

WIJ **W**ILLEM **A**ALEXANDER,
BIJ DE GRATIE GODS,
KONING DER NEDERLANDEN,
PRINS VAN ORANJE-NASSAU,
ENZ. ENZ. ENZ.

DRAFT 1 December 2025

Amendment to the Environmental Management Act in connection with the introduction of the requirement to establish environmental performance requirements in tenders for civil engineering contracts

(KetenID WGK27460)

BILL

Greetings to all who shall see or hear the following. Be it known:
Whereas We have considered that it is desirable to require unambiguous environmental performance requirements for the use of less polluting materials and products in public procurement for civil engineering works;
We therefore, having heard the Advisory Division of the Council of State, and in consultation with the States-General, have agreed and decreed as We hereby agree and decree:

Article I

The Environmental Management Act [Wet milieubeheer/Wm] shall be amended as follows:

A

The following definitions are inserted into Article 1.1, in alphabetical order:

'*contracting authority*': a contracting authority as referred to in Article 1.1 of the Public Procurement Act [Aanbestedingswet] 2012;

'*concession contract for works*': a concession contract for works as referred to in Article 1.1 of the Public Procurement Act 2012;

'*public works contract*': a public works contract as referred to in Article 1.1 of the Public Procurement Act 2012;

'*special sector company*': a special sector company as referred to in Article 1.1 of the Public Procurement Act 2012;

'special sector contract for works' means a special sector contract for works as referred to in Article 1.1 of the Procurement Act 2012;

B

In the title of Title 9.6, the words 'the transport sector' are replaced by the words 'contracting authorities and special sector undertakings in the transport sector and civil engineering'.

C

In Title 9.6, two articles are added, reading as follows:

Article 9.6.2

1. For the tendering of a public contract, special sector contract or concession contract for civil engineering works, the following may be imposed by or pursuant to a general administrative regulation for the protection of the environment and human health:

a. environmental performance requirements for materials and products to be designated by that measure and applied in such works;

b. additional criteria for the application of Article 2.115 of the Public Procurement Act 2012;

2. The general administrative regulation referred to in the first paragraph shall lay down rules for the application of section b of the first paragraph, setting a minimum estimated contract value in all cases.

Article 9.6.3

1. When preparing and entering into a public or concession contract for civil engineering works, the contracting authority shall in all cases formulate or propose:

a. the environmental performance requirements established for a material or product concerned pursuant to Article 9.6.2(1)(a) as a technical specification; or

b. where applicable to the relevant public or concession contract: the further criteria described on the basis of Article 9.6.2(1)(b).

2. The first paragraph applies mutatis mutandis to special sector companies preparing and implementing special sector contracts or concession contracts in civil engineering, road construction or hydraulic engineering referred to in Articles 3.1 to 3.6 of the Public Procurement Act 2012 and insofar as these are designated by general administrative regulation.

3. A contracting authority or special sector undertaking may deviate from paragraph 1 if the technical specification or the further criteria referred to in Article 9.6.2:

a. are not reasonably proportionate to the subject-matter of the contract in accordance with Articles 1.10(1), 1.13(1) and 1.16(1) of the Public Procurement Act 2012, and

b. the grounds for the deviation are properly justified in the procurement documents.

4. Rules may be laid down by general administrative regulation exempting public contracts, special sector contracts or concession contracts for works from the first or second paragraph.

Article II

It is hereby ordered that this Act shall be published in the Government Gazette and that all ministries, authorities, commissions and officials concerned will ensure its accurate implementation.

STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT – PUBLIC
TRANSPORT AND ENVIRONMENT,

A.A. Aartsen

EXPLANATORY MEMORANDUM

I. General

1. Introduction

This Bill amends the Environmental Management Act and aims to ensure that contracting authorities and special sector companies which are principals of works in structural engineering, road construction or hydraulic engineering (hereinafter: 'civil engineering'):

- Set consistent and uniform requirements in their procurement procedures to limit the environmental impact of civil engineering works. At present, public sector clients set varying environmental performance requirements in tenders for civil engineering works. As a result, contractors invariably have to meet different requirements. This bill provides the opportunity for an unambiguous standard with which the business community and governments can get to work.
- Reduce the environmental impact of civil engineering works. The construction sector has the largest footprint in terms of raw material consumption and environmental impact. This bill gives contracting authorities and special sector companies greater certainty to ensure that they purchase less polluting products. Setting clear, achievable requirements provides undertakings with the certainty they need to invest in measures that contribute to reduced raw material consumption and cleaner production methods. This will make the Netherlands less dependent on raw materials from abroad.

The proposed amendments respond to a specific request from the business community, contractors and clients, and are the result of extensive research and validation within the sector.

This Bill contains amendments to Title 9.6 of the Environmental Management Act to make the foregoing achievable. It regulates the following subjects, which are explained in more detail in Chapter 2 of this explanatory memorandum:

1. The requirement for contracting authorities and special sector companies to lay down environmental performance requirements as technical specifications when procuring civil engineering works (hereinafter: 'environmental performance requirements'). These requirements apply to the most environmentally harmful products in civil engineering as designated by the general administrative regulation, insofar as they are used within the works in question.
2. Requiring contracting authorities and special sector companies to take into account environmental performance when procuring civil engineering works above the minimum estimated contract value set by the general administrative regulation, in the form of an additional criterion in public contracts based on the best price-quality ratio (hereinafter: 'additional environmental performance criterion').

The additional criterion will ensure that more sustainable choices are made even for materials that are not covered by the first obligation. The higher the proportion of low environmental-impact, circular and sustainable materials used in civil engineering works, the higher the tender will be scored. By making an offer with a lower environmental impact, contractors therefore have a greater chance of winning a contract or to tender with a higher price. This will give forward-looking parties the opportunity to recoup additional investments they have made in sustainability.

Chapter 3 provides more information about the choice of instruments, including an exploration of the options for effectively managing the environmental impact of civil engineering works. The general part of this explanatory memorandum also sets out the obligations and their consequences in more detail.

The move towards more clarity in procurement and giving undertakings prospects for the production and purchasing of cleaner or circular materials for civil engineering should not be merely legislative in nature. In order to ensure that parties can work as well as possible with requirements that limit the environmental impact of civil engineering works and in order to promote the use of the existing leeway in the rules, there will be consultation with industry, contracting authorities and special sector companies on providing better and more targeted information, communication and practical development. With input from parties from the sector, the Ministry of Infrastructure and Water Management is therefore setting up a support point for contracting authorities and special sector companies to ensure that requirements that limit the environmental impact of civil engineering works are properly incorporated into their tenders.

1.1. Delimitation of this bill

This bill stipulates that contracting authorities and special sector companies are obliged to set environmental performance requirements for the most environmentally harmful materials or products in civil engineering works. These requirements relate, for example, to the environmental impact during the life cycle of civil engineering works or of the materials or products used in them. In addition, the bill provides that environmental performance is to be taken into account as a further criterion in the procurement of civil engineering works. This means that contracting authorities and special sector companies must take environmental performance into account when assessing bids from companies in tenders and may accept or reject a bid on those grounds.

generally accepted methods, such as the Environmental Cost Indicator (ECI), are used to determine the obligations limiting the environmental impact of civil engineering works. This Bill provides a legal basis for laying down detailed rules on the methods and scope of these obligations by means of general administrative regulation, and setting concrete standards for the most environmentally harmful products in civil engineering works by general administrative regulation. It also provides a legal basis for these rules to be made, by general administrative regulation, mandatory for special sector companies carrying out certain activities, as referred to in Articles 3.1 to 3.6 of the Public Procurement Act 2012. This structure provides the flexibility to adapt requirements that limit the environmental impact of civil engineering works to technological developments and political guidelines, without the need for legislative changes each time. Due to the fact that adjustments to substantive rules can take place with the associated procedural safeguards, due diligence remains ensured.

The obligations contained in this Act on limiting the environmental impact of civil engineering works apply to tenders for a 'work' within the meaning of the Public Procurement Act 2012. A work is understood to mean: the product of a set of architectural or civil engineering works able to fulfil an economic or technical function. This legal definition includes both buildings and infrastructure projects. Within the framework of this legislation, the focus is on works in the civil engineering sector, which include, inter alia, the construction and maintenance of roads, bridges, viaducts, quays, locks and sewerage systems. Although the term civil engineering works has no formal legal status, in practice it is widely used as a designation for civil engineering works in outdoor spaces. All civil engineering works fall under the broader category of 'works' as referred to in the 2012 Public Procurement Act, and therefore constitute an important 5 area of application for the prescribed requirements.

The intention is for general administrative regulation to determine both the environmental performance requirements that are mandatory for the most environmentally harmful materials as well as to determine further criteria on the basis of a life-cycle approach. This includes material production, transport and implementation in

the environmental scoring. Although the use of low-emission or zero-emissions machinery has a positive impact on the environmental score, this is not directly addressed in this bill. Contractors retain the freedom to decide for themselves how they limit the environmental impact, within the set requirements. The deployment of clean equipment is already actively promoted through the *Clean and Emissions-free Building (SEB)* programme, in which a roadmap and voluntary agreement have been drawn up and subsidy schemes are available.

Where this explanatory note refers to contractors, it means all parties that accept orders for civil engineering works from contracting authorities or special sector companies. In the civil engineering sector, the majority of contracting authorities and special sector companies are public, semi-public or entrusted with a public task. The bill therefore applies to contracting authorities and special sector companies in civil engineering that are subject to public procurement under the procurement regulations. For special sector companies, these are only special sector contracts or concession contracts for activities listed in Articles 3.1 to 3.6 of the Public Procurement Act 2012 and assigned by general administrative regulation. Public transport companies, domestic water companies, energy companies and port companies are so-called special sector companies. These companies operate in the water and energy supply, transport and postal services sectors: the special sectors. If deemed necessary by general administrative regulation, water authorities and ProRail can also be included, for example.

2. Outline of the proposal

2.1. Rationale and broader policy context

A circular economy is important for future-proofing our society. By minimising the use of finite raw materials and reducing the environmental impact of production chains, a circular economy contributes to the conservation of natural resources, waste prevention and the reduction of harmful emissions. A circular economy therefore strengthens not only the economic resilience of the Netherlands, but also the health of the living environment and the resilience of ecosystems – both now and for future generations.

The urgency of the transition to a circular economy is firmly anchored in international and European agreements. At the end of 2015, the Paris Agreement was concluded (Treaty Series 2016, 162). The purpose of this agreement is to keep the increase in the average global temperature well below 2°C compared to the pre-industrial level, and to aim for a limit of 1.5°C (Article 2(1)). The European Union and its Member States, including the Netherlands, have chosen to fulfil their international obligations jointly. In this context, the Union has enshrined its climate policy in a legislative framework. Central to this are the Union-wide objectives of climate neutrality in 2050 and a greenhouse gas emission reduction of at least 55 % in 2030 compared to 1990. These objectives are laid down in the European Climate Law (Art. 2(1) and 4(1)). To support these goals, the European Commission has adopted the *EU Circular Economy Action Plan*, a package of legislative and incentive measures to convert waste into raw materials and reduce raw material consumption.¹² The Netherlands, as President of the Environmental Council in 2016, played an important role in the adoption of this Action Plan.

At national level, the Netherlands is implementing these ambitions through the National Circular Economy Programme (NPCE), which was adopted on 3 February 2023.³ This

¹ European Commission. (2015). Closing the loop – An EU action plan for the Circular Economy. Brussels, European Commission Available via: www.ec.europa.eu/environment/circular-economy

² Council of the European Union. (2016, 20 June). Council conclusions on the EU action plan for the circular economy. Brussels, Official Journal of the EU: Available via: www.consilium.europa.eu/media/23261/st09717en16f.pdf

³ Ministry of Infrastructure and Water Management. (2023, February). National Programme for the Circular Economy 2023–2030. The Hague, National Government. Available via:

programme contains the government's vision of a circular economy and identifies concrete policy directions and measures. However, one of the most important findings from the biennial *Integrated Circular Economy Report (ICER)* of the Netherlands Environmental Assessment Agency (PBL) is that the consumption of raw materials in the Netherlands has hardly decreased since 2010.⁴ ICER 2021, 2023 and 2025 confirm that additional commitment is necessary to achieve the set circular targets.

The construction sector has a major role to play here. This sector is responsible for using a significant proportion of national resources, environmental impact and CO₂ emissions and the generation of waste. Within the NPCE, specific attention is therefore paid to this product chain. Governments and special sector companies are often the clients for civil engineering works. This is an important lever in procurement practice: tenders can significantly reduce the environmental impact of projects and promote the circular economy.⁵ The PBL states that a binding, national measure is necessary to use this lever effectively. Only then will there be a concerted transition within the sector, rather than fragmented, voluntary requirements and standards for each organisation. While residential and non-residential building construction ('B&U') is already subject to the statutory environmental performance requirement for buildings (MPG), the civil engineering sector will now have to focus on reducing its environmental impact.

The NPCE has therefore announced that circular procurement and tendering in the civil engineering sector will become a legal requirement. This follows studies by, among others, Copernicus Institute of Sustainable Development and Utrecht University, which conclude that there is a lack of concrete guidance on solutions within civil engineering procurement procedures and that the lack of a long-term vision and continuity from governments makes it difficult for market players to know which technologies to deploy, develop or scale up.⁶ Research by the PBL shows that statutory guidance on tendering for civil engineering works is one of the most effective measures within the NPCE to achieve a real impact.⁷ This bill gives substance to this by ensuring unambiguous and enforceable requirements for the purchase of civil engineering works that limit their environmental impact. This not only structurally reduces the environmental impact of the sector, but also prevents parties from always having to deal with different requirements and rules when tendering for civil engineering works.

