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REVISED CONSTRUCTION PRODUCTS REGULATION (CPR)

FIEC POSITION PAPER

07/09/2022

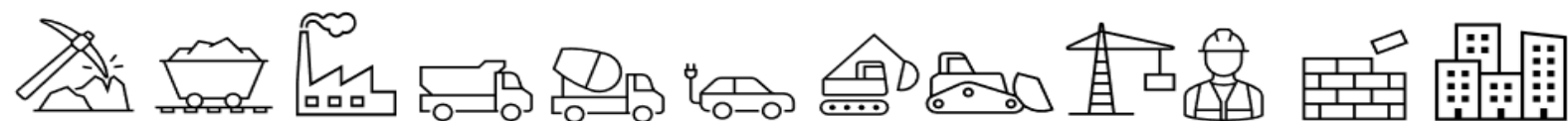
KEY MESSAGES

1. Rules on construction products should continue to address supply and not works contracts and enable the sector to contribute to innovation and circularity in construction
2. To resolve the long-standing backlog in the citation of standards, short-term and interim solutions are needed
3. The long transition period between the existing and new Regulation must not lead to further complexity of the framework
4. Delegated and implementing powers should only be conferred on the Commission in well-justified cases and remain "just-in-case" empowerments
5. The proposal must better reflect human and financial resources required for its implementation
6. Many provisions and definitions require more clarity and coherence between the new Regulation and other EU initiatives should be ensured
7. New rules on the CE-marking and digitisation could mean improvements if certain conditions are met

Introductory remarks

The Construction Products Regulation (CPR) is one of the central building blocks of the European single market and is now being revised. FIEC welcomes the intention of the European Commission to improve the overall functioning of the single market for construction products and to improve the environmental performance of products by establishing rules on how to express this performance, and by setting environmental and climate product requirements. It also welcomes the Commission's intention to address aspects of digitisation, and that harmonised standards and European Technical Assessments (ETAs) are kept at the heart of the legislative framework as a "common technical language" for all concerned parties.

As a guiding principle, new rules surrounding construction products should follow the principles of simplicity, transparency, predictability as well as legal certainty and technical reliability, and user-friendliness for those subject to the new Regulation. Contractors should still be able to recognise, based on the revised CPR, in a clear and unambiguous way, which construction products can be installed in Member States when meeting all requirements under the respective national building codes and local specifications.



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FIEC notes, although the Regulation's title refers to the "marketing of construction products", that the proposal covers a wide range of areas that go far beyond the placing of products on the market, for example, their "direct installation". FIEC understands that the scope of application of the CPR now covers all actors of the "construction ecosystem", e.g., manufacturers, importers, distributors, suppliers, architects, designers, and contractors. ***FIEC is of the opinion that the future CPR should continue to deal with the placing of products on the market in the Union, address the construction supply chain (manufacturers) and not apply to works contracts (contractors).*** "Users" of construction products, such as contractors, should, in general, not be subject to the future CPR and to obligations incumbent upon "economic operators".

The proposal also introduces new basic works requirements, product performance and inherent product requirements, as well as product information requirements. It is of critical importance for the application and good functioning of the legislative framework that all actors can comply with the new Regulation and work with the information related to construction products provided by the future CPR (esp. 'users' of the CPR, such as contractors). This implies that all actors can easily understand the obligations they are subject to and correctly interpret the information related to construction products so that informed choices regarding products can be made. Contractors need certainty. It is important that they can have confidence in the performance of a product, know that they are fit for the intended use, and know that products respond to local and their specific, day-to-day needs.

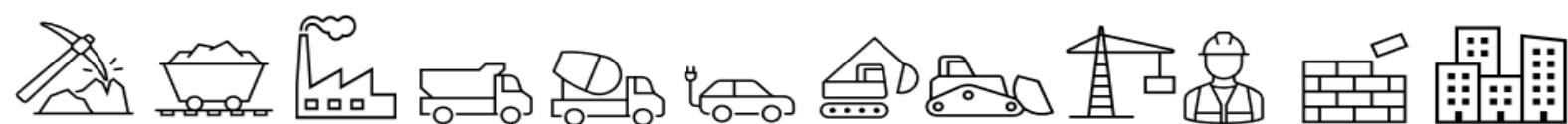
FIEC questions whether, with the proposed revised CPR, this will be the case. It expresses its concern over the fact that the proposal comprises almost 140 pages of provisions, annexes included, divided into fourteen chapters and almost one hundred articles, making it a legal text that is difficult to read and understand for those for whom it is intended and who will have to apply it every day.

