



Landlord/Tenant Dilemma

Joint statement by

CEPI, the European Council of Real Estate Professions (*)

&

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Joint statement on the Landlord/Tenant Dilemma by CEPI and UIPI

This statement is the result of a common initiative between the **European Council of Real Estate Professionals** (CEPI) and the **International Union of Property Owners** (UIPI). Both organisations have national member associations which sometimes have divergent opinions. However, CEPI and UIPI have acknowledged common interests in the field of energy performance of buildings and in particular in identifying solutions to finance the cost of the required work. Together both associations call for attention to be paid to the landlord/tenant dilemma and for equitable and effective solutions to be promoted at a European level.

The landlord/tenant dilemma

Landlords and tenants both have an interest in the energy performance of buildings. Requirements and awareness concerning this continue to increase. Improving the energy efficiency of buildings is a shared interest which should raise living standards and also reduce costs, but to achieve these results the work has to be done and paid for. The landlord wants to protect his long-term investment but may be reluctant to incur short-term costs. The tenant may also be reluctant to incur short-term costs but will benefit directly from renovation and lower energy costs. Property professionals also have an interest in the energy performance of buildings. In dealing with energy efficient renovation they have to negotiate between parties with conflicting interests and would benefit from a clear and fair system as to allocation of costs.

The question remains, who will pay for this work and who will benefit from the saving in energy costs? There is a problem with split incentives and this is what we see as the landlord/tenant dilemma. The answer depends on national legal systems in different countries. Much of the legislation in place concerning energy performance now originates from the EU. Therefore to provide an answer property professionals and property owners need to discuss at a European level what can be done and to promote "best case examples".

To find these "best case examples" we need to find out what is happening in different countries. For example, we know that in France legislation has been passed which allows for the benefit of energy savings resulting from work done by a private landlord to be shared between landlord and tenant; rather than only benefiting the tenant. Therefore both CEPI and UIPI have surveyed¹ their member associations as to the need for such a scheme in other EU countries, and further examples of steps which may be taken to solve the dilemma.

Existing scheme

In France a law has been passed relating specifically to the dilemma². This law establishes the legal conditions to allow the redistribution between the landlord and the tenant of the savings made on energy costs following energy efficiency improvements.

When energy saving renovations are undertaken by a landlord within the private and/or common parts of a dwelling, a contribution for sharing the saved energy costs can be asked of the tenant of the relevant dwelling, as from the end of the renovations, provided that the tenant directly benefits from the renovations made and these have been explained to him/her. The contribution is separate from the rent paid by the tenant.

¹ The survey was done between June and September 2010. It was sent to 40 +1 associations in 27 countries (AT, BE, BU, CH, CZ, DE, DK, ES, EE, FI, FR, GR, HU, IE, IS, IT, LT, LUX, NL, NO, PL, PT, RO, RU, SE, SL, UK). Answers were collected in 16 countries (AT, BE, CH, DE, DK, ES, FI, FR, HU, IT, LUX, PL, PT, SE, SL, UK)

² Article 119 Boutin Law 25 March 2009, Decree of 23 November 2009



This contribution can however only be asked if substantial work has been done or if the dwelling reaches a minimum level of energy performance. This participation, limited to 15 years maximum, is specified in the rent agreement and cannot exceed 50% of the energy saving made. A consultation between the landlord and the tenant regarding the nature and advantages of the renovation has to be first initiated and should be followed by the agreement of the tenant for the redistribution scheme to be authorized. If the tenant changes during the period of contribution, then, before concluding a new rent contract with a new tenant, the landlord has to justify the energy saving renovations made and the maintenance of this contribution until the agreed deadline.

The results of a survey of CEPI and UIPI member associations

All member associations were asked to confirm if there is a scheme in their country to share the benefit of energy saving between landlord and tenant (similar to that already described in France), and if not, if such a scheme was under current discussion, for examples of cases in which such a scheme has been used in practice, and whether or not they thought such a scheme is needed to fill a gap in effective energy management. In particular would such a scheme facilitate the implementation of the Energy Performance of Buildings Directive?

The majority of the respondents confirmed that there are not as yet measures in place to combat this problem, although awareness is growing and discussions are taking place as to the possible implementation of various schemes in different countries. For example in Austria, there is discussion about who meets the cost of installing new heating and the use of contracting. The representatives of Austrian landlords seem also willing to wider the current debate to the general question of split incentives. In Belgium, the Vlaams Energie Agentschap is researching the problem³.

In Germany, this issue is also under active consideration. Currently a landlord is entitled to increase rent by 11% of the cost of the energy saving measures. The saving of energy in this case does not need to reduce the tenant's costs, only to reduce the demand for energy. Such energy savings must be substantial and in the general public interest. There are discussions concerning the extension of this to include, for example, the costs of measures related to renewable energy (such as wind and solar power). The landlord is not entitled to increase the rent to cover the cost of works if classed as maintenance. For example, it is not permitted to use boilers installed before 1 October 1978. Replacement of such a boiler would be considered as maintenance and no rent increase would be allowed. However, a voluntary measure such as the addition of thermal insulation would enable the landlord to increase the rent.