2.2. Problem description

This bill provides a solution to two different problems, which are explained in more detail in this section:

1. The environmental impact of civil engineering works is relatively high.
2. There is a lack of clarity in the procurement of civil engineering works, creating ambiguity in the sector with regard to the use of sustainable materials in civil engineering works.

www.rijksoverheid.nl/npce-2023-2030

⁴ Hanemaaijer, A., Kishna, M. (project management), Koch, J., Lucas, P., Rood, T., Schotten, K., & Van Sluisveld, M. (2023). *Integral Circular Economy Report 2023* (PBL publication number 4882). The Hague, Reporting by the Netherlands Environmental Assessment Agency Available via: www.pbl.nl/publicaties/integrale-circulaire-economie-rapportage-2023

⁵ Rijksinstituut voor Volksgezondheid en Milieu [National Institute for Public Health and the Environment] (RIVM). (2021). *The environmental impact of the annual EUR 85 billion procurement by all Dutch public authorities: A study to help prioritise socially responsible procurement (MVI)* (RIVM report 2021-0219). Bilthoven: RIVM Available via: <https://doi.org/10.21945/RIVM-2021-0219>,

⁶ S.A.M.J.V., Swartjes, J. & Hekkert, M.P. (2022). *Transition to a circular soil, road and hydraulic construction in the Netherlands. A mission-driven innovation system analysis*. Copernicus Institute of Sustainable Development, Utrecht University. Available via: <https://zenodo.org/records/7273685#.Y5sdQcuZNhE>

⁷ Hanemaaijer, A., Kishna, M. (project management), Koch, J., Lucas, P., Rood, T., Schotten, K., & Van Sluisveld, M. (2023). *Integral Circular Economy Report 2023* (PBL publication number 4882). The Hague, Reporting by the Netherlands Environmental Assessment Agency Available via: www.pbl.nl/publicaties/integrale-circulaire-economie-rapportage-2023

The impact of civil engineering works on the environment is relatively large

In order to reduce the burden on the environment and dependence on fossil fuels and scarce raw materials, targets for the circular transition and sustainability have been set in various fora, both European and national. The Netherlands has set itself the goal of being fully circular and climate neutral by 2050. These goals also apply to the construction sector, including civil engineering works. The environmental impact of civil engineering works in terms of raw material consumption is relatively large. Our infrastructure – such as roads, bridges, dikes and sewers – consists of large quantities of often heavy materials, such as stone, concrete and steel. The extraction, processing and transport of these lead to an excessive burden on the soil. Research by EIB and Metabolic shows that the civil engineering sector is responsible for a significant proportion of the environmental impact in construction, as well as in the use of raw materials. In addition, the demand for materials in civil engineering is greater than the available supply can meet.⁸ It also appears that in 2019 alone EUR 51 million will be needed to compensate for the negative environmental impact caused in 2019 in civil engineering works.⁹ This is problematic, considering the (future) need for a well-connected Netherlands and the economic position that this entails. It means that we still have a large circular task to fulfil future construction tasks.

Lack of clear tendering procedures for civil engineering works with environmental performance requirements

Various parties, including experts from the Circular Construction Economy Transition Team [Transitieteam Circulaire Bouweconomie], the Concrete Agreement [Betonakkoord], the Steel Construction Agreement [Bouwakkoord staal], consultancies and the Netherlands Environmental Assessment Agency, have advised the government to provide clearer guidance on requirements limiting the environmental impact of civil engineering works in tenders in the civil engineering sector. In the current situation, contracting authorities and special sector companies in the GWW set environmental performance requirements for products and works in different ways, with varying levels of aspiration. Every contracting authority has considerable leeway in defining their policies. In practice this leads to a fragmented landscape in which different methods, standards and requirements are applied. Some contracting authorities and special sector companies do not even impose environmental performance requirements. As a result, entrepreneurs experience an uneven playing field, which is undesirable. Contractors are always having to meet different requirements. The parties would therefore like to have clear-cut, feasible, obligations. For them, dealing with the same requirements in comparable procurement contracts is important, along with the certainty that these requirements will continue to apply in the future and will be further tightened. This will provide certainty for the recoupment of investments in more sustainable production methods and therefore also will also serve the general interest of making civil engineering works more sustainable. Uniform requirements are also desirable for contracting authorities and special sector companies. This way, they will know how they can contribute to sustainability and they can be sure that they are purchasing less polluting products.

2.3. Approach to the problem

The reports mentioned in paragraph 2.1 provide the national government with clear advice. In order to achieve the objectives for sustainability in civil engineering works, more policy must be focused on direction from the government in public procurement. This direction is currently lacking. Contracting authorities and special sector companies can have a major influence on the development of civil engineering, which is almost entirely dependent on public procurement. Several studies have now been carried out⁸ into how the environmental impact of the construction sector can be reduced. Time and

⁸ Economic Institute for Construction (EIB). (2022). Material flows in construction and infrastructure. Amsterdam EIB. Available via: www.eib.nl/publicaties/materiaalstromen-in-de-bouw-en-infra

⁹ The EIB states that the total environmental costs of construction amounted to almost €1.7 billion in 2019, of which approximately 30% was attributable to civil engineering and 70% to building construction.

again, attention is drawn to direction through circular procurement. This is a powerful instrument: of the EUR 85 billion that governments spent on goods and services in 2019, EUR 25 billion was spent in the construction sector.¹⁰ To increase the demand for circular products and services, governments can use their substantial purchasing power to create a market for innovative circular products and services, thereby removing uncertainty for companies that wish to scale up.

The NPCE, having taken on board the messages from the industry, has incorporated the measure of legal guidance towards environmental impact reduction in the civil engineering sector. It states that further research will be carried out into how this guidance can be provided, involving co-governments and the sector. A characteristic feature of civil engineering works is that a (relatively limited) group of public clients manages almost all infrastructure and the government as a client can therefore exert a lot of influence on the market. This applies both to the central government and local authorities (water authorities, provinces, municipalities) as well as special sector undertakings. The studies announced in the NPCE have been completed, and subsequently, on 31 May 2024, the cabinet decided to introduce legislation to regulate the environmental impact of civil engineering.¹¹ It is important that contracting authorities and special sector companies know what standards they need to work towards and what standards can be imposed in procurement procedures. Therefore, the government wants to create more uniformity and predictability for the specification of environmental performance requirements in procurement. This will allow market parties to make targeted investments in the environmental performance of their products and sustainable innovations that benefit the environment. A phased implementation with accompanying policies is the most effective solution. The measure complements and supports the Climate-Neutral and Circular Infrastructure Strategy (CIP).¹²

In order to identify the policy options, numerous agencies have carried out research into how to guide environmental impact reduction in the civil engineering sector. The scope of application,¹³ the variants and effects,¹⁴ and the legal feasibility were examined. These variants – including an accounting obligation for all civil engineering works, an accounting obligation at product level, a limit value at construction work level, and an obligation to take environmental performance into account in the award decision for all procurements – are explained in more detail in Chapter 3. These research results have been summarised in a policy recommendation to the Ministry of Infrastructure and Water Management, and have been further explored and validated by the sector (business community, contracting authorities, special sector companies and trade associations).¹⁵

¹⁰ Verdonschot et al., 2021. The environmental impact of the annual EUR 85 billion procurement by all Dutch governments A study to aid prioritisation of socially responsible procurement (CSR). RIVM Available via: <https://www.rivm.nl/bibliotheek/rapporten/2021-0219.pdf>

¹¹ Ministry of Infrastructure and Water Management. (2024, 31 May). Explanatory note on circular climate policy [Parliamentary paper]. The Hague, National Government. Available via: www.rijksoverheid.nl/documenten/kamerstukken/2024/05/31/toelichting-circulair-klimaatbeleid

¹² Climate-neutral and circular infrastructure projects: since 2019, the Ministry of Infrastructure and the Environment has been applying the Climate-neutral and Circular Infrastructure (CIP) strategy towards climate-neutral and circular national infrastructure projects, with the aim of becoming fully climate-neutral and circular by 2030. The focus of the approach lies in the areas with the greatest climate and raw material impact. These are: road surfacing, facilities, coastline management & navigation channel maintenance, road, dyke and railway equipment, and railways. Together with market stakeholders, other public clients and knowledge institutions, the Ministry will develop a transition path for each of these areas determining the most realistic route to 2030.

¹³ Hendriks, R. H., & Grul, W. S. (2024). *Scope of application of mandatory environmental cost indicators in civil engineering*. Witteveen+Bos. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/02/13/bijlage-4-rapport-toepassingsgebied-dwingende-mki-in-de-gww>

¹⁴ Hendriks, R. H., & Grul, W. S. (2024). *Scope of application of mandatory environmental cost indicators in civil engineering*. Witteveen+Bos. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/02/13/bijlage-4-rapport-toepassingsgebied-dwingende-mki-in-de-gww>

¹⁵ Bosch, S., Peeters, T., Dijcker, R., Hendriks, R., Hoppe, F., & Bakker, E. (2024). *Environmental cost indicators policy advice*. Copper8, Witteveen+Bos & Flux Partners. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/05/31/bijlage-3-beleidsadvies-sturende-mki>

An evaluation has been carried out on steering towards environmental performance requirements in civil engineering works, which confirms that it contributes to reducing the environmental impact.¹⁶

As described, the civil engineering sector is characterised by the decisive role of contracting authorities and special sector companies on the client side. This makes imposing mandatory requirements on this group of clients highly effective. As a preferred option for achieving the objective of creating more uniformity and predictability, contracting authorities and special sector companies are required to set requirements that limit the environmental burden of civil engineering works. This obligation is included in this bill. The choice of this option was made on the basis of the studies mentioned above between the effectiveness and the feasibility of measures. Measures that require the least capacity, expertise and resources for clients and contractors have been chosen. The obligation provides a base level from which the sector can work.

There are also a number of measures that the cabinet take in the form of accompanying policy. The accompanying policy is intended for the unambiguous application of the proposed obligation and contributes to the creation of a level playing field for the entire market. It will support parties in implementing the measures contained in the bill and thus will contribute to the accumulation of experience and, with it, the capacity to fulfil the obligations. The accompanying policy is also important for the part of the market that is not affected by the obligation, such as parties committed to the sustainability of civil engineering works below the minimum estimated contract value set by general administrative regulation.

The sector is intensively involved in the design of the measures in this bill, as well as in the aforementioned studies. For example, consultations were held with the Association of Dutch Municipalities (VNG), the Interprovincial Consultative Committee (IPO) and the Union of Water Authorities (UvW). Discussions were also held, including during stakeholder consultation meetings, with staff from contracting authorities and special sector enterprises of different sizes and from different territories and regions, as well as market players - including contractors, producers and engineering firms. In addition, discussions were held with trade associations representing the building materials supply industry, while SME infrastructure, the construction association Bouwend Nederland, kennis- en normen instituut voor infrastructuur (CROW) [Infrastructure Knowledge and Standards Institute] and PIANOo [Expertise Centre for Procurement] were also involved. Furthermore, there has been contact with organisations such as Nature & Environment [Natuur & Milieu] and the Climate Alliance [Klimaatverbond]. The aim is to produce a proposal within the announced policy intentions that is workable in practice. The sector will continue its involvement in elaborating the Ministerial Decree, allowing the measure to be designed as effectively as possible and with broad support.

Both the obligation to be incorporated into the law, and the accompanying policy, are explained in more detail below.

Inclusion and elaboration of an obligation in legislation:

This bill introduces an obligation for contracting authorities and special sector companies to include requirements that limit the environmental impact of civil engineering works when tendering for such works. As developments in technology and in the market can happen suddenly, and as it is desirable to be able to adapt precise requirements to market conditions and innovation, further rules will be laid down by or pursuant to a general administrative regulation.

This Bill regulates the following matters relating to the tendering of civil engineering works:

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¹⁶ Bosch, S., Peeters, T., Hendriks, R., Preso, S., Hoog Antink, E., & Schweitzer, G. (2023). *Civil engineering procurement with environmental cost indicators: Evaluation of the action plan*. Copper8, Witteveen+Bos & Rijkswaterstaat. Available via: <https://open.rijkswaterstaat.nl/open-overheid/@269293/inkopen-mki-gww-evaluatie-actie-agenda/>

- Establishing that environmental performance requirements for materials and products used in construction works can be set by means of general administrative regulation. A contracting authority or a special sector company should set these environmental performance requirements as a technical specification in the preparation and execution of the civil engineering works contract.
- Establishing further criteria for the the environmental performance of civil engineering works taken into account in tendering procedures based on the best price-quality ratio.

The Act lays the foundations allowing the following to be laid down by general administrative regulation:

- Definition of the materials and products which are subject to the obligation of setting environmental performance requirements in technical specifications. From the viewpoint of proportionality, materials with the greatest environmental impact will be considered.
- Establishing further criteria for contracting authorities to take into account in order to protect the environment and human health when awarding contracts based on the best price-quality ratio.
- Laying down rules to make the environmental performance requirements for materials and further criteria transparent. This relates, for example, to the obligatory method for determining the environmental performance requirements for both materials and the further criteria. This is in line with generally accepted methods in the sector, such as the environmental cost indicator, which limits the environmental impact during the life cycle of civil engineering works.
- It is also stipulated that a minimum estimated contract value can be set above which further criteria become obligatory.
- The civil engineering activities of special sector companies preparing and creating a special sector or concession contracts for works which will be subject to the environmental performance requirements and the further criterion.

The Act also includes grounds for dispensations made by general administrative regulation:

- In laying down further criteria for the award of civil engineering works below a certain tender value (financial lower limit, e.g. the European tender limit¹⁷). Certain contracts may also be excluded if these contracts cannot be adequately managed with a further criterion relating to the environmental performance in the award.
- In the categories of contracts awarded by contracting authorities and activities of special sector undertakings subject to the obligation. This applies to contracting authorities and special sector companies that are required to comply with the obligations in their procurement procedures. For the further criterion relating to the environmental performance of civil engineering works, for example, a threshold value can be set for the number of employees or for the procurement volume, above which a contracting authority or special sector company is obliged to apply the award criterion. For example, dispensations could be made for the environmental performance requirements of materials or products in emergency and urgent situations or in cases where there is only one party able to fulfil the contract. A dispensation could also be issued for only one of the activities of a special sector company as defined in the Procurement Act 2012 as referred to in Articles 3.1. to 3.6.

A ministerial order may be used to draw up some parts of the general administrative regulation. For example, in the case of guidelines with the Environmental Cost Indicator¹¹ the ministerial order may designate a (version of the) determination method, as well as the maximum ECI performance requirements for the materials designated in the general

¹⁷ The European Procurement Limit is a threshold value set by the European Commission every two years. When the value of a work exceeds that threshold, the contracting authority is obliged to issue a European tender. For 2024 and 2025, this value has been set at EUR 5 538 000 before VAT.

administrative regulation. The proposed structure of the Act, general administrative regulation and the ministerial orders is intended to ensure sufficient flexibility to allow a timely response to technical developments and innovations and to advancing findings in the field of sustainable construction.

