

## **Position of Deutsche Bauchemie on the Construction Products Regulation (Regulation (EU) No 305/2011)**

### **The current situation**

The implementation of the former Construction Products Directive and today's Construction Products Regulation (CPR) is essentially based on CEN standardisation and the resulting harmonised product standards. The number of harmonised CEN product standards has grown over many years and meanwhile totals around 450. This stock of harmonised standards forms the proverbial backbone of the single market for construction products.

Harmonised CEN product standards are a central nucleus:

- They are used by manufacturers to declare the performance of their products in a common European language.
- The Member States take them as reference points to establish their national requirements to construction products.
- Planners and architects resort to them in Europe-wide tendering to describe the necessary performance of the construction products to be used.

In order to fill any remaining gaps, to repair identified mistakes and to ensure the necessary adaptation to technical and regulatory progress, existing harmonised standards must be regularly revised and new harmonised standards must be created. This means that the total stock of harmonised standards is in a constant process of development and growth.

The standstill in the harmonised standardisation of construction products is due to formal reasons (e.g. ECJ judgement C-613/14 James Elliott). It has brought the much needed development to a standstill and has become a serious threat to the single market. Short-term measures are urgently needed to restart the stagnant standardisation process. The huge backlog of technically revised standards, the harmonisation of which has been blocked by the Commission due to formal errors, impairs technical progress and must be cleared as soon as possible. The necessary measures cannot wait to become effective only under a reviewed CPR which is expected in a few years' time. Meanwhile, the single market would be massively damaged and no longer function smoothly. A massive hindrance to the necessary adaptation to technical progress and the continuation of the uncoordinated evasion on the EOTA route would be the consequence.

Irrespective of a possible CPR review, the following measures are immediately necessary to get the standardisation process going again:

- Existing mandates must be consolidated, supplemented where necessary and transformed into clear-cut standardisation requests. Within this process, the regulatory needs of the Member States should be taken into account in such a way that the harmonised product standards, which are developed on this basis, do not contain any gaps and thus render such national regulatory needs obsolete from the perspective of the Member States. The process of identifying any standardisation required and preparing the corresponding standardisation requests must be optimised to the extent that it is completed within a reasonably short period of time.

- The competent CEN committees need straightforward and detailed guidance and clear criteria for the development of harmonised standards. These must be accepted and applied by all parties involved (in particular by COM and CEN). The system of HAS Consultants should support the process. The available results of the joint initiative on standardisation, action 5 provide a good basis for the necessary guidance and criteria.
- CEN should provide a fast-track procedure for the revision of harmonised product standards so that identified errors can be rectified quickly. Furthermore, CEN should establish a central quality assurance procedure to make sure that standards submitted to the European Commission for publication in the OJEU comply with the formal requirements. Harmonised standards introduced in the past through publication in the OJEU should be preserved. They must not be withdrawn without replacement but only replaced by a revised version of the corresponding harmonised standard.

### **Review of the CPR: Requirements to the future legal framework**

The European Commission has analysed the existing CPR and the identified implementation problems. The Commission has come to the conclusion that a fundamental review of the CPR is necessary to cope with the current problems and identified system errors. Deutsche Bauchemie would comment as follows on the options presented by the Commission for discussion.

- **The existing single market for construction products must be fully maintained**

The single market built up over the last decades on the basis of the Construction Products Directive (CPD) and the Construction Products Regulation (CPR) must be fully maintained. In particular, the stock of some 450 harmonised product standards should be protected, with supplements and repairs to be made where required.

- In the end, all three options put up for discussion by the Commission for a stronger focus of the CPR (option C) would lead to a partial dismantling of the existing single market. Construction products already harmonised (product categories) would be de-harmonised again. This is not necessary, would weaken the single market and adversely affect all stakeholders in the construction sector. Against this background, the proposed measures for a stronger focus of the CPR are rejected.
- In order to take into account the requirements of the Member States, the Commission proposes a sharp borderline between the harmonised and non-harmonised areas of construction products. Member States would then have the possibility, after prior notification and established standstill periods, to set national requirements for "partly-harmonised" construction products in the non-harmonised area. This comes with the departure from the basic principle of "exhaustiveness", which would also cause a dismantling of the achieved single market. The goal must remain to fully identify all relevant essential characteristics of a construction product with an involvement of the Member States, to document them in a clear standardisation request and to harmonise them on this basis – by way of a harmonised product standard. The option of "partial harmonisation" and the division into harmonised and non-harmonised areas would bring the entire harmonisation process to a halt and constitute a step backwards in the efforts to eliminate European trade barriers.

- CEN standardisation must remain the usual procedure for harmonised technical specifications

The Commission holds that CEN standardisation has not proven its worth as a basis for harmonised technical specifications. Therefore, the Commission tends not to follow the route of CEN any longer but to introduce harmonised technical specifications itself. That would be done in delegated acts or implementing acts.

Deutsche Bauchemie takes the view that a phased procedure should be applied. The introduction of harmonized product standards developed by CEN should remain the normal case. In justified exceptional cases, the introduction of harmonized technical specifications could also be possible in the form of delegated acts or implementing acts.

- CEN product standards and their introduction as harmonised standards by the European Commission must remain the norm. Only this process ensures that the necessary technical expertise is gathered and included and that the parties involved (manufacturers incl. SMEs, testing bodies, TABs) are involved appropriately. These are important prerequisites for ensuring that the resulting regulations have the necessary practical suitability.

