

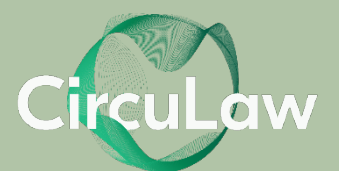


# Position paper

## EU law perspective for the circular construction sector



## SUMMARY





This paper further discusses the most important developments for the construction sector following EU legislative packages such as the Green Deal and Fit for 55. We aim to discuss the most relevant items and provide some perspective for local governments and regions that aim to stimulate a circular construction sector.

### General considerations about the legislative packages

1. The EU Green Deal is incredibly complex. It contains over 150 different laws and regulations. A comprehensive overview is already available through CircuLaw.<sup>1</sup>
2. The legislative packages started of with a lot of ambition on sustainability. This ambition has been decreased through the legislative process. We include an example of this is legislation concerning the use of sustainable construction products. On the left you can look at the original proposal, and on the right we find the result of the negotiation.<sup>2</sup>

#### Amendment 60

#### Proposal for a regulation

#### Recital 90

Text proposed by the Commission	Amendment
(90) In order to enhance the use of sustainable construction products whilst avoiding market distortions and to reach alignment with the Ecodesign for Sustainable Products Regulation, Member States' public procurement practice should target the most sustainable amongst the compliant products. Requirements applicable to public procurement contracts set out <b>by implementing</b> acts should be established <b>according to</b> objective, transparent and non-discriminatory criteria.	(90) In order to enhance the use of sustainable construction products whilst avoiding market distortions and to reach alignment with the Ecodesign for Sustainable Products Regulation, Member States' public procurement practice should target the most sustainable amongst the compliant products. Requirements applicable to public procurement contracts <b>that are specifically tendered as green public procurement contracts</b> set out <b>in delegated</b> acts should be established <b>by the Commission based on</b> objective, transparent and non-discriminatory criteria, <b>taking into consideration the specific constraints of small local authorities and the needs of SMEs.</b>

The revision started with a general rule for public procurement proceedings “should target the most stainable amongst compliant products” versus the final amendment were more requirements have been introduced.

3. After the legislative process has been completed for the majority of laws, what we see clearly is a focus on:
  - green growth and the (renewable) energy sector;

<sup>1</sup> [European green deal.pdf](#)

<sup>2</sup> Amendment 60 Revision of the CPR as published in the official journal P9\_TA(2023)0253 – [New Regulation on Construction Products – Amendments adopted by the European Parliament on 11 July 2023 on the proposal for a regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation \(EU\) 2019/1020 and repealing Regulation \(EU\) 305/2011 \(COM\(2022\)0144 – C9-0129/2022 – 2022/0094\(COD\)\) \(Ordinary legislative procedure: first reading\)](#)

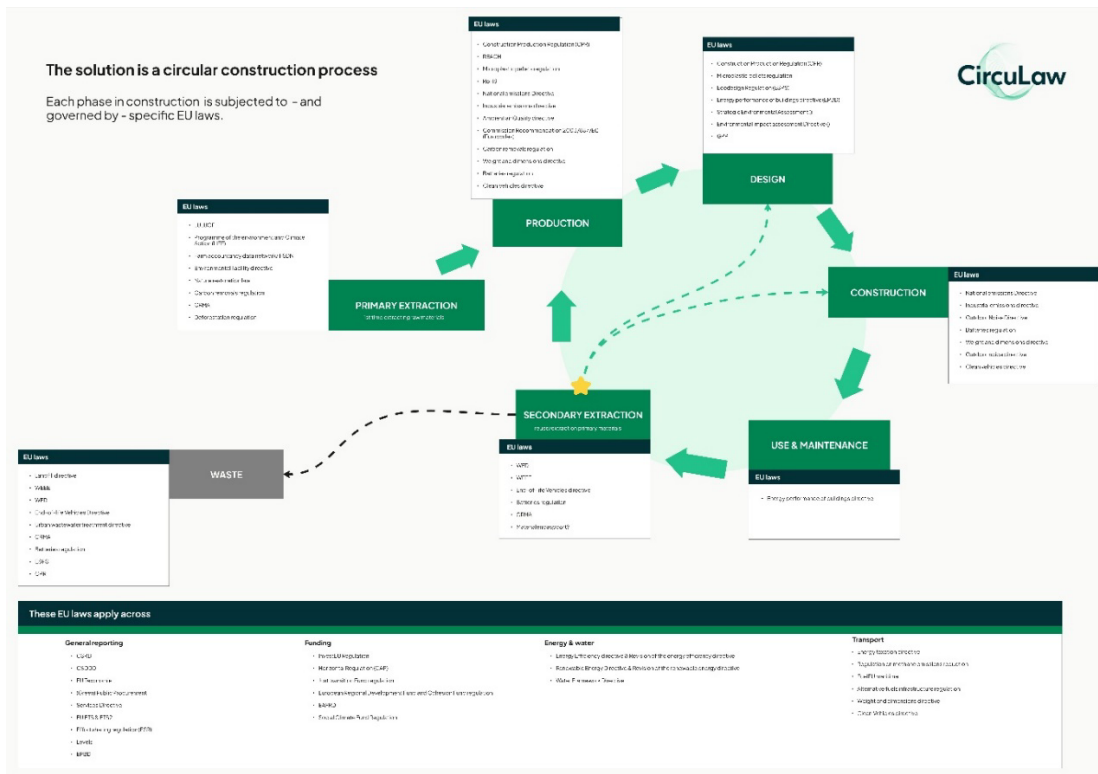


- most legislation is focused on industry and reduction of dependencies on non-EU countries, therefore most legislation targets **producers** (80%)
- sector and product specific laws -> Obligations and opportunities are **scattered** throughout various laws. Makes implementation in national legislation difficult for national law makers.
- Opportunities arise for frontrunners (governments) through public procurement processes. Leading by example and setting high standards for products. However, we need collaboration between governments for a successful application.
- The legislative package is set to enforce a minimum (harmonised) standard throughout the EU. This minimum standard is generally not ambitious (or circular)
  - Frontrunners are at risk slowing down by mandatory rules and requirements
  - A lot of uncertainty about the scope of the EU obligations for national initiatives and a risk of non-compliance (for example: discussion in the Netherlands about the chances of maintaining national standard for measuring the environmental impact of buildings and infrastructure).



### Specific considerations for the construction sector

4. The construction sector has been named as a priority in het CE Action Plan. Several laws and regulations have been put in place to facilitate change in the sector. CircuLaw has created another overview of the relevant legislation in the construction sector per phase:



5. This overview shows the abundance of legislation per phase in the construction sector. As expected a lot of legislation is directed towards the production phase of construction. The need to produce better products should drive legislation for materials find a way towards re-use, re-purpose and re-manufacturing. However we still see a lot of focus on the production of new goods.

A lot of legislation has been put in place that crosses the sector and is targeted at large companies. CircuLaw distinguishes legislation primarily focused on reporting, funding, energy & water and transport.

6. When looking at strategies to make the construction sector more circular, we find a number of solutions.<sup>3</sup>

- Technical strategies: biobased, repurpose and recycling, circular energy-renovations, alternative materials.
- More effective use strategies: building smaller, transform offices to houses, extend lifespan of infrastructure works.

<sup>3</sup> Copper8 e.o.: “Bouwen binnen planetaire grenzen, co2-impact van de Nederlandse bouw” (transation: Building within planetary boundaries, co2 impact from the Dutch construction sector), February 2024 [CO2-impact-van-de-Nederlandse-Bouw.pdf](#)

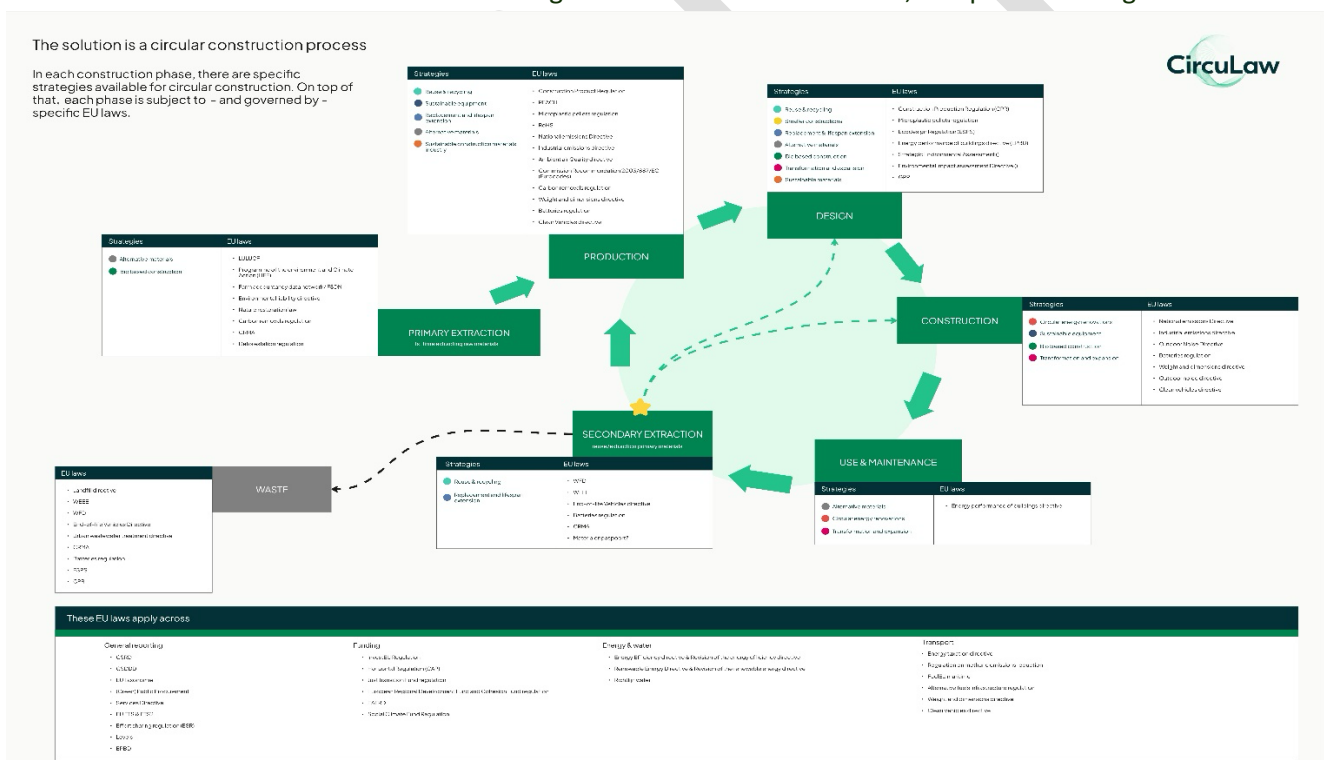


c. Industrialisation strategies: increase emission reduction in industry, zero-emission equipment:

Figuur 9  
Doorgerekende strategieën, op basis van de deelrapporten

BOUWTECHNISCHE STRATEGIEËN	BOUW-EN BOUWMATERIALEN-INDUSTRIE
<p><b>Biobased bouwen</b></p> <ul style="list-style-type: none"> <li>• Toepassen hout (CLT, HSB)</li> <li>• Toepassen vezelgewassen</li> </ul>	<p><b>Verduurzaming bouwmaterialenindustrie</b></p> <ul style="list-style-type: none"> <li>• Versnellen CO<sub>2</sub>-reductie in bouwmaterialenindustrie (2% / jaar → 5% / jaar)</li> </ul>
<p><b>Hergebruik &amp; recycling</b></p> <ul style="list-style-type: none"> <li>• Hergebruiken bouwproducten</li> <li>• Recycling van bouwmaterialen</li> <li>• Hergebruiken geleiders</li> </ul>	<p><b>Verduurzaming materieel</b></p> <ul style="list-style-type: none"> <li>• Emissievrij materieel in infrastructuur</li> </ul>
<p><b>Circulaire energienovaties</b></p> <ul style="list-style-type: none"> <li>• Recycling isolatiematerialen</li> <li>• Toepassen biobased isolatiematerialen</li> <li>• Circulaire installatieproducten</li> <li>• Hergebruiken materialen en producten</li> </ul>	
<p><b>Alternatieve materialen</b></p> <ul style="list-style-type: none"> <li>• Vervanging asfaltwegen door klinkerbestrating</li> <li>• Toepassen van geopolymer beton</li> </ul>	
VOORRAAD-STRATEGIEËN	
<p><b>Optoppen &amp; transformeren</b></p> <ul style="list-style-type: none"> <li>• Optoppen bestaande woningen (flats)</li> <li>• Transformeren kantoorgebouwen tot woningen</li> </ul>	
<p><b>Kleiner bouwen</b></p> <ul style="list-style-type: none"> <li>• Verschuiven van grondgebonden woningen naar appartementen</li> <li>• Verkleden van woonoppervlaktes</li> </ul>	
<p><b>Vervanging &amp; levensduurverlenging</b></p> <ul style="list-style-type: none"> <li>• Levensduurverlenging asfaltwegen</li> <li>• Levensduurverlenging bruggen</li> </ul>	

7. When we combine these strategies with the relevant EU laws, this picture emerges:



8. Ideally, one would hope that the legislative packages are aligned with these circular strategies. However, we conclude that this is partially true for the industrialisation strategies but not the case for the technical strategies and more effective use strategies.

