

The New EU-Regulation on Construction Products

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European Construction Products Legislation:

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Background



Background

□ Present situation

- Construction Products Directive (89/106/EEC), in force since 20 years
- CE marking compulsory, based on harmonised European Standards (hEN)
 - 477 hENs concerned (product standards)
 - 414 hENs finalised (→ 87 %)
 - 376 hENs already quoted in the Official Journal of the EU (→ 79 %)
- CE marking also based on European Technical Approvals (ETA)
 - Partly compulsory
 - 2000 valid ETAs

Background

- The CE marking must be affixed
 - visibly, legibly and indelibly
 - easily accessible for the market surveillance authorities
- The CE marking must be affixed, in this order of priority
 - on the product itself
 - on a label attached to it
 - on its packaging or
 - on the accompanying commercial documents

Background

□ Consultation and Impact Assessment

- Spring 2006
- 319 answers, amongst them
 - 94 European or national industrial associations
 - 102 manufacturers

□ “Better Regulation: Simplification Strategy” 2005-2008

- The recast/simplification of the CPD is action Ref. No. 2007/ENTR/001 in the Commission Work and Legislative Programme (CWLP) 2007

Background

□ Results of the impact assessment:

- Need for clarification
 - CE-marking compulsory or not
- Room for simplification
 - Systems of attestation of conformity
 - European technical approvals
- Lack of credibility
 - Criteria for designation and notification of bodies need to be strengthened
 - Coordination of market surveillance

Background

□ Context

- New legislative framework (goods package)
 - Regulation (EC) No 764/2008 ¹⁾
 - Regulation (EC) No 765/2008 ²⁾
 - Decision No 768/2008/EC ³⁾
- Small Business Act
 - Regulations should apply the “Think Small First” principle
 - All new European and national legislation shall undergo a „SME-test“, in order to assess the impacts on SMEs
 - Specific measures and exemptions for small and micro-enterprises

¹⁾ Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State

²⁾ Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products

³⁾ Decision Nr. 768/2008/EC of the European Parliament and the Council of 9 July 2008 on a common framework for the marketing of products

Background

❑ Three options were considered:

- Option 1: No change
- Option 2: No legislation
- Option 3: Revision of the CPD

❑ Option 3 was chosen for the following reasons:

- the present CPD has failed to ensure the functioning of the Common Market for construction products
(☞ Option1 not appropriate)
- the application of the principle of mutual recognition wasn't able either to ensure the free movement and use of construction products in the Common Market
(☞ Option2 not appropriate)

Background

□ Goals of the CPD amendment:

- Clarification
 - More and more precise definitions
 - Meaning of the CE mark
- Reinforcing the credibility
 - New, more stringent rules for the notification of bodies
 - Safeguard provisions for the notification

Background

□ Goals of the CPD amendment (continued):

- Simplification
 - Specific rules for micro-enterprises
 - Specific rules for individually manufactured products
 - Simplification of the procedures for European technical assessments
 - Multiple use of test results in order to facilitate type tests („shared testing“ und „cascaded testing“)
 - Alternatives to testing („without testing“ und „without further testing“)

Content

Content of the Proposal

□ Title

- Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products

□ Contents

- Chapter 1 – General provisions
- Chapter 2 – Declaration of performance and CE marking
- Chapter 3 – Obligations of economic operators
- Chapter 4 – Harmonised technical specifications
- Chapter 5 – Technical assessment bodies
- Chapter 6 – Simplified procedures

Content of the Proposal

□ Contents (continued)

- Chapter 7 – Notifying authorities and notified bodies
- Chapter 8 – Market surveillance and safeguard procedures
- Chapter 9 – Final provisions
- Annex I – Basic works requirements
- Annex II – Procedure for adopting European Assessment Document and for issuing European Technical Assessment
- Annex III – Declaration of performance
- Annex IV – Product areas and requirements for Technical Assessment Bodies
- Annex V – Assessment and verification of constancy of performance

Changes

Changes compared to the CPD

□ Adaptation to the new legislative framework

- More precise definitions
 - Placing on the market
 - Making available on the market
 - Economic operators
- Notification
 - Member States shall designate a notifying authority
 - Detailed provisions regarding the notification of the „bodies to be authorised to carry out third party tasks in the process“

Changes compared to the CPD

□ Adaptation to the new legislative framework (continued)

- Market surveillance
 - Specific provisions for construction products presenting a risk
 - Complying construction products which nevertheless present a risk to health and safety (deficiencies of hENs or ETAs)
 - Formal non-compliance
 - Safeguard procedure for market surveillance measures

