



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.05.1996
COM(96) 202final

COMMISSION REPORT ON
THE CONSTRUCTION-PRODUCTS DIRECTIVE

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I. Introduction

The aim of the 1988 Construction-Products Directive¹ is to ensure the free movement of all construction products throughout the Union.

The Directive covers a very significant area of EU industrial activity: 1.8 million businesses operate in this sector, with a turnover representing almost 10% of Community GNP.

Admittedly, 97% of these firms have fewer than 20 employees and are active mainly in regional markets.

Article 23 of the Directive requires the Commission to report on the operation of the Directive by 31 December 1993 at the latest and, where necessary, to submit proposals for appropriate amendments.

In an earlier communication, the Commission announced that this examination would be postponed as measures implementing the Directive still needed to be adopted.

Decisions taken in 1994 and 1995 have produced a more complete framework for us to assess more effectively both the operation of the Directive and the need for greater efficiency in its implementation.

The Group of experts on legislative and administrative simplification, better known as the Molitor Group, believes the report should be presented as soon as possible (cf. extract in annex).

¹ Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products. (OJ L 40, 11.2.1989, p. 12).

II. Current situation

The Construction-Products Directive provides a general legal framework for producing European technical specifications.

The removal of barriers to trade essentially depends upon the adoption of these specifications, namely the harmonised standards (i.e. specifications adopted by the CEN or Cenelec under a Commission mandate) and the European technical approvals, the latter being granted for products for which no harmonised or national standards exist.²

To this day, no technical specifications have yet been adopted, with the result that no construction products bear the CE logo. The Molitor Group has criticized this situation in its report and has thus stressed the non-operational nature of such a Directive.

It must be said that standards and technical approvals require implementing decisions to be taken, the prior adoption of which certainly requires a long time.

The process is slow because the Directive's scope is so broad (covering all construction products, from cement to pipes, from sanitary installations to telegraph poles) and because certain technical aspects are not perceived in the same way by Member States.

Work carried out in recent years has made it possible to clarify the approach needed. Thus, the Commission has recently been able to adopt:

- documents interpreting the essential requirements³ (in January 1994);
- a Decision classifying products in respect of fire behaviour tests (in June 1994);

² The Construction-Products Directive is original in providing for two types of technical specifications:

- harmonized standards, adopted by the CEN/Cenelec, as in the case of other "new approach" Directives;
- European technical approvals, adopted by the European Organization for Technical Approval.

³ The specific field covered by each of these specifications is provided for by the Directive. The existence of "documents interpreting essential requirements" is another original feature of the Directive. They aim to provide a link between essential requirements concerning construction projects and features which have to be taken into consideration by the technical specifications for products.

- the first finalised mandates instructing the CEN and Cenelec to devise harmonised standards for certain families of products; (heat-insulating products, doors, windows, shutters, gates and related building hardware, membranes, precast normal/lightweight/autoclaved aerated concrete products) (in October 1994);
- Decisions on the conformity checking for those same product families (in May 1995);
- decisions on conformity checking and mandates for three new product families (in October 1995).

A great many other decisions are being prepared for other product families (masonry products, pipes, etc.).

All these measures represent significant progress. In order to have products bearing the CE logo, however, such decisions need to be incorporated into technical approvals or standards.

We must bear in mind that harmonised standards will not be available for a significant number of products for at least five years.

This is because:

- (a) for most construction products, trade barriers result from the lack of harmonised tests for fire behaviour or resistance. For the Directive to work properly, standardization must be preceded by an approximation of the basic regulations in this area.

This approximation is linked to the functioning of the Directive even if legally it has to take place through regulations on works not directly covered by the products Directive. Approximation will therefore require political commitment. If that commitment is not forthcoming the work will be very slow, delaying the adoption of harmonised standards even further;

- (b) the implementing decisions - particularly standardization mandates - have hitherto been adopted for only 7 product families out of a total of at least 40.
The Molitor Group considers the drafting of these documents to be excessively slow.

The Member States' tendency to require that standardization mandates include all the essential aspects of their national regulations is making each drafting process take as much time as it would the Commission to adopt a Directive for each product family.

Normally, the implementation of a 'new approach' Directive should imply that standardization mandates refer to nothing other than the essential requirements;

- (c) the operative part of the Directive is such that there can be no harmonised standard until all the requirements and required characteristics - deriving from the essential requirements - for a particular product have been harmonised.

