

REFIT Platform Opinion

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REFIT Platform Opinion on the submission by the Danish Business Forum on the Construction Products Regulation

The REFIT Platform has considered the issue raised by the Danish Business Forum concerning overlapping and repetitive requirements of different EU regulatory measures on construction products and the need for a set of standards as the basis for CE marking and recommends that the Commission gives priority consideration to the problems of overlapping and repetitive requirements and the need for clear and full European standards covering all requirements for construction products in the ongoing Fitness Check of the Construction sector.

The detailed recommendations of the Stakeholder Group and Government group are provided within the main body of the Opinion.

Detailed Opinion

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1 Submission XII.8a by the Danish Business Forum (DBF)

Challenge

Manufacturers of construction materials have to live up to requirements regarding energy performance, environmental impact, safety, health, etc. These requirements stem from various pieces of EU regulation, EU labelling schemes etc. that sometimes overlap (e.g. Eco Design Directive, Directive on the energy performance of buildings, Construction Product Regulation, Directive on energy efficiency, Communication on resource efficiency opportunities in the building sector, and the Product Environmental Footprint).

As a consequence of overlap, manufacturers of construction materials are experiencing two major challenges when trying to comply with the legislation: Manufacture must calculate and document the same characteristics several times using different methods and the sheer amount of regulation is burdensome for businesses. Both challenges lead to unnecessarily high compliance costs.

Suggestion

Requirements for construction materials should be based on the same standards and the many different EU policies should be reduced and combined. Future regulation of construction materials should be based on the harmonised product standards and the standard for environmental product declaration (EDP).

The standard for environmental product declaration for construction products (EN 15804) should be the foundation for future environmental product declarations used for CE marking of construction products and the future system should be based on an already developed system.

2 Policy context

The Construction Products Regulation (EU) No 305/2011 (the CPR) creates a harmonised framework of construction products in accordance with harmonised technical specifications (either mandatory standards or ad-request European Assessment Documents) and for CE marking these products. It aims to remove technical barriers in the field of construction products and simplify construction product performance assessment procedures.

The harmonised technical specifications developed under the regulation may cover seven requirements for buildings and civil engineering works, including safety, health, environment, sustainability, etc.

The European harmonised standards (hENs) developed under the framework of the regulation are mandatory and define common assessment methods for certain construction products. They provide the means for demonstrating the fulfilment of regulatory requirements at EU, national and even regional or local level (including all legislation mentioned above by the Danish Business Forum and more). A recent judgment of the European Court of Justice (in case C-100/13) confirms that the system created under the CPR is to be considered exhaustive. In practice, this excludes the use of any other regulatory instruments for the same purposes, i.e. the assessment of performance within the sphere of the basic requirements for construction works, as defined in Annex I to the CPR.

Where the performance of certain construction products is governed by rules set in place in

or by means of several mandatory EU legislative measures (for example, under the CPR and the Ecodesign or the Machinery Directives), the relevant hENs are thus to be established in or by means of these different EU measures. Where this is still not the case, it shall be taken care of in the future. This is necessary to ensure legal certainty and consistency.

EN 15804 is a voluntary standard, not based on any EU legislation. It provides the framework for developing Product Category Rules (PCRs) by listing indicators for environmental performance (e.g.: CO2 emissions, use of primary resources like water) and guidance on which technical units (e.g. tonnes, W/m²K) should be used to describe the environmental performance. It is a horizontal approach which has not yet been translated into mandatory standards for particular products. EN 15804 only provides the framework for developing Environmental Product Declarations (EPD) The concept of European Product Environmental Footprints (PEFs) is also a voluntary project, not imposing any legal obligations. Current pilot projects for products potentially covered by PEFs have demonstrated the room for improvement in EN 15804 in the fields of assessing recycling potential and data quality.

Current situation

The Commission is currently preparing a mandate for the European Standardisation bodies to improve the quality of EN 15804. This should allow the future inclusion of relevant elements from EN 15804 into product specific standards under the CPR. The revised standard is to cover requirements set in EU policies and laws; mandates for amending harmonised European product standards would consequently be required.

The Commission is currently undertaking an evaluation (Fitness Check on the Construction Sector) of different pieces of EU legislation affecting the construction sector. One of the objectives of this evaluation is to identify possible regulatory overlaps and inconsistencies. The results of the evaluation are currently planned for Q1/Q2 2017.

