FIEC is the European Construction Industry Federation, representing via its 32 National Member Federations in 28 countries (25 EU, Norway, Ukraine & Turkey) construction enterprises of all sizes, i.e. small and medium-sized enterprises as well as "global players", carrying out all forms of building and civil engineering activities.

Position Paper 17.07.2020

FIEC Reaction to the taxonomy chapter on "Construction and Real Estate Activities"

Key messages

- As proposed by the TEG, the taxonomy will not trigger additional investments in sustainable construction.
- Eligibility for the construction of new buildings should be linked to the EPBD instead of imposing even stricter requirements for the taxonomy to support the enforcement of the EPBD.
- Eligibility for renovation should focus on the performance of the building instead of the level of expenditure specifically dedicated to energy efficiency measures. The threshold for "relative improvement" should take into account the technical feasibility and associated costs in order to make the taxonomy a supportive instrument for the renovation wave.
- The DNHS criteria should be aligned with existing legislation. When assessing the compliance with these criteria, the entire construction value chain should be considered, bearing in mind that some elements are out of the control of contractors.

1) Construction of new buildings

Threshold

"The threshold is based on 'nearly zero-energy building' (NZEB) requirements, which are defined in national regulation implementing the EPBD and are mandatory for all new buildings across EU Member States from 2021. To be eligible, the net primary energy demand of the new construction must be at least 20% lower than the primary energy demand resulting from the relevant NZEB requirements." (page 375)

"This implies that the taxonomy must will require even better levels of performance than NZEB, otherwise all new constructions would be automatically eligible, which would fail to direct finance towards more sustainable solutions and run the risk of diverting finance from the renovation of existing buildings. Since NZEB requirements correspond to different levels of performance across EU Member States, the use of a percentage improvement, rather than absolute figures, allows a degree of proportionality to be applied: in Member States where NZEB requirements result in a comparatively low PED, the energy reduction necessary to achieve the 20% improvement is smaller than in Member States where NZEB requirements result in a comparatively high primary energy demand." (page 376)

<u>Eligibility should be linked to existing legislation</u>

The **NZEB requirements** are **just in the process of being implemented** at national level and are in accordance with the respective national situation. Having to fulfil stricter requirements to qualify as sustainable **overrules legislation that was recently adopted, and which has the objective of contributing significantly to the mitigation of climate change.**

In its Communication on the European Green Deal, the European Commission stresses that "[it] will rigorously enforce the legislation related to the energy performance of buildings."[1] Therefore, instead of effectively making redundant recently adopted legislation, the **taxonomy should support the enforcement of the EPBD** by making it a part of the common language for environmental sustainability. This same approach has also been chosen for the following parts of this taxonomy chapter (renovation and individual measures) by linking eligibility of activities to compliance with recent and ambitious legislation.

Therefore, the **reasoning that "the taxonomy must require better levels of performance than NZEB**, or all new constructions would be automatically eligible, which would fail to direct finance towards more sustainable solutions and run the risk of diverting finance from the renovation of existing buildings" **is irrational**. Regulation offers a sufficient level of ambition and was made with the aim of contributing to a sustainable transition. By demanding performance improvement of at least 20% compared with the primary energy demand resulting from the relevant NZEB requirements, the taxonomy effectively makes a nonsense of the existing legislation. Furthermore, it has to be noted that a newly constructed building achieves better performance than a renovated building. Talking of a "risk" of diverting finance from the renovation of existing buildings is thus inappropriate. A negative impact on new construction will have a corresponding impact on jobs and growth and the effort will not necessarily be re-directed towards building renovation, resulting in a lose-lose situation for the industry, but also for building occupants and the environment.

Moreover, **pretending that meeting the 20% target requires less effort when requirements are already demanding is false.** It is rather the opposite. For instance, in France, only 1,876 buildings constructed during the period from 2014 to 2019 would fall under this category. This represents only 3% of the total amount of houses and 1.9% of non-residential building constructed during this period. This low percentage is due to the ambitious technical requirements that need to be fulfilled and the related increased construction costs that inhibit the realisation of such projects.

As it stands now, the taxonomy will not trigger additional investments and will ultimately miss its objective. First, construction companies are working towards fulfilling the targets that are required by national legislation in line with the EPBD. In that sense, the market is already adapting to stricter requirements. Second, where more ambitious solutions are available, opting for these will entail significantly higher costs for the clients who might eventually refrain from investing. Financial savings on energy bills may be insufficient to achieve return on investment within the lifetime of the materials used. By way of illustration, in Germany, over the last 4 years, construction costs increased by 10% due to stricter energy efficiency requirements. Even more striking: in Flanders, applications for permission got a temporary boost in late 2017 prior to the entry into force of stricter energy efficiency requirements in January 2018. Especially with regard

[1] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The European Green Deal. 11.12.2019. Page 9.

to the current economic crisis, construction clients do not have the resources to afford even costlier construction. They could voluntarily go beyond the requirements according to their needs but must not be obliged to do so to have their investment considered as sustainable.

