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Prospect for a Revision of the Construction Product Directive

Introduction

Construction products are within the remit of Orgalime constituency. It is a heterogeneous sector which includes a wide variety of products, including structural metal products, which includes the manufacture of metal structures and parts of structures, metal building and construction products in general.

Orgalime is therefore following the developments under the Construction Products Directive and the ongoing discussions about a foreseen revision of the directive. We welcome a revision of the existing directive if it achieves reliable and harmonised EU legislation in the field of construction products.

Orgalime welcomes the European Commission's commitment to avoiding the situation of different national implementations and interpretations which persisted under the original directive and has for a long time given rise to significant problems and barriers to trade for European manufacturers. The European industry needs a clear and harmonised framework with clear and harmonized definitions. This is of crucial importance for the competitiveness of European construction products manufacturers. On this basis we welcome the Regulation.

We comment hereafter on what we consider as the most important elements to take into consideration in the revision of the Construction Products Directive.

A simplified Community legislation on construction products

Orgalime welcomes the laying down of harmonised conditions for placing on the market and using construction products, with the major purpose of having a regulatory tool which could efficiently support the development of the European single market, as far as the new regulations do not affect the safety of construction products and the fair competition between manufacturers and importers of these products.

For our industry it is fundamental that the new Regulation can achieve its primary objective of rendering the legislation regarding construction products simple and clearer. Indeed simplification was the main reason which triggered the present revision, as put forward by the Commission in its "Communication on a strategy for the simplification of the regulatory environment" (25.10.2005).

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.9 million people in the EU and in 2007 accounted for some €1,813 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

A simplified Community legislation on construction products is necessary to reinforce the credibility of the whole system, aiming at a simplification for the placing on the market of construction products and therefore impeding the development of new barriers to trade at national, regional and local level.

In this sense Orgalime is in favour of the proposed Regulation's clear objective to introduce the use of a common technical language throughout the EU when dealing with construction products.

Orgalime believes it should be a priority that a legislation which is intended to be applied by such a broad sector as the construction sector with a very large number of SMEs should be drafted in simple language clearly understandable by such SMEs.

In order to provide legal certainty it would therefore be worthwhile to spend more time on certain details. In particular a number of essential concepts such as the meaning of the CE marking in the context of the Regulation as opposed to the New Legal Framework System, the placing on the market of construction products (in particular in relation to the transparency of the CE marking and accompanying information), and the simplified procedures could, in our opinion, be better explained and defined.

Marking: the meaning of CE marking

The proposed Regulation establishes that the placing on the market of Construction Products, which are under the scope of a harmonised European Standard or a European Assessment Document and for which requirements in relation to essential characteristics of that product exist, shall be accompanied by a declaration of the performances of the product regarding relevant essential characteristics.

In accordance with the proposed Regulation, the manufacturer is entitled not to declare performances for essential characteristics for which no regulatory requirements exist in the territory in which he/she intends to place the product on the market. The manufacturer is also entitled not to attach a declaration of performance (so not affixing CE marking on the product) where no regulatory provisions apply to the product.

The proposed Regulation also provides the manufacturer with the possibility to totally or partially exclude his/her product from the scope of the Regulation in so far there is no legal obligation for a declaration of a particular performance.

In the context of the Regulation on Construction Products, the meaning of CE marking differs when compared to the general principles set out in the New legal Framework and it is very specific; it attests that the information accompanying the product has been obtained in accordance with the proposed Regulation and, therefore, must be considered accurate and reliable. Even accepting that this is due to the specificity of the construction products (intermediate products intended to be incorporated in construction works) Orgalime believes that it is unfortunate that the Regulation maintains the present status whereby CE marking takes on two meanings.

Given that the meaning and the credibility of the CE marking is one of the major problems of the system with regard to construction products at present¹ and also that re-establishing clarity is one of the key aims of the revision, Orgalime believes that utmost care should be used to clearly explain from the start the meaning of the CE-marking in the context of the construction sector as opposed to its meaning in the "new approach" directives. Orgalime's opinion is that in order to achieve the main objectives of the acceptance of CE marking as a reliable marking by the national authorities and the users of construction products and of the needed clarification concerning the fundamental elements of the Proposed Regulation, the following instruments would be foreseen:

¹ see European Parliament IMCO study on safety and liability issues relating to construction products - PE 393.518 (points 3 and 7.2)

- Implementation of an information campaign with the target of guaranteeing the necessary diffusion in the construction products market of the main Regulation provisions; campaign for which a specific budget should be established.
- In the context of clarifying the meaning of CE marking and avoidance of confusion between the requirements of CE marking for this Regulation and that of other Directives which are different, like Low Voltage Directive or Machinery Directive, the necessary measures should be implemented to prevent the introduction of unnecessary administrative provisions for those products which do not affect the basic works requirement's fulfillment.

Harmonised technical specifications

Harmonised European Standards and European Assessment Document (EAD) are the harmonised technical specifications foreseen in the Regulation. Their role is to provide methods for assessing the performance of construction products for the relevant essential mandated characteristics.

The Regulation places the EADs at the level of technical specification with the same status as harmonised European standards (hENs). EADs references have to be published in the Official Journal of the European Union and by Members States in their official language. Their 5 year-period validity (art 8.4 CPD) has also disappeared in the current Regulation.