3 Opinion of the REFIT Platform

3.1 Considerations of the REFIT Platform Stakeholder group

Evidence of regulatory burden

The construction sector is governed by a large number of – possibly insufficiently coordinated regulations, e.g. Eco Design Directive, Directive on the energy performance of buildings, Construction Product Regulation, Directive on energy efficiency, Communication on resource efficiency opportunities in the building sector, the Product Environmental Footprint, and Regulation 1025/2012 on European standardization.

This is documented in the EESC opinion of 20131 and a joint position paper issued by the European Construction Industry Federation (FIEC)² and Construction Products Europe (CPE)³

¹EESC Opinion on "Strategy for the sustainable competitiveness of the construction sector and its enterprises" (April 2013): <http://www.eesc.europa.eu/?i=portal.en.ccmi-opinions.25196>

of 19 April 2016. This factor, coupled with the predominantly local business structure, leads to considerable administrative burden and to a possibly high fragmentation of the sustainable construction market.

Manufacturers of construction materials have to live up to requirements regarding energy performance, environmental impact, safety, health, etc., which stem from various pieces of regulation that sometimes overlap.

As a consequence, manufacturers of construction products are experiencing two major challenges when trying to comply with the legislation: Manufacturers must calculate and document the same characteristics several times using different methods. This introduces, additional complexity and cost in the implementation of the different EU legislative measures that applies to construction products, and may even jeopardise the achievement of policy targets”. These overlaps are also reflected in the requests for European harmonised standards, supporting these legislative measures.

A concrete example refers to *solid fuel burning heating appliances*, which fall under the scope of the Construction Products Regulation. These products are also covered for the same aspect by different requirements under the Ecodesign Directive. Commission Regulation (EU) 2015/1185⁴ implementing Ecodesign for this kind of product defines three measurement methods to be used to assess the particulate emissions from solid fuel local space heaters. It should be noted that, in the application of these regulations, different conformity assessment procedures apply as well.

The current implementation of the Construction Products Regulation (EU) N° 305/2011 is creating additional problems introducing further burdens and contradictions, in particular with Regulation (EU) N° 1025/2012 on European Standardisation, regarding the voluntary nature of European Standards:

- The procedures for introducing classes and thresholds (one of the most important and useful features for all the stakeholders in the construction chain) in harmonised standards are unnecessarily burdensome. As a result, when drafting standards experts have to choose between removing needed classes and thresholds or facing a long lasting bureaucratic process (usually years) to implement technical agreements. This limits the practical use of the standards and reduces the market potential to address innovation and private agreements outside the regulated essential characteristics.
- Drafting harmonised European standards is unnecessarily complex due to regulatory constraints. Furthermore, when they are finally published, there is a long delay before they can be used by the construction sector actors, due to a heavy and not well-defined administrative process.

² 2016-04-19 FIEC-CPE joint position on CPR: <http://www.fiec.eu/en/cust/documentrequest.aspx?UID=64ea00a5-eac8-45a4-bf73-1f4e09c4b138>

³ 2016-04-19 FIEC-CPE joint position on CPR: <http://www.construction-products.eu/Documents/Document/20160422061854-Standardisation.pdf>

⁴ See annex III of Commission Regulation (EU) 2015/1185 of 24 April 2015 implementing Directive 2009/125/EC with regard to eco-design requirements for solid fuel local space heaters: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32015R1185>

Finally, in the EESC Opinion (2013) on Construction products the EESC *"feels that the European system of construction product standardisation needs to be bolstered, by supporting standardisation bodies and incorporating into standards the aspects of work safety, product use and disposal."*

While recognising the value of the objectives in the different applicable regulations, a simple high-quality legal framework for companies is a key factor for competitiveness, development and employment. Simplification of the regulatory environment is crucial to encouraging innovation and reducing the administrative burden stemming from regulatory requirements, reducing the total volume of the EU acquis and promoting the transition to more flexible regulatory approaches.

Recommendations to the EC:

It is essential to ensure simplicity, stability and coherence of the EU regulatory framework as a crucial factor for both the internal and external competitiveness of the construction sector in Europe⁵, in particular taking into account the impact for SMEs.