In view of these observations, we call on the co-legislators to consider the following elements and suggestions to ensure that the future framework has a chance to become a usable text in the medium and long term.

I. Rules on construction products to apply to supply contracts and enable construction companies to contribute to innovation and circularity

Exclude the manufacturing of products on the construction site from the scope of application

The proposal extends the scope of application to the whole construction value chain: Manufacturers of construction products, suppliers, and contractors when placing products on the market or carrying out and making (parts of) works, as well as contractors, architects, designers, public buyers, and



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other actors when specifying or purchasing products. The proposal specifically includes companies executing construction works/contractors in its scope of application, e.g., in case products are manufactured on the construction site¹, except they meet the criteria to be exempted. FIEC understands that companies carrying out construction works would be regarded as "economic operators" and be subject to the same rules applicable to manufacturers, distributors, and importers etc.², in order - according to the Commission - to ensure safety and the protection of the environment and close a regulatory loophole that would otherwise (continue to) exist.

FIEC is of the opinion that such a regulatory loophole does not exist. Contractors manufacturing products on site for immediate incorporation into the works (e.g., windows and door frames) are subject to regulatory requirements applicable to the construction works that they carry out and these are mostly based on the same technical requirements as for manufacturers. FIEC fears that the provisions would considerably increase the administrative and financial burdens of contractors and potentially lead to a widening of liability for infringement of these provisions, also considering that the burden to prove that such an activity by a construction company falls under the exemptions in Art. 10 needs to be borne by the respective company. The manufacturing of products on the construction site and their direct installation should therefore be excluded from the scope, and contractors should be excluded from the other obligations incumbent upon "economic operators"³. We have serious doubts as to how such provisions could contribute to the green, digital, and industrial transition as intended by the Commission, at a time when important strategies ("Industry Strategy", "Renovation Wave", "Circular Economy Action Plan") must be implemented quickly. ***As a simple rule, the future CPR should continue to address supply contracts and not apply to works contracts.***

Example: Welding robots for metal works

The phase-in of the revised CPR framework will extend into 2045. Until this date, construction will change considerably (more automated, industrialised, digitalised, innovative, and climate friendly). The proposal for a revised CPR, if left unchanged, could hamper innovation efforts such as the automation of construction tasks or modular construction on the construction site, as, according to the new proposed framework, their output will increasingly need to be CE-marked by contractors using these methods (e.g., welding robots for metal works that are already used today on construction sites).

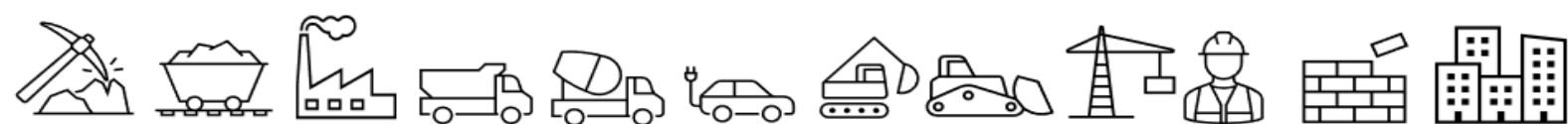
Provide for real and effective exemptions and simplifications for companies, in particular SMEs

The burden that economic operators, be they manufacturers, architects, contractors etc., are already facing today will be significantly increased by the multiplication of declaration obligations (e.g., new

¹ See recital 10, Art. 2 point (c), Art. 3 (8) and (9) or Art. 17 (3) of COM (2022) 144 final.

² See Art. 19.

³ See same Article.



