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Researches • Develops • Informs

CPR: Recent evolutions

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Belgian Building Research Institute

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Given that only competent courts may decide on the interpretation of Regulation (EU) N° 305/2011, any use of the content of these slides is the sole responsibility of the user.

Introducing myself

- BBRI employee, responsible for standardization, technical approval and certification activities related to products and systems
- Standardization:
  - Approx. 50% of Belgian standardization committees (NBN)
  - Chairman of CEN/TC128, secretary of CEN/TC277
  - Member of JIS Action 5, CEN CSF core group, CEN-CENELEC/BT WG9
- Technical approval:
  - Secretary General of UBAtc and UEAtc
  - Member of EOTA Technical Board
- Certification:
  - Active in the Belgian Construction Certification Association
  - Member of BUCP Technical Commission
  - Former GNB President

Overview

- General introduction
- Recent developments in the EU & Review of the CPR
- Applicability of the CPR
- James Elliot court case and its (potential) effect on European standardization and EOTA activities
- Conclusions

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- **General introduction**
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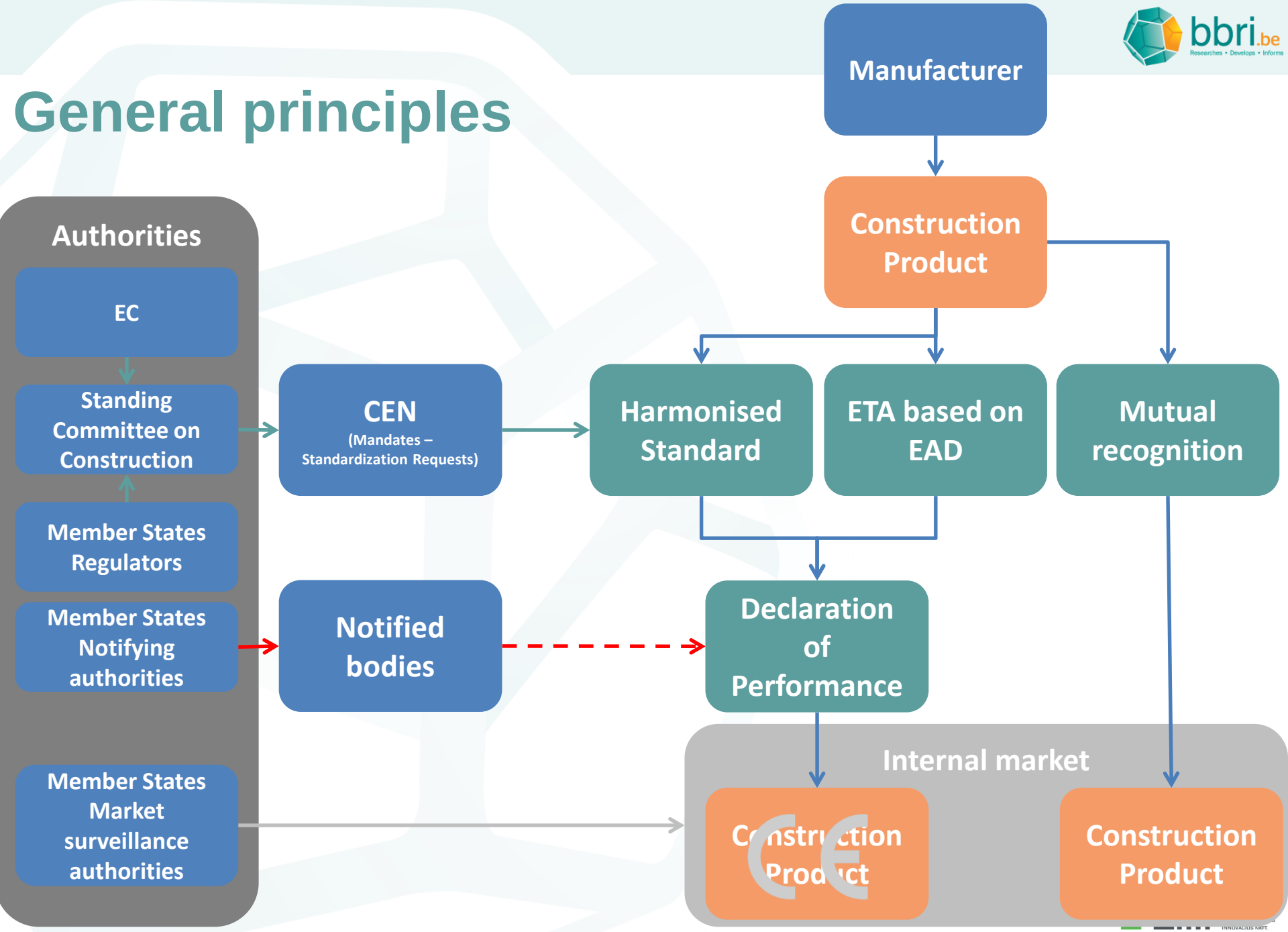
Meaning of CE Marking (Art. 8(2))

