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Implementing the Construction Products Regulation (EU) 305/2011

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THE EU CONSTRUCTION SECTOR



The importance of the construction sector for the Internal Market has been recognized already in 1985 by the fathers of the Internal Market and therefore they decided to open the market in the sector of construction products.

The EU Internal Market

To create the Internal Market for products it is necessary:

- **to abolish technical barriers to the trade of products**
(EU legislation for specific product families e.g. the Construction Products Directive and Regulation 305/2011)
- **to control the effective functioning of the market**
(effective market surveillance)
- **to avoid creating new unjustified barriers**
(Directive 98/34/EC - notification of new regulations)
- **to open the public procurement to competition**
(EU Directives on public procurement)

The Basic Mechanism

Directive 89/106/EEC → Regulation 305/2011 requires:

- **elaboration of harmonised European standards (hEN),**
- **implementation of the harmonised European standards in all EU Member States through approximation of their national regulations,**
- **application of the CE marking on construction products in line with these harmonised ENs,**
- **use of the hEN by all actors (regulators, engineers producers, contractors) in a “common European technical language”**

Problems in Directive 89/106/EEC which lead to its replacement by Regulation (EU) 305/2011

- **complex and ambiguous provisions**
- **implementation of hENs in Member States**
- **ET Approval was a too complicated, expensive and slow route to the CE marking**
- **designation / control of notified bodies**
- **difficulty for SMEs to CE mark their products**
- **insufficient market surveillance**

Some Basics

Member States **remain competent to define the level of Essential Requirements ("safety" of construction works)** in their territory.

Construction products must have a certain **performance (essential characteristics)** to allow designers/authorities to verify that construction works satisfy the Essential Requirements as regulated by each Member State in its territory.

Neither the CPD nor the CPR regulate the performance of construction products.

The elaboration of harmonised European standards

EU Commission invites CEN through **mandates for specific product families** to elaborate harmonised European standards for construction products.

The harmonised ENs are expected:

- to be written in **performance** terms and
- **not to exclude products** which are legally placed today on the EU market.

Therefore hENs are not expected to set **performance limits** (unless this is requested in the mandate or by a EU legal act).

Assessment and Verification of Constancy of Performance (AVCP) system

AVCP system (previously called "Attestation of Conformity") is defined by a Commission legal act and foresees the tasks which the manufacturer and (possibly) a 3rd party have to undertake in order:

- to assess the performance of a construction product,
- to verify that the performance remains constant over time.

Existing Commission Decisions on AoC **remain valid** under the CPR.

AoC→AVCP: Who does what ?

T A S K S	S Y S T E M				
	1+	1	2+	3	4
PRODUCER					
DECLARATION OF PERFORMANCE	YES	YES	YES	YES	YES
Assessment of product performance			√		√
Factory production control (FPC)	√	√	√	√	√
Further testing of samples	√	√	√		
NOTIFIED BODY					
Assessment of product performance	√	√		√	
Initial Inspection of Factory + FPC	√	√	√		
Contin surv +assessmt + eval of FPC	√	√	√		
Audit testing of samples	√				

Declaration of Performance (DoP) by the manufacturer

- after assessing the performance in accordance with hENs/EAD
- DoP is expressing the product performance accurately & reliably
- contains the performance of the ess characteristics related to the intended use taking into account the provisions where the manufacturer intends the product to be made available on the market (at least one ess. characteristic)
- Member States presume that DoP is correct and allow the product to be used without further controls (if the declared performance correspond to the requirements for such use in that Member State).
- Manufacturer supplies the DoP with each product (possibly also by electronic means)
- The DoP is accompanied by info required by REACH regulation

RULES FOR CE MARKING

- general rules on the symbol and geometry in Article 30 of Regulation (EC) 765/2008,
- CE marking can be affixed **only** if the product is covered by a harmonised EN (or if an ETA has been issued for the product),
- CE marking affixed **only** if manufacturer has made a DoP,
- no DoP = no CE marking
- by affixing 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 the Regulation 305/2011 and in other relevant EU legislation providing for its affixing.

Important obligations for MS

A Member State shall not prohibit or impede, within its territory or under its responsibility, the making available on the market or the use of construction products bearing the CE marking, when the declared performances correspond to the requirements for such use in that Member State.

A Member State shall ensure that the use of construction products bearing the CE marking shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate, when the declared performances correspond to the requirements for such use in that Member State.