9. We have made this assessment purely based on the Dutch legal framework in which the EU legislation and the circular strategies can be placed. Due to the differences in legislation in the various member states, this can vary significantly in countries throughout the EU.



We would like to illustrate this by pointing out differences in the way in which social housing is organised in Europe. In a few member states social housing is organised by public authorities, that qualify as public authorities and adhere to public procurement laws. This is not (yet) the case in the Netherlands. The Dutch social housing corporations have not yet been obliged to follow public procurement laws. Therefore, these corporations cannot make use of the front runner position through public procurement, whilst French and German social housing corporations can make use of these possibilities.

The same can be said about infrastructure. In the Netherlands, almost 97% of the road network is held by public authorities (Rijkswaterstaat, provinces and municipalities) and is therefore governed by public procurement laws. This can vary significantly in countries throughout the EU.

### **Power of reporting**

10. With the introduction of the CSRD, large companies must actively report on their sustainability. The CSDDD imposes an obligation to reduce and prevent the environmental impact for very large companies. These large companies will also be affected by reporting on sustainability by the financial sector. It is believed that most companies that are active in the construction sector in the EU and the Netherlands specifically will need to report on their performance on sustainability in the near future.<sup>4</sup>

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<sup>4</sup> SGS I The EU playing field of Circular Construction, mapping EU policies and impact, 24 May 2023: [The EU playing field of Circular Construction : Mapping EU policies and impact - Rijkswaterstaat Publicatie Platform](#)



11. Local and regional authorities are not directly subjected to the obligations of the CSRD and CSDDD. They are not required to provide information about their non-financial performance such as sustainability and circularity. However when local and regional authorities are part of the supply chain of large companies, they have to provide non-financial data to the companies active in their supply or value chain. They need to provide non-financial information in for example public procurement proceedings. Local and regional governments can also implement the reporting standards voluntarily by, for example, working on their own sustainability reports. Recently a 'coalition of the willing' lead by the municipality of Haarlem published guidance on sustainability reporting for municipalities.<sup>5</sup> The list of relevant indicators includes scope 1 and 2, and scope 3 and progress towards goals of the Paris Agreement. This is a fantastic example of governments leading by example.
12. The amount of data that will become available in the coming years, will allow for governments to make better choices in their public procurement processes and focus on rewarding sustainable frontrunners.

**Recommendations [will be finalised after METREX]:**

13. In order to facilitate frontrunners in circular construction, more is needed by every party concerned. More is needed from lawmakers and policymakers but also from the commercial frontrunners. Unfortunately, the extensive legislative package is not specific enough to promote circular strategies.
14. We advise governments to use the frontrunner-position as laid down in green public procurement as a driver for change in the sector.
15. We suggest working on a '**common CE framework**' in which standards on 'more ambitious sustainability requirements' for construction products have been made, before the European Commission decides to introduce mandatory minimum requirements.

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<sup>5</sup> Coalition of the willing: Guidance on sustainability reporting and accounting for governments (Handreiking Duurzaamheidsrapportage en -verantwoording voor decentrale overheden, oktober 2024: [1731503132285](https://www.coww.nl/1731503132285))



## IN DEPTH VIEW ON LEGISLATION

- i. CPR
- ii. ESPR
- iii. CSRD
- iv. CSDDD
- v. EPBD
- vi. ETS/ETS2
- vii. Taxonomy
- viii. EED



## i. CPR I Construction Products Regulation<sup>6</sup>

### Purpose of CPR

The Construction Product Regulation (CPR) sets requirements for construction products for the European internal market in the context of functionality, safety and environmental protection. The aim of the CPR is to regulate the free movement of construction products in the internal market, and to protect the safety and health of humans and the environment. The regulation is currently being revised.

### Status

5 November 2024      The revision of the CPR has been adopted by the Council

13 December 2023      Provisional agreement reached between the European Parliament and the European Council.

### 1. What is CPR?

The CPR is aimed at realising the European Commission's sustainability ambitions, which derive from the Green Deal, among other things. The current text contains a number of important changes compared to the revision version and previous proposals for adjustment:

- With the CPR Acquis Process, the revised version introduces a harmonised EU standardisation system that allows manufacturers to bring their construction products to market earlier and standards to be published more quickly.
- There will be a digital product passport, which will make the construction sector more digital and sustainable.
- It remains possible for contracting authorities/authorities to include sustainability in the tendering of construction works.
- The Revision explicitly addresses the reuse and remanufacturing of construction products.
- Finally, the Annex to the Revision contains a list of assessment points that producers must include in the Declaration of Performance and the Declaration of Conformity. It also includes a large number of regulations in the field of sustainability and the environment.

### 2. Obligations under CPR

#### Essential properties and product requirements

The CPR distinguishes between essential product properties and product requirements. Essential properties are about how a product behaves in a certain situation, or what its effects are.

Annex I.1 outlines a number of general requirements for products to ensure that construction works are safe; for example, how long a particular product must continue to function in the event of a fire. From these general requirements, essential characteristics of products must be derived.

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<sup>6</sup> Latest version: P9\_TA(2023)0253, d.d. 17 juli 2024 [EUR-Lex - 52023AP0253 - EN - EUR-Lex](#)



For the environment, Annex I.2 contains predetermined essential characteristics. This concerns, for example, the effects of a product on climate change, but also on water use.

Annex I.3 contains the product requirements in the field of safety and the environment. These requirements concern, for example, the amount of recycled material in the construction product.

### Harmonised technical specifications

When a manufacturer wants to place a construction product on the market, it must first be checked whether a harmonised technical specification is available for that product. A harmonised technical specification may include the following elements:

The essential properties of the construction product and its assessment method

It is important to distinguish between **determination methods** and **performance requirements** for construction products. Under the CPR, the assessment methods have been laid down in European harmonised standards. Member States are free to impose certain performance requirements on construction products, such as the determination of a European fire class for a construction product in a particular application, but they cannot apply a determination method other than the European harmonized determination method for determining that European fire class.

Another new addition of the revised CPR is that the Commission can also adopt its own harmonized technical specifications for construction products falling within the harmonized zone in so-called implementing acts. The Commission can set certain product requirements by means of delegated acts. This includes certain European minimum standards, such as CO<sub>2</sub> emission standards.

- Member States may not impose additional requirements on products on top of the CE markings.
- Member States may not impose other or stricter determination methods
- Member States may not impose additional data requirements above the required data that needs to be provided to acquire the CE mark or DoP<sup>7</sup>.

According to the CPR, for certain construction products, the manufacturer must indicate which minimum requirements are achieved. For example, a brick can be used constructively. For example, the manufacturer specifies how much tension and pressure (weight) that stone can handle. The manufacturer has had these characteristics tested using a determination method from a harmonized standard.

The design (and intended use) of the building then dictates the requirements for the structural elements. For example, a wall must be able to withstand a certain pressure. A buyer can then see which bricks on the market, according to the manufacturer(s), at least meet the requirements of the design and can therefore be used during construction.

The Commission allowing the Member States to deviate from this norm, when it comes to green public procurement. These are public procurement procedures with clear sustainability goals.

- Applying the environmental standards would lead to a low market offer for the required construction product;

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<sup>7</sup> Declaration of Performance



- Applying the environmental standards would lead to a failed/unsuitable tender;
- Applying the environmental standards would result in disproportionate costs causing the Member State to spend more than 10% in comparison to the scenario when no requirements would apply.<sup>8</sup>

This exception does not concern the determination method itself for calculating a LCA (EN 15804), but only the performance requirements of LCAs or the prescribing method of more essential environmental characteristics for the calculation of LCAs than a European minimum of essential characteristics.

As part of the CPR, the Commission wants to have a harmonised technical specification drawn up for all construction products. To this end, the Commission submits an application to the European Committee for Standardisation (CEN). CEN then develops a standard, which must be approved or rejected by the Commission within six months. An approved standard becomes a harmonized standard; the Commission must implement this standard within 12 months.

The harmonized standard specifies how the impacts/performance of a given construction product in relation to the identified essential properties are to be assessed. For example, the environmental impact of a product, including climate change, requires the use of a life cycle assessment. The Commission has also taken into account EN15804, the EPD standard for the sustainability of construction works and services, in the CPR. An application for a harmonised standard may also include thresholds relating to certain essential properties.

Together with the CPR Acquis Expert Group, the Commission shall adopt a work plan for the preparation of harmonised technical specifications. The objective of this CPR-Acquis Process is to work with all member states - on the basis of the various national regulations - to arrive at *standardization requests* (SRQ) for 34 different product groups. Based on the SRQs, a standardised determination method will be developed in the coming years. The determination method determines whether a product meets the required characteristics and properties (such as safety or durability).

There is currently no harmonized assessment method for sustainability. It is expected that a harmonised determination method that will then be implemented for all product groups will take a few more years.

#### Product requirements

Only when a harmonised standard for essential properties has been drawn up for a given product can product requirements be included in the harmonised technical specification. These product requirements can relate to safety and the environment. For this component, CEN can draw up a harmonised standard to determine whether the product meets certain requirements, but the use of that standard is voluntary. A manufacturer can therefore also demonstrate compliance with the product requirements in another way.

#### Assessment Methods and Verification

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<sup>8</sup> Article 84, section 3 of the revised CPR



The third part concerns the methods of assessment and verification. Construction products can be assessed against the relevant product requirements under the CPR.

### **Declaration of Performance, Declaration of Conformity and CE Marking**

A manufacturer wishing to place on the market a construction product to which the CPR applies and for which there is a harmonised technical specification must demonstrate that the product complies with it. In most cases, the manufacturer does this by calling in a competent authority to carry out the assessments together against the harmonised standard. In this way, the construction product is at least assessed on its essential properties.

An assessment of product requirements may also be necessary, but the use of the harmonised standard for this purpose is voluntary. When the construction product has been assessed against the harmonised standard on the basis of essential properties (and meets any thresholds), a declaration of performance is issued. When the construction product complies with the product requirements, a declaration of conformity is issued.

On the basis of the Declaration of Performance and the Declaration of Conformity, a construction product can be CE marked. It is important that the Declaration of Performance and Declaration of Conformity are always supplied with the products, or are correctly available online.

### **No harmonised technical specification**

Where a harmonised technical specification is not available for a product, the manufacturer may still have the product CE marked voluntarily. In that case, this is not done on the basis of a harmonised standard, but on the basis of a European Assessment Document (EAD). If an EAD is not yet available for the construction product, this can be drawn up by a Technical Assessment Body.

### **3. Who does CPR apply to**

The CPR applies to all Member States and all manufacturers who wish to make CPR products available on the internal market.

### **4. CPR in the national legal order**

Where there is a harmonised technical specification for a given construction product, that product falls within the harmonised zone. In that case, Member States of the European Union may not include additional assessment methods or thresholds for that product in national legislation. The product must be allowed on the market. However, an exception can be made if this is necessary for important health, environmental or safety reasons. The ban does not apply to public procurement.

### **5. Relevance of local and regional authorities**

#### **Sustainable procurement**

The CPR offers public authorities and local authorities the opportunity to include sustainability in public procurement proceedings. This is an exception to the harmonized zone. However, public authorities that tender are free to ask for more ambitious sustainability requirements in tenders. This may involve:



- More ambitious sustainability requirements than those set out by the Commission through delegated acts
- Additional sustainability requirements, related to essential characteristics other than those of the Commission delegated acts

Minimum requirements can be designed as technical specifications, selection criteria, (contractual) performance clauses and award criteria.

## **6. Relevance of the circular economy**

The CPR stimulates the circular economy in several ways:

- Certain harmonised technical specifications will also apply to used construction products. This will then be mentioned.
- When a used construction product is covered by a harmonised technical specification, the life cycle assessment with regard to essential environmental properties only needs to take into account effects that arise after the dismantling of the construction product. This is likely to provide a better outcome for used construction products compared to new construction products.
- The CPR can be used to set product requirements that promote a circular economy.
- Member States can oblige manufacturers to take back products that are supplied but not used.
- There will be a digital passport for products. For example, this includes information and safety requirements about a product, because these are not always available when a product is prepared for reuse.



## ii. ESPR | Ecodesign for Sustainable Products Regulation

### Purpose of ESPR

The Ecodesign for Sustainable Products Regulation (ESPR) is a framework regulation on the basis of which product requirements can be set for almost all physical products. These product requirements are aimed at making products more sustainable. The aim of the ESPR is to reduce the negative environmental impact of products throughout their life cycle and to harmonise product requirements in terms of sustainability within the internal market.

### Status

Current status The ESPR is yet to be formally adopted by the European Parliament and the Council of the European Union. Once the proposal has been adopted, the ESPR will enter into force on the 20th day following its publication in the EU Official Journal.

### Obligations for European member states

#### 1. What is ESPR?

The ESPR is part of the European Green Deal and its Circular Economy Action Plan. One of the spearheads of the Action Plan is the development of legislation for sustainable products. Products are still too often designed without an eye for sustainability: for example, they break down quickly or cannot be easily repaired. As a result, products become obsolete prematurely and products are replaced unnecessarily quickly. This costs a lot of energy and raw materials, because the old products have to be processed and new products take their place.