Therefore, FIEC advocates for amending the threshold on page 375 as follows:

The threshold is based on 'nearly zero-energy building' (NZEB) requirements, which are defined in national regulation implementing the EPBD and are mandatory for all new buildings across EU Member States from 2021. To be eligible, the net primary energy demand of the new construction must be **compliant with** the primary energy demand resulting from the relevant NZEB requirements.

2) Building Renovation

Eligibility of renovation

In general, it is important to stress that contractors can only be held responsible for the **theoretical potential performance** of the building after the renovation. Ultimately, the **use phase** will significantly impact the actual performance of the building, but it is out of the contractor's control.

Moreover, FIEC is convinced that the taxonomy could be a strong tool in **support** of the **renovation wave**. For this to be realised, the taxonomy's requirements should take clients' financial constraints into account, as these could inhibit an increase in renovation works.

> "When expenditures can be distinguished by type, at least 50% must be related to energy-efficiency measures in order to consider the renovation expenditures as eligible in their entirety." (page 367)

This requirement is too prescriptive and restrictive. A renovation is not usually focused on energy efficiency only. According to the taxonomy, for a deep renovation, even if there were structural, safety or other issues with the building that needed fixing during the renovation, regardless of how expensive these were and the proportion of the overall proposed budget, 50% would have to be spent on energy efficiency. Having said that, renovation can also lead to increased energy efficiency, even if less than 50% of the budget is spent on energy efficiency measures. In addition, this approach poses practical problems in the sense that it is difficult to distinguish measures targeting energy efficiency stricto sensu from other types of measures.

Instead, one should opt for performance requirements as this is the case for "thresholds" in this taxonomy chapter. Measuring performance instead of expenditure will also constitute an incentive for cost-effectiveness.

FIEC therefore advocates for not integrating this approach into the delegated acts. Expenditure should be eligible if the renovation achieves the desired objective in terms of energy performance regardless of the amount spent on energy efficiency measures stricto sensu.

> "Major renovation: the renovation is compliant with the requirements set in the applicable building regulations for 'major renovation' transposing the Energy Performance of Buildings Directive (EPBD). The energy performance of the building or the renovated part upgraded must meet cost-optimal minimum energy performance requirements in accordance with the EPBD." (page 380)

FIEC firmly welcomes linking the taxonomy to existing legislation and agrees that deep renovation can substantially contribute to the increase of energy efficiency in the building stock.

> "Relative improvement: the renovation leads to reduction of Primary Energy Demand of at least 30% in comparison to the energy performance of the building before the renovation." (page 380)

The threshold for "relative improvement" is given as an alternative to allow the eligibility of renovations that may not meet the "major renovations" requirements but still deliver considerably energy savings. However, from a technical point of view, only the renovation of very wasteful, inefficient buildings could lead to a reduction of primary energy demand of 30%. Although technically feasible, such a renovation would come at major costs. **To make the taxonomy a supportive instrument for the renovation wave, FIEC proposes that renovation is also eligible if the concerned building improves by at least two energy performance classes in accordance with the EPBD.** Certain derogations should also be provided for buildings in historic urban centres: any intervention would come at a major cost and must preserve and not compromise the historical and aesthetic value of the building. **FIEC proposes that in this case renovations are also eligible if the building concerned improves by at least one energy performance class.**

> *"The methodology used for the measurement of floor area should be stated referring to the categories defined in the International Property Measurement Standards." (page 380)*

The IPMS is a voluntary standard which is not based on EU legislation or policy. For measuring the floor area national standards should be used instead.

2) Do not significant harm assessment

In general, when **assessing the compliance with the DNHS criteria** it should be taken into account **who can actually be held responsible** with regard to the respective requirement. In the following we will demonstrate that some criteria are out of the control of construction companies. In fact, different players in the value chain have a role to play such as designers, planners, clients, users or manufacturers.

> "Lack of resistance to extreme weather events (including flooding), and lack of resilience to future temperature increases in terms of internal comfort conditions."

FIEC agrees that construction has great potential with regard to the adaptation of climate change. However, we would like to point out that extreme weather events are evolving and become more dramatic and damaging over time. Therefore, a contractor could build in resilience, which subsequently proved not to be sufficient in a "new" kind of extreme weather event. Current modelling of the impact of climate change can guide designers, enabling them to build in a degree of climate proofing. However, these scenarios can cover possibilities that can be calculated on the data we have available today. Let's take the example of flooding in coastal areas. Predictions can forecast the most likely extreme weather event, such as excessively high tides and these in turn can inform national building codes. However, there are no guarantees that these building codes will not be superseded by even more dramatic high tides, never previously imagined. In this kind of case, it is not impossible that buildings constructed to current standards are nevertheless flooded in future, as climate change accelerates beyond what we consider likely today. This science is evolving and contractors can only take precautions that appear sufficient based on what we know, or can plausibly predict, according to today's data.

