

POSITION PAPER

Revision of the EU Construction Products Regulation

Deutsche Bauchemie welcomes the negotiating positions adopted by the European Parliament and the Council and provides suggestions for finalising the future Construction Products Regulation in the trilogue negotiations.

In the past months, the European Parliament and the Council have further developed the Commission proposal for the revision of the EU Construction Products Regulation in the right direction. With their respective negotiating positions, several important improvements were proposed and the applicability of the legal text was simplified. Thus, there is great confidence that the Council and the Parliament, together with the European Commission, will now, in the ongoing trilogue negotiations, put the finishing touches on the new Construction Products Regulation to address the existing problems in harmonised standardisation, to advance digitalisation and to meaningfully serve the Green Deal objectives.

Simplifications

The negotiating positions of the European Parliament and the Council go in the same direction on many points. Both have successfully simplified the legal text significantly. The restructuring proposed by the Council supported these measures further.

Strengthening standardisation as the primary approach to developing harmonised technical specifications

The basis for solving the currently existing, massive problems in the area of harmonised standardisation should be - according to Article 6a of the European Parliament position - an implementing act, with which clear processes, responsibilities and deadlines for the development of harmonised standards are to be established. This is supported by the request to the Commission to participate in relevant standardisation processes already in the development phase and to provide indications of possible non-conformities. In case of CEN submitting standards to the Commission, which contain non-conformities, these standards should not only be blocked by the Commission, but the non-conformities should be named and CEN should be mandated to correct them. Furthermore, the Commission should - upon request - support CEN in setting up a body to check standards for non-conformities before they are forwarded to the Commission. This package of measures from Article 6a of the European Parliament position seems suitable to effectively improve the standardisation process and to reduce the backlog of non-conforming standards.

To contribute to the solution of one of the central problems of the current CPR, it is therefore important to include the content of Article 6a of the Parliament position in the final legal text. With Article 4, the Council rightly demands that non-conformities that prevent the introduction of the hEN, must be reported to the CPR-Acquis Expert Group anchored in the legal text. This addition to Parliament's package of measures makes sense.

To accelerate the standardisation process, which has so far often been very lengthy, the standardisation bodies should be given deadlines for the implementation of standardisation requests. The European Parliament position provides for a general 2-year deadline, the Council for a flexible definition of deadlines in each standardisation request. Since many details are already specified in the standardisation requests, the consultations in the standardisation bodies are mainly limited to the specification of the test methods for the essential characteristics specified in the standardisation request and to provisions for the application of the AVS, so that the time required for consultations should be shorter. When setting deadlines, attention must be paid to the balance: Realistic deadlines that are not too short should be set for CEN. Otherwise, the scenario could arise that the Commission regularly receives the authorisation to introduce harmonised technical specifications through secondary legislation because CEN has exceeded the set timeframe. At the same time, it is important to give an incentive to complete the consultations on hENs promptly and efficiently - in the interest of all.

The Council and the Parliament disagree on the procedure with which harmonised standards should be introduced. The Parliament proposes a formalized procedure with the introduction through a delegated act, whereas the Council wants to stick to the previous practice with the reference in the Official Journal of the EU.

Establish criteria to ensure that the Commission only introduces harmonised technical specifications by secondary legislation in exceptional cases.

Clear conditions are laid down by both the Council and the Parliament to ensure that the Commission is only empowered to introduce harmonised technical specifications (htS) by secondary legislation in those exceptional cases where the required htS will not be provided by CEN or will not be provided in a timely manner.

The catalogue of criteria is clearly stated in the Council position. The European Parliament also rightfully mentions corresponding criteria here. Within the Parliament position, more clarity and legal certainty would be created with a reference to the clearly formulated standardisation requests instead of a reference to the basic requirements for construction works that are subject to interpretation. The involvement of CEN and stakeholders in the development of a delegated act is the right step. To address the relevant stakeholders, the group of stakeholders should, however, not be restricted to the stakeholders financed by the Union according to the Standardisation Regulation. Regarding deadline for CEN, it has already been mentioned above that setting deadlines, that are too short, could result in the Commission regularly being empowered to introduce htS by secondary legislation, which must be prevented.

