board of Directors of the Housing Company puts into force the decisions made by the General Meeting of the shareowners (for example renovations). The Board of Directors has independent decision making power in relation to administration and smaller repairs (LLHC Act, Chapter 7, para. 2). The Manager takes care of the day-to-day management in accordance with the general instructions from Board of Directors (LLHC Act, Chapter 7, para 17). Unless otherwise stated in the articles of association of the Housing Company, the shareowners (i.e. the homeowners) are responsible for the management and maintenance of the inside of the apartment to which they have the exclusive right of use (LLHC Act, Chapter 4, para. 4).

There is **no legal minimum requirement** on how often the Building Management Company and the Housing Company must meet. The Housing Company must convene for a General Meeting at least once a year, no later than six months following the end of the financial year of the Housing Company (LLHC Act, Chapter 6, para. 3). The Board of Directors must meet "when needed" (LLHC Act, Chapter 7, para. 5), but in practice the Board of Directors will meet at least twice a year. One meeting would usually be held prior to the General Meeting to prepare the budget for voting. A second meeting during which the board of directors assembles and arranges itself will be held after the General Meeting. During major renovation works the Board would in practice meet more frequently.

The voting right is based on the number of shares owned and unless otherwise agreed in the Articles of Association a simple majority is need for decisions (LLHC Act, Chapter 1, para. 9; Chapter 6 para. 26). In a vote at a General Meeting, a shareholder may not exercise more than one fifth of the total votes conferred by the shares represented at the Meeting, unless otherwise provided in the Articles of Association (LLHC Act, Chapter 6, para. 13). All shares generally have the same voting right (LLHC Act, Chapter 1, para. 10; Chapter 2, para. 1; Chapter 6, para. 13). Some decisions, such as a change to the Articles of Association, require a **qualified majority of 2/3 of the votes** cast (LLHC Act, Chapter 6, para. 27). In Finland the threshold is at least 2/3 of the votes cast and the shares represented at the meeting. For example, a principle amendment to the articles of the association requires qualified majority calculated from the votes cast as well as represented in the General Meeting.

For maintenance work (e.g. maintenance of fixture and small repairs), no majority of votes is required to approve works. The Manager is responsible for the implementation of maintenance work under the formal supervision of the Board of Directors. The funding procedure is based on the annual budget, approved by the General Meeting. For major renovations such as roof repairs, facade, water and sewage piping, a simple majority of votes is required. Actors involved may include a hired contractor who is supervised by the Board of Directors. Major renovations may require third party consultants and independent contractors. The Housing Company would take a loan for major renovations. This would be repaid by the shareowners in monthly payments. The payback period can be up to 25 years for major renovations. Since the costs of major renovations are based on the quantity of shares associated with an apartment, larger apartments often pay a disproportionately large amount for repairs which have similar cost regardless of apartment size (for example bathroom upgrades).

Shareowners are generally ill-informed about the costs and benefits. In the past decade there has been a high profile discussion linked to the quality of air inside residential and public buildings. Some findings point toward the fact that stricter energy efficiency standards have led to worsening inside air quality.

3.2.5 Rental contracts

Landlord and private tenants are free to set the price for rent. The rent can be adjusted, but the basis for adjustment has to be part of the rental agreement. Rental contracts are either of a fixed term (e.g. 12 months) with the possibility to prolong or open ended

until further notice. Lease agreements until further notice can be terminated following the notice period. It is typical to enter into a new agreement following major renovations. Costs of energy efficiency upgrades to the tenant can be passed to the tenant indirectly only through a new agreement (i.e. this cannot be done directly by amending the existing lease unilaterally)).

For social housing, the rent charged to tenants cannot exceed the amount needed (in addition to other income) to cover expenses arising from the financing of the rental dwellings as well as their management. This is based on the Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans. Lease agreements for social tenants are open ended until further notice.

3.2.6 Energy efficiency policies

In relation to energy efficiency requirements in building codes, the Land Use and Building Act (MRL paras. 117g, 117h, 125, 126 and 126a) requires generally that certain energy efficiency improvements have to be made during renovations, if these are technically, functionally and economically feasible. Detailed information on how renovations are to be conducted is found in the decree "On improvements to energy efficiency in renovations and upgrades" (henceforth decree 4/2013"). In practice, decree 4/2013 makes it possible to choose between either **prescriptive- or performance-based** implementation of energy efficiency renovations (decree 4/2013, para. 8). As a specific requirement, the performance based approach requires that the applicant has to draw up a comprehensive plan (decree 4/2013, para. 9), but in principle applicants can choose between either approach. In the calculation of the Efficiency number ("E-number"), the use of renewable energy sources is favoured as these are weighted with a smaller factor. In practice this means that through the use of renewables, buildings achieve a better overall energy efficiency rating.

In case of large EE & RES investments, a collective loan can be taken upon agreement by the Housing Company which takes a long-term loan, corresponding to typically 20-25 years.

Energy Performance Certificates (EPC) are produced on a **building level**. If the cooperative comprises of multiple buildings, an EPC is produced for each building. An exception to this is buildings in which a significant proportion is used for commercial purposes. In these situations separate EPC are produced for the condominiums and the commercial space.

The "Energy Efficiency Agreement" scheme has had a separate Action Plan for Rental Housing Companies since 2002. The ongoing agreement period is 2017-2025. Overall (including other industrial, municipal and services sectors) the "Energy Efficiency Agreement" scheme aims to cover more than half of the energy savings set out in Article 7 of the EED (for more details: http://www.energiatehokkuussopimukset.fi/en/).

3.3 Germany

3.3.1 Summary

Key statistics	• In 2016, 57.1% of Germany's population lived in apartments, 70% of whom lived in buildings less than 10 dwellings. Germany has among the highest share of people living in apartments across the EU. • Just over half (51.7%) of Germany's population lived in an owner-occupied home in 2016: 26.2% with an outstanding loan or mortgage, while 25.5% without a loan or mortgage. • In the same year, 39.8% of the population were tenants with a market price rent, and 8.4 % were tenants in reduced-rent or free accommodation. • A 15.8% share of the population lived in households that spent 40 % or more of their equivalised disposable income on housing. With respect to people living below the at-risk-of-poverty threshold, this share was at 50.3%.
Main apartment ownership model	Composite ownership
Required majority for maintenance & renovations	Simple majority based on number of properties for maintenance and repair including modernisation maintenance. For modernisation measures that upgrade the building without changing the inherent nature of the apartment building, a ¾ majority is required (Sections 21 et seq. Apartment Ownership Act 1951 (Wohnungseigentumsgesetz, WEG)).
Actors involved in renovations	Appointed Administrator [*Verwalter*]. In theory, this could be one of the co-owners, but is typically represented by a building management company or a professional building manger/real estate agent.
Legal status of main decision making body	
Rental contracts	Provisions that allow landlords to renegotiate existing contracts due to need of modernisation exist. For maintenance renovations, a rent increase is not permitted (Sections 559, 555b German Civil Code (BGB)).
Energy performance certificates	Energy performance certificates are produced at building level.
Specific energy-related requirements in apartment buildings	None

Recent law updates in favour of energy efficiency	Although this is not newly introduced, Section 21 (5) Apartment Ownership Act 1951 (Wohnungseigentumsgesetz, WEG) introduces two important principles of proper administration in this context: (no 2.) "due maintenance and repair of the jointly owned property" and (no. 4) "building a reasonable maintenance reserve fund" In addition, the Tenancy Law Amendment of 2013 introduced the possibility for landlords to recover 11% of EE investments per year by means of rent increase (Sections 559(1), 555b No. 1 and 2 German Civil Code (BGB)).
Law references	• Apartment Ownership Act 1951 (Wohnungseigentumsgesetz, WEG) • Energy Conservation Act (Energieeinsparungsgesetz, EnEG) • Energy Savings Law (Energieeinsparverordnung, EnEV) • German Civil Code (Bürgerliches Gesetzbuch, BGB)

3.3.2 Key national terms

Administrator (*Verwalter*): Person elected by the apartment owners, who is responsible for the day to day work and administration of the building and the communication with the assembly of owners.

Assembly of owners (*Wohnungseigentümerversammlung*): Meeting of all apartment owners, held at least once a year, which takes decisions on all important issues and elects the administrator (*Verwalter*) at least every five years.

Maintenance reserve fund (*Instandhaltungsrückstellung*): A fund, organized by the community of homeowners with regular contributions from all apartment owners, set up to ensure that future maintenance work can be paid.

Building management company: An external professional company hired by building owners to carry out maintenance duties and handle day-to-day operations in apartment buildings. They perform duties agreed by the assembly of owners (Wohnungseigentümerversammlung).

Board of directors of homeowners does not exist in Germany

3.3.3 Apartment ownership model

About 14 % (5,5 mio.) of German households live in apartment flats with composite ownership. Composite ownership is the main model of apartment ownership in Germany. Housing cooperatives exist in Germany as well, but in most regions, they do not play an important role. In addition, holding a share in the housing cooperative and, thereby, becoming co-owner of the housing cooperative cannot be described as ownership of an apartment, since the relation between the shareholders and the cooperative who is the owner of the apartment is mostly based on rent law. However, both the shares in the cooperative and the right to live in the house may be inherited.

Under composite ownership, parts of the building that are typically considered communal include the roof, façade, entrance hall, lift, staircases, other exterior surfaces such as windows, the land on which the building is constructed as well as any other buildings on the plot which are not legally constituted as special ownership units (*Sondereigentum*) assigned to one of the owners only.

The ownership and all relationships within this context are regulated in the Apartment Ownership Act 1951 (Wohnungseigentumsgesetz, WEG). The administration of the building is regulated in sections 20-29 WEG[5]. In the context of energy efficiency renovations and modernisation, Section 21 (5) WEG introduces two important principles of proper administration: the principle of "due maintenance and repair of the jointly owned property" (Section 21 (5) no. 2 WEG) and duty of "building a reasonable maintenance reserve fund" (Section 21 (5) no. 4).

3.3.4 Management & maintenance of multi-family residential buildings

According to Sections 20, 26 WEG, an administrator (*Verwalter*) needs to be appointed by the assembly of owners (*Wohnungseigentümerversammlung*). In theory, the administrator could be one of the co-owners, but typically it will be a building management company. The responsibilities of the administrator are regulated by section 27 WEG. They are, inter alia, to implement resolutions of the assembly and ensure the enforcement of the house rules, to take all necessary measures required for the proper maintenance and repair of the jointly-owned parts of the property, to take other necessary steps as may be required in urgent cases to preserve the jointly owned property, and to collect the money to be paid in relation to matters jointly affecting the co-owners or the day-to-day administration of the jointly owned property.

Generally, the administration of the common property is a task of the assembly of owners and the administrator (cf. section 20 WEG) who is elected by the assembly of owners for up to five years, see section 26 WEG). A further board is not required. The assembly can, however, establish an advisory board (*Verwaltungsbeirat*, section 29 WEG) by majority, consisting of three co-owners.

The administrator must convene the assembly of owners at least once a year (section 24 (1) WEG). Moreover, the administrator has to hold a further assembly of owners, if decisions are necessary, which cannot wait till the next regular assembly of owners is hold. For an established community, it is also common, that the assembly of owners meets only once a year.

3.3.5 Rental contracts

Landlords and tenants are generally free to set rental prices.; since mid-2015, the so-called "rent brake" (*Mietpreisbremse*) has been introduced in areas where the supply of

[5] An English translation of the WEG can be found at: https://www.gesetze-im-internet.de/englisch_woeigg/index.html

housing is at risk. This is a form of rental control/cap which allows individual states to classify specific areas or districts with "overheated" housing markets and force landlords to rent apartments at prices that are no more than 10% above the local neighbourhood average rent (Section 556d German Civil Code (Bürgerliches Gesetzbuch, BGB)). After the conclusion of the rental contract, the possibility of rent increase is limited, in particular, to the level of the local neighbourhood average rent and, additionally, to 20% (in tense markets 15%) every 3 years (Sections 557 BGB et sec.).

Since the reform of federalism which took effect on 1 September 2006, social housing is no longer a competence of the federal government but an exclusive competence of the German states. Generally speaking, rents are limited to cost rents for a certain period of time for buildings that have been erected with financial support of the state or on land sold by the state based on that condition. Sometimes, this only applies for parts of the building.

The duration of rental contracts is unlimited. Rental contracts for a limited time are only allowed if a legitimate good reason is given (section 575 BGB). Otherwise, the contract is presumed to be open-ended.

In Germany, there are provisions that allow landlords to renegotiate existing contracts due to need of renovation for both private and social rental units. For modernisation, Section 559 (1) allows a rent increase of 11 % per year of the modernisation costs; a rent increase for maintenance work is not allowed. A recent legislative bill, which has not yet passed at the time of writing of this report, aims to limit these possibilities.

