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NOTE

From : Presidency
To : Competitiveness Council
Subject : Proposal for a Regulation of the European Parliament and of the Council
laying down harmonised conditions for the marketing of the construction products
- **Progress report**

1. Introduction

The Commission submitted the proposal to the European Parliament and the Council on 26 May 2008.

The European Parliament delivered its Opinion in first reading on 24 April 2009.

This Progress Report by the Presidency aims at describing the state of play and the outstanding issues in the Council Working Party.

The Swedish Presidency has continued the contacts with the European Parliament which had been established under previous Presidencies. The aim is to find a large degree of consensus on a text which could then form the basis for a later agreement at second reading.

2. Content and aim of the proposal

The proposed Construction Products Regulation will replace Directive 89/106/EEC (CPD) in order to simplify and clarify the existing framework for placing construction products on the market, and improve the transparency and the effectiveness of the existing measures. It will also take into account the New Legal Framework adopted for Community harmonisation in general, in particular Regulation (EC) No. 765/2008.

The Directive 89/106/EEC (CPD), which is now in force, is aimed at ensuring the free circulation of construction products in the Internal Market. Since the construction products are intermediate products intended to be incorporated in the construction works, the concept of safety applies to those products to the extent that they contribute to the safety of the works. This specificity explains that the CPD achieves its objective by defining harmonized means to express the performance of the product in an accurate and reliable way, rather than by harmonizing the safety requirements of the product, as is the case in the New Approach directives.

The proposal for a regulation intends to clarify the basic concepts and the use of CE marking; to introduce simplified procedures, so as to reduce the costs incurred by enterprises, in particular SMEs; and to increase the credibility of the whole system by imposing new and stricter designation criteria to bodies involved in the assessment and the verification of constancy of performance of construction products.

More specifically, the objective of the proposal is to ensure accurate and reliable information on construction products in relation to their performance. This is achieved by a system composed of two main elements: on the one hand, a set of harmonised technical specifications, harmonised standards and European Assessment Documents (EAD), providing the methods for assessing the performance of the products and, on the other hand, a number of notified and Technical Assessment Bodies (TABs) designated in conformity with strictly defined technical criteria, which contribute to the correct application of such methods.

3. State of play in the Council Working Party

The Working Party on Technical Harmonisation examined the Commission proposal during the Slovenian, French, Czech and Swedish Presidencies. The Swedish Presidency has devoted eleven meetings to the proposal, summing a total of twenty-seven Working Parties dedicated to this dossier since its presentation by the Commission. The Working Party has agreed on a number of amendments in relation to the proposal; some of them are in conformity with amendments made by the European Parliament, while others will be subject to further examination in negotiations with the European Parliament. The result of the examination in the Working Party can be presented as follows:

a) Basic Works Requirements and essential characteristics (Article 3)

This article concerns two of the main concepts in the proposal, Basic Works Requirements and essential characteristics. It has been redrafted to describe more clearly the meaning of these concepts and the relation between them as well as to include the possibility for the Commission to determine essential characteristics which shall always be declared when placing construction products on the market. The amendments made have a broad support in the Working Party.

b) Conditions for drawing up the declaration of performance (DoP) (Article 4)

This article, which is of central importance, concerns issues related to the mandatory or voluntary character of the CE-marking. The Swedish Presidency has launched a compromise text on this major issue. The compromise attempts to ensure mandatory CE-marking when there is a harmonised standard or a European Technical Assessment and *either* a Commission Decision on a threshold level or at least one essential characteristic to be declared *or* some kind of provision at national or European level concerning a Basic Work Requirement which is relevant for the product.

The latest compromise wording has received considerable support by delegations and by the Commission.

c) Obligations of economic operators (Chapter III, Articles 10-15)

These articles include provisions concerning the obligations of manufacturers, importers and distributors of construction products. Very few amendments in substance have been made to the Commission proposal and this chapter has the broad support of the Working Party.

d) Harmonised technical specifications (Chapter IV, Articles 16- 21a, annex II and V)

This chapter includes provisions for harmonised standards, European Assessment Documents (EAD), European Technical Assessment (ETA), Levels and Classes of Performance, and Assessment and Verification of Constancy of Performance. The Working Party has agreed, like the European Parliament, that only products not covered or not fully covered by a harmonised standard may request for an ETA as a way to CE-marking.

Furthermore, an extensive redrafting has in principle been agreed concerning the criteria and procedure for development and adoption of EADs. In substance this means that principles and important parts of the procedure are regulated in the articles, while more detailed rules are in Annex II or can be decided as a delegated act by the Commission.

e) Technical Assessment Bodies (Chapter V, Articles 22-25, Annex IV)

Delegations largely support the idea that the evaluation of TABs should be a task for Member States instead of the peer-evaluation that was outlined in the Commission proposal.

f) Simplified procedures for micro-enterprises (Article 27)

Several Member States have strong reservations to the proposal for Article 27, according to which micro-enterprises are privileged in using some simplified procedures for CE-marking. At the same time, many Member States are in favour of exceptions from the obligations to CE-marking for manufacturers who manufacture products off-site and install the products themselves. Since both these issues might have an effect on the extent and the credibility of the CE-mark, the Presidency holds the view that a compromise could be found in discussing all aspects of reduced burden for certain types of enterprises in one context.

g) Criteria and conditions concerning the new procedure for the delegation of power to the Commission to adopt non-legislative acts, in accordance with the Lisbon Treaty.

Questions related to comitology have been discussed in substance in the Working Party several times. Now, after entry into force of the Lisbon Treaty, the proposal has to be adjusted in the light of Article 290 TFEU.

5. Conclusion

The Council is invited to take note of this Progress Report.