



ESG real estate insights

Global perspectives on sustainability and climate

Circular economy: Obligation of means or obligation of results?

The taxonomies that are springing up all over the world are undeniably the operational translations of what can be considered green by legislators. In Europe, if the description of secondary objectives (DNSH¹) for construction activities is anything to go by, a newly constructed or renovated building can no longer be considered green if it does not take into account an ambitious objective in terms of the circular economy.

Part of the DNSH circular economy criterion reads as follows: *"At least 70 % (by weight) of the non-hazardous construction and demolition waste [...] generated on the construction site is prepared for reuse, recycling and other material recovery, [...].²"*

It now remains to be determined exactly what the words "prepared for" mean. Is it an obligation of result or an obligation of means? Do players actually have to prove that their waste has been recycled or simply show that they have sorted the outgoing flows?

Obligation of results:

If this is indeed an obligation to achieve results, the service provider in charge of collection can provide its customer with a waste tracking slip, or even a consolidated report at the end of the worksite showing precisely how much was reused as is and how much was reprocessed by an appropriate channel to become a secondary raw material once again. The auditor's job is clear³: they have to check that this objective has been achieved on a site-by-site basis.

Obligation of means:

In the opposite case, if we are talking about an obligation of means, this would allow the construction companies to report certain projects as green, even in countries where the recycling channels are still in their infancy or even completely non-existent. This raises the question of verification: how precisely can it be established that the outgoing flow is correctly sorted and prepared for reprocessing if there are no channels for it? And what can the auditor base their verification work on?

Although the new circular economy annex⁴ sheds some light on the concept of "prepared for re-use⁵" or "recycling⁶", the question remains.

If we are to believe the arsenal of regulations and strategic guidelines issued by the European Union on the subject (European Green deal, EU Construction and Demolition Waste Directive (2018/851/EU), the EU Circular Economy Action Plan or the EU Energy Performance of Buildings Directive (2010/31/EU)), combined with the "Levels⁷" tools found in the new taxonomy annex on substantial contribution to the circular economy; we would be moving towards an obligation of result. But in that case, why have you worded the criterion in this way? Why not instead write: "At least 70% (by weight) of the non-hazardous construction and demolition waste [...] generated on the construction site are reused, recycled" or "sent to appropriate material recovery channels"? We can certainly see in this the skillful hand of some, shall we say, "inspired" lobbyists.

In any case, if we consider that waste generation is one of the main environmental challenges the real estate and construction sector is facing, and that the scarcity of natural

resources and energy means that we need to rebuild the city on the city and above all with the city (urban mining concept), then everything must be done to speed up the industrialization of secondary raw materials recovery processes. In this context, the obligation to achieve results must take precedence. There is no doubt that the players in developed countries have a responsibility to find technical solutions before deploying them more widely.

One might consider the timing ill-chosen, given the marked slowdown in sales speeds due to the rise of interest rates. On the contrary, this is the best time to break away from the linear and invest at last in the circular. For some, this will be at least the main driver of their decarbonization; for others, it will be an essential condition for the survival of their business.

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Endnotes:

1. Do No Significant Harm criteria (DNSH). To be able to report an activity as taxonomy aligned or green in Europe, one has to prove that its activity contributes substantially to one of six environmental objectives (e.g., substantial contribution criteria) and at the same time do no significant harm to the other five (e.g., DNSH criteria). If the activity fails to comply with one these criteria, it cannot be reported as green.
2. [Annex to the Commission Delegated Regulation \(EU\) .../... supplementing Regulation \(EU\) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives \(Page 170-171\)](#)
3. Depending on the country (Spain, for example) auditors already have to deliver assurance on taxonomy. With the CSRD coming into force more countries will make the issue of limited insurance compulsory as they translate the directive in their own regulations.
4. [Annex to the Commission delegated regulation \(EU\) .../... supplementing Regulation \(EU\) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to the sustainable use and protection of water and marine resources, to the transition to a circular economy, to pollution prevention and control or to the protection and restoration of biodiversity and ecosystems and for determining whether that economic activity causes no significant harm to any of the other environmental objectives and amending Delegated Regulation \(EU\) 2021/2178 as regards specific public disclosures for those economic activities \(Page 33\)](#)
5. Preparing for re-use means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing. This includes, for instance, the preparation for re-use of certain parts of buildings like roof elements, windows, doors, bricks, stones or concrete elements. A pre-requisite for the preparation for re-use of building elements is usually the selective deconstruction of buildings or other structures.
6. Recycling means any recovery operation, by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy
7. [Level\(s\) indicator 2.2: Construction and Demolition waste and materials. User manual: introductory briefing, instructions and guidance \(Publication version 1.1\). Shane Donatello, Nicholas Dodd, Mauro Cordella \(JRC, Unit B.5\)](#)

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