

Position Paper

on the implications of the Construction Products Regulation (Regulation (EU) No 305/2011) on the European Standardization System

September 2016

Executive Summary

An interactive workshop was held in October 2015 to discuss the implications of the Construction Products Regulation for the European Standardization system. There were over 80 participants, including industry representatives, CEN/BT members, experts on behalf of CEN/CENELEC permanent delegates, Construction Core Group members, Technical Committees and European Partners.

Some key issues were raised at the workshop:

1. It was suggested that there are apparent inconsistencies between the development of standards to meet the requirements of the Construction Products Regulation (Regulation (EU) N° 305/2011) and the development process of such standards outlined in the Regulation on Standardization (Regulation (EU) N° 1025/2012). (See Clause 1)
2. European standards (ENs) are a powerful tool to consolidate by consensus the knowledge that reflects the state of the art in the construction products sector. In this context, harmonized European standards (hENs) under Regulation (EU) N° 305/2011, and CE marking in particular, act as a vehicle for the free movement of construction products within the internal market. The concern is that hENs should be comprehensive in how they address the EU regulatory framework but as they are drafted to meet the requirements of a mandate/standardization request they may not address all the aspects of every EU Member State's regulatory requirements. (See 2.3)
3. There are several queries on the procedural aspects of the implementation of Regulation (EU) N° 305/2011, including:
 - classes and thresholds (3.1),
 - formal objections process (3.2) and
 - the availability of the resources of the European Commission (EC) to support the standardization process (3.3).

4. The focus on harmonization without assessing the potential impacts on the international standardization system could be detrimental to the potential development of EN ISOs, which could therefore restrict the free movement of trade within the EU and around the globe.

The key recommendations highlighted in this paper to address these concerns are:

1. CEN/CENELEC and the EC promote the principle that hENs are voluntary. This is confirmed by Regulation (EU) N° 1025/2012 and this principle should form an integral part of the CEN/CENELEC standardization system. (See Clause 1)
2. CEN/CENELEC produces standards in the field of construction for use in a variety of purposes and hENs represent between 10-15% of the standards that are developed for this sector. It should be ensured that hENs produced for the construction sector reflect the needs of all stakeholders, in particular users, address aspects that include and are not limited to Regulation (EU) N° 305/2011, and not only focus on the mandatory regulatory elements. (See Clause 1, (4) and (6))
3. The development of a mandate/standardization request should follow the approach described in the Vademecum (guidance manual) on European Standardization. (See 2.1)
4. At present there is no clearly defined timeframe for the process of addressing revised answers to mandates/standardization requests. It is recommended that a timeframe of 4 - 6 months for the acceptance of the revised answer to mandates/standardization requests be implemented, which would help address these issues. (See 2.2)
5. CEN/CENELEC have an established procedure in place to manage claims on defective standards when those claims relate to health and/or safety. The EC should clarify the approach to addressing formal objections from Member States to the citation of hENs in the OJEU. (See 3.2)
6. Acceleration of the draft horizontal mandate, that covers the introduction of threshold levels and/or classes of performance of products in candidate hENs, would be welcomed. In the absence of a horizontal mandate alternative options should be explored. Over 60% of the candidate hENs that have been rejected for citation in the OJEU are rejected as a result of matters relating to the introduction of classes and threshold levels. (See 3.1)

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Abbreviations

BRCW	Basic Requirements for Construction Works (Annex I CPR)
BT	Technical Boards of CEN/CENELEC
BT/WG	Working Group of the Technical Board of CEN/CENELEC
CCMC	CEN/CENELEC Management Centre
CEN	European Committee of Standardisation (Comité Européen de Normalisation)
CENELEC/CLC	European Committee for Electrotechnical Standardization (Comité Européen de Normalisation de l'Electricité)
CPD	Council Directive 89/106/EEC (Construction Products Directive)
CPR	REGULATION (EU) N° 305/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC
EC	European Commission
EEA	European Economic Area
ESO	European Standardizations Organisations (REGULATION (EU) N° 1025/2012, Annex I)
EU	European Union
hEN	harmonized European Standard
NSB	National Standards Body
OJEU	Official Journal of the European Union
TRIS	Technical Regulation Information System

Background Information

During the 78th CEN/BT/TCMG meeting in June 2015, CEN/BT took decision BT 28/2015, inviting CCMC to organize an interactive workshop and have a discussion on the implications of the Construction Products Regulation - CPR (Regulation (EU) N° 305/2011) on the European Standardization system as well as on a strategic approach for the construction sector.

