

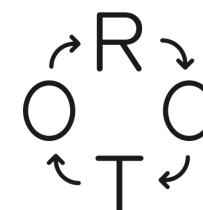
La Région et l'Europe investissent dans votre avenir !
Het Gewest en Europa investeren in uw toekomst!



LE BATI
BRUXELLOIS
SOURCE DE
NOUVEAUX
MATERIAUX

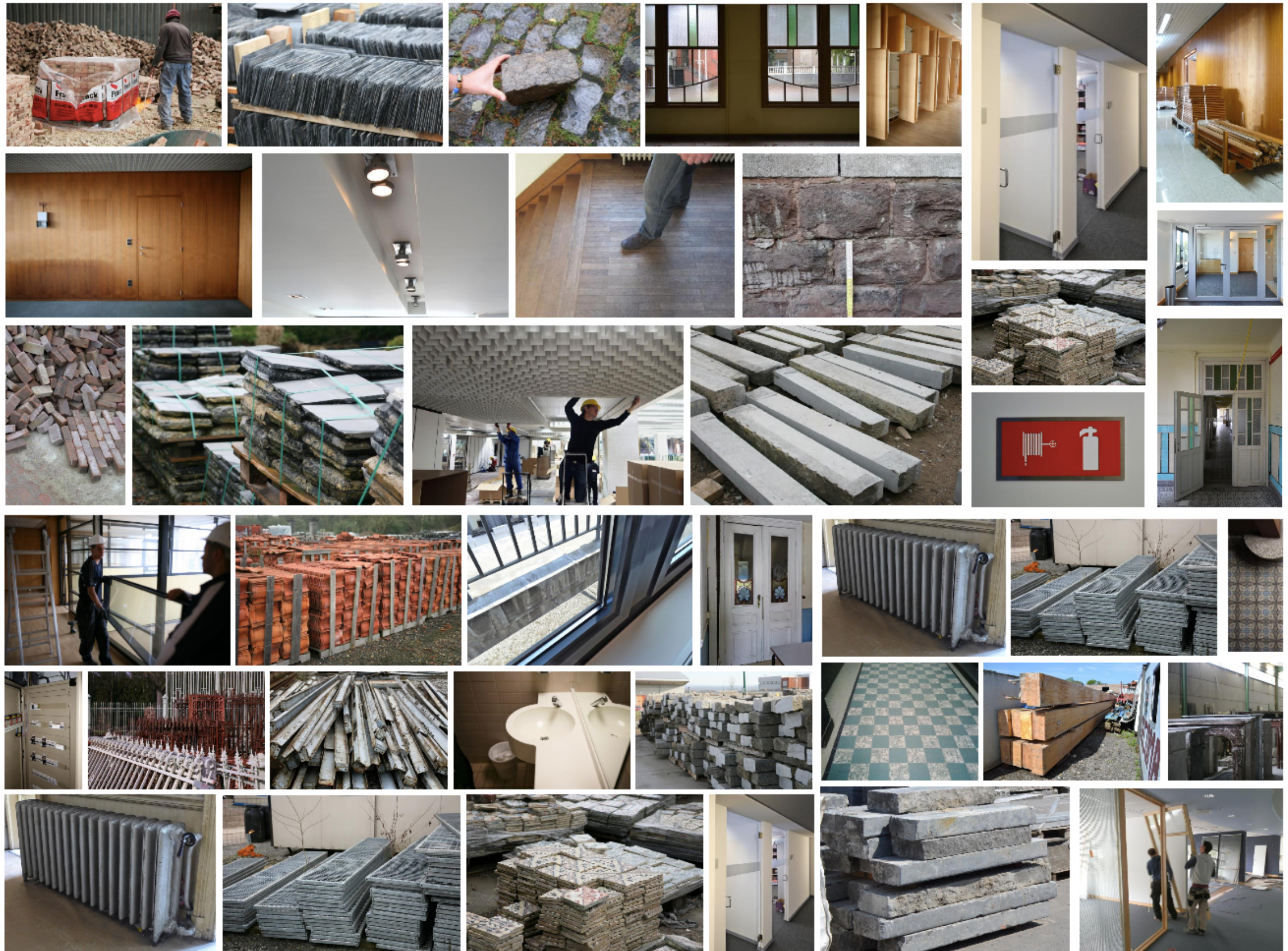
Re-use and regulatory aspects

22 February 2018



1. Context

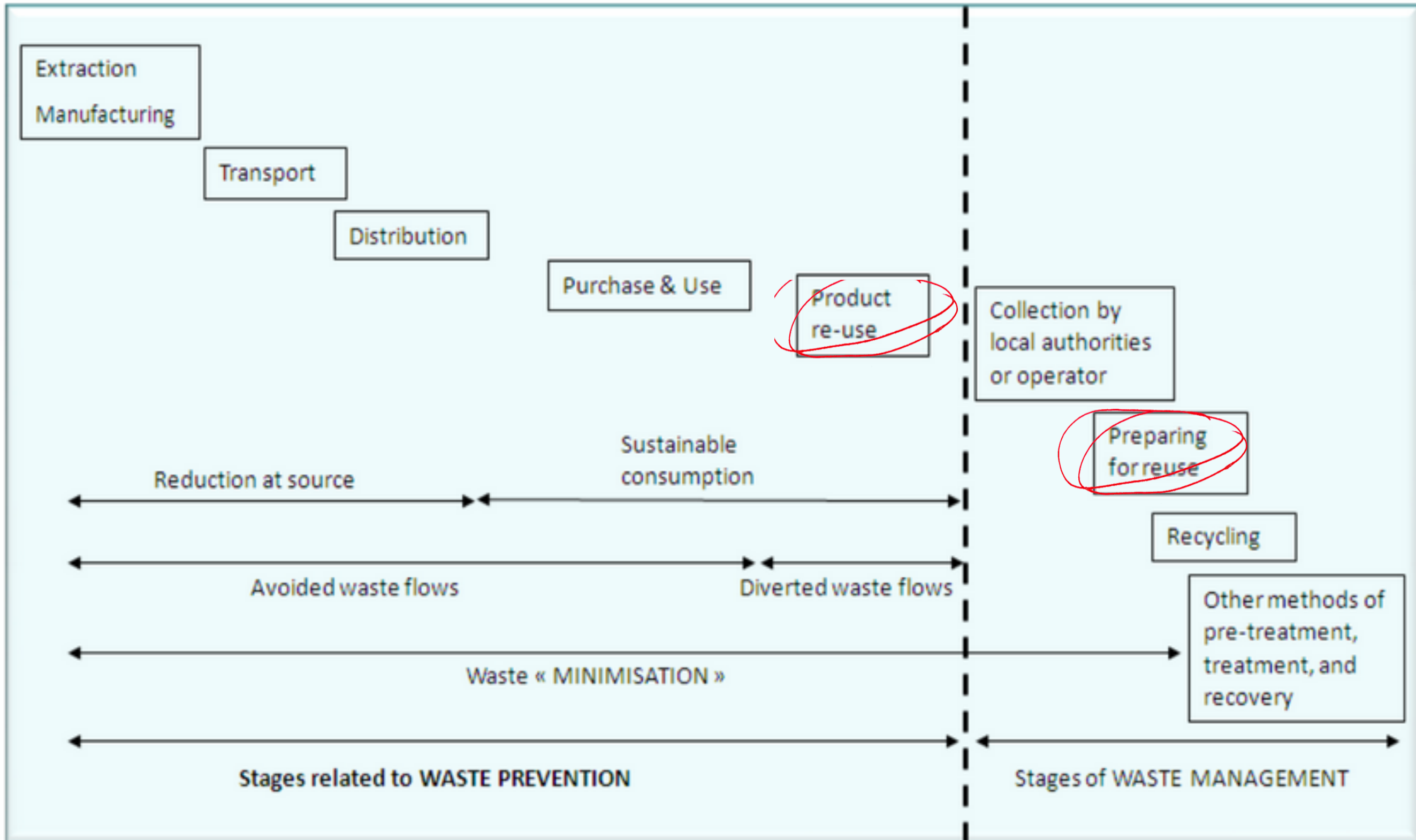
Re-used construction elements such as ...



