

POSITION PAPER

Brussels, 14 May 2019

Orgalim views on shaping a Regulation on Construction Products that strengthens the internal market

1. EXECUTIVE SUMMARY

Orgalim does not support a legislative change of the Construction Products Regulation (EU) No 305/2011 (CPR), but we do support using non-binding measures to address any implementation issues. We believe that drafting a set of guidelines for the interpretation of the CPR will be the best solution to the problems encountered today and we stand ready to support the European Commission throughout the drafting process. These guidelines should take into account the issues mentioned in this paper. Specifically, to clarify:

- Vocabulary within the framework of the CPR
- Application of Article 5 on derogations from applying CPR provisions
- The relationship between a European Technical Assessment (ETA) and CE marking or the role of standardisation and the voluntary route for CE marking through EOTA (Article 19.1.)
- Application of Articles 37 and 38 on simplified procedures
- The relationship between the CPR and more specific product safety legislation to avoid double legislation

Further implementation issues are related to horizontal legislation and need to be dealt with in the context of other legislation.

Standardisation issues

- improving the standardisation process in general and clarifying the relationship between the CPR and the Regulation on European Standards (EU) No 1025/2012
- improving cooperation between the European Commission and CEN on standard writing

Market Surveillance

- A need to further improve the system.

Orgalim represents Europe's technology industries: companies that innovate at the crossroads of digital and physical technology. Our industries develop and manufacture the products, systems and services that enable a prosperous and sustainable future. Ranging from large globally active corporations to regionally anchored small and medium-sized enterprises, the companies we represent directly employ 11 million people across Europe and generate an annual turnover of around €2,000 billion. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

2. INTRODUCTION

Orgalim - Europe's Technology Industries – represents among its membership a heterogeneous variety of small-and-micro-industries that manufacture structural metal products, metal structures and parts of structures, metal building and construction products in general. The construction industry plays an important role in the implementation of the circular economy package and environmental sustainability. However, to maintain the innovative and competitive potential, these businesses need to rely on a clear and harmonised legal framework which defines common rules for all economic operators throughout the EU while maintaining regulatory stability and predictability.

Orgalim strongly supports the CPR as a means to facilitate the free movement of construction products through a framework of 'common technical language' as the CPR vastly simplifies the export and import of construction products across the European Union – and creates a transparent system for the Member States to establish regulatory requirements for buildings. On the other hand, we acknowledge that Member States should retain the sovereign right to set regulatory requirements on construction works. However, these requirements must remain in line with the provisions of the CPR in relation to the essential characteristics of construction products defined within harmonised standards and European Assessment Documents.

The CPR has been in place since 2011 and became fully applicable in July 2013. Over the last 8 years our companies have invested time and resources to adapt to the provisions of the Regulation, a process, which in some Member States, especially where CE marking of construction products was not previously compulsory, required considerable effort. Therefore, in view of the Final Report on the Impact Assessment of the CPR, in the framework of the REFIT exercise, we support the general consensus among stakeholders pointing to option I "not to introduce any legislative change [but rather to] improve implementation through guidance and soft law measures"¹.

3. IMPLEMENTATION ISSUES

We recognise that the Regulation has gone a long way to remove technical barriers to trade and has in addition attempted to "simplify and clarify the previous framework [to] improve the transparency and the effectiveness"² of the measures. Nevertheless, as can be seen from the results of the CPR Implementation Report of 2016³ and the results of the Supporting Study for the Review of the CPR of 2018, there are still many implementation issues that need to be addressed to achieve a homogeneous market in all Member States. The implementation issues mainly arise from different interpretations of the text of the CPR within the Member States and could be solved through guidance documents, better education and information campaigns that would support in particular the small and medium sized companies of the sector.

¹ Supporting study for the review of the Construction Products Regulation: Impact Assessment, Final Report:

<https://publications.europa.eu/en/publication-detail/-/publication/57fd5ffa-ed41-11e8-b690-01aa75ed71a1/language-en>

² REGULATION (EU) No 305/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, Recital 8.

³ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Regulation (EU) No 305/2011 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0445>

Although Article 2 of the CPR defines construction products and describes the system for CE marking them, there are varying interpretations of the definitions which hinder the free circulation of construction products in the EU. Diverging opinions include how to use standards to draw up a Declaration of Performances (DoP), the format and content of the DoP document or the obligations of the economic operators under the CPR. Furthermore, there is additional vocabulary associated with construction products that has not been defined within the CPR or the supporting documents which merits further guidance to explain how it should be correctly interpreted. This vocabulary includes 'series' and 'non-series' products, 'kits', or 'product components' which need to be distinguished from 'products' (for example, it is unclear for users of welding machines whether welding rods are welding products or components of welding products).

An example of a particularly difficult legislative provision to interpret is the derogation from drawing up a declaration of performance under Article 5. The wording used to introduce the criteria for a derogation can be interpreted in such a way that it is almost impossible to apply. The Regulation specifies that a derogation can be applied only "*in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used*", however, in our experience there is almost always a national provision. Certainly, the intention behind this article was good, however, it is difficult for manufacturers to understand how these derogations can be applied in practice. Guidelines from the Commission with examples could be helpful to understand how manufacturers can organise production to qualify for the derogations.

The European Technical Assessment (ETA) is a procedure established under article 19.1 of the CPR as an alternative for construction products not covered or only partially covered by a harmonised standard. The document providing information on the performance assessment of products allows manufacturers to draw up the Declaration of Performance and affix the CE marking. However, the provisions of this article can be interpreted quite loosely, moreover, recently the number of ETAs established has been rising due to manufacturers searching for solutions to the backlog of harmonised standards. Further guidance could specify more precisely when ETAs can be developed.

Furthermore, similar interpretation problems apply to Articles 37 and 38 which refer to simplified procedures for demonstrating the conformity of a construction product. Article 37 was drafted for the benefit of small and medium sized companies to ensure that these entities have access to a level playing field. Meanwhile Article 38 refers to individually manufactured products or custom-made in a non-series process in response to a specific order. Orgalim believes that while it is important to help small manufacturers, it is unreasonable for users to accept less information on quality from a smaller manufacturer or to assume that large manufacturers should accept a heavier bureaucratic burden simply because they are bigger. Whatever the intention, the outcome, as seen in the Supporting Study for the review of the CPR⁴ is that very few manufacturers have been able to benefit from these procedures as the complicated formulation leads to interpretations that vary between Member States. In some countries they provide little or no economic benefits due to the fact that they are impossible to achieve. As the aim of the legislation should be to make access to the market as simple as possible, we feel that these procedures should be more clearly explained in guidance.

⁴ Supporting study for the review of the Construction Products Regulation: Evaluation, Final Report, p44; <https://publications.europa.eu/en/publication-detail/-/publication/e0ead9bc-ed3f-11e8-b690-01aa75ed71a1/language-en/format-PDF/source-search>

Finally, it is important to remember that for certain products, such as those that have to fulfil the requirements listed in (Annex I, clauses 3-4), more specific product safety legislation prevails over the CPR. For example, products such as mains powered smoke alarms are also covered by the Low Voltage Directive which regulates product safety in the specific aspect of electric powered products, while smoke alarms with a radio function are also covered by the RED and EMCD. For other electrical construction products, further environmental harmonisation legislation may apply, such as the Ecodesign Directive with its continuously increasing number of implementing acts. To maintain the competitiveness of our industries, it is imperative that there is no conflict between the conformity assessment procedures of such multiple regulations, this includes the use of different testing methods or the necessity to provide different conformity documents for the same characteristics. Clear and simple guidance should be available to explain the relationships between these regulations. The guidance could be based on the Commission interpretative documents⁵ developed after the implementation of the Construction Products Directive.

The uncertainty surrounding all of these issues hinders the free circulation of construction products in the EU which in turn leads to higher administrative costs.

