

## **Additional characteristics in harmonised standards**

("What kinds of performance should harmonised standards cover under the CPR and how?")

CEN TCs have recently come more and more frequently up with the question about the introduction (or the retaining) of additional characteristics into harmonised product standards (hENs) under the CPR (305/2011/EU), not including them into Annex ZA. This has prompted the EC services not only to establish a coherent line of action on this matter, but also to bring forward the justifications for the choices made. The purpose of this document is thus to elaborate, commencing from the legal grounds the CPR –based framework currently in place provides, the operational way forward for developing hENs in the future. This action coincides with one of the foremost priorities agreed between CEN and the EC services, aimed at ensuring an ever higher quality of these most important harmonised technical specifications in use.

According to Article 2(4) of the CPR, “essential characteristics” are those characteristics of construction products which relate to basic requirements for construction works. The performance of construction products is always related to these essential characteristics (cf. Article 2(5)). When the harmonised technical specifications, notably harmonised standards, are prepared under the CPR, in accordance with Article 3(1) these basic requirements shall constitute the basis and in accordance with Article 3(2) the essential characteristics shall be laid down in relation to them.

The full and exhaustive nature of the harmonised system created in and by means of the CPR has also been confirmed in the European Court of Justice judgment on case C-100/13 (cf. para 62). Pursuant to this ruling, Member States are to apply the contents of this system and only these contents when setting requirements for the performance of construction products covered by harmonised standards. – In fact, these statements of the Court can and also need to be understood as necessary pre-requisites in the legal argumentation carried out for the judgment: were the CPR –based harmonised structure not considered exhaustive in this manner, the ECJ could not (at least not as convincingly) have arrived to the outcome presented in the ruling.

Pursuant to these cornerstones of the scope of the common technical language provided by the CPR, all performance aspects of construction products, relevant in relation to basic requirements for construction works, are to be dealt with in essential characteristics of these products, as presented in the harmonised standard. Obviously, this necessitates that the respective mandates also are up to par, i.e. contain the standardisation requests for all these aspects. Where this is currently not the case, the Commission is, after prioritizing with CEN, to launch immediate actions to remedy these shortcomings.

This argumentation does not leave any space in the CPR –based hENs for any additional aspects not included in these essential characteristics, but still having a bearing to basic requirements for construction works. This is even more certainly the case for the use of any marks or other “quality signs” for such purposes, already covered by the CE marking (cf. Article 8(3) and also FAQs 19 – 21 on our Europa website). When such a performance aspect is regarded as useful to be communicated by the manufacturer to the recipients of his products, he should be empowered to do so by the contents of the hEN, its Annex ZA, and thus enabled to use the declaration of performance for this purpose.

Voluntary or other additional aspects of hENs under the CPR cannot thus have any impact upon basic requirements for construction works: the *conditio sine qua non* for incorporating them in these standards is that they do not deal with either one of them. The frequently used example for such aspects is the durability of the colour of, let's say, a brick: very interesting for the buyer aiming at incorporating the brick into his façade, but not having an impact on the fulfilment of basic requirements for construction works. Such features thus remain welcomed even in the context of the CPR –based hENs.

When setting requirements for the use of construction products in relation to any basic requirements for construction works, Member States authorities cannot refer to any such additional aspects outside the harmonised sphere (not included in Annex ZA). For the fluent functioning of the harmonised system currently in place, it is therefore essential that the regulatory needs of Member States, but also market needs, are timely and comprehensively conveyed to CEN, so as to be appropriately taken into account when preparing the hENs.

Operationally, this argumentation leads the EC services to request CEN not to introduce (or to include any longer) such additional performance aspects ("voluntary characteristics" et al) into harmonised product standards under the CPR. The EC services shall therefore not publish references in the OJEU to new hENs containing such additional elements outside Annex ZA. Apart from well-justified exceptions, this will also be the case for new versions of the existing harmonised standards, where such additional elements have previously been accepted.

The role and the status of harmonised standards (and harmonised technical specifications in general) is obviously one of the most important aspects to be revisited and potentially amended in the context of the possible revision of the CPR. The preceding argumentation and operational conclusion should therefore be seen as concerning the system currently in place, but not prejudging any future developments in any directions. More information about the alternatives under consideration is to be made publicly available when the roadmap for this possible revision is published in the coming weeks.