By affixing or having affixed the CE marking, manufacturers indicate that they take **responsibility for the conformity of the construction product with the declared performance** as well as the compliance with all applicable requirements laid down in this Regulation and in other relevant Union harmonisation legislation providing for its affixing.

CE Marking

- The Construction Products Regulation specifies rules regarding the marketing of construction products
- Performances accompanying CE marking are expressed in accordance with harmonised technical specifications, i.e. using European test or calculation methods to determine the performances and levels or classes agreed upon at European level
- The CE marking on construction products permits the free circulation of these products on the European internal market.

General principles



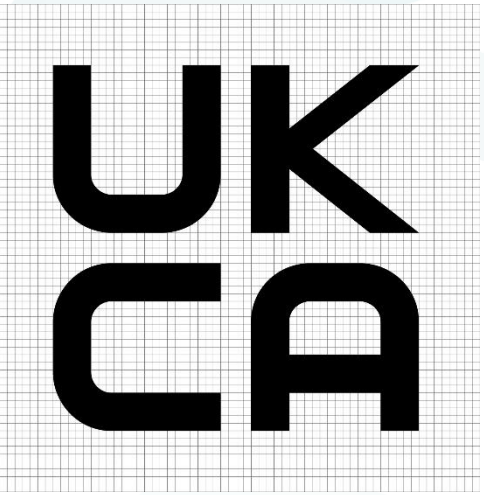
Free movement of goods: the DoP

(DoP = Declaration of performance)

- Contrary to the CE marking in other sectors, CE marking for construction products does not mean that the products are safe or healthy
- The CE marking for construction products (only) means that the manufacturer confirms that he determined the product performances according to the CPR (and therefore the harmonised technical specification) and that he assumes responsibility for the declared performances.
- The CE marking permits the free movement of the construction products, and authorities may check whether the product performances correspond with the criteria that they have set in their legislation.

CE Marking applies in more than 30 countries

(Until 29 March 2019?)



Austria (EU)
Belgium (EU)
Bulgaria (EU)
Croatia (EU)
Cyprus (EU)
Czech Republic (EU)
Denmark (EU)
Estonia (EU)
Finland (EU)
France (EU)
Germany (EU)
Greece (EU)
Hungary (EU)
Ireland (EU)
Italy (EU)
Latvia (EU)
Lithuania (EU)
Luxembourg (EU)
Malta (EU)
the Netherlands (EU)
Poland (EU)
Portugal (EU)
Rumania (EU)
Slovak Republic (EU)
Slovenia (EU)
Spain (EU)
Sweden (EU)
United Kingdom (EU)
Iceland (EFTA)
Liechtenstein (EFTA)
Norway (EFTA)
Canada (CETA)
Switzerland (MRA)
Turkey (EC-Turkey agreement)

CE Marking (CPD → CPR)

CE Symbol

ID Notified body**(ies?)**

Manufacturer

ID Product type

Ref. Declaration of performance

Year of affixing

Reference document

~~Reference to the certificate~~

Intended use

Product performances

Traceability code

CE

1136, 1173

Company
Street, Number
Zip, City
Country
C01123
CDOP01123

11
EN 1234:2010
~~1234-CPD-098676~~
Roof waterproofing membrane

Characteristic 1: Performance
Characteristic 2: Performance
Characteristic 3: Class
~~Characteristic 4: NPD~~
2011012312:23

No language requirements
for information accompanying the CE symbol

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Report on the implementation of the CPR

- EC Report on CPR implementation expected April 2016
- Published: 7 July 2016

2. By 25 April 2016, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation, including on Articles 19, 20, 21, 23, 24 and 37 on the basis of reports provided by Member States, as well as by other relevant stakeholders, accompanied, where relevant, by appropriate proposals.