Recent hypotheses concerning this issue, instigated by German Chancellor Angela Merkel, have focused on the possibility, in theory, of raising the rent. At present, costs are in practice not added to the rent, because the legal formalities make it nearly impossible. This is part of a large scale debate as to who should pay the costs of renovation: Government, owners or tenants. Surveys clearly show that tenants are in general not yet willing to pay a higher rent for a more energy efficient property and, as a consequence, landlords risk losing their tenants by modernising their properties.

In the Netherlands, agreement has been reached on a scheme aiming to achieve a 20% reduction of energy demand by social housing associations through refurbishment and stimulation of behavioural change by raising awareness amongst tenants⁴. According to this scheme the housing association and a tenant agree on an energy saving package in which the rent increase is calculated based on the investment. The average energy saving is calculated and it is guaranteed that the increase in rent will be less than the decrease in energy costs. The results are monitored, allowing for the rent to be adjusted if the expected results are not achieved.

³ *Vlaams klimaatbeleidsplan 2006-2012*

⁴ *Woonlastenwaarborg Aedes vereniging van woningcorporaties en de Nederlandse Woonbond.*



In November 2010, the UK's Department of Energy and Climate Change announced a new energy efficiency proposal that overcomes the problem of the landlord/tenant dilemma and split incentives in general. Called the 'Green Deal', it provides the up-front finance for energy efficiency improvements such as insulation for lofts, cavity walls, solid walls and floors as well as water pipe lagging. This means there are no up-front costs for landlords or owner-occupiers.

Once the improvements are installed, the cost of the measures (the 'Green Deal Loan') is paid back by whoever pays the utility bills. In the UK, utility bills are generally paid by the tenant, so it would be the tenant who pays back the 'Green Deal Loan'. The costs will be spread over up to 25 years and are attached to the property (but not placed as a charge against the property at the Land Registry). This means that should a landlord sell, the Green Deal loan will pass with the property to the new owner in the same way that the loan will pass to new tenants when they move into the property. The loan can also be transferred between energy suppliers which means landlords are not required to remain with a single energy supplier throughout the loan period. Whilst it is the tenant who pays back the loan, the 'Golden Rule' of the Green Deal is that the combined cost of both the utility bills and the loan must be lower than if nothing had been done – so after the measures are installed tenants will be financially better off as they are paying less in utility bills. The money for these improvements will come through private finance from large companies, which will also be in charge of advertising.

These examples demonstrate different ways in which the dilemma can be overcome. More research needs to be done but it is notable that the **majority of respondents to the survey confirmed they regard the introduction of schemes that resolve the landlord/tenant dilemma as helpful in encouraging landlords to go ahead with renovation.** Whilst this would further facilitate the implementation of the Energy Performance of Buildings Directive it should be noted that further discussion and investigation are required at an EU level.

Action to be taken at an EU level

We are drawing the EU regulator's attention to the differences in national legal systems and approach together with the consequences of the landlord/tenant dilemma for the effective implementation of energy efficiency improvements. Any solution to be suggested and/or promoted at European level must be sufficiently flexible to be applicable in different countries whether or not the level of rent is regulated by law or freely negotiable. One of the advantages of the French example above is that it separates the rent increase and the redistribution of the saving in energy cost.

It is important to look at the different ways in which the dilemma is being dealt with, and action should be taken to promote the most effective schemes aimed at a fair division of the cost between landlord and tenant. Whilst recognising that measures between landlord and tenant are a matter of national law and competence we feel that it is important to raise awareness of these issues at a European level and therefore call on the EU regulator to:

- recognise the existence of the split incentive and the importance of the landlord/tenant dilemma in the energy efficiency debate, in that respect the Commission's recognition of the need to address the issue of divided incentives between owners and tenants in the Energy 2020 Strategy is a first step in the right direction;
- examine the position in different EU member states to identify "best-case examples";
- promote the "best-case" examples and awareness of ways in which the dilemma can be overcome;
- encourage national regulators to remove any barriers to the effectiveness of such schemes; and
- encourage the introduction of such schemes in all EU countries.



The mission of CEPI, the **European Council of Real Estate Professions**, is to support European and cross-border transactions by enhancing and strengthening the work and activities of property professionals. We represent around 260,000 estate agents and property managers belonging to more than forty national professional associations based in 27 EU and EFTA countries.

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Union Internationale de la Propriété Immobilière - International Union of Property Owners (UIPI) regroups 27 European national organisations of property owners. It represents the interests of about 5 million private homeowners & landlords, owning about 20 million dwellings in 25 European countries.

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