12/04/2018
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Position paper

Concerning the consultation procedure regarding EU rules governing construction products employed in building construction and infrastructure works

To whom it may concern

With this position paper, the Safety and Security Division of the ZVEI – Zentralverband der Elektrotechnik- und Elektronikindustrie e.V. wishes to contribute to the consultation procedure concerning the revision of EU construction product legislation. The need for this supplementary position paper arises from the failure of the relevant Commission questionnaire to reflect adequately the problems facing the ZVEI in practical implementation.

The position paper introduces the ZVEI (I.), briefly summarizes its core positions (II.), and provides reasoning and specific proposals for solutions for the individual positions (III.).

I. About the ZVEI

The ZVEI represents the common interests of the electrical industry in Germany. It has over 1,600 member companies, together accounting for around 90% of all employees in the German electrical industry. Within the areas of activity of the ZVEI and its member companies, the provisions of EU construction product legislation particularly affect fire detection and alarm installations, products and systems, smoke and heat exhaust ventilation systems and the cable industry.

II. Summary of the positions

- As a matter of basic principle, the ZVEI advocates consolidation of a preclusive European statutory framework for construction products external to the system of mutual recognition (see III. 2.).
- Within the sphere of the affected technical building systems and equipment (electrical/electronic components), facility should be retained for product characteristics to be set out in the harmonized standards – consistent with the concepts of the Construction Products Directive/the New Approach – the observance of which gives rise to the presumption of fitness for use (see III. 1.).

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- Standards should also continue to be developed flexibly by means of the "option with requirement" instrument. These options should however also block further regulation by the Member States (see III. 3.).

- The ZVEI calls for greater efficiency in the standardization process, i.e. by the provision of model documents and processes, in order to attain consistency between the Construction Products Regulation, standardization mandates and the publication of submitted standards; of the last of these, the majority do not currently reach publication, owing to a lack of consistency with the Construction Products Regulation (see III. 4.).

- The ZVEI's view is that the notified bodies must be monitored more intensively and involved in the standards development process, in particular in order to assure the knowledge required of their staff for testing activity (see III. 5.).

III. Reasoning for the individual positions

1. Amendment of the regulatory concept in the sphere of electrical and electronic technical building systems and equipment

1.1. Problem

The concept of the EU Construction Products Regulation (EU CPR), which in contrast to that of the former Construction Products Directive (CPD) is limited to specifying a form of technical language harmonized throughout Europe and to harmonized test methods, frequently prevents the creation of technically usable standards in the sphere of technical building systems and equipment. Requirements placed upon construction products for technical buildings systems and equipment must instead – as was still possible under the concept of the CPD – satisfy requirements that frequently cannot be expressed numerically. Instead, the fitness for use of an installation (such as a fire alarm system or individual construction products forming part of a fire alarm system) is dependent upon the attainment of certain product characteristics. However straightforward market access through the system of the EU CPR may have become in principle, its application in practice presents difficulties.

In contrast to the situation for other construction products, the construction products to which we refer here are often subject to a number of further items of European product legislation (such as the 2014/35/EU Low-voltage Directive, 2014/53/EU Radio Equipment Directive, 2006/42/EC Machinery Directive, 2014/30/EU Electromagnetic Compatibility Directive, 2009/125/EC Ecodesign and Energy Labelling Directive and 2011/65/EU RoHS Directive), the requirements of which include the production of an EU declaration of conformity, and CE marking. Since this legislation differs from the EU CPR in its regulatory concept, implementation of the statutory obligations is confusing for the economic operators. In practice, production of a declaration of performance in addition to the required declaration of conformity gives rise to problems, since the relationship between the two declarations is not clearly apparent from the provisions. In the same way, issues have long been presented by virtue of these items of legislation being in competition with each other.

Where construction products other than the fire detection and alarm installations, products and systems, fume and heat exhaust installations and cable under consideration here are to be regulated at European level, the ZVEI has no objection to the existing regulatory concept of the current EU CPR. So far as the ZVEI is able to judge, the concept of the EU CPR appears reasonable for regulation of the use of "classic" construction materials (brick and tile, concrete, insulation materials, etc.),

particularly considering the division of competencies between the European Union and the Member States.

1.2. Solution

1.2.1. Different regulatory systems for different product applications

One potential solution to the problem would be for the products for technical building systems and equipment described to be removed from the existing regulatory concept of the EU CPR and made subject to an alternative system (System B), with the existing regulatory concept being retained for other construction products (System A). This would enable the concept of the Construction Products Directive (CPD), which was repealed in July 2013, to be reintroduced in part, at least for construction products for technical building systems and equipment. As soon as a construction product falls within the scope of a harmonized standard or European Technical Assessment, the manufacturer should be required to apply the standards in both systems.

