

Construction Products Regulation - overview

Summary

On the 1st July 2013 the old Construction Products Directive was withdrawn and replaced by the Construction Products Regulation. The Regulation aims to be an updated and improved version of the Directive, so the fundamental principles are the same, namely:

- To break down technical barriers to trade in construction products between Member States of the European Economic Area (EEA).
- To provide for a system of harmonised technical specifications for construction products.
- To establish harmonised rules on how to detail the performance of construction products in relation to certain essential characteristics.
- To generate a framework of Notified Bodies (bodies accredited by the EU to perform testing and certification activities with regard to this regulation).
- To provide for the CE marking of products.

A point to note is that like the Directive, the new Regulation does not aim to harmonise regulations and requirements concerning the actual construction works (e.g. the Building Regulations in the UK). Member States, public and private sector procurers are free to set their own requirements on the performance of buildings and construction works and therefore performance levels of products.

The Regulation represents a continued focus on the safety of completed construction works and lays down aspects to consider for construction products. The 6 'Essential Requirements' of the Directive have been extended to become the 7 'Basic Requirements for Construction Works', namely; Mechanical resistance and stability, Safety in case of fire, Hygiene health and environment, Safety and accessibility in use, Protection against noise, Energy economy including heat retention and a new requirement - Sustainable use of natural resources.

A point to note is that the Regulation does permit some exceptions for compliance and derogations from procedures, notably certain bespoke products, which are not manufactured in series (further details later in this document).

Citation

REGULATION (EU) No 305/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC. Published in the Official Journal L88, 04 April 2011.

Purpose

The reasons for changing from the Directive to a Regulation were to address certain ambiguities apparent within the Directive. The aims of which can be summarised as:

- To simplify and clarify the existing CPD framework, especially in the areas where no harmonised standards exist.
- To improve transparency and effectiveness of the existing measures.
- To bolster the credibility of the Directive.
- To reduce the financial burden on manufacturers, in particular small and medium sized enterprises.
- To clarify the obligation to apply a CE mark and the resulting consequences of non-compliance.
- To improve 'market surveillance', or in other words the enforcement of the legislation.

Of course the primary function remains, of course, to ensure the safety of construction products in all countries of the European Economic Area.

Changes to the Approach

Firstly the Regulation differs from the Directive, in that it requires no national legislation in member states to implement the mandatory requirements. This avoids different interpretations in different member states. Previously under the Directive, the UK, Eire and Sweden had adopted an interpretation that application of the CE mark was voluntary. The Regulation clarifies that application of the CE mark, where a harmonised technical specification exists, is indeed compulsory.

The Directive used a simplistic model whereby manufacturers sold their products directly to an end user. In reality a complex import-distribution chain often exists between the manufacturer and an end user. Hence the Regulation recognises this by imposing legal obligations on these importers and distributors to participate in ensuring the compliance of construction products they trade in. As of the 1st July 2013 importers and distributors need to adopt a 'chain of custody' approach to ensure the relevant supporting documents are capable of being transferred from the manufacturer to the end user. Furthermore, where a distributor places a product on the market under their own label, they will be treated in many respects as the manufacturer.

The Regulation clarifies that certain products may be exempt from its requirements, or may qualify for simplified procedures, where they are:

- Custom made products in response to a specific order, when installed by the manufacturer.
- Manufactured on the construction site.
- Intended for use in traditional, heritage type conservation projects.

The Regulation adds detail to the question of enforcement, which has in reality been rather weak until now. Member states must designate 'enforcing authorities' which are empowered to restrict or remove non-compliant products from the market. For example, in the UK, Trading Standards are the enforcing authority.

The Regulation aims to reduce the financial burden of compliance for small manufacturers. As such, micro-enterprises are allowed to use certain simplified procedures to demonstrate compliance, as long as they can be demonstrated to be equivalent.

In order to provide better access to information about the Regulation each member state has to create a 'product contact point' which aims to provide independent free advice, particularly to small enterprises.