Legal acts for the CPR implementation

CPR foresees that the Commission, in the framework of its role in implementing the CPR, may issue:

- **implementing act** on the ETA format,
- **delegated acts** on important implementation issues (the European Parliament and the EU Council have 3 months to react).

The **implementing act** to define the ETA format has been issued as Commission Implementing Regulation (EU) 1062/2013 (*published in OJ L 289 of 31/10/2013*)

Legal acts for the CPR implementation

Delegated acts foreseen to determine / amend:

- conditions for making the DoP available on a web site (the act has been adopted by COM and sent to EP and Council for their reaction),
- Annex II of CPR and, where necessary, supplementary procedural rules for ETAs,
- to adapt the other CPR Annexes in response to technical progress,
- establish classes of performance in response to technical progress (e.g. formaldehyde emissions for wood panels),

Legal acts for the CPR implementation

(continued)

Delegated Acts to determine / amend:

- the conditions on which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing;
- the AVCP systems for a product;
- those ess. characteristics or threshold levels for which, the manufacturer must declare the performance;
- the period for the manufacturer to keep the technical documentation and the DoP after placing the construction product on the market;

Simplified procedures

Under specific conditions all manufacturers can use **simplified procedures based on certain documentation** to declare the performance of their products without testing or without further testing.

A specific facility (Art 37) is foreseen only for **micro-enterprises** only (i.e. enterprises with less than 10 employees, annual turnover less than 2 million euros).

Clear rules for Notified Bodies and TABs

Notified Bodies and TABs (EOTA) must be designated by the notifying authorities of the Member States after verification that they comply with strict criteria set in the CPR.

The number of TABs and NBs designated under the CPR till now is 40% less than those designated under the Construction Products Directive 89/106/EEC.

Cooperation, exchange of information and experience among notified bodies in GNB and specific Sector Groups.

Cooperation, exchange of information and experience among notifying authorities of Member States.

The work in CEN

Harmonised ENs cited in the OJ under the CPD can **continue to be used** as harmonised ENs under the CPR.

Certain **adaptations** are however necessary.

CPR prevails against conflicting provisions in standards (e.g. on the information accompanying the CE marking).

CEN established a **model standard** which is used for new standards and when old hENs are amended to gradually update all hENs.

The work in EOTA

Manufacturers and importers may use ETApprovals issued before 01/07/2013 as ETAssessments throughout the period of validity of those ETApprovals.

EOTA consolidates the **EAD format and guidance** after receiving Commission's comments.

Existing ETAGs are expected to be transformed into EADs. **Priority** to transform those ETAGs in the area of which manufacturers have applied for ETAs.

In the meantime **ETAGs may be used as EADs** as in CPR, Art 66(3). EOTA **advises in writing** the EU Commission and the applicant manufacturer on how the ETAGs will be used.

Commission Implementing **Regulation (EU) 1062/2013** defines the format of the ETAssessment.

Product Contact Points + FAQs

Each Member State designates a **Product Contact Point for Construction** to provide information, using transparent and easily understandable terms, on its provisions aimed at fulfilling the basic requirements for construction works,

Product Contact Points for Construction shall be able to carry out their functions avoiding conflicts of interest in respect of the procedures for the CE marking.

List of Product Contact Points for Construction and replies to Frequently Asked Questions on our website:

http://ec.europa.eu/enterprise/sectors/construction/index_en.htm

CE marking on construction products

Common misunderstandings

The CE marking on a construction product is a passport for use in all Member States. (No, the product can be used if the declared performance corresponds to the requirements for such use in that Member State).

The manufacturer receives the CE marking from a notified body. (No, it is the manufacturer who undertakes the responsibility for the DoP and affixes the CE marking on the product).

The CE marking shows conformity with the standard and/or sets performance requirements (No, it shows conformity of the construction product with the declared performance and compliance with all applicable requirements laid down in the Regulation 305/2011 and in other relevant EU legislation).

Does this mean that CE marked products are "dangerous"? (No, the designer must make the correct choices from all the products covered by the harmonised EN. The contractor needs to use the product with the specified performance).

What about OTHER MARKINGS ?

