Preliminary draft decree amending the decree of 5 April 1995 laying down general provisions on environmental policy and the decree of 23 December 2011 on the sustainable management of material cycles and waste concerning the partial transposition of the European directive on the energy performance of buildings

At the proposal of the Flemish Minister for the Environment and Agriculture;

After deliberations,

THE FLEMISH GOVERNMENT HEREBY DECREES THE FOLLOWING:

The Flemish Minister for the Environment and Agriculture is responsible, on behalf of the Flemish Government, for submitting to the Flemish Parliament the draft Decree, the text of which is as follows:

Chapter 1. Preliminary provision

Article 1. This Decree regulates a matter of regional jurisdiction.

Chapter 2. Amendment of the Decree of 5 April 1995 on general provisions on environmental policy

Article 2. The following points 27° to 32° are added to Article 10.3.3 of Section 2 of the decree of 5 April 1995 on general provisions on environmental policy, added by the decree of 7 May 2004 and last amended by the decree of 26 February 2021:

‘27° to develop calculation methods and instruments for measuring the environmental impact of structures and materials throughout their life cycle and to preserve, assess and adjust the results of those calculation methods and instruments;
28° to issue the material performance certificates or MPCs referred to in Article 3(3)(6°) of the Materials Decree;
29° to manage the material performance database, referred to in Article 3(3)(7°) of the Materials Decree, as regards the assessment of the environmental impact of structures;
30° to review the applications and to grant, suspend or revoke the approval referred to in Article 33/24 of the Materials Decree;

31° to designate an organisation to take over the tasks of the certification body for parties responsible for MP, as referred to in Article 33/24 of the Materials Decree.
32° the direct holding to account and imposition of sanctions on parties responsible for MP, as referred to in Article 3 of Section 3, point 9°, of the Materials Decree.'.

Chapter 3. Amendments to the decree of 23 December 2011 on sustainable management of material cycles and waste

Article 3. In Article 2 of the decree of 23 December 2011 on the sustainable management of material cycles and waste, replaced by the decree of 26 February 2021, the following point 5° is added:

'5° Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings.'.

Article 4. The following part 3 is added to Article 3 of the same decree, amended by the decree of 17 May 2024:

'Section 3. For the purposes of part 7 of Chapter 3, the following definitions apply:
1° Person required to submit a declaration: a natural person or legal entity that must comply with the material performance obligations;
2° Structure: a construction that is connected to the ground either directly or indirectly at the place of destination that is either directly or indirectly supported by the ground at the place of use and intended to function at the site.
3° Energy Decree: the decree of 8 May 2008 laying down general provisions on energy policy;
4° Energy Decree of 19 November 2010: the decree of the Flemish government of 19 November 2010 laying down general provisions on energy policy;
5° Global Warming Potential or GWP: the global warming potential during the life cycle, an indicator for quantifying the potential contribution of a building to global warming during the entire life cycle of the building, as included in EN 15804+A2 or any subsequent version of this standard;
6° Material performance: the totality or a selection of the 19 environmental impact indicators from EN 15804+A2 or any later version of this standard, including GWP, calculated over the entire life cycle, and the weighted score of these indicators;
7° Material performance declaration or MP declaration: the unique document in which the party responsible for MP describes all the measures implemented to fulfil the material performance obligations. The final material performance calculation of a structure is based on the material performance declaration. The material performance declaration forms the basis for the final material performance certificate;
8° Material performance certificate or MPC: a certificate in which the result of the calculation of the material performance of a structure is stated, derived from the material performance start declaration or material performance declaration, expressed in one or more numerical indicators;
9° Material performance database or MP database: a digital system managed by the OVAM that manages all processes, data and transactions relating to the material performance of structures;
10° Material performance start declaration or MP start declaration: a written declaration indicating the start date of the work and overview of the material

performance sought for the structure, based on a pre-calculation of the material performance of the structure; The material performance start declaration forms the basis for the indicative material performance certificate;
11° Party responsible for material performance or party responsible for MP: the natural person or legal entity that provides material advice to the person required to make a declaration within the framework of the material performance regulations and that is responsible for the mandatory reporting pursuant to the decree. The party responsible for MP is an architect or EPB reporter as referred to in Article 1.1.3(127°) of the Energy Decree, appointed by the person required to submit a declaration and certified by a certification body for parties responsible for MP;
12° Organisational seal: a qualified electronic signature in the form of an electronic seal, as referred to in Article 3(30) of Regulation (EU) No. 910/2014, created by or on behalf of a legal person and which guarantees the origin and integrity of an electronic document;
13° Promoter-client: a natural person or legal entity the normal activity of whom or which is to erect, have erected or renovate buildings in order to sell them;
14° Technical material performance file: the set of supporting documents.'.