Thus for doors the existence of a harmonised "door" standard presupposes, *inter alia*, a common approach to test methods for fire, wind, heat and shock proofing, watertightness, airtightness, etc.

The date on which the last standard for a specific test is adopted is thus the date on which the harmonised standard becomes available;

- (d) the Directive does provide for an alternative to harmonised standards: European technical approval.

Technical approval may be granted to products for which standards are unlikely to be available, i.e. innovative products. Thus it can only be used as a supplement to standardization;

- (e) a final difficulty is that the Directive can only be applied if standards exist. But the adoption of standards depends on the good will of the standardizers.

In addition, those involved in standardization feel there is too large a gap between their priority task of producing the standards required by the market (i.e. quality requirements) and the too-narrow vision of the harmonised standards, which include only those aspects which need to be compulsory.

The forwarding of the first mandates has already revealed that this is a real problem.

It is vital, therefore, that the standardization bodies should commit themselves and take account of the priorities relating to the mandates when planning and executing their tasks.

III. Consultations and questions

It can be seen from the above that technical harmonization, which is the aim of the Directive, will only be achieved as a result of a slow and gradual process.

Prior to drafting this report, the Commission consulted the Member States and the representatives of industry within the Standing Committee on Construction on 27 September 1995.

The contributions received stress that the results regarding work so far achieved have been positive and encouraging, but also acknowledge that there will be difficulties in applying the Directive properly.

Virtually all the parties agree that the correct response would be to speed up the implementation work on the Directive and clarify a number of questions about which there is still uncertainty, such as those currently arising from the lack of technical specifications.

IV. The options

The fact that a Directive adopted in 1988 is only being implemented gradually and slowly cannot be regarded as wholly satisfactory. It is necessary to reflect on the ways and means of increasing efficiency in this respect, namely by

- (1) a commitment from the Member States in the following three areas:
 - (a) in the area of fire regulations, harmonised standards cannot be adopted until common tests have been adopted to assess a product's fire behaviour. The Commission has taken a first step in this direction by defining product classes in this area. It still has to define the necessary tests for each of these classes.
The technical work is flagging.
Political impetus is needed;
 - (b) in the area of works regulations, a lot of work has been carried out on a voluntary basis, in the form of Eurocodes in order to draw up common codes on works structures.

Effective harmonization of the products used in these works presupposes a commitment from the Member States to take account of the Eurocodes in their national regulations;

- (c) during the transitional period preceding the adoption of harmonised standards, Member States ought to work to facilitate the mutual recognition of tests on products in a systematic manner.

A more active policy on mutual recognition should deal with those cases where construction products are refused on the grounds that, although they have been checked in the country of origin, the country of destination refuses to become aware of or recognize their conformity;

- (2) changes adapted to needs in applying the Directive:

- (a) simplifying the decision-making procedures

This could cover decisions on the checking and certification of conformity and standardization mandates;

- standardization mandates: it should be stressed that the drafting of standards does not presuppose that standardization mandates take account of all of the requirements of the national regulations. What is more, these mandates are only contracts asking experts to draft specifications. A return to more general and less specific mandates will enable them to be adopted and applied in a more flexible manner;
- for decisions on the certification of product conformity, all parties should commit themselves to applying consistently the methodology devised for exercising a choice between the two main options, manufacturer's declaration and certification. Also, if several product families were grouped together in a single decision, this would avoid the need for taking forty different implementing decisions (and thus a great deal of red tape);

- (b) enlightened implementation of the Directive owing to the new approach

It is not advisable to defer implementation of the Directive until all of the requirements established for a product have been harmonised. The test methods for a number of those requirements need still to be developed. Any such method of procedure would

push any tangible results of the standardization activities as a whole into the distant future.

Where there are no harmonised standards and technical approvals, a producer has first of all the right to demand application of the principle of mutual recognition by invoking the provisions of the Treaty on the free movement of goods as interpreted by the Court of Justice in its case law, subject to justified restrictions pursuant to Article 36 (consumer protection, safety and health).

Secondly, producers should be given greater scope to declare that a product meets the essential Community requirements on the basis of the existing interpretative documents, even if not all of the harmonised standards are available yet.