Impact assessment on standardisation mandates if they contain performance classes and/or thresholds.

The European Parliament proposes that the Commission must carry out an impact assessment for standardisation requests that include the mandate to implement performance classes and/or thresholds.

Careful action, based on the information of an impact assessment, is appropriate in the case of standardisation requests that include mandatory thresholds, as products that do not meet the mandatory thresholds would no longer be marketable. This constitutes a market intervention, the consequences of which the decision-makers must be aware of. Class systems, with performance classes that are open

upwards and downwards and do not hinder the marketing of products, are a sensible format for the declaration of a performance and, for these, such an impact assessment should be dispensed in the interests of the smooth functioning of the harmonised standardisation system.

However, for affordable, sustainable construction, it would be counterproductive to make the achievement of the highest two performance classes in environmental sustainability mandatory after a certain period – as envisaged in the position of the European Parliament. The decisive factor is always the contribution that a product can make to sustainability after installation at the building level. Therefore, it is essential to abandon this requirement at the product level. Should this position of the European Parliament prevail nevertheless, at least an in-depth impact assessment should be carried out before the obligation enters into force.

Establishing a functioning process to identify and harmonise the regulatory needs of Member States.

The processes proposed by the Council and the European Parliament offer Member States the possibility to notify their regulatory needs for the upcoming harmonisation of certain construction products through the notification procedure and oblige the Commission to take the notified regulatory needs into account in the development of htS. In this context, the CPR Acquis Expert Group and the work plan to be established and regularly updated by the Commission play an important role.

It is crucial that not only the Commission and Member States, but also other affected stakeholders are appropriately involved in the CPR Acquis Expert Group so that their expertise and interests can be considered. However, the well-designed structures and processes will only work in practice, if the Member States provide their input on time and in the form envisaged. The Council position only stipulates that the Member States should notify their need for regulation to the Commission and to the CPR Acquis Expert Group, but fails to determine the procedure further. The European Parliament provides with the Single Digital Gateway – rightfully a concrete instrument – for the Member States to indicate the need for regulation.

It is positive to note that the exemption for national measures within the harmonised zone proposed by the Commission was not softened by the Council and Parliament and that it can be assumed that the exemption will only be applied in very exceptional cases. It is important that in such a case the CPR Acquis Expert Group is consulted at an early stage and examines whether the notified national regulatory needs can be directly integrated into the harmonised zone via a corresponding standardisation request without the Commission authorising the Member State to adopt national measures by means of an implementing act. None of the legislators question the need for the Commission to authorise national measures. Setting a deadline for the Commission – as provided for in the Council position – makes sense.

Construction Digital Product Passport vs. EU Construction Products Database: Conceptual Discrepancies for Digitising Information for Buyers of Construction Products.

Regarding the digitalisation of relevant information for the purchasers of construction products, conceptual differences between the proposals of the Council and the Parliament still need to be bridged. The Parliament's proposals are based on the Digital Product Passport (DPP) anchored in the Commission's proposal for the ESPR and appear to make sense. This reference offers the possibility of using the IT principles under development under the ESPR (DPP system) and to concretise the contents relevant for the

construction products DPP (DPP data) sector-specifically under the CPR. The relevant contents for the DPP identified by the Parliament include all relevant information and appear applicable.

Both the Council and the Parliament propose that the DoP/DoC should be made available in a machine-readable format. Among other things, this would enable the buyers and users of construction products to scan the often complex and difficult-to-interpret contents of the DoP/DoC, e.g. via QR code, and to carry out an automatic compliance check with the application requirements in the relevant Member State by means of an app. The extent to which the other components of the DPP - in particular the information requirements according to Annex I Part D - are needed in machine-readable form should still be examined with regard to feasibility.