Article 5. In Chapter 3 of the same decree, last amended by the decree of 17 May 2024, the following part 7 is added:

"Part 7. Circular construction and renovation".

Article 6. In the same decree, the following subsection 7.1 is added to the same part 7:

"Subsection 7.1. Material performance of buildings".

Article 7. In the same decree, in subsection 7.1, as added by Article 6, the following Article 33/19 is added:

'Article 33/19. The Flemish Government shall determine for which construction works a calculation of the material performance is mandatory. The Flemish government establishes the scope and content of the calculation method for the material performance of a structure. The Flemish government determines which calculation tool is used for the calculation of material performance and determines through modelling protocol the manner in which this calculation tool is to be used.

The Flemish government may impose requirements on the GWP of buildings. The Flemish government may grant exemptions or derogations from its calculations of material performance or from the requirements of the GWP.'.

Article 8. In the same decree, the following Article 33/20 is added to the same subsection 7.1:

"Article 33/20. Section 1. If a material performance calculation is required for a structure as referred to in Article 33/19, the holder of the environmental permit for urban planning acts or the reporter of the urban planning acts is the person required to make a declaration.

The Flemish government may establish further rules in the event that a structure subject to the mandatory reporting of material performance, as referred

to in Article 33/19, regardless of whether it is yet to be built, is under construction or has already been built, is transferred by the party required to submit the declaration before a material performance declaration has been submitted or if the environmental permit for urban development works is transferred by the party required to submit the declaration before a material performance declaration has been submitted.

Section 2. By way of derogation from Section 1, in the case of an agreement between a promoter-client and a natural person or a legal entity, the promoter-client is obliged to declare if the purpose of such an agreement is to sell, construct or renovate a building. The Flemish government may grant exceptions to this rule.

Article 9. In the same decree, the following Article 33/21 is added to the same subsection 7.1:

'Article 33/21. For work and actions on structures for which a mandatory material performance assessment applies in accordance with Article 33/19, the person required to submit a declaration appoints a party responsible for MP before the start of the work and actions.

If the party responsible for MP changes before the completion of the material performance declaration, the newly appointed party or person required to submit a declaration notifies the OVAM electronically. The Flemish government may determine the deadline for submitting this electronic notification.

Article 10. In the same decree, the following Article 33/22 is added to the same subsection 7.1:

"Article 33/22. Section 1. The party responsible for MP draws up the material performance start declaration, the material performance declaration and if necessary, the technical material performance file.

Section 2. The party responsible for MP prepares the technical material performance file in electronic format.

Section 3. Prior to the start of the work and actions, the party responsible for MP carries out a preliminary calculation of the material performance of the structure. The party responsible for MP makes that preliminary calculation on the basis of the choices made for the materials.

The party responsible for MP draws up the material performance start declaration on the basis of the preliminary calculation and the technical material performance file and submits this material performance start declaration to the OVAM on behalf of the person required to submit a declaration before the start of the work or actions. Following submission, the material performance start declaration is signed by the OVAM using an organisational seal. The use of this organisational seal does not imply any validation of the content of the data. The party responsible for MP sends the material performance start declaration to the person required to submit the declaration electronically. The work and actions may not commence until a material performance start declaration with pre-calculation has been submitted.

The architect and other designers of the structure elements concerned make the necessary information available to the person required to submit a declaration and to the party responsible for MP. The person required to submit a declaration or the party responsible for MP provides the contracted contractors with the available data on the material performance of structure.

The OVAM provides an indicative MPC on the basis of the material performance start declaration. The OVAM may request the data underlying the choice of materials and measures in the material performance calculation.

