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Brussels, 10 September 2008

CPD WG 08-143A
Revision of the Directive (CPR)**CEPMC Position on the Commission Proposal for a new Construction Products Regulation**
(reference: COM(2008)311)

CEPMC is a European association representing manufacturers and suppliers of construction products and materials via its 19 National Members (17 in EU and EFTA, Switzerland and Turkey) and 34 Associate Members (European Sectoral Associations) The companies within the members consist of small, medium and large sized enterprises producing the major part of the various types of construction products manufactured in Europe.

The construction Materials and Products Industry represents around 4% of (existing) European Union GDP, around 20% of total EU manufacturing output, 3 million jobs (excluding distributive trades) and 20,000 different construction products.

The sector has around 65 000 enterprises. Of these around 92 % are SMEs – less than 250 staff, including a large number of Micro enterprises (less than 10 staff) in many sectors (impact assessment SEC(2008)1900, AII, p. 63).

In aggregates for instance, micro enterprises account for 50% of companies represented through CEPMC , and can reach 67 % in specific countries such as Germany or France. The situation is similar for many other sectors, for instance expanded and extruded polystyrene, admixtures for cement and concrete, doors and windows, certain gypsum products, construction units using calcium silicate, mortar industry, sandwich panels, external thermal insulation, bricks and tiles and many others. In France, 90% of the enterprises in the precast concrete sector have less than 50 staff. Of 685 enterprises, 326 (48 %) are micro-enterprises which represent 8% of the total turn over.

CEPMC also represents large enterprises in sectors such as cement, gypsum plasterboard, plastic pipes, wood products, steel for construction, bricks.

The CEPMC position papers are only approved after internal debate and consensus between its national members and its associate (sectoral) members.

1. Need for a revision of the existing Construction Products Directive (CPD).

It was considered necessary by CEPMC members and associate members to revise the CPD.

Indeed, the CPD was written around 1985, more than 20 years ago. It did not have an immediate effect because several steps were required to put in place basic elements which were:

- Interpretative documents, giving the link between the essential requirements applicable to the construction works (which are regulated at the national level) and the characteristics of the products.
- Mandates, to CEN and EOTA, fixing the list of characteristics of products to be assessed for specific uses, and defining the system of attestation of conformity (of the assessment of the product).

- Supporting standards describing the test methods (about 1500 standards describing test methods were necessary to cover all the needs of all the various types of construction products).
- Harmonized products standards including the requirements for products, the methods to assess both the performance of the products and how to declare it in the information accompanying CE marking and finally the definition of the tasks of the Notified Bodies carrying out the assessment.

The first CE marking was agreed in 2000, and the first one for an important construction product (cement) was implemented in 2001

Since then more than 320 harmonized standards have been finalized by CEN and their reference published in the Official Journal, so now more than 300 families of products are subject to CE marking. In the same period more than 1100 European Technical Approvals for specific products have been issued allowing them to bear CE marking.

During this process, the manufacturers via CEPMC constantly supported the efforts of the Commission and Members States to implement CE marking on construction products. The manufacturers made a huge financial investment in standardization activities, considering this development as a significant step forward. This is because,

- A significant number of products (between 15% to 25% according to the sources, in average on the total of the construction sector, but with a large variability according to the specific sectors) are traded around Europe and for such products, manufacturers find a benefit in the common market and CE marking (one single assessment of the product, valid, recognized and used throughout Europe),
- The obligation to assess the performances of the products, using a common technical language, brings advantages in the relations between manufacturers, their clients (the contractors) and the public authorities in charge of the security and quality of the construction works,
- This system may drive the sectors towards a better quality of products and introduce a certain level of protection against lower quality products thus protecting products which are well manufactured and tested against unfair competition.

Having implemented the CE marking on more than 300 families of products and gained experience with the content of the 320 harmonized standards and 1100 ETAs (European Technical approval), now is the time for reflecting on the lessons of this experience. Doing so will provide the clarification which appears necessary and to adjust and improve some provisions of the system in order to facilitate the implementation of this Directive and the task of the people concerned.

2. New regulation (CPR). Commission Proposal – COM(2008) 311

CEPMC supports the decision to revise the CPD, and the proposal to replace the current *Directive* by a European *Regulation* (CPR).

Importantly a regulation will avoid inconsistencies introduced by Members States when they transpose a Directive into their national regulation. A regulation, directly managed at the European level, with the support of Members States should increase harmonization.

CEPMC shares the aim expressed by the Commission (see memorandum p.2) for the revision “*to make legislation less burdensome, easier to apply, while also preserving EU policy objectives*” (here “to ensure free circulation and use of construction products in the Internal Market”).