Re-use of ...

products

or waste ?



responsibilities

administrative approvals and licences
for collection, storage, treatment, transport and exportation

A reusable component is a product if it is ... not a waste

« re-use » & « preparing for re-use »

« waste »

clues to product presence :

economic advantage to re-use

contract for re-use

fluid market

comparable products on the market

short and no nuisance storage

CJEU case-law regarding by-products

Conclusion

1. products, in most cases
case-by-case analysis
2. practical indices for re-use ?
3. new use for another purpose ?

Do the CPR, CE-marking and declaration of performances apply to re-used construction elements ?



Regulation (EU) No 305/2011 of 9 March 2011
laying down harmonised conditions for the marketing of construction products

« CPR »

Broad legal framework : the internal market

New approach

1. basic requirements in the legislation

CPR



standardisation request (mandate)
EU Commission - CEN

2. details in the harmonised standards

hEN

3. compliance with the hEN = presumption of conformity with the legislation

4.  passeport to access the single market

European Conformity

Specific legal framework : the CPR

Two ways to get the CE-marking

mandatory

hEN process to CE-marking

for products fully covered by a harmonised standard

voluntary

European Technical Assessment (ETA) process to CE-marking

for products not (fully) covered by a harmonised standard

CPR, art.19

Specificities of the CPR compared to other New Approach directives and regulations

1. construction products are intermediate products
in relation with a building and an environment
delivered to professionals, in most cases
2. hENs are mandatory for the manufacturers
annex ZA
3. one performance at least must be declared

Consequences

Language codes for construction products

common technical language, testing and calculation methods for assessing performances



Goals : access to the market, compare products' performances

Different meanings depending on the country of destination of the product

Constructors refer to other tools to assess the fitness for use

CE- marking is not a safety or a quality marking

CPR and re-use: a legal loophole

basic requirement No 7

Sustainable use of natural resources

different views

Construction Products Europe, ADEME, EU Commission

case-study

Gamle Mursten, DK, second hand bricks

2013 - 2014

2016

23.8.2017 : ETA

European Assessment Document (EAD) n°170005-00-0305 « Re-used clay masonry units »

3. Main hypothesis

Re-used products are non-harmonised products

1. harmonisation focuses on the required characteristics for new products until the initial placing on the market
2. CPR focuses on language codes, not on fitness for use
3. second-hand goods in other sectors
4. conditions of re-use are « other requirements »

EU-directive 2015/1535 of 9 September 2015, art. 1, §1, d)

3. Main hypothesis

Consequences

General safety requirement

obligation of means to put safe products on the market

Economic law Code, Livre IX, art. I.10, 1°

Mutual recognition

European Technical Assessment (ETA) process to CE-marking *modelled on*

CPR, art.19

4. Subsidiary hypothesis

If re-used products are harmonised products, they are not (fully) covered by a harmonised standard

« making available on the market », distributor

« placing on the market », manufacturer

CPR, art.1, art. 2, 16) and 17)

Consequences

European Technical Assessment (ETA) process to CE-marking

CPR, art.19

Conclusion

In both cases, CE-marking is not mandatory for re-used construction products

How to assess the functional adequacy of re-used construction elements ?

proportionality

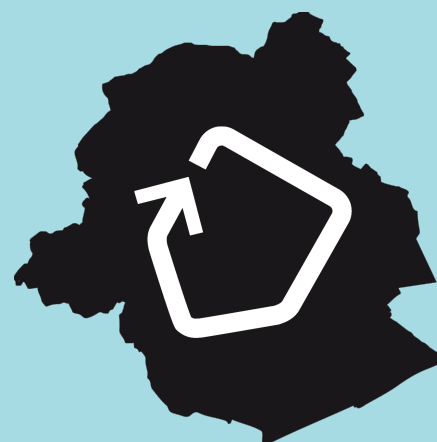
workshop 3

Re-use incites collaborations

Rules and standards in the construction sector: what are we talking about?

