

Message 103

Communication from the Commission - TRIS/(2026) 0768

Directive (EU) 2015/1535

Notification: 2025/0790/BE

Forwarding of the observations of a Member State (Spain) (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

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1. MSG 103 IND 2025 0790 BE EN 26-03-2026 11-03-2026 ES COMMS 5.2 26-03-2026

2. Spain

3A. CSIC, Consejo Superior de Investigaciones Científicas
Ministerio de Ciencia, Innovación y Universidades

3B. Ministerio de Asuntos Exteriores, UE y Cooperación
DG Coordinación del Mercado Interior y Otras Políticas Comunitarias
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4. 2025/0790/BE - S20E - Waste

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. CSIC Review of the 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 Implementation of Various European Regulations and Directives and the Strengthening of the Asbestos Removal Policy, Submitted by the Flemish Government.

The proposed amendments pursue coherent objectives: to update the regional legal framework in light of recent European legislation, to reinforce the asbestos removal policy through more structured and preventive obligations, and to introduce a comprehensive material performance regime in the construction sector.

The systematic replacement of references to Regulation (EC) No 1013/2006 with Regulation (EU) 2024/1157 is appropriate, although it would be advisable to ensure that all cross-references to specific articles and annexes are fully consistent and technically accurate, ideally supported by a clearer explanatory statement in the recitals to reinforce legal traceability.

The reinforcement of asbestos-related obligations, including extended deadlines, new categories of certificates and broader coverage of high-risk buildings, reflects a preventive and precautionary approach;

however, the multiplication of certificate types may create administrative complexity and legal uncertainty, particularly given the open-ended proportionality clauses that allow exemptions where compliance is deemed “not reasonable or proportionate.” These clauses would benefit from more objective criteria to ensure predictability and legal certainty.

The introduction of the material performance framework is the most structurally significant reform and represents an ambitious step towards circular construction. The integration of EN 15804+A2, the definition of the MP expert's role and the establishment of a material performance database managed by OVAM are conceptually sound. Nonetheless, the concentration of extensive regulatory, supervisory and quasi-certification powers in OVAM, including its automatic recognition as an MP expert, may raise questions regarding institutional balance and neutrality. Moreover, the broad delegations granted to the Flemish Government through repeated “may determine” provisions could be perceived as excessive unless further circumscribed.

The obligation to submit a material performance start declaration prior to the commencement of works is coherent from a policy perspective but may generate practical delays if administrative processes are not streamlined.

The expansion of fee mechanisms for waste shipments, certifications, database access and MPC issuance is consistent with the cost-recovery principle, yet proportionality and transparency in fee calculation should be explicitly safeguarded.

In the area of material performance, while the reference to EN 15804+A2 and life-cycle indicators is appropriate, the text does not sufficiently specify how data quality, methodological consistency and system boundaries will be ensured. The reliability of any life-cycle assessment (LCA) depends critically on the quality and comparability of datasets, underlying assumptions and modelling choices. It would therefore be advisable to establish minimum data-quality criteria, traceability requirements and periodic updates to prevent inconsistencies across projects.

The strong emphasis on Global Warming Potential (GWP) is understandable in the climate context; however, relying predominantly on a single indicator risks oversimplifying environmental decision-making. Other impact categories such as toxicity, resource depletion, acidification or water use should be adequately considered to avoid burden-shifting. A genuinely multi-criteria framework, or at least safeguards against single-indicator dominance, would better reflect the scientific complexity of circular construction.

Methodologically, the decree does not explicitly address uncertainty, variability or sensitivity analysis. LCA results can vary significantly depending on assumptions regarding lifetime, end-of-life scenarios, energy mixes or transport distances. Harmonised assumptions or mandatory sensitivity analyses would improve scientific credibility and comparability. Likewise, ensuring interoperability with established European databases and international standards (such as ILCD or PEF frameworks) would enhance transparency and methodological alignment.

Regarding asbestos policy, the preventive approach is sound, yet the text could further integrate evidence-based protocols concerning occupational exposure, environmental monitoring and risk management during removal or encapsulation. In some cases, improper removal may pose greater

short-term risks than controlled containment, and this nuance should be reflected in the regulatory framework.

The concentration of technical, regulatory and certification functions within a single authority may limit independent scientific scrutiny.

Introducing mechanisms for periodic scientific review and methodological updating would ensure that the system remains aligned with evolving knowledge and standards.

European Commission

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