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requirements for drawing up a declaration of performance⁴, including for used, remanufactured or surplus products⁵ and for drawing up a declaration of conformity⁶), and by the new requirements on product-inherent characteristics and product information. However, the abundance of information that will have to be provided will not necessarily empower users of products to make better and more informed choices about products they need for a specific use, and it is to be expected that many of the proposed obligations will make the overall framework significantly more complex than before. The proposed exemptions do not address all cases construction companies are confronted with (e.g., assembling and installing doors or windows). SMEs and micro-enterprises (including manufacturers, architects, designers, and contractors), which form an essential part of the EU's construction sector, would be particularly affected by many of the newly proposed obligations and need simpler rules instead of additional burdens that would be placed on them through the new Regulation. However, the proposed simplified procedures for SMEs and micro-enterprises⁷ can only be applied under certain conditions and do not, on closer inspection, introduce simpler rules.

Enable construction companies to effectively contribute to circularity in construction

SMEs and micro-enterprises are key to achieve the goals of the Green Deal and the digital transition (circular economy objectives, renovations to make buildings in the EU energy efficient, climate change adaptation, modular building...). FIEC welcomes that the proposal aims at establishing rules on how to express the environmental performance and at establishing environmental and climate product requirements for construction products. However, FIEC is particularly concerned that ongoing (and future) circularity efforts undertaken by the sector could be delayed by the new provisions⁸ on used, remanufactured and surplus products. To avoid unnecessary burdens for companies, it should be clarified in which cases used and remanufactured products must undergo the full administrative procedure to obtain a CE-marking.

It is important that for all products placed on the market, the same requirements apply. It must be emphasised that the re-use, remanufacturing, or recycling of products concerns mostly products and materials that have already been incorporated in construction works 20, 50 or even 100 or 150 years ago. No information is available for these products, which would make it a very difficult task to fulfil the proposed obligations. FIEC fears that, at a time when the construction sector experiments on how to optimise the circularity of products and construction works in a pragmatic way, the proposal could seriously impede, or even stop, ongoing circularity and innovation efforts due to increased administrative and financial burdens for companies. The provisions in the new Regulation should therefore only and exclusively apply to reused products intended to be placed on the market.

⁴ See Art. 10.

⁵ See Art. 12.

⁶ See Art. 13.

⁷ See Art. 65.

⁸ See recital 14, Art. 12, and Art. 29.



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In addition, it must be emphasised that knowledge about the materials and products, the techniques used to construct and knowledge about exposure to the climate for those construction works exists locally. Consequently, techniques to deconstruct and knowledge about the performances of products that may be reused or remanufactured, as well as knowledge about properties of materials that may be recycled, is also available locally. The proposed revised CPR should also envisage clear and proportionate provisions that consider this situation.

Ensure that 'credibility needs' of public procurers are met

The proposal extends the scope of application of the Regulation to all product requirements referred to in public procurement specifications⁹. The number of characteristics covered by the new Regulation will thus increase dramatically, and FIEC understands that all public procurers will be forced to use harmonised technical specifications. However, the proposal does not specify how public procurers will be involved in the development process of these specifications.

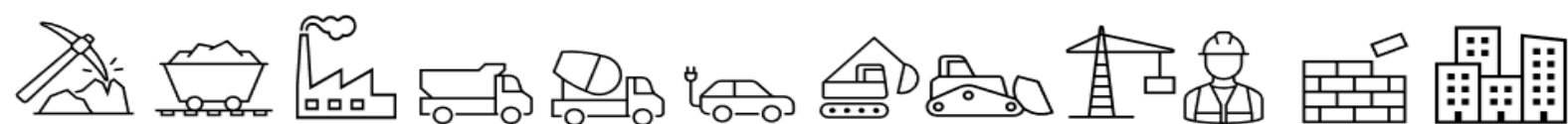
The possibility of using the delegated act procedure for setting harmonised standards foreseen under this Regulation would be particularly problematic, as public procurers would not have enough control over the evaluation of the performance of a product. This could seriously undermine the credibility of the performance declared and the 'credibility needs' of public procurers might not be met. Procurers are expected to satisfy very specific needs, i.e., specific functional and comfort needs, and regulators might not be aware or understand these needs and satisfy 'general interests' rather than these specific needs. Moreover, the proposal does not specify the mechanism to collect all the information needed to fulfil the proposed obligations¹⁰, which may relate to a diverse set of construction works, such as public buildings, highways, or even nuclear facilities. It would be an enormous challenge for the Commission to collect all the properties and characteristics, and the Commission might not have the necessary resources to fulfil this task.