Studies commissioned by the European Commission

- Survey on EU countries' regulatory practices (2018)
- Survey on users' need for information on construction products (2018)
- Survey on information needs among EU country authorities (342 kB) (2018)
- Cross-border trade for construction products and harmonised European standards - a snapshot (2017)
- Economic Impacts of the Construction Products Regulation (2016)
- Supporting study for the evaluation of the relevance of EOTA tasks (2016)
- Analysis of implementation of the CPR (July 2015)

8 Scenario's

- Option I - Baseline scenario: No legislative change.
- Option II: Revising the CPR
  - II.A: Limited CPR revision only tackling the issues explicitly identified in the July 2016 Implementation Report
  - II.B1, II.B2 & II.B3: Wider CPR revision also touching the basic principles underlying the CPR
  - II.C1, II.C2 & II.C3: Profound CPR revision shifting the balance in the present repartition of tasks between EU & Member States
- Option III: Repealing the CPR.

CPR Review
Results of the Technical Platform meetings

Technical platform outcome: support for

- Option I: Baseline scenario - No legislative change; or
- Option II: Revising the CPR, Alternative II.A: Limited revision of the CPR

Meetings with member states only, resulted – according to the EC - in support for

- Option II: Revising the CPR
  Alternative II.B.2: Wider revision of the CPR

Option I: Baseline scenario
No legislative change

- Maintaining current CPR + improving implementation through guidance/soft law
- No changes other than
  - Possible cost reduction for manufacturers (more use of electronic communication)
  - Possible amendment of Annex II
  - Possible amendment to the ETA-format
  - Possible amendment of Annex III

Option II - Revising the CPR Alternative II.A: Limited revision of the CPR

Cf. EC report of July 2016:

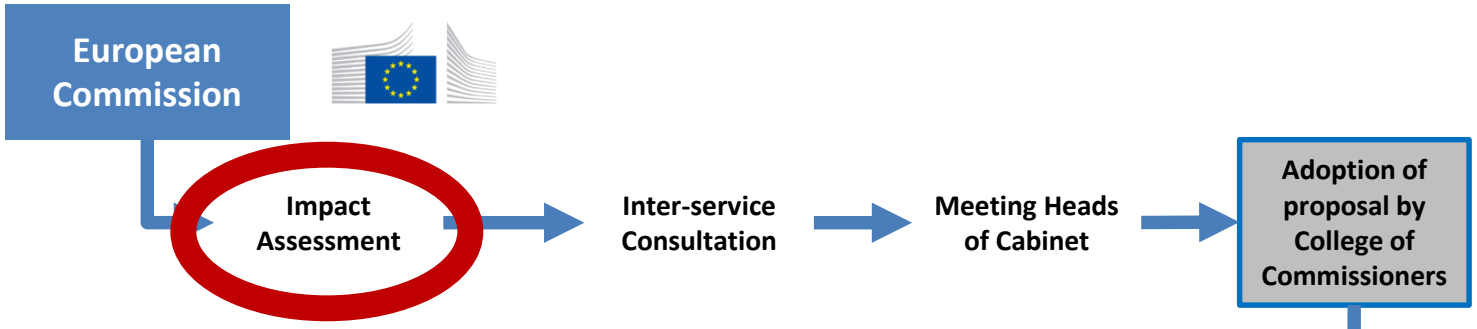
- Improving/introducing simplification provisions benefiting SMEs (articles 5, 6, 9(2), 37 and 38)
- Introducing appropriate sector-specific market surveillance and enforcement provisions
- Improving detailed rules regarding Notified Bodies
- Improving the transition from "approvals" to "assessments"
- Clarifying the relation between the CPR and Regulation 1025/2012 on standardisation and other standardisation issues, including improving coherence between the CPR and Ecodesign legislation

