Ympäristöministeriö
Miljöministeriet
Ministry of the Environment

3rd of December 2015

Finnish comments on documents discussed in SCC Subgroup meeting on 12.11.2015

In Finland we have an impression that the Commission is facing difficulties relating to the concept of legal certainty when introducing interpretations of the CPR in FAQs. As a general principle in European Union law it means that the law must be certain, in that it is clear and precise, and its legal implications foreseeable, especially when applied to financial obligations. The adoption of laws which will have legal effect in the European Union must have a proper legal basis. The general principle of legal certainty is particularly stringently applied when European Union law imposes financial burdens on private parties.

At the moment it is most certainly unclear, what is the correct interpretation of articles 5, 9, 18, 27, 37, 38, and 56–58. The interpretation should be in line with the actual text in the article, not just with a FAQ by the Commission. All decisions of the surveillance authorities must be based on articles of the CPR, not interpretative guidelines by the Commission. In case there are financial consequences to parties every decision must have legal background.

CE marking simplification (SUB-SCC 01/02)

It would be practical to reach a common understanding of the interpretation of the article 9.2. It is important to include at least the following information in the CE-marking: reference to the DoP, identification of the manufacturer, identification of the product, intended use and link or other IT means providing direct access to the DoP. However there is a need to clarify article 9.2 by an amendment.

Derogations from drawing up a DoP (Article 5 CPR) (SUB-SCC 01/03)

The CPR creates a massive amount of financial and administrative burden especially to SME's. We fear that the latest interpretations of the Commission don't follow the principle of Think Small First. Because of that principle the derogations in articles 5 and 37 are important to Finland and should be phrased so that the interpretation of the articles is clear. Finland was one of the countries that was actively drafting article 5 of CPR in the Council Working Group and demanding derogations. The main idea was that if there aren't any national provision regarding use of the product, why do micro-enterprises need the CE marking? If a Member State chooses not to legislate something regarding a certain construction product to be installed in construction works it means that locally used construction products with any performance may be used. There will be no barrier to trade because any product with or without CE marking will be acceptable. In these cases CE marking a product just because there happens to be a hEN means only extra cost and administrative burden to manufacturers without giving any benefit to free movement of construction products, especially in situations where the construction products are used only within one Member State.

The difference between CE marking a product and constructing a building must be seen. If something is constructed at the site there cannot be an obligation for CE marking because something made for one construction works like that will never be on the market. Finland supports the idea of the Commission that if an artisan makes something for a construction works it is not manufacturing and the product is not placed on the market.

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Use of simplified procedures by micro-enterprises (Article 37 CPR) (SUB-SCC 01/05)

At the moment it is unclear what is the content of STD and how is it possible to demonstrate equivalence of the procedures used to the procedures laid down in harmonised standards without buying and studying the standard in question. The purpose of simplified procedures was originally to decrease administrative burden and costs occurred to micro-enterprises. Articles 37 and 38 have not been widely used because the way they have been written don´t serve the purpose. The essential question designers, consumers and building authorities need answers for is whether the product may be used in a construction works or not. In other words it is mandatory to know the performance of the product. Therefore the content of STD should demonstrate the performance of product and how it has been tested or how the performance has been calculated. That is the only way the product can be compared with national requirements and judged whether the product is safe and secure to be installed into construction works. The question that needs to be solved is how to achieve the goal in practise with test methods different to the test methods given in harmonised standards. The article 8.6 of CPR requests Member States to legislate their national parameters for construction works and for essential characteristics of construction products in accordance with harmonised standards.

According to our understanding it is not possible to try to decrease the burden CE marking creates for SMEs with new interpretations or slight modifications of articles 37 or 38. This would obviously lead to unfair market situation and on the other hand "second class" CE marking which is not trusted by the clients buying construction products. Following actions will instead truly help the competitiveness of SMEs:
1) Clarification of the borderline when CE marking is not obligatory (article 5).
2) Improvement of harmonised product standards so that they do not include rules which are beneficial to big companies (e.g. testing frequency once per day).
3) Speeding up the preparation and approval of classified without testing decisions, which should be immediately incorporated into harmonised product standards.

The safety issue concerning the change of AVCP system 3 to 4 for micro enterprises should also be solved better since it is not possible to include all those product families in AVCP system 4. CE marking would not be reliable for example in case where AVCP system 4 would have been used for appliances fired by solid fuel (fire places). It is not possible for micro-enterprises to perform the complicated tests in their own laboratory. The authorities find it difficult to trust test results if these tests are performed in a testing laboratory not having competence to work as a notified body. Concerning this product it shall be kept in mind that there is a human danger due to increased fire accidents if too good performance (too low flue gas temperature) is declared in the DoP.

Deficiencies in hENs

Another fundamental problem with the CPR is mandatory harmonised standards which have deficiencies. If it is obligatory to use a harmonised standard and the Member States are not allowed to require extra information relating to safety and security, there must be a way to correct the deficiencies in the hENs immediately. The high quality of the hENs is fundamentally important. At the moment the situation is unbearable.

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