

EBC position on the future of the Construction Products Regulation and its implementation

About EBC

Established in 1990, the European Builders Confederation (EBC) is a European professional organisation representing national associations of micro, small and medium-sized enterprises working in the construction sector.

The construction sector is of vital importance to the European economy. With 3 million enterprises and a total direct workforce of 18 million, the construction sector contributes at around 9 % to the GDP of the European Union.

99.9 % of the European construction sector is composed of small and medium-sized companies, which produce 80 % of the construction industry's output. Small enterprises (less than 50 employees) are responsible for 60 % of the production and employ 70 % of the sector's working population.

1) General remarks

The EU's Construction Products Regulation (CPR) is one of the major pieces of legislation in the construction field, because it sets the legal conditions according to which products can circulate freely within the Union. It came into force in 2013, making CE marking (and therefore the harmonised European Standards used for this) compulsory. The CPR covers primarily the relationship between product manufacturer and market surveillance authorities, and only indirectly covers the relationship between manufacturers and users of construction products. Its provisions, however, impact product specifiers/users, who make up the majority of EBC members.

EBC does not want, for reasons of 'regulatory certainty', the CPR to be repealed. But a number of challenges with the text of the regulation itself, and with its application, exist.

2) Comments and recommendations

The supply of performance information of construction products

The Declaration of Performance (DoP) is a document that is intended primarily for market surveillance authorities and is intended only indirectly for users. There is plenty of evidence that many users of construction products look at the manufacturer's technical data sheet (or equivalent) for details about product performance, rather than the DOP, particularly if the DoP is on the internet rather than accompanying the product.

As currently written, the CPR requires duplication of performance data in the DOP and with the CE marking. This is both unnecessary and, in some cases, impractical because, for some products, the performance data runs to many pages, unreasonable to provide with the CE marking.

Many users of construction products believe that the CE marking indicates "high quality", and many users of products claim to be unable to fully understand the information given in the DoP.

The CPR requires all products to be accompanied by installation instructions and safety information. This is largely unnecessary for many products.

It would be good for SMEs (manufacturers and users) to minimise the effort of producing/reading documents by having just one document providing all relevant information about the product, combined with clarifications on what information should be provided.

Recommendations

- All information, Essential Characteristics (ECs), non-Essential Characteristics (NECs) and other relevant information, such as generic installation instructions, should be allowed in one document, although with separation between ECs and other information.
- The information needs to contain end use/installation information where this is required and where it can be evaluated by the manufacturer, such as testing in generic end use conditions (i.e. it can be assessed before CE marking).
- Awareness training on the real meaning of CE marking is required. Training and assistance on understanding and correctly using performance information is also needed.
- Products where instructions and safety information have little meaning should be exempt from the need to supply these instructions and/or information.
- The CE marking should, as with all other industrial products, be reduced to the minimum, e.g. just the letters "CE".

Exemptions and simplified procedures of the CPR

The CPR includes exemptions and simplified procedures (Articles 5, 37 and 38) whose current use is limited and need more clarification in order to be fully used by small and medium sized enterprises. Many craft companies provide a ‘service’, which often involves supplying and installing bespoke products which are not placed on the market in the same way as mass-produced products. The obligation to draw up a DoP and apply the CE marking to such products is costly and burdensome for craft SMEs.

The simplifications of Articles 37 and 38 are limited both in their effect and their degree of application. They provide exemptions only from type testing, not from the more costly factory production control (FPC) testing; the need to demonstrate ‘equivalence’ between an alternative method and the reference method is challenging (it is enough that the alternative method does not give better results than the reference method); and the required content of the Specific Technical Document (STD) is largely unknown.

Even when craft companies would like to apply standards, these standards are usually written only for mass-produced products. They cannot, in many cases, be applied in full (because of e.g. destructive testing and FPC requirements) to one-off or low volume production.

The obligation to declare the performance of at least one of the essential characteristics, when none are required, causes confusion and unnecessary administrative and financial burdens on SMEs.