Option II - Revising the CPR Alternative II.B.2: Wider revision of the CPR

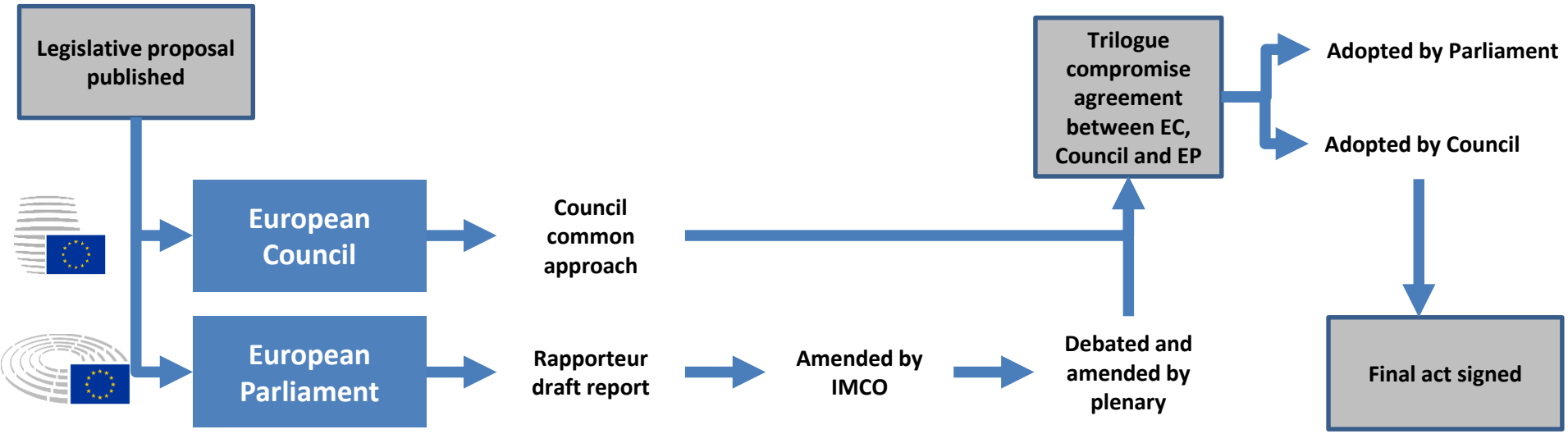
- **Harmonise specified (limited number of) essential characteristics**
- Harmonised standards continue to be at the core of the harmonised system
- For those characteristics which have not been included in the mandates and which therefore are not envisaged to be covered by harmonised standards, Member States could lawfully regulate performance assessment and communication at national level
- No CE marking
- **No ETA/EAD route**

Revision of the CPR - Legislative procedure

Step 1: Drafting legislative proposal



Step 2: Ordinary legislative procedure



Main issues identified by the European Commission

- Definition of scope (including overlaps with other EU legislation)
- **Single harmonisation route**
- Exhaustiveness of harmonisation, need for flexibility
- Safety and environment (objectives)
- Mandatory nature of harmonised standards
- Product information (Fitness for use, format of DoP)
- Simplification process
- Specific market surveillance / enforcement

European Commission: Initially envisaged options for the future

- Conclusions of the study point to a clear preference for no change or incremental changes only.

but:

- Definition of « incremental » changes in the presence of contradictory interpretations of current provisions
- Options insufficiently linked with the issues to be addressed, not fully understood by stakeholders
- Need for deeper analysis of legal issues

European Commission: Next steps

- **Evaluation**: Commission Staff Working Document to be adopted 1st quarter 2019
- **Impact assessment**:
  - Refining the potential options
  - Consultation of stakeholders: new open public consultation, interviews, technical platform
  - CSWD and potential proposal: next College

CPR Review - Conclusions

- Several studies, but impossible that a revision may be accepted by the European Parliament and the council before the end of the EP legislature (May / June 2019)
- Revised CPR (if revised), not before 2021, …

Standing Committee on Construction
Recent developments

EC Document regarding databases and public procurement

- Use of ‘soft law’

Guidance notably for public procurement

The note focuses on the demands to be set on the practical functioning and use of the system used by public authorities for collecting product data in advance notably for public procurement purposes, in relation to the applicable rules concerning the internal market of construction products, established in or by means of Construction Products Regulation (305/2011/EU; the CPR), and the respective European Court of Justice jurisprudence.