The design process has a major impact on the lifespan of a product: up to 80% of the environmental impact of a product is determined in the design phase. To promote the circularity of products, the European Commission can set product requirements based on the ESPR. These requirements include both performance requirements and information requirements that are intended to promote the durability of a product. As a result, products are designed in a more circular way and consumers are better informed about the sustainability of products.

#### 2. Overview of obligations under ESPR

##### Producteisen

The European Commission is empowered to set product requirements for different product groups in delegated acts. These requirements relate to, among other things, the following aspects of a product:

- Durability
- Reusability
- Upgradability
- Repairability
- Recyclability
- Proportion of recycled material
- Energy consumption and energy efficiency



- Resource use and resource efficiency

The Commission plans to adopt 30 delegated acts between 2024 and 2030. Within 9 months of the entry into force of the ESPR, the European Commission will draw up a non-binding list of the product groups that will be prioritised between 2024 and 2027. It is already clear that delegated acts will be drawn up for these products. It concerns the following product groups:

- Iron
- Steel
- Aluminium
- Textiles, especially clothing and footwear
- Furniture, including mattresses
- Links
- Detergents
- Paint products
- Lubricants
- Chemicals
- ICT products
- Electronics and energy-related products

The requirements also apply to products that are processed into other products and to products that are further processed.

There are also product groups that are excluded from product requirements. For example, no requirements may be imposed on food and medicines, among other things.

### **Digital Product Passport**

An important element of the ESPR is the digital product passport. A digital product passport is a 'tag' (such as a QR code) on a product, which can be scanned and provides information about the sustainability of a product. Based on this information, consumers can more easily compare the degree of sustainability of different products and make more sustainable choices. The product passport should also ensure that products can be reused or recycled more often.

At a minimum, a digital product passport should contain information on the product requirements laid down in delegated acts. Furthermore, where applicable, a product passport may also contain the following information:

- How a product performs: the score in terms of repairability and durability, and the CO<sub>2</sub> or carbon footprint
- Information for consumers on how to install, use and repair a product as sustainably as possible, and what should be done with a product at the end of its life
- Information for processing facilities on how to disassemble, reuse, refurbish, recycle or destroy a product
- Other information that may encourage consumers to make more sustainable choices

### **Unsold consumer products**





The ESPR also sets rules on the disposal and destruction of unsold consumer products. For example, the regulation lays down a general principle that economic operators must take appropriate measures to prevent the destruction of unsold consumer products.

If an economic operator throws away unsold consumer products or has them thrown away, an obligation to provide information applies. Economic operators must display the following information in an accessible manner on their website:

- The quantity and weight of the products discarded, per year and per product group
- Why the products were thrown away
- The part of the products prepared for reuse, remanufacturing, recycling and other forms of recovery
- What the economic operator is doing to prevent the products from being destroyed

For medium-sized and large companies, there is a ban on the destruction of certain unsold consumer products, such as garments. The Commission may, by means of delegated acts, add products to the product list. Medium-sized companies are subject to a transition period: 6 years after the entry into force of the regulation, the ban will take effect for them.

### **Obligations of economic operators**

There are several actors who have to ensure that products comply with the product requirements of the European Commission. For example, manufacturers must ensure that products are designed and made in line with requirements. Also, manufacturers are responsible for complying with the information requirements and the digital product passport must be present. Before a product is placed on the market, manufacturers must carry out a conformity assessment and prepare technical documentation. After that, the manufacturer draws up a declaration of performance and a CE mark is placed on the product.

Importers must check that products comply with the requirements set out in delegated acts. Before a product is allowed on the market, the importer checks whether the manufacturer's responsibilities have been fulfilled.

Finally, distributors must verify that a product has a CE mark and contains instructions for use. If the distributor suspects that a product or the manufacturer does not comply with the requirements specified in a delegated act, the distributor shall not place the product on the market as long as this is the case.

### **Promoting sustainable products**

Sustainable products can come at a higher price. In order to avoid discouraging consumers from making more sustainable choices, Member States may use incentives for product groups set out in delegated acts. Consider, for example, the provision of eco-vouchers or the introduction of taxation for sustainable products. The incentives should focus on the most sustainable products: products from the two highest performance classes of the Regulation or products with an [EU Ecolabel](#).

### **Support for SMEs**

In order to ensure that product requirements do not become too much of a financial and administrative burden for SMEs, the European Commission should ensure that initiatives are put in



place to support SMEs. In addition, the Commission provides digital tools (e.g. for calculating a life cycle assessment) and manuals to facilitate the application of the ESPR for SMEs.

Member States should also take appropriate measures to assist SMEs in implementing product requirements specified in delegated acts. This requires coordination with interest groups.

### 3. Who does ESPR apply to?

The ESPR is generally applicable and mainly imposes requirements on products. This means that the ESPR often includes obligations for manufacturers, importers, distributors and economic operators. They must ensure that the products meet the set requirements.

### 4. The ESPR in the national legal order

The ESPR is a regulation. This means that, once the regulation enters into force, the ESPR will be directly binding and directly applicable in EU member states. The Regulation should not be transposed into national law so that all Member States apply the ESPR in the same way. In the event that there is national legislation that is incompatible with the ESPR, the ESPR shall prevail over national legislation.

In addition, the Regulation stipulates that Member States must lay down detailed rules to ensure compliance with the obligations under the ESPR, including rules on the imposition of fines.

### Relevance for local and regional authorities

#### 1. Sustainable procurement

In order to encourage the procurement of sustainable products in European procurement procedures, the European Commission may set minimum sustainability requirements that contracting authorities - and therefore local and regional authorities - must meet.

The Commission is empowered to lay down the minimum requirements in an implementing decision. Requirements should only be imposed on products that are already included in delegated acts.

The requirements can be structured as follows:

- Technical specifications: based on the two highest performance classes, the highest scores or the best performance classes as further specified in a delegated act. For example: a product must have a certain CO2 footprint.
- Award criteria: where appropriate, the award criteria should have a minimum weighting of between 15% and 30%, so that the procurement process gives priority to the most sustainable products.
- Contract performance clauses and targets: on an annual or multi-annual basis, at least 50% of the tenders must consist of the most sustainable products. For example, local and regional authorities must purchase products containing at least 70% recycled material in at least 50% of procurement procedures per year.



Local and regional authorities may impose additional or more ambitious sustainability requirements on products, provided that the requirements are transparent, objective and non-discriminatory. At least until the European Commission has laid down a minimum standard.

### **Relevance for circular economy**

Based on the ESPR, requirements are set for, among other things, the durability, reusability, reparability and recyclability of products. In this way, the ESPR promotes the circularity of products: for example, products are easier to repair and therefore last longer. In addition, the digital product passport ensures that consumers are better informed about the sustainability of products. As a result, consumers are encouraged to choose more sustainable products, or even to refrain from purchasing a product. Information is also available on how a product lasts as long as possible and what should be done with a product at the end of its life cycle, which also benefits the circular economy.



## iii. CSRD I Corporate Sustainability Reporting Directive

### Purpose of CSRD

With the CSRD, the European Union - as part of the Green Deal - is aiming to create uniformity and transparency in the value chain in the form of a reporting obligation on non-financial information: every company must report on the same sustainability themes and topics. These themes and topics have been elaborated on the basis of the ESG (environmental, social and governance) aspects in the European Sustainability Reporting Standards (hereinafter: ESRS). In this way, anyone who wants to can gain insight into the sustainability performance of companies. Transparency is the first step towards making the economy as a whole more sustainable.

### Status

- The CSRD was published in the Official Journal of the European Union on 16 December 2022.
- The CSRD entered into force on January 5, 2023.
- The CSRD will apply from fiscal year 2024.
- Implementation deadline: 6 July 2024

### Related EU regulations

#### Non-financial Reporting Directive (NFRD)

Large companies, banks and insurance companies are required to report on their social and environmental performance and impact. The NFRD is the predecessor of the CSRD and has a smaller scope than the CSRD.

#### EU Taxonomy

EU Taxonomy is a common classification system that provides companies and investors with tools to identify sustainable investments in economic activities.

#### CSDDD

Legislative proposal by the European Union to go even further than just reporting on sustainability: a company must actually avoid and reduce the negative effects on people and the environment.

### Relevance for European member states

#### What is CSRD

Corporate Sustainability Reporting Directive (hereinafter: 'CSRD') is an EU directive that requires large companies (BVs and NVs) to report on sustainability performance from the 2024 financial year. A double materiality test is used. This means that, on the one hand, companies are obliged to report on climate developments that lead to possible (financial) risks and opportunities for the company. On the other hand, companies must report on the impact of their business activities on people and the environment. From 2026, this reporting obligation will also apply to listed SMEs. The CSRD requires companies to use the reporting system of the European Sustainability Reporting Standards (hereinafter: 'ESRS').

#### What is ESRS



The ESRS standards set out the reporting requirements relating to the organisation's risks, strategy, policy and impact on one of the specific themes derived from Environmental, Social and Governance (ESG) aspects. These themes are shown in the table below. Not all standards are required to comply with the reporting obligation; The company must motivate which topics are relevant to their business operations and report on them.

Overview of ESRS standards		
<b>General:</b> <ul style="list-style-type: none"> <li>- <a href="#">ESRS 1: General requirements</a></li> <li>- <a href="#">ESRS 2: General information</a></li> </ul>		
<b>Environment:</b> <ul style="list-style-type: none"> <li>- <a href="#">ESRS E1: Climate Change</a></li> <li>- <a href="#">ESRS E2: Vervuiling</a></li> <li>- <a href="#">ESRS E3: Water and Marine</a></li> <li>- <a href="#">ESRS E4: Biodiversity &amp; Ecosystems</a></li> <li>- <a href="#">ESRS E5: Material use and circular economy</a></li> </ul>	<b>Social:</b> <ul style="list-style-type: none"> <li>- <a href="#">ESRS S1: Own employees</a></li> <li>- <a href="#">ESRS S2: Workers in the chain</a></li> <li>- <a href="#">ESRS S3: Impact on Communities</a></li> <li>- <a href="#">ESRS S4: Customers and end-users</a></li> </ul>	<b>Administration:</b> <ul style="list-style-type: none"> <li>- <a href="#">ESRS G1: Business conduct</a></li> </ul>

### ESRS Theme Example

According to ESRS E1 climate change, the company must report on the following components:

<b>Part</b> Obligation to provide information on	
<i>Administration</i>	The integration of sustainability-related performance into incentive schemes.
<i>Strategy</i>	<ul style="list-style-type: none"> <li>- Drawing up a transition plan to mitigate climate change.</li> <li>- The main impacts, risks and opportunities related to climate change and their interaction with strategy and the business model.</li> </ul>
<i>Management of influences, risks and opportunities</i>	Description of the processes for identifying and assessing material climate-related impacts, risks and opportunities. <ul style="list-style-type: none"> <li>- Climate change mitigation and adaptation policies.</li> <li>- Actions and resources related to climate change policy.</li> </ul>



### *Metrics & Objectives*

Climate change mitigation and adaptation objectives:

- Energy consumption and energy mix (disclosure requirement)
- Scope 1, 2 and 3 emissions and total greenhouse gas emissions (disclosure requirement)
- Greenhouse gas removals and greenhouse gas reduction projects financed through carbon credits (disclosure requirement)
- Internal carbon pricing (information requirement)
- Projected financial impacts of material, physical, and transition risks and potential climate-related opportunities (information requirement)

### **Who does CSRD apply to?**

#### **Private entities**

As of fiscal year 2024, the CSRD applies to large and listed companies with:

- an annual turnover of more than €50 million;
- a balance sheet total of more than €25 million;
- companies with more than 250 employees.

To fall under the scope of the CSRD, a company must meet at least two of these criteria. As of the 2026 financial year, the CSRD will also apply to medium-sized and small listed firms.

However, if an organization belongs to the value chain of a company subject to CSRD, then this organization must provide the requested non-financial information to the company subject to CSRD. As a result, many SMEs and also the government will have to deal with the transparency obligations from the CSRD.

#### **Public entities**

Local and regional authorities themselves do not fall within the scope of the CSRD. Local and regional authorities are not obliged to draw up their own sustainability reports in accordance with the ESRS standards. However, several public organisations take the initiative to report on the realisation of their sustainability ambitions and goals because of their exemplary role and social responsibility. An example is the municipality of Amersfoort, which includes sustainability in their budget and annual report. In addition, there are various tools to measure sustainability within the government, such as the Municipal Sustainability Index (GDI), Local Sustainability Meter (LDM), Sustainable Netherlands Monitor and Sustainable Development Assessment Framework (ToDo).

#### **CSRD in national legal order**

CSRD is a European directive. The Netherlands must implement this directive in national laws and regulations. To this end, a legislative proposal called the Sustainability Reporting Directive Implementation Act has been drawn up. This directive was submitted for consultation on 18 November 2023. This consultation ended on 18 December 2023.

