

## Comments on the draft report for IMCO on Construction Products Regulation

Following the release of Christian Doleschal's draft report on CPR<sup>1</sup>, and considering amendments being tabled until mid-December, EEB hereby submit its views.

We are worried about the following directions taken in the report to be considered in the European Parliament:

- A greater push towards standardisation, at the expense of transparency and policy debate;
- A clear choice to protect industry's interests with too little to no consideration for consumers or the environment;
- A weakening of enforcement and market surveillance provisions, as well as the regime of green public procurement.

### A greater push towards standardisation, at the expense of transparency and policy debate

In this report, the role of the European Commission in setting requirements for construction products is weakened even more than in the Commission's proposal. This direction is really worrying as we know that this comes down to giving the pen to the industry to set all the legal requirements through harmonised standards, including concerning the environmental performance of products.

Considering the urgency and current backlog of standards and repeated rejection for citation in the official journal due to inappropriate standards being developed, Article 4(3) foresees the possibility for the European Commission to intervene by developing delegated acts in place of standards (fall-back option). However, amendments 97 to 104 of the report are substantially watering down the fall-back option, by adding more conditions and less possibilities for the European Commission to intervene. In a very iconic way, Amendment 101 makes it crystal clear where the rapporteur's interest lies, by deleting the possibility for the European Commission to set delegated acts if the harmonised standards developed are not aligned with the EU climate and environmental legislation and ambition. This route to standardisation is even strengthened with the following amendments on Article 5(1), deleting the direct applicability of information requirements from this regulation. In addition, amendment 107 aims to change the possibility for the European Commission under Article 5(3) to take delegated acts to adapt the list of requirements for construction products (Annex 1) to technical progress, including new risks and environmental aspects.

This primary, nearly exclusive, route of standardisation to establish mandatory requirements to access the EU market is all the more worrying that there is a track record of failure. Currently, only 12 out of 444 existing standards can be deemed to be in compliance with the current CPR, and absolutely no standards have been developed in support of environmental objectives. Why would more of the same failing recipe help to accelerate the transition of the sector towards environmentally sound and sustainable construction products?

Considering the general policy context, this push for the predominance of standards is contradictory to the current development of EU legislation, for example with the reformed Packaging and Packaging Waste Directive, where essential requirements implemented so far exclusively through standards have now been replaced by clear and quantified policy formulations to be discussed openly by the EU institutions and with public access to all documents.

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<sup>1</sup> [https://www.europarl.europa.eu/doceo/document/IMCO-PR-738491\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/IMCO-PR-738491_EN.pdf)

## A clear choice to protect industry's interests with little to no consideration for consumers or the environment

As if Christian Doleschal had forgotten he sits in the Committee for Internal Market and Consumers (IMCO), consumers' interests seem largely overlooked in this report. In addition, it also needs essential to remind the rapporteur that the revision of this regulation is to be made to contribute to the objectives of both the green and digital transitions.<sup>2</sup>

Among the many problematic suggestions put forward, one can specifically highlight amendment 248, which simply deletes the need for a centralised EU construction products database or system, referring specifically to Digital Product Passports - DPP (Article 78). This suggestion really goes against the grain of the arguments put forward in the EU Parliament note on the Impact Assessment<sup>3</sup> study for the revision of the CPR, emphasizing the many benefits of DPP for construction products. Making available digitally information for construction products would allow to overcome several current barriers hindering construction products to live up to the goals of circularity and sustainability and hampering installers, procurement professionals and consumers to make the right decision when buying construction products.