4. HORIZONTAL ISSUES

Standardisation System

Union Harmonisation Legislation aims to create a homogenous market in order to boost the competitiveness of European companies. This is becoming all the more important in the era of globalisation, a reality which affects products from the design phase, through production supply chain issues, national and international distribution channels to name but a few. The goal of European standards is to help manufacturers face up to these challenges and support their drive for innovation. Unfortunately, the European Commission has set these aims aside in recent years. It has disproportionately moved its focus to addressing what it perceives as legal challenges, when processing European standards to be cited as harmonised standards in the Official Journal of the EU (OJEU) as outlined in the Communication 'Harmonised standards: Enhancing transparency and legal certainty for a fully functioning Single Market (COM(2018)764 final)'⁶.

The backlog of finalised harmonised standards that are not cited in the OJEU creates a significant hinderance for manufacturers to swiftly place their products on the European single market and undermines their drive for innovation. The situation has affected construction product manufacturers more than those of any other sector due to the compulsory use of harmonised standards under the CPR which differs from that of standards under legislation following the New Legislative Framework (NLF). This, in turn, leads to further application issues as manufacturers struggle to find solutions which often vary across Member States.

The already lengthy, more closely supervised development process for harmonised standards starting from the mandate stage (and the difficulties involved in their revision) through to the unclear parameters of the verification procedure has led to a growing disillusionment with the standardisation system.

⁵ Communication of the Commission with regard to the interpretative documents of Council Directive 89/106/EEC: <https://eur-lex.europa.eu/legal-content/BG/TXT/?uri=OJ:C:1994:062:TOC>

⁶ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52018DC0764>

Meanwhile, companies are investing more in international standardisation in the search of immediate solutions⁷. However, if harmonised standards are to remain relevant to market needs, they should not diverge from international standards. Therefore, Orgalim urgently calls to improve the standardisation process (for example to clarify: product-specific classes and thresholds revision and voluntary characteristics versus essential characteristics) and to re-introduce without delay a schedule to allow for the timely citation of harmonised standards.

Orgalim recognises that the Joint Initiative on Standardisation has improved transparency between stakeholders and we encourage the active use of the outcomes of the initiative in all areas. On the other hand we look forward to a deeper cooperation between the Commission and the standardisation community that is based on an open dialogue. A suggestion to improve transparency could be to introduce an online system, similar to the legislative train of the European Parliament website, to track the mandate/development/conformity check/citation stage of standards. This would allow stakeholders to easily consult the current status of the standards they are interested in.

Market surveillance system

The mutual confidence of authorities and market users in the good functioning of the Internal Market has also been increasingly challenged over the past two decades from the realities emerging from the globalisation of the supply chains. Imported products including steel structures or internal fixings are increasingly under the spotlight of complaints about non-compliance from many different types of stakeholders. Therefore, the market advantages of the benefit of the presumption of conformity become questionable when faced with the realities of ineffective import controls and poor market surveillance of products placed on the market.

Orgalim recognises that progress has been made in harmonising the work of accreditation bodies, notified bodies, technical assessment bodies and market surveillance authorities, however there is a need to further improve the system. The new Regulation on "market surveillance and compliance of products"⁸ which the European institutions have recently adopted will partly address this new situation of an internal market immersed in a global market where European economic operators have to thrive on their domestic markets and to find ways to invest, innovate and compete at international level. We will continue to support the Commission in solving any implementation issues.

5. CONCLUSIONS

To conclude, although we recognise that there are issues with the current implementation of the CPR, Orgalim does not support a revision of the Regulation. Orgalim believes it is important to uphold an EU-wide approach through harmonised technical specifications that can guarantee legal stability in a free market and a level playing field for construction products. A stable European Regulation supported by clear interpretation guidelines, as is the case for the Machinery, the Pressure Equipment and the ATEX directives is the best route to achieve a clear and harmonised interpretation for all EU manufacturers. We are ready to support the European Commission with our insight and experience in drafting such guidelines.

⁷ This observation of Orgalim members is also noted in the Supporting study for the review of the Construction Products Regulation: Evaluation, Final Report, p48; <https://publications.europa.eu/en/publication-detail/-/publication/eoad9bc-ed3f-11e8-b690-01aa75ed71a1/language-en/format-PDF/source-search>

⁸ https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_5841_2019_INIT&from=NL

Responsible advisor: Helena Le Goff-Jedrzejowicz