Interesting parts of this directive are:

1. The scope of the CSRD has been adjusted: central banks (DNB), public development banks, credit unions, foundations and associations are exempted from the directive due to the non-commercial nature of these parties.



2. The disclosure obligation can be waived in 'very exceptional cases'. This is a very exceptional case when it comes to specific commercially sensitive information. Disclosure of this information may jeopardise the commercial position of the company.
3. The Netherlands is keeping open the possibility of having assurance provided by companies other than just accountancy firms.

The content of the directive may still change as a result of the results of the consultation.

### **Relevance for circular economy**

The CSRD supports the transition to a circular economy in the following ways:

1. Companies are required to report detailed information on their sustainability policies. This information will become available and can be taken into account in the decision-making of well-considered, greener decisions by investors, government, market parties and consumers.
2. CSRD ensures that a company's sustainability strategy is explained and linked to objectives, policies and measures. In this way, the results can be measured and progress monitored.
3. ESRS has drawn up a standard (environmental standard 5) that deals entirely with the circular economy. Indicators have been drawn up to measure the transition to the circular economy. In this way, companies will not only report on the extent to which their business activities contribute to a circular economy, but this data can also be compared from different companies. In this way, supply and demand can be better matched, waste can be reduced and circular companies can be rewarded and incentivised.

### **Relevance of local and regional authorities**

The CSRD has a direct and indirect effect on local and regional authorities. On the one hand, the directive imposes a number of obligations on municipalities and provinces. On the other hand, it offers opportunities to integrate sustainability into one's own policies and practices and to support a sustainable business climate in the context of uniformity and social responsibility.

#### **1. Direct effect**

The CSRD has direct effect for local and regional authorities if local authorities fall under the value chain of companies subject to CSRD. This is the case with tenders, tender land allocation and affiliated companies such as joint schemes. In these situations, the local government acts as a client towards companies. These companies can ask municipalities and provinces to provide certain non-financial information to them because of CSRD. This information is mandatory for the local and regional authorities.

We foresee that more and more companies at different points in the value chain will ask local authorities for information regarding the various sustainability topics of ESRS. The local government must have this information ready and therefore prepare the data, coordination and monitoring of ESRS themes.

#### **2. Indirect effect: own sustainability reporting**

Local and regional authorities have drawn up ambitions and targets on various sustainability themes. At present, few local and regional authorities have insight into the progress of these ambitions and internal objectives and the impact on policy and implementation. This is partly due to the fact that they are not obliged to report on non-financial information and that there is no guideline with clear



criteria and a clear set of standards. However, the ESRS standards can be used as a guideline to achieve uniformity with the business community.

Local and regional authorities are obliged to draw up annual financial justification documents, such as an annual report, accounts and budget. Rules on these financial justification documents are set out in the Decree on the Budget and Accountability of Provinces and Municipalities (hereinafter: BBV).

### **3. Indirect effect: steering towards policy objectives**

There are a number of ways in which local and regional authorities can force companies that are not (yet) formally covered by the CSRD to report transparently on non-financial data according to the CSRD system. In this way, the local government can actively steer the policy objectives regarding sustainability and circularity. Here are some of the possibilities:

#### ***a. Tenders***

Reporting of non-financial information according to the CSRD system can be included in tenders in various ways. In this way, the government gains insight into the sustainability performance of an organisation. As a result, the government can reward and encourage circular and sustainable companies.

The CSRD system can be incorporated into a tender in the following ways:

- I. As a minimum requirement:  
As a minimum requirement, the tender may include that the market party must report according to the CSRD system or a similar system. The contracting authority may place a specific emphasis on certain ESRS standards, which are applicable to the procurement.
- II. The selection criteria are:  
Selection criteria refer to the organisation selected by the contracting authority. Local and regional authorities can include as selection criteria that a candidate must report on the performance in the field of sustainability and circularity.
- III. In contracts:  
The contracting authority may draw up a contract requirement on transparent reporting on certain relevant sustainability topics, whether or not in accordance with ESRS
- IV. Below the European threshold:  
A tender below the European threshold gives more leeway and freedom in the tendering procedures and the formulation of specific requirements and criteria. If there is a tender below the European threshold, it is relatively easy to request a reporting obligation as a requirement or criteria in the tender as a requirement or criteria.

#### ***b. Tendering procedures for the sale of land owned by governments***

The same possibilities mentioned under tenders also apply to the sale of land.

#### ***c. Subsidies***

The CSRD emphasizes the importance of transparency and accountability. The increased emphasis on sustainability in business can provide a broader incentive for sustainability initiatives at the local level. Local and regional authorities can increase this incentive by linking the sustainability performance of companies to conditions for eligibility for subsidies. In this way, circularity of companies is rewarded and stimulated.

#### ***d. Licenses***





Local and regional authorities can set requirements in the licensing regulations on, for example, the disclosure of non-financial information in line with the ESRS standards. Companies that do not fall within the scope of the directive are thus forced to report on sustainability and circularity. Please note: the permit requirements must be in line with the environmental plan and policy rules.

***e. Covenants and performance agreements***

Covenants and performance agreements are written agreements in which parties record agreements about policy, intentions and collaborations. These written agreements may include that all parties report on certain ESRS standards in order to gain insight into the progress of certain sustainability performances. Subsequently, circularity can be actively steered by adjusting objectives and implementing specific sustainable measures.

**4. Indirect effect: non-legal instruments**

In addition, the CSRD can contribute to the networks of companies and the government. Insight is gained into the value chains of companies. This information can be used to learn from each other and to enter into new partnerships and collaborations. In addition, several municipalities have the objective of preparing SMEs for the CSRD by means of knowledge sharing. For example, the municipality of Amsterdam has included in the [Circular Implementation Agenda 2023-2026](#) that they will support SMEs through tools and collective actions such as a Community of Practice.



## IV. CSDDD | Corporate Sustainability Due Diligence Directive

### Doel van Corporate Sustainability Due Diligence Directive

The Corporate Sustainability Due Diligence Directive (CSDDD or CS3D) is a European directive that obliges certain large companies to counteract negative impacts on human rights and the environment. This is done on the basis of 'due diligence': a step-by-step research process on the basis of which companies identify and mitigate the (possible) negative effects of their supply chain. Companies subject to CSDDD must also draw up a climate transition plan, in which they include time-bound emission reduction targets. The aim of the CSDDD is to ensure that companies contribute to the transition to a sustainable economy and society.

The CSDDD is part of the European Green Deal, the package of measures that should help Europe to become climate neutral by 2050.

Another directive, which is closely related to the CSDDD, is the Corporate Sustainability Reporting Directive (CSRD). The CSDDD and the CSRD are both largely based on the OECD's international guidelines for large business and the UN Principles on Business and Human Rights. The CSRD ensures that companies report their sustainability performance in a clear and reliable way, so that people can make proper comparisons. Together with the CSDDD, which requires companies to address negative impacts on human rights and the environment in their supply chain, the CSRD is an important part of the European Green Deal. These measures aim to encourage businesses to contribute to the transition to a sustainable economy and society.

### Status

#### February 23, 2022

Proposal for CSDDD presented by the European Commission.

#### 14 December 2023

Provisional agreement reached between the European Parliament and the Council of the European Union. The proposal has been amended in substance after the provisional agreement.

#### April 24, 2024

Proposal for CSDDD approved by the European Parliament.

#### May 24, 2024

Proposal for CSDDD approved by the Council of the European Union.

### Current Status

The CSDDD was published in the EU Official Journal on 5 July 2024 and entered into force on 25 July 2024. Member States will have two years from this date to transpose the CSDDD into national law.

### What is the CSDDD?

Under the CSDDD, companies must protect **human rights** and the **environment** through **risk-based due diligence**. This implies that certain companies conduct careful research for their business operations. The idea behind this is that companies should actively look for the (possible) abuses within the company itself and the supply chain. The CSDDD is therefore also known as the **anti-look-away law**.



The due diligence obligation applies not only to **a company's own activities**, but also to business partners in a company's so-called **chain of activities**. This includes the following activities:

- **Upstream activities:** Activities of suppliers related to the production of goods or the provision of services, including the design, extraction, procurement, production, transport, storage and supply of raw materials and (parts of) products and the development of the product or service. This does not include consumer use and what happens to a product at the end of its life cycle.
- **Downstream activities:** Business partner activities related to the distribution, transportation, and storage of a product, if business partners perform these activities for or on behalf of the company.

The due diligence obligation is an **obligation to perform to the best of one's ability**. This means that companies are not expected to be able to completely prevent or end negative impacts. However, they should do everything they can to try this.

Another important aspect of the CSDDD is the mandatory **climate transition plan**. Companies must include **time-bound emission reduction targets**, in line with the goal of limiting global warming to **1.5°C**.

### Overview of obligations under CSDDD

To comply with the due diligence obligation, companies must go through several steps:

#### 1. Integrating due diligence into policies and risk management systems<sup>9</sup>

Companies covered by the CSDDD must integrate due diligence into their policies and risk management. The policy should include the following aspects:

- A description of the company's due diligence approach, including for the long term;
- A **code of conduct** that sets out the rules and principles that the company and its subsidiaries must adhere to;
- A description of the processes that ensure the implementation and integration into due diligence policies, including the measures taken to ensure compliance with the Code of Conduct and extend it to business partners.

Companies should review their due diligence policies every two years and, if necessary, adjust them. If there has already been a 'significant change' within that two-year period, the policy must be adjusted accordingly as soon as possible. This is the case if there is a change in the activities of a company or of a business partner in the chain of activities, or in the legal or business environment. This happens, for example, when a company expands into a new economic sector or market. Or there is a change in the company structure, due to a restructuring or merger or acquisition. But the introduction of a new product or the application of a new technology with potentially negative effects can also be a significant change.

#### 2. Identifying and assessing actual and potential adverse impacts<sup>10</sup>

Companies must take appropriate measures to identify and assess actual and potential adverse impacts of their operations and of their subsidiaries. This obligation also extends to the activities of business partners, if they take place within the company's chain.

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<sup>9</sup> Article 7

<sup>10</sup> Artt. 8 and 9



Specifically, companies need to identify general areas where adverse impacts are most likely to occur, and are most severe. The identified negative effects must then be assessed by them in more detail.

### 3. Preventing and eliminating potential negative impacts, and ending and minimizing actual negative impacts<sup>11</sup>

Companies must take **appropriate measures** to prevent and eliminate the adverse impacts identified and assessed. If this is not immediately possible, the negative effect should be limited as much as possible. The appropriate measures depend on a number of factors:

- Who causes the (possible) negative effect, namely:
  - only the company itself; or
  - the company itself and a subsidiary or business partner; or
  - only by a business partner in the chain of activities.
- Whether the (potential) adverse effect occurs in the activities of a *subsidiary, direct business partner or indirect business partner*; and
- The ability to influence a business partner who (partially) causes a (potential) negative effect.

The CSDDD mentions several measures that, depending on the context, may be appropriate:

- A **preventive or corrective action plan** that includes a timeline for implementing appropriate measures. This action plan may be developed in cooperation with industry or other stakeholders.
- **Stipulate contractually** with a direct business partner that the code of conduct, and if necessary also the (preventive) action plan, will be complied with.
- Make the necessary **financial or non-financial investments** to improve operational processes and infrastructure, such as facilities and production.
- Make the necessary **adjustments or improvements** to your own business plan, overall strategies and operations. Consider, for example, procurement, design, and distribution practices.
- **Provide targeted and proportionate support** to **SMEs** that are business partners of the company. If necessary in the context of resources, knowledge or limitations, training courses can be offered to SMEs, for example. If compliance with the code of conduct or the (preventive) action plan would jeopardise the survival of SMEs, the SME must be offered **financial support**. Consider, for example, direct financing or offering a loan at a low interest rate.

If these measures cannot prevent or remedy a (potentially) negative impact in the supply chain, the company must establish an **improved preventive or corrective action plan** and temporarily **suspend the business relationship**. If there **is no reasonable expectation** that the negative impact can be mitigated or if the action plan does not lead to results, the business relationship – with regard to the activities causing the negative effect – must be **definitively suspended**.

### 4. Remedial measures for actual adverse effects<sup>12</sup>

If a company has (partially) caused a negative effect, it is obliged to take **remedial measures**. This means that the situation must be reduced as much as possible to the situation in which the negative effect would not have occurred. This takes into account a company's part in causing the effect,

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<sup>11</sup> Artt. 10 and 11

<sup>12</sup> Article 12



including (non-)financial compensation to those affected or reimbursement of remediation costs to the government.

#### **5. Meaningful stakeholder engagement<sup>13</sup>**

Companies need to **involve stakeholders** throughout the due diligence process. Stakeholders include employees of a company, trade unions, advocacy groups and consumers. Other individuals or groups that may be affected by the products, services or activities of a company or their business partners may also be stakeholders.

#### **6. Setting up and maintaining a reporting procedure and complaints procedure<sup>14</sup>**

Companies subject to CSDDD must set up a **complaints procedure**. A complaint may be filed by (legal) persons, trade unions and civil society organisations that are faced with a (potential) negative effect. If the complaint is justified, the subject of the complaint must be identified as **having an adverse effect** (see *step 2*) and a company must take **appropriate action** (see *step 3* and *step 4*).