It must also be noted that this report specifically restricts the definition of products falling in the scope of Ecodesign for Sustainable products Regulation (ESPR) – and therefore stricter environmental requirements – to only heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products, excluding building-integrated photovoltaic panels (Recital 28). However, as already highlighted in our previous position paper, it seems crucial to us that cement is also integrated into the ESPR to be regulated with the other high-energy intensive intermediary materials as soon as possible.<sup>4</sup>

Finally, provisions on reuse – even though central to improve circularity of construction products – are also widely weakened in this report, with the deletion for example of obligation regarding de-installing or dealing with used products for re-use or remanufacturing (Articles 29). However, it is essential that that the installation and deinstallation phase are regulated by the CPR, to ensure the effectiveness of key environmental provision proposed on maintenance, reuse, and circularity. For example, a product can be fully recyclable in itself, but if it is installed in a building endangering its environmental characteristics (i.e., by using glues making it effectively non apt for recycling at end of life), then the initial recyclability claim of the product cannot be fulfilled.

## A weakening of enforcement and market surveillance provisions, as well as the regime of green public procurement

Some amendments proposed in this report can let us wonder whether or not the proper market surveillance of construction products and enforcement of this regulation are at the heart of the rapporteur's priorities (while being part of the main objectives of the revision of the regulation!). First of all, it is considered to delete minimum checks and minimum human resources, fearing an infringement to the principle of subsidiarity (Article 73). This suggestion is representative of how conservative the approach taken in this report is: indeed, it is now in several legislation that

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<sup>2</sup>[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/734692/EPRS\\_BRI\(2022\)734692\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/734692/EPRS_BRI(2022)734692_EN.pdf)

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0088&from=EN>

<sup>4</sup> <https://eeb.org/wp-content/uploads/2022/07/EEB-response-CPR-proposal-of-the-EC-July2022.pdf>

requirements for market surveillance activities are set (e.g., Ecodesign for Sustainable products Regulation, Waste Shipments Regulation) to mitigate the poor resources dedication at national level. The weakening of enforcement provisions can also be seen in changes in the power of the Commission to establish means to transmit information on construction products (Article 33, Article 49 and Article 78), as well as to establish minimum penalties (Article 90).

Finally, on green public procurement (GPP), the systematic change of wording throughout the text undermines the binding nature of GPP criteria. For example, amendment 260 changes the form of requirements for public contracts from mandatory technical specifications into voluntary ones. Overall, with the amendments proposed in this report, the Commission should not interfere with Member States competence to regulate public procurement, which should rather be of voluntary nature. This approach would severely undermine the potentials to develop GPP circular criteria and accelerate the uptake of most sustainable products, for example to promote the use of reused or recycled materials or other low carbon/less harmful products.

Overall, the direction taken by the amendments suggested by Christian Doleschal are very worrying, as they seem to hamper the CPR from achieving its full potential in terms of consumer and environmental protection, as well as transparency and enforcement. The interests of the industry seem to be overrepresented in his report, which should not come as a surprise considering that he was a lawyer for one of the most powerful medium-sized companies in the German construction industry for many years before being a Member of the European Parliament. This conflict of interests now needs to be strongly counterbalanced in the negotiations in the European with stronger stances in favour of consumers and the environment in this regulation.

## ANNEX – Amendment formulations

This Annex provides references to the formulations of amendments proposed in Christian Doleschal's report mentioned in this position paper, compared to the original text proposed by the European Commission, as well as suggestions of amendments supported by the EEB. This list is non-exhaustive and only highlights some of the key issues identified in the rapporteur's suggestions.