1.2.2. Inclusion of the products within the regulatory context of the EU CPR

The products for technical buildings systems and equipment should not be removed entirely from the scope of the EU CPR, but merely made subject to a different regulatory concept within it. According "classic" construction materials and safety technology components the same status under product law enables users to plan and design fire safety measures uniformly against the relevant national building safety regulations. From the perspective of use, this is necessary, since fire safety is subject to uniform requirements under building safety legislation that can be met not only by building fire safety products and measures, but frequently also by compensatory, installation fire safety measures (i.e. by products forming part of the technical building systems and equipment). Should it not be desirable for different systems to be governed by the EU CPR, a conceivable alternative would be the creation of a dedicated item of legislation for products used in technical building systems and equipment relevant to electrical engineering and electronics. For the reasons stated above however, selection of this alternative is subject to the equivalence of building fire safety and installation fire safety being assured.

1.2.3. Basis: the regulatory concept of the Construction Products Directive

Within the sphere of technical building systems and equipment under consideration here, a regulatory concept based upon that of the CPD constitutes a suitable solution. Under this concept, manufacturers would produce an EU declaration of conformity based upon the relevant harmonized standards, rather than a declaration of performance. CE marking could then – as under the concept of the CPD – give rise to the presumption of fitness for use. The manufacturers of components used in technical building systems and equipment would thus be able to use the declaration of conformity in order to demonstrate the attainment of certain product characteristics required for the products' fitness for use. The EN 54 series of standards for example, which governs requirements for the components of a fire detection and alarm system, sets out numerous specific product requirements. These provisions could be retained for the products concerned in a change of regulatory system.

1.2.4. Parallel regulatory systems in the EU CPR

Regulatory implementation of the parallel concepts could take the form of both regulatory concepts being being set out within the EU CPR, with individual harmonized construction products being assigned to one of the two concepts by a Commission communication in the EU Official Journal, C series (referred to below as the "communication"). To this end, the list of harmonized standards in accordance with Article 17 (5) Sub-para. 2 of the EU CPR, which is published by the European Commission at regular intervals in the EU Official Journal, C series, could be divided according to the respective applicable regulatory concept (for example into Parts A and B). The relevant provisions concerning System A and System B could then refer in each case to the relevant part of the list.

1.2.5. Concrete regulatory implementation of the proposal

Chapter II, "Declaration of performance and CE marking", would be a suitable point for setting out the different regulatory concepts. Chapter II may have to be renamed "Declaration of conformity, declaration of performance and CE marking", and divided into three sub-chapters. It could be preceded by a sub-chapter entitled "General part"; Systems A and B could then each be set out in a further sub-chapter. Provisions applicable to both System A and System B could be included in the general part.

Sub-chapter 1 (General part) could for example contain a formulation that a declaration of performance or declaration of conformity must always be produced when a construction product satisfies a harmonized standard or European Technical Assessment. Furthermore, general provisions governing the application of CE marking (location and form of application, blocking effect of CE marking upon further regulation at national level, obligation to supply the declaration of conformity/declaration of performance, exemptions from the obligation to produce a declaration of performance or declaration of conformity) could be regulated at this point.

The existing provisions in the EU CPR concerning the declaration of performance and the effect of CE marking could be incorporated into the sub-chapter governing System A (Sub-chapter 2), should they not be included in Sub-chapter 1, "General part". In this case, Sub-chapter 2 would first have to be preceded by a rule setting out the scope of System A. Reference could be made for this purpose to the construction products in Part A of the communication. Sub-chapter 2 could further govern the content and form of the declaration of conformity and the effect of CE marking within the scope of System A.

A further sub-chapter governing System B (Sub-chapter 3) could contain provisions specific to the declaration of conformity and the effect of CE marking. Sub-chapter 3 would likewise first have to define which construction products are to be governed by Sub-chapter 3/System B. Here too, a reference to Part B of the communication would be a suitable solution. Recourse could be made to the provisions of the CPD for presentation of the declaration of conformity. The effect of CE marking would also have to be governed separately, since the significance of the mark within the scope of System B differs from its effect in System A. Where CE marking is applied to construction products falling within the scope of System B, marking would give rise to a presumption of fitness for use. The Member States would thus be entitled to set out only performance levels and classes, where permitted by the Commission. Further national requirements concerning System B construction products relating to the

parameters already covered by the standard would not be permissible, including with respect to minimum performance values.

1.2.6. Editorial adaptation of other provisions of the EU CPR

The provisions set out in the remainder of the regulation would have to be adapted accordingly to the parallel system concept described above. In Chapter III, "Obligations of economic operators", reference would for example have to be made to the declaration of conformity, as well as to the declaration of performance. Certain adjustments would also have to be made in Chapter IV, "Harmonised technical specifications". A provision stating that harmonized standards relating to System B products not only contain methods for assessing the performance, but may also set out characteristics of a product, would for example also have to be added to Article 17 of the EU CPR. In addition, the Commission would have to be able to state if appropriate in its mandate ("standardisation request") whether the standard governing a specific construction product is to be developed for a System A or System B construction product. Corresponding amendments would also have to be made to Chapter VIII, "Market surveillance and safeguard procedures". Where the provisions of Chapter VIII concern the declaration of performance, reference must also be made to the declaration of conformity.