The event took place on 26 October 2015 at CCMC. More than 80 participants joined the event that brought together representatives from various construction products families, CEN/BT members, industry experts on behalf of CENELEC Permanent Delegates, Construction Core Group members as well as Technical Committees (TCs) and several European Partners.

The workshop identified the main bottlenecks and implications for standardization and facilitated the discussion, sharing experiences and expectations from members and stakeholders.

CEN BT and CLC BT were informed of the outcome of the workshop during its meeting on 27 and 28 October 2015 and consequently took decisions CEN/BT 47/2015 and CLC BT DC152/C082, supporting the establishment of a CEN/CENELEC/BT WG with the involvement of European Partner Organizations, for the development of a CEN/CENELEC position paper addressing several points.

Introduction

The aim of CEN/CENELEC is to provide standards in a timely manner to meet the needs of the market: that is bringing together the needs of suppliers, specifiers, purchasers, regulators (and market surveillance) and other key stakeholders.

The use of standards is voluntary. They are often used in the market as a means of communication between parties.

CEN/CENELEC have a long history of developing ENs in the construction field. Output accelerated in the 1990s as a result of mandates received under the Construction Products Directive (89/106) (CPD). As a result the CEN/CENELEC portfolio of construction standards (however defined) is in the region of 500 and increasing (the third largest sector in CEN). The key aims for CEN/CENELEC construction product standards are:

- to fulfill the needs of stakeholders of the construction sector;
- to stimulate the internal market;
- to remove barriers to trade by laying down harmonized rules for marketing construction products in the EU;
- to provide a common technical language to assess the performance of construction products, ensuring that reliable information is available to professionals, public authorities and consumers so they can compare the performance of products from different manufacturers in different countries.

The repealing of the CPD into Regulation (EU) N° 305/2011, coming into force in July 2013, was foreseen as a smooth transition. However, in practice, there has been an increasing number of delays concerning its interpretation and the need to define, change or revisit the procedures for its implementation. In addition, the European approach to standardization has changed with the implementation of the Standardization Regulation (EU) N° 1025/2012.

The current situation caused CEN/CENELEC to review its strategic approach to producing standards for construction products. In order to allow CEN/CENELEC to continue to meet the needs of its interested parties, improvements are needed in respect to Regulation (EU) N° 305/2011 and its implementation.

It is recommended that the following matters should be considered in partnership with the EC.

1. Apparent inconsistencies between Regulation (EU) N° 305/2011 and Regulation (EU) N° 1025/2012

Article 2.4 [d] of Regulation (EU) N° 1025/2012 defines a hEN as:

"the methods and the criteria for assessing the performance of construction products, as defined in point 1 of Article 2 of Regulation (EU) N° 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products, in relation to their essential characteristics".

However, in general, a European standard specifies requirements to be fulfilled and lays down the characteristics required, including: levels of quality, performance, interoperability, environmental protection, health and safety, dimensions, terminology, symbols, testing and test methods, packaging, marking or labelling, and conformity assessment procedures.