Compliance with the Regulation

As already noted, the Regulation requires that products which are incorporated into constructions are to be adequately specified so as to ensure the performance of the structure itself. In practice, of course, this means that a series of product specifications have to be produced so that manufacturers have proper benchmarks against which to declare their products' performance.

The Regulation thus permits two methods of compliance:

- Harmonised European Standards.
- European Technical Assessments (ETA)

Transition from the Directive to the Regulation does not have a transitional period, the 'switch' occurred on July 1st 2013. Note CE marking is only mandatory, where a harmonised standard is available against which to declare the performance of the product. Where there is no harmonised standard, the manufacturer may choose to demonstrate compliance via a European Technical Assessment route. However the decision to draft a European Technical Assessment will remain voluntary.

As with the Directive, the Regulation itself does not define the required attestation procedure for any particular product or group of products. Instead, a large number of Commission Decisions have followed which essentially determine whether the manufacturer can self-certify their products or the involvement of an independent body (a "notified body") is required. There were previously 6 levels of attestation which defined whether the manufacturer or notified body were responsible for various tasks. Under the Regulation, these are reduced to 5 levels.

Harmonised Standards

The ultimate scenario is to create harmonised standards for every construction product 'permanently incorporated in the works'. So far over 450 have been fully harmonised, (i.e. their reference has been published in the Official Journal of the European Community ("the OJ")), but many more are in progress or planned. A list of the Harmonised Standards can be found on the European Commission's [New Approach website](#).

The information relevant to CE marking and declaration is always found in Annex ZA of each harmonised standard. Of course these currently use the approach of the Directive and over time will need to be updated to be consistent with the Regulation.

European Technical Approvals

The Regulation continues to allow the development of ETAs, which are bespoke specifications to a particular manufacturer and product type, particularly useful for innovative products or kits. However there is a considerable change to how this route to CE marking operates. Firstly European technical 'approvals' are replaced by European technical 'assessments'. The relevant issuing bodies become known as Technical Assessment Bodies (TABs). In order to draft a European Technical Assessment, first a European Assessment Document is created, in response to a request by a manufacturer. This effectively sets out a consistent method of assessment agreed by all member states.

This route, although voluntary, has proved very popular with over 3000 ETAs issued to date. The changes aim to speed up the process and reduce cost to the manufacturer. Currently a list of issued ETAs can be found on the European Organisation of Technical Approvals (EOTA) website. Under the Regulation a new body for the co-ordination of Technical Assessment Bodies will be formed.

Factory Production Control Requirements

In addition to declaring technical performance against the basic works requirements and in order to comply with the Regulation, products must meet certain factory production control requirements. The manufacturer must be able to demonstrate that their production methods will result in consistent product and match the declared performance. The Regulation is no different to the Directive in this respect.

Declaration and marking

The Regulation makes some changes to the way in which a manufacturer declares compliance. The manufacturer's 'declaration of conformity', now becomes a 'declaration of performance'. This is a similar document, but must contain actual performance data in relation to the essential characteristics. It must be remembered that this is actually the most critical legal document in relation to the product. This must be 'made available' to the end user and the Regulation allows for this to be by electronic means, for example by posting on a website.

The principles of actually applying the CE mark, to represent compliance with the Regulation remain the same as under the Directive. However, better clarity is given with regards to who has the responsibility to apply it. Criteria for declarations and the exact form of the CE mark are given in Annex ZA of the relevant harmonised technical specifications.

Useful Links

There are a number of useful resources on the CPR on the internet. In particular:

The European Commission's [EUROPA web site](#) has a great deal of information in its construction industry section.

The UK [product contact point](#) provides information on the CPR as required by the Regulation.

Links to some bodies notified under the Directive / Regulation can be found on our [Notified Bodies page](#).

Further advice:

As with all CE marking directives, the actual requirements for any product under the directives are complex and dependent on not only the product but also, the intended function within construction works. Product Declarations must support any claims made, or implied by commercial literature.

For further advice specific to your products, please [contact us at Conformance](#) and we will be pleased to discuss your needs. If you'd like us to prepare a no-obligation quote for assisting you with CE marking your products, please take a look at our page (link reference) which gives details of the information required for a more accurate idea of the costs and procedures involved.

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