Global Sustainable Buildings Guide - Netherlands

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# Authors

# Green Certification

## Is there a nationally adopted and recognized form of certification for buildings? What is it and is it mandatory for all new buildings and refurbished buildings?

Different environmental certification methods for buildings exist in the Dutch market. These include (i) Building Research Establishment Environmental Assessment Method (BREEAM), (ii) Energy label, (iii) Energy Performance Coefficient (EPC)-norm, (iv) Eco-Quantum (EQ), (v) Municipal Practice Guideline (Gemeentelijke Praktijk Richtlijn) (GPR) (GPR Gebouw, GPR Materiaal, GPR Vastgoed), (vi) Leadership in Energy and Environmental Design (LEED), (vii) Passive House Planning Package (PHPP), (viii) Cradle-to-Cradle (C2C) tool Woningbouw xx, (ix) WELL Building Standard and (x) Actual Energy intensity indicator (Werkelijke Energie intensiteit indicator) (WEii). Among these, BREEAM has become the most commonly used model in the Netherlands to classify new and renovated buildings.

In June 2008, the Dutch Green Building Council (DGBC) was established as a "market initiative" by the real estate and construction sector to align the government's sustainability policy with the interests of the real estate stakeholders. As an independent, nonprofit organization, the DGBC aims to increase the number of sustainably (re)developed buildings. The DGBC is part of the World Green Building Council. Back then, it was supported by the (now dissolved) Building Research Foundation (Stichting Bouw Research) when it was developing and administering the assessment method BREEAM-NL, the Dutch version of the British BREEAM certificate.

Currently, there are four different BREEAM-NL certificates. The first one is "BREEAM-NL for New Buildings & Renovations." This first version of the certificate was launched in September 2009, with the first building designs being certified in April 2010. This certificate is mostly used for offices, retail establishments, schools, light industry, housing units and data centers. The second certificate, "BREEAM-NL In Use," was introduced in June 2011, and applies to existing buildings that are older than two years. It gives insight into the building's current sustainable condition and opportunities for improvement. The third certificate, "BREEAM-NL Area Development," was launched in September 2011 and assesses the building's sustainability from the perspective of the entire area where the building is located. The fourth certificate, "BREEAM-NL Demolition & Disassembly," was launched in 2013 and applies to demolition and disassembly projects. The assessment methodologies in relation to the existing BREEAM certificates are subject to ongoing amendments to cater to new developments in the market. Both BREAAM-NL for New Buildings & Renovations and BREAAM-NL In Use provide different certifications for residential and nonresidential works. With four BREEAM-NL certificates created within the first four years and the updates and expansions within each category, the desire for building verification in the Netherlands is apparent.

BREEAM-NL for New Buildings & Renovations rates buildings using five different star ratings, which are as follows: (i) Pass ≥30%; (ii) Good ≥45%; (iii) Very Good ≥55%; (iv) Excellent ≥70%; and (v) Outstanding ≥85%. BREEAM-NL In Use contains a different rating system, which is as follows: (i) Unclassified <10%; (ii) Acceptable ≥10%; (iii) Pass ≥25%; (iv) Good ≥40%; (v) Very Good ≥55%; (vi) Excellent ≥70%; and (vii) Outstanding ≥85%. BREAAM-NL Area Development measures sustainability levels using the following six categories: (i) management; (ii) synergy; (iii) sources; (iv) spatial development; (v) welfare and prosperity; and (vi) the area's climate. Lastly, BREAAM- NL Demolition & Disassembly measures sustainability taking into account the following eight categories: (i) management; (ii) health; (iii) energy; (iv) transport; (v) water; (vi) materials; (vii) waste and land use; and (viii) ecology.

With regard to legal framework, the Dutch Housing Act (Woningwet) requires the owner of an existing building to carry out energy-saving measures if local authorities deem it necessary. Under the law, authorities can impose penalty payments. As of 1 January 2022, sustainability has explicitly become part of the housing cooperative's statutory task or tasks. With the entry into force of the Environment and Planning Act (Omgevingswet) (EPA), the authorities intended to contribute to sustainable development, the habitability of the land, and the protection and improvement of the living environment. The EPA states that a company is required to save energy by making energy-saving provisions with a payback time of within five years. An owner of a residential or nonresidential building can also succeed in this requirement by taking measures listed in the Recognized Energy-Saving Measures List (Erkende maatregelenlijst). This list contains the measures to be taken by the owners of residential and/or nonresidential buildings to comply with the energy-saving obligation, and the measures to be considered when a party acts in a manner that could adversely affect the environment.