In addition, anyone who has **information** or **concerns** about (possible) negative effects in the activities of a (parent) company or of a business partner in the chain of activities must be able to report them through an accessible mechanism. This mechanism should be able to receive reports anonymously or confidentially, in accordance with national law.

#### **7. Monitoring the effectiveness of due diligence policies and measures<sup>15</sup>**

Companies must periodically assess their activities and measures, and those of their subsidiaries and business partners, if they are related to the chain of operations. Specifically, companies must monitor the **adequacy** and **effectiveness** of identifying, preventing, mitigating, ending, and minimizing adverse impacts. This is required at least once a year, or earlier if there is a new risk of a negative impact.

#### **8. Communicating publicly about due diligence<sup>16</sup>**

Companies covered by the CSDDD are required **to** publish a due diligence statement on their website on an annual basis. The European Commission will determine exactly what should be included in the declaration in delegated acts by 31 March 2027. In any case, the declaration will cover:

- The description of due diligence;
- Identified (possible) negative effects; and
- The measures the company has taken to address those impacts.

#### **Climate change transition plan<sup>17</sup>**

In addition to the due diligence obligation, another important aspect of the CSDDD is the **climate transition plan**. Companies subject to CSDDD must draw up and implement a transition plan to combat climate change. This plan aims to ensure that the business model and strategy are aligned with the goal **of limiting global warming to 1.5°C**, as set out in the Paris Agreement. The transition

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<sup>13</sup> Article 13

<sup>14</sup> Article 14

<sup>15</sup> Article 15

<sup>16</sup> Article 16

<sup>17</sup> Article 22



plan must also be in line with the EU's goal of being **climate neutral** by 2050. Companies should make every effort to achieve this.

The climate transition plan should include:

- **Time-bound climate targets** for 2030, with intermediate targets set every five years until 2050. The targets should be based on conclusive **scientific evidence**, including absolute scope 1, 2 and 3 **emission reduction targets where appropriate**;
- The main **action points** aimed at achieving the climate goals set;
- An explanation and quantification of the **investments and financing** that will support the implementation of the transition plan;
- A description of the role of **administrative, management and supervisory bodies** in the realisation of the transition plan.

Companies must update the transition plan every year. In the annual update, they must also show the progress made towards their climate targets.

### Supervisory authorities

EU member states will designate one or more supervisory authorities to monitor compliance with the due diligence obligation and the climate transition plan.<sup>18</sup> For example, supervisory authorities are authorised to request information from companies.<sup>19</sup> Supervisors are allowed to investigate compliance with the CSDDD, both on their own initiative and on the basis of complaints.

If it is found that a company is not complying with the obligations under the CSDDD, the supervisory authority must give the company time to take **remedial action**. Regulators have the power to order companies to stop their violation. In addition, they are allowed to **impose fines of up to 5%** of global net sales.<sup>20</sup> Finally, supervisory authorities may require companies to take **temporary measures** if there is an **immediate risk of serious and irreparable harm**.

### Civil liability<sup>21</sup>

Under the CSDDD, companies can be held liable for damage to a (legal) person. This is possible if a company has **intentionally** or due to **negligence** failed to take appropriate measures to prevent or terminate an adverse impact. If damage has occurred against which national law provides protection, the (legal) person is entitled to **full compensation**. However, companies cannot be held responsible for damage caused by their business partners in the chain of activities. Read [more about civil liability under the CSDDD](#) here.

### Who does CSDDD apply to?

The CSDDD applies to EU companies that had at least an average of **1000 employees** and a turnover of more than **€450 million in the past year**. Parent **companies** that do not themselves meet those conditions but whose subsidiaries are subject to CSDDD are also covered by the CSDDD. In addition, the directive applies to companies that have entered into a **franchise or licensing agreement** in the EU, provided that the royalties were at least €22.5 million and the net turnover was more than €80 million.

In addition, the CSDDD applies to **third-country** companies that generated more than €450 million in turnover in the EU in the last financial year. As with EU companies, parent companies of

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<sup>18</sup> Article 24

<sup>19</sup> Article 25

<sup>20</sup> Article 25 jo. Article 27

<sup>21</sup> Article 29



companies that are subject to CSDDD and companies that have entered into a franchise or licensing agreement are also covered by the directive.

When companies subject to CSDDD must comply with the directive depends on their size and turnover:

- 5000 employees and 1500 million euros turnover: 3 years after the entry into force of the Directive
- 3000 employees and €900 million turnover: 4 years after the entry into force of the Directive
- All other companies subject to the CSDDD: 5 years after the entry into force of the directive

Within 6 years of the entry into force of the directive at the latest, the European Commission will examine whether the scope is sufficient to achieve the goals of the CSDDD and create a level playing field between companies. Specifically, it will be examined whether the threshold for the number of employees and net turnover should be extended. It will also examine the need to introduce a sector-specific approach for high-risk sectors.

### **CSDDD in the national legal order**

The CSDDD is a guideline. The Netherlands must implement the CSDDD in national laws and regulations no later than two years after the entry into force of the directive.

In addition, there is a one-year transition period. In the case of the CSDDD, it will take at least another three years before a company has to comply with the obligations.

### **Relevance of the circular economy**

The CSDDD is part of the laws and regulations resulting from the EU Green Deal. The accompanying Circular Economy Action Plan stated the intention to create a framework for sustainable entrepreneurship. The CSDDD is an important part of that framework. By requiring companies to protect human rights and the environment, the directive aims to contribute to sustainable development and the transition to a sustainable economy and society. In doing so, the CSDDD complements the Corporate Sustainability Reporting Directive, on the basis of which certain large companies are required to report on their sustainability performance.

In addition, companies covered by the directive must draw up a climate transition plan, in line with the goals of the Paris Agreement. In order to achieve the climate goals set out in this plan, companies will have to reduce their emissions. This is where the transition to a circular economy is of great importance. In a circular economy, the value of raw materials and products is retained for as long as possible, so that fewer raw materials are needed. A large part of all CO<sub>2</sub> emissions are the result of material production. A circular economy can therefore make an important contribution to reducing the reduction targets.

### **Relevance of local and regional authorities**

At first glance, the CSDDD appears to be particularly relevant for companies directly covered by the Directive. Governments are not included. Nevertheless, the CSDDD is important for local and regional authorities in several ways.

### **Indirect effect**



Although the CSDDD will only apply to a limited number of companies, the directive will indirectly affect a much larger group of companies. Companies that fall into the chain of activities of companies subject to CSDDD will also have to deal with the CSDDD. As a result, suppliers of local and regional authorities – through another business partner – may also be subject to obligations with regard to the protection of human rights and the environment. For example: a company subject to the CSDDD notices that environmental pollutants leak during the production of clothing. As an appropriate measure, the company subject to CSDDD makes financial investments in the business partner's facilities, which means that no environmental pollution occurs during production. This also makes purchasing more sustainable for other business partners and customers of this company, such as provinces or municipalities. They no longer have to buy clothes that have been produced in a polluting way.

Companies that are part of the chain of a company subject to CSDDD will be investigated for the impact of their activities on human rights and the environment. They must provide information about this to the company that is subject to CSDDD. It is also possible that the company subject to CSDDD cooperates with a municipality or province, or that another company in the chain does so. In that case, that municipality or province also has a duty to provide information. If they receive a request for information from a company in the chain, they will have to provide the requested information. Municipalities and provinces may also receive a request from the company subject to the CSDDD to take measures to prevent or end negative effects. This may include, for example, developing action plans together with the company subject to the CSDDD and making contractual agreements, such as compliance with codes of conduct.

If a municipality or province does not meet the requirements for climate transition or other human rights, this can lead to contracts being terminated or fewer companies bidding for new contracts.

It is to be expected that more and more companies in different parts of the value chain will ask for information about sustainability. Local and regional authorities must be prepared to provide this information and must therefore have the necessary data, coordination and monitoring of sustainability themes in order.

### **Voluntary implementation and tendering<sup>22</sup>**

Although local and regional authorities do not fall within the scope of the CSDDD, it is possible to implement the directive voluntarily. The obligations under the CSDDD provide tools for applying due diligence within a municipality. This can be done in three ways.

1. Contracting authorities may use mandatory or voluntary compliance with the CSDDD as an **award criteria** in public tenders and concessions.<sup>23</sup> Compliance may also be established as a **contractual condition**. In this way, the CSDDD may also apply to companies that would otherwise not be covered by the directive.
2. If a municipality includes due diligence in its policy, it means that it takes a good look at how they do their job to reduce negative impacts on people and the environment. This can be done, for example, by drawing up a **Supplier Code of Conduct**, which sets out what is expected in areas such as fair working conditions and environmental protection.
3. In addition, the municipality may voluntarily Climate transition plan similar to what large companies are required to do under the CSDDD. This plan includes targets to reduce

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<sup>22</sup> Referred to in para 92.

<sup>23</sup> Article 31





greenhouse gas emissions, both in the short and long term. It lays out what needs to be done each year to meet those goals, and it describes how much money is needed for these changes. It also states who within the municipality is responsible for implementing the plan.

By taking these steps, the municipality shows that it is serious about sustainability and is helping to achieve global goals to combat climate change. Moreover, these activities derive from the legal framework for policy review set out in the judgment in KlimaSeniorinnen.

### **Subsidies**

Local authorities can use the CSDDD to promote sustainability at the local level. For example, they can link grant eligibility conditions to compliance with CSDDD requirements. Companies that want to be eligible for subsidies must then demonstrate that they are actively working to protect human rights and the environment, and take concrete steps to achieve their climate goals. Linking these conditions to subsidies must be properly substantiated by the local government.



## V. EPBD I Energy Performance of Buildings Directive

### Purpose of the EPBD

Buildings are currently responsible for the largest share of energy consumption in Europe, with as much as 40% of total energy consumption taking place in buildings. In addition, as much as a third of greenhouse gas emissions in Europe come from buildings. Therefore, addressing the construction sector is essential to achieve climate and energy goals. To address the energy performance of buildings, the Energy Performance of Buildings Directive (EPBD) was first introduced in 2010. The directive aims to improve the energy performance of buildings in the EU, taking into account the climate, local conditions, and cost-effectiveness.<sup>24</sup>

The EPBD has been revised several times. The most recent revision of the directive entered into force in May 2024. The review aims to speed up renovations in the EU, with a special focus on the worst-performing buildings in each country. Furthermore, the revision reflects higher ambitions and is aligned with the goal of making the entire building stock decarbonised and zero-emission by 2050.

### Status

#### April 2024

The proposal for the revision of the EPBD (Directive 2024/1275) has been adopted.

#### Current Status

The revised version of the EPBD was published in the Official Journal of the European Union on 8 May 2024 and entered into force on 28 May 2024. Member States will have two years from this date to transpose the new rules into national law.

#### What is the EPBD?

The Directive provides a common methodology for calculating the energy performance of buildings. It also sets minimum requirements for the energy performance of buildings and building components. In addition, the Directive provides a common methodology for calculating energy performance.

#### Overview of obligations under the revised EPBD

The revised EPBD introduces new sustainability standards, which will affect the construction of new homes and commercial premises, as well as the renovation of existing buildings.

#### National Renovation Plans (Art. 3)

All Member States must draw up a national building renovation plan, with the aim of making both public and private buildings energy efficient and CO<sub>2</sub> neutral by 2050. The plan must provide an overview of the current state of the buildings, possible bottlenecks in the market and the capacity of

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<sup>24</sup> Art. 1 EPBD 2010



the building and energy sectors (paragraph 2(a)). In addition, a roadmap must be drawn up with targets for 2030, 2040 and 2050 to ensure that energy demand and greenhouse gas emissions are reduced (paragraph 2(b)). The plan should also describe the policy measures and funding available to achieve these targets (paragraph 2(c) and (d)). From 2050 onwards, Member States will have to submit this plan every five years (paragraph 3). The European Commission assesses the plans to see whether they are sufficiently ambitious and whether they prioritise the renovation of the worst-performing buildings (paragraph 5).

### **New buildings (Art. 7)**

All new buildings in the EU must be zero-emission by certain deadlines. From 1 January 2028, new buildings owned by public bodies will have to comply, and from 1 January 2030, all new buildings will have to comply (paragraph 1). Until then, all new buildings must be at least nearly zero-energy and meet the minimum energy performance requirements. In addition, from 2028 onwards, for new buildings larger than 1,000 m<sup>2</sup>, and from 2030 for all new buildings, Member States will have to calculate the global warming potential (GWP) over the entire life cycle and report it on the energy performance certificate (paragraph 2). By 2027, member states must submit a roadmap to the European Commission, setting limits on the warming potential of new buildings, with targets for 2030 and beyond (paragraph 5). Furthermore, in the case of new buildings, Member States must pay attention to aspects such as optimal indoor air quality, adaptation to climate change, fire safety, accessibility for people with disabilities and carbon capture and storage in buildings (paragraph 6).

