Construction products: harmonised conditions for the marketing

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The Committee on the Internal Market and Consumer Protection adopted the report by Catherine NERIS (PES, FR) amending, under the first reading of the codecision procedure, the proposal for a regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products. The main amendments are as follows:

Scope: the committee clarifies that this regulation only concerns conditions for the marketing of construction products not the installation, assembling and incorporation of construction products into the works.

Definitions: a definition is inserted for "products which are not covered or not fully covered by a harmonised standard" in order to clarify the products for which a European Technical Assessment can be requested. The committee notes that mostly **innovative products will fall** under this definition. It also inserts definitions for, inter alia, 'Performance of a construction product', "European Technical Assessment" Specific Technical Documentation", "Technical Assessment Body". The latter must participate in the EAD development, carry out assessments and issue European Technical Assessments for products that are not covered by harmonised standards (mostly innovative products). The committee also reordered the definitions in the text, noting that reordering of definitions following a logical sequence. After defining the construction product, works and essential characteristics, harmonised technical specifications should be defined (including a harmonised standard and an EAD) followed by definitions of economic operators (a manufacturer, an importer, a distributor and an authorised representative). Definitions on making available on the market, placing on the market, withdrawal and recall should follow.

The committee added that the definition of ‘making available on the market’ excludes (a) any product which users transform on site for their own use in the context of their professional activity; (b) any product manufactured on and/or off site and incorporated by the manufacturer into a work without being placed on the market.

Two separate access routes to the CE marking: the Commission establishes the option of leaving access to the European technical assessment (ETA) free to all construction products. The committee notes that this carries the risk of establishing a two-speed certification procedure, with variable gauges of quality, to the extent that procedures for assessing performance differ depending on the route to CE marking. Accordingly, it wants to reserve the possibility of using the ETA for innovative products, which are now defined more precisely (see above).

Use of Specific Technical Documentation: in order to limit the costs, the Commission is proposing an alternative route to assess the performance of products: micro-enterprises will be able replace the conventional assessment system with a specific technical documentation (STD), in which the manufacturer demonstrates that his product is covered and meets the requirements of existing rules. Tests may, however, be required where the Commission believes them to be necessary for reasons of security. The committee notes that the need for market surveillance means there must be stricter control of products manufactured outside the EU. Applied to imports, the possibility offered by the STD of derogating from standard procedures for assessing performance entails a real risk of creating a loophole allowing products of questionable performance to enter the European market without any real opportunity for control. The committee adds that the Article on STD shall not apply to importers who place a product on the market

under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected. The sole aim of this amendment is to avoid the risk of the STD being misused to deliberately get around EU legislation on the CE marking, and to ensure that products placed on the market perform reliably.

Use of STD by micro-enterprises: the committee adds that the STD shall guarantee an equivalent level of health and safety for persons and for other issues of public interest. The manufacturer shall remain responsible for the product's compliance with the characteristics stated in the declaration of performance. The manufacturer shall provide information on the intended use of the product.

In addition, the Commission shall, by 5 years after the entry into force of the Regulation, draw up a report on the implementation of this Article considering, inter alia, whether its application could be extended to other undertakings, or whether to repeal it. The Commission shall submit this report to the European Parliament and the Council together with legislative proposals, as appropriate.

The Article shall not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected

Transparency: for the system to function smoothly there has to be a certain degree of transparency as regards the establishment of harmonised technical specifications and the assessment of the performances of products for which the CE marking is sought.

The procedure leading to the establishment of an ETA for innovative products must be not only confidential but also transparent vis-à-vis the manufacturer. It must be possible for the manufacturer to be informed about the progress of his application and to add to his file on the basis of a hearing with an independent scientific expert and a professional organisation of his choice. Accordingly, the committee provides that the manufacturer may ask for the working group to hear an independent scientific expert of its choice in order to supplement the information made available to the TABs. The working group shall be required to hold such a hearing.

In terms of **governance,** the committee also proposes that each Technical Assistance Body (TAB) participating in the decision-making procedure should have the same status within the OTAB. In addition, it wants over-representation of particular categories of manufacturer within European standardisation bodies should be avoided so as to ensure that decision-making is transparent and that SMEs are protected. Members provide that the European standardisation bodies shall ensure that no category of actors in any one sector comprises more than 25% of the participants on a technical committee or working group. If one or more categories of actors cannot take part in a working group, or chooses not to, this requirement may be reassessed on a pro rata basis in relation to actual participants.

Conditions associated with the CE marking: the committee notes that it is essential that any product placed on the Community market and covered by a harmonised technical specification (harmonised standard or ETA) has the CE marking. That marking corresponds to the manufacturer's declaration concerning the performance of the product, in accordance with a set of essential characteristics. The committee states that among the essential characteristics, characteristics for which the minimum requirements in terms of levels or classes of performance are determined by the Commission under the appropriate committee procedure, and which apply independently of where the construction product is marketed must be distinguished. These relate, inter alia to issues of general interest such as the environment, safety and evaluation of possible health hazards throughout the entire lifecycle of the construction product.

Members add that in the absence of a declaration of performance, the CE marking can not be affixed. The committee also stated that importers should also bear responsibility as far as marking is concerned.

Pending a proposal from the Commission reinforcing the CE marking, the compromise formula concerning national markings approved by the European Parliament and the Council when the ‘goods package’ was adopted should be maintained.

Declaration of performance: the latter must comprise the full list of the essential characteristics which has been determined in accordance with the harmonised technical specifications. For each essential characteristic of a product, the manufacturer shall declare a value, class or level of performance. If there is no requirement for that characteristic in the Member State where the product is being placed on the market, the manufacturer shall mark the product ‘NPD’ (No Performance Determined).

Furthermore, to clarify the meaning of declared performances and to ensure that consumers are properly informed, it is important that the declaration of performance refers to the product’s envisaged use.

The declaration of performances shall be drawn up using the model set out in Annex III in the official language, or one of the official languages, of the Member State in which the product is placed on the market.

Product Contact Points: Product contact Points must also provide information on, if applicable, the appeals possibilities available to all manufacturers contesting the conditions of access for one or more of their products to the CE marking, in particular the appropriate appeals procedures against decisions taken following the assessment. They must be independent of any body or organisation involved in the procedure for obtaining the CE marking. Guidelines on the role and responsibility of contact points shall be drawn up by the Commission and adopted by the Standing Committee for Construction.