We recommend that the European Commission, in cooperation/consultation with relevant stakeholders and the European Standardisation Organizations, to take the following actions:

- Align Articles 6 and 17 of the Construction Products Regulation (EU) No 305/2011 with Article 2 of Regulation (EU) N 1025/2012 on European Standardization to clarify that standards are voluntary.
- Ensure that the requirements of the Eco Design Directive, Energy performance of buildings Directive, Energy efficiency Directive, Construction Products Regulation and any future requirement developed in the framework of the Communication on resource efficiency opportunities in the building sector or the Product Environmental Footprint are addressed as far as possible through a single declaration (e.g. by requesting the European Standardization Organizations to integrate the Environmental Product Footprint in EN 15804).
- Ensure that EC guidance and opinions on the application of CPR have a clear legal status and transparency.
- Introduce an obligation for Member States to systematically communicate to the European Commission new or amended legal construction product requirements, classifications and thresholds used, permitting the European Commission to ensure standardisation requests reflect Member States' regulatory needs;
- Allow that European harmonised standards for construction products include all relevant information (not only addressing legal requirements) necessary for construction product users and with the reliability that they reflect contractors' needs

⁵ EESC Opinion on "Strategy for the sustainable competitiveness of the construction sector and its enterprises" (April 2013): <http://www.eesc.europa.eu/?i=portal.en.ccmi-opinions.25196>

(this particularly relevant for SMEs)

- The above recommendations shall be incorporated to the Fitness check exercise since their implementation will maximise the benefits that the European regulatory framework may offer, ensuring predictability, stability transparency and avoiding unnecessary cost and burden.

As the European Commission has launched a Fitness check (to be completed by Q1/Q2 2017) *that will pay particular attention to identifying any synergies (e.g. improved performance, simplification, lower costs, reduced burdens) or inefficiencies (e.g. excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures) within the group of legislative texts assessed, and help to identify the cumulative impact of the respective interventions, covering both costs and benefits on the construction sector*

- These recommendations shall also be aligned with the pilot project agreed under the Joint Initiative on standardization:” Enhance the support of standardisation to the Construction Products Regulation (CPR) “[COM\(2016\)358 final](#)

3.2 Considerations of the REFIT Platform Government group

The Danish Business Forum (DBF) has successfully brought up a problem of overlapping legislation and the problems it creates to manufacturers. Problems arise when there is a harmonised product standard (hEN) relating to Construction Products Regulation (CPR) (EU) No 305/2011 and the same product has to be CE marked also according to some other directive or regulation such as Machinery directive 2006/42/EC, or Ecodesign directive 2009/125/EC.

We share the view of DBF that there is a real potential to “Lighten the Load” and reduce the administrative burden set for the manufacturers. That could be done through simplification of the requirements to declare characteristics according to multiple directives.

The idea of declaring everything only once is agreeable. Unfortunately the suggestion made by DBF does not offer a durable solution. At the moment CPR is an exception regarding to voluntary use of harmonised standards. According to CPR the use of harmonised standards is mandatory and therefore the manufacturer is obliged to declare characteristics using the DoP of CPR, even though he would also have declared something using methods in other directives.

Therefore in order to cut down the burden on manufacturers, everything should be declared according to the CPR in case of overlapping legislation e.g. Ecodesign directive. The harmonised standards drafted according to the CPR should be elaborated in a way that the hENs could be exhaustive in practice and include all aspects that are needed for the CE marking. This would be a sustainable solution in the long run.

Considering the original submission and the policy context, one member state questions the appropriateness of the Stakeholder group recommendation to “*Align Articles 6 and 17 of the Construction Products Regulation (EU) No 305/2011 with Article 2 of Regulation (EU) N 1025/2012 on European Standardization to clarify that standards are voluntary.*” Changing the status of harmonised standards (hENs) developed under the CPR from mandatory to

voluntary could severely hamper the aim and effectiveness of the CPR.

Recommendations

The Commission is recommended to investigate the overlapping legislation in closer detail, in particular in relation to the CPR. This should be a key element of the fitness check to be carried out by the Commission. It is important that the Commission takes measures to avoid administrative burdens on manufacturers caused by unnecessary additional obligations of horizontal legislation. The use of the harmonised standards relating to the CPR to declare the performance of products in case of overlapping legislation could offer a possible solution to cut down the burden on manufacturers.

Furthermore, it is important to guarantee the equal treatment of Member States as well as other stakeholders in the enforcement of the CPR.