IMCO Meeting 22 January 2020 Legislative Scrutiny Session 10.30 – 12.30

EUROPEAN CONSTRUCTION INDUSTRY FEDERATION

Agenda Item 7: Implementation of Construction Products Regulation (Regulation (EU) No. 305/2011): Commission's presentation of the evaluation report and further plans

Input from FIEC – European Construction Industry Federation
Reference: Notice to Members 03/2019 dated 19/12/2019

Key Concerns

Quoting directly from the above notice on page 2, "the key needs and challenges addressed by the CPR include: "…(iii) better communication and information (including availability of comprehensive product information)… (iv) reduced legal certainty."

In its position papers and throughout the many discussions that have taken place in the context of the CPR evaluation, including in the meetings of the CPR Technical Platform, FIEC has maintained that neither of these needs and challenges has been adequately addressed.

Specifically, the following concerns remain relevant to (iii) and (iv) above.

(iii) Better communication and information

This has not been achieved for contractors and other users, i.e. the actors in the sector that undertake the actual construction of buildings and infrastructure (works). This is partly because under the CPR, the Declaration of Performance only needs to refer to at least one essential characteristic - CE Marking can be obtained on that basis and is limited to regulated aspects of construction products.

However, in order to be sure that the product in question is fit for purpose and suitable for use in the construction works in question, **contractors need more information than is provided in the Declaration of Performance and possibly with greater reliability than provided for in the framework of the CPR**. Moreover, the **CE Marking itself is not sufficient evidence that the product is fit for purpose.**

What is worse, is the misunderstanding – exacerbated by a Commission video on CE Marking in 2014 – that the CE Mark is a kind of quality mark, on which users can rely. This is not the case.

If contractors' (and other stakeholders) needs are to be satisfied, contractors need to be involved in establishing the information needs and the corresponding desired level of reliability.

The CPR does not meet the communication and information needs of contractors.

(iv) Reduced legal uncertainty

Even if the CE Marking is present on the product, this does not guarantee that the product can be used in the Member State where it is being installed. It only guarantees that the product can be marketed in the EU. In cases where Member States consider that manufacturers do not respect the CPR, they may withdraw products from the market.

However, legal certainty has not been achieved for contractors and other users. Although the CPR requires manufacturers to CE mark their construction products in order to market them in the EU, once a manufacturer has undertaken this obligation, the responsibility remains with

the contractor to check that the product can be used in the construction works in question. As the CE Marking does not guarantee fitness for purpose, the contractor remains liable in the event of the malfunction of a CE marked product installed by him.

The CPR has not reduced legal uncertainty for users.

Future plans for the CPR

The future of the CPR has been under discussion since its possible revision was announced in the Clean Energy Package in November 2016. Since then, FIEC and other stakeholders have held talks with the European Commission in the CPR Technical Platform, which was set up for the purpose of considering alternative options, ranging from no changes at one end of the scale to repeal of the Regulation at the other. The Commission is well aware of the preferences of industry stakeholders. In one of its own meetings, during which a series of questions were posed and answered immediately via slido, these preferences were underlined. One example of the views expressed in that meeting is that there was no support for repeal of the CPR.

Even though there are problems with the CPR, which have been explained in FIEC positions and those of other stakeholders, repealing it now would create more problems than it would solve. The standardisation system is not working effectively, that is clear. However, there are several reasons for this. FIEC has consistently maintained its view that the system needs to be fixed, supported by small amendments to the CPR. In the meantime, FIEC has called for flexibility from the European Commission and short-term solutions, which include for example, allowing the use of national marks on construction products, alongside the CE Marking, where relevant, i.e. if these add value for users.

FIEC is extremely concerned that in its "non-paper", the Commission is proposing a radical change in approach, which would effectively abandon the existing standardisation system and non-standardisation route to CE Marking (the "EOTA route"), i.e. placing the technical and administrative burden completely on the authorities (Member States and the European Commission).

The European Commission is proposing a drastic solution, which meets its own needs, but effectively excludes the standardisation and EOTA routes to CE Marking. This has not been supported by the industry stakeholders and threatens a system that – although needing improvement – has incurred considerable costs for all concerned. Abandoning the system now would represent a colossal waste of money and may considerably affect competitiveness.

The European Commission must continue to consult stakeholders in a transparent and formal way. The non-paper has not been developed with the stakeholders.

Questions that FIEC would like MEPs to ask during the Legislative Scrutiny Session

1. How does the European Commission plan to solve the lack of adequate information, currently available under the CPR, in order to ensure that contractors and other users do not incurr additional costs generated by time wasted searching for information, or worse, secondary testing at national level to ensure fitness for purpose?
2. What does the European Commission propose, to ensure legal certainty for users of CE Marked construction products, who cannot rely on the CE Mark or Declaration of Purpose?
3. To what extent is the Commission's non-paper on an "alternative route to the harmonised structure" the basis of its future proposal on a revised CPR? What support does the Commission have for this alternative route, from the industry?