Recitals/Articles	Text proposed by the Commission	Proposition of amendment in C. Doleschal's report	EEB/ECOS amendment suggestion
<p><b>Recital 28</b></p> <p><u>Explanatory note:</u> In this amendment, the rapporteur wants to strictly limit products falling under the ESPR. We strongly oppose this formulation, and in addition we believe that there are no grounds to treat cement differently from other energy intensive intermediate products, which are more appropriately regulated through Delegated Acts under the ESPR.</p>	<p>In particular, in the case of energy-related products included in ecodesign working plans which are also construction products and for intermediary products, <b>with the exception of cement</b>, priority for the setting of sustainability requirements will be given to the [ESPR]. <b>This should be the case for instance for</b> heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products, excluding building-integrated photovoltaic panels.</p>	<p>In the case of energy-related products included in ecodesign working plans which are also construction products and for intermediary products, with the exception of cement, priority for the setting of sustainability requirements will be given to the [ESPR]. <b>The intermediary products concerned are</b> heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products, excluding building-integrated photovoltaic panels.</p>	<p>In particular, in the case of energy-related products included in ecodesign working plans which are also construction products and for intermediary products, <b>with the exception of cement</b>, priority for the setting of sustainability requirements will be given to the [ESPR].</p>
<p><b>Article 4(3) – Fall back option</b></p> <p><u>Explanatory note:</u> the amendment proposed clearly mentions the priority given to</p>	<p><b>3. By way of derogation from paragraph 2 and in order to cover the regulatory needs of Member States and to pursue the goals of Article 114 of the</b></p>	<p><b>3. While priority shall be given to the elaboration of standards,</b> the Commission is empowered to supplement this Regulation by means of</p>	<p>By way of derogation from paragraph 2 and in order to cover the regulatory needs of Member States and to pursue the goals of Article 114 of the Treaty on the Functioning of the</p>



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<p>standards, and creates more conditions to set delegated acts, while deleting the possibility to use the fall-back option when standards are not in line with environmental legislation. It is iconic of how the standardisation route is promoted in this report, at the expenses of transparency and climate neutrality objectives. To the contrary we would like to add some clarity by adding a paragraph to ensure that a checkup of the climate ambition of the standards acquis of the CPR is in line with the climate and environmental goals pursued by the EU, including through the ESPR.</p>	<p><b><i>Treaty on the Functioning of the European Union</i></b>, the Commission is empowered to supplement this Regulation by means of delegated acts in accordance with Article 87, by establishing, for particular product families and categories, <b><i>voluntary or mandatory essential characteristics and their assessment methods in any of the following cases:</i></b></p> <p>(...)</p> <p><b><i>(e) the standards referred to in the first subparagraph of Article 4(2) are not in line with EU climate and environmental legislation and ambition;</i></b></p>	<p>delegated acts in accordance with Article 87, <b><i>and after consultation of the relevant European standardisation organisations and European stakeholder organisations receiving Union financing under Regulation (EU) No 1025/2012</i></b>, by establishing, for particular product families and categories, mandatory essential characteristics and their assessment methods in any of the following cases:</p> <p>(...)</p> <p><b><i>deleted</i></b></p>	<p>European Union, the Commission is empowered to supplement this Regulation by means of delegated acts in accordance with Article 87, by establishing, for particular product families and categories, <b><i>voluntary or mandatory essential characteristics and their assessment methods in any of the following cases:</i></b></p> <p>(...)</p> <p><b><i>Commission's text (e) + new paragraph: Within 12 months of the adoption of this Regulation, the Commission shall produce a report detailing where standards adopted are not in line with EU climate and environmental legislation, and detail steps to adopt Delegated Acts to rectify this shortcoming.</i></b></p>
<p><b>Article 5 – Product requirements</b></p> <p><u>Explanatory note:</u> With this amendment, the rapporteur suggest to delete the direct applicability of product requirements set in the CPR to be placed on the market. To the</p>	<p><b><i>1. All products covered by this Regulation shall, prior to their placing on the market or direct installation, satisfy the generic, directly applicable product requirements set out in Annex I Part D and the product requirements laid down in Annex I Part</i></b></p>	<p><b><i>1. The Commission is empowered to supplement this Regulation, by means of delegated acts in accordance with Article 87, by specifying for the respective product family or category, product requirements laid down in Annex I Part B and C.</i></b></p>	<p>1. All products covered by this Regulation shall, prior to their placing on the market or direct installation, satisfy the generic, directly applicable product <b><i>information requirements</i></b> set out in Annex I Part D and the product <b><i>performance requirements</i></b> laid down in Annex I Part B and C as specified for the</p>

European Environmental Bureau

• Rue des Deux Églises 14-16, 1000 Brussels, Belgium • ☎ +32 228 91090 • eeb@eeb.org • www.eeb.org

International non-profit association • Association internationale sans but lucratif (AISBL) • EC register for interest representatives:  
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contrary, we suggest to clarify the different scope of requirements set by the article (information and performance), in line with the ESPR.