Section 4. At the end of the work, the party responsible for MP makes a final calculation of the material performance of the structure.

At the first request of the person required to submit a declaration, the architect or contractors must provide that person with the data and supporting documents relating to the materials actually used in the structure and necessary for the calculation of the performance of the materials. The person required to submit a declaration makes this data and supporting documents available to the party responsible for MP at first request.

The party responsible for MP draws up the material performance declaration in accordance with the work carried out based on the final material performance calculation, technical material performance file and an on-site inspection. The material performance declaration reports the actual condition of the structure in the material performance calculation.

The party responsible for MP must submit the MP declaration to the OVAM once the person required to submit the declaration has given their consent. Once submitted, the material performance declaration is signed by the OVAM using an organisational seal. The use of this organisational seal does not imply any validation of the content of the data. The party responsible for MP provides the material performance declaration to the person required to submit a declaration digitally.

The OVAM issues a definitive MPC based on the material performance declaration and makes this available as part of the energy performance certificate for new buildings, as referred to in Article 1.1.1, §2, point 35° of the Energy Decree of 19 November 2010. The OVAM may request the data underlying the choice of materials and measures in the material performance calculation.

Section 5. The result of the material performance calculation, expressed as one or more numerical indicators, is provided to the EPB reporter referred to in Article 1.1.3, point 127°, of the Energy Decree.

Section 6. The party responsible for MP keeps the following documents for five years:
1° Material performance start declaration and indicative MPC;
2° Material performance declaration and the final MPC;
3° Technical material performance file, accompanying plans and annexes.

At simple request, the party responsible for MP makes the documents referred to in the first paragraph available to the OVAM.

Section 7. The person required to submit a declaration shall keep the documents referred to in Section 6(1) for a period of ten years. The person required to submit a declaration shall make the documents available to OVAM upon simple request.

If the person required to submit the declaration is no longer the owner of the structure to which the material performance declaration relates, this person is required to pass this information on to the new owner. The new owner will therefore become the person required to submit a declaration and must comply with all related obligations.

Section 8. The Flemish Government shall determine:
1 ° the method and deadline for submitting the material performance start declaration, the material performance declaration and the accompanying supporting documents, and any deviations from these;
2 ° the results of the material performance calculation to be transmitted to the EPB reporter referred to in Article 1.1.3, point 127° of the Energy Decree;
3 ° the method and deadline for submitting the results of the material performance calculation to the EPB reporter referred to in Article 1.1.3, point 127° of the Energy Decree.

Section 9. The Flemish government may:
1 ° determine which supporting documents are collected and stored in the technical material performance file and which supporting documents are submitted to the OVAM;
2 ° impose detailed rules on the splitting or aggregation of multiple material performance declarations into a single file;
3 ° lay down detailed rules on the form, layout and content of the pre-calculation, final calculation, technical material performance file, material performance start declaration, material performance declaration and the MPC.'.

Article 11. In the same decree, in Part 7, added by Article 5, the following subsection 7.2 is added:

'Subsection 7.2. Material performance database'.

Article 12. In the same decree, the following is Article 33/23 is added to subsection 7.2, as added by Article 11:

'Article 33/23. Section 1. OVAM shall maintain and manage a material performance database.

Section 2. The Flemish Government shall determine which data and documents from Article 33/22 are to be recorded and maintained electronically and in what form said data and documents are to be supplied and processed. The Flemish Government shall determine which actors provide the data. OVAM records said data in the material performance database.

Section 3. Every person required to submit a declaration or party responsible for MP residing or established in Belgium is uniquely identified in the material performance database by means of the enterprise number, national registration number or alien registration number. The Flemish government may determine an alternative identification method for persons required to submit a declaration or party responsible for MP who do not reside or are not domiciled in

Belgium. The Flemish government determines how the OVAM enters such data into the material performance database.

Section 4. The OVAM may, for statistical and scientific research purposes, make anonymised data from the material performance database, whether or not linked to anonymised data from other government databases, available to interested parties. The OVAM determines the conditions under which such data may be used.

In order to monitor the material performance of buildings, OVAM may link the data from the material performance database to the data available in other government databases. Once such data are linked, such data shall be anonymised. Under no circumstances are they traceable to an identifiable natural person.'.