Recommendations

- Article 5 should be rewritten and clarified so as to be clear which products it covers, and such products should be exempt from all provisions of the CPR.
- Craft products, which are not placed on the market in the conventional meaning of this term, should be exempt from the obligations of the CPR, but with the option given to follow the CPR when the manufacturer prefers to do so.
- Definitions of “individually manufactured”, “custom-made” and “non-series process”, and their link to “specific order” are needed.
- The obligation, in Article 5 a), that products are installed by their manufacturer, is too limiting. The wording needs adapting to provide appropriate exemptions for individually manufactured and custom-made products, without extending this unjustifiably to large manufacturers.
- Article 37 should be extended beyond micro-enterprises but only to manufacturers of a size where the article may justifiably be used.
- The FPC requirements of hENs should be changed or extended to address one-off and non-series products, or a general exemption for such products from following FPC provisions given.
- The same clarifications as for Article 5 are required for Article 38.

- Clarification is required of what is needed in an STD. The need to demonstrate “equivalence” should be reduced, and practical examples of where and how Articles 37 and 38 might be used would encourage more manufacturers to use them.
- If a situation arises when a product can be placed on the market with no declaration of any ECs, such product should not be a product within the meaning of the CPR.

The content and quality of CPR standards

Simplifications in harmonized European standards (hEN) need to be kept, and need to be made better known to SMEs. Moreover, they should include less onerous assessment methods that are just as robust a method as testing, but which substantially minimise the burdens on SMEs.

The Commission appears currently to reject candidate hENs if they include non-essential characteristics. SMEs, however, need these non-essential characteristics (e.g. dimensions) as much or more than essential characteristics. The idea of manufacturers having to comply with two documents (or two parts of the same document) is unnecessarily complicated.

Kits are important for SMEs, because they represent an efficient way of using sets of components without the SME construction enterprise having to make the selection. The CPR definition of kits, however, make it unclear whether, if a manufacturer sells a number of components (e.g. for a suspended ceiling or a wall partition) and there are hENs for these kits, the manufacturer is obliged to follow the hEN. This lack of clarity could lead to some CEN TCs (e.g. CEN TC241) to not writing kit standards.

Recommendations

- hENs should, as a strong preference, be allowed to continue to include ECs and NEC.
- The simplifications of ‘families’ and ‘tests previously performed’ need to remain in standards.
- hENs should include less onerous assessment methods, in addition but as alternatives to testing and, where appropriate, methods other than testing should be considered as the reference method.
- Guidance is needed on the notion of kits and of any obligations on manufacturers as a result.

Post-CE marking national requirements

The need to evaluate products in installed conditions is a valid requirement of many users and installers of construction products. This should not, however, be done at national level but, rather, harmonised technical standards (HTSs) should be exhaustive, so as to minimise the need for post-CE marking additional national requirements. A distinction should be made, however, between assessing products in generic installation conditions (which is a manufacturer responsibility and can be included in CE marking), and assessing in specific end-uses which does not fall within the scope of the CPR.

Where standards are found not to contain characteristics which are then subject to mandatory national assessment, Member States should use EU Regulation 1025:2012 to request changes to these standards.

In the field of labels and marks, construction SMEs find that the industry is producing too many different labels, quality marks and certification schemes. In addition, they are not mutually recognisable and create a protectionist barrier in some Member States which hinders free trade. European harmonisation in this field may not be the right answer, however, because some concerns and national specificities could be left out, to the detriment of the vast majority of construction SMEs.

The current approach, of not allowing any marking or additional certification schemes in respect of the essential characteristics covered by the CE marking, is broadly supported. Recognising, however, that the CE marking is not intended to cover the relationship between manufacturer and user, and also that it is not a quality marking in the normal understanding of this term, there is a need, on behalf of some users and in some sections of the market, to allow for optional quality marking.

