

Construction products: harmonised conditions for the marketing

2008/0098(COD) - 24/04/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 390 votes to 4 with 6 abstentions, 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:

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. Mostly innovative products will fall under this definition. Parliament amended the definition of "essential characteristics" and inserted definitions for, inter alia, 'Performance of a construction product', "European Technical Assessment" Specific Technical Documentation", "Technical Assessment Body". The latter must participate in the development of European Assessment Documents and assess the performance of the essential characteristics of construction products not or not fully covered by a harmonised standard in the product areas listed in Annex IV. Parliament also re-organised the text to make it more coherent.

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. In order to avoid a two-speed CE marking procedure, which would complicate the system and risk having a negative impact on the credibility of the CE marking, Parliament wants access to the European Technical Assessment to be reserved for innovative products, which are now defined more precisely.

Harmonised standards: Parliament stipulates that harmonised standards shall provide the generic intended use of the products if applicable. They shall also provide the characteristics, the minimum requirements for which in terms of levels or classes of performance shall be determined by the Commission for each family of products laid down in Annex IV and by type of application.

Levels or classes of performance: where provided for in the relevant mandate, the European standardisation bodies shall establish in harmonised standards minimum performance levels in relation to essential characteristics and, where appropriate, intended end uses to be fulfilled by construction products in Member States. The Commission may establish conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing. Where such conditions are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards, on the basis of a revised mandate.

Conditions associated with the CE marking: Members add that in the absence of a declaration of performance, the CE marking can not be affixed. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking, and shall take appropriate action in the event of improper use of the marking. There must be penalties for infringements, which may include criminal sanctions for serious infringements. Penalties shall be proportional to the seriousness of the infringement. Parliament stated that importers should also bear responsibility as far as marking is concerned.

Declaration of performance: the latter must comprise the full list of the essential characteristics given in the harmonised technical specification for the construction product, and for each essential characteristic either the declared values, classes or levels of performance or 'no performance determined'.

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

European Assessment Document: Parliament stated that where the Commission considers that a sufficient level of technical and scientific expertise concerning an EAD has been achieved, it shall give a mandate to the European standardisation bodies to draw up a harmonised standard on the basis of that EAD.

Simplified procedures-Use of Specific Technical Documentation: Parliament made some amendments to the verification of STD.

Use of STD by micro-enterprises: Parliament 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, whether to adapt it to small series production, or whether to repeal it. 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, Parliament 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**, Parliament 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.