Article 13. In the same decree, the following subsection 7.3 is added to part 7, as added by Article 5:

'Subsection 7.3. Accreditation of certification bodies and certification of parties responsible for MP'.

Article 14. In the same decree, the following Article 33/24 is added to subsection 7.3, as added by Article 13:

'Article 33/24. The party responsible for MP referred to in Article 33/22 of Section 1, first paragraph, is an architect or an EPB reporter, as referred to in Article 1.1.3, point 127°, of the Energy Decree, who acts as an independent expert and who is certified by a certification body for parties responsible for MP.

The Flemish government may:

1° determine the conditions that a party responsible for MP must meet;
2° determine the conditions and rules for the certification, quality assurance and disciplinary action relating to parties responsible for MP;
3° determine the conditions and rules for the use of the party responsible for MP certificate;
4° determine the conditions and procedure for imposing sanctions, suspension, lifting of suspension and revocation of the party responsible for MP certificate.

Certification institutions for parties responsible for MP are accredited. The Flemish government determines the conditions and procedure for accreditation, sanctioning, suspension, lifting of the suspension and the accreditation and the conditions for the use of the accreditation. The Flemish government determines the tasks and quality requirements of the certification institution for parties responsible for MP, determines the rules as regards the supervision of the functioning of the certification institution for parties responsible for MP and may designate an institution that verifies and sanctions the accreditation of the certification institutions for the certification of parties responsible for MP.

The OVAM is automatically certified as a party responsible for MP. The OVAM may take direct action against and impose sanctions on a party responsible for MP if an MP expert performs its duties improperly or incorrectly or if it no longer meets the conditions set out in the second paragraph. The Flemish

government may set out the procedures for holding the MP expert to account and imposing sanctions on them.

Certification regulations may be drawn up for the certification of a party responsible for MP as referred to in the first and second paragraphs and the accreditation of a certification institution for parties responsible for MP as referred to in the third paragraph. The Flemish government may determine how said certification regulations are established and may determine their content.

Article 15. In the same decree, the following subsection 7.4 is added to part 7, added by Article 5:

'Subsection 7.4. Personal data processing.'

Article 16. In the same decree, the following Article 33/25 is added to subsection 7.4, as added by Article 15:

'Article 33/25. Section 1. The OVAM acts as the data controller in relation to the processing of personal data within the scope of this section. In doing so, it acts as the data controller within the meaning of Article 4(7) of the General Data Protection Regulation, insofar as this is expressly provided.

Section 2. All personal data obtained and processed by the OVAM in the context of the application of this section may only be used for the purposes set out in:
1° this subsection;
2° Article 12 of this decree;
3° the rules on the organisation of the monitoring and enforcement of the provisions referred to in points 1° and 2°.

Section 3. The personal data processed in accordance with the second section relates to the following natural persons:
1° The person required to submit a return who must comply with the material performance obligations;
2° The party responsible for MP;
3° The architect;

Section 4. The personal data processed in accordance with the second paragraph relates to the following categories of personal data:
1° Personal contact details of the person required to file a return:
a) First and last name;
b) Address: street, number, PO box, postal code and municipality;
c) Phone references;
d) Email:
National registration number, company registration number, foreign national registration number of the person required to submit the declaration or an alternative method of identification;
2° Personal contact details of the party responsible for MP:
a) First and last name;
b) Address: street, number, PO box, postal code and municipality;
c) Phone references;
d) Email:
3° Bank account number for the party responsible for MP;
4° Diploma, education and extra training of the party responsible for MP;
5° Evaluation and performance of the party responsible for MP;

6° Characteristics of the structure:
   a) Basic land registry data of the structure;
   b) Address: street, number, PO box, postal code and municipality;
   c) Age of the structure;
   d) Type of structure;
   e) Physical characteristics of the structure;
   f) Property condition of the structure;
7° Data resulting from the management of administrative supervision and enforcement;
8° Log data.

Section 5. The following parties at a minimum can obtain reading and writing rights for the material performance database, either directly or via a data classification platform provided by the Flemish government:
1° Certified party responsible for MP for the files to which the party has been appointed;
2° A member of the OVAM staff;
3° A member of staff of, or the auditor appointed by, the recognised certification institution for parties responsible for MP in respect of the files of its affiliated certificate holders and the relevant parties responsible for MP.