The following rules interact: Within an existing rent contract, the possibilities to increase the rent are very limited. Therefore, the rent paid might be below market rent, particularly in large (university) cities. Moreover, the termination of a rent contract by the landlord is in most cases not possible. However, 11 % of the costs of EE and RES investments can be added to the yearly rent. This rent increase is not limited in time. At least in cases in which the tenants are willing and able to pay the rent increase of 11 % of the modernisation costs per year instead of terminating the rent contract, the investment in EE and RES measures is often attractive to the landlord even if these are not perceived as economically reasonable for the tenant.

3.3.6 Energy efficiency policies

The Energy Conservation Act (Energieeinsparungsgesetz, EnEG) is the legal framework for the energy renovation of residential building stock, together with the energy savings law (Energieeinsparverordnung, EnEV) which was enacted on this basis.

In case of existing residential buildings, in which the owner undertakes certain renovation work on exterior components that the owner develops or extends, certain energy quality standards must be observed. In the case of changes to exterior components (for example, exterior walls, windows, outer doors and roof surfaces), maximum values of the heat transfer coefficients must be complied with in accordance with section 9 (1) sentence 1 EnEV. Alternatively, the contractor can provide evidence that the whole building meets a certain upper limit of the annual primary energy requirement and a certain quality of the thermal insulation (so-called 140% rule, exceeding the new building requirements by a maximum of 40%). In addition, there are few individual unconditional (independent of modernization) retrofitting obligations according to section 10 EnEV for the insulation of the top floor ceiling and of pipelines as well as the replacement of older boilers (Quoted from BBSR-Online-Publikation Nr. 14/2016, Tenancy law and energy renovation in European comparison, p. 93).

Special rules exist for newly built small buildings or houses constructed of units (*Raumzellen*) for a temporal use of not more than 5 years with a useable surface (*Nutzfläche*) of less than 50 m² per unit according to section 8 EnEV. They only have to fulfil the rules on the insulation of the exterior components.

3.4 Poland

3.4.1 Summary

Key statistics	The majority of residential accommodation is in single family houses (almost 78 % within cities and almost 97% in rural areas; data of the Polish Central Statistical Office). However when considering apartments within multi-residential buildings (blocks of flats) 45.1% are dwellings owned by natural persons in buildings within condominium schemes (i.e. ownership of units); 36.2% are dwellings owned by housing cooperatives; 14.7% are owned by the commune (municipal dwellings); 1.6% are owned by Social Housing Associations (legal persons usually set up exclusively or with a substantial participation of the commune in the form of limited liability companies); 1.4% are company dwellings, 0.5% are dwellings owned by the State Treasury and 0.5% are dwellings owned by other entities (see Central Statistical Office, 'Housing Economy in 2015. Information and Statistical Papers', (Warsaw, Central Statistical Office, Oct. 2016), pp. 26-27)
Main apartment ownership model	Composite ownership (primary) Cooperative proprietary
Required majority for maintenance & renovations	Unanimity (for major renovations)
Actors involved in renovations	• Board of unit owners • Building management company • Homeowners Association/community
Legal status of main decision making body	
Rental contracts	No provisions that allow landlords to renegotiate existing contracts or pass the costs of energy efficiency upgrades to the tenant.
Energy performance certificates	Energy performance certificates are produced at building level
Specific energy-related requirements in apartment buildings	None
Recent law updates in favour of energy efficiency	None

Law references	• Polish Civil Code 1964 (as amended) • Polish Civil Procedure Code 1964 • Housing Co-operatives Act 2000 (as amended) • Law on Unit Ownership Act 1994 (as amended) • Construction Law Act 1994 (as amended) • Tenant Protection Act 2001

3.4.2 Key national terms

Unitary Ownership: Either co-ownership (owners own land plus building in fractional shares, e.g. heirs) or joint ownership (e.g. spouses)

Ownership of units: This refers to the composite ownership model (see Table 1). That is, composite ownership refers to a system where the owners own their apartment and all owners jointly own the common parts and land

Community of unit owners: A community of private homeowners in an apartment building. They may elect a board of directors to represent them.

Real estate manager: This may be a commercial company or a self-employed entrepreneur. It is an external professional company hired by building owners to carry out maintenance duties and handle day-to-day operations in apartment buildings.

Management board: This refers to the board of directors of homeowners (see Table 1). It is a group of elected/appointed homeowners of an apartment building whose role is to serve the community of unit owners and take decisions regarding the operation and management of common areas of the building.

3.4.3 Apartment ownership model

Composite ownership is the main apartment ownership model in Poland. In legislation this is referred to as ownership of units, the common parts are owned in fractional shares by owners of units.

Apart from ownership of units, the second most common form of owning flats is a proprietary, cooperative right to occupy a unit, bought within buildings belonging to housing cooperatives. The cooperative proprietary right to a unit is technically speaking a limited real right within a housing cooperative. The right is however transferrable inter vivos and mortis causa, may have its own register (the equivalent of a land register), and may be encumbered by a mortgage. Therefore, for statistical purposes holders of this cooperative right have also been classified as owner occupiers. The main difference is that it is the cooperative and its organs that are responsible for maintenance and not a management board elected by owners of units.

The majority of residential accommodation is in single family houses (almost 78 % within cities and almost 97% in rural areas; data of the Polish Central Statistical Office). However when considering apartments within multi-residential buildings (blocks of flats) 45.1% are dwellings owned by natural persons in buildings within condominium schemes (i.e. ownership of units); 36.2% are dwellings owned by housing cooperatives; 14.7% are owned by the commune (municipal dwellings); 1.6% are owned by Social Housing Associations (legal persons usually set up exclusively or with a substantial participation of the commune in the form of limited liability companies); 1.4% are company dwellings, 0.5% are dwellings owned by the State Treasury and 0.5% are dwellings owned by other entities (see Central Statistical Office, 'Housing Economy in 2015. Information and Statistical Papers', (Warsaw, Central Statistical Office, Oct. 2016), pp. 26-27) .

Under condominium law, parts of the building which are typically considered communal include the roof, façade, entrance hall, lift, staircases, common laundry rooms, bicycle storage, unused attic space, installations such as water, gas, electricity and heating ducts. Windows are a part of the unit, however because they are also a part of the façade, they must be renovated in a manner that does not change the look of the façade.

Thermal modernisation of multifamily buildings has been supported by a direct governmental programme on the basis of The Thermal Modernization Support Act 1998, whereby financial support of investments was made available in order to limit consumption of thermal energy. No other specific changes in property law have been introduced to encourage renovation of apartment blocks. In the period 1992-2005, there was an income tax incentive (deduction from income tax) if money was spent on renovating residential apartments or buildings (certain costs limits were introduced and allowed for a deduction in income tax).

3.4.4 Management & maintenance of multi-family residential buildings

The main actors in charge of apartment management are the Board of Directors of the Housing Company and the building management company.

In a default, statutory management system, the daily management of the scheme is entrusted to the unit owners (small communities, i.e. 7 or less units) or the management board (large communities, i.e. more than 7 units). If a professional manager has been hired (possible both in small and large residential communities) it is entrusted to him/her. The Law on Unit Ownership Act ("LUO") only differentiates between resolutions on ordinary and extraordinary management issues. In small communities under the default, statutory management, in matters concerning ordinary management, co-owners must have a majority consent (calculated on the basis of share values) and in matters concerning extraordinary management, there must be unanimity (arts 199 and 201 of

the Polish Civil Code – "PCC"). It should be emphasized that in the case of small residential communities, the legislator assumes that unit owners can directly manage common property and there is no need to introduce special management modes or mechanisms, thus the PCC provisions on co-ownership in fractional shares are to be applied mutatis mutandis.392. In large communities ordinary management decisions are made independently by the elected management board (art. 21 LUO) and extraordinary management decisions require a resolution of the majority of unit owners calculated on the basis of share values (art. 23 s. 1 and 2 LUO). This majority refers to all unit owners and not just those who attended a meeting. The mentioned resolution should also contain a proxy mandate for the management board or the manager to perform the act of extraordinary management. In art. 22 s. 3 LUO the legislator has provided an exemplary list of matters that are to be classified as extraordinary management. Among others, they include the determination of the yearly budget for maintenance of common property, the remuneration of the manager, the change of use of common property, recalculating share values, dividing common areas.

The choice of a building management company must be taken by the board of unit owners. That company may either be a manager, i.e. a paid professional that answers to the management board of unit owners, or a body which substitutes that board. Its obligations are the same as in the described default statutory system.

In case of cooperatives, their organs and employees perform management duties.

The management board (trustees) must convene a general meeting of owners at least once a year. The main function of the annual general meeting is to decide upon a yearly budget, to assess the work of the management board and (in Poland) to decide on the remuneration of the board members. In Poland a special general meeting must be convened on the request of owners whose share values represent at least one tenth of the total share value. Practice varies, if a building is older and needs more repairs there will be meetings convened more often. If it is a new built building, initially unit owners are not interested in meeting more often, unless there are building defects.

In small communities, major renovation requires unanimity, while other daily repairs require majority based on share values. In large communities, small repairs do not require voting, but may be carried out through a decision of the management board. Major renovations require majority calculated as a rule on the basis of share values.

For day-to-day repairs (small electrical works, fixing entrance doors, locks, repairing floors, etc.), the management board, manager or management company are the main actors involved. These types of measures are funded through owners' money collected as a monthly fee. The LUO provides that each unit owner must pay a monthly fee that covers management of common part expenses (including maintenance and repairs). This is calculated depending on the approved budged and planned repairs.
Common obstacles/hurdles faced in the process are arrears in payment of monthly fees.

For major renovations such as thermal modernisation, reroofing, draining or repairing foundations, exchanging major installation ducts, **unanimity** is required. These works often require a bank loan, which can be a major hurdle. According to the LUO, each unit owner must pay a monthly fee that covers management of common parts expenses (including maintenance and repairs). This is calculated depending on the approved budged and planned repairs. Difficulty in collecting unanimous votes or majority (in large communities) due to the absence of owners at meetings is typically a significant obstacle in the current management arrangement.

3.4.5 Rental contracts

Landlords and tenants are free to set the price for rent in Poland. Rents in the public sector are now referred to as limited rents, because they are no longer subject to the requirement of not exceeding 3% of the unit's reconstruction value, but should be consistent with the commune's policy (which takes the form of a resolution) on rent levels (Art. 8 TPA). These policies should differentiate rent levels taking into account at least the following factors: the building's location, the dwelling's location within the building, the building's state of repair, the available installations and installed equipment available in the building and in the dwelling (Art. 7 s. 1). However, rent levels for the so called social dwellings cannot exceed half of the lowest level of rent for normal/other dwellings within a given commune's housing stock (Art. 23 s. 4 TPA). Rental contracts for private tenants may be open ended or fixed term. This varies greatly and depends on the landlord. For social tenants, lease agreements are always concluded for an unlimited duration and only rental of the so called social dwellings (for the poorest, flats in sub-standard conditions) is concluded for a fixed duration.

There are no provisions that allow landlords to renegotiate existing contracts due to need of renovation. If a building needs to be demolished or renovated, there is only a possibility to terminate an existing contract. It is not possible for a landlord to pass the costs of energy efficiency upgrades to the tenant.

3.4.6 Energy efficiency policies

As mentioned above, thermal modernisation of multifamily buildings has been supported by a direct governmental programme on the basis of The Thermal Modernization Support Act 1998, while in the 1992-2005, an income tax incentive (deduction from income tax) was offered for renovations of apartments or residential buildings.

Minimum energy performance requirements apply in cases where thermo-modernisation is co-financed from dedicated financial programmes. The exact requirements depend on the specific programme. In case of the Thermo-modernisation Fund, the building should comply with actual building codes after the completion of the works. Such requirements are being set by some other Funds. In terms of specific requirements on renewable energy technologies, there is no obligation to deploy RES in case of thermo-modernisation but RES deployment is being supported by other financial means. There is a general requirement that the designer of new buildings is obliged to consider RES deployment in context of profitability.

The Thermo-modernisation Law was enacted through the Act of 18 December 1998 on Support for Thermo-Modernisation Projects (Journal of Laws 1998, No 162, item 1121). The Thermo-Modernisation Fund was created on the basis of the Act provisions, determining the rules of financial support to investors (building owners or administrators) for thermal modernisation investments. Effective today, the Act on Support for Thermo-Modernisation and Repairs was issued in 2008 (Journal of Laws 2008, No 223, item 1459). Accordingly the regulation, the investor is supported by the state by premium which can cover up to 20% of credit loan taken out for investment realisation.

A Premium is paid by the Bank of National Economy to the crediting investment commercial bank directly from the premium fund (owned and managed by the Bank of National Economy) as a repayment of the part of credit instalment just after all the modernisation works are completed. The replacement of a conventional heating system by another one using renewable energy sources is included in the scope of investments described by the Law (http://www.bgk.com.pl).

