



BAUINDUSTRIE

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JOINT POSITION

ON THE REVISION

OF THE CONSTRUCTION PRODUCTS REGULATION

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Zentralverband des Deutschen Baugewerbes e.V. (www.zdb.de)

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INTRODUCTION

The 30th of March 2022, after a consultation process that spanned over more than two years, the European Commission released its proposal for a revised Construction Products Regulation. The “*proposal for a regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011*” is a key piece of legislation, not only for the manufacturers of construction products, but also for all the construction chain, especially construction companies.

The revision of the Construction Products Regulation shall, according to the European Commission, ensure a smooth functioning of the Single Market and the free movement of construction products, address sustainability performances and make sure that the construction sector contributes to the Green Deal and the digital transformation.

From the perspective of the construction sector, the main goal of the Construction Products Regulation should be to create a legal framework that can be easily implemented, used in practice, is legally secure, user-friendly, and enables the safe use of construction products and their placing on the market throughout Europe.

The German and French construction federations welcome the ambition of the European Commission. However, they are highly concerned that the current proposal fails to achieve its goal and leads the sector into an unprecedented crisis. Far-reaching changes are necessary. Such technical constraints and complexities of legal interpretation on construction companies will not allow an efficient circulation of construction products in the Single market, in line with the Green Deal, while hampering the urgent national and European actions towards environmental and climatic building renovations and infrastructures adaptations.

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POSITION

2.1. A HARMFUL ENLARGEMENT OF THE REGULATION'S SCOPE TO CONTRACTORS

The construction products regulation aims at legal clarity about the technical characteristics of a construction product placed and traded on the market. Contractors are not manufacturers, nor distributors. Contractors who make pieces of works (e.g. joiners, metal craftsmen, masons, water and wastewater networks contractors, housing contractors, earth workers, road constructors, etc.) do not manufacture products to be placed on the market. Thus, the professional use of such products or accessories i.e. for installation, assembly or processing on site for immediate incorporation into construction is a service. Contractors undertake construction works and are legally liable, qualified and trained, fully insured and contractually responsible for this project.

Contractors are constantly innovating. They already, like all other sectors, implement digital solutions and robotics in their activities. This does not make them more manufacturers than before. They are only living in the present and innovating for the future.

The European Commission lays down that “*construction products manufactured on the construction site for immediate incorporation into the construction works are subject to the same rules as other construction products*” in recital (10). Moreover, articles 1 and 2 refer to the coverage by the CPR of direct installation and construction products made on a construction site. Some exemptions are formulated in Article 10 for drawing up a declaration of performance, such as for individually manufactured or custom-made products. Whereas Article 17 states that the “*CE marking shall be affixed before the product is placed on the market or directly installed into a construction work.*”

CE marking has neither relevance nor *raison d'être* in the case of product manufactured on the construction site for direct incorporation into a construction work in the framework of a works contract.

It would only represent a useless and additional burden. Contractors are already, and have been for a very long time, legally responsible for the work they carry out and, consequently, for the performance of the materials, products, and systems they use, which the Commission cannot ignore.

This approach is problematic on multiple aspects. Construction companies will have to prove that they are out of scope by meeting the requirements for the exemptions in Art. 10. In addition, exemptions rely on Member States interpretation, which may lead to confusion, arbitrariness and, sometimes, unfairness. Furthermore, innovative developments in construction in the future might not fall under the exemptions. Construction will become more automated, industrialized, digital, environmentally friendly, and innovative. And, in that regard, the new CPR can be hampering innovations such as automation of construction tasks or modular construction on the construction site, as their output will need to be CE marked by contractors using these methods more and more in the future.

German and French construction federations call for:

- ➔ **A clear delimitation between construction products and construction works and services.**
- ➔ **No extension of the scope beyond the placing on the market of construction products.**
- ➔ **Affordable and usable simplified measures while ensuring the same quality.**

2.2. A VERY COMPLEX TEXT

The European Commission's proposal for a revised Construction Products Regulation contains 94 articles, 7 annexes and over 70 definitions. Although it claims to regulate aspects of the entire value chain in the construction sector for a clearer and simpler regulation, this draft is even more complex and less clear than the current CPR. In this context, it is highly questionable whether the future regulation could be properly understood and applied by the legal subjects in the construction sector, which are characterized by a great heterogeneity.

One example of the increased complexity is the introduction of regulating public procurement by the CPR. The introduction of criteria for green public procurement adds complexity as well as the extension towards public tenders in Art. 7.

Moreover, the planned transition period until 2045, with new standards published and applicable step by step, will create further complexity as two legal system with regards to construction products will coexist for a long period. A further addition to this complexity is the construct of establishing two different

standards for one product, one voluntary that is linked to the Declaration of Conformity and another mandatory with the Declaration of Performance.

German and French construction federations call for:

- ➔ **The limitation of the scope of the regulation to critically reduce the complexity.**
- ➔ **A CPR focussed on its key concept to declare performances with a European technical language (DoP) and the conformity of products (DoC) where is relevant for grounds of health, safety or protection of the environment.**
- ➔ **Focus on products that are marketed for the first time.**
- ➔ **Not regulating matters of public procurement in the CPR.**

2.3. A BURDENSOME VISION OF CIRCULAR ECONOMY AND ENVIRONMENTAL ASPECTS

The European Commission proposes a complicated system, in which amongst others a Declaration of Performance for reused products needs to be made by the economic operators to kick-off the circular economy in the construction sector. Whereas the construction sector agrees and strongly supports the need to increase the circularity of construction products and improve the circular economy in the sector, we fear that the administrative burden become higher so that, in the end, re-use and recycling will be decreased in practice.