### **Existing buildings (Art. 8)**

Member States should ensure that, in the event of a major renovation, the energy performance of a building is improved in order to meet the minimum energy performance requirements, to the extent that this is technically, functionally and economically feasible. These requirements apply to the entire building or specific parts of it. In addition, energy performance requirements should be applied to building components that have a significant impact on energy efficiency when replaced or renovated (paragraph 2). Major renovations also encourage the installation of efficient energy systems, and to pay attention to indoor climate, fire safety, adaptation to climate change, and the removal of hazardous substances such as asbestos (paragraph 3).

### **Minimum energy performance standards (Art. 9)**

Non-residential properties must meet certain energy consumption thresholds by 2030. By 2030, 16% of these buildings must be below the threshold, and 26% by 2033. (paragraph 1). For housing, Member States must plan to reduce energy consumption by at least 16% by 2030 and by 20-22% by 2035, focusing on the worst-performing housing (paragraph 2). Exceptions are possible for buildings that are difficult to renovate, such as historic and religious buildings (paragraph 6). Public authorities must provide financial support, especially for vulnerable groups (paragraph 4).

### **Emission-free buildings (Art. 11)**

A zero-emission building should not emit CO<sub>2</sub> emissions from fossil fuels (paragraph 1) and, where possible, it should be able to respond to external signals to adjust energy consumption or energy



storage. Member States must ensure that the energy consumption of these buildings remains within a certain ceiling, which is adjusted each time new cost-effective levels are set (paragraph 2). This maximum should be at least 10% lower than the limit of 28 May 2024 set at national level for nearly zero-energy buildings (paragraph 3). In the case of renovations, Member States may adjust this ceiling, as long as it meets cost-effectiveness (paragraph 4).

Member States must also ensure that the operational CO<sub>2</sub> emissions of a zero-emission building remain within national limits, distinguishing between new and renovated buildings (paragraph 5). In addition, they must ensure that the annual primary energy needs of these buildings are covered by renewable energy, for example generated locally or from an efficient heat network (paragraph 7).

### **Renovation passport (Art. 12)**

By 29 May 2026, the renovation passport should be introduced by all Member States (paragraph 1). The renovation passport provides building owners with a plan to renovate their building towards a zero-emission building by 2050. Although the scheme is in principle voluntary, Member States may decide to make it mandatory (paragraph 2). Member States should also ensure that renovation passports are affordable and consider financial support for vulnerable households. The passport shall be issued digitally by a qualified expert following an on-site inspection (paragraph 4). The renovation passport may be issued together with an energy performance certificate and shall be stored in national databases for the energy performance of buildings (paragraph 7).

### **Technical Building Systems (Art. 13)**

Member States must set requirements for the installation and use of systems in order to ensure the energy efficiency of technical building systems (paragraph 1). These systems must be properly installed, correctly adjusted and, in certain cases, hydronic balancing to minimize energy loss. Also, where possible, new buildings should be equipped with equipment to regulate the temperature in each room separately (paragraph 3). Member States may also set requirements for greenhouse gas emissions from heating systems and the minimum share of renewable energy for heating buildings (paragraph 1). Non-residential buildings must be fitted with indoor air quality measuring equipment after renovations (paragraph 5) and large buildings are equipped with building automation and control systems (paragraph 9). Furthermore, Member States should aim to replace fossil fuel heating systems with sustainable alternatives (paragraph 7).

### **Infrastructure for sustainable mobility (Art. 14)**

New non-residential buildings with more than five parking spaces must have at least one charging point for electric vehicles, and include the pre-cabling to be able to install more charging points in the future. For new buildings that are not homes and have more than five parking spaces, bicycle parking facilities must be provided. These must be large enough to accommodate at least 15% of the average occupant capacity or 10% of the total number of occupants of the building (paragraph 1). For residential buildings with more than three parking spaces, at least one charging point must be installed and two bicycle parking spaces must be provided for each residential unit. In addition, at least 50% of parking spaces must be pre-wired in order to be able to install charging points for electric vehicles in the future (paragraph 4). This applies to both new buildings and buildings that are



undergoing major renovation. Furthermore, Member States must take measures to simplify the installation of recharging points, especially in residential buildings with co-owners, and remove barriers such as landlords' consent (paragraph 8).

### **One-stop-shops for the energy performance of buildings (Art. 18)**

Member States should set up technical assistance facilities to improve the energy performance of buildings. This should be done in cooperation with relevant authorities and stakeholders, such as homeowners and small and medium-sized enterprises (SMEs), including micro-enterprises (paragraph 1). Member States should establish one-stop-shops to ensure that technical assistance facilities are available.

The technical assistance facilities should provide households, SMEs and public authorities with clear information on technical and financial opportunities, with a special focus on households living in energy poverty and living in low-performing buildings (paragraph 2). The one-stop-shops must provide independent advice on the energy performance of buildings and can accompany urban regeneration programmes (paragraph 3). This includes specific services for vulnerable households and people on low incomes (paragraph 3).

### **Energy Performance Certificates (Art. 19)**

Member States must put in place a system of energy performance certificates that indicate how energy-efficient a building is. In addition, the certificate also includes reference values such as minimum energy performance requirements and requirements for nearly zero-energy buildings (paragraph 1). From 29 May 2026, certificates must indicate the energy performance class on the basis of a fixed scale, ranging from A (very energy efficient) to G (worst performance) (paragraph 2). Member States can extend the scale to include class A+ for extra energy-efficient buildings.

Energy performance certificates must be clear, affordable and reliable (paragraph 4). They also provide advice on possible improvements, unless the building is already in energy performance class A (paragraph 5). The advice must be practicable and include information on potential energy savings and costs (paragraph 7). It must also indicate whether heating and air-conditioning systems need to be replaced (paragraphs 8 and 9).

The certificate also indicates where the owner or tenant of the building can obtain more information about the recommendations for improvement (paragraph 10). Certificates are valid for 10 years. For poorly performing buildings, advice on renovation should be given (paragraph 13). Simple procedures should be put in place by Member States to update the certificate after improvements (paragraph 14).

### **Reporting**

The EPBD imposes several reporting obligations on Member States to improve the energy performance of buildings. Member States are required to report on their national renovation plans and progress towards achieving energy efficiency targets, as laid down in Articles 3 and 9 of the EPBD. They should also calculate the cost-optimal levels of energy performance requirements and compare them with current requirements (Article 6).



In addition, Member States must submit inspection reports of heating, ventilation and air-conditioning systems ( Article 24), and ensure independent control systems for energy performance certificates and renovation passports (Article 27).

### **EPBD in the national legal order**

The EPBD is a guideline. The Netherlands must implement the revision of the EPBD in national laws and regulations no later than two years after the entry into force of the directive. However, the prohibition of financial benefits for fossil fuel boilers (Article 17(15) of Directive 2024/1275) is subject to an earlier deadline: this provision must be incorporated into national legislation before 1 January 2025.

### **Relevance of the circular economy**

The EPBD contributes to the circular economy by promoting energy efficiency within the built environment. Encouraging renovations and the focus on zero-emission buildings is in line with the principles of the circular economy, which focuses on the efficient use of raw materials.

The EPBD encourages renovations, leading to an extended lifespan of buildings and a reduced use of new building materials. This not only lowers greenhouse gas emissions, but also reduces the demand for primary raw materials. Furthermore, the EPBD encourages the reuse of materials in renovation projects, which can lead to less waste generation and a greater focus on recyclable and sustainable building materials. This is in line with the R-ladder's 'reduce, reuse, recycle' strategies, which reduces energy consumption.

In addition, the EPBD contributes to the use of renewable energy, such as solar energy, and reduces dependence on fossil fuels.

### **Relevance of local and regional authorities**

#### **1. The leading role of the public sector**

Local and regional authorities should lead by example and can play a leading role in the transition to energy-efficient and CO<sub>2</sub>-neutral buildings. Local and regional authorities can develop policies that are in line with the goals of the EPBD, such as developing subsidies for renovations.

In addition, local governments can raise awareness about the importance of energy efficiency by organizing educational programs. By providing information about available grants and the importance of sustainability, they can encourage residents and businesses to renovate underperforming buildings.

Collecting and analyzing data on the energy performance of buildings is also important. Local authorities can collect data to gain insight into the current state of the buildings.

#### **2. Sustainable procurement**



The EPBD imposes requirements on Member States to improve the energy efficiency of buildings, which affects procurement in the building sector.

Member States must draw up national renovation plans to transform all buildings into zero-emission, energy-efficient buildings by 2050. This means that tenders for renovation works must meet energy saving requirements.

In addition, there are minimum requirements for new and existing buildings, with public buildings having to be emission-free from 2028. In the case of major renovations, buildings must comply with these requirements, and for non-residential buildings, specific thresholds have been set that are gradually becoming stricter.

Furthermore, there are obligations for the use of solar energy and for automatic lighting systems, as well as infrastructure for sustainable mobility, such as charging points for electric vehicles.

Local and regional authorities should take these requirements of the EPBD into account in procurement, which offers opportunities for a more sustainable construction sector

### **3. Reporting**

The EPBD imposes several reporting obligations on Member States to improve the energy performance of buildings. This reporting obligation covers, among other things, the national renovation plans and progress in achieving energy efficiency targets.

Although the reporting obligations are incumbent on Member States, they may have indirect consequences for territorial authorities. Local and regional authorities have a role to play in the implementation of building renovation plans and the achievement of energy efficiency targets at local level. They may also be required to provide data to the national authorities for the required reporting to the EU.

### **Tooling: Level(s)**

Level(s) is a European framework (methodology) that aims to improve the sustainability in the construction sector by providing a uniform way to assess and report on the sustainability performance of buildings and infrastructure. The focus is on the full life cycle of buildings to reduce greenhouse gas emissions 'whole life carbon', use resources circularly, and support the health and well-being of occupants. The European Commission has already completed the framework for buildings. A complete the framework for infrastructure has not been published yet.

At the moment Level(s) is a voluntary reporting tool that uses existing standards to assess the environmental performance of buildings with indicators such as Life Cycle Assessment (LCA), Life Cycle Cost (LCC) and Indoor Air Quality (IAQ). It helps the construction sector to achieve more sustainable and healthier buildings that contribute to the goals of the European Green Deal.

Public authorities can use Levels in their procurement processes. The manual "[Life Levels](#)" elaborates tools for governments to implement the Levels framework in procurement processes, the guide



contains practical examples to illustrate how European countries can include sustainability criteria, such as LCA, LCC and IAQ, in their (green) public procurement process.

## **VI. Emissions Trading System (EU ETS) + ETS2**

### **Target ETS**

The EU Emissions Trading System (ETS) is the largest emissions trading system in the world and aims to reduce greenhouse gas emissions. This system sets a cap on total emissions, and companies must monitor and report their emissions. For every tonne of CO<sub>2</sub> and other greenhouse gases they emit, they have to surrender an allowance. These rights can be traded on the market. The targets are to reduce emissions by 21% by 2020 compared to 2005, and by 2030 this should increase to a 62% reduction.

The ETS has a direct impact on the building materials industry, as rising CO<sub>2</sub> prices affect the choice of materials. Emission-intensive materials such as concrete and steel are becoming more expensive due to the cost of emission allowances<sup>25</sup>, which can encourage construction companies to consider alternatives, such as circular building materials.

The ETS-BRT extends the system to the built environment and the mobility sector. Energy suppliers will be obliged to buy emission allowances for gas consumption, and a separate ETS system will be set up for transport and the built environment, with emission allowances eventually expiring. The income from this system is used for the Social Climate Fund. The Netherlands has the option to set up a national cap-and-trade system, which would allow it to accelerate CO<sub>2</sub> emissions by setting a cap on the total amount of greenhouse gases.

The ETS-BRT system aims to achieve a 45% reduction in emissions by 2030 compared to 2005. This system also has an impact on the building materials industry, as higher CO<sub>2</sub> prices will further influence the choice of building materials.

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<sup>25</sup> DGBC





## VII. Taxonomy Regulation<sup>26</sup>

### Purpose of Taxonomy

The EU Taxonomy is part of the Sustainable Finance Framework of the Green Deal. This framework is aimed at attracting more private capital to sustainable investments. In this way, the other objectives and action plans from the Green Deal can be financed.<sup>27</sup>

Currently, some Member States have established schemes for awarding the 'sustainable' label to investments. These schemes vary from one Member State to another, making it difficult to compare sustainable investments. In addition, companies and institutions must meet different criteria in different Member States in order for an investment to be classified as sustainable. This increases costs and discourages investment in sustainable investments by companies from other Member States.<sup>28</sup>

The most important and binding measure of the Sustainable Finance Framework is the creation of a uniform classification system for the marketing of financial products as an environmentally sustainable investment.

The European Commission has developed a simple and practical guide for users: [EU Taxonomy Navigator](#). The uniform classification system has been explained in the EU Taxonomy Regulation. Specifically, the following objectives have been set out for the Regulation:<sup>29</sup>

1. Providing investors and companies with a frame of reference;
2. Supporting investors and companies in their efforts to plan and finance the transition to sustainability and circularity;
3. Protecting investors and companies from greenwashing. Greenwashing is the act of gaining an unfair competitive advantage by classifying an investment as sustainable, while in practice this is not the case, or insufficiently.
4. Helping investors and companies to accelerate the financing of sustainable projects.

