

The Constitutional Court upholds the COBRACE car park capacity threshold

On 2 May 2013, the Brussels Parliament approved the Brussels Code on Air, Climate and Energy Management (COBRACE). The COBRACE provides various measures to improve air quality and energy efficiency of buildings and to protect the climate. As part of these measures, the COBRACE provides maximum capacity thresholds for the car parks of both new and existing office buildings in Brussels.

The Belgian association of real estate professionals ("**UPS**I") and the Belgian car parks federation have challenged the COBRACE thresholds before the Belgian Constitutional Court arguing, amongst others, that the thresholds breach the equal treatment principle and car park owners' property rights. In a ruling dated 27 November 2014, the Constitutional Court rejected all arguments that were raised by the plaintiffs and decided that to uphold the COBRACE thresholds.

In this note we briefly (i) summarise the relevant car park capacity thresholds, (ii) explain how these thresholds impact on existing office buildings and (iii) clarify the Court's position.

The COBRACE imposes stringent capacity thresholds to existing office buildings' car parks

For office buildings considered easily accessible by public transport, which include buildings located in Brussels' European area, the central business district or the vicinity of the North or South railway stations, a maximum of two parking spaces is provided for the first tranche of 250m² of office space,

and of one parking space for each additional 200m² tranche. For office buildings located in less accessible areas, the Code allows the operation of one parking space per 100m² or per 60m² of office space.

The thresholds do not only apply to new office buildings. They also apply to existing office properties, on the occasion of renewal or extension of the environmental permit covering the operation of their car parks.

Environmental permits must be renewed 15 years after their grant. Consequently, many office property owners will be confronted with the thresholds in the coming years.

Exceeding parking spaces are subject to an

environmental levy or must be made public or abolished

Most of the existing office buildings' car parks in Brussels exceed the maximum capacities. As a rule, after renewal of the building's environmental permit, such car parks may no longer be used unless (i) they are made public or (ii) the operator of the property pays a yearly environmental levy per exceeding parking space.

With regard to office buildings considered easily accessible by public transport, the Code fixes the levy at EUR 450 for the first year following the granting, renewing or extension of the environmental permit. In less

accessible areas, this amount is EUR 350 or EUR 250. In each subsequent year, the levy is indexed and, in addition, increased by 10% during the entire term for which the permit was granted (15 years in principle).

The position of the Constitutional Court on the COBRACE thresholds

In the proceedings before the Constitutional Court, the plaintiffs mainly argued that the COBRACE thresholds breach the ownership rights and legitimate expectations of property owners. In its ruling dated 27 November 2014, the Court rejected these arguments and considered amongst others that the thresholds are acceptable and balanced in view of the COBRACE's objectives. The Court expressly considered that the fact that many property owners were in the seventies and eighties obliged to construct large car parks or have rented out parking spaces in excess

does not mean that the authorities would not be in a position to impose the COBRACE thresholds.

Bad news for office property owners

The application of the COBRACE thresholds and the financial impact thereof may lead to important costs and difficult discussions during property transactions and with lessees. Also, the conditions under which the levy can be avoided by making parking spaces accessible to the public remain unclear and may be difficult to apply in practice for certain properties.

Many office building car parks exceed the COBRACE thresholds. The fact that the Court decided to uphold the COBRACE thresholds is bad news for the owners of these properties. Landlords, lessees and authorities will require creativity and flexibility in order to deal with these issues.

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