



Helpdesk

EU NEWS ON IMPLEMENTATION OF "ACQUIS COMMUNAUTAIRE"

13/10/2008

Construction products: new Regulation (proposal)

Commission proposes further cuts in red tape for construction products



To improve the internal market for construction products, the European Commission proposed to replace the "Construction Product Directive" (89/106/EEC) by a new Regulation aiming to remove all remaining regulatory and technical obstacles to the free circulation of construction products in the European Economic Area.

With this proposal the Commission is continuing the drive to modernise EU legislation and cut unnecessary red-tape and over-regulation. The aim is to make life easier for industry and in particular for small enterprises. These changes will mean that construction products can be placed on the market at reduced costs and innovators can take advantage of simpler and more efficient procedures.

With 15% of EU manufacturing added value, but only 5% of intra-community trade, the construction sector is less open than other sectors of manufactured goods. "Construction products" include more than 40 ranges of products such as doors, thermal insulating products, cement, roofing products or bricks. The proposal aims at introducing a "common technical language" for expressing the performance of all

these products, thus simplifying and clarifying the present situation. A clarification of procedures leading to CE marking is introduced as well, to reduce costs for manufacturers, whilst ensuring that the declaration of performance accompanying the product is accurate and reliable. Specific measures are also introduced to make life easier for micro-enterprises.

Making the internal market for construction products a reality

To enhance the internal market for construction products, the European Commission has proposed to replace the “Construction Products Directive” (89/106/EEC) by a new Regulation aiming to remove all remaining regulatory and technical obstacles to the free circulation of construction products in the European Economic Area.

Proposal aims at introducing a **common technical language** by which manufacturers will declare the performances/characteristics of the products they place on the market and will therefore be allowed to affix the CE marking on them:

- **Member States** authorities will be able to express their requirements using the same common technical language, mainly harmonised European standards.
- The **users** (architects, engineers, contractors ...) will have full knowledge on the performance of the products they intend to use.
- The role of **CE marking** is to ensure the accuracy and the reliability of the declaration of performance.
- The proposal foresees **flexible rules for the manufacturers** to adapt to market needs when making this declaration.
- Specific measures are also introduced to **make life easier for micro-enterprises**^[1].

Better Regulation: All this will serve the interests of simplification, clarification and strengthened credibility of the system. The proposal forms an important contribution to the Commission’s **Better Regulation** and **Simplification** initiatives (MEMO/08/62).

At present, the steadily advancing **implementation** of Construction Products Directive 89/106/EEC (**CPD**) has already brought about more than 300 harmonised European product standards (hENs), more than 20 guidelines for European technical approvals (ETAGs) and more than 1100 such approvals (ETAs), supported by more than 50 Commission Decisions on the applicable systems for conformity assessments or classifications for the reaction to fire. This existing CPD-based acquis presents a solid groundwork for the future, and should therefore remain continuously in use. Nevertheless, the large-scale public consultations have pointed to several weaknesses within the system currently in force: according to the stakeholders, it should be significantly **simplified**, its concepts, procedures and obligations **clarified**, and its **credibility** considerably strengthened. These are the key objectives of today’s proposal.

Internal market to be completed: Making their principles operational in the field of construction, the proposal aims at enhancing free circulation of construction products in the European Economic Area (Memo 07/54).

For **innovation** (IP/08/12), the proposal also provides additional opportunities, by simplifying the administrative procedures and thus reducing the burdens currently met by the manufacturers.

These alleviations and clarifications will be most concretely felt by the European **SMEs**, in particular **micro-enterprises**.

A common technical language for manufacturers, users and Member States

The means to facilitate free circulation and use of construction products is the creation of a **common technical language** for expressing the performance of such products. They are intermediate products, i.e. intended to be permanently incorporated into construction works. Therefore, the information about their performance should be available as clearly and fully as possible for their users: architects, designers, builders, contractors and other actors in this field. Moreover, also the competent public authorities will benefit from using in their regulatory and administrative activities the European common technical language, as expressed in harmonised standards or more individualised solutions for innovative products. This would allow the demands set out for any given products to be expressed through this language, instead of previous national techniques, and the remaining technical obstacles for free circulation could thus be removed more efficiently than before.

Following the contents of the **New Legislative Framework (NLF)**, to be formally adopted by the Council during the coming months, the definitions and the concepts to be used have been streamlined and clarified: the obligations of different actors in the field of construction have chiefly been based on the respective NLF provisions. Also the incorporation of the new rules of NLF on notified bodies and market surveillance into the proposal contributes forcefully to the increased credibility of the proposed system. Still, the specific features of the construction sector, the experience gained and the acquis brought about during the implementation of the CPD, as well as the intermediate nature of construction products, have rendered it necessary to slightly adjust the NLF structure for the purposes of CPR proposal.

Member States will stay responsible for safety issues

The litmus test for the respect of the subsidiarity principle is the relation between **Member States and Community competences**. Today's proposal will not put forward any changes in this matter: quite as before, Member States will remain responsible for ensuring that construction works on their territory are designed and built so as not to endanger safety, while respecting other basic requirements. This will continue to be achieved through national rules. On the other hand, the objective of the proposal is to facilitate the creation of the internal market for construction products, for which the Treaty gives the responsibility to the Union. The common technical language, mainly the harmonised European standards, will form the means for reaching this Community objective.

Standards will constitute the main harmonisation tool

Harmonised standards (hENs) will continue to constitute the main harmonisation tool foreseen in the proposal. In this context, they provide the measurement units for products performance and the testing and calculation methods for assessing the level of performance of those products.

However, the use of the standards is definitely not going to be limited to the manufacturers for describing and assessing the performance of their products: instead, also the competent public authorities of Member States shall use the language of the standards when specifying the requirements to be fulfilled. For example, Member States shall refer to the classification systems included in the harmonised standards when regulating on fire safety.