CEPMC also attaches great importance to a number of principles, which should form the basis of the preparation of the new regulation:

- The huge investments made during the last fifteen years to finalise harmonised standards and to implement CE marking for a large number of products must be recognised. The new Regulation must allow the use of these standards without change as the industries concerned and their clients (contractors, distributors, users), who are currently CE marking their products, are satisfied with this process;

- The new regulation must not introduce distortion of competition or discrimination in favour of any group of manufacturers vis-à-vis the others;
- The CE marking must have the same validity, hence the same credibility, irrespective of the basis from which it was justified;
- The new regulation must prevent the development of new barriers to trade at national or local level and must lead to the implementation of effective market surveillance;
- The new regulation must provide a simple, reliable, cheap and fast route for CE marking on innovative products, guaranteeing their confidentiality.

3. General position

Construction products must not endanger the *health and safety of people*, and must respect the Environment.

CEPMC supports the *free circulation of construction products*, and their use by contractors, when the product is adequate for the use, without any technical or financial barriers.

Consequently, CEPMC supported the development of CPD and supports the implementation of CPR in requiring that the manufacturers assess the performance of their products and declare the performances of their products using only the common technical language. The aim is that manufacturers get the most benefit by a CE marking that is based on one single assessment of the product being valid and recognized everywhere by everyone in Europe.

In the new CPR, it is crucial that:

- *the information provided by manufacturers on products performances be accepted by users (contractors, designers) and national, regional or local authorities as reliable and credible,*
- *this information be clear, unambiguous, expressed in a way that is useful for the users and authorities,*
- *the new definition of responsibilities should not allow the creation of new opportunities under which technical barriers could be erected.*

4. Remarks on the content of draft CPR

CEPMC recognizes that the draft introduces some significant improvements in terms of clarification (e.g. the meaning of CE marking) and simplification (e.g. article 26).

- **Art.2: Definitions**

Several definitions should be added:

- Kits, to avoid “creative” interpretations (see definition given in Guidance paper C of CPD).
- Innovative products

Proposal for the definition of innovative product:

An innovative product is a construction product whose characteristics and performances cannot be entirely evaluated according to an existing harmonised standard. This may occur, for example, when:

1. *The construction product does not fall within the scope of the harmonised standard;*
2. *The product does not meet one or several technical definitions of characteristics given in the standard;*
3. *One or more essential characteristics of the products are not or not appropriately covered by the standard;*
4. *One or several test methods necessary to assess the performance of the product are missing or not applicable*

The definition 4 “harmonised technical specifications” should be changed to refer to ETAs and not to EADs.

- **Art.3: Basic works requirements and essential product characteristics**

CEPMC supports this as a useful clarification.

- **Art. 4.1: Conditions for drawing up declaration of performance**

Article 4.1 of the CPR defines the conditions under which a declaration of performances of a product shall be issued by a manufacturer: product performance shall be assessed and declared if “a requirement in relation to essential characteristics of that product exists where the manufacturer or importer intends to place the product on the market”.

We understand that these requirements are those directly relating to products.

In fact, many countries have very few regulation specifically oriented to products, and when they exist, very few characteristics of products are concerned. The consequence of this provision as phrased is that for a large number of products the CPR drastically reduces the content of the mandatory declaration of performances; Sometimes, for specific products, it would not be obligatory to declare any performance(s) and these products will be authorized to be placed on the market without CE marking in the Members States concerned.

What CEPMC believes is that **as soon as a product is placed on the market and covered by requirements in relation to the essential characteristics of the product, to satisfy the basic work requirement, the declaration of performance should be compulsory.**

- **Art. 4.1 (a):** CEPMC requests to change “that” by “its”,
- **Art. 4.1 (b):** A detailed definition or examples of the word “requirement” should be provided by the text,
- **Art. 4.2: and last paragraph of 4.1:** CEPMC supports the possibilities offered by art. 4.2, to voluntarily declare performance for other characteristics than those for which the declaration is compulsory.
- **Art. 5.2: Content of the declaration of performance.**

The system proposed in CPR, leads to change substantially the presentation of the declared performances of the product:

- Declaration of performance has to be done (compulsorily) for the characteristics for which regulations exist in the country where the product will be placed on the market (these characteristics are by definition variable from one country to another)
- Declaration may be done (voluntarily) for characteristics for which the contractors or distributors have to demonstrate that they fulfill national requirements existing in the country of destination (these characteristics are depending on the national building codes, so they also vary from one country to another)

This systems, which seems to be simplified by comparison with the previous ones (CPD), or at least no fundamentally changed, will lead, in reality, to a situation more complex, in which the manufacturers will not be sure of the information they have to provide and the contractors or distributors will need to know, case by case, what technical information on products they need to receive. That means a heavier burden and high level of competence on the content of the harmonized standards for contractors and distributors.