The paradigm of the CPR consists of the use of the harmonised structure under this act (harmonised standards, declarations of performance, certification and other AVCP features etc) as the sole means of delivering information of the performance of the products concerned to their potential users, comprising also public authorities. Introduction of additional *ex ante* structures for these same purposes is therefore suspect to result in non-compliance with *acquis communautaire* in this field. The information provided by the manufacturer in the declaration of performance is to be presumed accurate and reliable (cf. Article 4(3) of the CPR), and thus should be sufficient for procurement purposes without any additional pre-authorisations or documentation gathered at this stage. All this is to be reflected in the compilation of the data fields to be taken into use for information archives created in this manner.

The use of information compiled by national authorities about construction products is fully compatible with the CPR-based legal structure at the *ex post* stage, during the evaluation of the tenders received. This database would thus function as an information archive, passively available for such purposes (when the procuring authority would consider such a use opportune). The pre-requisites of keeping such an information archive would also comprise:

- The purely (and also *de facto*) voluntary nature vis-à-vis manufacturers of these arrangements: the inclusion of a given product in this archive would not be allowed to have any impact on its treatment in procurement contexts;
- The avoidance of any pro-active approaches vis-à-vis manufacturers on the side of the national authorities compiling and maintaining such a database: the possibility of having one's products included in it should not be presented by public authorities in a manner which would discourage the manufacturers to market their products without them being included in it. The inclusion should thus be left wholly dependent on the indigenous and non-prompted interest of manufacturers having their data archived in this kind of fashion;
- The absence of any approvals of the data content (notably from the point of view of compliance with any requirements): the entry into the database, of course respecting the data fields, should not be made conditional in any manner, the insertions would thus depend solely on the manufacturers' initiatives and the data content they would be bringing forward to be treated like this;
- The manufacturers in question should have a right to withdraw the information of their products (or parts of it) from the archive.

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(European) Parliament Question

Parliamentary questions

5k 17k

28 February 2018

E-001233-18

Question for written answer E-001233-18
to the Commission
Rule 130
Esther de Lange (PPE)

Subject: Enforcement of rules on products with CE marking EN1090-1

Answer in writing

1. Is the Commission aware that the Human Environment and Transport Inspectorate (ILT), which performs a supervisory role on behalf of the Ministry of Infrastructure and Public Works in the Netherlands, has decided to suspend enforcement of the rules in the case of manufacturers who supply assembled metal structures as part of a building or of infrastructure, where the manufacturer both produces the materials in a factory and assembles them at a building site?

2. Does the Commission consider that a metal structure which is produced by a single manufacturer and assembled on site by it (and which becomes part of a building or of infrastructure) in order to perform a single contract that it has accepted falls under the Construction Products Regulation (CPR) and the European harmonised product standard EN 1090-1?

3. What action will the Commission take to clarify whether or not a metal structure which is produced by a single manufacturer and assembled on site requires an FPC certificate?

Original language of question: NL

Last updated: 13 March 2018

Legal notice

(European) Parliament Question
EC answer

Parliamentary questions

99k 22k

18 June 2018

E-001233/2018(ASW)

Answer given by Ms Bieńkowska on behalf of the Commission

Question reference: E-001233/2018

1. Yes, the Commission was made aware of this by letter of 7 December 2017 from Koninklijke Metaalunie.

2. If a construction product (e.g. a metal structure) is both manufactured and incorporated into the construction work (e.g. a building) by the same economic actor, no transaction or change of ownership of that product takes place between the manufacturing and the incorporation phases. The Commission recalls that, according to Article 1 of the Construction Products Regulation 305/2011 ('CPR'), the regulation lays down conditions for the placing or making available on the market of construction products. In these particular circumstances, and in the absence of any further information to the contrary, the CPR does not appear to be applicable.

3. Consequently, the Factory Production Control (FPC) certification rules based on the CPR do not appear applicable either in the situation described above.