"Excessive water consumption due to inefficient water appliances."

First, the choice of such products is not usually made by the contractors and in any case, the performance of these products is not controlled by the contractor. Furthermore, the actual use of the products by the end user is key. Should an end user not follow any recommendations for optimal use, provided by the manufacturer, the performance may not reach the level intended by the manufacturer. Therefore, the contractor can only be held responsible for the installation of these appliances.

"Landfill and/or incineration of construction and demolition waste that could be otherwise recycled/reused."

"At least 80% (by weight) of the non-hazardous construction and demolition waste (excluding naturally occurring material defined in category 17 05 04 in the EU waste list) generated on the construction site must be prepared for re-use or sent for recycling or other material recovery, including backfilling operations that use waste to substitute other materials."

The figure of 80% is in principle technically achievable. However, fulfilling this requirement can lead to adverse effects in areas where recycling facilities are locally not available. Where this is the case, waste has to be transported over long distances resulting in increased CO2 emissions. In such circumstances, transporting the waste to landfill sites might be economically and environmentally more advantageous.

FIEC therefore recommends to align the taxonomy with the Waste Directive that was amended in 2018 and according to which the preparing for re-use, recycling and other material recovery, including backfilling operations that use waste to substitute other materials, of non-hazardous construction and demolition waste shall be at minimum 70% by weight by 2020. Before imposing additional requirements, the effectiveness of this Directive should be assessed first.

"Indirect damage to forest ecosystems due to the use of timber products originating form forests that are not sustainably managed."
"At least 80% of all timber products used in the new construction for structures, cladding and finishes must have been either recycled/reused or sourced from sustainably managed forests as certified by third-party certification audits performed by accredited certification bodies, e.g. FSC/PEFC standards or equivalent."

With regard to materials, allocation of responsibility can be difficult as contractors sometimes follow the designer's indications. In that case, the designer is responsible for the choice of the product. Equally, the end clients specify the budget for designers and contractors, as well as potentially specifying materials.

If there is a choice for the contractor, sourcing from sustainably managed forests is already common practice. In that sense, contractors already have to provide certificates providing the origin of timber products.

Recycling or re-use of timber products is not comparable to its sourcing from sustainably managed forests. First, life cycle assessments would be necessary to determine whether it is really more environmentally friendly than a certified natural product. Second, challenges remain with regard to the quality of recycled timber, in particular when it comes to structural elements of a building. Only products which are certified being fit for purpose should be used. Third, while this approach is destined to create a market for recycled and reused wood, local supply chains are crucial in order to achieve true sustainability. It is counter productive to transport recycled/reused wood all over the European Union to compensate for potential shortages of recycled/reused wood in some areas.

Having said this, the overall figure of 80% is acceptable as it applies to recycled/reused and sustainably sourced timber taken altogether. In any case, there should be no specific requirement for recycled/reused timber.

3) Future developments

Review of the taxonomy regarding the NZEB requirements

In line with FIEC's comments made above, the taxonomy should be updated in accordance with the revision of the NZEB requirements. With the NZEB requirements expected to be further tightened over the coming years, the level of ambition of the taxonomy in this regard will also be increased over time. The review of the NZEB will consider technological developments and the contribution adopted according to legislation made with regard to the mitigation of climate change. Linking the taxonomy to the development of the EPBD will allow for a coherent and ambitious approach in building regulation.

> "The Sustainable Finance Platform should progress this work with the aim of introducing thresholds for embodied carbon by 2025." (page 373)

First, it is essential to stress that contractors only have limited control over embodied carbon, which is generated during the manufacturing of products, i.e. before they are installed in a building by the contractor.

Furthermore, sustainable materials, which have been produced as a result of decarbonised processes in production can be more expensive – as decarbonisation generates additional costs for manufacturers, who need to recover these costs in the subsequent price of their products - and their availability depends on the progress made in the respective market. For reducing embodied carbon in products, making them more sustainable whilst remaining affordable and available, manufacturers should be given enough time. Thus, progress on embodied carbon in taxonomy should be in line with progress in construction products manufacturing. Whilst we recognise an increased demand can eventually drive an increase supply, going too fast will substantially increase overall construction costs which might lead to the client refraining from investing. Moreover, the introduction of such thresholds will ultimately require certification regarding the concerned products which will again increase the bureaucratic burden for companies. The close involvement of construction professionals in this process will be essential.

> "[…] there could be a requirement for renovations to occur within 15 years from the acquisition date." (page 373)

Clients of construction companies cannot be forced to invest in the renovation of their building and 15 years following acquisition is not feasible in many cases. **FIEC therefore advocates for not integrating such an approach in the future work of the Platform on Sustainable Finance. Renovation intervals cannot be prescribed or binding.**