



## Discussion Paper

### The future of the standardisation system within the CPR

This document was developed by the European Builders Confederation (EBC), the European Construction Industry Federation (FIEC), Construction Products Europe and Small Business Standards (SBS) as input on the role of the standardisation system in the current CPR and its potential revision. Other topics related to the implementation or future of the CPR will be developed.

#### 1. State of the art

Standardisation plays a crucial role for the European construction sector. It is the main pillar of the Internal Market, facilitates the free movement of construction products in the European Union (EU) and streamlines construction activities. This important role is acknowledged in the European legislation, notably the Construction Products Regulation (CPR) and the European Standardisation Regulation.

Within the scope of the CPR, harmonised technical specifications, such as harmonised European product standards, define the common technical language to be used:

- by manufacturers to express the technical performance of their products in CE marking and Declaration of Performance (DoP). Alternative approaches are not allowed;
- by national regulators to express the required performance of products to fulfil building and construction requirements e.g. safety, health, environment, etc.
- by designers and contractors to exchange information irrespective of EU borders or local practices.

The common technical language, and standards in general, are continuously revised to adapt to market needs and technological and scientific developments. They support the technical implementation of policy priorities defined within the regulation by legislators. The experts in charge of standards development are tasked to implement technically these priorities, spelled out in standardisation mandates by the EC. The experts involved in the evolution of standards follow a transparent and coordinated process involving all stakeholders in the construction chain, including the industry.

**Construction product manufacturers and contractors strongly rely on standards and need them to remain aligned with changing market and regulatory demands. Without up to date standards, the Internal Market for construction products could neither be achieved, nor maintained.**

However, in recent years the integration of standards in the regulatory system has often failed and resulted in less efficiency in the construction sector and damage to the internal market.

The current list of harmonised standards published in the Official Journal of the European Union (OJEU) is outdated. New versions of harmonised standards are available, but their citation was



rejected. This rejection is often not based on incompatibility with or non-implementation of policy priorities, but on legalistic grounds irrespective of the quality of the technical work performed by the experts. This backlog, although not limited to construction products, affects the manufacturers of these products more than those of any other sector due to the mandatory nature of harmonised products standards under the CPR. The consequences of unavailable or outdated harmonised product standards include an increase in direct or indirect costs for the businesses (especially Small and Medium-sized Enterprises), for which the economic damage is not yet clear. Moreover, there is acute confusion in the market, especially when new or revised/updated standards have been published but not cited in the OJEU. This situation is unsustainable for stakeholders using standards. Furthermore, there is not only a risk to the competitiveness of the sector, but also a risk that this dysfunctional system might force the creation of new national standardisation initiatives.

## **2. How did we get to this situation?**

Development of harmonised standards implies a combination of technical and legal approaches to satisfy both market and regulatory needs. Legal requirements to be included in standards are agreed by Member States and the European Commission in mandates (Construction Products Directive approach) and standardisation requests (since the entry into force of the standardisation regulation). The content of standards needs to fit these needs according to an approach consistent with the regulation, but also integrating the technical knowledge of the industry as regards assessment of products and market demands.

The entry into force of the CPR was supposed to be an evolution and not a revolution and therefore harmonised standards did not need to be revised. In the last years this situation changed and the European Commission has been introducing, in a non-systematic way, more formal legal conditions and requirements to the content of harmonised standards, some of them coming from successive rulings of the European Court of Justice (C-100/13 Commission v. Germany, C-613/14 James Elliot, T-229/17 Germany v. EC).

The European Commission can set the rules for the development of harmonised standards using the standardisation requests, which are the legal basis to be followed by standardisers. Unfortunately, the EC remained passive by not using this approach and, as a consequence, European Committee for Standardisation (CEN) was obliged to continue working with the outdated mandates (standardisation request predecessors under the CPD).

This situation is discouraging experts to work on standards because they are quite often blocked for reasons out of their control. They are prevented from using the formal objection legal instrument by Member States because the content of mandates is not updated to the legislative priorities set by the CPR.



Conciliation of approaches between the interested parties does not take place or is not successful because there are no pressure mechanisms. The EC does not suffer any consequences for not delivering solutions and CEN/CENELEC is unable to force product Technical Committees to develop standards, due to the nature of standardisation and the uncertainty over citation.

The malfunctioning of the CEN/CENELEC route to CE marking was solved by some manufacturers using the European Organisation for Technical Assessment (EOTA) route originally defined for products out of the scope of harmonised standards.

The construction industry needs clear and reliable guidance for the development of harmonised standards including standardisation requests and commitment by the EC to support their development to satisfy national and European needs as well as to reach policy objectives such as the EU Green Deal and Circular Economy.

### **3. What the Commission is considering**

#### **Short-term**

The Commission is not offering short-term solutions to resolve the current backlog of uncited standards in the Official Journal of the European Union. Its goal is the revision of the CPR that, if successful, will only deliver results in 10 years' time. In the meantime, the Commission is questioning the value of standards and criticising the role of the industry in the process.

The short-term actions of the Commission are focused on maintaining legal certainty without considering the impact of these actions on the market. A remarkable example of this kind of practice is the discussion about the content of harmonised standards. On one hand, the Commission is threatening to de-harmonise some standards, withdrawing them from the OJEU because they are not up to date according to the current state of the art, and, at the same time, is blocking the citation of the updated versions. The standardisation system is currently cornered without having the means to react to the issues raised by the Commission and respond to policy priorities defined by European Institutions. Other problems related to the same topic are:

- The regulatory demands from Member States were not integrated in consolidated versions of mandates as standardisation requests. At the same time standards must be exhaustive following the legal interpretation of the rulings of Court cases C-100/13 and T-229/17.
- Delegated Acts requested by standardisation technical committees are not delivered in a timely manner; this blocks the citation of the standards because the Delegated Acts are not ready.
- Administrative and legal technicalities have become the main basis for the rejection of candidate harmonised standards. This has resulted in an outdated standards framework that does not keep up with the technical evolution of the sector.