The obligations in the bill are designed in such a way that national uniformity is guaranteed, while leaving room for customisation. The basic standards that the government considers minimally necessary in the field of the environment and the methodology are clearly laid down in the general administrative regulation and ministerial orders, so that contractors are not always confronted with different base points. At the same time, clients retain the freedom to pursue higher ambitions. This may involve more stringent environmental performance requirements or additional requirements, for example in the case of percentages of recycled or renewable products.

Environmental performance requirements for the highest-impact materials in the civil engineering sector

The introduction of an environmental performance requirement at product level through tenders for civil engineering works means that all materials and products covered by this bill must meet when used in such works. These requirements have two objectives: firstly to keep the poorest-performing materials off the market, and secondly to give producers certainty in their decisions to invest in improved sustainability.

The products to be determined by general administrative regulation will be selected on the basis of the environmental impact they can have within civil engineering works. Research shows that the dominant product flows in civil engineering works are asphalt, steel and concrete.¹⁸ Based on an extrapolation, it is estimated that concrete, steel and asphalt together account for around 69 per cent of the environmental impact of the civil engineering sector.¹⁹ This makes it effective at the minimum to start managing the environmental impact of these product flows. An additional argument for choosing the highest-impact products is that such initiatives are already underway. For some products, the desired environmental performance requirements have already been established on a voluntary basis by part of the sector. As it is possible that other products (e.g. brick paving) will become more dominant in the future, the choice has been made to lay down product flows at general administrative regulation levels.

The environmental performance requirements of materials or products will be laid down by the Minister. He will be advised on this by independent committees on the basis of achievable performance with high-quality products used in current practice. In determining the level of the requirement, proportionality and affordability are explicitly taken into account; a requirement at product level is intended as a 'peloton requirement'. This means that the upper limit of the environmental performance of that specific product is laid down. This is the so-called basic level that a product must meet, which can be lowered over time in order to force the lagging part of the market to become more sustainable. In order to keep up with developments in the market, the requirements will be adapted every two years based on the advice of the independent committees.

¹⁸ Economic Institute for Construction (EIB). (2022). Material flows in construction and infrastructure. Amsterdam EIB. Available via: www.eib.nl/publicaties/materiaalstromen-in-de-bouw-en-infra

¹⁹ Hendriks, R. H., & Grul, W. S. (2024). *Scope of application of mandatory environmental cost indicators in civil engineering*. Witteveen+Bos. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/02/13/bijlage-4-rapport-toepassingsgebied-dwingende-mki-in-de-gww>. Concrete, steel and asphalt together account for at least 43 percent of the total environmental impact of civil engineering, compared to 12 percent for other materials. The remaining 45 per cent of the environmental impact is unknown due to lack of data. Because this missing data relates to earthworks, hydraulic engineering and underground infrastructure, concrete and steel are also responsible for part of the impact here. Based on an extrapolation, researchers estimate that the total share of these materials in the environmental impact of civil engineering works is 69 percent.

The Bill requires contracting authorities and special sector companies to include environmental performance requirements of products in calls for tenders for civil engineering works. As the environmental performance requirements are also included in the RAW, UAV, UAV-GC²⁰ contract forms, these are easy to integrate into existing procurement processes. It is the responsibility of material or product manufacturers to prove that their materials or products meet the established environmental performance requirements.

Introduction of the additional criterion relating to the environmental performance of civil engineering works in public procurement

The second legal requirement concerns the obligation of contracting authorities and special sector companies to include an assessment of environmental performance when tendering for civil engineering works that exceed a certain minimum estimated contract value, in the form of an additional criterion relating to environmental performance. Achieving a climate-neutral and circular infrastructure sector involves more than merely setting environmental performance requirements at material or product level. An environmental performance requirement at material or product level does not have the same impact on mitigating the environmental impact of every civil engineering project. This is because it ensures an improvement in the environmental performance of the materials or products designated by ministerial decree, if one or more of these materials or products are actually used in civil engineering works. In addition, although the obligation imposes a lower threshold at product level, it does not encourage efforts to limit the environmental impact of the civil engineering work as a whole, which is often a possibility. This obligation also does nothing to encourage alternative, more sustainable product choices, integral design choices that lead to sustainability gains or measures for the sustainable execution of the entire civil engineering works. For example, introducing an environmental performance requirement at product level does not encourage the use of smaller quantities of products. The additional criterion relating to the environmental performance of civil engineering works ensures that more sustainable choices are also made for materials that are not covered by the first obligation. The higher the proportion of the circular and sustainable material used in civil engineering with a low environmental impact, the higher the tender is scored. Contractors therefore have a greater chance of winning a contract, or submitting a tender with a higher price, if their bid has a lower environmental impact. This will give forward-looking parties the opportunity to recoup the additional investments they have made in sustainability.

Contracting authorities and special sector companies are obliged to include environmental performance as an additional criterion when tendering for civil engineering works that exceed a certain minimum estimated contract value. This is tied in with the Public Procurement Act 2012. This Act stipulates that for European tenders and tenders based on the 2016 Public Works Procurement Regulations (ARW 2016)²¹, it is mandatory to apply the best PQR as an award criterion. PQR stands for Price-Quality Ratio, which means that, in addition to price, one or more other criteria are also taken into account in the tendering process to assess quality in a bid. This Bill also requires that one of these additional criteria must be the environmental performance criterion established by general administrative regulation. This means that the environmental performance of a tender is taken into account in the award decision. The aim is to reduce the environmental footprint of civil engineering works, both by improving product performance through with other design choices. The methodology for calculating environmental performance as an additional criterion is regulated by or pursuant to general administrative regulation.

²⁰ These are standard applied contract forms for civil engineering.

RAW: Rationalisation and automation of groundworks, road building and hydraulic engineering

UAV: Uniform administrative conditions

UAV-GC: Uniform administrative conditions for integrated contracts

²¹ PIANOo. (2020). Tendering Regulations for Works 2016 (ARW 2016), as published in the Government Gazette. The Hague, Public Procurement Expertise Centre. Available via: www.pianoo.nl/sites/default/files/media/documents/ARW%202016%20zoals%20gepubliceerd%20in%20Staatscourant%202020.pdf

Where a quantitative criterion is not possible, for example in a long-term framework contract, it is also possible to apply a qualitative criterion. This may take the form, for example, of an action plan for reducing the environmental footprint when making design choices. The exact elaboration of this will be regulated by or pursuant to general administrative regulation. The proposed award obligation will additionally escalate the environmental performance requirements at material or product level (first amendment) to the level of the project as a whole. It follows from procurement directives that, when awarded on the basis of the best price-quality ratio, the additional criteria, including weighting factors, must be announced in advance. This must be included in the contract notice, the descriptive document (specifications) or in the award guidelines (see Article 67(5) of Directive 2014/24 and Article 2.115 of the Public Procurement Act 2012). In order to provide guidance on the weighting that contracting authorities may assign to the additional criterion, it will be examined whether a minimum weighting can be recommended via the support point (see accompanying policy).

In determining this minimum estimated contract value, a balance is made between the expected (positive) impact on the environmental performance of civil engineering works, the costs associated with the implementation of the measure²² in relation to the size of the civil engineering work and the share of the market and the contracting authorities and special sector companies that fall within this delimitation. The aim is to cover as large a share as possible of all product usage and the associated environmental impact and raw material use in civil engineering works. Small works, where the expected impact is limited, will be, especially in the initial period, exempt from the obligation. This will also make allowance for the small and medium-sized enterprises (SMEs) that usually perform the contract for smaller civil engineering works. The minimum estimated contract value and the manner in which the additional criterion relating to the environmental performance of civil engineering works will be formulated will be further regulated by general administrative regulation. The starting point is to create as much clarity as possible for the market and at the same time leave room for a specific interpretation per (type of) client where this is necessary or desirable.

Accompanying policy

A support point will be established to support the parties in when applying their statutory obligations. This involves addressing the following topics:

- Encouraging parties to consider including requirements that reduce the environmental impact of civil engineering works when tendering for them, even where the works do not exceed the minimum estimated contract value set by the general administrative regulation. This will contribute to the development of knowledge and the capacity to carry out the obligations.
- Promoting consistency in procurement with requirements that limit the environmental impact of civil engineering works.
- Encouraging the application of requirements that limit the environmental impact of civil engineering works during the design phase.

The legal requirements, followed by the accompanying policy, are explained below.

Establishment of a support point to support procuring parties with environmental performance requirements

Knowledge and experience of working with requirements that mitigate the environmental impact of civil engineering works varies greatly among purchasers. Large contracting authorities in particular have a great deal of experience and will be able to implement the legislation relatively easily, whereas smaller contracting authorities that have not yet worked with such requirements may need more support in this regard. A support point for sharing knowledge and experience will be established. The main purpose of the support point is to support contracting authorities to meet the the environmental impact

²² Costs here refer to both the legal costs and the material costs and the costs in terms of time invested by the contracting authority.

mitigation requirements of civil engineering works. As has emerged from discussions with stakeholders, this process will draw on the experience of other contracting authorities. The support point will be set up in anticipation of the implementation of the legislation, in order to share knowledge and experience before contracting authorities are subject to the statutory requirement. The support point will not only provide support for inexperienced contracting authorities, but will also benefit experienced contracting authorities and special sector companies will benefit, in particular by providing clarity and efficiency. This will contribute to the development of knowledge and the capacity to carry out the obligations. Stakeholder consultations show that many contracting authorities and special sector companies themselves work with requirements that mitigate the environmental impact of civil engineering works, but often in ways that vary slightly. These contracting authorities can gain a lot if experiences are shared and a unambiguous approach is elaborated jointly.

Encouraging procurement with an award criterion based on environmental performance, including for smaller projects

Contracting authorities tendering for civil engineering works that fall below the minimum estimated contract value set by general administrative regulation and to which environmental performance does not apply as an additional criterion and is therefore not legally required, may of course apply these criteria if they wish. Where there are significant environmental gains to be made, these are encouraged. The planned support point can play a role in encouraging contracting authorities and special sector companies to consider environmental performance in more projects than only those covered by the statutory obligation.

Promoting consistency in procurement where environmental performance is required

At present, there are many differences in the market when it comes to requirements that mitigate the environmental impact of civil engineering works. Contracting authorities and special sector companies are free to interpret these requirements themselves, leading to confusion among contractors and uncertainty about the direction of measures that are required or rewarded. This uncertainty means that contractors are less willing to make investments that contribute to sustainability. There is insufficient certainty that these investments can be recouped within the foreseeable future. Clear requirements and unambiguous enforcement therefore contribute to the investment perspective offered to entrepreneurs and ensure that transaction costs can be reduced without the need for great expertise. The obligations in this bill provide parties with clarity on environmental performance-based procurement by contracting authorities and special sector companies. Documents will also be available through the support point to further promote clarity, such as test protocols or guidance on the weighting of the environmental performance criterion.

Encouraging the implementation of requirements in the design phase

The legislation ensures procurement in accordance with requirements that limit the environmental impact of civil engineering works. However, environmental gains can also be achieved to a large extent in the phase prior to procurement, namely during the design of a project. The support point aims to encourage circular design principles. Stimulating an assessment of the environmental performance of different design variants and choices during the (early) design phase of a project is also encouraged. This ties in with policy commitments from, among others, the climate-neutral and circular infrastructure strategy, the Buyer Groups and the Manifesto for Socially Responsible Contracting and Procurement.

3. Reason for choice of instrument

When drafting this bill, careful consideration was given to the most effective and appropriate instrument for reducing the environmental impact of civil engineering works and achieving clarity in procurement. The reasons for opting for regulation rather than

voluntary instruments are explained below. It is then explained why it was decided not to introduce generic product requirements and not to include additional rules in the general administrative regulations under the Environment Act,²³ as well as why the procurement instrument is suitable for achieving the desired objectives.

As mentioned above, it was decided not only to steer with voluntary instruments, but rather to regulate and implement standards. This is because in the civil engineering sector for years, developments and initiatives have encouraged and supported clients in the civil engineering sector to reduce the environmental burden of their works, such as:

- Raw Materials Agreement
- Climate-neutral and Circular Infrastructure Strategy
- Circular Construction Economy Transition Agenda
- Sustainable Civil Engineering Manifesto 2030 (formerly Green Deal Sustainable Civil Engineering since 2017)
- Socially Responsible Procurement and Purchasing Manifesto (MVOI)
- Concrete agreement
- Buyer Groups focused on civil engineering
- Various platforms and initiatives, including Building Circular, Circular City/the New Normal
- Developments within existing platforms, such as CROW, WoW, Bouwend Nederland

With these programmes and initiatives, as well as with the help of various grants, awareness that procurement as an instrument can not only be used for immediate procurement needs, but can also be applied more widely as an instrument for the realisation of important policy objectives, has been created. These voluntary initiatives promote awareness, cooperation, knowledge sharing and progress. However, this is not done at the high rate necessary to achieve international, national, regional, local and sectoral objectives. As described earlier, business, various contracting authorities and special sector companies, as well as research and consultancy firms, indicate that a binding national measure will ensure that the circular design and implementation of projects in civil engineering does not remain an individual policy for each contracting authority individually, as is currently the case, but that this transition in civil engineering develops collectively. This bill therefore implements a basic level for the entire sector, in addition to the commitment described above. Research was carried out in preparation for the Cabinet decision to legally steer environmental impact mitigation in civil engineering. This shows the significant effect of the obligation.²⁴ The commitments could lead to a reduction of approximately 0.8 megatonnes of greenhouse gas emissions by 2030.²⁵

Setting generic product requirements

Generic product requirements, such as environmental certificates or minimum environmental standards for building materials, can contribute to sustainability, but they also have major imitations. It is not proportionate to impose strict environmental

²³ This choice was made on the basis of research into the legal integration of the policy measures. (Source: Hoppe, F., & Bakker, E. (2024). Mandatory environmental cost indicators in civil engineering: research into legal integration. Flux Partners.

²⁴ Hendriks, R. H., & Grul, W. S. (2024). Scope of application of mandatory environmental cost indicators in civil engineering. Witteveen+Bos. Available via:

<https://www.rijksoverheid.nl/documenten/rapporten/2024/02/13/bijlage-4-rapport-toepassingsgebied-dwingende-mki-in-de-gww>; Bosch, S., & Peeters, T. (2024, 13 February). Mandatory environmental cost indicators in civil engineering: Effects and variants. Copper8.

Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/02/13/bijlage-3-rapport-dwingende-mki-in-de-gww-effecten-en-varianten>; Bosch, S., Peeters, T., Dijcker, R., Hendriks, R., Hoppe, F., & Bakker, E. (2024). Policy advice guiding ECI. Copper8, Witteveen+Bos & Flux Partners. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/05/31/bijlage-3-beleidsadvies-sturende-mki>.

²⁵ Warringa, G., Bergsma, G., Bouwman, P., Kanters, J.-W., Odenhoven, N., & Uijtewaald, M. (2024, January). Suggestions for additional circular economic policy. CE Delft. Available via: <https://ce.nl/publicaties/suggesties-voor-aanvullend-circulaire-economiebeleid/>

requirements on all products within the civil engineering sector, regardless of the specific application and the environmental impact of the product within a given project. This would also place a disproportionate burden on smaller producers and suppliers, as they would have to draw up an environmental declaration for all products. This is not realistic for every product, as the impact of the products on the overall environmental performance can be limited. Furthermore, opting solely for generic product requirements would restrict flexibility and innovation in the market, as market parties would be limited to predetermined standards that may not be appropriate for every situation. Tendering can be used as an instrument to steer the process in a proportionate and effective manner: requirements can be tailored to the nature and scope of the project, without creating unnecessary barriers for smaller producers and suppliers.

Setting requirements under the Environment Act

Environmental law regulates what is and is not permitted in the physical living environment and under what conditions. Rules to reduce the environmental impact of civil engineering works could be laid down by general administrative regulation under the Environment Act. During the drafting of this Bill, numerous variants were examined in this regard. For example, according to Section 4.123 of the Living Environment Activities Decree, it is possible to lay down the use of building materials in works. However, as with setting generic product requirements, it is not proportionate to set generic environmental requirements regardless of the specific application and environmental impact of building materials. As explained above in relation to generic product requirements, opting for generic application requirements for construction materials only could limit the impact on overall environmental performance can be limited and would limit flexibility and innovation in the market.

Other variants that are in line with the system set out in the Environment Act are the establishment of mandatory guidelines or environmental values for civil engineering works.²⁶ The mandatory guideline should then apply to a civil engineering project that is being realised, maintained or otherwise modified. In addition, an environmental impact ceiling can be set as an environmental value for civil engineering works. By incorporating them as mandatory guidelines, this environmental value is imposed on government agencies as a mandatory requirement to ensure that the environmental effects created by work activities on (new) civil engineering works do not exceed the environmental impact ceiling.

Since the environmental values target the impact civil engineering works have on the environment rather than the products or materials used in such works, a realistic variant is to lay down mandatory guidelines in the Living Environment Quality Decree. The reason for not opting for implementation under the Environment Act lies in the European Construction Products Regulation (CPR). Under the CPR, it may no longer be permissible in future to include ambitious performance requirements for specific construction products in legislation if these have been laid down by the European Commission.²⁷ However, it is and remains possible to set requirements in procurement and tendering processes, based on the relationship between clients and contractors. Therefore, the option of no conflict with the CPR if environmental performance requirements are established at European level was chosen. The relationship between procurement law and the CPR is further explained in paragraph 4.1 of this explanatory memorandum.

The choice of the procurement instrument

The procurement instrument offers a flexible option to limit the environmental impact of civil engineering works. Tenders are the moment when governments and other contracting authorities make concrete choices regarding the awarding of contracts and 17 contract terms for civil engineering works. Through tenders, public authorities can

²⁶Hoppe, F., & Bakker, E. (2024). Mandatory environmental cost indicators in civil engineering: research into legal integration. Flux Partners, p. 33 et seq.

²⁷ Currently, this is not yet on the European Commission's agenda. It is unclear whether the Commission will set these environmental performance requirements in due course. See chapter 4

effectively steer towards reducing the environmental impact in civil engineering, as this allows them to set specific requirements and criteria. This encourages businesses to develop and implement sustainable solutions, while governments retain influence over the entire project process. This can significantly reduce the environmental impact of civil engineering works across the entire chain. It also creates an efficient, market-oriented approach that promotes innovation and environmental gains. Moreover, the obligations in this bill are well in line with existing regulations and practice, such as the Public Procurement Act and the CPR – under which contracting authorities may, if they wish, lay down more stringent requirements (see Chapter 4), and it is easy to adapt to technical and policy developments.

Setting requirements that limit the environmental impact of civil engineering works through contracting authorities offers the possibility of applying these requirements proportionally. In the civil engineering sector, projects vary widely in size and nature. By incorporating requirements into the tendering process, they can be tailored to the specific context of the work, thus avoiding their being excessively stringent or, conversely, too lenient. Furthermore, this approach ties in well with the existing responsibility of contracting authorities to procure sustainably, and fits within the legal framework of the 2012 Public Procurement Act.

Finally, it was decided to incorporate the proposed provisions into the Environmental Management Act (Wm). The Environmental Management Act already contains a provision that provides guidance to contracting authorities. Pursuant to Section 9.6.1 of the Act, rules may be laid down by general administrative regulation concerning the procurement of road vehicles, which are further elaborated in the Regulation on the promotion of clean road vehicles. These regulations implement the European directive on clean and energy-efficient road vehicles. Although this bill does not deal with implementation, in both cases it concerns the setting of rules on procurement for the protection of humans and the environment.

Variants to guide the procurement of civil engineering works

An exploration has been carried out into the possibilities to effectively steer towards environmental impact reduction in civil engineering through tenders. The overview below sets out the four most important variants, along with the reasons why they were not selected.

1. Accounting obligation for all civil engineering works

A frequently mentioned route for introducing a legal obligation to reduce environmental costs is an accounting obligation for all civil engineering works, possibly as a first step towards a results-based undertaking. This means that the environmental costs of the project must be determined for all works within a civil engineering work. However, an accounting obligation alone gives little additional guidance to manufacturers, and does not give substance to the desired investment perspective. As a result, it is expected to have little effect on sustainability, although it can contribute to increasing knowledge and awareness.

2. Accounting obligation at product level

An accounting obligation at product level is also seen as a possible first step towards reducing environmental costs, as it would oblige manufacturers to calculate environmental performance and the underlying data quality would improve. An accounting obligation means that the contractor is obliged to also calculate and submit the environmental performance at the time of an offer. However, here again the accounting obligation may provide insight, but has no mandatory character, making it impossible to force a reduction. 18

3. Limit value at project level

A third proposed route is the obligation to achieve a generic result at project level applicable to all civil engineering works, in line with the limit value for the Environmental Performance for Buildings (MPG) in residential and non-residential buildings – for

example, for the new construction of a dwelling, the MPG is set at 0.8. In this case, the limit value for the environmental impact will have to be stipulated for each project type (e.g. a bridge or tunnel). However, civil engineering works lend themselves less well to such a limit value, for various reasons:

- A good comparative unit for civil engineering works is not available, partly because works are often realised on the basis of local circumstances. This is different from that in building construction, where the floor area is a unit for comparison.
- Underground space is a dominant factor in the environmental performance due to the need for foundations. The composition of the subsoil varies greatly from site to site.
- In the design of civil engineering works, the range of products that can be used is narrower than in building construction. Setting a limit value at the building level therefore leads either to a value that is easily achievable in practice, or to a stricter limit value that requires many exceptions to be practicable.

4. Procurement with environmental performance as an additional criterion in the award for all procurement

One possible route for implementation is a sector-wide obligation to purchase with environmental performance as a criterion in all procurement. It has not been chosen to apply the obligation to all projects, because the potential impact is often relatively low compared to the costs (both in time and in capacity) for a contracting authority. In particular, small contracting authorities and special sector companies are substantially burdened by such requirements.

Selected instrument

By law, contracting authorities and special sector companies are obliged to purchase sustainably. In this way, contracting authorities will work towards fully climate-neutral and circular procurement, so that this sector as a whole will operate in a climate-neutral and circular manner. This builds on existing cooperation and agreements made with the parties.

Options other than legislation have previously been explored and implemented through various initiatives aimed at making civil engineering more sustainable (communication, financial, organisation, co-regulation and support instruments). All these voluntary initiatives promote awareness, cooperation, knowledge sharing and progress. However, this is not being done quickly enough to meet international, national, regional, local and sectoral targets. Nevertheless, these options can and will still be used to support the legal obligation. The support measures will, as far as possible, be centrally managed by the support point referred to in 2.3.

4. Relationship to superordinate legislation

4.1. Relevant EU legislation

Since the bill also concerns construction products, care was taken during its drafting to ensure alignment with the revised European Construction Products Regulation (EU 2024/3110) laying down harmonised rules for the marketing of safe and sustainable construction products ('the European Construction Products Regulation'), in order to prevent any conflict with European law.

The revised version of the European Construction Products Regulation, adopted on 1 January 2025, allows the European Commission to draw up harmonised rules (harmonised technical specifications and European technical assessments) on the sustainability of construction products. These include which essential environmental characteristics must be provided for product families or product categories and how the environmental impact of construction products should be determined and verified. Once these rules are in place, manufacturers must be able to demonstrate that CE-marked construction products comply with European requirements by means of a combined declaration of performance and conformity. Pursuant to Article 5(5) of the Construction

Products Regulation, the Commission may adopt delegated acts concerning threshold levels, performance classes or mandatory essential characteristics for product families or product categories covered by harmonised standards. Under the Green Deal for Green Procurement, the European Commission makes an exception for procurement. According to Article 83(2) of this Regulation, more ambitious and additional requirements may be set with regard to the essential environmental characteristics.

Whether Member States set a threshold level or performance class for environmental performance requirements, as is the intention of the first measure in this legislative proposal (at product or material level),²⁸ is currently at the discretion of the Member States themselves, as is the way in which the essential environmental characteristics are weighted to a one-point score (in the Netherlands with a monetary weighting set, which expresses the total environmental impact of a product or project as a monetary value known as the environmental costs, or 'shadow costs'). It is not known whether the European Commission intends to set delegated acts for environmental performance in terms of threshold levels or performance classes; this is not currently on the European Commission's agenda. For the time being this is unlikely, given that Member States want to focus differently on the implementation and assessment of environmental performance depending on their national situation and priorities.

Also, at the time of the submission of this legislative proposal to the State Council for an opinion, no harmonised technical specifications have yet been established for inspecting the environmental performance of construction products under the Revised Construction Products Regulation. If harmonised technical specifications are adopted in due course for construction products falling within the scope of this Bill, the Netherlands will, if necessary, amend the mandatory environmental performance requirements accordingly. When more information about this becomes available, it will be made available via the website of the national government.

Finally, this Bill is in line with the trends at European level, without any more stringent rules at national level. In order to be able to speak of more stringent national rules in a technical sense, two conditions must be met. There must be a competitive disadvantage for the NL industry, and it must be NL legislation that goes beyond what is required by an EU directive, which regulates exactly the same subject matter and has a detrimental effect on the NL industry directly addressed by the directive. Since the proposal concerns tender criteria and any market participant can participate under the same conditions, as explained in more detail in Section 4.2 of this proposal, the first condition is not met. In addition, uniform procurement conditions are what the market parties, contracting authorities and special sector companies consulted wish for, because they are currently faced with different procurement conditions. The second condition is therefore also not met. As the present bill does not impose more stringent requirements on all construction products in Dutch legislation, but only obliges contracting authorities to set environmental performance requirements for the highest-impact materials when tendering for civil engineering works, the European Construction Products Regulation will not affect this. The European Construction Products Regulation does not say anything about including environmental performance at structural level, such as the award criterion.

4.2. Obstacle to the free movement of goods

This Bill has been carefully drafted with a view to safeguarding the free movement of goods within the European Union. The obligations in this Bill are objective, non-discriminatory conditions which apply within the framework of procurement contracts. The prescribed environmental performance requirements are accessible to all market participants, regardless of the Member State in which they are established. Any company, within or outside the Netherlands, that meets the specified requirements may tender for the contract under the same conditions. The obligation is also aimed at

²⁸ At construction level - such as measure two of this legislative proposal - the European Commission does not set rules under the revised European Construction Products Regulation.

achieving legitimate objectives of the general interest, in particular promoting sustainability and reducing the environmental impact of the construction sector, in line with the Climate Agreement and European Green Deal objectives.

It will be guaranteed by general administrative regulation that the requirements are established in an objective and proportionate manner, e.g. by using European recognised determination methods and standards, such as the method for determining the environmental performance of construction works and civil engineering works, based on a life cycle analysis (LCA). It is therefore not a form of indirect discrimination or a disproportionate restriction on freedom of movement, but a policy measure which falls within the framework of public procurement law and is compatible with EU law. The obligations ensure that market participants are presented with more uniform tendering conditions, rather than always being confronted with different conditions.

To further ensure that the bill does not create unjustified barriers to free movement within the internal market and does not conflict with existing EU regulations, the bill will be technically notified to the European Commission. This notification gives the European Commission the opportunity to check that the proposed legislation is in line with the EU Directives and does not create obstacles to the free movement of goods, services, capital or people. The notification process, as referred to in Directive 2015/1535/EU and Directive 2006/123/EC, also allows other Member States and the Commission to submit comments or objections if the proposed legislation is contrary to European legislation.

4.3. Relation to the General Data Protection Regulation (GDPR)

Based on the DPIA model and the Pre-scan DPIA, it has been concluded that this bill does not involve the processing of personal data. The Bill provides for an addition to existing procurement procedures of infrastructure works. The focus here is on the procurement process for products and works, and not on the processing of personal data. A Data Protection Impact Assessment, as well a review by the Data Protection Authority²⁹, is therefore not necessary in this case. The DPIA Template³⁰ is based on the General Data Protection Regulation (GDPR), the Data Protection Investigation and Prosecution Directive and the national regulations based in part on it, such as the General Data Protection Regulation Implementing Act (UAVG). This model also incorporates the guidelines of the European Data Protection Board (EDPB).

5. Relation to national legislation

In the preparation of the policy, extensive research has been carried out into which laws or regulations can best incorporate the measures from this legislative proposal. See Chapter 3. This Bill follows the procedures and definitions of the Public Procurement Act 2012, as they are already applied by contracting authorities in practice. In addition to the provisions of Title 9.6 of the Environmental Management Act, which already contains a provision encouraging contracting authorities to purchase clean vehicles, the legislative proposal aims at limiting the environmental tax in the civil engineering works.

