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. **FIEC** is a Member of the Platform on Sustainable Finance.

Feedback on the draft delegated act on climate change mitigation

Construction of buildings, renovation of existing buildings, acquisition of buildings, and construction of infrastructure

18/12/2020

In the following you can find FIEC's assessment of the draft delegated act on climate change mitigation with regard to construction activities. We identified potential risks for the draft delegated act to be in contradiction with core principles guiding the development of technical screening criteria. Moreover, we identified several issues regarding the usability of criteria. As a member of the TWG in the Platform on Sustainable Finance, entrusted with the preparation of the next delegated acts, we especially want to ensure the usability of DNSH criteria as these might be used for the coming delegated acts.

1) Chapter "7.1 Construction of new buildings"

a) Description of activity – Exclude demolition activities

FIEC recommends excluding demolition activities from the scope of the delegated act on climate change mitigation.

First, the impact of demolition activities regarding climate change mitigation is not significant and does not justify its inclusion under the delegated act for this environmental objective. On the other hand, covering demolition activities is essential when it comes to developing the delegated act for the environmental objective "Transition to a circular economy" since the way a demolition is executed and demolition waste is managed can have a significant positive impact on the transition to a circular economy. Second, demolition activities are performed independently from the construction of buildings. They are performed by specialised demolition contractors and occur on a different contract basis. Third, most of the criteria in this chapter of the delegated act are not applicable to demolition activities.

b) Substantial contribution

Substantial contribution criterion in the draft delegated act on climate change mitigation

> "The Primary Energy Demand (PED), defining the energy performance of the building resulting from the construction, is at least 20 % lower than the threshold set for the nearly zero-energy building (NZEB) requirements in national measures implementing Directive 2010/31/EU of the European Parliament and of the Council. The energy performance is certified using an as built Energy Performance Certificate (EPC)."

Rationale in the TEG Report from March 2020 (p. 376)

> "The establishment of a relative threshold in the form of a percentage improvement on NZEB requirements is justified by the fact that from 2021 new constructions will be mandated by national/regional building regulations to comply with NZEB requirements. This implies 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. 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."

FIEC urges to link the eligibility to compliance with NZEB requirements. We consider the present criterion to be in contradiction with core principles guiding the development of technical screening criteria.

Policy coherence [Article 19 (1) (d)]: Requesting stricter requirements than those foreseen by the NZEB requirements undermines existing legislation as the NZEB requirements only apply from January 2021. Until now, constructing according to these requirements has been voluntary and the effects could not have been properly assessed. The chapter on "Renovation of existing buildings" also refers to compliance with existing legislation.[1] The requirements for the construction of new

[1] As set in the applicable national and regional building regulations for 'major renovation' implementing Directive 2010/31/EU. The energy performance of the building or the renovated part upgraded meets cost-optimal minimum energy performance requirements in accordance with the respective directive.

buildings could still be tightened within the mandate of the Platform on Sustainable Finance once the effects of implementing NZEB requirements have been properly evaluated.

Environmental integrity [Article 19 (1) (g)]: Demanding even stricter energy-efficiency requirements violates the principle of environmental integrity, i.e. taking into account life cycle considerations. The higher the energy performance of a building, the higher the CO2 emissions linked to the manufacturing of construction products such as insulation material.[2] Moreover, this is in contradiction with the provisions on the environmental objective "Transition to a circular economy" which require the efficient use of raw materials (Article 13 (1) (a)).

Level playing field [Article 19 (1) (j)]: Requiring a better performance is not a neutral measure as countries implemented the requirements of the EPBD in different ways with some having already reached a cost-optimal level with their NZEB requirements. This would lead to construction companies, investors and homeowners in such countries being discriminated through an excessively narrow scope.