The following parties at a minimum may be granted reading rights to the material performance database, either directly or via a data classification platform provided by the Flemish government:
1° The person required to submit a declaration in the file for which they are required to comply with material performance obligations;
2° The owner of the structure, who is not a person required to submit a declaration;
3° The architect in the cases for which he has been appointed as architect by the person required to submit the declaration;

The Flemish government draws up further rules on access control to the various sections of the material performance database for the parties referred to in the first and second paragraphs and on the adjustment of reading and writing rights – at the very least following approval by the certification institution for parties responsible for MP – for the parties referred to in the first and second paragraphs. The Flemish government may lay down detailed rules on access management to the various parts of the material performance database for those involved, other than those referred to in the first and second paragraphs.

Section 6. The OVAM applies the maximum time limit set out in Article III.87 of the Administrative Decree of 7 December 2018 to its selection rules.

In the selection criteria it draws up, the OVAM specifies a precise retention period for each instance of personal data processing. If this specific period is shorter than the period referred to in the first paragraph, the specific retention period applies.

The OVAM keeps the administrative documents not included in Article III.87 of the Administrative Decree of 7 December 2018 for 20 years after the file has been closed.

Notwithstanding the first paragraph, the data in the database referred to in Article 33/23 must be kept for up to one year following the renovation or demolition of the structure.

Section 7. The OVAM takes the appropriate technical and organisational measures necessary to protect the personal data referred to in the fourth section. These measures ensure an appropriate level of security, taking into account, on the one hand, the state of the technology and the cost of the measures to be applied and, on the other hand, the nature of the data that must be secured and the potential risks.

Section 8. The OVAM takes appropriate measures to ensure that the following elements are included in the information provided to the data subjects:
1° The purpose of the processing;
2° The types or categories of personal data to be processed;
3° The parties involved;
4° The entities to which the personal data may be disclosed;
5° The purposes for which the personal data may be disclosed;
6° The retention period;
7° The designation of the controller.

The appropriate measures referred to in the first paragraph are intended to ensure that:
1° data subjects are properly informed about the processing of their data;
2° data subjects are aware of their rights;
3° data subjects know who to contact in order to exercise their rights.

Section 9. The Flemish government may establish detailed rules for the processing of personal data in the context of the application of this decree.

Article 17. In the same decree, the following Article 33/26 is added to the same subsection 7.4:

'Article 33/26. Section 1. The MP controller acts as the data controller in the context of the application of this section. The processing of personal data by the party responsible for MP is necessary for the performance of the tasks for which they have a legal obligation referred to in Article 6(1)(c) of the General Data Protection Regulation.

Section 2. Parties responsible for MP process personal data for the purpose of calculating and assessing the environmental impact of materials used in structures.

Section 3. The personal data processed in accordance with the second section relates to the person required to submit a declaration.

Section 4. The personal data processed in accordance with the second section relates to the following categories of personal data:
1° Personal contact details of the person required to file a return:
a) First and last name;
b) Address: street, number, PO box, postal code and municipality;
c) Phone references;
d) Email:

2° Characteristics of the structure:
a) Basic land registry data of the structure;
b) Address: street, number, PO box, postal code and municipality;
c) Age of the structure;
d) Type of structure;
e) Physical characteristics of the structure;
f) Property condition of the structure;

Section 5. The following categories of recipients may access the personal data referred to in the fourth section:
1° The OVAM;
2° Certification institutions;
3° EPB reporter, as referred to in Article 1.1.3, point 127°, of the Energy Decree.

Section 6. The personal data referred to in the fourth section is kept by the party responsible for MP for five years after the final MPC has been provided.

Section 7. The party responsible for MP takes appropriate technical and organisational measures necessary to protect the personal data referred to in the fourth section. These measures ensure an appropriate level of security, taking into account, on the one hand, the state of the technology and the cost of the measures to be applied and, on the other hand, the nature of the data that must be secured and the potential risks.