Regarding the relationship with other regulations for civil engineering works, it is relevant to note that procurement law concerns public contracts and therefore interferes with contractual freedom in private law. The draft Act does not affect any further public-law regulations applicable to civil engineering works. For instance, for quality assurance in soil management (kwalibo), regulations are included in the Soil Quality Decree for

²⁹ As prescribed by the Data Protection Authority. (undated). For the government: legislative review [Web page]. Available via: www.autoriteitpersoonsgegevens.nl/themas/basis-avg/praktisch-avg/voor-de-overheid-wetgevingstoetsing

³⁰ Knowledge Centre for Policy and Regulation (KCBR). (2023, September). Model DPIA Civil Service v3.0. The Hague, KCBR. Available at: www.kcbr.nl/sites/default/files/2023-09/Model%20DPIA%20Rijksdienst%20v3.0.pdf

quality and integrity requirements for activities in soil management. The Living Environment Law (Structures) Decree also contains provisions on the environmental performance of buildings. These regulations apply to civil engineering works insofar as they involve a building structure. The obligations laid down in these regulations are the preconditions that must be met in the performance of contracts. These obligations have to be taken into account when setting environmental performance requirements and formulating environmental performance as an additional criterion.

6. Consequences (excluding financial consequences)

As noted above, a variety of agencies have conducted research into the measures and their effects. The sector (including local authorities) has also been intensively involved in these investigations, both in the initial phase of policy making and in the validation of the research results and the elaboration of this Bill. With the broad application of requirements, this Bill increases the market (demand) for circular products in the civil engineering sector. With unambiguous clarity, it provides a level playing field for undertakings. Managing environmental impact also contributes to investment security for sustainable innovations in business.³¹

Significant positive effects are anticipated in the areas of climate and raw material consumption. Research by CE Delft shows that in 2019, the civil engineering sector was responsible for 4 megatonnes of CO₂eq, approximately 3 per cent of the total CO₂eq emissions in the Netherlands.³² According to CE Delft, the commitments could lead to a 1-megatonne reduction of greenhouse gas emissions by 2030.³³ Of these, 600 kilotonnes are attributable to the obligation of environmental performance requirements at material level, and 400 kilotonnes to the additional environmental performance criterion. This excludes the impact that can be achieved in civil engineering works carried out by Rijkswaterstaat and ProRail. If the tenders from these parties are also included, it will lead to additional savings of 65 kilotonnes and 160 kilotonnes of CO₂ respectively. In general, as the requirements become stricter, this will result in additional environmental benefits.³⁴ The obligations in this Bill are seen as one of the largest potential climate impacts of the 55 measures from the NPCE, along with the service life extension of products.³⁵ With the above data, the basis for an assessable objective has been laid for both obligations. This is established when the level of the environmental performance requirements and the minimum estimated contract value are determined by or pursuant to a general administrative regulation. Setting environmental performance requirements for the most impactful products in the GWW also contributes positively to the security of supply of raw materials, as the use of non-scarce raw materials, the use of secondary and/or biotic raw materials and products that can be recycled well into the future contribute to a lower environmental impact.³⁶ Setting

³¹ Bosch, S., Peeters, T., Dijcker, R., Hendriks, R., Hoppe, F., & Bakker, E. (2024). Policy advice guiding environmental cost indicators. Copper8, Witteveen+Bos & Flux Partners. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/05/31/bijlage-3-beleidsadvies-sturende-mki>

³² Bosch, S., Peeters, T., Hendriks, R., Preso, S., Hoog Antink, E., & Schweitzer, G. (2023). Civil engineering procurement with environmental cost indicators: Evaluation of the calibration curve Copper8, Witteveen+Bos & Rijkswaterstaat. Available via: <https://open.rijkswaterstaat.nl/open-overheid/@269293/inkopen-mki-gww-evaluatie-actie-agenda/>

³³ Vries, J., de, Laan, J. van der, I., Nieuwenhuijse (2025), Factsheet | Acceleration measures for the application of environmental performance requirements GWW, CE Delft

³⁴ Vries, J., de, Laan, J. van der, I., Nieuwenhuijse (2025), Factsheet | Acceleration measures for the application of environmental performance requirements in civil engineering works, CE Delft

³⁵ Hanemaaijer, A., Kishna, M. (project management), Koch, J., Lucas, P., Rood, T., Schotten, K., & Van Sluisveld, M. (2023). Integral Circular Economy Report 2023 (PBL publication number 4882). The Hague, Reporting by the Netherlands Environmental Assessment Agency Available via: www.pbl.nl/publicaties/integrale-circulaire-economie-rapportage-2023

³⁶ Warringa, G., Bachaus, A., Bergsma, G., Bouwman, P., Odenhoven, N., Ahsman, N., Peters Sengers, J. J., & Heideveld, A. (2024, May). Impact assessment of the National Circular Economy Programme. CE Delft. Available via: <https://ce.nl/publicaties/effectbeoordeling-nationale-programma-circulaire-economie/>

minimum requirements for environmental impact can indirectly lead to more reuse and a higher share of recycled products in civil engineering works, which in turn reduces primary use of raw materials and has a positive impact on security of supply of raw materials.³⁷

The binding national measure also leads to other positive environmental effects, according to research.³⁸ Requirements that limit the environmental impact of civil engineering works can contribute to minimising harmful effects on biodiversity, soil quality and (drinking) water quality, including nitrogen. This also leads to a better and cleaner living environment for the population of the Netherlands.

Requirements that limit the environmental impact of civil engineering works may lead to the application of other building materials, such as biobased products. The National Approach to Biobased Construction (NABB) was established to build chains that ensure a mature market for the cultivation, processing and application of biobased materials and products in construction.³⁹

It is conceivable that the envisaged obligations will be associated with unintended, negative side effects. This is discussed in more detail in section 6.3. These are environmental impacts in a broad sense, including effects such as greenhouse gas emissions, use of raw materials and use of space. However, obligatory procurement with requirements that limit the environmental impact of civil engineering works primarily leads to positive environmental effects on the environment; namely the reduction of the environmental impact of civil engineering works.

6.1. Coordination with interest groups

During the drafting of this bill and the fine-tuning of the obligations, active efforts were made to coordinate and consult with relevant interest groups. The aim is to understand the different perspectives and interests so that the bill is well aligned with the wishes and concerns of those involved. This proposal was developed following extensive consultation with the Association of Netherlands Municipalities (VNG), the Interprovincial Consultation (IPO) and the Union of Water Authorities (UvW) - including through the Local Authorities Implementation Test process, which is explained in more detail in section 7.3. - market players, engineering firms and various contracting authorities and special sector companies. Interviews were also conducted with employees of contracting authorities and special sector companies of different sizes and from different areas and regions. Manufacturers, contractors, waste processors and suppliers were also interviewed. Discussions were also held with trade associations representing suppliers of construction products, SME infra and Bouwend Nederland, and independent organisations within the Dutch tendering and civil engineering domain, such as CROW and PIANOo. Furthermore, there has been contact with organisations such as Nature & Environment [Natuur & Milieu] and the Climate Alliance [Klimaatverbond]. The aim is to arrive at a proposal that is as workable as possible in practice within the announced policy intentions.

³⁷ Ibid.

³⁸ Bosch, S., Peeters, T., Hendriks, R., Preso, S., Hoog Antink, E., & Schweitzer, G. (2023). Civil engineering procurement with environmental cost indicators: Evaluation of the calibration curve Copper8, Witteveen+Bos & Rijkswaterstaat. Available via: <https://open.rijkswaterstaat.nl/open-overheid/@269293/inkopen-mki-gww-evaluatie-actie-agenda/> and Bosch, S., & Peeters, T. (2024, 13 February). Mandatory environmental cost indicators in civil engineering: Effects and variants. Copper8. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/02/13/bijlage-3-rapport-dwingende-mki-in-de-gww-effecten-en-varianten>

³⁹ Ministry of the Interior. (2023, 8 November). National Approach to Biobased Building. The Hague, National Government. Available at: www.rijksoverheid.nl/documenten/rapporten/2023/11/08/nationale-aanpak-biobased-bouwen

6.2. SME test

On 16 June, a panel discussion took place in the context of the SME test in accordance with the guidelines set out above. In addition to their own input, the umbrella organisations MKB infra and Bouwend Nederland found two individual SME entrepreneurs willing to participate. In the panel discussion, the participants agreed that clarity and continuity are important. By gradually tightening environmental performance requirements, SMEs are given the opportunity to grow. Creating a level playing field is crucial for SMEs. The Ministry of Infrastructure and Water Management has indicated that, in this context, the proportionality of the measures for SMEs should be taken into account, for example by setting a threshold value for the additional criterion relating to the environmental performance of civil engineering works.

Other matters discussed included clarity regarding various ongoing initiatives, consistency with European policy, and the importance of monitoring and evaluation. In addition, consideration is given to the involvement of SMEs when drafting the general administrative regulation. The panel appreciated the organisation of this panel discussion. It was agreed to keep in touch during the drawing up of the general administrative regulation to discuss the measures and their implications for SMEs.

In addition to this specific SME panel discussion, various SMEs were present at a stakeholder meeting with market parties on 13 March 2025, where explicit attention was drawn to the feasibility for SMEs. In further developing the regulations, consideration will be given to the operational perspective for SMEs that will be affected by the implementation of the proposed changes.

6.3. Impact on the Caribbean Netherlands

The obligations included in this Bill do not apply to the Caribbean Netherlands, namely Bonaire, Sint Eustatius and Saba, nor to the countries of Aruba, Curaçao and Sint Maarten. These areas each have their own climate and sustainability plans and programmes adapted to their specific administrative and geographical situation. In addition, the Environmental Management Act, the Public Procurement Act 2012, the Climate Agreement and the National Circular Economy Programme do not apply to these areas. Because the implementation of climate and circular infrastructure measures in these countries and public bodies is organised differently and is still under development, it is not appropriate to apply the obligations set out in this Bill on a one-to-one basis.

6.4. Environmental impact test

The primary objective of mandatory procurement with a (minimum) environmental performance requirement at product and project level is to generate positive effects for society.

Substantial negative consequences are therefore not addressed in this Bill. Mandatory tendering with environmental requirements primarily leads to positive social and environmental effects, namely reducing the environmental impact of civil engineering works. Because environmental performance provides insight into effects over the life cycle and in the chain, effects elsewhere and/or later are in principle part of the calculation. Therefore, efforts are being made to reduce the environmental impact. The aforementioned studies on the impact of managing environmental performance in civil engineering works support this.

Some examples of potential negative environmental impacts of limited scope:

- Movement for the transport of sustainable and/or recycled products may increase when these have to be transported from far away. Overall, this is not expected to be substantial in relation to the overall positive environmental impacts of the measure, as the general administrative regulation is very likely to be associated with methods that calculate the impacts on the life cycle analysis²⁴ of a construction product, such as the Environmental Cost Indicator.
- The use of biotic products, such as biobased binders in asphalt, may lead to an increase in the use of physical space for production crops. No verdict can be made regarding the extent of this increase because of the many dependencies, freedom of choice and other policies to stimulate this measure (such as the

National Approach to Biobased Building).⁴⁰ Substantial effects are not likely; the use of farmland and space currently used for livestock farming is part of the policy (NABB) and is therefore not undesirable.

- Product use for generating sustainable energy may increase. This will not lead to substantial environmental impacts because it would reduce the environmental impact of the product or work in question and/or because it is not cost-effective.

An increase in waste streams and emissions is not plausible, as the environmental performance obligation seeks to reduce these effects. If the environmental performance calculation covers all impacts over the life cycle and in the chain, impacts elsewhere and/or later are generally part of the calculation.

6.5. Impact on ICT

This legislative proposal will have limited impact on the ICT infrastructure and systems involved in its implementation. The necessary adjustments and integrations can be implemented within existing ICT structures without requiring significant investments in new technologies or systems. The impact on existing ICT systems is mainly limited to necessary updates, the purchase of software licences, the costs of which are proportionate and insubstantial, or minor changes to the processes related to the administrative and operational implementation of the law, and specifically:

- The environmental performance of products can be made clear to contractors using existing tools and existing environmental databases.
- The consequences for contracting authorities are limited: they must purchase a licence for the software or tools to assess environmental performance at project level or outsource calculations to a consultancy firm.
- Supervision of compliance by contractors with the contracts, including environmental performance requirements of the contracting authority does not require a licence; the contractor must provide the necessary data.

7. Implementation

This bill obliges contracting authorities and special sector companies designated by special administrative order to include environmental performance requirements in existing tenders for civil engineering works. The aim is to provide clarity in procurement, so that clarity is created enabling market participants to invest in less polluting products and for contracting authorities to ensure that the products they purchase contribute to their climate and circularity objectives. This chapter explains which contracting authorities are entrusted with the implementation of Articles 9.6.2 and 9.6.3 and how this has been coordinated with them.

7.1. Implementation by contracting authorities and special sector companies

This bill contributes to the feasibility for contracting authorities and special sector companies to effectively include environmental performance in their tenders. In order to ensure the feasibility of the Bill, more than one hundred contracting authorities and special sector companies have been involved. Among other things, during stakeholder consultations, they provided input which has either been incorporated into the present Bill or will be included in the general administrative regulation. During the elaboration of this Bill, input was also sought on several occasions from umbrella organisations VNG, IPO and UvW within the framework of the Local Government Implementation Test (see section 7.3.) in order to ensure that the bill would be as workable as possible. 25

⁴⁰ Ministry of the Interior. (2023, 8 November). National Approach to Biobased Building. The Hague, National Government. Available at: www.rijksoverheid.nl/documenten/rapporten/2023/11/08/nationale-aanpak-biobased-bouwen

Currently, contracting authorities and special sector companies procure civil engineering works. The feasibility of the procurement process for civil engineering works depends on several factors:

Complexity of projects

GWW projects can be technically complex and include a wide range of work activities, such as road building and water management. In procurement processes, specialist knowledge is needed to draw up the technical specifications correctly, as well as to assess tenders on the basis of those specifications. This requires expertise on the part of the contracting authority, which can lead to a higher workload and the need for specialist support. In most procurements of civil engineering works, contracting authorities and special sector companies hire specialist support from engineering firms. This Bill ensures that environmental performance is incorporated into these existing procedures. In order to do this effectively, environmental performance measures to be included in large procurement projects may require contracting authorities and special sector companies to adapt their procurement documents so that they allow for environmental considerations and the appropriate assessment methods. The environmental performance of the most commonly used products in civil engineering works stipulated in this Bill will be integrated into existing tender specifications and contracts used by contracting authorities and special sector companies in their procurement of infrastructure. No implementation aspects are provided for here.