The life of users simplified

Besides, the harmonised and more transparent manner of expressing this performance will benefit the **users** (architects et al) of these products, who will find it easier to obtain reliable information about the performances of the products they will choose to use when declared using the harmonised standards, and to compare this information with the demands set out for them. This will facilitate their duties to ensure the safety of the construction works as required by the respective national rules.

Flexibility for innovative products

On the other hand, more flexibility is required for the assessment of the performance of construction products which have not yet been sufficiently commoditised for harmonised standards to be developed for this purpose. For such products, often of **innovative** nature, the previously available route to European technical approvals will be maintained, whilst modified to reach the simplification objectives.

European Assessment Documents

The guidelines for European technical approvals (ETAGs) approved during the CPD era will remain in force, but all the future preparatory work will be carried out with a view to adopting **European Assessment Documents (EAD)**, which thus will have a function comparable to that of the harmonised standards. EADs will be drafted through close collaboration of Technical Assessment Bodies (TABs), but they will always be based on the manufacturer's initiative and his full cooperation. The **European Technical Assessments (ETA)** will then be carried out and issued by a TAB at the request of a manufacturer on the basis of a EAD, i.e. using the assessment methods prescribed in this harmonised technical specification.

Declaration of performance

The proposal contains precise rules for determining the obligations of all economic operators in the field of construction products. Notably the situations when the manufacturer shall make a **declaration of performance** for his product have been clearly defined. In these circumstances, the standards or the ETAs in use will then offer the manufacturer a choice of declaring the performance in relation to additional product characteristics beyond the minimum requirements in place. This choice will most probably be exercised in accordance with the demands of the market, i.e. the users of the construction products in question. The declaration of performance will be supplied with each product (or each batch of the same product, delivered to a single user); this can also take place by electronic means.

CE marking for construction products

The use and the specific meaning of **CE marking for construction** products will also be regulated in the proposal. CE marking shall be affixed to all products for which the manufacturer has made the said declaration of performance, but only to those products. By affixing the CE marking on the product, the manufacturer will take responsibility for the declared information having been obtained in accordance with the proposed Regulation. Therefore, this information must be considered accurate and reliable. CE marking shall also be the only marking for this purpose: quite like under the CPD, Member States shall ensure free circulation and use of CE marked products within their territory. While the general principles of the NLF concerning CE marking will be followed, these specificities of the construction sector reflect the nature of construction products and the experience gained

during the implementation of the CPD.

Simplified access to CE marking for micro-enterprises

Moreover, **micro-enterprises** will be given a simplified access to CE marking, when their products do not have a very important role in assuring the safety of construction works. This opportunity will allow such enterprises to place their products on the market less costly and more swiftly than before. Also **individually manufactured products** will be able to enjoy such beneficial treatment, under same safety-related conditions.

Other simplified procedures

Other simplified procedures **leading to CE marking**, aiming at significantly reducing the costs incurred to manufacturers, have been included in the proposal:

- **Without testing:** the product is deemed to be considered without testing as reaching a specific level or class of performance;
- **Without further testing:** the product need not be tested again, if it was already successfully tested by a third party (often by a business association);
- **Sharing type-testing / type-calculation:** The manufacturer will be able to benefit from the test results carried out (or calculations performed) by a third party as long as his product shares the factors that determine the product-type, i.e. it uses a given combination of raw materials or other elements in a specific production system;
- **Cascading type-testing / type-calculation:** The manufacturer assembling kits or systems can use the results of the tests carried out by the provider of components to such kits or systems, when the precise instructions of the provider are duly followed. In addition, tests carried out in upstream stages of the production process need not be repeated in downstream stages, provided that the performance characteristics are not modified, such as for example, the transfer of testing from a systems provider or a model designer to the assembler of such systems or model.

Specific Technical Documentation

However, the use of all these simplification mechanisms will be depending on the manufacturer demonstrating that his product complies fully with the applicable requirements. This demonstration is carried out through the use of **Specific Technical Documentation (STD)**, which will thus become a part of the declaration of performance, as well as the accompanying technical documentation, to be kept intact by the manufacturer for monitoring purposes. For example the market surveillance authorities of Member States will therefore be able to check the justifications of the manufacturer, if any doubts were to emerge later on.

The attestation of conformity systems under the CPD will be streamlined by replacing the current six systems in place with five slightly adjusted ones, now to be called **systems for assessment and verification of constancy of performance**. The present Commission Decisions will remain in force with only the corresponding minor adjustments.

Stricter criteria for Notified Bodies and TABs

In accordance with the NLF the proposal introduces also **new and stricter criteria for Notified Bodies and TABs**. This will increase the credibility of the whole system.

The **market surveillance** arrangements foreseen within the NLF will be extended to apply

to all construction products, again enhancing the credibility of the system.

Standing Committee of Construction

The requirements for **Comitology** will also be set up: a Standing Committee of Construction will be established, with full competences for the necessary regulatory procedures with scrutiny. In addition, this committee could also be utilised for consulting Member States on other than regulatory issues. Due to the potentially urgent regulatory needs after the adoption of the Regulation, the proposal will allow measures to be taken to convene this committee already before its general applicability.

In short, the proposal represents a solid example of Better Regulation, not only through appropriate procedures of stakeholder consultation and impact assessment, but also by reaching for the very pertinent objectives of simplification, clarification and increased credibility of the system. In order to attain these objectives the legislative procedure about to commence should be followed by an efficient implementation of its results. The European construction sector should receive the unequivocal support of all stakeholders, soon to be able to benefit from a real internal market for construction products.

More information

http://ec.europa.eu/enterprise/construction/cpdrevision/cpd_revision_intro_en.htm