FIEC demands...

- That the CPR only regulate the placing of construction products on the market and not apply to works contracts
- That contractors be – as far as possible – excluded from declaration and documentation requirements, in particular concerning the direct assembly of products on the construction site

⁹ See Art. 7 (2).

¹⁰ See Art. 7 (2).



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- Simple, clear, and transparent rules for all construction companies that enable them to tackle the numerous challenges they will be faced with (automation, innovation, circularity...)
- That contractors be able to identify quickly and unambiguously which construction products can be installed when all requirements under national building codes are met

II. Short-term and interim solutions to allow for the citation of standards

Harmonised technical specifications, such as harmonised European product standards, define the “common technical language” that is used by manufacturers (to express the technical performance of their products), by national regulators (to express the required performance of products to fulfil national building and construction requirements), and by designers and contractors to exchange information, irrespective of borders or local practices. Contractors therefore heavily rely on standards and need them to be aligned with ever changing market and regulatory demands. FIEC (again) points to the fact that there has been a backlog in the citation of harmonised standards for several years. FIEC, together with other stakeholders, has repeatedly called on the Commission for a solution to this urgent problem¹¹. The construction sector cannot continue working with outdated standards. The proposed revised Regulation does not sufficiently address these legitimate concerns.

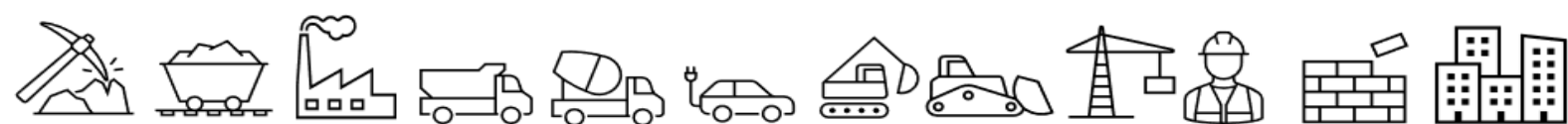
To the astonishment of many actors of the “ecosystem”, the proposal foresees a progressive replacement of present harmonised standards during a very long transition period. Given the enormous challenges that the sector faces and will continue to face in the (near) future, it is hard to see a product specification remaining unchanged or outdated for years or even decades. The progressive introduction of harmonised technical specifications over a period of 20 years would take too much time, and therefore, the proposal must foresee short-term or interim solutions to allow for the citation of harmonised standards under the present Regulation. FIEC would like to remind the Commission that the abovementioned backlog could be resolved, and the quality of standardisation improved, by updating the standardisation mandates given by the Commission to CEN in the form of new standardisation requests, and by closer cooperation between the two organisations. EU stakeholders should consider the alternative industry proposals made by FIEC, Construction Products Europe (CPE), the European Builders Confederation (EBC) and Small Business Standards (SBS)¹².

FIEC also fears that the proposal, if adopted in its current form, will not sufficiently contribute to the goals of the EU Strategy on Standardisation¹³ where construction is cited as one of the “most pertinent areas” where harmonised standards could improve competitiveness and reduce market barriers at international level, deliver on the twin green and digital transition and support the resilience of the single market. FIEC also questions whether the standards-setting will become more functional and “agile” as envisaged in the strategy.

¹¹ <https://www.fiec.eu/fiec-opinions/position-papers-pl/fiec-position-revision-construction-products-regulation>

¹² <https://www.fiec.eu/fiec-opinions/position-papers-pl/fiecebcsbscpe-joint-declaration-standardisation>

¹³ COM (2022) 31 final.



