

## 'Green house directive' and cult buildings

EPBD (Energy Performance of Building Directive) – Proposal for a Directive of the European Parliament and the Council 2021/0426

<https://oeil.secure.europarl.europa.eu>

### Religious freedom - housing - 'green house directive' - exclusion clauses - environment - sustainability - National Recovery and Resilience Plan (NRP)

In order to address the issues of global warming and energy efficiency, a proposal for a measure to regulate the ecological conversion of buildings has been approved for the first time by the Plenary session of the European Parliament. The legislative procedure adopted in this case is the ordinary one (which proposes in its structure the already known co-decision procedure). Initial commentators have, moreover, often referred to the text under the consideration of it *ex ante* as a 'directive', even though this is still a legal basis that requires triangulation between the European Parliament, the Council and the Commission, via mediation between the Member States. Supporting the usefulness of an initially less exact wording are the need for understanding of the proposal in question and the circumstance that these proposals tend to at least set out the guiding criteria that the final wording, at the end of the mediation, ends up incorporating.

The main points concern the regulation of residential construction. New buildings will have to be constructed, starting in 2028, to meet the zero-emission benchmark (with a shorter deadline, to 2026, for public authority properties). Existing residential buildings will have to achieve Class E status by 2030 and even Class D by 2033. Considering the application of Art. 19 D. l. 19 May 2020, no. 34 (so-called *Superbonus*), which is leading to supplying delays as well as growing litigation profiles, the deadline seems unrealistic. And it is even more unlikely that the implementation of energy band steps will be more effective for non-residential buildings (a particularly heterogeneous category in the law of the Member States), where the deadline is 2027 for class E and 2030 for class D.

The exclusion clauses from the objective perimeter of the proposal, if not literally mentioned in the text, would in any case be unavoidable. Buildings not subject to the efficiency improvement process include monuments, buildings of architectural or historical value, technical buildings and buildings of temporary use, as well as public social housing where the increase in rent resulting from the modernisation works exceeds the savings in energy bills. This is an exclusion parameter that risks defeating every regulation on the point from the outset, because it is admitted that energy efficiency could correspond to an excessive increase in real estate value or rent.

**Churches and other places of worship** are currently among the excluded categories. Overlooking here the hasty qualification, which does not take into account the growing building differentiations in matters of worship, this exception appears consistent with the non-residential destination of sacred places or places used for religious functions of any kind, as well as the provision of Article 17 TFEU. It takes the form, as it is well known, of a clause safeguarding objective State laws regarding churches, religious associations or communities, philosophical and non-confessional organisations. Any regulation eventually disciplined in the directive for places of worship - even if it was the same for other non-residential buildings - could find an obstacle in the provisions of domestic law, whether of unilateral emanation, or, as in the Italian system, in the case of agreements with religious confessions legislatively approved (Article 7 Const., u. cpv.; Article 8 Const., III).

Energy improvements in residential buildings must be made when a new tenant enters or when the building is sold or renovated. While the economic consequences of the first two circumstances can be foreseen (the monetary increase in property rents and the slowing down of sales due to costs that are unsustainable to the contracting parties), the last hypothesis seems potentially at odds with the provisions that in various ways provide an economically incentivising and promotional discipline for the benefit of building maintenance (arguing to the contrary, for instance, art. 2053 C. C., which provides a special liability for the owner in the event of damage caused by the ruin of a building determined, *inter alia*, by defective maintenance).

Domenico Bilotti