1. CEN/CENELEC produces standards in the field of construction for use in a variety of purposes. By definition they are voluntary¹ and organizations that use them do so voluntarily. Users include manufacturers and specifiers, sometimes well beyond the EU/EEA. When a regulator, national or European, requires the use of a standard, this can put into question its voluntary use and may constitute a deviation from the principle of the New Approach. This is a deviation from Regulation (EU) N° 1025/2012 that has to be further clarified. Article 4 Clause 1 and 2 of Regulation (EU) N° 305/2011 gives requirements for the expression of information about the performance of products and on the use of CE marking for products.
2. When a construction product is covered by a harmonized standard or conforms to a European Technical Assessment which has been issued for it, the manufacturer shall draw up a declaration of performance when such a product is placed on the market.
3. hENs shall be established by the European standardization bodies listed in Annex I to Part 1 of the Vademecum, on the basis of standardization requests/mandates issued by the EC in accordance with Article 6, Regulation (EU) N° 1025/2012, after having consulted the Standing Committee on Construction referred to in Article 64 of Regulation (EU) N° 305/2011.
4. The voluntary nature of standards is confirmed by Regulation (EU) N° 1025/2012. In case of Regulation (EU) N° 305/2011, a number of the clauses of this voluntary document are used to declare performances in compliance with the Regulation (EU) N° 305/2011. While manufacturers do not need to declare the performance of every characteristic of a construction product, they do need to do so for those characteristics for which there are provisions (i.e. regulations or technical rules) in relation to the intended use or uses in the Member States where the manufacturer intends the product to be made available on the market.

¹ CEN/CENELEC Guide 30, 'European Guide on Standards and Regulation - Better regulation through the use of voluntary standards - Guidance for policy makers', pg 4, Edition 1, 2015-06.

5. ENs and hENs should generally respond to the needs of all stakeholders including all relevant properties and characteristics, relevant for specifiers and contractors to select products that are fit for the intended use on specific construction sites, taking into consideration aspects such as:
- design,
 - transport,
 - storing,
 - handling on site,
 - installation,
 - assembly,
 - execution or incorporation,
 - repair and maintenance, and possibly
 - demolition, waste and recycling.

The current practice is that these properties and characteristics will not be included in the informative Annex ZA/ZZ.

6. Where there are instances of overlapping Regulations and Directives, all associated standardization requests for new programmes of work should clearly state where the relevant performance characteristics for a product are mutually exclusive from existing Regulations/Directives. Regulation (EU) N° 305/2011 in Basic Construction Work Requirement 7 covers the sustainable use of natural resources for construction works, which is also covered by aspects of the material efficiency standardization request in support of the Eco-Design Directive. European standards, harmonized and non-harmonized, that are developed as a result of these overlapping regulations and Directives could have an adverse impact on the construction products sector. In this instance the mandates/standardization requests that have been developed to deliver on these initiatives and issued by EC departments to CEN/CENELEC may contain work programmes with overlapping requirements. This may result in manufacturers experiencing significant difficulty in trying to demonstrate compliance with parallel (and, in some cases, potentially conflicting) sets of conformity criteria. It is recommended that any future standardization request/mandate should be consistent with a clearly defined approach from the EC on delivering on the corresponding objectives.

RECOMMENDATIONS

Taking account of statement (4), the working group recommends that the EC clarifies that the scope of a hEN can have a wider scope than the regulatory provisions that meet the requirements, which are identified in the Annex ZA.

Also taking into account statement (4), CEN CENELEC invites the EC to discuss and agree on a common understanding and the role of standards under Regulation (EU) N° 305/2011 and the corresponding principles of Regulation (EU) N° 1025/2012.

Taking account of statement (6), where there are instances of overlapping Regulations and Directives, all associated standardization requests for new work programmes should state clearly where the relevant performance characteristic for a product is mutually exclusive with existing Regulations/Directives.

2 Exhaustive harmonization (Standardization)

2.1 Mandates and standardization requests

1. Drafting candidate hENs is based on mandates or standardization requests issued by the EC to CEN/CENELEC. The legal basis is defined in Article 17 of Regulation (EU) N° 305/2011, in which the term "mandate" is used, and in Article 10 of Regulation (EU) N° 1025/2012, which uses the term "standardization request" and states that those requests are implementing acts.
2. It is agreed that the development of a standardization request should follow the approach described in the Vademecum.² It is recommended that under each standardization request the issuing EC service shall agree, together with the European Standards Organizations (ESOs), on the practical execution of the compliance assessment procedures. CEN/CENELEC emphasise the need to have commonly agreed criteria for the assessment of hENs, which should be applied consistently across call candidate hENs.
3. It is becoming clear that standardization requests by the EC to CEN/CENELEC concerning amendments are not necessarily in line with the procedures defined in Regulation (EU) N° 1025/2012, i.e. letters instead of implementing acts. However, CEN/CENELEC are open to this approach, if the content is technically agreeable and the legal veracity is confirmed by the EC.

