



Council of the
European Union

Brussels, 17 December 2020
(OR. en)

13596/20

MI 545
ENT 145

COVER NOTE

From:	DE Presidency
To:	Working Party on Technical Harmonisation (Construction Products)
No. prev. doc.:	WK 13624/20
Subject:	Report of thr German Presidency concerning the Future of the Construction Products Regulation.

Delegations find below the report of the German Presidency concerning the Future of the Construction Products Regulation.

The Future of the Construction Products Regulation – Presidency Report

– Stocktaking of work undertaken and outcomes under the German Presidency –

I. Introduction

Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products (Construction Products Regulation or the CPR¹) was adopted in 2011 and has applied in full since July 2013. In October 2019, the Commission published an evaluation, which identified a multitude of shortcomings and needs for improvement. In the Commission Communication on a European Green Deal in December 2019, a review of the CPR was announced. This was confirmed in the New Circular Economy Action Plan in March 2020 and the Commission Work Programme 2021. A proposal by the Commission is envisaged for Q 4 2021. The Commission has already started two parallel work streams, one on the CPR Review and one on the review of the technical acquis of the CPR (i.e. the harmonised standards, the European assessment documents and the legal acts of the Commission). To support the discussions on the CPR Review, the Commission has published, inter alia, a non-paper with refined indicative options for the review of the CPR. Commission work has been supported by activities under previous Council Presidencies.² Works on the future of the CPR are thus well under way³.

II. Summary of the work carried out and topics discussed during the German Presidency
The German Council Presidency decided to actively support the discussions on the future CPR during this crucial time by focussing on three main topics:

1. “Sustainability and circularity aspects in the construction sector”,
2. “The future of standardisation of construction products” and
3. “Indoor emissions and environmental and health protection”.

To this end, four informal virtual meetings of the Working Party Technical Harmonisation (Construction Products) as well as a virtual conference on 18 and 20 November 2020 (“Construction Products – Fit for the Future”⁴) with a wide range of stakeholders were

¹ 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 Text with EEA relevance, OJ L 88, 4.4.2011, p. 5–43.

² See for example Council Conclusions on “Circular Economy in the Construction sector” of 8 November 2019 (Doc. 13814/19) and the informal meeting of the Working Party on Technical Harmonisation: Circular Economy and Construction Products Regulation in Future in September 2019 in Helsinki under the Finnish Council Presidency.

³ In addition, the European Parliament is planning to adopt an own-initiative report on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation) in early 2021. The draft report by the Committee on the Internal Market and Consumer Protection was published on 9 September 2020.

⁴ A recording of the conference and further documents can be found on the conference website www.cpr-conference.de.

organized. The Presidency pursued the goal of creating a better starting point for discussions on the one hand, and on the other hand to promote and enable an exchange of views among the Member States with a view to the CPR Review, thus outlining some common viewpoints. This Presidency Report summarises the state of play as discussed during the Presidency activities and has been prepared under the responsibility of the German Presidency, taking into account the views and suggestions expressed by delegations. It is intended to provide a basis for further discussions and to facilitate the task of the incoming Presidency. It should not be considered binding on the delegations, as it constitutes the Presidency's assessment of the outcome of discussions held.

1. Sustainability and circularity aspects in the construction sector

Since its adoption in 2011, the CPR contains a building requirement (Basic Works Requirement, (BWR) 7) with a focus on the sustainable use of natural resources. These aspects have so far hardly been legally referred to and developed in the Member States. They have also not yet been included in harmonized European standards for construction products. However, both at national level and at European level through political initiatives such as the European Green Deal, the Renovation Wave or the new EU Action Plan for the Circular Economy, this topic is becoming increasingly important. In order to prevent diverging approaches, the Commission has indicated that a revised CPR could provide a harmonised method for assessing and communicating the environmental performance of construction products.

As a prerequisite, there is a need to better understand the interaction between requirements for construction works, on the one hand, and the requirements for construction products and for information on construction products, on the other hand. Which assessment method should be used is also being discussed.

a) Working Party on Technical Harmonisation (Construction Products) on 24 September 2020

In the first informal meeting of the Council Working Party on Technical Harmonisation (Construction Products) under the German Council Presidency on 24 September 2020, "Aspects of sustainability and circularity in the construction sector" were discussed on the basis of a Presidency background paper⁵ with guiding questions included as well as an online questionnaire and several expert presentations.

During the discussion, the majority of the Member States taking part in the debate were of the opinion that the CPR should contribute to the achievement of the EU climate targets and the implementation of the European Green Deal. This could be made possible through uniform product testing and the provision of data on product characteristics. One focus of the discussion was sustainable construction and the existing requirements and experiences in this respect in the Member States. The discussion as well as the results of the online questionnaire showed that - so far - only a small number of Member States have regulatory requirements for sustainability and circularity in place. However, in many Member States, there are good examples of measures that are implemented and planned to achieve the goal of greater sustainability.