3.5 Portugal

3.5.1 Summary

Key statistics	• In 2016, 45% of Portugal's population lived in apartments, 42% of whom lived in buildings with 10 or more dwellings. • More than a third (38.5%) of Portugal's population lived in an owner-occupied home in 2016 for which there was an outstanding loan or mortgage, while 36.7% lived in an owner-occupied home without a loan or mortgage. • In the same year, 12.9% of the population were tenants with a market price rent, and 11.8% were tenants in reduced-rent or free accommodation. • A 7.5% share of the population lived in households that spent 40 % or more of their equivalised disposable income on housing. With respect to people living below the at-risk-of-poverty threshold, this share was at 29.1%.
Main apartment ownership model	Composite
Required majority for maintenance & renovations	Qualified majority (2/3)
Actors involved in renovations	• Homeowner association • Manager
Legal status of main decision making body	
Rental contracts	No provisions that allow landlords to renegotiate existing contracts due to pass costs of energy efficiency upgrades to tenant exist. Deep renovations in the building might give place to reallocation of the tenant and eventually entitle the owner to give notice of the contract under payment of compensation to the tenant, according to Decree-Law 157/2006, of August 8th.
Energy performance certificates	Energy performance certificates are produced both at building and individual flat level. However, certification of all individual units grants certification of the building and certification of the entire building grants certification of all the individual units (Article 6,3 and 7 of Decree-Law 118/2013, of August 20th.
Specific energy-related requirements in apartment buildings	Energy efficiency requirements are mandatory when a renovation is undertaken in a (residential or non-residential) building. Specific requirements must be fulfilled in any renovation, regardless its dimension, in the parts and components intervene, as the following: minimum requirements for U-values (walls, roofs and pavements and windows), solar factor and shading devices in windows, ventilation rates, minimum efficiency for heating, ventilation, air conditioning systems, renewable systems, and lighting (for

	non-residential only). Regardless of the type of system to be installed for preparation of domestic hot water, in new buildings (residential and non-residential) and in building's renovations, this should include solutions for the use of solar thermal energy, whenever there is an area of coverage, in horizontal hedges, or in sloped roofs between the southeast quadrant and southwest. In residential buildings there is a minimum renewable energy contribution required for Domestic Hot Water (DHW), based on a minimum solar thermal panel area for each building occupant in.
Recent law updates in favour of energy efficiency	Decree-Law 39/2010, of April 26th, as amended by Law 64-BB/2011, of December 30th, Decree-Law 170/2012, of August 1st and Decree-Law 90/2014, of June 11th, on electric mobility. Under Article 5 of Law 153/2014, of October 20th, unanimity is replaced by 2/3 majority for installation of energy micro units of production by a single co-owner and 2/3 majority is replaced by simple majority of 50% for installation of micro units of production in common parts.
Law references	• Civil Code (Articles 1430-1438-A) – main regime of condominium • Decree 267/94, of October 25 – complementary aspects of condominium regulation • Decree Law 157/2006, of August 8 – works in located buildings • Decree-Law 307/2009, October 23th as amended - legal regime of building rehabilitation • Decree-Law 118/2013, of August 20th – energy performance certificate • Law 153/2014, of October 20th - micro production of energy • Decree-Law 39/2010, of April 26th – legal regime on electric mobility

3.5.2 Key national terms

Unitary Ownership: Unitary ownership refers to an undivided apartment building, of which owners own shares or full property

Director (*Administrador*): The director is in charge of maintenance duties and day-to-day operations in apartment buildings. The director must be a single person (human or legal person, e.g, a company)

Unanimity refers to all members (it may be needed to change the constitutive title); **absolute majority** might refer only to all members voting.

Building Management Company does not exist in Portugal

3.5.3 Apartment ownership model

The Portuguese model for apartment ownership falls under the model of composite ownership. In 2015 the Portuguese housing stock was estimated at 3.6 million buildings and 5.9 million dwellings, of which around 450 000 are multi-occupancy properties (Statistical Yearbook, Portugal 2015/Census 2011).

In Portugal, the dogmatic structure of apartment ownership [*propriedade horizontal*] has evolved based on property concepts, rather than being based on traditional co-ownership (collective) ownership or concepts derived from associations. It is generally accepted that the concept of apartment ownership consists of two components, namely individual ownership of a unit [*proprietário exclusivo da fracção autónoma*], and collective or co-ownership of the land and structural parts of the building *comproprietário das partes comuns* (Portuguese CC art 1420(1)).

Consequently, the purchaser of a unit in a multi-building scheme not only acquires ownership of the single unit/apartment, but he simultaneously acquires joint ownership in the common property. Neither of these components can be disposed of separately (CC art 1420(2)). Therefore, owners cannot alienate their shares in the common property while retaining individual ownership of their units. Both components, individual and common property, are inextricably linked to one another, forming a twofold unity. Accordingly, they can only be alienated, charged or otherwise dealt with together as a single entity.

Common parts include the land and other elements, such as the outside shell of the walls and other structural walls; the roof; entrance halls, stairways, corridors; and common installations for services such as electricity, gas, water, and heating (CC art 1421(1)(a) - (d)). The following may also be designated for common use: the recreation hall and gardens; lifts; a residence for the caretaker or manager of the scheme; and parking areas (CC art 1421(2)(a) - (d)). Self-contained portions of a building or even separate buildings may be designated for common use, such as a laundry, a swimming-pool, storage facilities, a clubhouse or a kindergarten. As a general rule, all portions of the building or separate buildings that are not allocated in the constitutive title deed as individual units must be regarded as common property (Article 1421(2)(e) CC). The Civil Code makes provision for the allocation of an exclusive use area to a specific owner or owners in the constitutive title of the condominium (CC art 1421(3)). Exclusive use areas are carved out of the common property for the benefit and use of one or more unit owners. Charges concerning exclusive use areas fall on the beneficiary of the area concerned.

In Portugal, there are no apartment buildings in mixed public/private ownership. Nevertheless, condominium law is mainly a device for management of common parties, so it would not be relevant to be a public/private ownership.

Until 1994, the condominium schemes regime would only encompass units in one single building (although each unit could be utilized for residential, industrial, commercial, and professional purposes or as parking garages). Nonetheless, apartment ownership regime inspired regulation of time-sharing interests by Decree 275/93 of 5th August (as amended).

Since 1994, CC art 1438-A, supplemented by Decree-Law 267 of 94 of 25 October 1994, opened up the prospect that the condominium format might now be applied to a group of autonomous low-rise buildings or of multi-unit high-rise buildings. In this context, apartment ownership would arise in several situations. First the condominium regime could apply to a group of houses, linked either by common parts of the land where the houses are erected, or by common facilities and common equipment. Such a scheme combines house-ownership, which is exclusive and offers a high level of privacy, with common amenities (such as gardens, a swimming-pool, laundry services, and a porter or

security guard). This kind of scheme became the legal framework for the development of housing accommodation for the upper classes of Portugal.

The main advantage of applying the condominium legal regime to these schemes is that provisions of the Civil Code stipulating the various rights and duties of the owners and rules on administration of the condominium will be applied, dispensing with an *ad hoc* case by case regulation. Decree-Law 267/94 played, therefore, a significant role in the development of commercial and industrial condominiums, shaped in the form of multi-unit low-rise buildings. Commercial (retail parks) and industrial condominiums (industrial parks) soon became very popular in Portugal. More recently, iParks, promoting, creating and settling companies with a high technological content have been created.

Since the enactment of Decree-Law 167/97, of 4th July 1997, the condominium regime became extensively used to regulate the complex relationships which flow from multi-proprietary rights in holiday apartments, villages and resorts. As is well-known, tourism is one of the core growth engines of the Portuguese economy, and the promotion, enhancement and sustainability of tourism activities is a core strategic national policy. Decree-Law 39/2008, in force as from 7th March 2008, as amended, has adapted the condominium legal regime to overcome the difficulties of multi-ownership units in tourist facilities, and to ensure high quality structures and services in the tourism industry (which prides itself on constant scrutiny and improvements).

3.5.4 Management & maintenance of multi-family residential buildings

The main actors in charge of apartment management are the homeowner association and the director [*Administrador*]. The director is selected by the association, that might decide to appoint one of the co-owners or to hire a building management company. The homeowner association is mandatory and is in charge of the general decisions about the management of communal parts. Apartment owners automatically become members of the homeowner association. In very exceptional circumstances, the homeowner association is entitled to decide upon the use of private units. No board of directors of the homeowner association is foreseen in Portuguese Law.

The director's functions include the following: executing the decisions of the general meeting; ensuring compliance with by-laws; managing the financial affairs of the association, *inter alia*, by proposing an annual budget, by opening a separate bank account and by collecting monthly contributions from the owners; representing the owners in litigation and other matters; keeping the common property and the common services in a state of good repair and in proper working order; taking emergency measures to preserve the common property and safeguarding all documents related to the scheme (CC art 1436).

Portuguese law distinguishes between the external role of a manager in transactions with third parties and his internal role in dealing with individual owners. When transacting with third parties, the manager is usually regarded as acting on behalf of the owners collectively. Owners are bound by transactions performed by a manager acting within his authority (*intra-vires*). In respect of dealing with internal affairs with individual owners, it is generally accepted that the manager acts as an organ of the community of owners, not on behalf of the owners individually. As a consequence, a manager's mandate cannot be revoked by any one individual owner (CC art 1435(1)), and moreover a manager can file a suit against an individual member on behalf of the owners collectively (CC art 1437(1)).

A general homeowners meeting takes place **once per year** (the legal requirement matches the legal practice). In case of necessary maintenance, some more meetings may be scheduled.

The homeowners association exercises its powers by means of formal resolutions passed at a duly constituted general meeting. Votes are allocated in accordance with the

participation quota of the apartment in question (CC art 1430(2)). Owners, representing at least half of the quotas in the common property, must be present or represented before valid resolutions can be taken at a general meeting (CC art 1432(3)). If the required quorum is not obtained at the first meeting, CC art 1432(4) provides that a second meeting can be convened, and must take place within one week after the first. The second meeting can validly adopt majority resolutions, irrespective of the number of owners present, if the majority of voters represents at least a quarter of the shares in the common property (CC art 1432(4)). If only specific owners are charged with certain expenses, only those owners are allowed to vote on resolutions concerning these expenses (Article 1424(3) CC).

The following measures can be approved by a resolution representing two thirds of the total vote: an authorization to individual owners to alter the architectural style or the esthetical appearance [*linha arquitectónica ou o arranjo estético*] of the building (CC art 1422(3); and improvements to the common parts of the building (art 1425 CC).

A resolution approved without opposition by a majority of votes representing two thirds of the total votes may resolve that charges pertaining to collective services may be apportioned amongst apartment owners equally, or on the basis of the objective utility which these services and installations have for each particular apartment owner (Article 1424(2) CC).

For maintenance works such as small reparations of doors etc., simple majority based on number of votes is necessary. The homeowners association is in charge of the decision about the need of works and eventually the company in charge of them. The director executes works or contacts companies to do it and is responsible for monitoring the works. For major renovations such as roof repairs, insulation, heating system upgrades, lifts and painting, two-third majority is required. In practice, these works are agreed upon in homeowners meeting. The manager will be in charge of collecting some proposals and delivering them to co-owners. After selection of the best proposal, a contract will be concluded between co-owners and the selected enterprise. The payment will be made through the mandatory fund or through an extraordinary contribution of co-owners if necessary. In general, the funding might be a problem if the owners are not in condition to pay the extraordinary contribution.

Under Article 5 of Law 153/2014, unanimity is replaced by 2/3 majority for installation of micro unit of energy production by a single co-owner and 2/3 majority is replaced by simple majority of 50% for installation of a micro-unit of energy production in common parts.

Articles 27.º, 28 and 29.º of the legal regime on electric mobility allows the instalment of charging points for electric vehicles in common parts by a co-owner upon simple communication to the director.

A financial fund to cover costs is mandatory as 10% of communal charges are allocated to the fund. In case of major investments, a loan can be taken upon agreement of several co-owners.

3.5.5 Rental contracts

Landlords and tenants are free to set the price for rent. For social tenants, price caps apply based on the financial conditions of the household.

Even if the unit has been rented out, the owner remains liable for the common charges allocated to the unit in question (CC art 1078(1)). Landlords and tenants, however, can agree among themselves that the current charges for the utilisation and maintenance of common property and for the use of common services must be borne by the tenant (CC art 1078(3)). The agreement in point must be in writing, and must specify the charges payable by the tenant, and also be signed by him. The landlord is under a duty to notify the tenant, within one month, of the exact amount of the charges he must pay to the condominium fund (CC art 1078(5)). The tenant is required to pay such sums within one

month after such notification (CC art 1078(6)). To simplify matters, the parties can simply agree on a fixed sum, to be paid every three months (CC art 1078(7)).