Implementing the measures described at the beginning of this paper, which are necessary under the existing CPR to clear the current backlog of non-introduced product standards, is also an important prerequisite for the smooth functioning of standardisation under a reviewed CPR.

Only in exceptional cases, which are subject to criteria, should the European Commission be empowered to introduce itself harmonised technical specifications by means of delegated acts or implementing acts. For this, clear criteria should be laid down which limit this option to cases where CEN has not carried out the relevant standardisation mandate from the European Commission or has not done so within a reasonable period of time. Furthermore, the European Commission could become active in this way if serious danger to the safety of buildings or to human health and the environment is identified and the necessary measures cannot be taken fast enough through CEN.

A phased approach could look as follows:

- With a strong involvement of the Member States, the European Commission prepares standardisation requests which are then given to CEN. The involvement of the Member States must ensure that the standardisation requests are complete and thus render the need for national regulation obsolete.
- Based on the standardisation requests, CEN develops harmonised product standards which are harmonised by the European Commission through the OJEU.
- Should CEN not carry out the standardisation request or not do so within a reasonable period of time, the European Commission is empowered to fill the arising gap with a harmonised technical specification which is introduced by a delegated act or implementing act.

- Harmonised procedure for environmental impacts of construction products (EPD, EN 15804)

The "Green Deal" and the "Circular Economy" action plan of the European Commission call, inter alia, to use the upcoming CPR review to adequately address the sustainability and circular economy aspects of construction products. Deutsche Bauchemie supports these efforts in principle.

The key instrument must be a uniform method for determining and communicating the environmental impacts of construction products during their entire life cycle. In this respect, environmental product declarations (EPDs) according to EN 15804 have proven their worth in the construction sector for many years. EPDs are widely used and available for many construction product families. They form the basis for assessing the sustainability of buildings.

After the recently completed revision of EN 15804 (A2 amendment), which included the adaptation to the PEF methodology, EPDs according to EN 15804+A2 can be understood and used as a shape of the PEF methodology which is specific to construction products. EPDs according to EN 15804+A2 should form the basis for product-related statements on environmental impacts and sustainability assessments at building level.

- Avoid to further complicate the system through a combination of declaration of performance and declaration of conformity (NLF approach) regarding product-inherent requirements

Under the current CPR, the performance is declared based on the essential characteristics of a construction product. In this sense, the manufacturer provides a declaration of performance. In connection with the introduction of additional requirements for product-inherent properties with regard to safety, health and environmental aspects, it is discussed whether the NLF approach should be used in the future.

This would lead to a combination of a declaration of performance according to the previous approach and a declaration of conformity according to the NLF approach. This would further complicate the already quite complicated system and lead to confusion for everyone involved. The risk of misinterpretation of the meaning of the CE marking of construction products has already been criticized by the construction industry. Mixing the different approaches would increase the confusion.

According to Article 3, Paragraph 3 of the current CPR, the European Commission is empowered to stipulate in delegated acts that certain essential characteristics of a construction product must always be declared by the manufacturer and that a certain threshold (minimum requirement) must always be met. This option could be used to set binding minimum requirements without fundamental changes to the CPR. A precondition for establishing requirements for product-inherent properties should be a consensus between the member states.

- Clear criteria and conditions for the EOTA/TAB route

For innovative and complex construction products that cannot (yet) be standardised, a parallel route (previously EOTA route) is required in addition to the CEN route. To adequately coordinate the two pathways, clear criteria and conditions should be defined for both paths. Starting one or the other route should be centrally coordinated by the European Commission on the basis of established criteria. For products that can be standardised, a standardisation procedure should be established to ensure that EADs are converted into hENs within a certain period of time. In addition, measures should be taken to curb the spread of EAD observed in the current CPR.

- *Avoid double regulation and ensure coherence between different legislative areas*

Construction chemical products are covered by different legal areas, whereby the CPR and the European chemicals legislation (e.g. REACH and CLP) are of particular importance. It is essential to avoid double regulation and to ensure coherence between the legal areas. For example, if the release of certain substances from (construction) products is regulated by a restriction under the REACH regulation, this aspect should not be regulated again under the CPR.

- *Digitalisation: IT-supported methods should make communication along the construction supply chain more efficient and smarter*

Particularly due to sustainability and environmental aspects, the future volume of information to be communicated under the CPR will increase and can no longer be fully reflected in the CE marking on the product. Moreover, practice has shown that there is no need for duplicate information in the CE marking and the declaration of performance. Instead, IT-based methods should be used to optimise supply chain communication and make it more efficient. For example, IT tools could be established for users of construction products to easily assess whether they can deploy a product in a given Member State for the intended use. Concepts and methods (such as BIM, Smart CE marking and Digital Logbook) are important developments which should also be supported by a reviewed CPR.

**Deutsche Bauchemie e.V.**

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*As an industry association, Deutsche Bauchemie represents the entire construction chemicals industry in Germany. In 2019, the more than 130 member companies with around 32.000 employees generated sales of 8.5 billion euros. This corresponds to half of the European market volume and about a quarter of the world market. Under the umbrella of the German Chemical Industry Association (VCI), Deutsche Bauchemie has been representing the interests of its member companies for over 70 years, towards the public, political actors, authorities, other industry sectors, science and the press.*