This opportunity should not only make access to the CE logo easier for manufacturers, but also allow the Community to concentrate its activities on the essential harmonised standards, thus avoiding tendencies towards over-regulation and the imposing of excessive burdens on manufacturers.

V. Conclusions

The implementation of the Directive gives rise to difficulties.

To overcome them:

- the Commission should undertake to clarify the detailed rules for implementing the Directive, speed up the work and draw up a suitable work plan;
- the Member States should avoid insisting on a multitude of detailed rules in the implementing provisions;
- the European Committee for Standardization should commit itself to actually putting in place a programme to develop harmonised standards.

In view of the scope thus offered for improving the way in which the Construction-Products Directive is applied, the Commission does not consider it appropriate to propose amending the Directive at this stage.

It will, however, monitor the situation very closely over the next two years.

At the end of that period, it reserves the right to propose any amendments deemed necessary on the basis of the prevailing situation.

Moreover, use could be made of these two years by the relevant departments, to deliberate, in conjunction with the Standing Committee on Construction, on the functioning of the internal market as regards construction products.

ANNEX

MOLITOR GROUP CONSTRUCTION PRODUCTS
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CONSTRUCTION PRODUCTS

16. At the beginning of 1994, the Atkins Report stressed the importance of the building sector for Europe's competitiveness. "Construction is an industry in which Europe can beat the world. But there is a danger of failing to grasp the opportunities and allowing the markets in Europe and the quality of construction to decline. There is still much that can be done to make the industry stronger and to remove some of its weaknesses and to improve the built environment of Europe". Competitiveness in the construction industry could be improved by the effective free movement of products within the European Union.

Directive 89/106/EEC, amended in 1993 and hereinafter referred to as the Construction-Products Directive, aims to remove impediments to the free movement of products due to differences:

- in standards, testing and certification of conformity procedures, or
- in the national laws on construction products.

18. The Construction-Products Directive is one of the "new approach" Directives. It lays down the essential requirements applicable to building structures as a whole and not to the various construction products:

- * mechanical strength and stability
- * safety in the event of fire
- * hygiene, health and the environment
- * safety in use
- * protection against noise
- * energy saving and heat insulation.

19. This means that Member States can only authorize access to the market of those construction products possessing the qualities such that the construction work in which they are used satisfies the essential requirements of the Directive.

20. In contrast to the other "new approach" Directives, the essential requirements of the Construction-Products Directive have been embodied in interpretative documents. The latter serve as a basis for drafting European harmonised standards or other technical

specifications established at European level, or for the establishment or conferring of European technical approval or for the recognition of national technical specifications.

21. The CEN (European Committee for Standardization) is responsible for drafting European harmonised standards relating to construction products. To be able to use the CE logo, the product must conform to the European technical specifications, which are:

- * European harmonised standards (European bodies: CEN, Cenelec);
- * European technical approvals (European body: EOTA);
- * recognized national technical specifications.

The CE logo indicates that products conform to the European technical specifications that apply to them. To certify this, conformity procedures have to be applied. In principle, two methods are possible:

1. a statement of conformity provided by the manufacturer,
2. a certificate of conformity issued by a notified body.

22. Although the Construction-Products Directive was adopted in 1988 and its transposition was set at 27 June 1991 at the latest, seven years later the building industry is still not able to use the CE logo for construction products.

There are several reasons for this stagnation:

- the drafting of mandates conferred on the CEN for the drawing up of harmonised standards takes too long. Only four of the 80 documents needed have so far been finalised and progress is therefore much too slow;
- in contrast to the other "new approach" Directives, the Construction-Products Directive does not enable manufacturers to use the CE logo directly for products which meet the essential requirements of the Directive. The CE logo can only be affixed if the product meets the harmonised European technical specifications. In practice, this means that manufacturers cannot use the CE logo since there are no harmonised technical specifications.

23. For the time being, the new approach does not work in the construction-products sector. As long as there are no harmonised standards or other technical specifications, there will be no free movement of construction products. These products must still satisfy differing national requirements, which is detrimental to the competitiveness of the European construction industry.

Proposal 11

The drafting of European harmonised standards for construction products should be speeded up. In the meantime, the Commission must put forward proposals to achieve these aims while completing and implementing as quickly as possible the review provided for in Article 23 of the Construction Products Directive (89/106/EEC), and/or enabling manufacturers to sell their products in other Member States.