

## FOCUS ON ...

EXPERTISE



September 2022

## Éco Energie Tertiaire: September 30, 2022, 1st deadline for data transmission on OPERAT

Éco Energie Tertiaire is a regulatory obligation that commits the tertiary sector to energy sobriety. The objective of reducing energy consumption compared to 2010 for tertiary buildings with a surface area of more than 1,000 m<sup>2</sup> is -40% in 2030, -50% in 2040, -60% in 2060.

In order to organise the monitoring of this obligation, the State provides the taxpayers concerned with the OPERAT platform, the first deadline for which is 30 September 2022.

The tertiary sector alone accounts for 1/3 of energy consumption. Renovation of this sector is therefore a decisive lever for achieving the European energy saving objectives.

Éco Energie Tertiaire is an obligation to progressively reduce energy consumption in tertiary buildings resulting from the 2015 Energy Transition and Green Growth Act, the 2018 ELAN Act and implemented by Decree 2022-305.

### Who is affected?

This applies to the owners or operators of an establishment housing tertiary activities in the public or private sector: Offices, Public services, Education, Health, Justice, Shops, Hotels,

Restaurants, Tourist and leisure residences, Sports, Culture and entertainment, Logistics, Air terminals, Railway, road, maritime or river terminals, Automobile, motorbike or nautical sales and services, Computer rooms and operating centers, Car parks, Laundries, Printing and reprography.

### Which buildings are affected?

Buildings, parts of buildings or groups of buildings with a tertiary activity area (or a combination of areas) equal to or greater than 1,000 m<sup>2</sup>.

This includes:

- Buildings with a surface area of 1,000 m<sup>2</sup> or more allocated exclusively to tertiary use,



- All parts of a single mixed-use building housing tertiary activities, the total area of which is equal to or greater than 1,000 m<sup>2</sup>,
- Any group of buildings located on the same land unit or on the same site if these buildings house tertiary activities on a cumulative surface equal to or greater than 1,000 m<sup>2</sup>.

However, this does not apply to temporary constructions (precarious building permits), places of worship, activities for operational use for defence, civil security or internal security purposes.

### What are the objectives?

The objectives are progressive and concern not only the owners but also the lessees. This "co responsibility" of the owner and the lessee implies the conclusion of amendments to existing leases in order to define the distribution of their respective roles and obligations.

They can be achieved in two alternative ways:

- In relative terms,
- In absolute terms.

#### Targets in relative terms

The target is a reduction in final energy consumption:

- In relation to a reference year (chosen by the taxpayer) which cannot be earlier than 2010,

- Including all energy uses over a year,
- Adjusted for climatic variations (correction methods defined by decree),
- Qualified by the corresponding occupancy and intensity of use data entered on the OPERAT platform.

The targets for reducing energy consumption compared to 2010 are :

- - 40% in 2030,
- - 50% in 2040,
- - 60% in 2050

#### Targets in absolute terms

The objective is determined:

- For each category of activity,
- Including all energy uses over a year,
- By a threshold expressed in kWh/m<sup>2</sup>/year, based on the energy consumption of new buildings in the same activity category and the best available techniques,
- Taking into account indicators of intensity of use specific to each type of activity.

In view of the complexity of the implementation of the decree and its orders, it is strongly recommended that clients be assisted by specialized external service providers.

## What actions should be taken?

By "actions", the tertiary decree refers not only to works in the proper sense of the term but also to everything related to user behavior, good daily practices and equipment maintenance.

The actions to be deployed may thus concern :

- The energy performance of buildings,
- The installation of efficient equipment and devices for the control and active management of this equipment,
- How the equipment is operated,
- The adaptation of the premises to energy efficient use and the behavior of the occupants.

## Which tools to declare?

Decree 2022-305 of 1 March 2022 sets out the terms and conditions for the implementation of OPERAT, a computerised platform for collecting and monitoring final energy consumption.



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For each building subject to the obligation, the owners or lessees "according to their respective responsibilities" will have to declare annually on the platform :

- Tertiary activities carried out,
- Building area,

- Annual energy consumption by energy type,
- Reference year with associated consumption and corresponding receipts,
- Use intensity indicators relating to the activities hosted,
- Modulations foreseen,
- Accounting for final energy consumption related to the charging of electric or plug-in hybrid vehicles. It is possible to delegate "the transmission of their energy consumption to a service provider or, subject to their technical capacity, to energy distribution network operators".

This platform will generate and publish final energy consumption and consumption targets on the basis of an annual digital certificate.

## What are the sanctions in 2022?

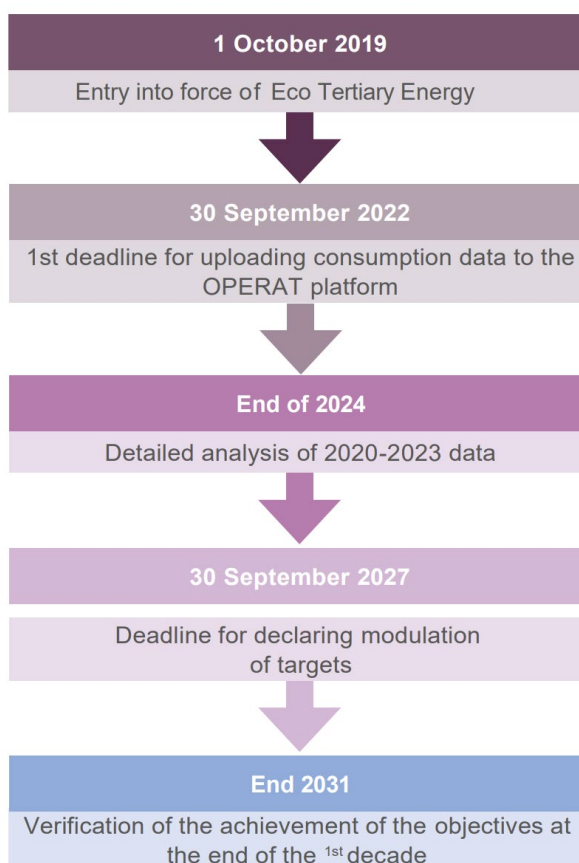
If the owner or lessee does not comply with their obligations to reduce consumption, the decree provides for penalties of up to an administrative fine of €1,500 for natural persons and €7,500 for legal persons.

If the owner or lessee does not transmit the consumption data via the online platform, he/she is liable to a formal notice to transmit them within 3 months. If they fail to do so, a document will be published on a website of the State services, listing the formal notices that have remained without effect.

Compliance with the obligations set out in the Tertiary Decree will have to be justified at the time of signing a lease or a deed of sale. The energy performance of the building is already a commercial and financial asset for the owner. Non-compliance with the obligations will therefore be sanctioned by a lack of interest in the property by potential tenants.



## Reminder of the calendar



## To go further

Article L. 174-1 and R. 174-22 to R. 174-32 of the Construction and Housing Code.





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