Hence, even when a construction product is covered by a harmonised standard, the manufacturer may ask for a European Technical Assessment, issued on the basis of an EAD for assessing the product performances, which gives European Assessment Document the status of alternative and complementary instrument to the harmonised standards.

We fully support the voluntary nature of European standards that prevail also under new approach directives, However, giving alternative possibilities equal status in the Regulation itself, which new approach directives do not do, gives the impression that harmonization is not consequently aimed at by means of the proposed Regulation. This might lead some to question the purpose of regulating construction products at the EU level. Orgalime believes that this is not an adequate solution and doubts that this is the intention of the European Commission,.

The new technical specification EAD, introduced by the Regulation, could be an important tool to obtain the assessment of essential characteristics of an innovative construction product for which specific applicable harmonised standards do not exist, reducing time and cost of placing the product on the market.

Orgalime would like to see a full recognition of all test methods throughout the EU through harmonised standards for all products which are not covered by ETAG's or CUAP's under the existing CPD.. Giving to the manufacturer the choice for the technical specification for the product assessment, the proposed Regulation foresees the possibility to carry out an ETA even when a harmonised standard exists for the same product. Orgalime's opinion is that the consequent new EAD has to be issued taking into consideration the harmonised test methods already included into the standard in order to avoid differences on evaluating construction products with similar characteristics and to achieve the objective to set out a common technical language when placing products on the market. Provided this is achieved, Orgalime believes that EADs should be the right tool for construction products which are not falling into the scope of a published harmonised European standard. If this is not done there could be products complying with a harmonized European standard and other similar products complying with a European Assessment Document

which specify different compliance criteria. This would not assist the primary objective of removing barriers to trade from within the EU.

An effective surveillance of the application of the whole procedure for preparing and adopting a new European Assessment document (EAD) is also necessary in order to prevent that a new EAD could be elaborated for products which are already covered by existing EADs. It should be made clearer also, that EAD's shall be based on existing ETAG's or CUAP's for the same family of products.

Given the investment that the European Commission has already put into the construction products' sector and the time that work on harmonized standards and ETAG's or CUAP's has taken, we feel that the proposed Regulation should not lead to an unnecessary revision of standards and guidelines that have already been adopted under the existing directive. Harmonized standards which have already been developed by European standards organizations on the basis of mandates given by the Commission should not be unnecessarily revised only as a consequence of the new Regulation.

Conformity assessment and test methods

The revision of the CPD should be a step forward in better regulation and bring coherence and simplicity in the procedures of assessment and verification of constancy of the declared performances to various aspects of Community legislation (safety, environment protection, energy efficiency, etc) which apply to the same product.

This is particularly important for SMEs and manufacturers of small series products, where there is a clear need to keep control of the costs of testing without lowering the protection offered by standards.

The draft Regulation introduces simplified procedures which can have important effects in the reduction of the cost of products placed on the market, especially for specific sectors characterized by the presence of a large number of small enterprises (even crafts) producing a small series of products; we very much welcome this as far as the safety of products and the fair competition between manufacturers of different sizes and importers are not affected.

Among these simplified procedures, the introduction of the concepts of Sharing TT, cascading TT, Without Testing and Without Further Testing into the Regulation is a step into the right direction since they will enhance simplification and contribute to reducing unnecessary administrative burdens for manufacturers.

The new Regulation introduces for micro – enterprises (SMEs with less than 10 employees) a simplified access to CE marking. In this sense micro-enterprises are allowed to replace the established assessment and verification of constancy of the declared performances procedure and type testing by a simplified technical documentation allowing the use of less onerous tools to assess performances.

While this is an innovate approach which can bring benefits to the smallest enterprises, Orgalime believes that such an approach may be questionable in particular for health and safety reasons because it establishes discrimination between competing companies and may be subject to abuse by unscrupulous operators. In particular it should be prevented that these simplifications might be misused by companies which import products from outside the EU or by subsidiaries of bigger companies, reducing the credibility and liability of the Declaration of Performances. Adequate clarification should also be given as to the case, when a given micro-enterprise would grow above

10 employees after their products have passed the simplified procedure. For these reasons, in the case of safety and similar legislation, we are against lesser requirements for SME's.

In the field of conformity assessment, there are a number of open questions, which would probably need further clarification, including the following:

- Regarding the simplification foreseen for “individual products”: the notion of “individual product” should be better defined
- Regarding the foreseen “geographical limited” ETAs should be carefully implemented. Experience with market surveillance raises the concern that CE-marking based on such an ETAs might be used on market outside this given “geographical area”. Since in most cases construction products are not directly sold by the manufacturer to the end user, when a construction product passes several distribution steps, such information as geographical limitations might get lost, leading to unfair competition, extensive market surveillance and possible safety risks. Therefore, the relation of the “geographical limitation” in connection with the validity of the CE-marking should be more clearly described. In that respect, an official list of abbreviations for countries and regions could be helpful.
- And the requirement of the original directive, that the ‘least onerous (conformity assessment) procedure consistent with safety’ should continue to be all that is required. In most cases this should be module A, manufacturers declaration