Examples:

- In Denmark, NZEB corresponds to "low energy class" also known as "volunteer building class", defined in the building regulation from 2018, which is the most demanding energy performance class.
- In France, a reduction of the PED by 20% can be compared to the labels Effinergie+ and BEPOS. At the end of 2019, only 1 876 building, of which 1 430 residential (70 769 units) and 442 non-residential buildings, qualify for these labels.[3] This represents only 3% of residential housing units and 1.9% of non-residential buildings constructed between 2014 and 2019. Technical challenges and high costs which could not be compensated by financial supporting schemes led to such a low level of investment.
- For the Netherlands, a study conducted by the Economic Institute for Construction and Housing shows that the implementation of the NZEB requirements, i.e. an increase of the energy performance coefficient, "could only be attained by letting go the cost-optimality principle."[4]

[2] Centre Scientifique et Technique de la Construction : Du Nearly Zero Energy Building à la neutralité carbone. March 2020. Page 9. & JRC: User Manual 1: Introduction to the Level(s) common framework. October 2020. Page 20.
[3] Own calculations of the French Building Federation (FFB) based on the Observatoire des Bâtiments Basse Consommation.
[4] Economic Institute for Construction and Housing: Lessons on the proportionality of the implementation of the EPBD directive 2010. November 2020. Page 65.

Against this background, especially considering the examples above, going beyond the NZEB requirements equals a level of ambition that is too stringent and thus leads to a niche market that does not leverage enough investments and environmental improvement and thereby limits the usability of the Taxonomy for the construction of buildings.

This is reflected by similar concerns expressed by financial institutions regarding the chapter on "Acquisition of buildings" of which the scope is considered being too narrow. In some countries, the low share of constructed buildings in the building stock complying with the EPC Class A follows the same logic as the low share of buildings complying with NZEB requirements with these two being similar or identical.[5] High technical and especially financial barriers (as described above) pose an obstacle to a sufficient level of investment in such buildings.

FIEC is therefore proposing the following amendments:

Construction of buildings

The Primary Energy Demand (PED), defining the energy performance of the building resulting from the construction **complies with** the threshold set for the nearly zero-energy building (NZEB) requirements in national measures implementing Directive 2010/31/EU of the European Parliament and of the Council. The energy performance is certified using an as built Energy Performance Certificate (EPC).

Acquisitions of buildings

For buildings built before 31 Dec 2020, the building **fulfills NZEB-requirements for new buildings *or* belongs to the top 15% of building stock in the relevant subcategory *or* fulfills the requirements for renovation according to 7.2 within three years.**

[5] For instance, in Wallonia, „Q-ZEN" correspond to EPC class A.

2) Chapter "7.2. Renovation of existing buildings"

Criterion for substantial contribution to mitigation of climate change

"The building renovation complies with the applicable requirements for major renovations.
Alternatively, it leads to a reduction of primary energy demand (PED) of at least 30 %."
Footnote in delegated act regarding 30%: "The initial primary energy demand and the estimated improvement is based on a detailed building survey, an energy audit conducted by an accredited independent expert or any other transparent and proportionate method, and validated through an Energy Performance Certificate. The 30 % improvement results from an actual reduction in primary energy demand (where the reductions in net primary energy demand through renewable energy sources are not taken into account), and can be achieved through a succession of measures within a maximum of three years."

FIEC recommends replacing the proposed alternative improvement by an improvement relating to energy performance classes. While we are considering the 30% improvement as the right level of ambition to address the most wasteful part of the building stock, an alternative criterion based on the improvement by energy performance class would allow to incentivise investors to also renovate less wasteful buildings and thereby improving the performance of the entire building stock. At the same time, energy performance classes are a well-accepted tool at national or regional level.

We therefore propose to modify the criterion as follows:

Alternatively, renovations achieving the following improvement in energy performance classes:

- **for buildings with an energy performance class lower than D, the renovation leads to an improvement to class C**
- **for buildings with energy performance class D, the renovation leads to an improvement to class B**
- **for buildings with energy performance class B or C, the renovation leads to an improvement to class A**

Moreover, the text of the corresponding footnote is unclear. It is unclear whether the theoretical improvement or the actual improvement is the determining factor for the eligibility of a renovation and how compliance be proven.