Last updated: 18 June 2018

Legal notice

(European) Parliament Question EC answer

- If a construction product (e.g. a metal structure) is **both manufactured and incorporated into the construction work (e.g. a building) by the same economic actor, no transaction or change of ownership of that product takes place** between the manufacturing and the incorporation phases.
- The Commission recalls that, according to Article 1 of the Construction Products Regulation 305/2011 ('CPR'), the regulation lays down conditions for the placing or making available on the market of construction products.
- In these particular circumstances, and in the absence of any further information to the contrary, the **CPR does not appear to be applicable**.

Applicability of the CPR

- The CPR is only applicable when a “construction product” is “supplied” for distribution or use on the Union market or is made available on the Union market (first making available).
- Consequently, the CPR is not applicable (does not appear to be applicable) when the contractor manufacturers and incorporates a construction product into it’s construction work, without having put this product on the market (as a product).

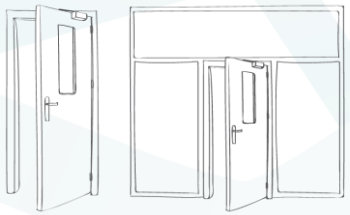
Supply and works contracts

- Legislation, at European and at Belgian level, regarding contracts, differentiates between:
  - Works contracts, covering execution, or both the design and execution, of a work
  - Supply contracts, covering the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, but these may also cover as an incidental matter, siting and installation operations
  - Obviously, both types of contracts may have a mixed character, because they may both address installation.
- The CPR is only applicable for activities covered by supply contracts

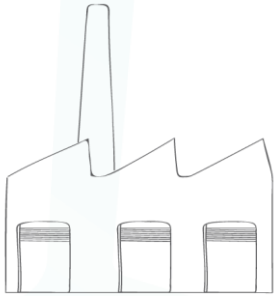
Are installers entitled to CE mark?

- Starting from the assumption that the CPR does not (appear to) apply for activities covered by works contracts, CE marking by installers working in the framework of a works contract may be considered to be illegal.
  In other words, if the contract is a works contract, **contractors may not be permitted to affix CE marking**.
- This interpretation has not yet been confirmed, but it may be prudent for installers not to CE mark. CE marking by installers may be qualified as an act of unfair competition.

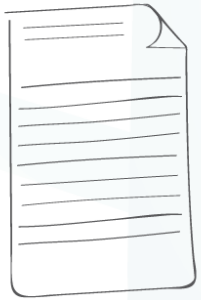
Example: scenarios under which door(sets) are marketed and/or installed



CE marked doorsets

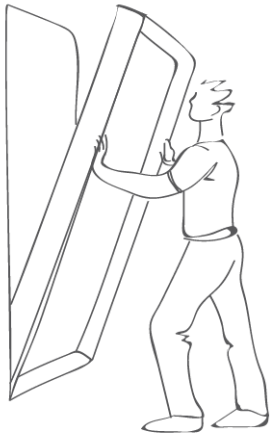


Manufacturer of doorsets



Declaration of performance

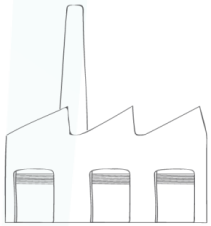
Installer



The installer demonstrates compliance with regulatory requirements, making use of the Declaration of performance and compliance with state-of-the-art rules and specific requirements for the particular works by other means

Example: scenarios under which door(sets) are marketed and/or installed

Manufacturer of door leaves



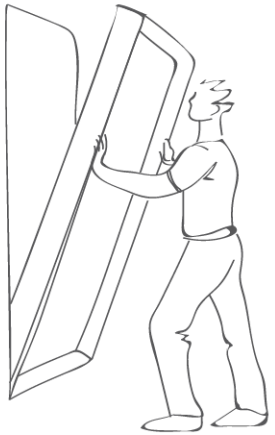
Manufacturer of sealants and gaskets

Manufacturer of hardware

CE marked sealants and gaskets*

CE marked hardware*

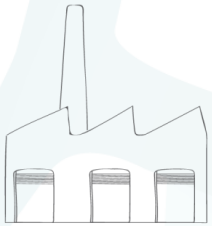
Carpenter / Installer makes the door frames and installs the door assembly