Utility costs pertaining to the use of the premises are to be paid by the tenant (*e.g.* consumption of water, gas, electricity and heating) (CC art 1078(2)).

Provisions that allow landlords to renegotiate existing contracts due to need of renovation do not exist and landlords can pass costs of energy efficiency upgrades to tenants only in cases of general reconstruction of the building.

The duration of typical rental contracts is 1 year in case of private rent and 10 years for social (Law 81/2014, December 19).

3.5.6 Energy efficiency policies

Energy efficiency requirements are specified in Decree-Law 118/2013, of August 20th, implementing Directive 2010/31/UE. Energy efficiency requirements are mandatory when a renovation is undertaken both in residential or non-residential buildings. Specific requirements have to be fulfilled in any renovation, regardless its dimension, in the parts and components intervene, as the following: minimum requirements for U-values (walls, roofs and pavements and windows), solar factor and shading devices in windows, ventilation rates, minimum efficiency for heating, ventilation, air conditioning systems, renewable systems, and lighting (only for non-residential).

Regardless of the type of system to be installed for preparation of domestic hot water, in new buildings (residential and non-residential) and in building's renovations, this should include solutions for the use of solar thermal energy, whenever there is an area of coverage, in horizontal hedges, or in sloped roofs between the southeast quadrant and southwest.

In residential buildings there is a minimum renewable energy contribution required for Domestic Hot Water (DHW), based on a minimum solar thermal panel area for each building occupant in.

In Portugal, some tax incentive aim at promoting *investment arrangements in apartment buildings.*

The EPC (energy performance certificate) is being progressively required in tendering processes and for obtaining public funding and, e.g., to apply and receive financial incentives from the national Energy Efficiency Fund (FEE) and from the National Strategic Reference Framework (QREN). Additionally, the EPC will play an important role when it comes to implementing EU structural funds, mainly under the "Portugal 2020" initiative, and not only identifying which buildings should be addressed but also validating the implemented improvement measures. The energy label has been increasingly used by municipalities to reduce taxes for the most energy efficient buildings.

In what respects *policies, measures and programmes which specifically target energy efficiency upgrades in apartment buildings and rented properties,* IFRRU 2020 (Urban Rehabilitation as an instrument for revitalization of cities) is to be mentioned. It is a financial instrument aimed to support investments in urban renewal, that covers the entire Portuguese territory. In order to boost investment, IFRRU 2020 brings together various sources of financing, whether European funds of PORTUGAL 2020, whether funds from other entities such as the European Investment Bank and the Development Bank of the Council of Europe, combining them with funds from commercial banking. To support in more favourable conditions the investment in urban renewal and energy efficiency of buildings, a single application for funding is required, and there are no restrictions related

to the nature of the entity requesting the financing or the future use of the renewed building. Applications shall be submitted to the selected banks through their commercial network at any time, that is, without prior application periods and without a limit to the number of applications per candidate.

Also NOTICE 21 - PUBLIC ADMINISTRATION EFFICIENT 2016 is a program issued in the scope of the Energy Efficiency Fund (FEE). Provided the possibility of funding applications to implement measures to promote energy efficiency in public buildings. Investments aimed the implementation in existing buildings, occupied by public entities, of solutions that promote the improvement of energy performance, through the replacement of existing equipment with more efficient ones, or through the implementation of control devices that allow optimize the conditions of use and consumption of energy, which together have a simple return period of less than 8 years. Project financing took the form of a non-reimbursable grant, with application fee of FEE for each application being 80% of total eligible expenses up to a maximum of € 80,000. The overall budget allocation for the Notice is € 1,500,000.00. distributed by the beneficiaries.

3.6 Spain

3.6.1 Summary

Key statistics	• In 2016, 66.1% of Spain's population lived in apartments. Together with Latvia, Spain has the highest share of population living in apartments in the EU. Over two thirds of people (69%) in apartments in Spain lived in buildings with 10 or more dwellings. • Nearly half (46.9%) of Spain's population lived in an owner-occupied home in 2016 for which there was an outstanding loan or mortgage, while 30.9% lived in an owner-occupied home without a loan or mortgage. • Tenants represented less than a quarter (22.2%) of Spain's population: 13.8 % were tenants with a market price rent, and 8.4% were tenants in reduced-rent or free accommodation. • A 10.2% share of the population lived in households that spent 40 % or more of their equivalised disposable income on housing. Of the people living below the at-risk-of-poverty threshold, 36.4% spent 40 % or more of their equivalised disposable income on housing.
Main apartment ownership model	Composite
Required majority for maintenance & renovations	Simple majority (51%)
Actors involved in renovations	• Homeowners community • Board of owners • Administrator (usually a building management company)
Legal status of main decision making body	The homeowners community lacks legal personality and is conformed by all co-owners in a given condominium. However, the Law grants the community a sort of legal personality for some specific cases such as to enter into arrangements with third parties, including credit operations to carry out rehabilitation works, as regulated by Art. 9.4 and 9.5.a) of Legislative Royal Decree 7/2015, of 30 October, Approving the Consolidated Act on Land and Urban refurbishment.
Rental contracts	The possibility of increasing the rent when the landlord makes improvements during the lease term is foreseen in Art. 19 LAU
Energy performance certificates	Flat/building
Specific energy-related requirements in apartment buildings	All existing legislation on building legal and technical requirements are of direct application to apartment buildings. Requirements of habitability, health and hygiene, sustainability, comfort, spatial dimension, durability, security, energy saving, quality, economic aspects, etc., are regulated nowadays mainly in the Building Act (LOU) 38/1999, of 5 November, and in Royal Decree 314/2006 of 17 March, approving the Spanish Technical Building Code, which are the regulatory framework that establishes the basic quality

	requirements of both buildings and their facilities to allow them to be functional, safe and habitable. As an example, the Technical Building Code requires that a percentage of the domestic hot water must be met with solar thermal energy. It may also be highlighted the Spanish Thermal Building Regulations -RITE-, Royal Decree 1027/2007, of 20 July 2007, which aims to establish the energy efficiency and safety requirements that thermal installations must meet in buildings designed to meet the demand for the welfare and hygiene of people during their design and sizing, execution, maintenance and use, as well as determining the procedures that can prove its compliance
Recent law updates in favour of energy efficiency	See above
Law references	• Condominium Act 49/1960 (Ley de Propiedad Horizontal, LPH), last amended by Act 42/2015) for whole Spain except in Catalonia • Spanish Civil Code 1889 acts as subsidiary law in case anything is missing in LPH; • Arts. 553-1 to 553-59 Catalan Civil Code (CCC), last amended by Act 5/2015 (Catalan civil code work as subsidiary to Arts. 553-1 to 553-9 in case something is missing). • Urban Leases Act of 1964 [*Ley de Arrendamientos Urbanos de 1964*] • Urban Leases Act of 1994 [*Ley de Arrendamientos Urbanos de 1994*], as amended by Act 4/2013 • Act 8/2013, of 26 June, on Rehabilitation, Regeneration and Urban Renewal • Building Act (LOU) 38/1999, of 5 November, and in Royal Decree 314/2006 of 17 March, approving the Spanish Technical Building Code • Legislative Royal Decree 7/2015, of 30 October, Approving the Consolidated Act on Land and Urban refurbishment

3.6.2 Apartment ownership model

Composite ownership (condominium, [*propiedad horizontal*]) is the main apartment ownership model in Spain. Several other residual models however exist such as the housing cooperatives, the homeowners' associations and the time-sharing. Under condominium law, parts of the building which are typically considered communal include the roof, façade, entrance hall, lift, staircases, ground, gardens, swimming pools, common leisure areas, etc. Apartments, however, remain privately-owned.

Housing cooperatives refer to the ownership model where several owners of a piece of land joint together to develop that piece of land to build houses/flats for themselves. The cooperative either retains the ownership of the houses/flats thus renting the units to the co-operativists or sells the units to them, thus disappearing. The latter form has been quite common during housing boom times and disguises a "false cooperative" as usually a regular professional developer is behind the development. Cooperatives are democratic institutions but also imply several restrictions such as the need for the cooperative's consent to transfer the unit to third party or to one's heir or the need for being trained and act following the "cooperativism spirit");

Homeowners' associations are organised as regular associations – 3 or more people are required – and they take decisions according to associations' legislation. The most common problem is that economic regime of associations is not adequate for this type of associations as usually their economic obligations are below what is required for the maintenance of a group of properties. Another problem is that according to the Spanish Constitution, one cannot be obliged to pertain to an association, which means that the owners can leave the association – thus giving up paying the maintenance – at any time, although the courts sometimes have compelled them to pay even if they have left the association (STS 7-5-2008) but still remain owners.

Time-sharing ownership refers to the model where the owners only own a "turn" over a unit, i.e. a particular week every year. Owners of such "turns"/time-shares have a right to vote and contribute to common expenses of the building where the unit is located according to the value of the "turn".

3.6.3 Management & maintenance of multi-family residential buildings

The actors in charge of apartment management in the most usual form of organisation of multi-family residential buildings (i.e. condominiums) in Spain are the: homeowners community (*comunidad de propietarios*; usually internationally knowm as "condominiums"), the board of owners (*junta de propietarios*) and administrator (*administrador de fincas*, usually a building management company).

The **homeowner community** (condominium) in Spain (*comunidad de propietarios*) is conformed by all co-owners of a multi-family building and lacks legal personality. However, it shares some features with an association: it has a sort of own patrimony (different from the one of the co-owners) to pay regular expenses through a reserve fund, it can be liable for damages, it can sue and be sued in court, it may pay taxes and fees, etc. In principle, there is no obligation for a building or a group of buildings to form a homeowner community, as they can be organised through an association, for example, or even through the Roman (ordinary) co-ownership (i.e. no distinction of common and private parts, no government body, division of rights and obligations through quotas, no free disposition of a specific part of the building but only of the quota, etc.). However, condominiums are very common in Spain not only for multi-family residential buildings but also for organising several parking spaces, a pool of detached houses or even graveyards. They can be even created (and usually are) by the real estate developers themselves before the units are sold to co-owners.

The administration/government body of a standard Spanish condominium is the **board of owners** (*junta de propietarios*), to which all co-owners belong. According to the Spanish law (Art. 14) the *junta de propietarios* can appoint the president and other relevant posts in the condominium. It has to approve the budget of the condominium, to approve all reparations and actuations to be taken in the conservation and renewal of the condominium, to change the bylaws and internal regulations and to take decision on any other relevant topic related to the condominium. A similar regime is foreseen in the Catalan Law (Art. 553-19 CCC). Unipersonal common posts (together forming a sort of board of directors) are the president and the secretary of the condominium but also deputy presidents might exist. They are regular co-owners of the condominium, no specific background is required; it is rather common to find that nobody wants to become any of these, so condominiums usually foresee a rotatory system of appointment (each year a different co-owner of a unit) (Art. 13 LPH).

The administrator (*administrador de fincas*) is the condominium's manager who can be either a co-owner (e.g. the president, the secretary or any other) with no special skills or knowledge or an external professional with certain qualifications and requirements, usually a building management company (Art. 13 LPH and 553-15 CCC).

According to the law, there is **one compulsory meeting** per year among the homeowners community (Arts. 16 LPH and 553-20 CCC). It can be called either by the

president or by 25% of co-owners. A recent survey undertaken by the UNESCO Housing Chair University Rovira i Virgili (URV) (May 2017) reveals that in the practice, 44% of condominiums hold only that compulsory meeting per year, 28% hold two, 10% hold three and 15% hold more than three. However, as more meetings are held, less co-owners attend: when there is only one, 88% attend but when there are more than 3 (usually when there are important matters to discuss such as important reparation works) only 29% attend.

According to Art. 17.7 LPH, conservation or rehabilitation works (those required to keep the structure in good condition) shall be adopted with the **vote of a majority of owners that have attended the meeting**, and they must represent, at the same time, a **majority of the participation quotas**. The same may be said concerning Catalan law, as Art. 553-25 CCC states that it must be adopted by simple majority of the owners present in the condominium meeting, and they must represent, at the same time, the simple majority of their participation quotas. Catalan law, though, incentivizes the instalment of plugs for electric cars (556-36.3 CCC), as all that is required to undertake this work is to give notice to the condominium even if it affects common elements of the structure. There is no distinction in the procedure between maintenance work and major renovations. The above procedure applies to:

a) The execution of works or the establishment of services that have the purpose of suppressing architectural barriers or the installation of elevators, no matter if the agreement supposes the modification of the title of constitution and the statutes or the works or the services affect the structure or the outer configuration;

b) The innovations required for the habitability, accessibility or security of the property, according to its nature and characteristics, no matter if the agreement involves the modification of the title of constitution and the statutes or affect the structure or external configuration;

c) The execution of the necessary works to install common infrastructures or equipment in order to improve the **energy or water efficiency** of the buildings and the mobility of the users, to connect broadband telecommunications services or to individualize the measurement of the consumptions of water, gas or electricity, or for the general installation of recharging points for electric vehicles, no matter if the agreement involves the modification of the title of constitution and the bylaws.