We recommend deleting the second sentence and thus modifying the footnote as follows: The initial primary energy demand and the estimated improvement is based on a detailed building survey, an energy audit conducted by an accredited independent expert or any other transparent and proportionate method, and validated through an Energy Performance Certificate.

3) DNSH criteria for construction of buildings (7.1), renovation (7.2) & construction of infrastructure (6.13 to 6.17)

a) Transition to a circular economy

> "Operators limit waste generation in processes related to construction and demolition, in accordance with the EU Construction and Demolition Waste Management Protocol and taking into account best available techniques and using selective demolition to enable removal and safe handling of hazardous substances and facilitate re-use and high-quality recycling by selective removal of materials, using available sorting systems for construction and demolition waste."

This provision is unclear and thus limits the usability of this criterion. First, the protocol does not refer to the limitation of waste during the construction process but to the management of the waste generated during construction or demolition. Second, parts of this criterion are unclear, e.g. "best available techniques". Third, due their vagueness, it is not possible to prove compliance with most of the criteria contained in the CDW protocol.

We therefore recommend simplifying and replacing this part of the DNSH criteria by listing the following three elements of the CDW Management Protocol's checklist:

- **Prepare a process-oriented waste management plan showing how materials are to be reused or recycled.**

The existence of such a plan can be proven and the development of a waste management plan will allow for a more structured approach to the processing of waste taking into account the local/regional infrastructure.

- **Use the European List of Waste.**

This is a clear criterion and will help to assure the comparability of data across the EU.

- **If demolition activities are kept in the scope of activities: Prior to the demolition, a pre-demolition audit must be performed by a competent auditor.**

The conduct of such an audit can be proven and will allow for a selective demolition and thus a better processing of demolition waste.

b) Pollution and prevention control

When it comes to verifying compliance, we want to stress that the information/testing on building products' emission of pollutants has to come from the manufactures and should be done before the completion of the building.

"Measures are taken to reduce noise, dust and pollutant emissions during construction or maintenance works."

It will also be difficult to prove compliance with this provision. Usually, such measures are defined in environmental plans that come with a construction project. In practice, one way to follow-up on such measures is to note the number of complaints by residents but such an approach would limit the usability of the Taxonomy.

For reasons of usability, we recommend deleting this provision. Such a criterion can again be included in the context of the revision of the criteria once ways for quantification and proving compliance were identified.

c) Biodiversity

An Environmental Impact Assessment (EIA) or screening has been completed, for activities within the Union, in accordance with Directive 2011/92/EU.

For reasons of usability, FIEC recommends clarifying the reference to an Environmental Impact Assessment by adding

The requirements do not apply where regulated otherwise in national regulation for planning, building or environment.

as stipulated in article 1.4. of the corresponding Directive.

The new construction is not built on one of the following:
(c) forest land (whether or not covered by trees), other wooded land or land that is partially or wholly covered or intended to be covered by trees, even where those trees have not yet reached the size and cover to be classified as forest or other wooded land, as defined in accordance with the [FAO definition of forest].

Level playing field (j): FIEC considers this provision to be in contradiction with the principle of ensuring a level playing field as it will considerably limit the possibility for constructing in a taxonomy-compliant way in countries where forest land is abundant such as in Sweden or Finland. Due to such differences between Member States and within Member States, the allocation of building permits is locally regulated.

Moreover, we consider the question on sustainable land use to be solved by the "Avoid-Reduce-Compensate" approach, covered by the Directive 2011/92/EU.

This approach has also been considered as appropriate for meeting the DNSH principle in this delegated act with respect to the construction of infrastructure. We very much welcome this approach as the conduct of an EIA and thus the application of the "Avoid-Reduce-Compensate" approach ensure that the negative environmental impacts of constructing infrastructure are kept to a minimum and that residual impacts are compensated for.

We therefore recommend deleting the above criterion.