Changes compared to the CPD

□ Change of philosophy

- „The New Approach is not the appropriate legislative technique for achieving the objective of ensuring free circulation and use of the construction products“ (Commission proposal 10037/08, Explanatory Memorandum, cl. 1.1)
- Different meaning of conformity: instead of conformity with European technical specifications now „conformity with the declared performance“
☞ *“harmonized technical language”*
- Concept of „fitness for use“ has been abandoned
- CE marking only if a declaration of performance has been made

Changes compared to the CPD

❑ Obligations of economic operators

- Newly introduced in CPR
- Types of economic operators:
 - Manufacturers
 - Authorised representatives
 - Importers
 - Distributors

Changes compared to the CPD

- Manufacturers
 - Responsible for the correct declaration of performance and for the CE marking in the first place
- Authorised representatives
 - Acts on behalf of the manufacturer (e.g. in case of manufacturers from third countries)
 - Cooperates with national authorities (esp. market surveillance authorities)
- Importers⁴⁾
 - Shall ensure that the product fulfills all requirements with regard to the declaration of performance, CE marking and technical documentation
 - Shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declaration of performance

⁴⁾ Any natural or legal person established within the Union, who places a construction product from a third country on the Union market

Changes compared to the CPD

- Distributors
 - Shall ensure that the product bears the CE marking and is accompanied by the documents required
 - Shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declaration of performance
- Cases in which obligations of manufacturers apply to importers and distributors
 - An importer or distributor shall be considered a manufacturer where he places a product on the market under his name or trademark or modifies a construction product already placed on the market in such a way that conformity with the declaration of performance may be affected (e.g. modifications)

Changes compared to the CPD

□ Simplified procedures

- „Specific technical documentation“ (STD) newly introduced for this purpose
- A STD is required for the following cases:
 - If the type test (at present „Initial type test“) shall be replaced by one of the following options
 - shared testing
 - cascaded testing
 - WT (without testing)
 - WFT (without further testing)
 - to replace the „applicable system“ and to demonstrate the compliance of the construction product with the „applicable requirements“ for
 - micro-enterprises⁵⁾
 - for individually manufactured products

⁵⁾ According to EC Recommendation (2003/361/EC) micro-enterprises are enterprises with less than 10 employees and a yearly turnover of not more than 2 Mio. EUR

Changes compared to the CPD

□ Technical assessment bodies

- New name for the present „European technical approval bodies“
- „European technical approvals“ will be renamed „European technical assessments“
- EOTA becomes „Organisation of technical assessment bodies“
- Product areas and requirements for technical assessment bodies laid down in annex IV
- Technical assessment bodies will be notified by Member States

Changes compared to the CPD

□ European technical assessment (ETA)

- ETA possible for products which are not or not fully covered by harmonised standards
- Instead of two routes to an ETA (CUAP und ETAG) only one way through a „European assessment document“ (EAD)
- The reference of each EAD shall be published by the EC in the Official Journal of the European Union
- Procedures laid down in detail in annex II of the CPR

Changes compared to the CPD

□ Basic works requirements

- New term for the present „essential requirements“
- Additional seventh basic works requirement:
 - Sustainable use of natural resources

7. SUSTAINABLE USE OF NATURAL RESOURCES

The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and ensure the following:

- (a) recyclability of the construction works, their materials and parts after demolition;
- (b) durability of the construction works;
- (c) use of environmentally compatible raw and secondary materials in the construction works.

Problems



Problems

□ Main discussion points

- Cases where a declaration of performance (DoP) and hence CE-marking will be compulsory (Art. 3-5)
- Simplified procedures (Art. 26-28)
- Product Contact Points (Art. 9)
- Procedures for EAD/ETA (Annex II)

Problems

□ DoP and CE (Art. 4 and 4a)

- DoP and CE mandatory, but with the following exceptions:
 - construction products manufactured individually in a non series process in response to a specific order, and installed by the manufacturer in a single identified work
 - construction products manufactured on the construction site
 - construction products manufactured in a traditional manner in a non-industrial process for adequately renovating buildings officially protected as part of a designated environment or because of their special architectural or historic merit

Problems

- On this Article 4 was a major conflict between the European Commission and Member States
 - CE marking is compulsory under the current CPD (at least for standardized products)
 - The proposal of the European Commission envisaged a DoP and CE marking to be compulsory only when there are „requirements in relation to essential characteristics of that product“ in the Member State, where the product is placed on the market
 - The present solution is a compromise supported by a qualified majority of Member States