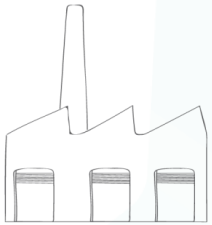
The installer demonstrates compliance with regulatory requirements, making use of the Declarations of performance of the sealants, gaskets and hardware, and compliance with state-of-the-art rules and specific requirements for the particular works by other means

* Some of these products need to be CE marked, others might be CE marked (but do not have to be)

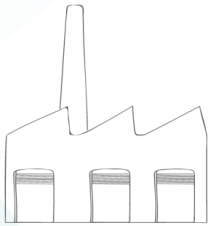
Example: scenarios under which door(sets) are marketed and/or installed



Manufacturer of door leaves



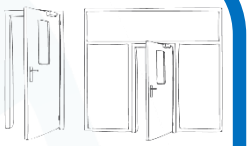
Manufacturer of sealants and gaskets



Manufacturer of hardware

These products are intended to be incorporated in a construction product and do not need to be (door leaves and door fames cannot be) CE marked

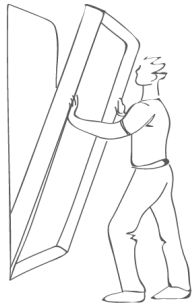
Carpenter making door frames and marketing doorsets



CE marked doorsets

Declaration of performance

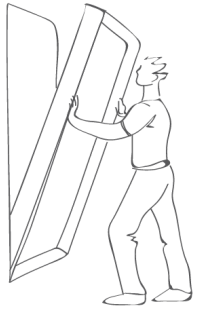
Installer



The installer demonstrates compliance with regulatory requirements, making use of the Declaration of performance of the doorset, and compliance with state-of-the-art rules and specific requirements for the particular works by other means

Both possibilities used by the carpenter

Carpenter makes the door frames and installs the door assembly



The carpenter demonstrates compliance with regulatory requirements, making use of the Declarations of performance of the sealants, gaskets and hardware, and compliance with state-of-the-art rules and specific requirements for the particular works by other means

Overview

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General principles of the New Approach

- Before the New Approach: Harmonise technical regulations by harmonising technical product manufacturing specifications
  - Slow legislative processes
  - Detailed technical know-how necessary
- White paper in 1985: the New Approach
  - Directives: only Essential Requirements
  - Reference to European (harmonised) standards, use of which is voluntary, manufacturers may apply other specifications
  - Compliance with European (harmonised) standards leads to presumption of conformity with essential requirements

New Approach: advantage

- Use of standards to support European laws and policies has increased – Standards play a key role
- Standards help remove technical barriers to trade and are, therefore, considered as key policy instruments in many areas relating to the functioning of the Internal Market

Different users = different information needs

- Authorities (**EC** and national regulators, market surveillance, customs, …)
- Manufacturers, distributors and importers
- Conformity Assessment bodies (certification and inspection bodies, laboratories)
- Contractors, installers, assemblers, joiners, …, subcontractors
- Public and private procurers, architects, designers, specifiers, engineers, …
- Quantity surveyors
- Promoters, developers, real estate agents, …
- Insurers
- Construction works owners, clients, …
- Research institutes, universities, …

Why are users' needs different throughout Europe?

- Different legal systems, traditions, uses, climate, geology, … in the different European countries;
- Different users' expectations with regards to safety, quality, comfort and use of construction works in the different European countries; and
- Different education, competences, responsibilities, insurance and liability rules in the different European countries for construction actors

→ **Can these be addressed in 1 document & at European level**

→ **Is there no need to complement European documents by national ones?**

Product related users' needs

European (harmonised product) standards should support the establishment of

- Reliable technical information about the product
- Reliable technical information related to working with the product
- Reliable technical information related to those working with the product

→ **European product standards are not only a means of communication between authorities and manufacturers**

→ **These documents fit in a (predominantly) national system of regulations, codes of good practice and agreements addressing the needs of a large number of stakeholders, with different responsibilities**