However, if such works aim to **set new facilities, services or improvements** not required for the proper conservation, habitability, security and accessibility of the property, according to their nature and characteristics, this agreement shall be adopted by a favourable vote of **three-fifths of the total of the owners**, which, in turn, represent three-fifths of the participation quotas (Art. 17.4 LPH). In Catalonia the vote of four-fifths of the total of the owners, which, in turn, represent four-fifths of the participation quotas is required (Art. 553-26.2b CCC).

The process followed when maintenance and major renovation works are carried out is:
1. Any member of the Community and/or the Administrator detect anomalies, damages or injuries in the building that require rehabilitation or maintenance works (this may also be the result of having passed the compulsory Technical Building Inspection). Then the Community must agree (following the above-mentioned majorities) upon taking action.

2. If action is agreed, the Community and the Administrator contact a Specialized Technician in rehabilitation to make an assessment of the work to be carried out. The most effective way is to contact three professionals, requesting an offer of fees and a curriculum that expresses the technical and professional solvency. The Community, advised by the Administrator, will choose the best profile.

3. The chosen Technician makes an inspection of the building, analyses the problem detected and issues a technical report that establishes the gravity and urgency of the situation and recommend the measures to be taken.

4. The President of the Community and the Administrator inform the neighbours and proposes the creation of an ad hoc group of co-owners for the follow-up of the rehabilitation works (comprised usually of the President and 3 or 4 more co-owners).

5. The Community finally hires the Technician chosen to do the Diagnosis and the Rehabilitation Project. The Technician directs the works, the economic control and assumes the coordination of security under supervision of the Board.

6. The Technician drafts the Project, which will include: descriptive report of the works, specifications, status of estimations, budget, planning of the works, general and detailed plans and security study.

7. The Community of owners approves the Project and the completion of the described works.

8. The Board and the Administrator send the documentation of the Project to different specialized construction companies (usually three), for the presentation of the work budgets.

9. The Works Board and the Administrator send the companies' budgets to the Technician for a comparative study.

10. The Technician issues its report to the Works Board and to the Administrator, who will have to choose the Company. The work contract model with the Company is also analysed.

11. The Board presents to the Community, in the General Meeting, the accepted budget, for approval. It is recommended to foresee an amount destined for complementary interventions to the Project.

12. The Board of Works signs the contract with the Company, establishing the technical conditions, guarantees, schedule and duration of the works and the start date. The Project is attached as a contract document.

13. The Technician and/or the Administrator processes the municipal authorization of works (license) and, If appropriate, the necessary financing and the subsidies or aid. The license application is parallel to the tender for works.

14. The Board of Works considers the convenience of hiring an insurance police to deal with possible damages that may be caused throughout the works.

15. Before starting the works, the Administrator requests the construction company to be up-to-date with Tax and Social Security payment. The company presents the Occupational Safety and Health Plan, if applicable, to the Technical Director of the work and communicates the opening of the work centre before the labor Administration.

16. After the work is initiated, follow-up visits are scheduled with the participation of the Technician, the Board, the Administrator and the Company. A record of all decisions is taken.

17. The Administrator makes the payments of the work certifications previously conformed by the Technician.

18. Once the work has been completed, the Technician issues the Final Certificate of Work and documents according to the works carried out (certificates of technical suitability and homologation, material files, certificate of exterior walls ...). Prior to the commencement of work, the Community must have a municipal license or permit for works. The application must be made by license or by license communication. The processing period depends on the administration's intervention regime, and may take between 24 hours and three months (approximately).

There is a reserve fund in each condominium, to which each co-owner must contribute according to his share in the building (the share of each unit is calculated according to m^2 of the unit, its use, its physical and legal features, etc.). The reserve fund is specially devoted and usually used to undertake maintenance and reparations in the common

parts of the building (Art. 9.1 f) LPH and 553-6 CCC. Some works do not need the consent of the homeowner community to be undertaken, regardless they are ordered by the Public Administration or required by any of the co-owners: those needed for the maintenance of common elements including those related to safety, habitability and universal access (for those handicapped and elder than 70 years). The occupation of common elements while the works last; when major works or divisions or union of current units are compulsory according to the legislation on urban regeneration and renovation (Art. 10 LPH).

In terms of public financial support, various subsidies accessibility, energy improvement and others can be available. These grants (public aid) are variable. For instance, according to the State Plan 2013-2016, an aid may be obtained for conservation, energy efficiency or accessibility measures in buildings (Art. 19). The community may apply for this aid, as well as groupings of condominiums or unique owners of residential buildings that meet the requirements of Article 20 (Art. 21). The maximum amount eligible may neither exceed 12,000€ per dwelling and per 100 m2 of useful premises area nor exceed 30% of the total cost of the planned works, among other requirements (Art. 22). However, the Autonomous Communities, according to their competence on housing, also develop quality standards for the housing stock. In addition, municipalities may also establish their own Local Housing Plans, according to the rules enacted by each Autonomous Community.

According to the recent survey undertaken by the UNESCO Housing Chair URV (May 2017), almost half of the delays in improvements are due to economic reasons. However, the lack of agreement between neighbours also causes 3 out of 10 of these delays. It also reveals that the vast majority of communities have not requested any public aid or subsidy. The main subsidy requested is rehabilitation, followed by the adaptation of infrastructures to the disabled. Approximately half of the subsidies requested have been achieved. The oldest buildings are those that have requested more subsidies.

In case of large EE & RES investments, the community is granted legal personality to enter into credit operations in order to carry out rehabilitation works, as regulated by art. 9.4 and 9.5.a) of Legislative Royal Decree 7/2015, of 30 October, Approving the Consolidated Act on Land and Urban refurbishment. The Community must approve in a General Meeting the request of financing to the financial entities. The president will sign the loan on behalf of the Community. As pointed above, however, banks are reluctant to grant loan due to the lack of guarantees, so they try to involve all neighbours and make them jointly liable in case of non-performance of the loan. Before entering into the loan, the community must study and analyse the works to be undertaken, the amounts and costs of the works and taxes, the ability to pay the owners and to what extent Community savings could be used to decrease the need for bank financing.

3.6.4 Rental contracts

Landlords and tenants are free to set the price of rent (Art. 17 LAU, Act 29/1994 of Urban Leases). The tenancy contract shall be for a fixed term (Art. 1543 CC). Therefore, any stipulation that submits the contract to indefinite extensions is null and void, since it violates the general notion of temporality and the prohibition to leave performance of contracts to the discretion of one of the contracting parties (Art. 1256 CC). If nothing agreed by the parties, the contract that shall be deemed to be concluded for one year can be unilaterally extended to three years by the tenant (Art. 9 LAU). As a result, three years is the standard duration of tenancy contracts in Spain.

When it comes to public housing, it is the local Administration itself or a public depending company that manages the building, but this is solely in case of social rented properties (there are no housing associations). Housing with a public task shall adapt to the prices established by each Autonomous Community, or failing this, by the State, which will depend on the legal regime of housing protection, the area where housing is located and the square metres of the dwelling.

With regard to the private nature of tenancy contracts with a public task it is usual the complete referral by the Autonomous Communities's (Spanish territorial regions with competence on social housing) regulations to the private law tenancy regime, provided for in Act 29/1994 on Urban Leases in order to regulate the content and the effects of the lease agreements of the protected houses (with the only exception of rent, which is determined by law, the object of the contract -the dwelling- and the need to follow a public process in order to grant the lease). In relation to this, it should be noted that the LAU's First Additional Provision in its eighth paragraph allows the establishment of a specific regime that for tenancy contracts for public housing. However, this possibility has not been generally explored by the competent Autonomous Communities in the field of housing; so they continue to refer to the LAU in the social lease agreements they entered into. However, in some cases the duration of the contract is established by law. The last State Plan of Rental Housing Promotion, rehabilitation, regeneration and urban renewal 2013-2016 (Royal Decree 233/2013) regulates the Rented Social Housing Programme (*Programa de Vivienda Protegida en Alquiler*) in two types of housing with a public task (article 13): rented social housing in rotation (*viviendas de alquiler social en rotación*) and protected rental housing (*viviendas de alquiler protegido*). Social rental housing in rotation is aimed at family units with an income of up to 1.2 times the Public Index of Multiple Purpose Income. These leases will have a minimum of one and a maximum of three years of duration, as long as tenant's economic conditions remain constant (art. 17.3).

For all rented properties under LAU, there are no provisions that allow landlords to renegotiate existing contracts due to need of renovation. According to Art. 21 LAU, it is the obligation of landlords to maintain the property; therefore there is no point in renegotiating the rent for that reason. If it is a matter of improvements (Art. 22 LAU), landlords can only undertake these works if they cannot be deferred until the end of the lease contract. If this is the case, the tenant can terminate the contract unless the works do not heavily affect the habitability of the property. The tenant has the right to get the rent reduced in proportion of the negative consequence she suffers as a result.

The possibility of increasing the rent when the landlord makes improvements during the lease term is foreseen in Art. 19 LAU. The LAU is usually applied to tenancy contracts with a public task (as pointed above), such as for example if there is an improvement in the flat's energy efficiency. Once the first three years of the tenancy contract have elapsed, the landlord may increase the annual rent in the amount resulting from applying to the capital invested in the improvement the legal monetary interest rate at the time of the completion of the works, increased by three points, as long as it does not exceed an increase of twenty per cent of the current rent at that time. In order to calculate the capital invested, public subsidies obtained for the realisation of the work shall be discounted.

3.6.5 Energy efficiency policies

Requirements of habitability, health and hygiene, sustainability, comfort, spatial dimension, durability, security, energy saving, quality, economic aspects, etc., are regulated nowadays mainly in the Building Act (LOU) 38/1999, of 5 November, and in Royal Decree 314/2006 of 17 March, approving the Spanish Technical Building Code, which are the regulatory framework that establishes the basic quality requirements of both buildings and their facilities to allow them to be functional, safe and habitable. As an example, the Technical Building Code requires that a percentage of the domestic hot water must be met with solar thermal energy. This code also obliges to take advantage of photovoltaic energy due to the levels of solar radiation in Spain and the buildings must have appropriate thermal facilities designed to provide the thermal well-being of their occupants and the lighting installations adapted to the needs of their users. However, the

Autonomous Communities, according to their competence on housing, also develop quality standards for the housing stock[6].

It may also be highlighted the Spanish Thermal Building Regulations -RITE-, Royal Decree 1027/2007, of 20 July 2007, which aims to establish the energy efficiency and safety requirements that thermal installations must meet in buildings designed to meet the demand for the welfare and hygiene of people during their design and sizing, execution, maintenance and use, as well as determining the procedures that can prove its compliance. For the purposes of the application of the RITE, the fixed installations of air conditioning (heating, cooling and ventilation) and hot water production, designed to meet the demand for thermal well-being and hygiene of people, will be considered as thermal installations. The RITE will be applied to the thermal installations in the newly constructed buildings and to the thermal facilities that are reformed in the existing buildings (e.g. through the incorporation of new air conditioning or hot water subsystems or the modification of the existing one, the replacement of a generator of heat or cold with another one of different characteristics, the expansion of the number of heat or cold generating equipment or he change in the type of energy used or the incorporation of renewable energies), exclusively in regard to the renovated part, as well as in relation to the maintenance, use and inspection of all thermal installations, with the limitations that are determined therein.

The legislation on renewable energy in Spain is extensively developed for buildings in the DB-HE of the Technical Building Code. There is no single renewable energy law, but there are a growing number of royal decrees, laws, regulations that affect renewable energies in Spain. It must be borne in mind that each Autonomous Community can legislate about it and may have more restrictive conditions regarding the installation of renewable energies[7].

At a national level, article 63.1 of the State Housing Plan 2009-2012 already recognised grants to subsidized housing developers if projects obtained an A, B or C energy rating. Furthermore, the State Housing Plan 2013-2016 (extended to 2017) establishes as eligible actions those conducive to reduce by 30% a block's energy demand. Some of these actions include the installation of solar panels to produce domestic hot water, the increase of thermal insulation, carpentry replacement and double glazing, implantation of air renewal systems with heat exchangers and the installation of mechanisms that favour water savings, as long as energy efficiency is proved (art. 19.3). Eligible blocks shall have at least 20 dwellings with a residential purpose, present serious structural or other kind of damages or be aimed entirely at renting for at least 10 years as of the time the assistance is received (art. 20). Moreover, the elaboration of a report on energy efficiency and building conservation, signed by a qualified technician, is required. Consequently, a grant is requested both for the drafting of the report and for the above-mentioned protective actions. Nevertheless, the deduction in the income tax for improvement works was in force from January 1, 2014 until December 31, 2015.