Award on the basis of price and quality

This proposed Act requires that in civil engineering works above a minimum estimated contract value indicated by general administrative regulation, environmental performance should be included in the tender in the form of an additional criterion. According to the 2012 Public Procurement Act, it is in principle mandatory to use the best price-quality ratio (PQR) as the award criterion, unless there is a well-founded reason to choose another criterion, such as the lowest price. Under the Public Procurement Act 2012, the best PQR is currently used most for the procurement of civil engineering works as an award criterion.⁴¹ This means that it is not only the price that matters, but also the quality of the works and the products used. The quality criteria may currently be determined by the contracting authority itself. This bill provides that one of the additional criteria must be environmental performance. The assessment method is regulated by or pursuant to a general administrative regulation, so that in all tenders that fall within the legal obligation, environmental performance will be determined in the same way and will be taken into account in the award.

The current procurement methodology requires contracting authorities and special sector companies to carefully consider both the financial and technical aspects of the project. Contracting authorities and special sector companies must be able to objectively and transparently assess whether the proposals submitted meet the requirements set and strike the right balance between price and quality. Calculating environmental performance as a further criterion often requires specialist knowledge and data. Contracting authorities and special sector companies will have to adapt their existing processes and systems to integrate environmental performance in a correct and transparent way. This may require additional resources and expertise, but it can contribute to more sustainable procurement practices and a greater focus on environmental responsibility in the public sector. More efficient and sustainable construction projects can ultimately lead to lower operating costs, reduced energy consumption and a lower environmental impact, which offers benefits for the client and society as a whole. The specialist support that is often required for large projects can be provided if the contracting authority does not have the knowledge itself. The National Government also provides support via the support point described in Section 2.3 to

⁴¹ Wittenveen+Bos conducted a data analysis of all tenders published on TenderNed over the period 2016-2024. Based on this, it was concluded that contracting authorities use best PQR at 83%. For tenders above the European threshold value, this figure is as high as 95%.

include environmental performance as a criterion in the assessment of the quality of civil engineering works.

Education and expertise

Since incorporating environmental performance requires new knowledge and skills, contracting authorities and special sector companies may need to provide education and training for their staff. This applies in particular to staff responsible for drafting and reviewing tenders, as they need to properly understand the technical and legal aspects of environmental performance. It may be necessary to engage experts or collaborate with external consultants in order to evaluate environmental performance correctly.

Assessment system and transparency

Contracting authorities and special sector companies should have clear instructions and guidance on how to weigh the additional environmental performance criterion against other criteria. This requires careful consideration and a transparent approach, so that market participants understand how their bids are assessed. Contracting authorities and special sector companies should also ensure that decisions are properly underpinned so that they meet the requirements of transparency and equality. These instructions and guidelines, as well as support for them, are provided through the support point. Prescribing, by or pursuant to Orders in Council, a method of environmental performance assessment contributes to uniformity and transparency in the sector. The establishment of a single central support point for contracting authorities and special sector companies also contributes to this.

Management and control

If environmental performance is used as additional criteria, this may lead to an additional time investment by contracting authorities and special sector companies to monitor this (more information on this can be found in Chapter 9). This refers specifically to the monitoring of compliance by contractors with the commitments made. Contracting authorities and special sector companies will have to ensure an effective mechanism for verifying that the promised environmental performance is actually met during the performance of the contract. This may involve, for example, the need for follow-up, audits or reports to ensure compliance with the environmental criteria. The support centre provides support in this respect. The (multi-annual) funding for the support point is provided through the Multi-annual Activities Budget of the Ministry of Infrastructure and Water Management and therefore has no impact on the national budget.

The feasibility for contracting authorities and special sector companies to incorporate environmental performance into their procurement can be effectively achieved, but it does require additional steps and attention to detail. In order to facilitate the above implementation aspects, the general administrative regulation opts for environmental performance requirements that require the minimum necessary expertise, resources and capacity on the part of contracting authorities and special sector companies. The above aspects will be discussed in more detail. In procurement law, a distinction is made between contracting authorities and special sector companies. Special sector companies fall under a different regime in procurement law; they have more procedural flexibility under the Procurement Act. The proposed provisions of Articles 9.6.2 and 9.6.3 apply without prejudice to the provisions of the Public Procurement Act 2012. These provisions lay down the environmental performance requirements for products and works which the contracting authority or special sector companies must take into account when tendering for civil engineering works. They serve as pre-defined preconditions for these calls for tenders.

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This Bill does not apply to all special sector contracts, but to contracts for activities referred to in Articles 3.1 to 3.6 of the Public Procurement Act 2012 and designated by general administrative regulation.

7.2. Implementation test for local and regional authorities

As part of the proposed legislative amendment, an implementation test has been carried out for local and regional authorities. The Local Government Implementation Test (UDO) is a process used to engage in dialogue with local authorities, such as municipalities, counties and water boards, about the feasibility of the law at local and regional level. This process provides an opportunity to jointly examine the impact of the law, any practical bottlenecks and the necessary adjustments to work processes within these authorities.

In this context, discussions were held with the Association of Dutch Municipalities (VNG), the Interprovincial Consultation (IPO) and the Union of Water Authorities (UvW). In general, these organisations have responded positively to the proposed law and underlined the need for a more transparent, efficient and streamlined procurement process which takes into account the environmental performance of civil engineering works. The regulations help public authorities to procure in a uniform manner and offer them the certainty that they are purchasing less polluting products. The input from VNG, IPO and UvW was used to further fine-tune the regulations, focusing on the feasibility of implementation within the existing local and regional authority structures. Based on these discussions and the process, additional support will be provided on specific topics raised at the support centre. In addition, the general administrative regulation pays specific attention to ensuring proper and efficient implementation at local and regional level. It has been agreed with VNG, IPO and UvW that a local government implementation test process will once again be performed in the elaboration of the general administrative regulation.

8. Supervision and enforcement

To date, compliance with rules by contracting authorities and special sector companies has not been regulated under administrative law, and this bill does not regulate administrative supervision and enforcement of the articles in Title 9.6 either.

Verification of compliance with Articles 9.6.2 and 9.6.3 of this legislative proposal takes place within the framework of legal protection under private law. If a party believes that the contracting authority is violating procurement law in any way, there are various options for interested parties – such as citizens, suppliers and other market participants – to take action, depending on the stage of the procedure. For example, there is the option to ask questions or express concerns during the Q&A session of the call for tenders. If no satisfactory answers are received, a party may lodge a complaint with the complaints desk of the contracting authority. If the contracting authority and the economic operator continue to disagree on the complaint, the economic operator can still contact the Committee of Procurement Experts. In addition, there is always the possibility of referral to a civil court. Citizens and businesses can rely on Article 162 of Book 6 of the Civil Code if the rules based on Articles 9.6.2 and 9.6.3 of the Environmental Management Act are not complied with. In public procurement, it is customary that compliance with the applicable rules can be enforced by means of summary proceedings before a civil court.

In addition, the Committee of Procurement Experts can act as an accessible specialist body where parties can bring a complaint about the actions or omissions of a contracting authority to the extent that those actions or omissions fall within the scope of the Public Procurement Act 2012. The Committee of Procurement Experts will consist of independent experts with in-depth knowledge of procurement law and practice, enabling them to make objective and expert assessments of complaints submitted. The establishment of this committee will ensure quick and efficient dispute resolution without the parties having to go to court. This will contribute to a quick and cost-effective problem resolution, increasing confidence in the procurement process. The involvement of the Committee of Procurement Experts will thus contribute to a culture of

transparency and responsibility within contracting authorities and special sector companies.

Finally, supervision of compliance with procurement rules can also place outside the framework of legal protection. Directors who are responsible for tenders can be contacted about this. In addition, contracting authorities and special sector companies are subject to annual audits. Adherence to the Public Procurement Act 2012 provides a low-threshold, familiar and accessible way for stakeholders to intervene when contracting authorities or special sector companies do not comply with the rules.

9. Financial impact

In the development of this legislative proposal, attention has been paid to the financial consequences of the proposed legislation, both for the citizens and businesses concerned and for the administrative burden. In order to properly map out the quantitative effects of regulatory pressure on the various stakeholders, SIRA Consulting B.V. conducted research into the impact of the law.⁴² This study focuses on the administrative and regulatory burden on citizens and businesses on the one hand, and, on the other hand, on the administrative burden on contracting authorities and special sector companies. To calculate the effects of regulatory pressure, SIRA uses the methodology employed throughout the government, known as the '43' (Regulatory Pressure Calculation Method), to quantify regulatory pressure.

This chapter discusses, as far as possible, the results of the regulatory pressure study of the proposed amendments to the Environmental Management Act. It is important to mention that these results have taken shape on the basis of a number of assumptions about choices that will be made by general administrative regulation or ministerial order. The regulatory burden of the proposed general administrative regulation will be discussed in the draft decision, because further refinement will take place to determine the effects of the regulatory burden. The obligations included in this legislative proposal do not entail any financial consequences for the national budget. The establishment of the support point can take place within the existing budgetary frameworks.

9.1. Impact on individuals and businesses

The quantitative regulatory pressure effect of the proposed amendment on citizens and businesses was evaluated by SIRA Consulting B.V. The regulatory impact study concerns the amendments to the Environmental Management Act, based on the assumption that the Environmental Cost Indicator will be used as an environmental performance requirement in the general administrative regulation. The study shows that businesses and governments are generally positive about the proposed amendments, as the legislation is in line with practice and, by providing clarity, provides a more perspective for both companies and governments. When the general administrative measure is drawn up, the effects will again be mapped out by SIRA.

*One-off regulatory burden effects: **environmental performance requirements in the form of the environmental cost indicator***

The burdens of applying the environmental cost indicator and performance requirements at product level lie primarily in demonstrating performance. For many concrete and asphalt products, variants with a lower environmental cost indicator score are available. Often, the underlying data required to perform an LCA, and subsequently the calculation⁴⁹

⁴² Poll, van der, P., Mok, J. (2025). Research into the financial effects of environmental performance requirements in tenders for civil engineering works. SIRA Consulting B.V. Available via https://www.internetconsultatie.nl/milieuprestatie_gww/b1

⁴³ <https://www.kcbr.nl/sites/default/files/2023-12/Handboek%20Meting%20Regeldrukkosten%202023%20-%20DEF%20-%204-12-2023%20toegankelijk.pdf>

of the environmental cost indicator, are also available through the supplier. No explicit costs have been included for perusal, as enterprises competing in these tenders are sometimes already subject to environmental cost indicator requirements, meaning that the working method is already familiar to them.

Enterprises bidding in public works tenders for civil engineering works face a one-time burden of collecting evidence in favour of the asphalt and concrete products to which the environmental cost indicator performance requirements will apply. On average, SIRA estimates – based on interviews with parties in the sector – that calculating the environmental cost score for a single product costs approximately EUR 400 (P). These costs may consist of time spent by internal staff performing the calculation, or out-of-pocket costs if an external agency is engaged. In most cases, suppliers perform the calculation themselves, and charge the costs. It is expected that the bulk of these costs of each product will arise the first time this product is used. When the composition of the product is unchanged if it is reused, no new calculation needs to be carried out. When the composition has changed, this is in most cases a limited change where only certain parameters need adjusting. This additional action does not result in significant regulatory costs.

Based on the above, the costs of applying environmental cost indicator performance requirements appear to be related to the number of asphalt and concrete products, for which environmental cost indicator values will ultimately included in an underlying regulation. After all, once the burden of proof has been put in place for a product, it can also be used for subsequent tenders. How many products this would ultimately be, depends on the number of products will eventually be included in the scheme. This is not yet known. Information from the Concrete Agreement and Moederbestek.nl indicates that SIRA has made an estimate. As it is not known how many asphalt and concrete products will end up in the scheme, SIRA uses a wide range of at least 50 to a maximum of 200 products (Q).

One-off regulatory burden costs

Environmental cost indicator-performance requirements			
Scenario	Cost per product (P)	Number of products (Q)	Total costs (P*Q)
Minimum	€ 400	50	€ 20 000
Maximum	€ 400	200	€ 80 000

Structurally, companies do not incur any costs for tenders that include environmental performance requirements. All they have to do is provide the evidence described above in order to meet the requirements of the contracting authority. The interviews conducted by SIRA also show that the environmental cost indicator-performance requirements at peloton level will not lead to significant additional costs for the equipment. The vast majority of suppliers already meet these requirements in the current situation. It is likely that parties that cannot meet these requirements will fail to participate in this type of procurement. This also applies to the additional criterion, but another factor is that the material costs depend to a large extent on the fulfilment of the obligation by the client. As a result, the additional costs are hardly quantifiable.

Structural regulatory costs: mandatory environmental cost indicator award criterion for major projects

Structurally, enterprises incur costs for the tenders where the material cost indicator obligation has to be taken on board as an additional criterion. This requires a specific

computation and elaboration for each tender, which entails additional costs. The legal costs for including environmental cost indicators as an additional criterion can be divided into the costs incurred before and after the tender decision by the public purchaser.

The costs incurred before a civil engineering project is awarded to a contractor are the costs of tendering for the contract itself ('tendering costs'). On average, these costs are estimated to represent 35% of the total process costs of ECI award criteria for companies. The registration costs consist, on the one hand, of carrying out or assigning LCA calculations in order to subsequently arrive at ECI scores for the materials used, and, on the other hand, costs are incurred as a result of the time expenditure required to specify the customer demand, the client's wishes and conditions. Although one respondent indicated that they use the services of external sustainability consultants to perform the LCA calculation, SIRA has assumed for the calculation of regulatory compliance costs that these consist of the time spent by internal employees. The estimated out-of-pocket costs for hiring such external staff have been converted into 'internal' hours using standard hourly rates in accordance with the methodology used across the civil service.⁴⁴ In reality, however, it is expected that a significant proportion of (particularly smaller) clients will initially make use of external consultancy firms.

The costs to businesses following the award of civil engineering works by public clients arise during the entire lead time of the project ('lead costs'). These ongoing costs primarily consist of the 'as-built check', in which the contractor demonstrates that the promised ECI has actually been achieved in practice by means of an ECI calculation based on the quantities actually used, and substantiated with supporting documents. Although the running costs of the ECI as an additional criterion may fluctuate with the running time of a project, respondents estimate these costs at an average of 65% of the total process costs.