### Status

The EU Taxonomy is a new regulation. It is being phased in due to the large size of the Regulation and the associated costs for companies and businesses to comply with the obligations under this Regulation.<sup>30</sup>

1. The EU Taxonomy was adopted by the Council on 15 April 2020.
2. The EU Taxonomy was adopted by the European Parliament on 18 June 2020.
3. As of 1 January 2022, the delegated acts of the environmental objectives of 'climate change mitigation'<sup>31</sup> and 'climate change adaptation'<sup>32</sup> entered into force.
4. As of 1 January 2023, the delegated acts of the other environmental objectives entered into force: 'sustainable use and protection of water and marine resources',<sup>33</sup> 'transition to

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<sup>26</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance): [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852)

<sup>27</sup> Recital 5

<sup>28</sup> Recital 6

<sup>29</sup> Recital 11

<sup>30</sup> Recital 10

<sup>31</sup> Art. 10

<sup>32</sup> Art. 11

<sup>33</sup> Art. 12



circular economy',<sup>34</sup> 'pollution prevention and control'<sup>35</sup> and 'protection and restoration of biodiversity and ecosystems'<sup>36</sup>.

The Commission has adopted delegated acts to further specify the EU Taxonomy Regulation and to be able to act flexibly and swiftly in the event of new developments.

## Relevance for European member states

### What is the EU Taxonomy?

The EU Taxonomy is a common classification system that provides companies and investors with tools to identify sustainable investments in economic activities.<sup>37</sup> The classification system ensures:

1. A common language that creates transparency and insight into finances;
2. Insight into the extent to which an investment is sustainable;
3. Insight into which environmental goals investments have an impact on.

In this way, more private capital is directed towards sustainable investments in order to enable the transition to a sustainable economy. In addition, the reliability, consistency and comparability of information on sustainable investments in the financial sector will be enhanced.<sup>38</sup>

### 1. The classification system for an environmentally sustainable economic activity

An environmentally sustainable economic activity exists when the following four criteria are met:<sup>39</sup>

1. The activity makes a 'substantial' contribution to at least one of the six **environmental objectives**<sup>40</sup>.
2. The activity does not significantly harm the other five environmental objectives. This is also known as the **DNSH criterion** : do no significant harm. The main focus is on the environmental activities of the economic activity itself and the life cycle of the products and services that the activity delivers. Existing life cycle assessments shall be used as evidence.<sup>41</sup>
3. The activity meets the **minimum guarantee of corporate social responsibility**. For example, the activity must comply with the OECD Guidelines for Multinational Enterprises and the United Nations Principles on Business and Human Rights.<sup>42</sup>
4. The activity complies with the **technical screening criteria** described in the '**delegated acts**'. Delegated acts describe the guidelines and technical criteria that an activity must meet in order to be classified as 'substantial contribution' or 'no significant harm'. These screening criteria include both quantitative and qualitative indicators and are specified by environmental objective and by sub-sector.<sup>43</sup>

To ensure that the technical screening criteria remain up-to-date, the European Commission has set up a Platform on Sustainable Finance. This platform advises the Commission on, among other things, the technical screening criteria and the sustainability objectives. If a company or institution does not

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<sup>34</sup> Art. 13

<sup>35</sup> Art. 14

<sup>36</sup> Art. 15

<sup>37</sup> Art. 1(1)

<sup>38</sup> Recital 20

<sup>39</sup> Art. 3

<sup>40</sup> Art. 16

<sup>41</sup> Art. 17

<sup>42</sup> Art. 18 lid 1

<sup>43</sup> Art. 19



agree with an assessment of the sustainability of an economic activity of the financial institution due to certain technical screening criteria, they can report to the platform. The Platform may then advise the Commission to make a certain change to the technical screening criteria in order to ensure that the economic activity is recognised as sustainable.<sup>44</sup>

## 2. The six environmental objectives

The EU Taxonomy has included the following six Sustainable Environmental Goals, as a classification system for all economic activities:<sup>45</sup>

### 1. Climate change mitigation

This target is aimed at achieving the temperature target of 1.5 degrees Celsius from the Paris Agreement. A substantial contribution is made if the activity is aimed at reducing, preventing and removing greenhouse gas emissions. Think of process or product innovations in the field of:

- renewable energy, energy efficiency, energy infrastructure;
- clean or zero-emission mobility, renewable materials;
- Carbon capture and utilisation and carbon capture and storage
- Sustainable forest management
- and clean fuels.<sup>46</sup>

For more information on the specific technical criteria and KPIs set by the European Commission, see delegated act.

### 2. Adaptation to climate change

An economic activity contributes substantially to these objectives if the activity focuses on adaptation solutions to prevent or reduce the (potential) negative effects of climate change on people, nature or assets.<sup>47</sup> This includes, for example, measures aimed at reducing heat stress and flooding. For more information on the specific technical criteria and KPIs set by the European Commission, see the delegated act.

### 3. Transition to a circular economy

An economic activity contributes substantially to the circular transition if the activity is aimed at the prevention, reuse or recycling of waste. This includes, but is not limited to:

- more efficient and increased use of natural resources (reduction of primary raw materials or increase of secondary raw materials);
- making products durable, recyclable, repairable or reusable;
- reducing hazardous substances;
- prolonging the use of products;
- reducing waste generation, recycling waste, reducing litter and developing waste infrastructure;
- prevention of waste incineration.<sup>48</sup>

For more information on the specific technical criteria and KPIs set by the European Commission, see the delegated act.

### 4. Pollution prevention and control

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<sup>44</sup> Art. 20

<sup>45</sup> Art. 9

<sup>46</sup> Art. 10

<sup>47</sup> Art. 11

<sup>48</sup> Art. 13



An economic activity makes a substantial contribution to the prevention and control of pollution if the activity is aimed at protecting the environment from pollutants in air, water and soil. These are:

- preventing and reducing pollutants
- improving the quality of air, water and soil
- limiting the production of chemicals and cleaning up litter<sup>49</sup>.

For more information on the specific technical criteria and KPIs set by the European Commission, see the delegated act.

#### **5. Sustainable use and protection of water and marine resources**

This objective aims at the sustainable use and protection of water and marine resources. These are all living and non-living organisms found in the rivers, lakes, seas and oceans. People exploit these resources for food, medicines and cosmetics, for example. An economic activity contributes substantially if the activity aims to achieve or maintain good status of water bodies and marine ecosystems. Includes:

- sustainable use of marine ecosystem services;
- improving water management and efficiency;
- appropriate collection, treatment and discharge of urban and industrial waste water;
- the occurrence of microorganisms, parasites, or other hazardous substances in water for human consumption.<sup>50</sup>

For more information on the specific technical criteria and KPIs set by the European Commission, see the delegated act.

#### **6. Protection and restoration of biodiversity and ecosystems**

An economic activity contributes substantially to the protection and restoration of biodiversity and ecosystems if the activity aims to protect, conserve or restore biodiversity and ecosystems. These include nature and biodiversity conservation, sustainable land use and management, sustainable agricultural practices and sustainable forest management.<sup>51</sup>

For more information on the specific technical criteria and KPIs set by the European Commission, see the delegated act.

For each specific investment, a company or institution may choose to focus on one of the above environmental objectives. In that case, only that objective needs to be reported for that specific investment. However, at the organisational level, a company or institution must report on the extent to which the economic activity contributes to or detracts from all six environmental objectives.

#### **Who does EU Taxonomy apply to?**

The EU Taxonomy applies to the following companies and institutions.<sup>52</sup>

##### **1. Financial market participants<sup>53</sup> that make financial products available.**

Financial products<sup>54</sup> include everything related to asset management and pension products or schemes. The following companies are financial market participants:<sup>55</sup>

- a. Insurance undertakings;

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<sup>49</sup> Art. 14

<sup>50</sup> Art. 12

<sup>51</sup> Art. 15

<sup>52</sup> Art. 1(2)

<sup>53</sup> Art. 2(2)

<sup>54</sup> Art. 2(3)

<sup>55</sup> Art. 2 lid 1 verordening 2019/2088. Link: [eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32019R2088](https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32019R2088)



- b. Investment firms;
- c. Institutions for Occupational Retirement Provision (IORP);
- d. Developers of a pension product;
- e. Alternative Investment Fund Managers (AIFM Management);
- f. Providers of a pan-European personal pension product (PEPP provider);
- g. Managers who are eligible from a venture capital fund or a social entrepreneurship fund;
- h. Undertakings for collective investment in transferable securities;
- i. Credit institutions.

These companies and institutions must report in the periodic reports (e.g. in the annual report) and in the case of pre-contractual disclosures (the negotiation phase before a contract is concluded) on:<sup>56</sup>

- Information relating to the environmental objectives to which the investment contributes;
- How and to what extent the investment in the economic activity can be considered sustainable.

## **2. Member States or the European Union**

Measures taken by Member States or the European Union, which include requirements for financial market participants or issuers in the area of financial products or corporate bonds that have been designated as 'sustainable'. Issuers<sup>57</sup> issue securities or intend to issue a security.<sup>58</sup>

## **3. Companies subject to CSRD**

Companies that are required to submit a non-financial report under the CSRD disclose how and to what extent the company's activities can be qualified as sustainable.<sup>59</sup>

## **4. Non-financial corporations**

Non-financial undertakings are required to provide the following information:<sup>60</sup>

- The share of turnover from products or services, which come from sustainable ecological economic activities;
- The share of capital and operational expenditure related to the assets and processes related to sustainable ecological economic activities.

If one of these parties infringes the Regulation, the proportionate and dissuasive measures and sanctions of a Member State shall apply.<sup>61</sup>

In addition, the delegated acts include templates for the different companies and institutions that fall under the scope of EU Taxonomy. According to the template, these companies and institutions must report on the sustainability of their economic activities.

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<sup>56</sup> Art 5

<sup>57</sup> Art. 2(4)

<sup>58</sup> Art. 2(h) of Regulation 2017/1129. Link: [Regulation \(EU\) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC. \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2017/1129/oj)

<sup>59</sup> Art. 8(1)

<sup>60</sup> Art 8 paragraph 2

<sup>61</sup> Art. 22



Finally, companies and institutions that do not formally fall under the scope of the EU Taxonomy can report on their environmentally sustainable economic activities on a voluntary basis.<sup>62</sup>

### **EU Taxonomy in national legal order**

EU Taxonomy is a regulation. This means that the EU Taxonomy is directly binding and directly applicable in EU member states. The Regulation should not be transposed into national law, so that all Member States apply the EU Taxonomy in the same way. In the event that there is national legislation that is incompatible with the EU Taxonomy, then the regulation will take precedence over national legislation.

### **Relevance for circular economy**

The EU Taxonomy supports the transition to a circular economy in the following ways:

#### **1. International policies and agreements**

The EU Taxonomy Regulation is an important part of the European Green Deal and other (international) agreements and policies aimed at circularity and sustainability, such as the Paris Agreement, the United Nations 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs). On the one hand, the regulation ensures financial flows to circular and sustainable developments and, on the other hand, transparency about the extent to which investments are sustainable.<sup>63</sup>

#### **2. Environmental objective: transition to a circular economy**

One of the six environmental objectives of the regulation focuses on the transition to a circular economy. This means that all investments are tested for variables in order to contribute to a circular economy and not harm it. For example, according to delegated acts, economic activities must be assessed in terms of:<sup>64</sup>

1. Increasing the durability, repairability, upgradability and reusability of products;
2. Reduce the use of resources through design and material choices;
3. Reduce the use of building materials and promote reuse by facilitating repurposing, dismantling and demolition in building and construction sectors;
4. The use of product-as-a-service business models;
5. Circular value chains in which products, components and materials are processed to the highest possible standard;
6. Replacing hazardous substances in materials and products for safer and more sustainable alternatives;
7. Reducing food waste in the food value chain.

#### **3. Prevents greenwashing**

Greenwashing is the promotion of a financial product (e.g. shares, funds or securities) as sustainable, while in practice this is not the case. In this way, individuals and other companies are misled. This has major negative consequences for the confidence of private investors in the sustainable financial market, as a result of which greenwashing reduces the flow of capital to sustainable initiatives. This is detrimental to achieving the objectives of the Green Deal and the Paris Agreement.

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<sup>62</sup> Recital 15

<sup>63</sup> Recital 1 t/m 18

<sup>64</sup> Recital 28



The regulation prevents greenwashing in the following ways:

- a. If a company or institution promotes a product or service as 'sustainable', it must be demonstrated in the pre-contractual phase that it is actually sustainable.<sup>65</sup> This must be done on the basis of a report based on the classification system of the EU Taxonomy.
- b. If an investment of a financial product falls outside the scope of the EU Taxonomy, the following sentence must be specifically stated in the pre-contractual disclosures and in the periodic reports: "The underlying investments of this financial product do not take into account the EU criteria for environmentally sustainable economic activities."<sup>66</sup>

## **Relevance of local and regional authorities**

The EU Taxonomy has a direct and indirect impact on local authorities (municipalities and provinces).<sup>67</sup> Based on its exemplary role and social responsibility, the local and regional authorities can also use this regulation to integrate sustainability into their own policies and to support a sustainable business climate.

