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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 and would welcome reliable and harmonised EU legislation in the field of construction products.

Orgalime welcomes the European Commission proposal to have a Regulation for construction products rather than a directive in order to avoid different national implementation and interpretations, something that 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.

While the proposed Regulation clearly does not follow the “new approach” legislative technique, Orgalime would nevertheless appreciate seeing a proposal which follows as closely as possible the principles laid down in the “new approach” package for the accreditation and market surveillance aspects.

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 a new Regulation laying down harmonised conditions for placing on the market and using construction products, with the major purpose having a regulatory tool which could efficiently support the development of the European single market.

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).

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 on the draft Regulation's clear objective to introduce the use of a common technical language throughout the EU when dealing with construction products.

However, at the present stage the draft Regulation is, in our opinion, not clear enough. A study of the text by industry experts has led to a very large number of questions being raised with a view to clarifying, interpreting and as regards the overall cohesion of the text. In order to provide legal certainty it would be therefore worthwhile to spend some more time on certain details.

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, which could be clearly understood by such SMEs.

Orgalime therefore proposes to re-draft the text Regulation in order to render it clearer. 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 Approach System and the simplified procedures could, in our opinion, be better explained and defined.

Marking: the meaning of CE marking

In the context of new draft Regulation on Construction Product the meaning of CE marking is very specific: It is the placing on the market of the construction product only if accompanied with the relevant information about the product performances (Declaration of Performances). The draft Regulation establishes that the placing on the market of Construction Products, which are under the scope of a harmonised European Standard or a European Technical Assessment, shall be accompanied by a declaration of the performances of the product regarding relevant essential characteristics.

In accordance with the draft 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 draft 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.

Orgalime believes that:

- As a result a construction product could be placed on the market for the same purpose with or without CE marking, introducing a possible distortion of competition.
- The Regulation should clearly define that if a characteristic of a construction product has an influence on at least one of the basic requirements of construction works, then it should bear the CE marking and be accompanied by the Declaration of performances including at least these performances assessment values.
- In general and given the fact that the meaning and the credibility of the CE marking is one of the major problems of the system at present¹ and also that re-establishing

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

clarity is one of the key aims of the revision, the Commission should use utmost care 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. The first and more evident manner to do it is by rendering the legal text clearer than it is at present.

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 draft Regulation places the EAD at the level of technical specification with the same status as harmonised European standards (hENs). EAD references have to be published in the Official Journal of the European Union and published by Member 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 use the EAD for assessing the product performances, which gives European Assessment Document the status of alternative and complementary instrument to the harmonised standards.

This renders hENs voluntary and gives the impression that harmonization is not consequently aimed at by means of the proposed Regulation, which might lead some to question the purpose of regulating construction products at the EU level.

As we doubt that this is the intention of the European Commission Orgalime believes that this is not an adequate solution.

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. But Orgalime believes that EADs should be reserved for construction products which are not falling into the scope of a published harmonised European standard in order to avoid differences on evaluating construction products with similar characteristics (giving to the manufacturer the choice for the technical specification for the product assessment). 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.

Given the investment that the European Commission has already put into the construction products' sector and the time work on harmonized standards has taken, we feel that the proposed Regulation should not lead to an unnecessary revision of standards that have been already adopted under the existing directive should maintain their present legal status. Harmonised standards which have been already 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 conformity assessment 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.

Orgalime would like to see a full recognition of all test methods throughout the EU through harmonised 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.

Among these simplified procedures, the introduction of the concepts of Sharing TT and cascading TT 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 applicable attestation of conformity procedure and type testing by a simplified technical documentation allowing the use of less onerous tools to assess performances.

Orgalime believes that while this is an innovative approach, which can bring benefits to the smallest enterprises, we believe 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. 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.

As proposed in the draft Regulation for construction products the present ETAGs and CUAPs disappear and are replaced by European Assessment Documents (EADs). However, it should be ensured that not only single manufacturers, but also a relevant group of manufacturers can provide input to the EAD when they are drafted, like this is the case at present. Moreover, in the present directive, each ETA based on an ETAG or a CUAP procedure has to be adopted by each national approval body coordinated by EOTA. This requirement should be maintained.

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” EADs it 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 sold by the manufacturer directly 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.