One difficulty that was addressed by several Member States is the comprehensive provision of all necessary information on the properties of construction products with regard to the sustainable use of natural resources, health and environmental protection. Harmonised test methods should form the basis for this. With regard to the important question of the appropriate data basis, the discussion showed that a large majority of Member States welcomes the use of Environmental Product Declarations (EPD) according to EN 15804. They described the standard as helpful and widely used in the construction sector. Companies have already spent considerable resources on the development of EPDs. The Product Environmental Footprint (PEF), on the other hand, rarely provides sufficient information for sustainable construction and does not play a major role for users in the case of construction products. PEF could play a role in the consumer communication.

⁵ WK 8632/2020.

Member States considered that sustainability assessment should take place at the construction works level. For reasons of subsidiarity, concrete requirements for construction works should furthermore be regulated in the Member States.

In the future, the provision of product information by manufacturers of construction products should be expanded significantly. It was emphasized that EPDs need to be further improved and extended. It was pointed out that a uniform and clear system with harmonized methods is necessary, especially if more and more Member States impose basic requirements for construction works regarding sustainability, circularity and reusability.

b) Online questionnaire on sustainability

Prior to the Council Working Party meeting, Member States were asked to answer selected questions on country-specific aspects of sustainable construction via an online questionnaire. The online questionnaire was answered by 17 Member States. The aim was to get a more concrete picture on

1. what is understood by sustainable construction in the Member States,
2. whether Europe-wide uniform requirements for sustainable building are desirable,
3. how the data situation for assessing sustainability in the Member States is regarded,
4. the role of construction products and the basic requirements for buildings as laid down in the CPR.

The evaluation of the questionnaire showed that measures for sustainable construction are implemented in all 17 replying Member States, but in very different ways.

The majority of Member States emphasized that a uniform approach to the regulatory framework was welcomed, while the concrete requirements for buildings should be decided at national level. However, it also became clear that so far there are only isolated and very different mandatory requirements in the Member States that address very different aspects of sustainable construction (e.g. Recycling Plan, indoor measurements, Building Logbook). With regard to the data basis, it became clear that Environmental Product Declarations according to EN 15804 (EPDs) are widely used and are thus the greatest common denominator with regard to the form of data collection on the sustainability of construction products.

On the question whether there should be a Europe-wide obligation to declare environmental and health-related information for all harmonised construction products, 10 out of the 17 participating Member States answered favourably. The remaining 7 Member States declared that they do not yet have a final national position on this issue.

c) Presidency conference “Construction Products – Fit for the
Future on 18 and 20 November 2020”

The topic of sustainable building was also a central issue in the virtual Presidency conference "Construction Products - Fit for the Future". The workshop "Construction product information - the basis for circularity and sustainability of buildings" on 18 November 2020 deepened the topics discussed in the Council Working Party, involving representatives from science, the construction and housing industry, the Commission and the recycling industry. It was agreed that environmental information on construction products is the key to sustainability and circularity of buildings. Important elements are the correct design and selection of materials in order to increase the resource and energy efficiency of buildings and make it measurable by means of life cycle assessments. All players in the value chain are involved here - the manufacturers of building materials, the builders and architects, the construction companies that carry out the work, the real estate industry and also the recycling/waste management sector.

The high-level panel discussion "The European Green Deal and its impact on the construction and building sector" on 20 November 2020, with the participation of the construction and housing industry and representatives of Member States, focused on the Commission's current policy initiatives. It was discussed how the construction sector can contribute to the implementation of the Green Deal and the achievement of climate targets and whether manufacturers, architects, owners and occupants/users of buildings are sufficiently prepared for this task. The conditions were discussed on how energy and resource efficiency can best be combined with economic viability to achieve the goal of sustainable and affordable housing. Differentiated financial support for renovations was seen as conducive to reaching different target groups and to addressing the very heterogeneous conditions in the Member States. The use of prefabricated construction methods to accelerate the sustainable conversion of existing buildings was seen as a limited option for new construction and also for renovation of residential buildings. In order to further promote the important element of circularity in the construction sector, new digital instruments were seen as an important support in the future. They are to be used to link large quantities of data on building products quickly and cost-effectively, to store them for the long term and to make them available for reuse and recycling at the end of their lives.

2. The future of standardisation of construction products

To date, references to 444 harmonised European standards on construction products have been published in the Official Journal of the European Union (OJEU). However, since December 2018, not a single harmonised standard has been referenced. At the same time, technology and regulatory needs have advanced and standardisation committees have continued their work. In its non-paper with refined options for the CPR Review, the Commission has included as an option an alternative path for standardisation.