[6] The rules in force in each autonomous Community: http://www.efenergia.com/legislacion-eficiencia-energetica/espana/comunidades-autonomas/

[7] The following website shows the rules in force in each autonomous community in 2010: http://www.minetad.gob.es/energia/desarrollo/EnergiaRenovable/Documents/20100630_PANER_EspanaAnexo.pdf

3.7 United Kingdom (England and Wales)

3.7.1 Summary

Key statistics at a glance	*For all the UK* • In 2016, 14.3% of the UK population lived in apartments, one of the lowest shares across the EU. Just over one third (37%) of the people in apartments lived in buildings with 10 or more dwellings. • Just over a quarter of the UK population (27.9%) lived in an owner-occupied home in 2016 for which there was an outstanding loan or mortgage, while 35.5% lived in an owner-occupied home without a loan or mortgage. • Tenants represented just over a third (36.6%) of the UK population: 18% were tenants with a market price rent, and 18.6% were tenants in reduced-rent or free accommodation. • A 12.3% share of the population lived in households that spent 40% or more of their equivalised disposable income on housing. Of the people living below the at-risk-of-poverty threshold, 42.4% spent 40% or more of their equivalised disposable income on housing.
Main apartment ownership model	Leasehold ownership of apartments and freehold ownership of building
Required majority for maintenance & renovations	Freeholder will usually be under an obligation to do repair and maintenance works. No provision made for carrying out improvement work (that is, work that goes further than repair and maintenance)
Actors involved in renovations	Free-holder (an individual person, a company, or a company owned by all or some of the apartment owners)
Legal status of main decision making body	
Rental contracts	No provisions that allow landlords to renegotiate existing contracts due to need of renovation or pass costs of energy efficiency upgrades to tenant
Energy performance certificates	Energy performance certificates are produced at individual flat level
Specific energy-related requirements in apartment buildings	None
Recent law updates in favour of energy efficiency	None

Law references	• Minimum Energy Efficiency Standard introduced by Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

3.7.2 Key national terms

There is no understanding of unitary ownership in England.

Leasehold - Freehold - Resident owned company: In England and Wales, flats are owned on (very long) leases. The building is owned on a freehold basis (like 'ownership'). The freeholder can be owned by an individual/company with no other interest in the apartments or by a company in which all/some apartment owners have a share (a resident owned freehold company). In this i shall refer to the freehold as either 'traditional freehold ownership' or 'resident owned freehold'.

Housing association: A housing association is a non-profit making organisation that provides low-cost "social housing" for people in need of a home. Housing associations now also provide some market rate housing (i.e. not all low cost).

3.7.3 Apartment ownership model

In England, flats are owned on (very long) leases. The building is owned on a freehold basis (like 'ownership'). The freeholder can be owned by an individual/company with no other interest in the apartments or by a company in which all/some apartment owners have a share (a resident owned freehold company). Freehold can be referred to as either 'traditional freehold ownership' or 'resident owned freehold'. A resident owned freehold is like composite ownership (but it may be that not all residents have a share in it). Traditional freehold ownership is neither unitary nor composite.

A secondary ownership model similar to condominium, the so-called "commonhold" exists but is negligible. There is a current political move to 'reintroduce' commonhold as leasehold is subject to huge public debate at the moment.

Parts of the building which are typically considered communal include roof, façade, entrance hall, lift, staircases, and other exterior surfaces such as windows. It all depends on the wording of the lease. Sometimes apartment doors are communal. Sometimes window frames are, sometimes not. Sometimes the whole window is, sometimes not.

There is no standard ownership model in England and Wales. There is no standard management model - it all depends on what the lawyers have set up. However, there are controls imposed by statute that, for example, give apartment owners the right to challenge unreasonable maintenance charges.

In apartment buildings of mixed public/private ownership, there are many problems. The most common scenario would be a social landlord (e.g. local government) owning a building that is part rented to social tenants, and yet some apartments have been bought under the 'right to buy'. If the social landlord wants to renovate, for example, they may not have powers in relation to privately owned apartments. If they renovate and want to recover a share of costs from the private owners, this may be really difficult.

3.7.4 Management & maintenance of multi-family residential buildings

The freeholder is the key person in charge of the management of apartment buildings in England. They may, or may not, choose to hire a company to carry out the property management. There are often voiced concerns that freeholders use 'related' property management companies 'to make money'.

If an apartment block is owned by a housing association (i.e. a non-profit organisation that provides low-cost "social housing" for people in need of a home) then they will, as freeholder, be responsible for the building. They may employ a building management firm to do the work but the big decisions will be those of the housing association. The property management hired by the particular building owner would typically do the day-to-day management and only defer to the building owner for bigger expenses or unusual work.

The freeholder will usually be under an obligation to undertake repair and maintenance works, however this is the freeholder's decision. If the freeholder is a residents management company, the majority required and decision-making structure will depend on the company documents. If the freeholder is one legal person (a human being or, e.g., a housing association) then they can simply decide. Typically there is no provision made for carrying out improvement work (that is, work that goes further than repair and maintenance). The funding procedure for such works depends on how property management has been set up. Routine work is usually forward funded by the freeholder and recovered through a service charge imposed on the apartment owners - but there may be provision for the freeholder to request sums in advance.

For major renovations, there is unlikely to be a specific procedure. If it is simply a lot of repair work then it will be the same process as for maintenance work.

There are significant obstacles with the current management arrangement regarding energy efficiency upgrades in apartment buildings. (see publication: S J Bright and D Weatherall, 'Framing and Mapping the Governance Barriers to Energy Upgrades in Flats' (2017) 29 Journal of Environmental Law 203 DOI:10.1093/jel/eqx017). Some of the main challenges are:

- Freeholders' interest in the property is often very limited in all senses – the value of the freehold may not be high, and the additional value of making improvements therefore small as the benefits in terms of any increase in property value is principally realised by the leaseholders (a split incentive problem). As such is it hard to see why a freeholder would be interested in making improvements. This is in addition to the more standard split-incentive problem that freeholders don't pay the energy bills, leaseholders (or their tenants) do.
- Unless leases explicitly provide for improvements (and most private sector leases don't) freeholders cannot reclaim costs of improvements from leaseholders. They also can't have access to leaseholders' properties to make the improvements (obviously though this access issue isn't a problem where works are entirely in common parts).
- Leases frequently prohibit individual flat owners (leaseholders) from undertaking improvements inside their flat. A typical prohibition is against "structural alterations", alternatively, leaseholders may have to pay their freeholder to get permission to make the improvements;
- In some cases leaseholders have enfranchised (i.e. jointly own the freehold, having exercised a legal right to come together and purchase it from the former freeholder) or are exercising their statutory right to manage (i.e. have taken over the management of the building from their freeholder - again a statutory right). In these cases lease terms can still be a problem: for example, if the lease doesn't allow for improvements all owners will have to agree for works to proceed and to share the cost.
- This adds to the general problem that applies to all multi-owned properties anywhere in the world of getting people to come together to agree to spend money in their collective interest.
- Also with enfranchised leaseholders, there are no requirements for them to form a company to manage the building, to have any plan or a financing fund in place for the building, to have regular meetings etc. (all these are normal requirements in other countries).
- There a lot of smaller process problems: leases are often very old, unclear and badly drafted; when freeholders want to make improvements they have to go through statutory consultation processes that are often problematic; there are problems of freeholders being absent and entirely disengaged even from their duties to maintain the buildings; there are extensive and well-document instances of freeholders seeking to exploit or defraud leaseholders in the charges they seek to place on them.
- These problems sit alongside other challenges to improve the flatted stock: blocks of flats are non-standard buildings in the UK (most people live in houses); high-rise buildings can be technically hard to improve; flat owners have lower incomes than house owners (on average) and therefore less money to invest, etc.

3.7.5 Rental contracts

Landlords and tenants are free to set the price for rent. Typical rental contracts are 6-12 month long but can be prolonged. For local authority (council) tenants, the rents are fixed according to the local authority's housing policy and the amount of money they get

from central government. For housing association tenants rents are set according to government guidance.
There are no provisions that allow landlords to renegotiate existing contracts or pass the costs of energy efficiency upgrades to the tenant.

3.7.6 Energy efficiency policies

Making significant changes to thermal elements (walls,roofs or floors) would normally require Building Regulations approval and require the thermal insulation of the element to be upgraded to a reasonable standard. The extent to which the work on the element is controlled and the amount of upgrading needed depends on the particular circumstances of the thermal element. Generally, when it is renovated then it should be upgraded, where it is cost effective to do so, to the standard set out in the Approved Document[8].
There are no national standards requiring installation of renewable energy as part of renovation works.

Energy performance certificates are produced at individual flat level for self-contained flats (i.e. each one behind its own front door, with kitchen and bathroom facilities). Communal areas are not included in the EPC. This type of EPC is probably helpful for the individual owner occupier or landlord wanting upgrade elements of their own flat, which they have the right to alter (e.g. individual heating technologies, internal insulation, lighting and appliances). It does mean, however, that there is no information about communal areas, and would not give information about options which would involve renovation of the whole block (e.g. external wall insulation).

The Minimum Energy Efficiency Standards legislation puts requirements on the landlords of private rented properties from April 2018. The regulations will come into force for new lets and renewals of tenancies with effect from 1st April 2018 and for all existing tenancies on 1st April 2020. It will be unlawful to rent a property which breaches the requirement for a minimum E rating, unless there is an applicable exemption. This should increase energy efficiency investment in the least efficient buildings - F and G rated. However, there are exemptions from these regulations, and we do not yet know what effect they will have. Also, there may be some technical changes to way EPCs are calculated, which could reduce the number of properties rated as F and G.

[8] For more details: https://www.planningportal.co.uk/info/200135/approved_documents/74/part_l_-_conservation_of_fuel_and_power/2

3.8 United Kingdom (Scotland)

3.8.1 Summary

Key statistics	See UK statistics (Section 3.7.1)
Main apartment ownership model	Tenement Management Scheme
Required majority for maintenance & renovations	Renovation always requires unanimity Repairs require a "simple majority" if the tenement falls within the Tenement Management. "Simple majority will require absolute majority
Actors involved in renovations	• Owners of flats • Manager/factor
Legal status of main decision making body	Energy performance certificates are produced at individual flat level
Rental contracts	Both private and social landlords can terminate a lease contract if they intend to renovate the property. Landlord to pass the costs of energy efficiency upgrades to the tenant.
Energy performance certificates	Individual flat level
Specific energy-related requirements in apartment buildings	None
Recent law updates in favour of energy efficiency	The definition of "maintenance" in the Tenement Management Scheme was amended to include "installation of insulation" by the Climate Change (Scotland) Act 2009.
Law references	• Tenements (Scotland) Act 2004. • Law of common ownership (for issues not covered by the above Act) • Housing (Scotland) Act 1988 - soon to be replaced by the Private Housing (Tenancies) Scotland Act 2016. Both these Acts regulate private tenancies. • Housing (Scotland) Act 2001 regulates social tenancies.

3.8.2 Key national terms

Tenement: In the Tenements (Scotland) Act 2004, s26(1), this term is defined as follows: In this Act, "tenement" means a building or a part of a building which comprises two related flats which, or more than two such flats at least two of which—

a) are, or are designed to be, in separate ownership; and

b) are divided from each other horizontally,

and, except where the context otherwise requires, includes the solum and any other land pertaining to that building or, as the case may be, part of the building; and the expression "tenement building" shall be construed accordingly.

Tenement Management Scheme: The Tenements (Scotland) Act 2004, schedule 1, sets out a default scheme regulating how owners of flats in a tenement may take certain decisions about strategic parts of the building. In very brief terms, the TMS allows a majority of owners to instruct that repairs or maintenance may be carried out to certain strategic parts of the building, regardless of who owns that part. All owners will be responsible for a share of the costs of the work, even if they voted against the work, or did not vote at all.

Real burdens: A real burden is an obligation affecting a property which can be enforced by neighbouring property owners, similar to a real covenant US law or a restrictive covenant in English law. Real burdens will frequently regulate how repairs and maintenance to flats and common parts of tenements are to be carried out and paid for, meaning that the Tenement Management Scheme cannot apply.

Majority: This refers to majority of all members, not just those choosing to vote

Maintenance: This term is defined in the Tenements (Scotland) Act 2004, Schedule 1, para 1.5 as follows: "maintenance" includes repairs and replacement, the installation of insulation, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance.

Unitary and Composite Ownership models do not exist in Scotland.

Simple or qualified majority do not exist in Scotland. There is no term for these concepts, since the law of the tenement does not require any decisions to be taken in this way.

Homeowner association and board of directors of homeowners do not exist as terms in Scotland, because this form of corporate body does not exist in Scotland.

