



## POSITION PAPER on

### Common framework for marketing products (former New Approach)

Date: 10 October 2007

The construction materials and products sector accounts for some 4% of total European GDP and 15-20% of total manufacturing output. CEP MC represents the sector via 19 national federations and 30 European sectoral organizations.

CEPMC has examined the 3 proposals presented by the European Commission:

1. Proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products (Reference COM(2007) 53 final 2007/0030 (COD))
2. Proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products (Reference COM(2007) 37 final 2007/0029 (COD))
3. Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC (CPD WG 07-087)

This examination has been made by considering that these legal texts should have impacts on the Revision of the Construction Products Directive 89/106/EC.

1. **Proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products (reference COM(2007) 53 final 2007/0030 (COD))**
  - **Article 3: Conformity assessment procedures (Page 15)** "Where Community legislation requires conformity assessment to be performed in respect of a particular product, the procedures which are to be used **shall** be chosen from among the modules set out and specified in Annex I, ..."

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- CEPMC strongly supports the conclusions reached by the Commission's Impact Assessment to keep for Construction Products the Attestation of Conformity system currently included in the Construction Products Directive for the following reasons :
    - The implementation of the modulus system would require a re-examination of many provisions included in the current generation of harmonized standards, with a risk to re-open long discussions which were solved in the current system,
    - and many actors would have to learn and explain the system of modules.
  - These changes would bring significant costs in both money and time whilst they would not bring any advantage concerning the assessment of the conformity of the products, by comparison to the system introduced by the current Construction Products Directive and already used for number of construction products.
  - **Chapter 1 – Article 6: "Definitions" (Pages 16 - 17)**
    - CEPMC approves these definitions and recommends their uses in the revised CPD.
    - Nevertheless, the specific aspects of the CE marking for construction products have to be preserved in the revision of the Construction Directive, and then authorized by the present Decision. Indeed, for Construction Products, CE marking does not exactly means "conformity with technical requirements" or "safe", but CE marking introduces mainly the obligation to declare the performances of the product for essential characteristics having an influence on "essential requirements" (possibly renamed "basic requirements" in the future regulation on construction products in preparation to revise CPD) defined for works.
  - **Chapter 2 - Obligations of Economic Operators (Pages 17-21)**
    - CEPMC approves the content of these obligations and recommends their uses in the revised CPD. In particular, the Article 11 "Cases in which obligations of manufacturers apply to importers and distributors" has to be considered.
  - **Chapter 3 - Conformity of the product**
    - Article 13 "Presumption of conformity": *Products which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the requirements covered by those standards or parts thereof, set out in ... [reference to the relevant part of the legislation].*

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- In the Construction Products Directive it's key to keep the conformity assessment on the base of technical specifications, i.e. harmonized European standards and European technical Approvals.
  - Article 17 Rules and conditions for the affixing of the CE marking.
  - In the bullet 4. A precision should be given stating that this provision concerns only the "CE marking" so, the two letters CE.
  - An additional bullet could introduce the idea that in specific cases (e.g. Construction Products) it is required that CE marking be "accompanied" by technical information on the performances of the product, or the intended use. The content of this information and the support which can be used (including electronic means, e.g. web-sites, as possible option) has to be defined in the relevant technical specifications. Indeed, the use of electronic tools is already implemented, in practice, for number of products including some construction products. In the case of Construction Products, where the information required is often detailed and complex, the explicit authorisation of this option in the Decision would be a important improvement and would avoid useless discussions..
- 2. Proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products (Reference COM(2007) 37 final 2007/0029 (COD))**
- **Chapter I – General Provisions**
    - Article 2 "Definitions": CEPMC approves these definitions.
  - **Chapter II – Accreditation**
    - CEPMC supports:
      - The designation of a single national accreditation body in each Member State who wants to have it, with a clear definition of the services covered, not offering or providing any activity or service that conformity assessment bodies provide, nor consultancy services.
      - The accreditation of the Conformity Assessment Bodies by the national accreditation Body.

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▪ **Chapter III – Community market surveillance Framework and controls of products entering the Community Market**

- As long as the market surveillance is insufficiently implemented, the manufacturers who fulfill the rules and requirements of the harmonized standards are penalized.
- CEPMC supports the provisions ensuring that *“national authorities are given equivalent means of intervention and the necessary authority to intervene in the market to be able to restrict or withdraw non compliant products”*
- CEPMC wishes that national approaches for the organisation of the market surveillance become more consistent and that Member States' resources be adapted to have an efficient market surveillance.

**3. Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC (Meeting Document: 21/07)**

This proposal concerns the mutual recognition for products which are not subject to Community harmonisation. Introduction (Page 1)

- For these products, Members States are entitled to issue national technical rules, but they will be obliged to continue to observe the principle of “Mutual Recognition”.
- The obligation to apply this principle is not new, as it is already included in the Treaty (article 28 and 30). But it was not satisfactorily applied in practice:
  - Manufacturers, in particular small and medium sized, often do not know the obligations of Members States to allow the sale on their territories of products lawfully marketed in another Member State, and which are not subject to Community harmonisation unless justified reasons. Consequently, they believe that they shall adjust their product, to suit the individual national markets, involving unjustified extra cost and administrative burden.
  - Manufacturers often do not know the national technical regulations existing in individual Members States.



- Therefore, CEPMC supports the proposal from the Commission, and particularly:
  - the establishment, in each Member State, of Product contact points for the provision of information on national technical rules applicable,
  - and the obligation of proof for National Authorities, to set out the reasons why they introduce a decision affecting the free movement of a product even though this product is lawfully marketed in another Member State.