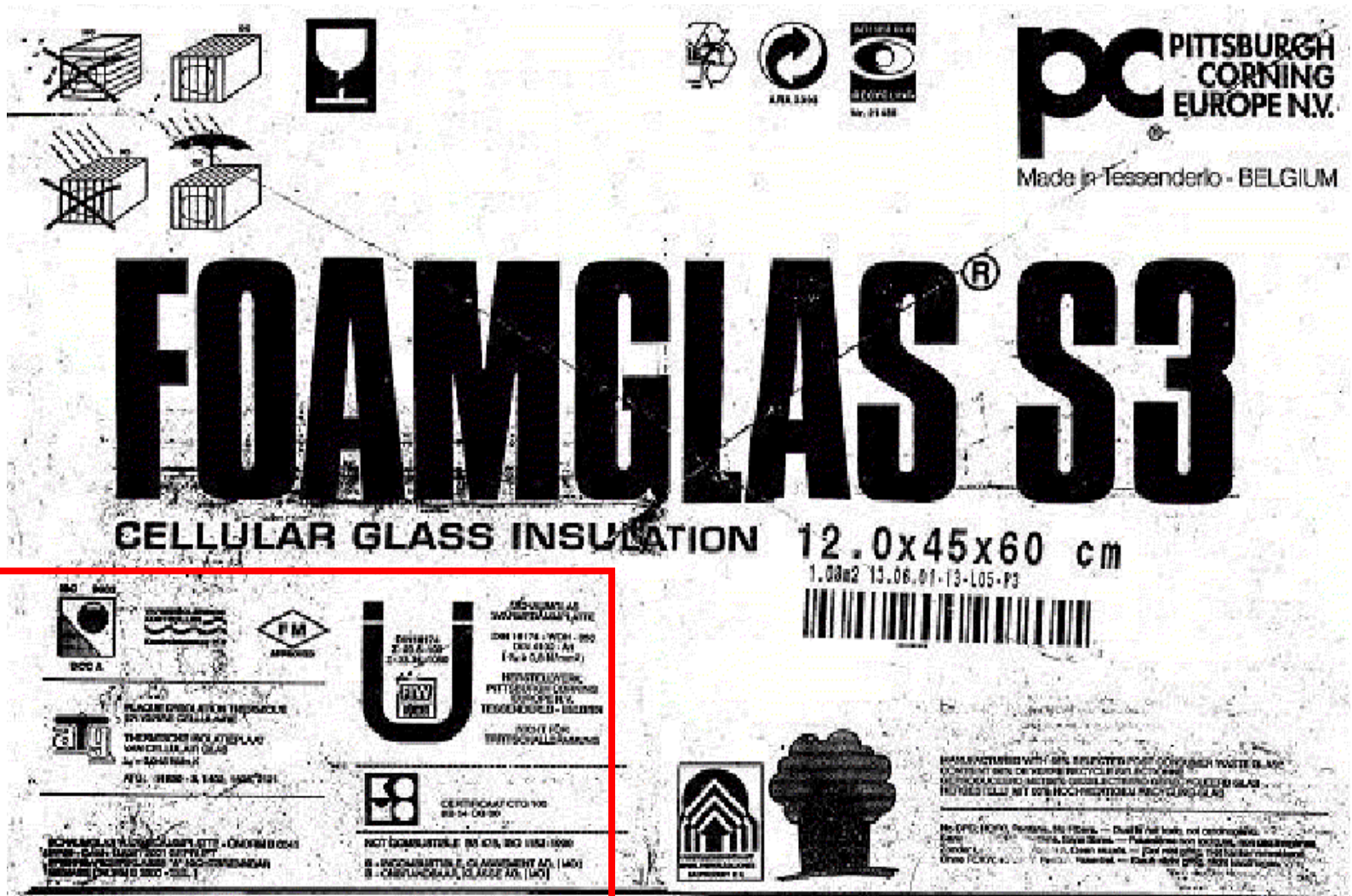


What about OTHER MARKINGS ?

CPR Art 8(3):

Member States shall not introduce any references (and shall withdraw any existing references) in national measures to markings attesting conformity with the declared performance in relation to the essential characteristics covered by a harmonised standard other than the CE marking.

EXAMPLE OF OTHER MARKINGS AFFIXED BEFORE THE CE MARKING



CONTACTS

Our website (DG ENTERPRISE, UNIT G-5):

http://ec.europa.eu/enterprise/sectors/construction/index_en.htm

Our e-mail: construction@ec.europa.eu

Public procurement: http://simap.europa.eu/index_en.html

Official Journal of EU: <http://eur-lex.europa.eu/en/index.htm>

Notified Bodies: <http://ec.europa.eu/enterprise/newapproach/nando/>

CEN/CENELEC: <http://www.cencenelec.eu>

EOTA: <http://www.eota.eu>

Thank you for your attention