Under the Building Decree (Bouwbesluit 2012), which applies to new buildings, including residential and nonresidential buildings, minimum standards are set for energy performance according to the "Nearly Energy-Neutral Buildings" (Bijna Energieneutrale Gebouwen) (BENG). The energy performance requirements are determined based on three individually achieved demands. These requirements arise from the "Energy Agreement for Sustainable Growth" (Energieakkoord voor duurzame groei) signed in 2013 and from the European Energy Performance of Buildings Directive.

The Building Decree contains multiple sustainability requirements, including those arising from the European Energy Performance of Buildings Directive. All applications for new construction permits must meet the requirements of the BENG. These building regulations set standards for the maximum energy requirement, fossil energy use and the generation of renewable energy in buildings.

The Energy Performance Buildings Decree (Besluit Energieprestatie Gebouwen) provides the energy label obligation regarding nonresidential buildings. The energy label must be available upon delivery, sale and lease of the building. As of 1 January 2023, it is prohibited to use all office buildings, new and refurbished, with a minimum of 100 square meters, without a valid energy label of at least C.

Residential and/or nonresidential buildings will have to meet the requirements of the Environmental Performance for Buildings (Milieu Prestatie Gebouwen) when applying for a permit under the EPA.

# Energy Performance Certificates and Minimum Energy Standards

## Is there a mandatory form of energy performance certification? When does it apply and are there any prescribed minimum standards?

**Instruments that have been put in place**

Since 1 January 2008, the mandatory form of energy performance certification for buildings in the Netherlands has been the "energy label" (Energielabel). When selling or leasing a building, building owners are obliged to provide the purchaser or tenant with an energy label. As stated in “Green certification”, it is prohibited to use certain office buildings without, at a minimum, energy label C. An energy label is valid for 10 years after issuance. Therefore, the certificate cannot be older than 10 years from the date that both parties signed the purchase or lease agreement. Since 2009, the label establishing a building's energy performance has needed to be displayed in a visible place for public view in the following types of buildings: (i) public buildings with a floor area of more than 250 square meters; (ii) public government buildings with a floor area of at least 250 square meters; and (iii) all other types of public buildings (e.g., schools, hospitals, stores, supermarkets, restaurants, hotels) with a floor area of at least 250 square meters.

Since 1 January 2015, a "final energy label" has been mandatory upon the sale, lease or delivery of residential units. The label displays a dwelling's energy performance and lays down which energy-saving measures can be taken for that particular dwelling. The label categories range from A to G (A being the highest level, with few energy-saving measures possible, and G being the lowest level, requiring several energy-saving measures). The validity term of the label remains at 10 years. In addition, at the beginning of 2015, all owners of residential properties in the Netherlands that previously failed to request energy labels received "temporary" energy labels for their dwellings. The authorities sent out these temporary energy labels during the first months of 2015 to about 5 million owners of residential properties. These temporary energy labels permit market players to explain to owners of residential properties how they can make their dwellings more energy efficient. These temporary energy labels do not have a formal status and merely amount to data indications with regard to the dwelling (i.e., information from the Land Register). Since 1 January 2015, owners of residential properties have been obliged to request final energy labels from the authorities upon the sale or lease of existing dwellings. As such, also beginning 1 January 2015, the authorities have been enforcing this obligation by controlling the issuance of an energy label upon the sale, new lease or delivery of a building. Failure to comply with this obligation will lead to penalties of up to EUR 900 for individuals, and penalties of up to EUR 20,250 and a ban on using the building in question for companies.

# Incentives for Green Retrofit

## Are there any government-funded or sponsored schemes for improving the energy efficiency of existing buildings and, broadly, how do they work?

The "National Plan on Neutral Energy Building" ("**National Plan**") was launched in June 2011 by a former agency of the Ministry of Economic Affairs (Agentschap NL). The National Plan describes measures to foster energy saving in the Netherlands and lays down a strategy to ensure that all buildings completed after 2020 will be in accordance with the BENG. Energy neutrality for buildings entails that a building generates as much energy as it consumes. The National Plan is revised and updated every five years in line with the developments to provide clarity and reliability for companies facing complex and expensive investments.

"Green Deals" were established by the authorities in 2011. These are agreements between authorities and companies, public organizations, and individuals that attempt to remove barriers facing companies and institutions that strive to save energy. Some of these barriers include the principal/agent problem of actors' conflicting interests (e.g., for leased premises and public organizations with separate financing of the building and yearly energy costs) or the short payback periods that customers require. Initially, deals were only meant for energy-saving measures. However, they can now also apply to commodities such as biodiversity and mobility. A "bottom-up" approach characterizes Green Deals as the responsibility for realizing green growth shifts to society, whereas the role of the authorities becomes increasingly facilitating. The Green Deal scheme is cautious with government subsidies and primarily aims to remove barriers to investment in green mechanisms.