In addition, market surveillance will become extremely difficult with this system.

CEPMC considers that the declaration of performance should cover all the essential characteristics of the product, as it is currently done under CPD.

CEPMC requests that for the essential characteristics of products, the manufacturers should be required to provide a value or class of performance (if they are covered by a regulation) or a class or pass fail criteria. In addition, NPD should remain possible to be declared if there is no requirement

concerning this characteristic in the country where the product is being placed on the market (i.e. maintain the current system).

- **Art 6: Form of the declaration of performance**

CEPMC requests that manufacturers are clearly authorized to provide the declaration of performance using website and electronic tools, without prior authorization from the client or the Commission.

- **Article 7.2 CE marking and other quality marks**

CEPMC supports the content of this article. A quality mark could be added in addition to CE marking only if this quality mark covers other aspects than those covered by the CE marking (other characteristics, or third party intervention if this is not included in CE marking)

- **Art. 7.3 Use of CE marking**

This article does not necessarily cover the case where the product has (may have) several uses (e.g. thermal insulating products). These construction products should be allowed to be made available on the market with a precision on the use concerned

- **Art 8.2: Rules and conditions for the affixing of CE marking**

CEPMC requests to replace art. 8.2 by the following:

“The CE marking shall be affixed visibly, legibly and indelibly to the construction product, to its data plate, to the packaging or to the accompanying documents.”

CEPMC proposes to add, at the end of art.8.2 “or it shall be stored in a manufacturer’s web site accessible by the client”

- **Art. 8.3: Rules and conditions for the affixing of CE marking**

CEPMC requests the deletion of the phrase “two last digits of the year in which it was affixed”. This obligation is often costly or complicates the production line, without any benefit for the client.

Clarification is also requested as to what it means exactly “the unique identification code of the construction product” and the “number of the declaration of performance”.

- **Art. 9: Contact points**

CEPMC supports this clause, as useful clarification.

In addition there should be a clause requiring that the contact point must be independent from any body involved in the assessment of the products.

- **Art. 10 to 15: Obligations of economics operators:** CEPMC supports this as a good clarification.

- **Art. 10.3: Obligations of manufacturers**

Manufacturers shall carry out sample testing of marketed construction products only when there have been complaints.

- **Art. 16: Harmonized standards**

A paragraph should be included dealing with the content of the standards. In particular, the scope of the harmonized standards should be more explicitly and more accurately defined.

In particular, the scope shall define the product or the range of products covered and should clearly indicate the uses covered.. Indeed a product can be used in various uses, and a regulation applies to the product for one use and not necessarily for another (e.g. mineral wool can be used as thermal insulation, acoustic insulation, to fill holes, etc). So an essential characteristic relevant for a given use can be unnecessary for the same product with a different use.

- **Art 17.1: Formal objection against harmonized standards**

Harmonized standards shall entirely satisfy the requirements set out in the relevant answers to the mandate accepted by the Commission and Member States. Often the answer to the mandate modifies the requirements of the mandate.

- **Art 18.4 Levels and classes.**

CEPMC supports this article which is a real simplification.

- **Art 19 Assessment and verification of constancy of performance**

CEPMC strongly supports the decision not to use the modules included in the New Legislative Framework – horizontal decision.

But CEPMC is opposed to the renumbering of the existing AoC (Attestation of Conformity) levels, as this would oblige a change in all the administrative documents currently implemented by enterprises, both for internal communication and for official documents (decrees, etc.) without any added value. CEPMC requests the retention of system numbering 1+, 1, 2+, 3 and 4.

- **Art 20.1 European Assessment Document**

CEPMC requests the addition at the end of the article 20.1 the following phrase: “only for the products which depart from the harmonized standard”, or “do not fall within its scope for the required end use”. (This precision should also be added to whereas 17)

CEPMC opposes the proposal that an ETA could be carried out even when a harmonized standards exist for the same products. This option would;

- decrease the transparency and value of CE-marking;
- confuse the market;
- decrease the willingness of some industries to invest in standardization, forcing other industries also to choose the more expensive ETA route;
- produce rivalry between EOTA and hEN forcing industries to be active on both fields. This will result in needless additional costs for industry and will especially harm SME's

Therefore the use of ETA should be limited only to (innovative) products/kits not covered by hEN. When there is a possibility to draft an EAD, it is also usually possible to draft a hEN. EAD can be seen as pre-standardization and should therefore be assessed after a fixed period to see if transformation into a hEN is feasible. This would avoid unnecessary barriers for manufactures.