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III. A long transition period must not lead to further complexity

The proposal foresees to repeal the current Regulation only in 2045¹⁴. The coexistence of the current and the proposed revised Regulation, once adopted and into force, for a period of nearly 20 years would considerably increase the complexity of the framework(s) and lead to a very difficult situation in which the sector would be obliged to continuously adapt to new harmonised technical specifications. One must bear in mind that product families will be covered by harmonised standards under the current Regulation, by harmonised standards under the revised Regulation and by its delegated acts¹⁵. There are reasonable doubts as to whether the sector will be able to constantly keep track of all specifications. We therefore advocate for more suitable implementation timeframes.

FIEC demands...

- That short-term solutions be offered to remove the current backlog of standards and allow the construction industry to work with up-to-date standards, enabling it to contribute to the economic recovery post-Covid 19, to the completion of the twin transition and to be competitive at international level
- That the European Standardisation System be prioritised, better collaboration between the Commission and CEN be ensured and the industry be included in the writing of technical rules if delegated acts are used
- That the long transition period and the coexistence of the current and revised CPR does not lead to further complexity

IV. Delegated and implementing powers to remain “just-in-case” empowerments

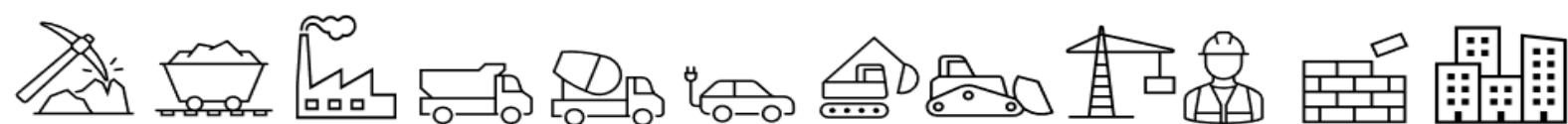
According to the Commission, as no harmonised standards for construction products could be cited in the Official Journal of the EU (OJEU) since late 2019, the new back-up empowerments for the Commission “should be even more comprehensive” (Recital 18). The European Commission now proposes to be empowered to modify some 20 articles of the Regulation through delegated or implementing acts¹⁶. It must be emphasised that the range of areas covered by delegated acts remains a serious source of concern, as these might increase the complexity of the framework and have a significant impact on its certainty and predictability - especially when used for harmonised standards¹⁷ or for defining additional product requirements and sustainability aspects of construction

¹⁴ See Art. 92.

¹⁵ This also applies to the conformity assessment systems (AVCP systems under the current CPR that will gradually be replaced by the AV systems under the revised CPR) as well as to the declaration obligations (some product families will still use declarations of performance under the present CPR, others will use the declarations under the new CPR, and there will also be declarations for used, remanufactured or surplus products and, in some cases, a declaration of conformity will be required).

¹⁶ See recital 92, 93, Art. 4 (3), points a to g, or Art. 5 and 6.

¹⁷ See Art. 4 (3).



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products, which will also trigger considerable additional workload for Commission staff. In addition, the delegated act procedure often does not allow for sufficient consideration of the views of all stakeholders. Delegated or implementing powers should thus only be conferred on the Commission in well-justified cases where there is no alternative to close a regulatory loophole that would otherwise exist. Apart from that, they should only be used in exceptional cases and remain "just-in-case" empowerments. It should be ensured that the industry and Member States are closely involved and included in the drafting of delegated acts, which should, first and foremost, be an industry- and expert-driven process. In any case, costs and burdens should be limited and all actors should have sufficient time to adapt to the rules set by delegated acts.

FIEC demands...