Although companies arrive at similar qualitative assessments of the feasibility and effectiveness of the ECI award criterion, their quantitative estimates of the regulatory costs vary widely. This is not surprising, given the diversity of civil engineering infrastructure, and the fact that certain contractors specialise in particular niches of the sector that potentially have little overlap with each other. At the same time, the experience of contractors working with ECIs as a further criterion can also play a role, with companies seeing the supplementary costs decrease as they gain more experience and knowledge. On the basis of the interviews, however, this latter statement cannot be unequivocally substantiated. In order to reflect the variation between contractors in their assessment of the legal costs of the ECI as an additional criterion, the regulatory burden costs have been calculated by SIRA using three scenarios: a scenario based on the minimum costs that companies expect to incur, a scenario based on the maximum costs, and an average scenario. The cost consists of the expected time required in each scenario multiplied by the standard hourly rate of a highly qualified employee (EUR 54.-). The estimated time expenditure⁴⁵ for a large project is as follows for the three scenarios:

- Minimum 29.2 hours (tendering phase) + 54.2 hours (implementation phase) = 83.4 hours
- Average: 43.5 hours (tendering phase) + 80.7 hours (implementation phase) = 124.3 hours
- Maximum 57.7 (tendering phase) + 107.2 (implementation phase) = 164.9 hours

This translates into the following regulatory burden per project:

- Minimum EUR 1 577 (registration fee) + EUR 2 927 (implementation costs)

⁴⁴ See <https://www.kcbr.nl/sites/default/files/2023-12/Handboek%20Meting%20Regeldrukkosten%202023%20-%20DEF%20-%204-12-2023%20toegankelijk.pdf>

⁴⁵ Time expenditure is generally expressed by the interview respondents in FTEs instead of individual working hours. As the number of working hours in full-time employment can vary significantly between employers and between collective labour agreements, a standard number of hours is used for calculation purposes. SIRA has chosen to use the number of 1 720 working hours on an annual basis. This number is based on an estimate by the Ministry of Social Affairs and Employment.

- Average: EUR 2 349 (registration fee) + EUR 4 358 (implementation costs)
- Maximum EUR 3 116 (registration fee) + EUR 5 789 (implementation costs)

From the costs incurred during the tendering phase, i.e. the tender costs, the costs of performing the LCA and ECI calculations at product level (EUR - 1 200) must be deducted. These regulatory costs would in any case already be incurred as a result of the environmental performance requirements in the form of the ECI.

In the table below, the regulatory burden costs of the ECI are expressed as an additional criterion for companies per project minus registration costs (P), and in total (P*Q) have been calculated and transparently presented for all three scenarios. The number of projects (Q) has been estimated on the basis of an analysis of tenders for civil engineering works above the European tender limit⁴⁶ and published on TenderNed over the period from 1 January 2016 to 31 June 2024. Of these 240 projects, SIRA states that 85%, or 204 projects, incur regulatory costs as a result of this obligation. In the other cases, award criteria are already used in the current situation and this new obligation does not lead to additional costs.

Structural regulatory costs

Scenario	ECI award criteria			
	Type II	Cost per project (P)	Number of projects (Q)	Total costs (P*Q)
Minimum	Tendering costs (- €1200)	€ 377	204	€76 908
	Implementation costs	€2 927	204	€597 108
	Total	€3 304	204	€674 016
Medium	Tendering costs (- €1200)	€1 149	204	€234 396
	Implementation costs	€4 358	204	€889 032
	Total	€5 507	204	€1 123 428
Maximum	Tendering costs (- €1200)	€1 916	204	€390 864
	Implementation costs	€5 789	204	€1 180 956
	Total	€7 705	204	€1 571 820

The additional environmental performance criterion results in an increase in regulatory costs of EUR 5 500 per year for an average civil engineering project. This is 0.01%⁴⁷ of the total project value of an average project of EUR 11.3 million.

⁴⁶ The obligations relating to the ECI award criterion apply to the tendering of civil engineering works above a minimum estimated contract value. The definition of this category is being examined by the Ministry of Infrastructure and Water Management. A possible option that will be considered is the European procurement limit for works, which will be €5 538 000 in 2024-2025. The SIRA study has used this procurement limit for major projects as a basis for its calculations.

⁴⁷ Of the total market value of civil engineering works, 'European' tenders account for 30%, or €2 722 500 000 of all public tenders. The average annual number of projects above this tender threshold is 240. The average project value of projects above the European procurement limit is therefore EUR 11 343 750.

9.2. Administrative burden

The one-off costs for public authorities consist of acquainting themselves with the specific requirements of the proposed scheme and incorporating them into their own procedures and the model specifications. For each individual organisation, the costs may vary widely depending on the extent to which ECI requirements are already being applied in tenders for civil engineering works. A one-off cost of EUR 3 300 is anticipated per organisation for the implementation of the environmental performance requirements.

One-off administrative burden

Environmental cost indicator-performance requirements				
Time spent by organisation (in hours)	Hourly rate (EUR)	Cost per organisation (P)	Number of organisations (Q)	Total costs (P*Q)
44	€75.00	€3 300	286	€943 800

For the preparation of the tender, the assessment of proposals and the checks after the award, structural costs of EUR 263 per organisation are anticipated for the obligation to comply with environmental performance requirements at material level. When looking at the additional criterion, the total is EUR 11 746 per organisation, about half of which consists of time spent and half of which consists of out-of-pocket costs.

Structural administrative burden

Environmental cost indicator-performance requirements				
Time spent by organisation (in hours)	Hourly rate (EUR)	Cost per organisation (P)	Number of projects (Q)	Total costs (P*Q)
3.5	€75.00	€263	2 128	€559 664

ECI award criterion				
Cost of time spent (EUR)	Out-of-pocket costs (EUR)	Costs per project (EUR)	Number of projects (Q)	Total costs (P*Q)
€ 6 188	€ 5 558	€ 11 746	204	€ 2 396 184

9.3. Legislative consequences

The Bill incorporate on contracting authorities and special sector companies the obligation to involve environmental performance requirements and additional environmental performance criteria when procuring civil engineering works. This bill does not make any changes to the 2012 Procurement Act. Contracting authorities remain bound by the procedures and provisions contained therein with regard to the manner of procurement. There are also no changes to the organisation of supervision and enforcement, which takes place within the existing framework of legal protection under private law. In summary, the existing system remains unchanged and the obligations included in this bill are in line with existing work processes. On this basis, it is expected that the bill will not have any legislative consequences.

10. Monitoring and evaluation

With a view to the proper implementation, monitoring and evaluation of the proposed legislative amendment, agreements will be made with contracting authorities and special sector companies on how information will be shared among the contracting authorities themselves and with the State regarding the implementation of the measure and the administrative burdens involved. This is expected to take place through a designated structure within the Climate-Neutral and Circular Infrastructure Strategy or through the monitoring of Socially Responsible Procurement and Purchasing. This information will monitor whether the law is being applied as intended in practice. Particular attention will be paid to the effectiveness of the new rules, compliance by contracting authorities and special sector companies and the experience of market participants.

The data collected will be used to evaluate whether the implementation of the law meets the stated objectives. When laying down the environmental performance requirements and further criteria in the general administrative regulation, the intention is to set an assessable target based on the intended effects from the studies described in Chapter 6. If it proves that the intended outcomes are not being sufficiently achieved or that the law is not functioning properly in practice, an investigation will be conducted to determine whether the regulations need to be adapted in order to meet the objectives. This process ensures that the law remains flexible and can be adapted based on practical experience, thereby guaranteeing its long-term effectiveness and efficiency. The sector is actively involved in the design and implementation of these evaluations, so that practical experiences can be drawn on for potential improvements or policy adaptations.

11. Advice and consultation

11.1. Consultation with stakeholders in preparation phase of the Bill

During the drafting of this bill, extensive consultations were held with a wide range of actors to ensure that the law properly aligns with practice and the needs of all parties involved. Individual consultations have been held with contracting authorities, special sector companies, economic operators, industry associations, engineering and consultancy firms and legal experts. In addition, there have been stakeholder consultations which all interested parties could join to provide input on the bill. In total, more than two hundred individual parties were consulted. These consultations have provided valuable insights into the effects of the law in practice, the challenges encountered by contracting authorities, special sector companies and market parties, and the possibilities for improving the law and making it more achievable.

In addition, discussions have been held with civil society organisations and other stakeholders that are affected by procurement practice, so that their perspectives have also been taken into account. The consultation process has contributed to the refinement of the bill and has ensured that the bill is not only legally and operationally robust, but also widely supported by the parties concerned. In this way, an attempt has been made to make the law as effective and achievable as possible for all parties involved.

Finally, a sounding board group was formed, in which representatives of various stakeholders came together to discuss the draft legislation and provide feedback. This sounding board group has given valuable insights into the practical feasibility of the law and will also be consulted for the general administrative regulation.

11.2. Review by the Advisory Board on Regulatory Burden

The draft legislative proposal and the accompanying explanatory memorandum were submitted to the Advisory Board on Regulatory Burden (ATR) for assessment of administrative burdens and regulatory consequences. The ATR issued its opinion on 15 August 2025. The board recommends 1) substantiation in the legislative proposal how providing scope for customisation to contracting authorities and special sector

companies relates to achieving a clearer application of environmental performance requirements in procurement procedures, 2) the formulation of an evaluable objective relating to the expected environmental impact of both instruments, 3) an explanation of how feasibility for undertakings will be taken into account when determining the phases to which the legislative proposal applies 4) clarification of how a calculation method from the revised European Construction Products Regulation will be handled to avoid unnecessary regulatory burden, and 5) supplementation of the regulatory burden calculation, in accordance with the State-wide methodology. The manner in which the Ministry of Infrastructure and Water Management has incorporated the points of advice is discussed in more detail below. On 30 October 2025, ATR issued a supplementary opinion. Where further clarification was needed, this has been incorporated into this bill.

Substantive point-by-point response of the Ministry to the Advisory Board on Regulatory Burden

1). The Bill has been designed in such a way as to ensure national uniformity, while leaving room for customisation. The basic standards that the government considers minimally necessary in the field of the environment are clearly laid down in the general administrative regulation and ministerial order, so that contractors are not always confronted with different base points with different contracting authorities. At the same time, contracting authorities retain their freedom to meet higher targets. These could be stricter environmental performance requirements or additional requirements, for example in relation to material requirements or the specified percentages of recycled goods or biobased materials. This is explained in more detail in section 2.3 of the explanatory memorandum. In order to ensure customisation, the bill includes the option to deviate from the obligations. These requirements will be further elaborated in the general administrative regulation. Furthermore, the project threshold that will apply to the obligation of the award criterion will be determined with precision. This will be consulted on with a sounding board group, which represents a good reflection of the sector, amongst others. This includes whether a phased introduction of lower project threshold and/or of certain forms of contract (e.g. construction teams, basic maintenance, framework agreements) appropriate to different local situations is required.

It is expected that allowing customisation will not compromise the clarity and uniformity that the obligations are intended to achieve. This is because the environmental performance requirements are incorporated into the UAV-GC and RAW standard contracts and tender specifications which contracting authorities use in practice to specify the requirements for their procurements. By utilising UAV-GC and RAW, the obligations are automatically implemented.⁴⁸ In practice, the requirements in the sector will therefore mostly be applied because the sector uses UAV-GC and RAW. This guarantees clarity. This is also stated in the Bill on page under section 2.3.

2). The Ministry of Infrastructure and Water Management endorses the wish for regular evaluation and monitoring of obligations. In order to lay the foundations for an evaluable objective, an indicative calculation has been made of the impact of environmental performance requirements at the level of materials (concrete, steel and asphalt).⁴⁹ Current performance levels were used as a reference and the period 2024-2030 was taken into consideration. It showed that if the environmental performance requirements were to be introduced by 2024, it would lead to a total CO₂ saving of around 623 ktonnes in the year 2030 (non-cumulative). Relatively speaking, this is a saving of approximately 13 % of the total impact of the civil engineering sector in 2030, both on environmental performance⁵⁰ and on CO₂ emissions. An estimate in Appendix II of that same advisory report suggests that currently 70% of tendering in the civil engineering market is without

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⁴⁸ In the civil engineering market, approximately 1/3 of the market volume (based on turnover) consists of RAW specifications and about 2/3 of UAV-GC contracts

⁴⁹ Bosch, S., Peeters, T., Dijcker, R., Hendriks, R., Hoppe, F., & Bakker, E. (2024). *Environmental cost indicators policy advice*. Copper8, Witteveen+Bos & Flux Partners. Available via: <https://www.rijksoverheid.nl/documenten/rapporten/2024/05/31/bijlage-3-beleidsadvies-sturende-mki>

⁵⁰ Measured using the Environmental cost indicator (ECI)

environmental performance requirements. Based on this assessment, the potential of this policy measure translates into absolute reductions in CO₂ and environmental performance by 2030. In general, the stricter the requirements, the greater the environmental benefits.

Research has also been carried out into understanding the impact of the second measure, which obliges contracting authorities and special sector companies to include environmental performance quality aspects in the form of a (subordinate) award criterion in the procurement of civil engineering works above a certain contract value.⁵¹ It is based on the scenario that this obligation applies to civil engineering works that are put out to tender with a contract value above the European tender threshold. It showed that this scenario would lead to a reduction of 400 ktonnes CO₂e. Again, the positive effect of the measure on the environmental impact increases when the estimated contract value is set lower.

The above data form the basis for an assessable objective for both obligations. Because the level of environmental performance requirements and the minimum estimated contract value are not specified in the Bill, but are determined by or pursuant to a general administrative regulation, the Bill does not yet include any firm, assessable targets with regard to the expected environmental impact of the obligations. However, additional information on the desired effects of both measures has been added in Chapter 6 of the explanatory memorandum. The Ministry of Infrastructure and Water Management also endorses the wish for regular assessment and monitoring. The effect of the obligations will be periodically assessed for feasibility (practical implementation by clients and contractors). Another area being examined is how the real contribution to reducing environmental impact can be monitored. The cost-benefit ratio will also be taken into account. The sector will be actively involved in shaping the evaluations, so that experiences from practice can be immediately used for improvements and adjustments. This is clarified in Chapter 10 of the explanatory memorandum.