B and C ***as specified for the respective product family or category in accordance with paragraph 2.*** The product requirements ***laid down in Annex I Part B and C are only applicable where they have been specified in accordance with paragraph 2.***

2. ***In order to specify*** the product requirements set out in Annex I Part B, C ***and D,*** the Commission ***is empowered to supplement this Regulation, by means of delegated acts in accordance with Article 87, by specifying,*** for particular product families and categories, these product requirements ***and by laying down*** the corresponding assessment methods. Once the Commission has specified these product requirements by delegated acts, it ***may*** issue standardisation requests which aim at the elaboration of ***voluntary*** harmonised

***Products shall only be placed on the market if they comply with the product requirements set out in this delegated act.***

2. ***When specifying*** the product requirements set out in Annex I Part B, C, the Commission ***may define,*** for particular product families and categories, ***which of*** these product requirements ***shall apply to this product family or category and lay down*** the corresponding assessment methods. Once the Commission has specified these product requirements by delegated acts, it ***shall*** issue standardisation requests which aim at the elaboration of harmonised standards providing presumption of conformity with these mandatory product requirements. ***In the event that there is no harmonised standard, the Commission shall establish clear guidelines for manufacturers on how to demonstrate conformity with product requirements.***

respective product family or category in accordance with paragraph 2. The product requirements laid down in Annex I Part B and C are only applicable where they have been specified in accordance with paragraph 2.

2. In order to specify the product requirements set out in Annex I Part B, C and D, the Commission ***shall*** supplement this Regulation, by means of delegated acts in accordance with Article 87, by specifying, for particular product families and categories, these product requirements and by laying down the corresponding assessment methods.

***3. For performance requirements set in Annex I part B and C, the respective delegated acts shall, as appropriate, include:***  
***(a) minimum or maximum levels in relation to a specific product parameter referred to in Annex I part B and C or a combination thereof.***  
***(b) non-quantitative requirements that aim to improve performance in relation to one or more parameters referred to in Annex I part B and C***

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	<p>standards providing presumption of conformity with these mandatory product requirements <b>as specified by these delegated acts.</b></p> <p><b>3. The Commission is empowered to amend Annex I Part B, C and D by means of delegated acts in accordance with Article 87 in order to adapt it to technical progress and in particular to cover new risks and environmental aspects.</b></p>	<p><b>3. deleted</b></p>	<p><b>or a combination thereof.</b></p> <p><b>4. (new) For Information requirements set out in Annex I part D, manufacturers are required to disclose information in the Declaration of Conformity.</b></p> <p><b>5. (new) The Commission is empowered to amend Annex I Part B, C and D by means of delegated acts in accordance with Article 87 in order to adapt it to technical progress and in particular to cover new risks and environmental aspects.</b></p>
<p><b>Article 78 – EU construction products database or system</b></p> <p><u>Explanatory note:</u> Digital product passports are needed in the construction sector to foster digitalization and secure information provision all along the construction value chain – from extraction to end of life. Databases are an old school way of collecting data – requirement remains the same but instrument is</p>	<p><b>1. The Commission is empowered to supplement this Regulation by means of delegated act according to Article 87, by setting up a Union construction products database or system that builds to the extent possible on the Digital Product Passport established by Regulation (EU) ... [Regulation on ecodesign for sustainable products].</b></p>	<p><b>All article deleted.</b></p>	<p>1. The Commission <b>shall</b> supplement this Regulation by means of delegated act according to Article 87, by <b>setting up Digital Product Passport established by Regulation (EU) ... [Regulation on ecodesign for sustainable products]. Digital Product Passports shall meet all conditions established by Regulation (EU) [Regulation on ecodesign for sustainable products].</b> The Digital Product</p>

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brought in line with the ESPR.