The Climate Agreement (Klimaatakkoord) signed in 2019 is the successor of the Energy Agreement for Sustainable Growth 2013. The Climate Agreement contains agreements with five sectors on measurements that have to be taken to achieve the Paris climate targets of 2015. The Climate Agreement contributes to the climate goals from the Climate Act 2019 (Klimaatwet). The measures announced in the Climate Agreement include extra investments, such as sustainable energy sources; the introduction and implementation of a CO2 tax for companies; and the introduction of environmental zones. These measures can affect the real estate sector.

# CO2 and Energy Targets

## Are there any national targets for CO2 reduction and/or energy use reduction from buildings? If there are, are there any exclusions?

The rules laid down in the Climate Agreement 2015 in Paris prescribe that CO2 emissions must be reduced. Therefore, the Netherlands must reduce CO2 emissions by 60% (compared to those in 1990) by the end of 2030. In 2050, emissions must be reduced by 95%. As mentioned in “Incentives for green retrofit”, in 2019, the Dutch government signed (in association with multiple civil society organizations) the National Climate Agreement (Klimaatakkoord). In this national agreement, concrete agreements were made for all sectors. In the 2021-2025 Coalition Agreement (Coalitieakkoord), these climate goals have been tightened with new intermediate steps: 60% CO2 reduction in 2030, 70% in 2035 and 80% in 2040. This has an indirect effect on the construction and building industries as they are responsible for more than 40% of CO2 emissions.

In December 2019, the Supreme Court of the Netherlands ordered the government to cut greenhouse gas emissions by at least 25% by 2020. It marked an end to a six-years-long legal battle in a case brought by environmental campaigners on behalf of 900 Dutch citizens. It was expected that the outcome of this case would strengthen the government's commitment to CO2 reduction in the following years.

# Renewable Energy

## Are there any regulations requiring a percentage of energy consumption to come from renewable sources?

According to Article 22 of Directive 2009/28/EC (Renewable Energy Directive), every EU member state needs to submit a report on its progress concerning the facilitation and use of energy from renewable sources during the two preceding years. The Dutch authorities issued several reports on this topic. The latest was published in 2022. In the aforementioned National Climate Agreement 2019, it was agreed that 70% of all electricity will come from renewable sources.

# Regulation

## What other national regulatory measures are there, such as taxes on energy consumption and/or tax reliefs on energy-saving measures, that can encourage more efficient use of energy in buildings?

The Netherlands offers fiscal subsidies meant to encourage more efficient energy use in buildings. Two main schemes are available: (i) the Energy Investment Allowance (Energie-investeringsaftrek) (EIA) and (ii) the Environmental Investment Allowance (Milieu-investeringsaftrek) (MIA). The EIA covers energy-saving measures or costs for energy research, energy advice or tailored advice, while the MIA covers sustainable renovation plans. Both schemes offer an approximate 11% net benefit of the investment.

The main tax scheme is the EIA, which provides incentives in the form of financial benefits to entrepreneurs who invest in energy-saving business assets and sustainable energy. The scheme applies to any entrepreneurs that pay income or corporate taxes in the Netherlands. Except for depreciation, the investment (i.e., purchase and production costs) of these business assets is 45.5% extra deductible of the fiscal gains (as of 2024). An application for the scheme can be submitted if (i) energy investments were made for a minimum sum of EUR 2,500, (ii) the business asset had not been in use before, (iii) the business asset is on the so-called "energy list" of energy-saving business assets and sustainable energy, and (iv) an EIA and an MIA have not been requested at the same time.

