

FIEC PRESS RELEASE – 24/11/2010

CONSTRUCTION PRODUCTS REGULATION:

IMCO Committee of the European Parliament Vote in 2nd Reading

**FIEC WELCOMES A MOSTLY WELL BALANCED VOTE BUT WARNS AGAINST
CREATING A LEGAL VACUUM FOR CONSTRUCTION ENTERPRISES**

FIEC welcomes many key parts of the result of the IMCO vote in 2nd reading and applauds the choice of the Committee to make clear that contractors are not covered by the scope of the regulation by creating a new recital. Construction enterprises however remain disappointed that the legal uncertainty surrounding off-site production for incorporation into own works by contractors has not been resolved.

Moreover, whereas FIEC is very satisfied that IMCO has backed the retention of vital product information linked to the CE marking on or attached to the product itself, the Declaration of Performance is an essential document for the purposes of product traceability and, as products evolve, will increasingly contain important information regarding a product's sustainability performance. In order not to create extra burdens on micro- and SME contractors who do not always have access to the internet on site, the supply of the Declaration of Performance through websites should not be forced on product users.

**1. ENTERPRISES PRODUCING AND INSTALLING PRODUCTS FOR THEIR OWN WORKS
MUST NOT BE OBLIGED TO CE MARK (RECITAL AND DEROGATIONS FROM DRAWING
UP DECLARATION OF PERFORMANCE: ART 5)**

As underlined by the European Parliament in first reading, companies manufacturing construction products for incorporation into works for which they – themselves – are liable are contractors. They should not be considered as manufacturers, and should not be required to become involved in CE marking activities as they are not placing a product on the open market and already fall under specific regulations for contracting works. The Council Common position allowed for misinterpretation in that respect.

FIEC therefore welcomes the new recital that clarifies the role of contractors and congratulates IMCO for voting to make it clear that contractors should not be concerned by any obligation to draw up a Declaration of Performance and affix the CE marking.

Off-site Production:

FIEC is however disappointed that IMCO has voted to retain the distinction between on and off-site production in Article 5 (b), which seems contradictory to the new recital referred to above. In FIEC's view it is not the location of production that is important but rather whether the product or element is placed on the market or whether it is incorporated into building or civil engineering works by the same economic operator who is liable for the completed works. Rather than fabricating elements on site, many contractors pre-fabricate products in their own off-site units for use in their own works to increase quality and efficiency. Keeping the article as written may risk forcing contractors to stop off-site production therefore jeopardizing quality and efficiency in the industry.

FIEC is the European Construction Industry Federation, representing via its 34 national Member Federations in 29 countries (27 EU & EFTA, Croatia and 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. FIEC is also an Associate Member in the European Committee for Standardisation CEN. Being composed of 2.6 million enterprises of which 97% are SMEs with fewer than 20 operatives, the Construction Sector employs 1.4 million operatives, representing 7.3 % of Europe's total employment

For further information, please contact Frank Faraday

FIEC, Avenue Louise 225, BE-1050 Bruxelles

Tel. +32-2-514 55 35, Fax +32-2-511 02 76 e-mail: info@fiec.eu web: www.fiec.eu

2. MAINTAIN SUFFICIENT INFORMATION ON CONSTRUCTION PRODUCTS (ARTICLE 9)

The overwhelming majority of companies active in the construction industry are small and micro contractors. They need to find sufficient information on the product itself. Article 9 “Rules and conditions for the affixing of CE marking” reintroduces the current requirements regarding CE marking of construction products and answers the needs of users.

Users of construction products incorporate thousands of different products into construction works and must be able to unambiguously identify a product prior to its incorporation. Therefore they need to find all relevant CE marking related information identifying the product and indicating its intended use with relevant declared characteristics on the product itself, on the label fixed on the product or on the packaging and should not have to search through web-based information. Absent or incorrect information may jeopardize the performance of the finished works and may even compromise the safety of workers and the public.

FIEC therefore warmly welcomes the decision by IMCO to keep essential information regarding the product’s regulated characteristics linked to the product’s intended use, on the product itself or accompanying it.

3. SUPPLY OF THE DECLARATION OF PERFORMANCE (ARTICLE 7.3)

FIEC does not support the use of web-sites as the default standard for supplying the Declaration of Performance. Smaller construction sites, unlike offices, often have no internet connection and the obligatory placing of the Declaration on web based repositories would add an additional burden to the craftsmen, micro-enterprises and SMEs of the construction industry to search for information that in many cases they have to provide in turn to clients, architects and market surveillance authorities. Contractors are bound by strict liability rules regarding the incorporation of products and therefore the choice of the delivery format should ultimately remain with the recipient and not with the product-seller.

FIEC, mindful of the increasing role and benefits of the internet, does however support the principle of delegated acts for laying down the right conditions for the future supply of the Declaration of Performance through web-sites. This said, current rules do not permit the use of websites for the supply of information linked to CE marking and building codes in many Member States do not make provision for making product information available electronically. Therefore, in the absence of a Commission Decision, any new recital encouraging “current practice” to continue would have the potential of creating a legal vacuum.

FIEC therefore restates that the choice of the form of delivery of the Declaration of Performance should reside with the client and not simply suit the manufacturer or product distributor. Removing burdens for manufacturers should not create new burdens for micro- and SME contractors who are professional users of construction products.

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