Section 8. The party responsible for MP takes appropriate measures to ensure that the following elements are included in the information provided to the data subjects:
1° The purpose of the processing;
2° The types or categories of personal data to be processed;
3° The parties involved;
4° The entities to which the personal data may be disclosed;
5° The purposes for which the personal data may be disclosed;
6° The retention period;
7° The designation of the controller.

The appropriate measures referred to in the first paragraph are intended to ensure that:
1° data subjects are properly informed about the processing of their data;
2° data subjects are fully aware of their rights;
3° data subjects know who they should contact in order to exercise their rights.

Section 9. The Flemish government may establish detailed rules for the processing of personal data in the context of the application of this decree.

Article 18. In the same decree, the following Article 33/26 is added to the same subsection 7.4:

‘Article 33/27. Section 1. The certification institutions for parties responsible for MP act as data controllers for the purposes of this section. The processing of personal data by certification institutions for parties responsible for MP is necessary for the fulfilment of the tasks for which they have a legal obligation, as set out in Article 6(1)(c) of the General Data Protection Regulation.

Section 2. Quality assurance agencies process personal data for the following purposes:
1° Granting, suspending and revoking the party responsible for MP certificate;
2° Organisation of the training.

Section 3. The personal data processed in accordance with the second section relates to the following natural persons:
1° The party responsible for MP;
2° The person required to submit a declaration.

Section 4. The personal data processed in accordance with the second section relates to the following categories of personal data:
1° Personal contact details of the party responsible for MP:
   a) First and last name;
   b) Address: street, number, PO box, postal code and municipality;
   c) Phone references;
   d) Email:
2° Diploma, education and extra training of the party responsible for MP;
3° Evaluation and performance of the party responsible for MP;
4° Personal contact details of the person required to submit a declaration;
   a) First and last name;
   b) Address: street, number, PO box, postal code and municipality;
   c) Phone references;
   d) Email:
5° Characteristics of the structure:
   a) Basic land registry data of the structure;
   b) Address: street, number, PO box, postal code and municipality;
   c) Age of the structure;
   d) Type of structure;
   e) Physical characteristics of the structure;
   f) Property condition of the structure;
6° Data arising from the supervision of the party responsible for MP;

Section 5. The OVAM or an auditor appointed by it may consult the personal data referred to in the fourth section.

Section 6. The personal data referred to in the first section, 2°, must be retained by the certification body for parties responsible for MP for five years after the certificate expires.

Section 7. The certification institution for parties responsible for MP takes the appropriate technical and organisational measures necessary to protect the personal data referred to in the fourth section. These measures ensure an appropriate level of security, taking into account, on the one hand, the state of the technology and the cost of the measures to be applied and, on the other hand, the nature of the data that must be secured and the potential risks.

Section 8. The certification institution for parties responsible for MP takes appropriate measures to include the following elements in the information provided to the data subjects:
1° The purpose of the processing;
2° The types or categories of personal data to be processed;
3° The parties involved;

4° The entities to which the personal data may be disclosed;
5° The purposes for which the personal data may be disclosed;
6° The retention period;
7° The designation of the controller.

The appropriate measures referred to in the first paragraph are intended to ensure that:
1° data subjects are properly informed about the processing of their data;
2° data subjects are fully aware of their rights;
3° data subjects know who they should contact in order to exercise their rights.

Section 9. The Flemish government may establish detailed rules for the processing of personal data in the context of the application of this decree.

Article 19. In Article 66(1) of the same decree, as amended by the decrees of 29 March 2019 and 26 February 2021, the following eleventh, twelfth and thirteenth paragraphs are added:

'The Flemish government may make the submission of an MPC as referred to in Article 33/22 subject to the payment of a fee.

The Flemish government may charge a fee to third parties to consult, dispose of and use the material performance database referred to in Article 33/23(1).

The Flemish government may charge a fee for assessing an application for accreditation as a certification institution for parties responsible for MP, as referred to in Article 33/24, third paragraph.

Chapter 4. Entry into force of provision

Article 20. This decree enters into force on 1 January 2028.

Brussels, ... (date).

The Minister-President of the Flemish Government,

Matthias DIEPENDAELE

The Flemish Minister for Environment and Agriculture,

Jo BROUNS