New Approach → CPD → CPR

Classic New Approach	CPD	CPR
ERs on product	ERs on works	BWR on works
Conformity with ERs: • Direct (any means) • Indirect: hENs (presumption)	Fitness for use • hENs (no other means) • ETA$_{pprovals}$ (voluntary)	Performances • hENs (no other means) • ET$_{Assessments}$ (voluntary)
Dated transition period in directive	Coexistence for each individual hEN	Coexistence for each individual hEN
Global Approach to conformity assessment	Attestation of conformity systems	AVCP systems
Compulsory CE marking	Obligatory character of CE marking unclear	CE marking obligatory if hEN or ETA

EC communication
Enhancing transparency and legal certainty for a fully functioning Single Market (COM(2018) 764 final)

Judgment (Case C-613/14): harmonised standards 'form part of EU law', even though they are developed by independent private organisations and their use remains voluntary.

- EC must pay attention to the content of harmonised standards
- EC bears responsibility in the process of initiating, managing and monitoring of harmonised standards.

→ **Increased administrative control**
(HAS consultants managed by EY + EC check before citation)

→ **Comitology procedures** (Regulation (EU) N° 182/2011) **apply for standardization requests**

- On 22 October, CEN organised a workshop to provide standards writers guidance on the development of harmonised standards in the framework of the CPR
- If anything else, it demonstrated that, when writing harmonised standards, CEN/TCs are faced with practical and legal difficulties

Citation in OJEU – backlog

- Total standards offered – 129
  - Before 2017 – 108
  - New since 2017 – 21
- Distribution of total offered standards
  - Cited – 3
  - Action with CEN-CENELEC – 97
  - Action with EC – 29

→ ‘Old’ versions of standards continue to be the reference for CE marking

→ Construction actors work with the actual versions

Construction Products Regulation (CPR) CEN–EC Workshop (26 November 2018)

EC concerns:

- Either mandate with EC acceptance letter or standardization request (Commission delegated implementation decision in L-series of the OJEU)
- Quality control in CEN-CENELEC related to the assessment criteria.
- Justification of technical choices
- State of play of standards: huge backlog of non-cited standards and the progress in solving the backlog is relatively slow
- Exhaustiveness of standards
- Citation of standards, if Commission delegated implementation decision

Construction Products Regulation (CPR) CEN–EC Workshop (26 November 2018)

CEN-CENELEC concerns:

- Non-mandated characteristics
- Classes & thresholds requests
- Dangerous substances
- Dated vs. undated normative references
- Answers to (CPD) mandates and new standardization requests.
- Pass/fail
- HAS consultants activities

Are CPR harmonised standards still standards?

- Cohabitation in one document of
  - the basis for CE marking (references to CE marking, use of CPR terminology, only thresholds and classification applicable in all member states); and
  - product requirements that reflect the state-of-the-art in the construction sector (reference for the selection and use of products taking into account the needs of specific works)
- If harmonised standards are tailored to meet the needs of the European Commission … are these still ‘standards’ (cf. WTO rules)? (voluntary, transparency op procedures, openness, impartiality, consensus …)

New approach to the « New Approach »?

- European standards should address **all stakeholders' needs**, not only those derived from the Construction Products Regulation
- Whereas **all concerned parties** should have an equal say in standardization, the European Commission's influence has become very important
- Given the judgment in ECJ case C-613/14, is it possible to maintain the present concept of harmonized product standards (EN + Annex ZA)?

Consequences for EOTA

- Citation of European Assessment Documents stopped (soon to start again through Commission Decisions?)
- EC insists on EOTA using dated normative references
- Potential solution:
  - EADs refer to dated standards
  - TABs are permitted to judge applicability of standards
  - If judged inapplicable, EADs need to be amended
- …

Overview

- General introduction
- Recent developments in the EU & Review of the CPR
- Applicability of the CPR
- James Elliot court case and its (potential) effect on European standardization and EOTA activities
- **Conclusions**

Conclusions

- CPR is under review
  (revised CPR not expected before 2021)
- Implementation still not very clear (e.g. only now it becomes apparent that the CPR does not apply for contractors)
- James Elliot court case put New Approach under pressure
- Will review of the CPR be influenced (e.g. disconnecting product standard from Annex ZA)?
- Will mutual recognition become more important again?