Problems

❑ Simplified procedures (Art. 26-28)

- Big debate on the company size as a criterion for simplified procedures and exceptions

❑ Product Contact Point

- Shall provide information on requirements for the use of a given construction product in a Member State
 - For a fee or free?
 - Member States fear big administrative burden

❑ Procedures for EAD/ETA (Annex II)

- Heavy procedure
- Some Member States would prefer delegated act for this

Timetable



Timetable

□ Entry into force (acc. to EC-proposal)

- In general twenty days after the publication in the Official Journal of the EU
- All „operative“ articles (i. e. everything except definitions and articles required for the „preparation“, e. g. for notifications, standing committee etc.) by **1st July 2013**

Timetable

□ State of play

- EP
 - First reading of EP in spring 2009
 - 106 amendments decided by EP (24 April 2009)
 - New composition of IMCO committee, new rapporteurs due to EP elections in June 2009
- Council working group
 - Already 38 sessions of the Council working group under Slovenian, French, Czech, Swedish and Spanish presidency
 - Attempt to achieve a political agreement in the Competitiveness Council on 25 May 2010
 - Otherwise only progress report to the Council

Control

CE Marking and Building Control

□ Product vs. works

- There are harmonised European standards for construction products
- But there are no harmonised European building regulations – for construction works Member States are still responsible

□ Market vs. installation

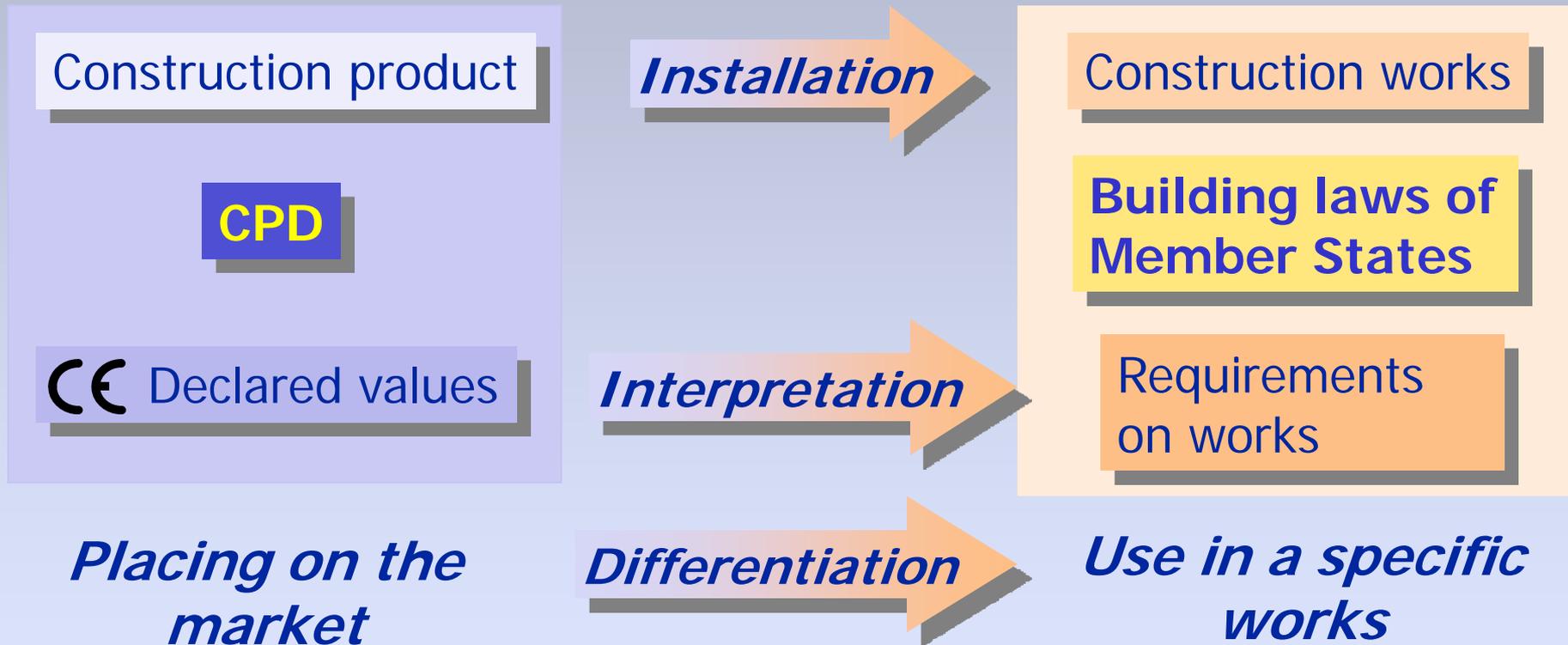
- There is a common European market for construction products
- But products which have been placed on the market legally might not be allowed to be used freely