Recommendations

- HTSs should be exhaustive, and Member States should use Regulation 1025 Article 11 to avoid the need for additional national characteristics.
- HTSs should be extended to include the assessment of products in generic end use conditions, where this appropriately belongs in CE marking and does not compromise national practices.
- A transitional period is needed while HTSs are made exhaustive.
- More action is needed against unfair additional requirements, installation requirements, quality marks and qualification of installers, without which the free market will not function as intended.
- An approach towards quality marks, which allows individual product sectors to decide for themselves whether there is a market need for them, is broadly supported but with the need for oversight to ensure that such marks are not used abusively.

Market surveillance

Despite actions to strengthen national market surveillance over recent years (in particular Regulation 765/2018), the market remains fairly open to unfair competition, with abuses or problems, in particular, going uncontrolled even if reported to market surveillance authorities. A lack of market surveillance also exposes SME construction companies to the risk of using products not having the performance levels declared of them.

Not all SME manufacturers fully understand how to draft a DOP or produce CE marking, which leads to many 'documentary' non-conformities on the market.

Recommendations

- Market surveillance authorities should be prepared to intervene more frequently and actively to prevent instances of unfair competition.
- Further guidance is needed on the content of the DOP and CE marking under the CPR, including the possible re-introduction of requirements in hENs, to reduce the high level of documentary non-conformity.

Access to standardisation and standards

Certain interest groups dominate in some European TCs, and this presents a situation likely to be disadvantageous to SMEs.

A 'harmonised EN' should not, in many cases, be considered as a single document. Because of normative references, it is common that, to follow any hEN, SME manufacturers need to buy 20-30 different documents. This can lead to substantial costs (€2 000-€3 000), a large amount especially in the case of one-off or small volume production. One possible solution would be for the CPR to specifically exclude products sold with a total annual value of, for example €2 000.

Recommendations

- Care must be taken to ensure that all stakeholders are adequately represented in standardisation and that no one interest dominates.
- Proposals for reducing the regulatory and financial burdens on SMEs of applying standards should be developed.

Technical Note

EBC position on the future of the CPR and its implementation

19 March 2018

➤ **Introduction**

The aim of this Technical Note is to provide the background explanations to the positions proposed in the Position Paper above. A number of challenges with the text of the Construction Products Regulation (CPR), and with its application, exist and have led the Commission to review it, to launch studies into aspects of its implementation and consequences, and to hold a series of Technical Platform discussions with stakeholders.

This Note is divided into topics which align roughly with the topics of the Commission's Technical Platforms. While it provides the explanations for the EBC positions, it does not repeat them.

➤ **The CPR topics**

Topic 1: User requirements versus manufacturer obligations

The Declaration of Performance (DoP) is a document that is intended primarily for market surveillance authorities and is intended only indirectly for users. It would be good for SMEs to minimise the efforts of producing documents by having just one document which would be a tool for the customer, whether this is an extended DoP or a document which contains the DoP.

Some products need to be tested, prior to CE marking, in representative end-use conditions (e.g. anchors bolts and products subject to reaction to fire). This should be understood as assessing the capability of the product to perform in general uses, which can be covered by CE marking. It does not, however, cover the suitability of the product for use in a particular works ('fitness for use'), which cannot be covered by CE marking but is the responsibility of users/designers.

Some products have to be tested in the Member State of destination before they can be used (but after they have the CE marking), and some users require information about non-essential characteristics which do not appear in the DoP. Whether some of what is tested after CE marking could be included in harmonised technical specifications (HTS) should be examined. If HTSs are 'extended', and in particular if they are extended to include more assessment in generic end use conditions, the conditions should cover all those which exist in different Member States. The intension of extending HTSs would be to make post-CE marking testing largely unnecessary.

If the performance of a product depends on how it is installed, then the need for installation instructions to be included in the DoP should be emphasised. Writers of HTSs should be allowed to consider requiring manufacturers to assess products in, and identify, generic intended end use conditions/applications where, for their products, it is appropriate to do so.

CPR Article 4.2 states "... information in any form about [the product's] performance in relation to the essential characteristics, as defined in the applicable HTS, may be provided only if included and specified in the declaration of performance", which has been interpreted as meaning that ECs may be given outside the DoP. However, CPR FAQ 19 says "... the CPR renders the use of the declaration of performance the only manner to declare this performance". If ECs are to be allowed to be given outside the DoP, or if NECs are to be allowed to be given in a document which includes the DoP, a clear statement from the Commission on this is needed because it would clarify whether current assumptions on what is permitted are correct.