### **1. Financial products: subsidies and local taxes<sup>68</sup>**

Local and regional authorities use various financial products. For example, municipalities can grant subsidies to market parties in order to be able to carry out a certain economic activity. In addition, local and regional authorities make use of local levies to pay for certain public services, such as the collection of waste from households by means of waste charges.

#### **Subsidies**

When applying for a subsidy, economic operators that fall within the scope of the regulation must report to the local and regional authorities on the extent to which the economic activity contributes to the six environmental objectives. In this way, the local government gains insight into the number of subsidies granted annually that fund sustainable economic activities.

In addition, the local and regional authorities can use subsidies to control the use of the classification system by companies that do not formally fall within the scope of the regulation. The EU Taxonomy emphasizes the importance of transparency in the financial world and attracting capital to sustainable economic activities. The greater emphasis on sustainability in business can be a broader incentive for more sustainable initiatives at the local level. Local and regional authorities can strengthen this incentive by linking the sustainability performance of economic activities to the subsidy conditions, provided that this is well motivated.

#### **Local taxes**

The local authority is obliged to report on the extent to which the economic activity, on which a local tax has been introduced, can be classified as environmentally sustainable.

#### **Licenses**

Companies must apply for an environmental permit from the local government to carry out economic activities. Local and regional authorities can include requirements in the permit

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<sup>65</sup> Art. 6

<sup>66</sup> Art. 7

<sup>67</sup> Art. 4

<sup>68</sup> Art 4



requirements to provide insight into the contribution of the economic activity to environmental objectives according to the EU Taxonomy. Companies that do not fall within the scope of the regulation can be incentivised to report transparently. However, it is important that these permit requirements are proportionate and proportionate and in accordance with the environmental plan and policies.

DRAFT





## VIII. EED | Energy Efficiency Directive

### Purpose of EED

The Energy Efficiency Directive (EED) sets out rules and obligations regarding energy efficiency. The EED was last amended in October 2023. The new version should contribute to 'Fit for 55'; the EU's overarching ambition to reduce greenhouse gas emissions by 55% by 2030 compared to the 1990 reference year. This reduction is necessary because the EU wants to be climate neutral by 2050. In addition, the EED aims to contribute to the EU's security of energy supply by reducing the EU's dependence on energy imports.

### Status

10 October 2023      The revised EED has entered into force

11 October 2025      Implementation deadline.

Current status    Directive not yet (fully) implemented into national legislation

### Obligations for European member states

#### 1. What is EED?

The European Member States must work together to ensure that energy consumption within the EU is reduced by 11.7% by 2030 compared to the energy consumption predicted in the 2020 EU reference scenario. To achieve this, each Member State must implement energy efficiency measures. The end goal is binding; The measures taken by the Member States to achieve that objective are not. Whatever measures a Member State chooses, they must together contribute to annual energy savings that ultimately add up to the 2030 target.

EU Member States should also try to contribute to another, non-mandatory, goal: a total primary energy consumption below 992.5 megatonnes of oil equivalent (MToe) by 2030.

#### 2. Energy Efficiency First-principle

The EED is largely based on the Energy Efficiency First (EEF) principle. That is the motto for governments when it comes to new policies and investment measures that have an impact on energy consumption and efficiency. This is also relevant in the real estate sector.

The Energy Efficiency First principle is based on the idea that energy saving can also be considered as an energy source. As a result, member states must include energy efficiency 'by design' in policy development and investment choices.

This could mean, for example, that an investment in energy savings is given priority over an investment in energy infrastructure. After all, it is conceivable that this will make a greater contribution to the goals of the EED.

At present, Member States do not focus on energy savings in all sectors separately. This applies, for example, to the built environment. Member States – including the Netherlands – will therefore have to adapt their policies to the new reality of the revised EED and the EEF principle.



### 3. Specific obligations of Member States

In this section, we tell you exactly what member states should or can do to achieve their goals.

#### Application of EEF

To ensure that member states apply the Energy Efficiency First principle as effectively as possible, the European Commission provides the following guidelines:

##### Cost analysis

Member States should prepare and make available cost-benefit analyses identifying the wider benefits of energy-efficient solutions. In doing so, they take into account the following aspects:

- The entire life cycle
- The long-term perspective
- The potential system and cost efficiencies
- Security of energy supply
- Societal, economic, health and climate aspects
- The application of principles on sustainability and the circular economy
- Member States must map the impact on energy efficiency of existing regulations on, among other things, (spatial) policy, finance and investment measures
- Member States should assess the impact of energy efficiency initiatives on energy poverty
- Member States should designate the entities responsible for monitoring the implementation of the EEF principle

Finally, EU Member States must demonstrate how the EEF principle is reflected in national, regional and local energy efficiency policies and investment measures. They do so in the National Energy and Climate Progress Report.

#### Real estate of public authorities

85% of all buildings used by EU Member States were built before the year 2000. 75% of them have poor energy efficiency. As part of the Green Deal – which also includes the EED – the EU has decided that by 2050 all real estate of member states and local authorities and public organisations must be zero-emission. This will apply to new buildings as early as 2030. Since 2021, all new government buildings must be near-zero emissions.

To make existing buildings owned by public bodies more sustainable, Member States must renovate 3% of their total floor area to nearly zero-energy or zero-emission every year. This concerns buildings of more than 250m<sup>2</sup> that will not be nearly energy-neutral by 1 January 2024.

In support of this goal, Member States should identify the buildings in question. This inventory must be updated at least every two years. The inventory should include the following aspects:

- The floor area
- The annual consumption – if the figures are available – when it comes to heating, cooling, electricity and hot water
- The energy certificates (issued as part of the Energy Performance of Buildings Directive)



## **Sustainable procurement**

In European procurement, contracting parties must take into account the energy efficiency performance of products, services, works and buildings.

In order to ensure transparency in the application of energy efficiency requirements in the procurement process, Member States should ensure that contracting authorities make public information on the energy efficiency impact of procurement. In addition, Member States should provide support in the application of energy efficiency requirements in procurement, by:

- Establish clear rules, at least on the assessment of life-cycle costs, environmental impacts and costs
- Setting up knowledge support centers
- encourage cooperation between contracting authorities

## **Energy services**

In order to ensure that the objectives of the directive can be achieved, it is important that there are sufficient energy services that have knowledge in the field of energy efficiency. To ensure that energy efficiency professionals are competent, Member States should take measures: setting up a network, making certification schemes available and promoting participation in certification, training and education programmes.

In addition, it is important that the market for energy services is further developed in order to achieve sufficient supply and demand. For example, Member States should facilitate market access for small and medium-sized enterprises. Member States should also disseminate clear information on:

- Available energy contracts
- Instruments
- Available qualified or certified energy service providers
- Available monitoring and verification methods and quality control arrangements

These efforts are aimed at incentivising energy savings, ensuring final customer rights and supporting energy efficiency projects to promote a more sustainable society.

## **Protecting vulnerable consumers and alleviating energy poverty**

Member States must take measures to protect – and empower – people affected by energy poverty or low income. Otherwise vulnerable people or people who live in social housing also deserve protection. This can consist of, for example:

- Making public funding accessible and available
- Take measures to ensure that lower incomes and vulnerable households also benefit from transitions under the EED, and that the benefits are not reserved for groups with a high level of livelihood security
- Technical assistance

EU Member States must ensure that customers have access to effective, independent and efficient means to settle disputes with energy service providers outside the courtroom.



In addition, Member States should establish a network of experts who can advise on topics such as:

- Measures to prevent or remedy energy poverty on the basis of income, gender, health, minority or demographic group
- National definitions, indicators and criteria for energy poverty, energy-poor and vulnerable customers
- Methods and measures to ensure:
  - Cost of Living Affordability
  - Cost-neutral renovation for lower incomes for energy efficiency
  - Public funding that benefits both owners and tenants

### **Other liabilities**

There are specific obligations for specific target groups. For example, data center administrators are required to:

- make certain information on their energy performance publicly available, such as on energy consumption and the use of renewable energy
- use of residual heat, unless this is demonstrably not feasible in a technical or economic sense

In addition, grid operators are required to:

- Improve their energy efficiency, monitor losses, establish rules on the technical adaptation of their networks, and provide information to other power plants on how to connect to the grid
- Apply the energy efficiency first principle in the planning, maintenance, development and investments of the gas and electricity networks. The authorities involved must check whether this is indeed happening in processes involving the approval and monitoring of projects and plans

### **4. To whom does EED apply?**

The EED often contains obligations for EU member states and local and regional authorities. In addition, obligations have been included for specific companies, such as data centres and grid operators. Finally, an audit obligation has been included in the EED that applies to organisations with a certain energy consumption.

### **5. EED in the national legal order**

The EED is a European directive. The Netherlands must implement this directive in national laws and regulations. The following laws still need to be amended in order to implement the recent revision of the Directive:

- Energy Efficiency Implementation Act
- Procurement Act 2012
- Collective Heat Supply Act

*The implementation period (11 October 2025) also applies to these laws.*



## **Relevance for local and regional authorities**

### **1. The leading role of the public sector**

The Member States – and all local and regional authorities and public organisations within them – must lead by example in achieving the goals of the EED. The ultimate goal in terms of savings is an average annual energy saving of 1.5% until 2030.

Until the end of 2025, this saving may amount to 1.3%; From then until 2027, it will be 1.5%. To reach the average of 1.5% in 2030, countries must achieve annual savings of 1.9% from 2028. All in all, this should result in total savings of 11.7% by 2030.

Until 31 December 2026, this mandatory savings target does not apply to local authorities with fewer than 50,000 inhabitants. For local authorities with fewer than 5000 inhabitants, it will only apply from 31 December 2029.

To achieve the goals of the EED, local and regional authorities must include specific energy efficiency measures in their long-term planning, such as plans on decarbonisation or renewable energy. It is important that relevant stakeholders, such as energy agencies and vulnerable groups in society, are involved in the development of these plans.

In addition, local and regional authorities should take measures to mitigate the negative effects of energy efficiency measures, for vulnerable groups or low-income households in energy poverty.

### **2. Sustainable procurement**

In European procurement procedures, local and regional authorities are obliged to purchase services, products, buildings and works that are highly energy-efficient, unless this is not technically feasible.

The EED sets specific energy efficiency requirements that contracting authorities/local and regional authorities must comply with during European procurement procedures. For example, contracting parties may only purchase buildings or conclude leases for buildings that are at least nearly zero-energy, unless the purpose of the purchase is to carry out a thorough renovation or demolition.

Even if there are no specific energy efficiency requirements for a contract in the Directive, contracting parties must still apply the Energy Efficiency First principle.

To ensure transparency, contracting parties should publish information on the energy efficiency impact of contracts on Tenders Electronic Daily.

### **3. EMS in Energy Audits**

Organisations with an annual energy consumption of 85 terajoules and more will have to set up an Energy Management System from 11 October 2027. An EMS is a system that measures and accesses the organization's energy consumption in real-time via dashboards, enabling the organization to track problems and make improvements.

From 11 October 2026, organizations with an average annual energy consumption of 10 terajoules and that do not have an EMS must have an energy audit carried out at least every 4 years. These audits must comply with criteria set by Member States, based on EU directives:



- The audit is based on *up-to-date*, measured, traceable operational data on energy consumption and energy taxation
- The audit provides a detailed insight into the energy consumption of buildings and industrial activities, including transport
- The audit identifies possible measures for energy savings
- The audit identifies the potential for cost-effective use or generation of renewable energy
- Where possible, the audit uses cost analyses that cover the entire life cycle
- The audit provides a reliable picture of the overall energy performance and possible improvements
- The audited organization must create a plan outlining how the recommendations from the audit will be implemented.

Organizations that do not have to comply with these requirements are encouraged to undergo audits and implement recommendations, for example on the basis of technical or financial support from Member States.

#### **4. Heat and cold supply**

About half of all energy consumption in the EU is spent on heating and cooling. The major consumers within this are the built environment and industry.

It goes without saying that the *carbon footprint* is considerable, and the EU is committed to reducing it by increasing the share of renewable energy. In the context of energy efficiency, Member States and local and regional authorities should work on the reuse of waste heat and cold and pave the way for integration of energy supply, heating and cooling.

As part of the Energy Efficiency Directive, member states have been drawing up an extensive heating and cooling assessment every 5 years since 2012 . It also includes the opportunities for energy efficiency in this context. The most [recent analysis of the Netherlands dates from 2020](#). Click here for [analyses of the other Member States](#).

Local authorities must also draw up heating and cooling plans. This applies in any case to municipalities with a population of more than 45,000 inhabitants. These plans must include, among other things, an overview of the possibilities for higher energy efficiency within a municipality.

#### **Relevance of the circular economy**

The relevance of the EED for the circular economy is clearly visible in the EEF principle. This principle approaches energy efficiency as the 'first fuel', an energy source in its own right. In the event of an energy demand, the alternative options are first considered. For example, this can lead to energy savings being chosen over investments in energy infrastructure. Or that renewable energy sources are chosen more often.

Conversely, the circular economy also contributes to the objectives of the EED. If a product is designed with a longer lifespan or a higher degree of reusability or recyclability, the result is that less energy is needed to make new products or recycle used products. Energy efficiency and the circular economy go hand in hand.



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