2.2 Process of addressing revised answers to the mandates

1. There is concern that the process of acceptance of revised answers to mandates/standardization requests from CEN/CENELEC to the EC is not sufficiently transparent and could be more effective and efficient. This would help address issues around the development of candidate hENs.
2. CEN/CENELEC dedicate a significant amount of time and resource to ensuring that the standards being developed are in line with the relevant mandate.
3. It is believed that there is a need for transparency and openness, highlighting the status of mandates/standardization requests and answers to mandates/standardization requests as they evolve to keep all stakeholders informed.
4. At present there is no clearly defined timeframe for the process of the EC to respond to revised answers to mandates/standardisation requests. This raises issues when finalizing candidate hENs. This has an adverse impact on the development of standards and a defined timeframe would help address issues in this respect. A maximum timeframe of 4 – 6 months for the acceptance of a revised mandate/standardization request is recommended.

² Standardization requests (role, adoption and execution), SWD(2015) 205 final of 27/10/2015, *Vademecum on European standardisation in support of Union legislation and policies*

Part 1 - Role of the Commission's Standardisation requests to the European standardisation organisations

Part 2 - Preparation and adoption of the Commission's standardisation requests to the European standardisation organisations

Part 3 - Guidelines for the execution of standardisation requests

http://ec.europa.eu/growth/single-market/european-standards/vademecum/index_en.htm

2.3 Harmonized European standards and national (legal) requirements

1. Regulation (EU) N° 305/2011 is not intended to harmonize Member State's building regulations across the EU³: it is in place to harmonize the methods of test, calculation and/or assessment. This represents a move away from the notion of exhaustive harmonization, i.e. hENs should be comprehensive in addressing all EU national (legal) requirements.
2. However, it is the position of CEN/CENELEC that candidate hENs are not all-encompassing and can only be complete with respect to the content of the accepted mandate or standardization request (including work programme). CEN/CENELEC TCs do not have the responsibility and the capacity to identify all applicable national regulations and to verify the completeness of a mandate or standardization request.
3. CEN/CENELEC TCs do not have an obligation to identify all national regulations that are applicable to the development of hENs (e.g. Mandate M/366 and regulated dangerous substances). New regulations that are notified by the Member States via the process outlined in Directive (EU) N° 2015/1535⁴ using TRIS lead to the EC updating the mandates accordingly. This process requires a greater degree of transparency, as at present the status of mandates and how they reflect the current regulatory environment is unclear.
4. CEN/CENELEC support the position that hENs reflect the requirements outlined in the corresponding mandate/standardization request issued by the EC and are state of the art at a given point in time.

RECOMMENDATIONS

Taking account of statement (1) of 2.1, the development of a standardization request should follow the approach described in the Vademecum.

Taking account of statement (3) of 2.1, the importance of the compliance assessment procedure, as foreseen in Article 10 (5) of the Regulation (EU) N° 1025/2012, to the standardization system should not be underestimated. CEN/CENELEC and the EC need to work in partnership to ensure the delivery of high quality hENs and European standardization deliverables in line with the mandate/standardization request.

Taking account of statement (4) of 2.2, at present there is no clearly defined timeframe for the process of the EC to respond to revised answers to mandates/standardisation requests. A maximum recommended timeframe of 4 – 6 months for the acceptance of a revised mandate/standardization request would help address these issues.

Taking account of statement (3) of 2.3, members of CEN/CENELEC TCs are not in a position to identify all of the relevant national regulations and technical approaches that are applicable to construction products. It is recommended that as new regulations are notified by Member States, the EC updates the relevant mandates/standardization requests and if accepted, corresponding standards can be developed.⁵

³ Judgment of the Court (Tenth Chamber) of 16 October 2014. European Commission v Federal Republic of Germany. Case C-100/13.