The discussion amongst Member States during the informal virtual meeting of the Working Party on Technical Harmonisation (Construction Products) on 8 October 2020 was based on a Presidency background paper⁶ with guiding questions included. In addition, the Presidency invited experts from the European Standardisation Organisations - namely CEN / CENELEC - and industry experts active in standardisation to present their views on the current situation and possible solutions.

⁶ WK 10441/2020.

Inter alia, the Presidency wanted to know whether the analysis made by the Commission on the issues of the current system of harmonised technical specifications was shared by the Member States, which roles the national and European authorities in technical regulation and the different private actors should have, which improvements in the standardisation process are deemed necessary, which short-term solutions to overcome the standstill could be identified and whether the establishment of an alternative path for standardisation besides the current European standardisation system through the European Standardisation Organisations is supported.

During the discussion and in subsequent written answers, Member States emphasized the central role of standardisation for the harmonisation of construction products and the need for short-term solutions to overcome the deadlock in the referencing of standards by the Commission. The idea of an alternative route for standardisation was met with criticism by several of the Member States that took the floor. A constructive dialogue between CEN and the Commission was deemed necessary to be resumed in order to find pragmatic solutions. Whilst translation of standards into all official languages of the EU was welcomed by the Member States, this was not considered to be amongst the main problems or the main reasons why the current CPR standardisation system does not work. Undated references are not considered by the Member States to be a major problem either. Member States agreed that there should be fair representation of stakeholders in the standardisation process. At the same time, regulatory needs of the Member States should be considered during the standardisation process. On the topic of exhaustiveness, Member States saw the need for a different approach by allowing Member States to set requirements at national level, where harmonised European standards do not adequately cover the relevant aspects. Member States also expressed the need for clear criteria for harmonised European standards to be established by the Commission. There was some criticism regarding the legal basis for some of the requirements set by the Commission. The Commission, on the other hand, referred to what it considered to be mandatory requirements of European law and to shortcomings in the standards-based regulatory system.

During the virtual Presidency conference on 18 and 20 November 2020, that subject was discussed in greater depth. In a technical workshop on 18 November 2020, the focus was placed on the question what requirements a standard should meet in legal, practical and procedural terms. In particular, the implications of the James Elliott ruling of the ECJ were discussed.

On 20 November 2020, a high-level panel debate was held, in which the international dimension of technical regulation on the basis of standards and their world-wide significance for the European economic area were emphasized.

In another high-level discussion on the same conference day between the Presidency, a member of the European Parliament, the Commission and a representative from the construction sector, the future of the CPR as a whole was discussed. The need for a short-term response to the standstill in referencing standards was also emphasised here, as was the goal of integrating sustainability and circularity issues into a new CPR. Furthermore, market surveillance issues were mentioned. The Presidency raised the question of whether it might make sense to pursue the review of the CPR in two steps. The first step could result in the immediate resolution of the standstill problem; the second step could then be a comprehensive examination of the more far-reaching issues.

Furthermore, on the initiative and under the moderation of the Presidency, the Commission and CEN/CENELEC have resumed their thread of communication in order to seek ways forward, particularly with regard to the need for rapid referencing of standards for harmonised construction products in the OJEU.

3. Indoor emissions and environmental and health protection

In the informal virtual meeting of the Working Party on Technical Harmonisation (Construction Products) on 29 October 2020, the topic of indoor air emissions within the CPR framework was discussed on the basis of a Presidency background paper⁷ describing the achievements and challenges with harmonised tools provided by the CPR for planning healthy indoor air quality. A high number of experts from Member States, the Commission and the European Chemicals Agency (ECHA) presented the state of play of the current assessment practices of emissions of volatile organic compounds (VOC) in the Member States, the EU Ecolabel, the Member States' regulatory needs in this field as well as highlights of the most recent developments in indoor air and chemicals assessment and legislation.

⁷ WK 11487/2020.

In the discussion following the presentations, questions prepared by the Presidency were addressed. In the meeting, there was consensus amongst the Member States taking the floor that the harmonised horizontal reference method EN 16516 Construction products: Assessment of release of dangerous substances - Determination of emissions into indoor air (EN 16516:2017+A1:2020) is a good basis for performance declarations under the CPR. Furthermore, the harmonisation achieved by the EU LCI Working Group in determining common health-based reference values, lowest concentrations of interest, for hazardous VOC was unanimously welcomed.

At the Presidency conference, one of the workshops on 18 November 2020 was dedicated to indoor emissions under the title „From sick to healthy buildings: Way forward with emissions into indoor air under the CPR“. In this workshop, problems and solutions for performance declarations on VOC emissions under the CPR were discussed on the basis of a keynote presentation on healthy buildings and opening statements by a panel of experts. The panel consisted of representatives of a range of interested stakeholders including in addition to the European Commission and public authorities also the viewpoints of manufacturers, voluntary product labels and building certification schemes. The panel supported unanimously a harmonised declaration model agreed by the Member States and the Commission to be put forward in 2021.