CPR Article 11 6) requires that "When making a construction product available on the market, manufacturers shall ensure that the product is accompanied by instructions and safety information". CPR FAQ 14 mentions the "installation manual or installation instructions", implying that these are separate from the DoP. It should be clarified that installation instructions may be included in or with the DoP. There should also be an exemption from the requirements of Article 11 for products where "installation" and/or "safety" instructions have little sense.

It needs to be more clearly understood that the obligation to declare at least one EC is what defines a product as a 'construction product' within the CPR. If there is an end-use where NPD could be declared for all ECs, the product would not be a CPR product, would not have to comply with the HTS and would not have CE marking.

It should be possible for manufacturers to supply all information required by all stakeholders, including market surveillance authorities and users, and also covering generic installation conditions (where appropriate) and safety information, in one document.

There is currently duplication of information between the DoP and CE marking, because the ECs have to be given both in the DoP and with the CE marking. For some products, it is not possible to give all information about ECs with the CE marking. HTS writers should not be allowed to decide on giving only the most important ECs with the CE marking, but if a TC judges it appropriate, it should be permitted for the CE marking to refer only to the DoP.

Topic 2: Exemptions and simplified procedures of the CPR

CPR Article 5

CPR Article 5 was intended to exempt some products from the need to draw up a DoP and apply CE marking, although Article 4 means that the manufacturer is not exempt from complying with an hEN if it exists or an ETA if he has one. The wording of Article 5 should be changed in order to clarify that the exemption can be used even when the CPR and an hEN/ETA exist. The criterion of the existence of national provisions makes Article 5 almost inapplicable and should be deleted. While many products are installed by their manufacturer, the obligation that they have to be limits the possible application of Article 5.

Article 5, because it applies to products already included in the CPR, should be written in a way which exempts products from all of the provisions of the regulation, including the obligation to comply with hENs (while leaving the possibility that they may).

Traditional/heritage conservation products should be excluded from all provisions of the CPR, and Article 5 b) should be clarified to mean that it applies to products used in the construction works on that site.

While Article 5 a) should be modified to apply to products other than those installed by their manufacturer, clarification is needed of the definitions of “individually manufactured”, “custom-made” and “non-series production” (as required by CPR Recital 40). These definitions need to be acceptable to all parties, so as to allow a sensible and justified application, while not extending Article 5 a) to manufacturers which should properly be covered by the CPR. It is understood that a manufacturer applying Article 5 would need to comply with whatever provisions exist for products not covered by the CPR in the Member State of destination.

CPR Articles 37 and 38

CPR Articles 37 and 38 provide exemptions, in respect of product-type determination (initial type) testing, from following the methods in hENs. Article 37 provides an exemption for micro-enterprise manufacturers of all products, while Article 38 provides an exemption for all manufacturers of individually manufactured products or products custom made in a non-series process, but they provide no exemption from following the factory production control (FPC) provisions of hENs. The FPC section of any hEN should be changed or extended to cover individual and non-series products, because manufacturers of such products cannot follow conventional FPC provisions.

Practical examples of where Articles 37 and 38 could be applied and how, if necessary, the requirement to show equivalence between the alternative and the reference method is shown, would probably be helpful in encouraging the wider use of these two articles.

Topic 3: The content and quality of CPR standards, and EC procedures affecting standards

hENs contain two ‘simplifications’ already: “Families” and “Tests previously performed”. Both of these simplifications need to be kept, and possibly they need to be made better known to SMEs.

The idea that only one assessment method is allowed for each characteristic does not appear to derive from the CPR. CPR Article 17.3 encourages the inclusion of less onerous assessment methods than testing, while mandates permit more than one method, when this is properly justified. CEN TCs should be encouraged to include simpler assessment methods (e.g. calculation, tabulated values, deemed to satisfy provisions and classified without testing/further testing (CWT/CWFT)), in addition but as alternatives to the reference method. The reference method should not always be a test method, where it is appropriate for it to be something else, such as calculation.

