Construction products: harmonised conditions for the marketing

2008/0098(COD) - 20/09/2010 - Commission communication on Council's position

The Commission welcomes the completion of the 1st reading in the Council, with the position now adopted. In particular, the Commission appreciates the support given by the Council to its proposal concerning the measures aimed at **simplification**, which remains a key issue for the European SMEs active in this sector.

The **clarification of general principles and contexts** has also been supported by the Council: this is notably reflected in the clear and central role played by the Declaration of Performance (DoP) and the associated CE marking, whose meaning is now unambiguous in this context. The same goes also for the role of harmonised standards, which now clearly has been strengthened by making them the only means available to assess the performance of the essential characteristics of the construction products covered by them.

The Council was only partially in agreement with the Commission's opinion on the **amendments** adopted by the European Parliament at first reading:

- Council approved in principle the main lines of the amendments by the European Parliament on the **declaration of performance**, thus rendering it obligatory when the construction product in question is covered by a harmonised standard or an ETA has been issued for it. In the same context, the Council's position develops somewhat further the corresponding amendments by the European Parliament, delegating the Commission **decision-making powers** on determining those essential characteristics of construction products covered by harmonised standard, for which the manufacturers shall always declare the performance;
- Council rejected the Parliament's proposal to include **dangerous substances** into the mandatory contents of the declaration of performance, covering this topic only in the new recital. This position is in line with the Commission's views, as expressed also in the amended proposal;
- Council also rejected the Parliament's proposal, supported and re-worded by the Commission, to include a clause ensuring the **independence of Product Contact Points** for Construction from bodies involved in the procedure for obtaining the CE marking.

As regards the new provisions introduced by the Council, the Commission endorses the principles expressed by these changes.

Although it considers that the position of the Council does not meet some of the essential aims of its initial /amended proposal, the Commission perceives that the only way of allowing the procedure to continue is to refrain from opposing it. In conclusion, the Commission supports, **in a spirit of compromise, the position adopted by the Council, subject to two statements** mentioned in the following point which concern respect for the principles of "Better Regulation" and market surveillance.

- **Better regulation:** the Commission recalls that this proposal is part of its simplification strategy and therefore regrets that the text finally agreed by the Council could impose unnecessary administrative and testing burdens. The Commission intends to monitor in particular this aspect of the Regulation and will include its conclusions in the report it will present to European Parliament and the Council five years after the entry into force of this Regulation.
- **Market surveillance**: the Commission considers that the authorities of a Member State may, if necessary, take appropriate measures for a product which is placed, or made available, in their

market, (i) if the declaration of performance does not contain the performance related to the essential characteristics for which there are requirements for that product and its declared intended use or uses, or (ii) if the declared performances do not correspond with those requirements, in the same Member State, or parts of its territory. The measures need to be proportionate to the risks involved and should not lead to the fragmentation of the internal market.