3.8.3 Apartment ownership model

In Scotland, a building made up of apartments and common areas (stairs etc.) is known as a tenement. The apartments within a tenement are known as flats. The shared areas are referred to as common/strategic parts, and are held in a form of tenure known as common ownership. By default, the land below the tenement is part of the ground floor flat. Where there is more than one ground floor flat, the land is owned in sections by the ground floor flats immediately above it. The stairs and/or elevator are owned in common by all flat owners, and the land below the stairs or elevator is therefore also owned in common by all the flat owners. This default position may be varied by the title deeds of any particular tenement, so the picture of who owns what will not be the same for all tenements.

In Scotland, strategic areas of the tenement may be covered by the Tenement Management Scheme (TMS). The Tenements (Scotland) Act 2004, schedule 1, sets out a default scheme regulating how owners of flats in a tenement may take certain decisions about strategic parts of the building. In very brief terms, the TMS allows a majority of owners to instruct that repairs or maintenance may be carried out to certain strategic parts of the building, regardless of who owns that part. All owners will be responsible for a share of the costs of the work, even if they voted against the work, or did not vote at all. Where areas are included within the scheme, flat owners will be entitled to instruct repairs to them and will be liable to pay for these repairs, regardless of who owns the areas concerned. For example, the roof of the tenement may be owned by the top floor flat owner. If the TMS applies to the building, a majority of flat owners will be entitled to instruct repairs to the roof, and all flat owners will be liable to pay for those repairs, despite the fact only the top flat owner actually owns the roof. The areas of the building covered by the TMS are (i) the ground on which it is built, (ii) its foundations, (iii) its external walls, (iv) its roof (including any rafter or other structure supporting the roof), (v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building, and (vi) any wall, beam or column that is load bearing. It should be recalled that the TMS does NOT apply to all tenements in Scotland, however.

Public authorities must meet the Energy Efficiency Standard for Social Housing, meaning that specific energy efficiency ratings for various types of housing stock must be reached, through renovating housing stock if necessary. No such Standard currently exists for private owners. As such, public owners in mixed tenure tenements can try to persuade private owners to agree to energy efficiency renovations, but private owners cannot be forced. In recognition of this difficulty, an exception to the EESSH applies where "social difficulties" - such as unwilling private owners in a mixed tenure block - prevent public owners from meeting the standard. Bearing in mind this exception, the legal issues for mixed public/private blocks are more or less the same as for entirely private blocks, although the practical issues (incentives to carry out energy improvements, access to finance, organisational difficulties) may be different: there is no empirical data available which to base an answer, however.

3.8.4 Management & maintenance of multi-family residential buildings

The concept of homeowner association does not exist in Scotland. Private owners have no obligation to form an association of any kind. The owners of flats are the key actors in respect of repairs, maintenance and upgrades to a tenement. The rules on how decisions can be taken in relation to repairs, maintenance and upgrades vary depending on (i) the type of work to be undertaken; (ii) the area of the tenement affected by the work; (iii) the presence or absence of provisions in the title deeds regulating by whom relevant parts of the tenement are owned and how decisions on the work concerned can

be made. Flat owners can agree (by simple majority) to contract an agent, known as a manager or factor, to carry out certain tasks on behalf of the flat owners. The factor will normally have the power to arrange insurance of the tenement, arrange for minor repairs to be carried out and to seek consent from all owners for more significant or expensive repairs. It is possible, though unusual, for one owner to act as the manager. The precise powers of the manager/factor, and the relationship between the manager and the owners, will be defined within the management contract. There is no compulsory form of contract that must be used here. There is no empirical data on the terms generally included.

The law does not specify when or how owners should come together to make decisions on maintenance or repairs. In some tenements, the title deeds may lay out a process. In most tenements, owners must decide for themselves if or how to come together to make decisions.

Renovation will always require unanimity. Repairs will require a simple majority if the tenement falls within the Tenement Management Scheme, or may be instructed by an individual in an emergency, which would usually mean the building is no longer wind or watertight, or is unable to support itself. If the tenement does not fall within the TMS, the rules on carrying out repairs will be regulated by real burdens in the title deeds.

Maintenance work includes repairs and replacement, the installation of insulation, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance. If covered by the TMS, a majority of owners are required to agree in order to approve these works. Otherwise, the voting rules may be regulated by real burdens in the title deeds, or unanimity may be required. A real burden is an obligation affecting a property which can be enforced by neighbouring property owners, similar to a real covenant US law or a restrictive covenant in English law. Real burdens will frequently regulate how repairs and maintenance to flats and common parts of tenements are to be carried out and paid for, meaning that the Tenement Management Scheme cannot apply. If a manager/factor has been appointed, the flat owners are likely to have given them authority to instruct repairs below a certain value. Otherwise, flat owners must make the decision. Where the part of the tenement being repaired falls within the TMS or is in common ownership, all owners will pay a share of the costs. Otherwise, real burdens in the title deeds may regulate how costs are to be shared.

For demolition, alteration or improvement unless reasonably incidental to the maintenance, the voting rules may be regulated by real burdens in the title deeds, or unanimity may be required. Flat owners must make the decision. Where the part of the tenement being renovated is in common ownership, all owners will pay a share of the costs. Otherwise, real burdens in the title deeds may regulate how costs are to be shared. Common obstacles/hurdles faced in undertaking works of any nature (maintenance, major renovations, etc.) include difficulties in understanding the law (who has responsibility for what?), in organising decision-making, and in accessing funding may. The complex ownership and management rules significantly impede the likelihood of EE and RES works being undertaken. Even if owners are willing, it is not always easy for them to understand how the works can be instructed. It is also more difficult to provide grant funding for work of this kind where there is no corporate body to apply for or administer funds on behalf of all owners in the tenement.

3.8.5 Rental contracts

Landlords and tenants are free to set the price of rent. When the Private Housing Tenancies (Scotland) Act 2016 is brought into force, landlords will not be allowed to increase rent more than once in any 12 month period, and if a tenant believes the proposed increase would take their rent beyond rents charged for comparable properties in the area, they may seek a review by Rent Service Scotland. Local authorities may also apply to the Government to have certain areas designated as "rent pressure areas". If this designation is applied, rents for sitting tenants can be capped by the local authority at no less than CPI plus 1% for a maximum of 5 years.

There are no provisions that allow landlords to renegotiate existing contracts due to need of renovation; however both private and social landlords can terminate a lease contract if they intend to renovate the property. It is not possible for a landlord to pass the costs of energy efficiency upgrades to the tenant.

3.8.6 Energy efficiency policies

Energy standards apply to conversions and also work on existing buildings, such as extensions, conservatories, alterations and replacement work. However, in some situations, individual standards may not apply or guidance on compliance with the standards may differ for such work. The latter is usually to recognise constraints that arise when working with existing buildings.

There are grants for elementals such as renewable energy generation and some elements of insulation but these may be available for limited windows of time or only for certain demographics with limited financial resources.

EPCs are performed at the individual flat level. This can lead to limitations in executing full building upgrades because there isn't the same motivation to upgrade communal spaces, particularly if these areas are serviced by the Council.

The Energy Efficiency Standards for Social Housing, targeted as housing associations and providers of social housing, impacts largely on flats but is not exclusive to them. This standard requires social landlords to improve the energy efficiency of their properties such that no property has an ECP rating below a C or a D. There is a small allowance to exempt properties that are hard to treat or expensive to renovate. It is understood that the Scottish Government will increase the baseline requirement to a B as a future phase of work.

4 Discussion

4.1 Review of current situation

Table 2 provides an overview of the main condominium ownership structure in the selected Member States. While national legal, economic and political conditions have resulted in different governance schemes and apartment ownership models across the EU, this analysis has identified several common trends. The creation of homeowner associations/community[9], whose purpose is to manage building areas jointly owned by its members, is common in many condominiums across Europe[10]. Membership is typically mandatory and is granted automatically to all apartment owners. The homeowner association/community is also in charge of the appointment of an administrator/director or board of directors and typically convene at least once a year to discuss the management of communal parts. Communal parts of buildings typically include the land on which the building is constructed, roof, façade, entrance hall, lifts, staircases and utility installations. No tailored energy performance requirements are applicable in apartment buildings; instead, mandatory requirements, as prescribed in building codes to comply with the EPBD requirements, need to be met when major renovations or new constructions are undertaken, as with any type of building.

The work has also highlighted various differences in the governance schemes of multi-owner residential buildings. While in most countries the creation of homeowner association/community is mandatory, the concept of homeowner association does not exist in the UK. Even in countries where such a governance scheme exists, the set-up of a homeowner association/community is not mandatory under certain conditions. For example, in Finland the daily management is entrusted to the unit owners for buildings with up to 7 units, while for buildings with over 7 units, a management board must be put in place. In Belgium, the creation of a board of directors is mandatory only in large apartment buildings with more than 20 units. The management of the condominium is facilitated through the appointment of a board of directors, an administrator or both. For example, in Finland and Belgium, a board of directors must be put in place, while in Germany an administrator needs to be appointed. This could be one of the co-owners, but it will typically be a building management company.

Communal parts of a building, as specified in national condominium law, can be defined and treated differently from country to country. In England and Wales, the co-ownership of common building elements depends on the wording of each leasehold: e.g. sometimes window frames or whole windows are communal, sometimes not. In Finland, condominium shareholders are responsible for interior surfaces; all other parts are owned and maintained by the Housing Company. For buildings under the Tenement Management Scheme in Scotland, the ownership of the roof will be shared by the top flat owners; the majority of flat owners will be however entitled to instruct repairs to the roof and all flat owners will be liable to pay for those repairs.

Legal personality of the main decision making body is given only in limited cases. In Spain, the homeowner association/community is granted legal personality to enter into credit operations in order to carry out rehabilitation works. The homeowner association/community must approve the request of financing in a General Meeting and the president will sign the loan on behalf of the Community. Although not given legal personality, in Germany a credit can also be jointly concluded by community of owners through a majority decision of the assembly of owners (e.g. in the case of thermal insulation of the facade; cf. Federal Court of Justice (BGH), BGHZ 207, 99-114). In Finland a collective loan can be taken upon agreement by the Housing Company which

[9] While the word "association" can often be linked to a group of people with its own legal personality, this analysis has shown that condominium co-owner groups forming a homeowner association/community typically do not have a legal personality across Europe.

[10] These concepts do not exist in England, Wales and Scotland (UK).

can be typically 20-25 years long. It should be also noted that the obligation for establishment of a dedicated fund to cover costs of maintenance and renovation work only applies in Portugal, Poland and Germany. In other countries, co-owners must take their own initiatives in order to raise the necessary funds major renovation works.

While a meeting (e.g. owner assembly) takes place at least once a year (e.g. Flanders-Belgium, Finland, Germany, Poland, Spain and Portugal), this is not always the case. In Finland, while there is no legal minimum requirement on how often the Building Management Company and the Housing Company must meet, the Housing Company must convene for a General Meeting at least once a year. The required majority for decisions varies according to the type of work. In many cases, work can be divided into: (1) maintenance or (2) major renovations, upgrades and improvements. Energy efficiency upgrades would typically fall under the latter category which is associated with stricter majority rules. In several cases, this would require unanimity which could be extremely difficult to obtain especially in buildings with large income disparities among owners.

In the rental sector, an overview of the main contractual and legal elements that can potentially impact energy efficiency upgrades in the selected Member States is shown in Table 3. Private landlords and tenants are generally free to set rent in all countries except Germany, where the so-called rent-brake (*Mietpreisbremse*) in areas where the supply of housing is at risk can be applied. This is a form of rental control/cap introduced by the federal government in 2015 which allows individual states to classify specific areas or districts with "overheated" housing markets and force landlords to rent apartments at rents that are no more than 10% higher than the local comparative rent.

In general, landlords and tenants cannot negotiate existing lease contracts and share costs of energy efficiency upgrades in a way that can potentially benefit both parties. The cost of energy efficiency upgrades can be therefore indirectly shifted to the tenant only through a new agreement in most Member States. Only in Germany it is possible to increase rent by 11 % of the renovation costs directly after modernisation work within the ongoing contractual relationship[11].

Rental contracts are generally fixed-term, typically varying from 1 to 3 years, with a possibility of extension. Energy efficiency upgrades attached to a high upfront capital cost will not be appealing investments in which properties are rented on a short-term basis. This gives rise to temporal split incentives: the energy efficiency investment does not pay off before the property gets transferred to its next occupant/owner. In this situation, the occupant (tenant or owner-occupier) does not have a clear idea of how long they will live in their property or simply plan to move relatively soon and may be perceived as risky (Bird & Hernandez, 2012). Contracts of unlimited duration are more common in the social housing sector, whereby several rent setting rules and limits apply in almost all Member States. Special governmental support would be necessary in order to facilitate energy efficiency improvements in this segment of the housing stock.