# Financing

## Are there any public or private “green” financing initiatives for sustainable real estate projects?

The Netherlands Ministry of Finance and the Ministry of Infrastructure and Environment have launched a scheme for green projects (Regeling groenprojecten 2022) whereby banks can offer credit for lower interest rates to investors who plan to invest in green real estate projects. Banks can offer lower interest rates because of the tax benefits that the authorities give to "green" savers and investors. The Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland) reviews applications for the scheme in the name of the Ministry of Economic Affairs. The Netherlands Enterprise Agency seeks to make the "real estate chain" more sustainable by (i) assisting with the growing demand for sustainable real estate, (ii) promoting energy savings that lead to cost savings, (iii) spreading knowledge via publications, such as the Sustainable Buildings Newsletter (Duurzame Gebouwen Nieuwskrant), (iv) actively supporting the Sustainable Housing Platform, (v) cooperating on the platform's and the DGBC's projects, such as green lease and performance contracts, (vi) making retail real estate more sustainable and (vii) promoting the use of sustainable energy. The Netherlands Enterprise Agency also offers the Investment Subsidy for Sustainable Energy and Energy Saving, or "ISDE subsidy" (Investeringssubsidie duurzame energie en energiebesparing), which can be used to make dwellings more sustainable. One can request a refund after purchasing a (hybrid) heat pump, solar boiler or electric cooking facility. The amount of the subsidy one will receive depends on the type and the amount of energy-saving measures one undertakes.

Private financing initiatives for sustainable real estate projects can be provided by the Triodos Bank, which has committed itself to offering green financing for sustainable real estate projects. The Triodos test for sustainable real estate assesses buildings according to the following four aspects: (i) yield; (ii) people; (iii) planet; and (iv) project. The Triodos Bank has also had a closed-end real estate fund since 30 June 2004, which exclusively invests in buildings that are sustainably built and/or managed. In case of such an investment, the property management contract contains a standard annex in which sustainable management of the property must be defined. The stated management includes (i) issuing reports on energy consumption, (ii) stimulating sustainable use and behavior by the tenant, (iii) laying down ambitions regarding the use of materials and (iv) advising on the improvement of properties. The attractiveness of the fund and of sustainable real estate is exemplified by the 97.6% occupancy rate of the buildings in the fund portfolio. Another bank, the ASN Bank, also has a Green Projects Fund (Groenprojectenfonds) that supports sustainable real estate and green projects in the wind and solar energy sectors. CBRE Dutch Office Fund and PGGM Private Real Estate Fund both invest in sustainable real estate projects.

# Planning

## Is the national or local/state government able to mandate green initiatives via the planning/zoning regime (e.g., district heating systems on large developments)?

Before the Netherlands Buildings Decree 2012, the legal framework for local authorities to establish environmental and sustainability standards for real estate projects was limited.

With the entering into force of the Buildings Decree 2012, local officials gained the authority to impose sustainability standards on real estate projects, because requests for environmental permits to construct new residential and office buildings with a minimum floor area of 100 square meters can only be granted if an "environmental performance calculation" (milieuprestatieberekening) is submitted. The calculation needs to be made according to the "Determination Method for the Environmental Performance of Buildings and GWW-works" (Bepalingsmethode Milieuprestatie Gebouwen en GWW-werken), which makes it possible to calculate the environmental effects of construction. Together with the national environmental database, this calculation method forms the basis in determining a construction's effect on the environment based on the different materials used. This calculation method is also used for the issuance of certificates for buildings (e.g., GreenCalc, BREEAM-NL).

Aside from public law requirements for sustainable buildings, several municipalities have established their own sustainability policies. Through these policies, municipalities encourage property developers and builders to build sustainable buildings. Nonetheless, parties to a real estate project remain free to use contract law to set standards for the sustainability level of their project within the limits of existing regulations.

# Green Leases

## Are green leases or green lease provisions mandatory or optional? If mandatory, to whom do they apply? If optional, is there significant take up?

Green lease provisions remain optional in the Netherlands. Under the widely used industry-standard Lease Agreement and General Lease Conditions regarding office space, a specific sustainability/green lease provision has been adopted in line with the energy label obligation of energy label C. The industry-standard Lease Agreement and General Lease Conditions regarding commercial space also contain a specific sustainability/green lease provision, according to which parties underline the importance of sustainability and, thus, will support one another in reaching their formulated sustainability targets.

The Dutch green lease provisions were set up by the former agency Agentschap NL and the Sustainable Housing Platform (Platform Duurzame Huisvesting). This platform is an alliance between sector, knowledge and umbrella organizations that play an important role in (i) housing in existing nonresidential premises, (ii) maintenance and management of buildings and (iii) investment in building facilities. The platform is currently the active player in the promotion of green leases and removal of "split incentives." These split incentives still form a barrier for building owners to take sustainable or energy-saving measures. In a traditional contract, the landlord is required to pay the investment costs, even when the lower energy bill will ultimately benefit the tenant. Such a setup may cause a landlord not to take far-reaching measures. A green lease, on the other hand, enables parties to reach an agreement on a fair distribution of the costs, as a result of which both tenant and landlord can profit from the sustainable and energy-saving measures that are undertaken.

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