3). The Cabinet endorses the importance of workability for undertakings in the implementation of environmental performance requirements. The government does not want any unnecessary administrative burdens to be associated with draft legislation. Therefore, following extensive research involving the sector, obligations requiring a limited amount of expertise, resources and capacity were chosen. Small and medium-sized enterprises (SMEs) have also been taken into account, see, inter alia, Chapter 6.2 of this Bill. The principle is that the obligations should lead to an unambiguous workable standard for undertakings and governments, instead of fragmented requirements across purchasers, as is currently the case. Compared to the current situation, the Bill thus provides greater clarity and reduces the amount of preliminary investigation required. By using generally accepted methods (such as the ECI), uniform formats and central support, the implementation will be streamlined.

During the drafting of the Bill, intensive discussions have been held with governments, industry associations, contractors and producers. Stakeholder consultations have also been organised to ensure that the Bill is suited for practice. This policy will be continued in the development of lower-level regulations. In the course of further elaboration in the general administrative procedure and ministerial order, attention will also be given to the proportionality of the requirements, so that the parties are not disproportionately burdened. This also applies when a choice has to be made regarding modules of the life cycle analysis used to calculate the ECI. For example, a sounding board group, broadly representing the sector, will be established to evaluate the direction in which the sector is moving. Finally, the entry into force of this Bill will be regulated by Royal Decree. This will allow the exact date of entry into force to be tailored to practical circumstances, for example to give the sector sufficient time to adapt its processes, systems or policies. 36

4). As stated in the bill, the calculation method for clarifying the environmental performance requirements is laid down by ministerial decree. Here its relationship with

⁵¹ Vries, J., de, Laan, J. van der, I., Nieuwenhuijse (2025), Factsheet | Acceleration measures for the application of environmental performance requirements in civil engineering works, CE Delft

the European Construction Products Regulation is expressly taken into account. This can be found in Chapter 4 of the Bill. The assertion that two parallel calculation systems arise – from the European Construction Products Regulation and from the bill – is untrue. The current environmental performance system is based on established European standards and rules. In both the European Construction Products Regulation and the current Dutch environmental performance system, the current EN15804⁵² and the existing European Product Category Rules⁵³ for specific product groups (such as concrete, steel and asphalt) form the basis for calculation rules. Suppliers that meet the Dutch requirements therefore by definition also meet the European requirements.

It is possible that, under the revised European Construction Products Regulation, the European Commission will further develop calculation rules for product groups in the form of a technically harmonised specification. This is currently not the case; calculation rules have not yet been developed, published or entered into force. The European Commission has initiated a CPR Acquis process with a transition period of at least ten years to achieve harmonised technical specifications. As a Member State, the Netherlands is involved in this process. The objective of the Netherlands is to ensure that the calculation rules support the objective of the Bill and the Environmental Performance Requirement for Buildings, which is mandatory under the Environment and Planning Act, at European level, to effectively guide the reduction of the environmental burden by offering clarity to industry and contracting authorities. Different rules also apply to contracting authorities under the revised European Construction Products Regulation. For example, they may impose stricter or additional requirements.

The CPR Acquis process is a careful and lengthy process of negotiation. The Netherlands cannot speed up this process. This also means a period of uncertainty regarding calculation rules and their supplementation by Member States. Postponing the Bill until there is more clarity means that industry and contracting authorities may not be able to benefit from it for years. This is undesirable. Nevertheless, the Netherlands is taking steps to prepare as best as possible for the revised European Construction Products Regulation. For example, research is being carried out into different scenarios within the revised European Construction Products Regulation – for example that the European Commission allows different databases to be used in the calculation of the environmental performance of construction products – and the legal implications of this. Preventing unnecessary regulatory pressure is a priority in this regard. Depending on the legal scope, there are roughly two possible scenarios:

- The current situation remains: if a manufacturer meets the Dutch requirements – then a manufacturer also meets the European (CPR) requirements.
- The current situation is changing because the European calculation method can no longer be supplemented by Member States. In the further elaboration of the bill (by or pursuant to a general administrative regulation), the business community will be relieved of increased regulatory pressure, for example by the government itself making environmental data available or by applying different types of requirements in tenders, such as a requirement for the maximum clinker content in concrete or the maximum production temperature for asphalt, thereby specifically reducing the environmental impact.

5). The quantitative regulatory impact of the proposed amendment on citizens and businesses has been assessed by SIRA Consulting B.V. in accordance with the methodology used across the Government.⁵⁴ The regulatory burden report deals the amendments to the Environmental Management Act, based on the assumption that the ECI will be guided as an environmental performance requirement by general

⁵² EN15804 is the European standard for determining the environmental performance of construction products.

⁵³ The Product Category Rules (PCRs) are a set of specific rules, requirements and guidelines for the preparation of environmental product declarations.

⁵⁴ Poll, van der, P., Mok, J. (2025). Research into the financial effects of environmental performance requirements in tenders for civil engineering works. SIRA Consulting B.V. Available via https://www.internetconsultatie.nl/milieuprestatie_gww/b1

administrative regulation.⁵⁵ Chapter 9 of the Explanatory Memorandum summarises the findings of the report and describes how these findings were arrived at. A reference to the report is also included.

The interviews conducted by SIRA show that the ECI performance requirements at peloton level will not lead to significant additional costs of materials. The vast majority of suppliers already meet these requirements. It is possible that some 'stragglers' will incur additional costs, but it is more likely that these parties will opt out of this type of tender. This also applies to the award criterion, but the fact that material costs depend to a large extent on the fulfilment of the obligation by the client also plays a role. As a result, the additional costs are hardly quantifiable.

All the undertakings interviewed indicated that they already had experience with the ECI in tendering, so they are already largely familiar with this method. Potential project-specific knowledge acquisition costs form part of the time spent on performing LCA and subsequently ECI calculations. The costs of familiarisation by clients form part of the one-off time spent on 'adjusting' the ECI performance requirements by those clients who, in the current situation, have had no experience with the ECI in the tender. These costs could not be considered separately from the other one-off activities by respondents.

11.3. Feasibility assessment by the Department of Waterways and Public Works

On 13 August 2025, the Ministry of Infrastructure and Water Management received the feasibility assessment from the Department of Waterways and Public Works (Rijkswaterstaat). The conclusion of the assessment is that the bill is feasible. In this regard, the Department of Waterways and Public Works has provided the following points for consideration:

- It is essential that the Act and the general administrative regulation provide sufficient scope for justified deviations and alternative approaches so that the Department of Waterways and Public Works can continue to carry out projects within the limits of capacity, technology, specific purchasing strategies and administrative burdens.
- In order to assess the actual impact on the work and organisation of the Department, a feasibility test is also desirable for the general administrative regulation.

The Department of Infrastructure and Water Management will take the aspects mentioned into account in the further elaboration of the bill in the underlying regulations.

11.4. ProRail feasibility assessment

On 01 September 2025, the Ministry of Infrastructure and Water Management received the feasibility assessment from the Department of Waterways and Public Works. The Bill aligns well with the approach already taken by ProRail to reduce the environmental impact of the rail sector. ProRail is therefore in favour of this bill. At the same time, ProRail notes that the Bill currently provides for the power to lay down detailed rules by general administrative regulation and ministerial order. It is precisely in these detailed regulations that the concrete scope of application and the substantive requirements that are of specific importance to ProRail are further elaborated. In this respect, it is important that, provided that it is properly aligned to practice, it allows for technological innovation and takes into account the different needs of contracting authorities. ProRail would like to remain closely involved in this further development by participating in the sounding board group. In addition to a number of textual changes in the draft Explanatory Memorandum, ProRail has raised a number of points for consideration, 38 including:

⁵⁵ During the drafting of the general administrative regulation, SIRA will once again conduct a regulatory burden assessment.

- In some cases, such as an action plan for collaboration contracts, the mandatory prescription of a further criterion by general administrative regulation is brought into question.
- Ensuring uniform and unambiguous application of the assessment and calculation methodology is essential for creating predictability among market players and ensuring a level playing field within the sector.
- Including temporary exemptions for pilots in the exceptions to be further elaborated in the general administrative regulation regarding environmental performance requirements should be considered so that innovations or sustainable products can be tested.
- Ensuring sufficient circularity and high-quality reuse at the end of the product life cycle.

The Ministry of Infrastructure and Water Management will take the aspects mentioned into account when it further elaborates the bill in the underlying regulations.

11.5. Online consultation

An online consultation on this bill took place from 10 July 2025 to 21 August 2025. The responses to the online consultation have been processed and included in the online consultation report.⁵⁶ In summary, in the responses to the online consultation, broad support was expressed for the legal anchoring of environmental performance requirements in the civil engineering sector by 97% of the parties. The parties see this as an important step towards greater uniformity and a level playing field. The consultation also highlighted a number of points for further attention, such as the need for clear definitions and delimitation of obligations, proportionality between large and small projects, and room for innovation and customisation. The Ministry has taken these points into account in the further elaboration of the bill and will incorporate them in refining the support point and the obligations under lower-level regulations. More information on the reactions and the substantive responses can be found in the consultation report.

11.6. Notification to the European Commission

This legislative proposal was notified to the European Commission at the time it was submitted to the State Council for an opinion.

12. Transitional legal provisions and entry into force

The entry into force of the provisions of this proposal – together with the provisions of the accompanying general administrative regulation to be submitted and the ministerial order – will take place by Royal Decree. This gives the parties involved, such as contracting authorities, special sector companies and market participants sufficient time to prepare for the new regulations and the associated procedures. With the establishment of the support centre described in Chapter Two as an accompanying policy, all parties involved will be adequately informed and supported with regard to the new rules and their rights and obligations. The entry into force of the law has therefore been carefully planned to ensure that all parties are able to adapt to the new legal and administrative requirements in a timely manner, without unnecessary interruptions in procurement processes or other negative consequences. The requirements will only apply to new tenders from the date of entry into force.

⁵⁶The report of the online consultation and the accompanying documents can be found on the website [government.nl](https://www.government.nl), under:

II. Article-by-Article Explanatory Notes

Article I, part A

Definitions are added to Article 1.1 of the Environmental Management Act that are reflected in the proposed Articles 9.6.2 and 9.6.3 of the Environmental Management Act. As these definitions correspond with the provisions of the same name in the 2012 Public Procurement Act, this provision refers to Article 1.1 of the 2012 Public Procurement Act.

Article I, part B

Following the entry into force of this Act, Title 9.6 no longer regulates only the transport sector's contribution to environmental, climate and energy policy through the procurement of clean road vehicles by contracting authorities. This Bill has also made it possible to lay down rules on the application of environmental performance requirements in the procurement of civil engineering works by contracting authorities. Since both the existing Article 9.6.1 and this Bill concern contracting authorities and special sector companies, Title 9.6 regulates the contribution of contracting authorities and special sector companies to environmental, climate and energy policy after the entry into force of this Act. The heading has been adapted to fit in better with the adapted title.

Article I, part C

Article 9.6.2

Article 9.6.2 introduces the basis for determining environmental performance requirements for materials and products used in civil engineering works. As explained in the general section, these are environmental performance requirements for the most impactful materials and products in civil engineering works. These materials and products will be designated by general administrative regulation. Additional conditions regarding environmental performance requirements for specific materials and products may also be laid down. These regulations therefore provide contracting authorities and the business community with clarity about the environmental performance requirements applicable to a material or product.

In addition, the proposed provision provides the basis for describing further criteria that contracting authorities or special sector companies must take into consideration when awarding contracts on the basis of the best price-quality ratio. This will provide clarity on the specific criteria that a contracting authority or special sector company needs to take on board in order to include environmental performance in the assessment of the quality of tenders. The proposed provision is in line with Article 2.115 of the 2012 Public Procurement Act, which contains rules on establishing further criteria when applying the best price-quality ratio criterion for awarding contracts.

The general administrative regulation regulates the cases in which these further criteria must be established. In any case, no quality requirements are specified for the award of works that fall below an estimated value. The estimated value that should be is currently being examined, for example the European Procurement Limit. The general administrative regulation does not apply to contracts with an estimated value below that specified in the general administrative regulation insofar as it concerns the obligation to apply a further criterion. This will be taken into account in the further elaboration of these additional criteria.

As indicated in the general section of the explanatory notes, the environmental performance requirements for materials and products and the additional criteria described may vary. Due to the wide variation in environmental performance requirements and the additional criteria that are taken into account in awards based on the best price-quality ratio, the proposed provision includes as a general condition that these requirements and criteria serve to protect the environment and human health. Regarding environmental protection, reference is made to Article 1.1, second paragraph, of the Environmental Management Act. This covers improving the environment, ensuring

the efficient management of waste materials and wastewater, and the economical use of energy and raw materials.

Article 9.6.3

This proposed provision regulates the obligations of contracting authorities or special sector companies to set environmental performance requirements or additional criteria in compliance with the proposed Article 9.6.2. As indicated in the general part of the explanatory notes, these obligations apply not only to contracting authorities, but also to special sector companies. For special sector companies, this only applies to special sector contracts or concession contracts for activities referred to in Articles 3.1 to 3.6 of the 2012 Public Procurement Act, insofar as these activities are designated by general administrative regulation.

The third paragraph includes the possibility for contracting authorities and special sector companies to deviate from the obligation to apply the environmental performance requirement as a technical specification or additional criterion in a tender. This exception may be applied in a situation where the established requirement or criterion in a specific procurement is not reasonably proportionate to the contract. This must be assessed in accordance with the principle of proportionality laid down in Articles 1.10, 1.13 and 1.16 of the Public Procurement Act 2012 and the interpretation of these articles in literature and case law. These provisions of the Procurement Act 2012 are based on the principle that contracting authorities, when designing requirements, conditions and criteria, assess whether they are reasonable in relation to the contract. On the basis of the proposed Article 9.6.3(3), contracting authorities may assess the requirements and criteria prescribed in the general administrative regulation against this principle. This avoids the application of the mandatory requirements and criteria in specific cases coming into conflict with the principle of proportionality. This possibility of deviation is subject to the condition that it is duly justified in procurement documents. This 'comply or explain' condition is also in line with the procurement law in which it is regularly applied. Contracting authorities and special sector companies are therefore already familiar with this.

The fourth paragraph proposes a basis for allowing exceptions to the application of the first and second paragraphs by means of a general administrative regulation. These are general exceptions, which apply in addition to the case-by-case assessment requirement, which stipulate that these conditions and the award criteria must be set in a way that is reasonably proportionate to the subject matter of the contract. Examples of these exceptions are given in section 2.3 of the general part of the explanatory memorandum.

STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT - PUBLIC
TRANSPORT AND ENVIRONMENT,

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