Based on this analysis, the following challenges have been identified:

1) Grey areas in legal structure of apartment ownership

Without a clear and comprehensive regulatory framework, there is no regulatory system for management procedures of common areas of a multi-owner building. Without the establishment of well-functioning homeowner association/community, the value of individual apartments may decrease, even if the owners maintain their individually owned apartments only. Lack or weak of a homeowner association/community also prevents buildings of need of energy efficiency upgrade from being renovated as there is no legal entity to organize the individual owners and enforce their obligation to pay their share of the debt.

[11] A recent legislative bill not yet passed aims to limit these possibilities.

2) High level of majority required in decision-making decision processes

Energy efficiency upgrades would typically fall under major renovation/improvement work, which is typically associated with stricter majority rules. In several cases, this would require unanimity which could be extremely difficult to obtain especially in buildings with large income disparities among owners.

3) Lack of legal personality of homeowner association

Viable legal standing of homeowner associations is critical in ensuring that they can enter into contracts, establish agreements with third parties and enforce obligations to the owners. This is also especially important step for ensuring that the homeowner association can raise finance through a bank on behalf of all residents collectively. Condominiums should also have their own differentiated (from each co-owners' ones) well-funded estate to support maintenance and improvement works.

4) Energy performance certificates (EPC) produced at individual level

While an individual apartment EPC is helpful for owners pursuing an energy efficiency of their individual apartment, it does mean, however, that there is no information about communal areas, and would not give information about options which would involve renovation of the whole block (e.g. external wall insulation). In cases where energy performance certificates are produced at individual apartment level, communal areas of the building are not assessed in the EPC. This can lead to limitations in implementing full building upgrades because there isn't the same motivation to upgrade communal spaces.

5) Lack of technical knowledge/skills

Decision making related to energy efficiency upgrades in condominiums is typically led by a number of co-owners with non-technical background. They may not have all the knowledge, awareness, skills or time that would be required to take well-informed decisions and initiate or oversee what can be complex renovation projects.

6) Lack of flexibility in lease contracts that would allow tenants/landlords to align incentives

Table 2. Overview of main condominium ownership structure in selected Member States

	Main ownership model	Required majority for decisions	Main actors involved	Legal personality of decision maker	Legal obligation for fund	Mandatory meetings per year	EPCs
BE-Fla	Composite	75 or 100%	HA; BoD;		None	1	Flat level
FI	Unitary	51 or 66%	BoD; BMC	Yes	None	1	Building level
FR							
DE	Composite	51%	Administrator; Owner assembly; BMC	No, but a joined credit for renovation work can be concluded upon decision of the owner assembly	Yes (maintenance reserve fund, typically 7-12 €/m² annually)	1	Building level
PL	Composite	100%	BoD; BMC		Yes (monthly fee for common expenses)	1	Building level

PT	Composite	51% or 67%	HA; BMC	None	Yes (10% of charges allocated to fund)	1	Flat level
ES	Composite	51%	HA; BoD; BMC	No (sometimes limited though)	Yes (monthly fees, reserve fund)	1	Both levels
UK-Eng	Leasehold/ Freehold	51% or 100%	Freeholder	Not applicable	None	0	Flat level
UK-Sco	Tenement Management Scheme	100%	Flat owners	Not applicable	None	0	Flat level

HA: Homeowner Association; **BoD**: Board of Directors, **BMC**: Building Management company

Table 3. Overview of rental contracts and energy efficiency provisions in selected Member States

	Rent		Duration of typical rental contract		Contract renegotiation after renovation	Pass of EE costs to rent
	Private	**Social**	**Private**	**Social**		
BE-Fla	Free to set		Typically three years with possibility of extension	Unlimited duration	No	No
FI		Rent cannot exceed the amount which is needed to cover expenses arising from the financing of rental units and their management	Either a fixed term (e.g. 12 months) with the possibility to prolong or until further notice	Until further notice	Lease agreements until further notice can be terminated following the notice period. It is typical to enter into a new agreement following major renovations	No - cost can indirectly be shifted to the tenant through a new agreement, but it cannot be shifted directly
FR						
DE	Free to set but since mid-2015, the so-called "rent brake" (Mietpreisbremse) has been introduced	Limited to cost rents	Unlimited duration	Unlimited duration	Rent increase of 11 % of the renovation costs is possible following modernisation work	Rent increase of 11 % of the renovation costs is possible following modernisation work
PL	Free to set	Limited rents (no longer subject to requirement of not exceeding 3% of unit's reconstruction value). Rent cannot exceed half of the lowest rent within a given commune's housing stock	Depends on landlord (open-ended or fixed term)	Unlimited duration	No - only a possibility to terminate existing contract if building is to be demolished or renovated	No
PT	Free to set	Price caps apply based on financial conditions of family	1 year	10 years	No	Only in a context of general reconstruction of the building
ES	Free to set	Rent established by each Autonomous Community, or State (depends on legal regime of housing protection, area where housing is located and dwelling size).	Fixed-term (Typically, 3 years)	1-3 or more years (as long as tenant's economic conditions remain constant)	Yes	Yes – usually only possible limited to once the 3-year tenancy contract elapses. During the term, only if improvements cannot be deferred but tenants can terminate or claim for a rent reduction
UK-Eng	Free to set	Rents for local authority tenants are fixed according to local authority's housing policy and amount of money they get from	6-12 months (but can continue)	Periodic (e.g. monthly but continues) but increasingly, moving towards fixed-term	No	No

		central government. For housing association tenants rents are set according to government guidance		tenancies.		
UK-Sco	Free to set but landlords will not be allowed to increase rent more than once in any 12 month period, and if a tenant believes the proposed increase would take their rent beyond rents charged for comparable properties	Free to set	No data	No data	No - Both private and social landlords can terminate a lease contract if they intend to renovate the property.	No

4.2 Good practices and recommendations

4.2.1 Information tools tailored for condominium owners

Global Technical Diagnosis (GTD) in France

Global Technical Diagnosis is a holistic tool designed to inform condominium owners in France about all key technical aspects in their buildings: (1) an overview of the status of communal parts and equipment in common areas of the building, (2) situation of the syndicate (Union of co-owners) with regard to the legal and regulatory obligations in the Code of Construction and Housing, (3) analysis of possible technical improvements and heritage management and (4) Energy Performance Diagnosis or energy audit[12]. It must also include a list of works necessary for the conservation of the building, their cost and summary of measures to be carried out over the next ten years. A compulsory annual contribution paid by the co-owners in the same way as those decided by the general assembly for the payment of provisions of the budget estimate is also foreseen. The global technical diagnosis is valid for 10 years. Since January 1, 2017, global technical diagnosis is mandatory in any condominium building over 10 years old (CCH: L.731-4). It can also be obtained on a voluntary basis for other buildings with a partial or total residential purpose as of January 1, 2017, following made in the general assembly and agreement among the owners.

Five-year renovation plan in apartment buildings in Finland

In Finland, prospective buyers of apartment units in condominiums should be informed on scheduled renovations for the next 5-years. Each housing company should have a renovation plan ("Pitkän tähtäimen suunnitelma" (PTS)) which details an overall picture of the condition and future repair needs of the property, including timing and costs. If such a document is not available, prospective buyers can check completed renovations in the past from the house manager's certificate *Isännöitsijäntodistus*).

[12] Energy performance diagnosis is mandatory in all buildings with a collective heating or cooling system from 1 January 2012. In residential condominiums of fifty or more units with a collective heating or cooling installation and building permit issued before June 2001 an energy audit must be carried out instead of the energy performance diagnosis (Article L134-4-1of the Construction and Housing Code). Both documents are valid for 10 years.

4.2.2 Energy performance contracting in apartment buildings

PadovaFIT!

PadovaFIT! is an IEE project (Intelligent Energy Europe) funded by the European Union, with the aim of energy redevelopment of the private building condominiums in the city of Padova. It has launched investments in the private housing building sector of around EUR 16 million and is expected that 150 buildings will undergo energy efficiency improvements. Under this programme, the city council acts a facilitator and institutional guarantor. The delivery partner (Energy Service Company) is in charge of the execution of the works, using a repayment model which is based on energy performance contracting. Small & differentiated measures are bundled together to make them bankable. Stakeholders Involvement & Engagement is a key part of the programme as there are different target groups to address: Single Building Managers and citizens, Building managers associations, Small owners associations, House Owners/Tenants Unions and Builders associations. This is a crucial step as these target groups may often show resistance either related to reluctance of change in status quo or lack of knowledge. For this reason, facilitators receive both technical and psychological training.

Energies Posit-If

Energies POSIT'IF was created in 2012 as a public-private partnership by the Île-de-France region with the aim to offer third party financing solutions for energy efficiency upgrades in apartment buildings. It acts as an integrated service provider offering technical design, implementation and operations, financing and insurance services to owners of multifamily residential apartment buildings. The target audience includes million multifamily apartment buildings with an energy class of E or below. Energies POSIT'IF acts as a public ESCO to integrate the different steps of the process, thereby reducing transaction costs and using a significant amount of energy savings to pay for investments. The project is supported by the European Commission through the Horizon 2020 programme. In 2015, Energies POSIT'IF reported a structural agreement with the European Investment Bank as part of a global 400 million € financing program for residential homes in France.

4.2.3 Mandatory energy performance requirements

Mandating minimum standards for rented properties or condominium buildings can be a powerful measure. It can primarily protect social tenants or other tenants who would have no power to negotiate an energy efficiency upgrade in their rented properties. Under such regulation, the responsibility rests with the owners, who are called to ensure a reasonable energy efficiency level in rental units, thereby sending a clear signal to the market. To ease the burden of compliance by landlords, the availability of financial incentives or the use of models that overcome the barrier of the upfront costs can be considered alongside this regulation (see section on Financial incentives & models).

This practice is not yet widespread in Europe as it is not mandated by EU legislation. A few noteworthy examples include minimum energy efficiency rating E for privately rented properties in the UK, the obligation to phase out rental housing with a label lower than label C in the Netherlands and roof insulation requirement in Flanders, Belgium. A specific requirement for common areas in condominium buildings could be an important driver for energy efficiency buildings in this segment of the building stock.

4.3 List of recommendations

Based on the above analysis, the following list of recommendations can be made.

A. Clear and comprehensive legal framework in homeownership law

1) Legal requirement to attain a homeowner association in multi-owner buildings including granting legal personality or status that would give them the right to raise

finance on behalf of all residents collectively, including the right to enforce fund collection (see point 2)

2) Management rules of jointly-owned building parts, rights and obligations of co-owners, including obligations to make periodical contributions to a common fund covering maintenance and renovation work including energy efficiency upgrades.

3) Simplification of majority rules regarding decisions regarding energy efficiency upgrades and effective facilitation of condominium owner meetings, including the possibility of set-up of digital voting systems and establishment of mediation techniques in case of lack of consensus

4) Minimum energy performance requirements (e.g. energy ratings or prescriptive requirements for jointly owned parts in a building such as roof or common utilities) in condominium buildings

5) "Greening" of residential lease contracts that include provisions which enable alignment of incentives between landlords and tenants. Flexibility to increase rent in case of energy efficiency upgrades, including the establishment of a ceiling to avoid the risk of luxury renovation

B. Education, advice and consumer information

1) Development of information tools targeting potential apartment owners/tenants in property transactions informing them on energy efficiency status at building-level

2) Mandatory renovation plans informing all apartment owners on mid-term and long-term planned measures including costs and savings

3) Provision of independent advice on energy efficiency upgrades and dissemination of good examples in condominiums

C. Financing

1) Government-supported incentives designed in a way that also encourage building-level upgrades, in addition to any relevant upgrades feasible at individual apartment level. This could be achieved by raising financial support if the whole building is renovated.

2) Stability of financial schemes targeting apartment buildings as decision making process in this type of building takes longer than that in single-family houses

3) Extension of credit lines offered by commercial banks to Homeowner Associations/Communities and provision of government guarantees

4) Tailor-made access to finance for condominiums, where the Homeowner Association/Community would be responsible for the legal representation of individual apartment owners and given the right to enforce fund collection from the owners

5) Specific programmes enabling the implementation of energy performance contracting in condominiums, including the use of facilitators

List of figures

List of boxes

List of tables

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: http://europea.eu/contact

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),

- at the following standard number: +32 22999696, or

- by electronic mail via: http://europa.eu/contact

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: http://europa.eu

EU publications
You can download or order free and priced EU publications from EU Bookshop at: http://bookshop.europa.eu. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see http://europa.eu/contact).

KJ-NA-29094-EN-N

JRC Mission

As the science and knowledge service of the European Commission, the Joint Research Centre's mission is to support EU policies with independent evidence throughout the whole policy cycle.

EU Science Hub
ec.europa.eu/jrc

@EU_ScienceHub

EU Science Hub - Joint Research Centre

Joint Research Centre

EU Science Hub

Publications Office

doi:10.2760/966263

ISBN 978-92-79-79347-9