

Exchange of views on re-used products under the CPR

1. Introduction

The Commission was contacted by Denmark with a question concerning the treatment of re-used bricks in relation to the CPR.

The Commission consulted Member States and stakeholders on their views and possible experiences concerning this practical implementation issue at the 6th SCC CPR 13-14 February 2014. It was agreed that the document CPR 06/15/1 should be revised and recirculated in light of the comments received.

This document is based on the document CPR 06/15/1, on contributions prepared by the UK and tries to better address the key issues raised by Member States and other stakeholders.

The conclusions included in this document are based on the information available to the Commission at present and can only be applicable to the case of re-used products described under point 2. A more detailed analysis based on information concerning different products re-used, their uses, size of the sector, etc. could lead to a revision of the conclusions therein.

2. Background

The case presented by Denmark concerned bricks which the economic operator takes from an old building and sells to a contractor in order for them to be incorporated in a construction work. The economic operator submits the bricks to a cleaning process to remove the old mortar or paint ('preparation') which does not imply a manufacturing process and the performance of the brick remains unchanged.

The reused construction product is often very old, was placed on the market before the CPD or CPR, when CE marking was not yet in place. In addition, the economic operator who prepares the bricks for re-use is not a manufacturer himself and the factory production control within the meaning of the CPR might not be in place.

Denmark asked if the CPR applies to these products, including obligations concerning CE mark and DoP, if "reuse" is the correct term, how the definition "*placing on the market*" in the CPR should be understood regarding reused construction products and whether Member States may require reused products to be assessed on the basis of Eurocodes or hENs.

3. Terminology

The CPR is silent with regard to reuse and recycling. The terminology set out in the Waste Framework Directive 2008/98/EC (WFD) is pertinent in this case. According to the WFD, the situation mentioned by Denmark correspond to the concept of "*re-use*" and "*preparing for re-use*" mentioned defined under Article 3.13 and 3. of the WFD. Re-use is different from "*recycling*", as the latter implies a reprocessing of products (likely to affect their performance and product type) in order to produce a new product.

4. Applicability of the CPR concerning reused construction products

Re-used products are not excluded from the scope of application of the CPR. As soon as a product falls under the CPR definition of construction product (Article 2(1) of the CPR), the CPR conditions for placing or making available on the market of construction products apply. Most relevant CPR provisions for this case are Article 4(1) (the manufacturer shall draw up a DoP when a construction product, which is covered by a hEN or conforms to a ETA issued for it, is placed on the market), Article 5 (derogations from drawing up a DoP), Article 14 (obligations to distributors) and Article 15 (cases in which obligations of manufacturers apply to importers and distributors).

However, we can differentiate here **two possible situations**:

1. **Re-used products which were placed on the market after the applicability date of the CPR¹ and the Construction Products Directive² (CPD).** In these cases, the CPR provisions apply in full, and economic operators who prepare the bricks for re-use should fulfill their obligations under Article 14 of the CPR (under the assumption that the performance of the products remains the same as described in the DoP or CE mark affixed in accordance to the CPR/CPD).
2. **Re-used products which were already placed on the market legally before the applicability date of the CPR and of the Construction Products Directive.** In the case described under point 2, only some of the CPR obligations to distributors (Article 14 of the CPR) are relevant for this type of re-used products and can be legally required within the limits of the information available, because the actual information on the products might be very difficult to obtain in practice³. The CPR obligations concerning DoP and CE mark would not be relevant in such a case.

On the contrary, in such cases the ignorance of the real performance of these re-used products will not discharge users of compliance with the requirements deriving from national building legislation. For this reason, the economic operators who sell re-used bricks would need to inform their customers of the probable performance and safety information (Article 14(2) of the CPR) allowing the users to use the re-used bricks safely⁴. This should not discharge neither the economic operators selling such bricks

¹ According to Article 2(17) of the CPR “*placing on the market*” means the first making available of a construction product on the Union market.

² To be noted that, according to Article 66(1) to the CPR, products which have been placed on the market in accordance with the CPD before 1st July 2013 shall be deemed to comply with the CPR.

³ For example, in the case of products placed on the market before the CPD, the performance of which was never declared, it would be impossible or very improbable to find any relevant information. In addition, re-used products sold might come from different origins and uses, making very difficult to verify if all have similar performance and characteristics. Finally, the CPR was designed to address the production process of products undertaken under the CPR regime and the specificities necessitated for its applicability to old re-used products have not been considered by the legislator.

⁴ For example, use of the re-used product for load bearing structures might not be appropriate when the load bearing performance of the product is not known.

from their obligation to check the characteristics of the products and provide information on the performance of the bricks if requested or required to do so.

5. Placing on the market

In order to consider that a product is "*placed on the market*" under the CPR, two essential elements need to be present and occur after 1st July 2013: an economic transaction and a "new" product.

Concerning the first element, there is an economic transaction when an economic actor sells the product, as described under Article 2(16) of the CPR.

The second aspect concerns the cases when the performance and identification of the product as well as its intended use has changed substantially⁵ after its first placing on the market and before selling it for re-use. The case raised by Denmark is not concerning a substantial change of the re-used products and therefore this aspect would not be relevant.

Cases where the performance of the product has been changed during its life or as a consequence of the salvage process undertaken by the economic operator should be assessed on a case by case basis in order to identify how the CPR would be applicable to them and which options exist to demonstrate the performance of the given re-used product.

6. Can a Member State require that re-used construction products are assessed on the basis of the Eurocodes or hENs?

In case the assessment of re-used construction products becomes necessary due to the intended use or a substantial change in their performance, the use of applicable hENs for such assessment is possible providing it is not legally excluded or technically unfeasible.

7. Tentative conclusion and actions

- Only some CPR obligations concerning distributors apply to re-used construction products described under point 2 which were first placed on the market before the CPD and the performance of which remains unchanged.
- Re-used construction products should be accompanied by information on their performance and safety commensurate to the available information, to allow their users to know if they are in compliance with the applicable national building rules.
- A frequently asked question could be included on the CPR website concerning re-used products described under point 2.
- Consideration should be given to the treatment of re-used products when assessing the possible revision of the CPR and when developing or reviewing hENs.

⁵ For example, the mechanical resistance of a brick was substantially affected with time or other characteristics of the brick are modified due e.g. to chemical cleaning process of old paints.