These administrative and legal hurdles prevent the positive development of the internal market, slow down or even block the required evolution of standards in Europe and create uncertainty in the market.

## Long-term

As regards the long-term revision of the CPR, the European Commission has presented several policy options to Member States but seems to be focusing on going back to the old approach in which technical rules are written by regulators at European level with the involvement of Member States according to the delegated or implementing acts procedures. This is especially worrisome as such a centralised process would restrict the possibility of smaller industry members to express their voices and see their views being integrated within the standardisation work.

This change would require either a significant expansion of European Commission staff, to gather the required technical competences, or result in the widespread use of external expertise e.g. private consultants which are not best placed to do this work. Both approaches could not gather views and knowledge from actors in the field on an especially large range of existing products, while the standardisation process has proven to be more efficient and inclusive. The costs of standardisation are currently carried by the industry to obtain accurate results. The divergence from the standardisation framework would result in shifting the costs of developing technical requirements to public authorities and taxpayers.

Consequently, the construction sector supports the development of an alternative option to those presented by the EC, keeping standardisation at its core. Further discussions will be needed, and we would like to invite all interested parties e.g. Member States, CEN, European Commission, etc. to collaborate with us, with the aim of proposing a viable solution in which harmonised standards play a fundamental role in the system.

## 4. What does the industry need?

**Standardisation should be an industry driven bottom-up process involving all concerned parties working together in a cooperative and flexible manner in order to have up-to-date standards which are crucial to enable sustainability and digitalisation and support innovation in the construction sector in a timely and rapid manner.**

**This process allows a better representation of multiple technical points of view and the inclusion of SMEs' perspectives in the technical work.**

**Some of the challenges of the standardisation system should be solved as soon as possible within the current legislative framework through pragmatic solutions, while others may require changes in the CPR with a long-term perspective.**



## Short-term solutions

We need solutions to remove the current backlog of standards and allow the industry to work with up-to-date standards, especially needed to boost economic recovery following the COVID-19 outbreak.

Following the approach used for the backlog of standards on medical devices, we ask the Commission to:

- Provide a flexible approach to the development of harmonised product standards, allowing the industry to put forward technical solutions, which match the sector's needs while continuing to satisfy regulatory aims;
- Streamline the development of standardisation requests, ensuring both fast delivery and transparency;
- Put in place joint actions between the European Standardisation Organisations and the European Commission in order to remove the backlog in the citation of harmonised product standards in the OJEU.

## Long-term review

The planned review of the CPR should be based on the existing reliable European standardisation system, the core of the European harmonised internal market and driver behind the sector's success at international level. In order to do that, the review should address systemic challenges, such as market surveillance, the relationship between the Commission, EOTA and the CEN, as well as simplification measures, in addition to new challenges, for example environmental aspects (climate change, circular economy), digitisation and adaptation to innovation.

Moreover, the review cannot foresee the hierarchal superiority of the European Commission over the other actors. In accordance with the general WTO-TBT standardisation practices standards need to be written in consensus with all stakeholders for the benefit of society through a balanced approach between all interested parties. This practice reinforces the credibility and comprehensiveness of the technical work conducted at European level, while providing additional legitimacy to European standards globally, which enables Europeans to increase the use of their standards abroad; and compete internationally.

**A well-functioning European regulatory framework for construction products integrated within the standardisation system will not only respond to industry needs but will serve society at large. It will enable the European Union to achieve the completion of the digital internal market, the Economic recovery post-Covid 19, EU Green Deal strategic plans and Circular Economy goals. Construction stakeholders are today assessing the potential options to allow the system to work and will soon present joint technical proposals to address the challenges of the current CPR framework. It is our goal to involve all stakeholders in a dialogue, intended to find an appropriate regulatory system to permit the free circulation of construction products.**



## About the organisations

Established in 1990, the **European Builders Confederation (EBC)** is a European professional organisation representing national associations of crafts, micro, small and medium-sized enterprises working in the construction sector. EBC is a member of SMEunited (the European association of micro-enterprises and SMEs) – [www.ebc-construction.eu](http://www.ebc-construction.eu)

Founded in 1905, the **European Construction Industry Federation (FIEC)** is representing via its 32 National Member Federations in 28 countries (25 EU & Norway, Ukraine, Turkey) construction enterprises of all sizes, i.e. small and medium-sized enterprises as well as “global players”, carrying out all forms of building and civil engineering activities – [www.fiec.eu](http://www.fiec.eu)

Founded in 1988, **Construction Products Europe** is a Brussels-based international non-profit making association. The association is made up of national and European associations that represent Small and Medium-size Enterprises and world-leading companies. Construction Products Europe aims to promote the European construction industry, to share information on EU legislation and standardisation and to provide input in all European construction-related initiatives – [www.construction-products.eu](http://www.construction-products.eu)

**Small Business Standards (SBS)** is a European non-profit association, co-financed by the European Commission and EFTA Member States, to represent and defend small and medium-sized enterprises’ interests in the standardisation process at European and international levels. SBS also raises the awareness of SMEs about the benefits of standards, encouraging them to get involved in the standardisation process – [www.sbs-sme.eu](http://www.sbs-sme.eu)