III. Suggestions by the Presidency regarding the further development of the Construction Products Regulation

The Presidency acknowledged the Member States' views and draws the following suggestions from the debates:

On the future of standardisation of construction products:

- a) Regarding the implementation of the current CPR:
 1. The Presidency invites the Commission to keep up a constructive dialogue with CEN / CENELEC in order to find pragmatic solutions for overcoming the current standstill with regard to referencing harmonised European standards for construction products in the OJEU.
 2. Solutions for the standstill should be found before a revised CPR will have entered into force.
 3. The Presidency invites the Commission to swiftly issue and discuss clear and pragmatic criteria and reliable and stable templates for harmonised standards (hENs).
 4. The idea of making rejections of standards more transparent by turning them into an official communication by the Commission should be explored.

5. The Commission should continue to implement the current CPR by setting new and adequate (i.e. clear, proper, technically correct and legally up to date) standardisation requests and by referencing standards in the OJEU.
6. The Presidency invites the Commission to consider the possibility of using Answers to Mandates.
7. In the event that the Commission maintains its legal opinion that it is necessary to date references, "normative references" should be allowed, to date all standards, or state that the valid version is the one that was applicable at the date of publication (or citation) of the harmonized European standard.
8. Better and more transparent involvement of all relevant stakeholders in the standardisation process.
- b) Regarding a revised CPR:
9. Swift revision of the CPR could be considered in order to address urgent legal and technical challenges.
10. The European Standardisation Organisations CEN / CENELEC shall remain the core of the European regulatory framework for standardisation; a parallel system of finding technical rules should be avoided.
11. Proper reflection of regulatory needs of the Member States in the standards.
12. The outcome of the CPR acquis work stream should be returned to the CPR system of regulation, including discussion and adoption of standards in the CEN / CENELEC committees.
13. The review of the technical acquis of the CPR should not preclude legislative decisions by the law making institutions of the EU concerning the CPR Review.
14. Better and more transparent involvement of all relevant stakeholders in the standardisation process.
15. The functions among the parties involved could be distributed more clearly, the Commission and the regulatory authorities of the Member States on the one hand undertaking the development of harmonised requirements and the definition of essential characteristics for construction products, CEN/ CENELEC developing test methods on the other hand. The administrative burden for the Member States should be taken into account.
16. The Standing Committee on Construction (SCC) could take charge of copying the content of Annexes ZA in implementing acts. The Annexes ZA could be removed from harmonised standards.

On sustainability and circularity aspects in the construction sector:

1. Requirements for the sustainability of buildings should continue to be regulated in the Member States.
2. Manufacturers of construction products should provide sufficient product information on sustainability aspects.
3. Harmonised methods for the life cycle assessment (LCA) of construction products should be developed in order to provide comparable product data in corresponding databases.
4. In line with recital 56 of the CPR, the sustainability information of construction products should be declared via EPDs according to EN 15804.
5. While the Product Environmental Footprint (PEF) might play a role for consumer communication, it is not considered suitable for the explanation of sustainability information of construction products.
6. The assessment of sustainability should continue to be carried out at the building level.
7. The provision of certified environmentally relevant product data is cost-intensive, especially if this would have to be done separately for a large number of individual products. EPDs developed under the auspices of professional federations could provide economic relief for manufacturers, especially SMEs.
8. The costs resulting from the requirements to provide information and proof of sustainability for construction and housing must be reasonable.

On indoor emissions and environmental and health protection:

1. The Presidency invites the Commission to include the declaration of VOC emissions in the harmonised system under the CPR, now that the necessary test and assessment methods have been developed.
2. The Presidency invites the Commission to propose VOC classes that are compatible with a high level of protection for all building users including vulnerable groups.
3. At least three performance levels are mostly seen as appropriate.
4. A simple pass/fail approach is not considered to be a good driver for ambitious product development for a toxic free environment.

5. For consumers, an informative assessment in the form of a pictogram (colour scale) is recommended to be introduced in accordance with clause 9 (3) of the CPR.
6. As class criteria, at least the R value (a hazard index based on the EU LCI to account for combination effects or mixture toxicity), and the sum of all emitted VOC (TVOC) and substances classified as carcinogenic, mutagenic or toxic for reproduction (CMR) should be included .
7. Threshold levels for construction products emitting carcinogenic substances should be laid down on the basis of the CPR.
8. For formaldehyde, a carcinogenic substance with a threshold, own ambitious benchmarks (in addition to EU LCI, CMR and TVOC) are requested.
9. The Presidency invites the Commission to propose common criteria for VOC emission classes as soon as possible.
10. The Presidency invites the Commission to include a declaration of performance on both the release of hazardous substances and the content of non-volatile hazardous substances in the future CPR.