⁴ Directive (EU) N° 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society service

⁵ CEN/CENELEC *Internal Regulations – Part 2 – Common rules for standardisation work* – June 2015

Taking account of statement (4) of 2.3, CEN/CENELEC and the EC should support the position that hENs are not exhaustive. At present hENs reflect the requirements outlined in the corresponding mandate/standardization request issued by the EC and are state of the art at a given point in time.

3. Procedural aspects of the CPR implementation

3.1 Classes and thresholds

1. The content of a mandate or standardization request is described in the Vademecum, Part II, 4.3. Article 27 of Regulation (EU) N° 305/2011 describes how levels or classes of performance may be defined. Article 27 (2) and (3) read:

“[...] Where classes of performance in relation to the essential characteristics of construction products are not established by the Commission, they may be established by the European standardization bodies in harmonized standards, on the basis of a revised mandate.

“When provided for in the relevant mandates, the European standardization bodies shall establish in harmonized standards threshold levels in relation to essential characteristics and, when appropriate, for intended uses, to be fulfilled by construction products in Member States.”

2. These clauses mean that classes and thresholds may only be included in a hEN if they are provided for in a mandate or standardization request. However, classes and thresholds are core content of a technical standard and are inherent to the process of the preparation of ENs.
3. It is the CEN/CENELEC position that Article 27 (2) and (3) of Regulation (EU) N° 305/2011 applies only to the essential characteristics that are covered in a hEN, where there are provisions (i.e. regulations or technical rules) in relation to the intended use or uses in the Member States where the manufacturer intends the product to be made available on the market.
4. Vademecum, Part I, 6.1 states that:

“... any standard produced in response to a request may also deal with other issues not covered by the request. Therefore, especially with standards supporting Union legislation, a distinction [*which is the function of the Annex ZA*] must be drawn, as far as possible, between specifications aimed at supporting Union legislation and other specifications.”

These “other specifications” may be attributed with classes and thresholds following CEN/CENELEC Internal Regulations.

5. Whereas the EC may want to limit the use of thresholds and classification in accordance with the provisions of Regulation (EU) N° 305/2011 it should always be possible to request the inclusion of classes and thresholds in hENs in line with Article 27 (2) and (3).
6. Following the provisions of Article 27 (2) and (3) of Regulation (EU) N° 305/2011 can result in delays in the standardization process. To avoid delays in standardization work there is a need to have delegated acts available in a timely fashion or a horizontal standardization request covering the issue of classes and thresholds. The accepted new classes and thresholds levels in candidate hENs should be consolidated in the corresponding mandate/standardization request.

3.2 Possibilities for Objections

3.2.1 CEN/CENELEC Formal Objections

1. CEN/CENELEC have a procedure in place to manage claims of defective standards when those claims relate to health and/or safety.
2. The procedure is intended to be used for a published European Standard (issued by CEN/CENELEC). The scope of such a claim is limited to any negative effect in relation to health and/or safety that the use of the European Standard might have.
3. The procedure defines the responsibilities of the actors within the CEN/CENELEC system and the different actions to be taken in order to treat such claims in the most effective and efficient manner.

3.2.2 Other Procedures

The CEN/CENELEC formal procedure is neither a substitute for:

1. the "Appeal Mechanism" that might be used during the drafting phase of a European Standard by a CEN/CENELEC member body in case an action or inaction is not in accordance with the CEN/CENELEC rules or its aims, or is not in the best interest of the European market or such public concerns as safety, health or the environment; nor
2. a "Formal Objection" that might be used by an EU Member State or the European Parliament against the listing of a European Standard in the OJEU.

