Cemma is a foundation assisting manufacturers and other economic operators to fulfil the requirements of the CPR. Professor dr. A.R. Neerhof at the Law faculty of the VU University Amsterdam, has recently published a thorough investigation of the consequences of the CPR for other marks than the CE-mark, often referred to as 'voluntary quality marks' or QMs (see A.R. Neerhof, 'Weinig ruimte voor private keurmerken onder de Verordening bouwproducten, Deel I and Deel 2, Tijdschrift voor Bouwrecht 2017/19 and 2017/37). We advise to continue with the CPR as it is now. So we are in favour of option I, the "baseline scenario". Naturally, where needed the CPR text should be corrected or improved.

To our opinion, revision of European harmonisation legislation is only justified if it will lead to:

- an improved functioning of the Internal Market, or
- less burdens on manufacturers, consumers and other economic operators without deteriorating the Internal Market by introducing new barriers

To our opinion, the other options proposed will result in an Internal Market that will function less well.

At first sight it might appear strange that manufacturers who are selling their products in many MSs prefer the local QMs to the CE mark. However, one should realise that these manufacturers have already decades of experience with the local QMs and good contacts with the certification institutes issuing these QMs. They feel safe in a Europe with the national markets clearly defined with local marks functioning as barriers to trade. They may fear an Internal Market, where the CE logo will facilitate competition by new, mostly SME entrants that operate currently in just one or a few MSs (not in the last place because of expensive QMs) or big companies from outside the EU.

We do not understand what is so special about construction products that these products should not bear a CE-mark, differently from other products marketed and used in Europe. The CPR is helping manufacturers to extend their businesses to other member states without additional costs for local QMs. As a consequence, the competiveness and innovative power of the whole construction sector will improve and the prices for consumers may lower.

To our opinion, the main reason of the continuing opposition to the CPR has mainly a commercial origin, predominately in the older member states (MSs) where the local QMs have enjoyed the confidence of the local markets up until this day. Although everyone who reads the CPR must conclude that CE marked products may not bear another mark that declares any product property that is related to an essential characteristic, the market position of these QMs is still dominant, mainly by a poor surveillance by MSs.

We notice that other persons and organisations, among which many from Germany, have given already their feedback in which they express the same opinion as ours: keep the CPR unchanged. The Court of Justice of the EU judged in October 2014 that Germany must stop demanding a "bauaufsichtliche Zulassung" with the accompanying Ü-Zeichen for products already bearing a CE-mark. DE promised to stop this practice ultimately within two years. However, DIBt has yet issued extensions of these Zulassungen after these two years transition period. Competitors complaining about continuation of this forbidden practice at the surveillance authority (being another department of DIBt) have been told that manufacturers cannot use these Zulassungen anymore for commercial goals, neither affix the Ü-Zeichen to their product anymore, but that these extensions are issued correctly, . However, these manufacturers continue with Zulassungen and Ü-Zeichens as before and local authorities keep demanding them. So nothing seem to have changed.

We are convinced that these illegal practices, being true barriers to trade, and the opposition against the CPR will probably not disappear before MSs will take their surveillance obligations seriously. National surveillance authority should now actually start to act against violations of the CPR, which occur in The Netherlands and a lot of other MSs in the form of products bearing QMs next to the CE logo. This was already forbidden in the Treaty itself, in the CPD (1989!) implicitly and now even explicitly in the CPR. So surveillance authorities should start now to act, as the CPR prescribes in detail!

We will complete our feedback with some facts and observations that may help to decide between the several option:

- CE-marking is a strong means for cutting back on the pressure resulting from rules and regulations.
  Instead of re-assessing the performance of his product in every MS where he chooses to place his product on the market – de facto until today a prerequisite for marketing and selling his product there – a manufacturer just need to assess his product once in any MS he wants.
- In the document PART-2017-257042V1.pdf, accompanying and explaining this review of the CPR, the additional costs caused by the CPR is said to be between 0,6% and 1,3% of the turnovers of manufacturers. We doubt whether the savings of not applying anymore for all these QMs has been taken into account, and these saving are for certain more substantial, just only because of the use of AVCP system 4 where admissible.
- Private QMs are still requested in several MSs by contractors, insurance companies, local building authorities, etc.
  For this reason CEMMA understands but regrets when manufacturers feel themselves forced to breach the law and apply for QMs, although they want to obey the law and realise that QMs form barriers to trade and are explicitly forbidden in the CPR.
- QMs are not or hardly giving more information than the CE mark on a product.
  This is because the existing private QMs are based for 90% or more on the same harmonised European standards that are making CE marking possible and obliged.
- Despite the provisions for SMEs in the CPR, CE marking may already be intricate and time consuming for these enterprises, but getting QMs in several MSs for their products manufactured and sold in relatively small numbers, is really expensive.
- Of course the companies have to pass on the costs for QMs to the consumers.
  Only in The Netherland the yearly turnover of QMs is 80 M€.
- CE marking is often cheaper than one QM.
  For CE marking third parties (ironically the issuers of private QMs!) must only be involved in assessing product characteristics for which non-compliance may have serious consequences for the safety and health of users and employees and the environment. Assessment of other properties do not need third party involvement, contrary to QMs.
- The discussion of the so-called additional, non-essential product characteristics often has a high theoretical character.
  To the opinion of the Commission these additional characteristics cannot be part of the harmonised European standards. However, these additional characteristics have in most cases a relation with one or more of the essential characteristics and should therefore be included in the ANEX ZA of the harmonised standard or deleted when redundant.
- When changing their building regulations or other rules that will have effect on requirements for the essential characteristics of building products, MSs should use methods given in the harmonised standards, as demanded by the CPR.
  When the assessment of other characteristics are demonstrably needed, these should be incorporated in the mandate, thus becoming new essential characteristics.
- Technical Assessment Bodies, EOTA members where manufacturers may apply for an ETA resulting in a CE mark for their product not (completely) covered by a harmonised standards,

are advising their clients to apply also for a QM (which they often issue themselves) with the argument that a CE mark is not enough for selling their product.

- In many CEN/TC's drafting harmonised standards and on national level in mirror committees, the bigger industrial companies are deciding on the content of the standards
  Only the huge companies can afford to continue in the endless discussions in frequent meetings of a TC, its working groups, task groups, ad hoc groups etcetera. The secretariat of these TC's (mostly carried out by a national normalisation institute) is often being financed by the industry, dangerous for the independency of the secretariat.

CEMMA hopes that these considerations may help making decisions on the future of the CPR.

CEMMA

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