For machine-readable DoP/DoC, the definition of standard formats is essential and must be done individually for each htS. Therefore, the Parliament's proposal seems reasonable to issue standardization requests to CEN in this respect and to include the standard formats for machine-readable DoP/DoC in the relevant product standard. The reference to the existing CEN Workshop Agreement CWA 17316 already provides guidance and makes it easier for the standardisation bodies to implement corresponding standardisation requests in a uniform manner.

In contrast to the Parliament, the Council adheres, at least conceptually, to the central EU construction products database proposed by the Commission. With this approach, there is a risk that the principles on DPP laid down at horizontal level in the ESPR will be insufficiently considered under the EU Construction Products Regulation.

Furthermore, there are discrepancies between Parliament and Council on the relevant content. The Council counts the technical documentation according to Art. 21(3) as relevant information for the EU construction products database. The technical documentation according to Art. 21(3) is not only of a confidential nature, but also has an immense volume that increases steadily over time. The effort of uploading and regularly updating this enormous and constantly growing amount of data would be disproportionately onerous, representing an unnecessary bureaucratic burden and this data should therefore only be provided to national market surveillance authorities upon request.

The effort required to set up and operate a central European database (Council position) should not be underestimated and is fundamentally a major challenge for all parties involved. The relevant content could be made available with less effort via a decentralised system of DPPs (European Parliament position). In order to ensure the long-term availability of the DPPs, the optional DPP registry planned according to the European Parliament position would be helpful.

Product requirements only apply if they have been specified by delegated act.

The newly introduced product requirements are only described generically in the annexes to the CPR. For practical application, they must be specified for the respective product type. In this sense, it is logical that the product requirements outlined in the annexes only apply once they have been specified in a delegated act. In its position, the Council also clarifies that product requirements can only be defined for harmonised products. The Parliament also takes this position implicitly.

Differences still exist regarding voluntary standards, which can be used to demonstrate conformity with product requirements. According to the Council's ideas, the Commission is authorised to issue

standardisation requests for the development of corresponding conformity standards, but does not have to do so in every case. In contrast, the proposals of the Parliament provide that the Commission must issue corresponding standardisation requests if product requirements have been introduced by delegated act. The procedure proposed by the Parliament seems more suitable for ensuring a level playing field.

Provisions for assessing the environmental sustainability of construction products.

The Commission proposal contains a list of essential environmental requirements in the Annex. These are the life cycle assessment indicators usually included in environmental product declarations. The European Parliament has proposed several useful adjustments to this Annex. The names of the individual LCA indicators were adapted to the relevant standard EN 15804, which improves the understanding and clarity. Furthermore, according to the ideas of the Parliament, not only the "CO₂ footprint" (GWP) but all 13 so-called "core indicators" must be declared bindingly. This will ensure that no "cherry-picking of indicators" takes place, but that a uniform and fair assessment basis is created for all products.

However, it is problematic that the six "additional LCA indicators", which are only declared voluntarily according to the standard (EN 15804), because the associated reference methods have not yet been sufficiently validated, would also have to be declared as mandatory after 5 years. This provision goes beyond the standard and should be linked to further preconditions. For example, the mandatory application of the additional LCA indicators could be linked to the prerequisite that the reference methods have been successfully validated and the provisions in EN 15804 have been amended accordingly. Alternatively, the development and validation of missing reference methods could be awarded by the Commission to CEN via a standardisation request and the mandatory application could be placed at the end of this process.

It is surprising that the Council has left the corresponding annex almost unchanged. Against this background, the trilogue negotiations should be guided by the proposals of the Parliament.