- **art 21 European Technical assessment**

CEPMC requests to delete in article 21.1 “for any construction product” and to replace it by “for innovative products”.

CEPMC requests the addition of the following clause as article 21.3 “where there is an established European test method available for the technical assessment of the performance of a product, and as long as this test method is applicable, it shall be used in ETA.

A precision: CEPMC thinks that EADs cannot be considered as one of the two types of “European Harmonized Specification”, but the status of ETS should be given to ETA (European Technical Assessment)

- **Art. 26 Use of specific Technical Documentation**

CEPMC supports the clauses constituting this article.

But the necessity that the STD shall be verified by a relevant certification body should be examined by sector or by family of products. For certain products (e.g. fire protection products) it is required to be “third party certificated products”. For others, the intervention of Notified Bodies could be limited to system 1 or 2 (e.g. wood products).

- **Art. 27 Use of Specific Technical Documentation by micro-enterprises**

CEPMC notes that a large part of the construction products sector is opposed to this, believing it to be too easy. But others may accept or are favorable.

CEPMC requests the addition at the end of article 27 a third paragraph stating that “This simplified procedure shall guarantee an equivalent level of protection for consumers with respect to the requirements of Health, Safety and Protection of the Environment and fitness for use.

In addition, the use of STD should not be limited to micro-enterprises, but enlarged to all SMEs.

- **Art. 28 Use of Specific Technical Documentation for individually manufactured products**

CEPMC requests that the application of this article be extended to cover also small series.

The definition of small series should be given for each family of products within the harmonized standards, and CEN should be mandated by a horizontal mandate to do so.

- **Article 36 Witness tests**

In some cases witness testing is justified. At present many Notified Bodies do not have the ability to test certain products in their own test facilities and so expanding the use of witness testing is important.

But, to prevent abuse of the system, Article 36 should include provisions requiring the Commission to develop additional conditions for the use of witness testing.

- **Article 37: Application for notification**

Notified bodies shall always be accredited as required in the New Legal Framework. No exception shall be given. This will guarantee equal service of notified bodies to the manufacturers.

- **Art. 38.3: Notification procedures**

Decision on the essential characteristics applicable to the so called horizontal notification shall be left to SCC. Horizontal notification should be allowed in addition to fire characteristics at least for all acoustic characteristics (not just absorption) and dangerous substances

- **Art 46 to 49 market surveillance**

CEPMC is in favor of the development of effective market surveillance in the Members States, but is concerned by the limited resources allocated by Members States to this activity.

CEPMC requests that a clause be added in CPR imposing on Member States the requirement to designate and make publicly accessible a body, where the manufacturers or any other actor can make a complaint

- **Annex I: Basic works requirements n°3 “Hygiene, Health and the Environment”**

The scope of the previous definition is extended to the construction and demolition phases in addition to the service phase.

CEPMC requests that the commission undertake the preparation of a guidance paper to detail how this basic work requirement will be developed. CEPMMC believes that an interpretative document or similar should be prepared, in order to guide the future preparation of mandates on this field. The existing mandates given to CEN on this issue should be preserved.

- **Annex I: Basic works requirements n°7 “Sustainable use of durable resources”**

CEPMC requests that the commission undertake the preparation of a guidance paper to detail how this basic work requirement will be developed. CEPMMC believes that an interpretative document or similar should be prepared, in order to guide the future preparation of mandates on this field. The existing mandates given to CEN on this issue should be preserved.

The requirements to ensure “use of environmentally compatible raw and secondary materials in the construction works” are very vague and hence could be abused. The meaning of “environmentally compatible” should be clarified. It would be sensible to refer to the work within CEN TC350 and

make use of the standards that have been developed on sustainability in this committee rather than developing new standards.

- ***Annex II: Procedure for adopting European Assessment Document and for issuing European Technical Assessment***

CEPMC is concerned by the time indicated for the adoption of an EAD and for the issue of European Technical Assessment. These periods are excessively short and are not realistic. This could lead to a reduction in the quality of the assessment and in subsequent confidence in the assessment.

If ETA is reserved to innovative products, then there could be more flexibility in these timescales.

- ***Annex III: Declaration of performance***

Remarks: Declaration of performance shall include a description on all intend uses of the product covered by the CE-marking.

Without further development declaration of performance is not applicable to the structural construction products using Guidance Paper L CE-marking Methods 1, 2, 3a or 3b.

5. Request for additional points not covered

- ***Role and identification of the various organization or bodies created by the CPR***

CEPMC requests the addition of an annex including a list of the organizations or bodies created or cited by the CPR, with definitions of their roles and missions.

- ***Mutual recognition***

CEPMC is concerned about the application of Mutual Recognition agreement within the Union and between the Union and Countries outside the Union