German and French construction federations ask for:

- ➔ **A comprehensive approach towards circular economy in the construction sector that deals with waste criteria, standards, procurement criteria and market creation for secondary materials;**
- ➔ **A functioning business model for companies as regards circular economy;**
- ➔ **A lean, manageable and affordable framework to facilitate reuse and recycling of construction products.**
- ➔ **Achieving circularity in the construction sector by a separate legal act outside of the scope of the CPR**
- ➔ **Given the spike of prices in the construction sector, Article 22 should be carefully reconsidered in order to prevent any further price pressure on construction products.**

2.4. NEW DEFINITIONS REINFORCING LEGAL UNCERTAINTY

The new Construction Products Regulation creates an unprecedented number of new definitions. Whilst trying to establish comprehensive definitions and legal certainty, some definitions remain unclear. For instance, definitions like Article 3 (52) "*non-series process*" are open to interpretation. The concept of automated techniques and assembly lines is context dependent and needs to be clarified to give the meaning of "*non-series*". Also, other definitions require more clarity such as "product presenting a risk" and "double use product".

Moreover, the definitions related to the circular economy as "used product" can come into conflict with other legislation on waste.

German and French construction federations ask to:

- **Revise the above-mentioned definitions and ensure that they are clearly understood and delineated.**
- **Add the definitions of “3D-printing”, “civil engineering works” (the proposal for a revised CPR, defining only construction works and buildings), and the “authorised representative” (in reference to the regulation 2019/1020 on Market surveillance).**

2.6. AN IMPRECISE HARMONIZED ZONE

The harmonized zone established by Article 7 can be the key to achieving that all potential national requirements towards construction products are addressed when designed correctly. A well-functioning mechanism between the potential requirements on the national level, its collection and processing on the European level, so that currently existing gaps that lead to legal uncertainty do not occur in the future. The process outlined under Article 7 (4, 5) needs to be an efficient tool for member states to close regulatory gaps in standards.

German and French construction federations ask to:

- ➔ **Clarify the meaning of the harmonised zone.**
- ➔ **Establish criteria for national regulatory needs that must be considered by the European Commission and covered by the corresponding harmonized technical specifications.**
- ➔ **Establish a formalized procedure with a clear timeline for the notification of national regulatory needs by the Member States, including deadlines within which the EU Commission must respond.**
- ➔ **Possibility for a member state to adopt national measures in absence of reaction from the European Commission following the notification of justified regulatory needs.**

2.5. AN EXTENDED USE OF DELEGATED ACTS

The proposal of the European Commission foresees the use of delegated acts widely. Article 87 lists the empowerments of the European Commission for delegated acts covering a wide area, as for example under Articles 4 (3,4 and 5) and 5 (2 and 3).

The wide use of delegated acts creates legal uncertainty for the construction value chain, since the CPR could be modified, at any time and in many areas, by the European Commission. By depriving the actors of a certain visibility on the application of the text to the various construction products, the sector will have difficulty anticipating and committing the investments necessary for its development and its possible adaptation to the new text. Furthermore, the wide use of delegated act does not allow the same level of involvement of all relevant stakeholders. Especially, industry stakeholders are worrying that their voice shall not be heard accordingly in the future CPR, while it is currently reflected in the standardisation system,

German and French construction federations ask to:

- ➔ **Revise the field of delegated acts.**
- ➔ **Critically review the extent to which delegated acts are used with the target to reduce their applicability. From the perspective of the construction industry, proposals for delegated acts to be deleted are: Article 22 (5) on the traffic light labelling, Art. 84 (1) on sustainable procurement practices and Art. 90 on sanctions.**

2.6. A NECESSARY IMPROVEMENT OF EUROPEAN STANDARDISATION

The current draft of the Construction Products Regulation does not contain any improvements to resolve the current backlog of standards. Even if the new Construction Products Regulation should provide for a process to include all Member States products requirements, a central challenge in the standardization system remains. The standardization process and the cooperation between CEN/CENELEC and the EU Commission are not improved and only a circumvention of the problem by delegated acts is foreseen.

The only solution proposed by the Commission is a deviation of the central problem with the adoption of delegated acts if CEN does not deliver standards according to the mandate given by the European Commission and in a timely manner. Considering the proposed timeline for the new CPR's implementation, which shall be completed by 2045, transitional regulations are urgently required to overcome the backlog in standardisation.

German and French construction federations ask for:

- ➔ **The urgent reduction of the current backlog of non-cited standards and an immediate solution for the construction sector.**
- ➔ **A clearly defined process between the EU Commission and the standardisation organisations on European standards. This includes up to date and clearly defined standardisation requests and acceptance criteria defined by the European Commission.**
- ➔ **An improved inclusivity and lower costs of participation in the standardisation process for construction companies.**

2.7. THE USE OF DIGITALISATION AS A LEVERAGE TOOL

The proposal for the CPR makes first steps into the digitalisation of related documents and processes. The Declaration of Performance can be provided electronically via Permalinks or in a digital format. Further, a data base for relevant data on construction products, built on the digital product passport, should be established. However, a far more ambitious approach is needed to reap the benefits of digitalisation in construction.

German and French construction federations ask for:

- ➔ **The introduction of a uniform and machine-readable format for the relevant information (DoP, DoC). The current requirements in Article 15 are not sufficient. Only machine-readable formats would open the possibility for users to carry out automatic conformity checks with the help of an application. In this way, a user could in the future digitally read in the DoP/DoC and compare it via an application to the regulations of a Member State.**
- ➔ **The data base needs to be built in a “fit-for-use” way by protecting and enforcing industrial and intellectual property rights of received data, in order to fulfill the preconditions for any future conformity checks on the use of construction products.**