3.2.3 Non-citation of candidate hENs

1. Due to non-citation a significant number of hENs are published by CEN/CENELEC, adopted by NSBs and are cited as current, superseding withdrawn national standards whilst there is a lengthy delay for the citation of these candidate hENs in the OJEU. It is recommended that the EC considers the CEN/CENELEC approach to addressing issues with candidate hENs during the development of the standard to mitigate against these issues causing confusion once the hENs have been published.
2. For uncited candidate hENs, CEN/CENELEC would like to work with the EC to explore the possibilities of streamlining processes, including faster exchanges of information and other collaborative efforts, so as to ensure the swiftest possible citation of candidate hENs.

3.3 EC resources

1. In order to move forward in a timely way CEN/CENELEC would request that sufficient resources, especially staff, are available for the EC to implement Regulation (EU) N° 305/2011. These resources should be used for a variety of tasks, e.g. for drafting delegated acts or implementing acts, replying to answers to mandates/standardization requests, resolving issues with non-cited harmonized European standards. These resources are necessary for CEN/CENELEC in order to provide quality standards in a timely fashion.

RECOMMENDATIONS

Taking account of statement (6) of 3.1, acceleration on the acceptance of threshold levels and/or classes of performance in hENs for construction products is key. CEN/CENELEC would like to work with the EC to consider alternative approaches to address matters around the usage of classes and thresholds in candidate hENs.

Taking account of statement (6) of 3.1, delays with the inclusion of new classes and threshold levels in candidate hENs as defined in Article 27 of Regulation (EU) N° 305/2011 should be reviewed, as the lack of Delegated Acts that have been processed in accordance with Article 60 of Regulation (EU) N° 305/2011 is indicative of an issue that needs to be addressed by the EC.

Taking account of statement (1) of 3.2.3, it is recommended that the EC considers the formal objections procedures of CEN/CENELEC and their approach to addressing issues with candidate hENs during the development of the standard. This shall mitigate against these issues causing confusion once the hENs have been published by CEN/CENELEC and NSBs.

Taking account of statement (1) of 3.3, it is essential that sufficient resources, especially staff, are available for the EC to implement the requirements of Regulation (EU) N° 305/2011. These resources would help with the delivery and citation of hENs in a timely fashion.

4. Global relevance of ENs

1. Achieving global relevance for European standards is a key aim for all CEN/CENELEC members. Promoting European influence at an international level reinforces the importance of the international standardization system. According to the Commission's Communication report of 18 October 2004⁶:

"the extension of making use of standards in areas of Community legislation beyond the Single Market is highly desirable.."

2. EN product standards brought to EN ISO level under the Vienna Agreement could potentially open market opportunities outside of Europe for many industries.
3. Candidate hENs use Regulation (EU) N° 305/2011 specific terminology, while other terminology is being used throughout the world for conformity assessment purposes. ENs using specific Regulation (EU) N° 305/2011 related terminology that disregards internationally recognized terminology may lead to a situation where exchange of conformity assessment information (certificates, inspection and test reports, declarations of performance/conformity etc.) becomes difficult, unless communication occurs between parties that work within the framework of Regulation (EU) N° 305/2011.
4. The non-citation of standards is leading to a reduced level of participation from key stakeholders in CEN/CENELEC TCs and this could have the effect of undermining the value of European standards.
5. The EC have developed an online portal for frequently asked questions [FAQs] covering Regulation (EU) N° 305/2011. The way these questions have been developed and the status of the proposed answers that precedes their publication or amendment is not clear.

RECOMMENDATIONS

Taking account of statement (1) of 4, it is recommended that CEN/CENELEC experts should be supported more strongly in their participation at ISO level to increase the significance of their expertise outside Europe.

Taking account of statement (2) of 4, EN product standards brought to EN ISO level under the Vienna Agreement have the potential to open market opportunities outside of Europe for many industries. This process should be enhanced by minimising the content for EU regulatory needs in standards.

Taking account of statement (4) of 4, it is recommended that collaborative efforts between CEN/CENELEC and the EC are increased, so as to ensure the swiftest possible citation of hENs in the OJEU. This would lead to a corresponding increase in the participation of the key stakeholders in the development of hENs.

⁶ Communication from the Commission to the European Parliament and the Council on the role of European standardisation in the framework of European policies and legislation, pg. 4, COM (2004) 674 final