**2. Economic operators may access all information stored in that database or system which regards them specifically. They may request that incorrect information is corrected.**

**3. The Commission may, by implementing acts give access to this database or system to certain authorities of third countries that apply voluntarily this Regulation or that have regulatory systems for construction products similar to this Regulation provided that these countries:**

- (a) ensure confidentiality,**
- (b) are partners of a mechanism for lawful transfers of personal data compliant with the Regulation (EU) 2016/679,**
- (c) commit to engage actively by notifying facts that might trigger the need for action of market surveillance authorities, and;**
- (d) commit to engage against economic operators**

Passport shall contain all information provided by the manufacturers and included both in the Declaration of Performance and Declaration of Conformity.

2. (new) The Commission may, by **implementing acts define specific conditions applicable for construction products specifically.**

~~give access to this database or system to certain authorities of third countries that apply voluntarily this Regulation or that have regulatory systems for construction products similar to this Regulation provided that these countries:~~

- ~~(a) ensure confidentiality,~~
- ~~(b) are partners of a mechanism for lawful transfers of personal data compliant with the Regulation (EU) 2016/679,~~
- ~~(c) commit to engage actively by notifying facts that might trigger the need for action of market surveillance authorities, and~~
- ~~(d) commit to engage against economic operators infringing this Regulation from their territory.~~ Those





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	<p><i>infringing this Regulation from their territory. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88(1).</i></p>		<p>implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88(1).</p>
<p><b>Article 84 – Green Public Procurement</b></p> <p>Explanatory note: The constant change of wording proposed by the rapporteur in the amendments to Article 84 aims to limit the binding nature of GPP. To the contrary, we would like to highlight that, considering the relevance of GPP in driving large scale demand, it is essential that the Commission develops mandatory provisions for relevant product categories (ideally most polluting products per volume first, applicable to all products.</p> <p>We believe the Commission should gradually start this process in 2027, as this will require the establishment of</p>	<p>1. The Commission is empowered to supplement this Regulation by delegated acts according to Article 87 by establishing sustainability requirements <b>applicable</b> to public contracts, <b>including implementation, monitoring and reporting of those requirements by Member States.</b></p> <p>2. Requirements adopted pursuant to paragraph 1 for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3, point (1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, may take the form of <b>mandatory</b> technical specifications, <b>selection criteria, award criteria,</b> contract</p>	<p>1. The Commission is empowered to supplement this Regulation by delegated acts according to Article 87 by establishing sustainability requirements <b>that may be applied by Member States</b> to public contracts.</p> <p>2. Requirements adopted pursuant to paragraph 1 for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3, point (1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, may take the form of <b>voluntary</b> technical specifications, contract performance clauses, or targets, as appropriate.</p>	<p>1. The Commission <b>shall</b> supplement this Regulation by delegated acts according to Article 87 <b>by December 31st 2025</b>, by establishing <b>mandatory</b> sustainability requirements applicable to <b>all</b> public contracts, including implementation, monitoring and reporting of those requirements by Member States.</p> <p>2. Requirements adopted pursuant to paragraph 1 for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3, point (1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, <b>shall</b> take the form of mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate.</p>

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product requirements (cf. art. 5 + 22).

performance clauses, or targets, as appropriate.

3. When establishing requirements pursuant to paragraph 1 for public contracts, the Commission shall take into account the following criteria:  
(a) the value and volume of public contracts awarded for that given product family or category or for the services or works using the given product family or category;  
(b) the need to ensure sufficient demand for more environmentally sustainable products;  
(c) the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable products, without entailing disproportionate costs.

3. When establishing requirements pursuant to paragraph 1 for public contracts, the Commission *may* take into account the following criteria: (*IDEM text COM*).

3. When establishing requirements pursuant to paragraph 1 for public contracts, the Commission shall take into account the following criteria:  
(a) the value and volume of public contracts awarded for that given product family or category or for the services or works using the given product family or category;  
(b) ***the environmental benefits entailed by the uptake of products in the highest two classes/scores.***  
(c) the need to ensure sufficient demand for more environmentally sustainable products;  
(c) the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable products, without entailing disproportionate costs **as determined on a total lifetime and operating cost basis.**