It would be important to specify more precisely the reference to the software provided free of charge by the Commission for determining environmental sustainability in the Commission proposal and the negotiating positions of the Council and the Parliament, which is formulated in general terms. Currently, different commercial databases with background data on the raw materials for construction products are used, which lead to different results. Only a uniform European database with the LCA data of the raw materials used ensures harmonisation of the assessment of environmental sustainability in the sense of a "Common European Language". In addition to a uniform database with background data, software that is as easy to use as possible is needed to carry out the life cycle analyses.

Product information requirements.

The conceptual distinction between product requirements and product information requirements is useful and improves understanding.

The explicit provision proposed by Parliament that the product information requirements should also apply to non-harmonised construction products is problematic. There is a massive risk that the application of the information requirements, which are described very generally in the annexes, without an htS will lead to distortions of competition. Without an htS, the necessary basis for corresponding data and information is lacking. Accordingly, the information requirements should only apply to harmonised construction products.

It should be noted that passing on the information with the product, especially to the private end consumer in the Do-it-yourself-store, is a particular burden, due to the volumes involved. A practicable digital solution must be found here.

Rules on the distribution of the safety data sheet.

The Commission's proposal provides for the safety data sheet to be passed on to all customers for construction products that are present as mixtures. This goes beyond the relevant provisions of the REACH Regulation. The Parliament has taken this appropriately into account in its proposals and has restricted the provisions for passing on the SDS to such an extent that they correspond to the provisions of the REACH Regulation.

Although the Council limits the provision of the Commission proposal to the information in section 3 of the SDS, it neglects to focus on the commercial and industrial customer.

As the CPR should leave the provisions on the transfer of the SDS to the REACH Regulation and not tighten them up, it is to be hoped that the amendments proposed by the Parliament will be referred to in the trilogue negotiations.

Building products in contact with drinking water.

In accordance with the Council's positions, the performance assessment and requirements according to the EU Drinking Water Directive are to be excluded from the scope of the new CPR. On the other hand, an additional product family called "construction products in contact with water intended for human consumption" has been added to the list of product families (Annex IV).

At first glance, this seems contradictory and should be clarified and concretised during the trilogue negotiations.

Transitional provisions: a difficult issue.

In order for the principles of the revised CPR to work in the future, all htS need to be adapted to the new legal framework before they become applicable. In addition to the EADs, this concerns the almost 450 harmonised product standards, where Member States and industry must be involved in this process. Accordingly, this adaptation process will take a long time, which was the reason why the Commission proposed a transition period of about 20 years. During this time, the relevant parts of the old and the new CPR should be applied in parallel. In this context, it was certainly good that the Commission started the CPR acquis process quite early. The incorporation of the CPR acquis expert group into the legal text of the new CPR will create a legal framework for the continuation of this process.

Even though the long parallel application of the old and new CPR has been criticised from many sides and sends the wrong political signal, it is difficult to develop alternative solutions.

The Parliament proposes to limit the parallel application of the old and new CPR to 10 years, whereas the Council sticks to the approx. 20 years proposed by the Commission.

It must be avoided at all costs that products are de-harmonised after the end of the transition period because the relevant htS have not yet been adapted to the new CPR. This danger is imminent if the transition

period - without a fall-back option for emergencies - is chosen too short and not all relevant htS have been adapted to the new CPR and introduced during this period.

Empowerments of the Commission should be reviewed in an overall view for feasibility.

At the end of the legislative procedure, an overall assessment should be made of whether the European Commission has sufficient resources and technical expertise to exercise the powers assigned to it for secondary legislation in a timely manner. Furthermore, it must be ensured that the relevant stakeholders are adequately involved in the preparation of implementing and delegated acts. It must be prevented that the issuing of such acts by the Commission becomes a bottleneck in the implementation of the revised CPR.

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As an industry association, Deutsche Bauchemie represents the entire construction chemicals industry in Germany. In 2022, the more than 130 member companies with around 32.000 employees generated sales of 8.9 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 75 years, to the public, political actors, authorities, other industry sectors, science and the press.