Until fairly recently, hENs under the CPD/CPR contained both ECs (referred to from Annex ZA) and NECs. The Commission has recently been refusing hENs which contain NECs. As a clear preference, hENs should be allowed to continue to contain both ECs and NECs.

Topic 4: Post-CE marking national requirements

CPR Article 8 4) requires that “A Member State shall not prohibit or impede ... the making available on the market or the use of construction products bearing the CE marking, when the declared performances correspond to the requirements for such use in that Member State”. Article 8 6) requires that “The methods used by the Member States in their requirements for construction works ... shall be in accordance with harmonised standards.” Taken together, the interpretation is that Member States are permitted to set requirements on performance levels/classes where these are given in an hEN or EAD, but that they are not permitted to impose additional characteristics or to require compliance with national standards.

Despite this, there are many examples of where Member States do impose either additional characteristics and/or require compliance with national standards. Also rules on installation, even if they do not require additional characteristics, represent technical barriers to trade if they can only be satisfied in the Member State of destination.

If a Member State justifiably requires such additional characteristics, they should be brought within the scope of the CPR, in particular by changing mandates so that hENs can be amended to cover them (although a suitable transitional period is required while such characteristics are harmonised). The CPR does not provide for an appeal against any hEN in general terms, only when the hEN does not comply with the mandate. Article 11 of Regulation 1025/2012 should be more widely used as the correct means of appealing against hENs which do not address all required characteristics. Consequently, additional national requirements for products should not, in fact, occur.

CPR Article 8 4) states “... the CE marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics” This is confirmed by CPR FAQ 19; “Quality or private marks, let alone those with national connotations, are not allowed to cover any characteristics already included in the hEN. This also applies to NPD”. Despite these provisions, national quality marks continue to exist to demonstrate the performance of essential characteristics.

Further clarification of the meaning of the CE marking (as a regulatory conformity marking, not a mark of quality) is needed, and any quality marks must not be used in a way which creates or maintains barriers to trade. National requirements on the qualification of installers are also seen as an important, and sometimes costly, barrier to trade.

Topic 5: Market surveillance

Despite actions to strengthen national market surveillance over recent years (in particular Regulation 765/2018), SBS remains concerned that unfair competition, in particular, is going uncontrolled, even if reported to market surveillance authorities.

According to the most recent (2013) report on market surveillance activities in the construction sector, there are widely different levels of intervention, ranging from none to more than 1 000 per year, there are different types of control, varying from 100 % documentary and no testing to 90 % testing, and there are different levels of actions/fines resulting from inspections, ranging from none to more than 50 per year.

A common finding, though, is that 50+ % of inspections show non-conformity, although many of these are related to documentation and marking. It does not seem possible to know how many products on the market do not have the performance levels declared of them. The high level of documentary non-conformity perhaps calls into question the decision that the content of the DoP and CE marking can no longer be given in hENs.

A central or national system of anonymous reporting of complaints of unfair competition would be welcomed, as would more active monitoring of market surveillance activity beyond just the collection of data.

Topic 6: Access to standardisation and standards

If particular interest groups (multi-nationals, conformity assessment bodies, etc.) are allowed to dominate the drafting of standards, this is likely to lead to situations which disadvantage SMEs. National, European and international standardisation bodies should monitor the composition of committees and intervene if it found that any one interest dominates.

Quality management systems require that manufacturers need to hold copies of all standards with which they claim compliance. This means that a manufacturer cannot hold only the product standard; he needs also to hold all normative references. This often leads to a high initial investment in standards, and then an on-going need to monitor any changes in the product standard or any of its normative references, which is both costly and time-consuming.

In order to reduce the burden on SMEs, schemes such as “shared access’ to standards (e.g. where a trade association buys standards but it then able to make them available to members free or at reduced cost. Notifications of changes to standards should be sent out to associations holding such standards, in order that they can pass this on their members.