CE Marking and Building Control

❑ Market surveillance vs. Building Control

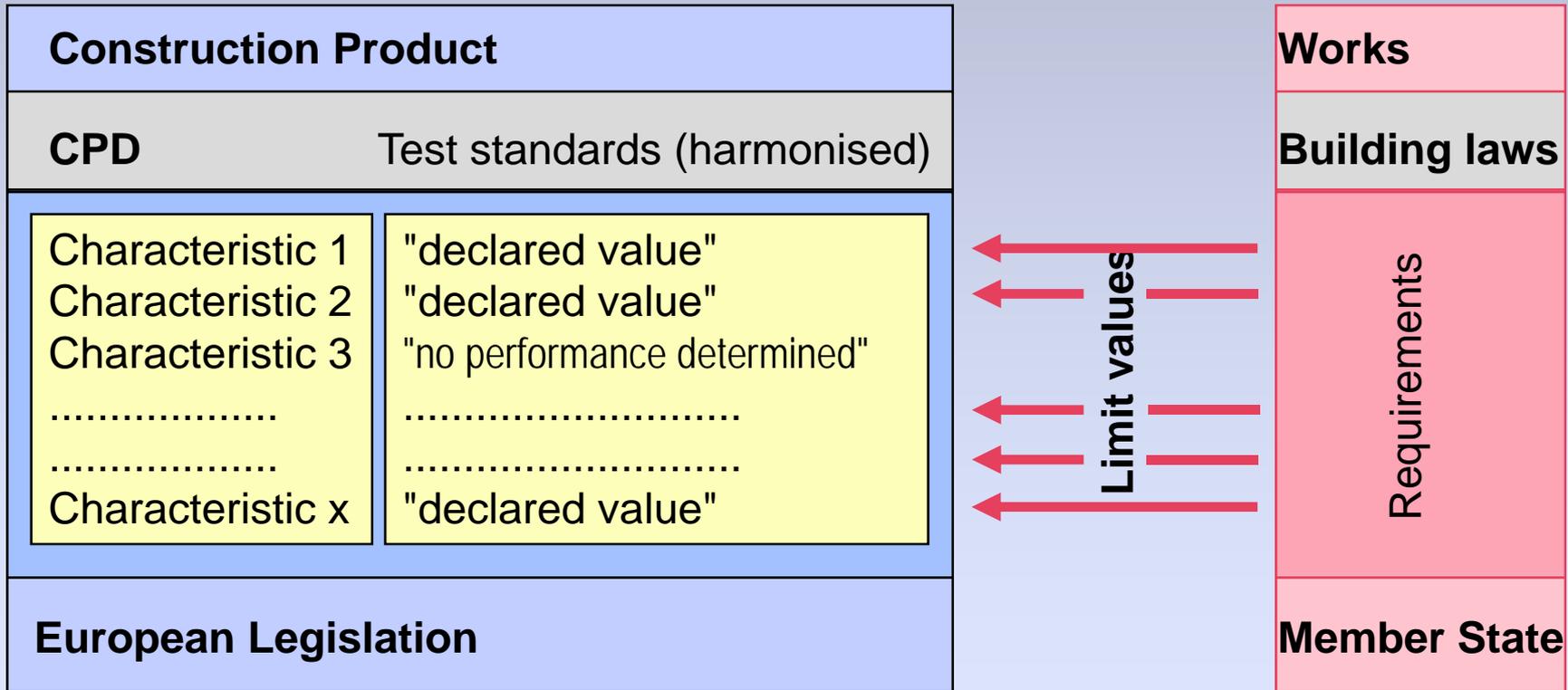
- Member States are obliged to establish market surveillance authorities for harmonised product areas (EU-Regulation No 765/2008)
- But there is no European approach for building control

CE Marking and Building Control



CE Marking and Building Control

- ❑ Possible requirements of Member States for the use/installation of construction products



CE Marking and Building Control

- ❑ **Placing on the market of construction products**
 - Regulated at European level
 - Market surveillance
- ❑ **Use/installation of construction products**
 - National requirements in building regulations
 - Building authorities responsible for the control

Thank you very much for your attention!