- That the plethora of delegated powers conferred on the Commission under the revised CPR only be used where there is no alternative to close a regulatory loophole, and, apart from that, only be used in well-justified and exceptional cases
- That the industry and its experts be included in the drafting of delegated acts, making it an industry- and expert-driven bottom-up process

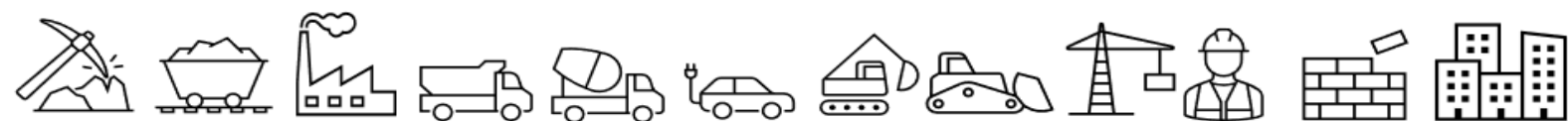
V. Better reflect human and financial resources necessary for the implementation of the Regulation on both sides

The resources necessary for the proper application and implementation of the proposed Regulation (both human and financial) will be considerable for public authorities, including the European Commission itself, and the industry. The Commission will have to perform more tasks than is currently the case under Regulation 305/2011. Most importantly, it will have the difficult task of implementing the new rules and maintaining the current system in parallel for some 20 additional years. It is questionable whether the Commission has the resources and the expertise necessary for setting harmonised technical specifications on the performance¹⁸ and requirements of products¹⁹.

Moreover, as explained above regarding the "harmonised zone", it will be especially difficult to collect the information about product families from procurers from each country on several subsectors (buildings, roads, infrastructure...), - information that has never been collected - and to develop appropriate evaluation methods, especially if the harmonised zone is intended to be 'exhaustive' and to cover the needs of all procurers for all potential uses and needs. FIEC therefore is concerned

¹⁸ See Annex I part A.

¹⁹ See Annex I parts B to D.



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that the ambitions of the Commission as set out in the proposal are not in line with the staffing needs mentioned. This also applies to other aspects foreseen in the proposal, such as the EU Construction Database. As regards the industry, it would be confronted with a lot more declaration obligations than before and be obliged to continuously adapt to new harmonised technical specifications. This comes not only with additional staffing needs, but also with costs.

FIEC demands...

- That the variety of newly introduced requirements associated with the extension of the scope of application be proportionate to the needs for human, administrative and financial resources "on the ground" so that the CPR can be properly implemented and applied by those actors subject to its provisions

VI. Clarify obligations and ensure coherence with other EU legislation on construction and buildings

Many new definitions and obligations, e.g., "construction products"²⁰ or the proposed obligations regarding the declaration of performance and conformity, need to be specified. It is, for instance, not entirely clear in which situations the two declarations mentioned above can be used in an independent, parallel, or complementary manner. Further clarity on some important aspects of the proposal is also needed on, e.g., "duly justified" cases/imperative grounds of health, safety, or protection of the environment²¹, obligations of economic operators de-installing or dealing with used products for re-use or remanufacturing²² or on the "protocols" to be established on the "place, conditions, and presumed length of use" of the de-installed product²³. Other definitions, such as "items" or the term of "services" (used in several definitions²⁴) are either too unclear (items²⁵) or should simply not be covered by the future CPR (services).

Finally, it is not sufficiently clear how the Commission intends to ensure that the revised Regulation is coherent with requirements of other EU initiatives, or that the interplay between the CPR and these initiatives is fully grasped by those that will be subject to these rules (e.g., the recast Energy Performance of Buildings Directive or EPBD). As an example, the proposal for a recast EPBD requires the calculation of the life-cycle global warming potential (GWP) for new buildings from 2030²⁶ onwards. However, contractors may not be able to perform this calculation - which will require access to a lot of information on construction products and their embodied carbon – in a rigorous

²⁰ See Art. 3 (1).

²¹ See Art. 7 (5).

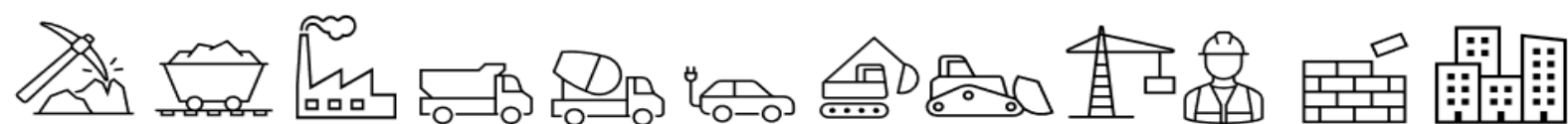
²² See Art. 29.