CJUE, C-613/14, James Elliott Construction Limited, of 27 October 2016

La Région et l'Europe investissent dans votre avenir !
Het Gewest en Europa investeren in uw toekomst!

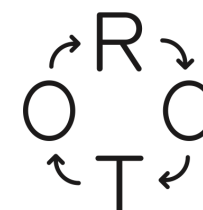


Sophie Seys, Rotor asbl

sophieseys@rotordb.org

to download the study : www.bbsm.brussels

this presentation does not engage Sophie's current position at the Constitutional Court of Belgium



1. '**waste**' means any substance or object which the holder discards or intends or is required to **discard**;

(...)

13. '**re-use**' means any operation by which **products or components that are not waste** are used again for the same purpose for which they were conceived;

(...)

16. '**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;

EU-Waste Framework Directive 2008/98/EC of 19 November 2008, art. 3

This Regulation lays down conditions for **the placing or making available on the market** of construction products by establishing harmonised rules on **how to express** the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products.

CPR, art. 1

1. '**construction product**' means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works;

2. '**kit**' means a construction product placed on the market by a single manufacturer as a set of at least two separate components that need to be put together to be incorporated in the construction works;

(...)

16. '**making available on the market**' means any supply of a construction product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

17. '**placing on the market**' means the first making available of a construction product on the Union market;

(...)

19. '**manufacturer**' means any natural or legal person who manufactures a construction product or who has such a product designed or manufactured, and markets that product under his name or trademark;

20. '**distributor**' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a construction product available on the market;

CPR, art. 2

1. Following a request for a European Technical Assessment by a manufacturer, a European Assessment Document shall be drawn up and adopted by the organisation of TABs for **any construction product not covered or not fully covered by a harmonised standard**, for which the performance in relation to its essential characteristics cannot be entirely assessed according to an existing harmonised standard, because, inter alia:

(a) the product does not fall within the scope of any existing harmonised standard;

(b) for at least one essential characteristic of that product, the assessment method provided for in the harmonised standard is not appropriate; or

(c) the harmonised standard does not provide for any assessment method in relation to at least one essential characteristic of that product.

CPR, art. 19, §1

7. Sustainable use of natural resources

The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and in particular ensure the following:

- (a) reuse or recyclability of the construction works, their materials and parts after demolition;
- (b) durability of the construction works;
- (c) use of environmentally compatible raw and secondary materials in the construction works.

CPR, annex 1, Basic requirements for construction works

(c) ‘**technical specification**’ means a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

The term ‘technical specification’ also covers production methods and processes used in respect of agricultural products, as referred to in the second subparagraph of Article 38(1) of the Treaty on the Functioning of the European Union (TFEU), products intended for human and animal consumption, and medicinal products as defined in Article 1 of Directive 2001/83/EC of the European Parliament and of the Council, as well as production methods and processes relating to other products, where these have an effect on their characteristics;

(d) ‘**other requirements**’ means **a requirement, other than a technical specification**, imposed on a product for the purpose of protecting, in particular, consumers or the environment, and **which affects its life cycle after it has been placed on the market, such as conditions of use, recycling, reuse or disposal**, where such conditions can significantly influence the composition or nature of the product or its marketing;

EU-directive 2015/1535 of 9 September 2015, art. 1, §1, c) and d)

1° " **produit** " : tout bien corporel qu'il soit neuf, d'occasion ou reconditionné, qu'il ait été fourni ou mis à disposition d'un utilisateur à titre onéreux ou à titre gratuit dans le cadre d'une activité commerciale ou de services, de même que tout bien corporel mis à disposition par un employeur ou destiné à être mis à la disposition d'un travailleur pour exécuter son travail.

Sont également visées les installations, en d'autres termes la mise en place des produits disposés de façon telle à pouvoir fonctionner ensemble. **Ne sont, par contre, pas visés les produits d'occasion livrés comme antiquités ou les produits qui, pour en faire usage, doivent être réparés ou reconditionnés, à condition que le fournisseur en informe clairement la personne à qui il fournit le produit;**

Economic law Code, Livre IX, art. I.10, 1°