2. Consolidation of a preclusive European statutory framework for construction products

2.1. Problem

It is of paramount importance for the business interests of the ZVEI's member companies that they be confronted with a uniform European statutory framework for the marketing and use of construction products used in technical building equipment and systems. This framework should prevent further national regulation if at all possible.

2.2. Solution

The scope for further regulation by the Member States and the national standards organizations should also be restricted in a future EU CPR to the greatest extent possible, in order to enable a given construction product to be used throughout the EU.

The acquiring of preclusive effect by the technical specifications within the scope of the EU CPR could be clarified in Article 3 of the EU CPR separately from the existing provisions concerning CE marking (Article 8 of the EU CPR). This would result in the EU CPR being preceded by an arrangement in which the regulatory scope available to the Member States is already clarified definitively at a higher level.

3. Retention of the flexibility of standards by means of the "option with requirement"

The ZVEI also advocates retention/consolidation of the flexible application of standards under construction product law. Owing to differences between the national buildings requirements in different countries, or for technical reasons, the individual products must often exhibit different characteristics. The production of products with dedicated characteristics is however frequently not economically viable when the characteristic is not a legal or technical requirement for certain applications. To resolve this problem, the existing EN 54 series of standards contains "options with requirements". Options with requirements enable the manufacturer to adjust his products to the requirements of the specific application. At the same time, procedures binding throughout Europe are set out that have the effect of blocking any further regulation at national level. This facility should be retained during adaptation of the EU CPR. Such "options with requirements" could in future also be termed "categories"; it must at the same time be defined clearly that categories of this kind, specified by the standards organizations, do not constitute levels or classes of performance in accordance with Article 27 of the Construction Products Regulation.

4. Streamlining of the standardization process by means of model documents and model processes

4.1. Problem

Considerable time may pass from mandating of a harmonized standard to its publication in the Official Journal, Series C of the EU. Attendance of meetings of the standards committees is expensive and time-consuming for the member companies. A number of standards have been produced by the standards committees in the area of installation fire safety. The references of these standards were however not published in the Official Journal, the reason given being that they were not consistent with the regulatory concept of the EU CPR (see also III. 1.). In the past, this development has evidently been partly due to widespread ignorance of the differences in and changes to paradigms and mechanisms of the EU CPR (with respect to its predecessor, the CPD).

4.2. Solution

The standards development process could be made more efficient, and consequently considerably cheaper, if deficits could be identified and addressed much earlier. This would enable the standards committee to take early corrective action. Unnecessary and time-consuming revision phases would thereby be avoided.

A corresponding arrangement could be introduced in an amendment to Article 17 of the EU CPR: an additional sub-paragraph could be inserted at this point setting out that the new Harmonized Standards Consultants (HAS Consultants) that are to be created are to provide each CEN TC with a basic framework in the form of a "model standard"; and that they are to complete the standards development process once within a defined timeframe, this process then serving as a model process. This would ensure that all parties involved have been informed of the system, and that the result of standardization activity is consistent with the EU CPR.

5. Improvement of the quality of work of the notified bodies

5.1. Problem

The work of the notified bodies has been seen to differ widely in its quality in the past. In some cases, notified bodies are not capable of comprehending the current legal situation concerning construction products and applying it during their testing activities. Although Article 43 (7) c) of the EU CPR states that the personnel of the notified body are to have appropriate knowledge and understanding of the applicable harmonized standards and of the EU CPR, many notified bodies, i.e. their personnel, have been seen in practice to lack the necessary knowledge. Consequently, the involvement of notified bodies does not necessarily assure the quality of product testing.

5.2. Solution

For assurance of the quality of testing, supporting provisions could be added to Article 43 of the EU CPR governing, in particular, mandatory further training of the personnel of notified bodies. Further training should be organized at European level in order to ensure that a uniform standard is attained and that the economic operators in the different Member States are subject to the same conditions. Article 44 of the EU CPR (Presumption of conformity) should perhaps be deleted, in order to prompt greater commitment on the part of the Notified Bodies.

The introduction of round-robin testing (comparison of the results of tests on golden samples) would also be expedient. The following interim step is therefore proposed for the transition from the existing to the future system:

1. Attendance by all notified bodies (NBs) of meetings of the Group of Notified Bodies (GNB) of their respective Sector Group (SG) is mandatory. Failure to attend results (possibly following a warning) in notification being withdrawn.

2. An independent tester is appointed for each SG who audits the NBs, i.e. in particular their testing establishments.

3. Introduction of round-robin testing.

Beyond these measures, a provision should be added to Article 43 of the EU CPR that replaces the widespread practice of notified bodies offering supplementary certificates – on a voluntary basis – with reference to harmonized construction products: this is to be replaced by a "pan-European quality mark".

Yours faithfully

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