²³ See Art. 29 and 12.

²⁴ See, for example., Art. 3 (4).

²⁵ See, for example, Art. 3 (3).

²⁶ See Art. 7 and Annex III of the Proposal for a recast Energy Performance of Buildings Directive (COM (2021) 802 final).



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manner as, according to the proposal for a revised CPR, they will only have access to information of the foreseen Union-wide construction products database which regards them "specifically"²⁷.

FIEC demands...

- That those definitions and obligations which currently lack clarity be specified to avoid legal uncertainty for users
- That consistency between the future CPR and other product legislation at EU level be ensured, concerned actors be enabled to perform the calculation of the GWB of buildings and all actors can fully understand the interplay between different EU initiatives related to buildings and construction

VII. Other elements

CE marking and "other markings"

The CE marking is now to be affixed to construction products for which manufacturers are required to provide a declaration of performance that at least covers the performance with regard to the mandatory essential characteristics²⁸, and a declaration of conformity²⁹. These developments are to be welcomed as they could bring an improvement in terms of the "informative value" and the meaning of the CE marking - which often is misunderstood - provided that the information associated with it is relevant, credible, and based on correct criteria or information³⁰. If the CE marking covers the needs of all users (information, format, and credibility), "other markings"³¹ do not have an added value. However, if the CE marking does not cover all the needs of all users, "other markings", which often reduce administrative burdens, help to avoid delays and additional costs of construction works, should continue to be allowed, as they protect and can facilitate the activities of users.

Digital solutions

The proposal places greater emphasis on digital solutions³². The Single Digital Gateway and the creation of a Union-wide database for construction products could offer a clear overview over all national measures applicable to products (Single Digital Gateway) and over all information on products (Union products database) and therefore are, in principle, to be welcomed, provided that they do not place additional administrative and financial burdens on users. It should be clarified if, under

²⁷ See Art. 78 (2).

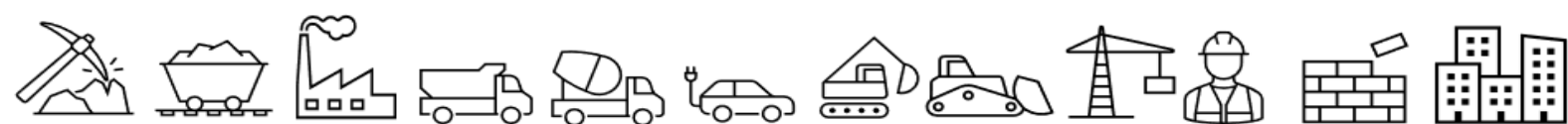
²⁸ See Art. 11 (2), Annex I Part A.

²⁹ See Art. 16, 17 and 18.

³⁰ Regarding European Assessment Documents (EADs), which are no longer considered harmonised technical specifications and are excluded from the 'harmonised zone', FIEC fears that CE-marked products based on ETAs could have a lower "informative value" compared to a CE-marking that is based on a harmonised standard (see, e.g., recital 62).

³¹ See Art. 18.

³² See Art. 7 (6) and Art. 78.



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which conditions and for what information (only specific information?) the database can be accessed by operators other than public authorities, how it will be maintained, and how exactly it will be compatible with the Digital Product Passport³³.

FIEC demands...

- That the information about the performance of the product associated with the CE marking and the information contained in the EU database be relevant, reliable, and credible for users of construction products
- That additional burdens for companies be avoided when digital solutions are implemented and the database for construction products be accessible to all economic operators, for all information they deem necessary to fulfil obligations under other EU legislation, e.g., the recast EPBD

Final remarks

In view of the abovementioned elements, it will be essential that the demands and concerns of the construction sector are considered, and that a constructive and solution-oriented dialogue be established between its representatives and the institutions. FIEC stands ready to work together with the EU institutions towards creating a clear, simple, user-friendly, and viable framework that enables the sector to live up to its key role in contributing effectively to the completion of the Green Deal and the digital transition.

³³ See COM (2022) 142 final (Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products).

