



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



Circular Letter: BC 06/2013

31 July 2013

**European Union (Construction Products) Regulations 2013
S.I. No. 225 of 2013**

Dear Manager,

1. GENERAL

I wish to advise you that the Minister for the Environment, Community and Local Government signed the *European Union (Construction Products) Regulations 2013* (S.I. No. 225 of 2013) on 27 June 2013. A copy of the regulations is enclosed for your information. Further copies are available on the Department's website¹ at: -

[S.I. No. 225 of 2013](#)

The new regulations give full effect in Ireland to the market surveillance provisions of *Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* (known as the Construction Products Regulation or "CPR"). A copy of the Construction Products Regulation is available on the European Commission's website² at: -

[Construction Products Regulation](#)

S.I. No. 225 of 2013 and the Construction Products Regulation should be read in tandem in order to obtain a complete view of the obligations on economic operators, the requirements for the marketing of construction products covered by the Construction Products Regulation and the market surveillance procedures to be followed and the powers conferred on Building Control Authorities.

2. BACKGROUND

The primary purpose of the Construction Products Regulation is to break down technical barriers to trade in order to ensure the free movement of construction products across Member States within the European Union. It does this by harmonising those elements which previously led to barriers to trade. In this regard, the Construction Products Regulation provides for: -

¹ <http://www.environ.ie/en/Legislation/DevelopmentandHousing/BuildingStandards/FileDownload,33645,en.pdf>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0005:0043:EN:PDF>

- a system of harmonised technical specifications (over 420 harmonised European standards for construction products (hENs) are currently in force³),
- an agreed system of attestation of conformity and verification of constancy for each product family (as set out in the harmonised technical specifications),
- a framework of notified bodies, and
- the mandatory CE marking of construction products as a passport to the internal market.

The Construction Products Regulation came into force across the entire European Union on 1st July 2013 with the result that each construction product for which a harmonised European product standard (known as a hEN) is in force will need a *Declaration of Performance* from the manufacturer and be affixed with the CE mark before it can be placed on the market after this date.

3. MAIN PROVISIONS OF THE REGULATIONS

The *European Union (Construction Products) Regulations 2013* (S.I. No. 225 of 2013) provide for the: -

- market surveillance of construction products having regard to the specific requirements of the Construction Products Regulation and overarching requirements of Chapter III of *Regulation (EU) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/9*,
- establishment of building control authorities as the market surveillance authorities for construction products (although the Minister has power to appoint other competent authorities to undertake market surveillance in respect of specific products areas),
- appointment of authorised officers and their powers in respect of market surveillance,
- offences, penalties and prosecutions, and
- the destruction or disposal of construction products where a person has been convicted on indictment of certain offences under the regulations.

4. APPLICATION

The new regulations apply to construction products the essential characteristics of which are laid down in harmonised technical specifications in relation to the basic requirements for construction works as set out in Annex I to Construction Products Regulation. Harmonised technical specifications include harmonised European product standards and European Assessment Documents (i.e. voluntary route to CE marking for innovative products).

Construction products which are not covered by a harmonised technical specification are outside the scope of the Construction Products Regulation and the accompanying *European Union (Construction Products) Regulations 2013*. Such products would fall within the scope of *Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety* (known as the General Product Safety Directive or “GPSD”) the implementation of which in Ireland is the responsibility of the National Consumer Agency.

³ Over 3,000 European Technical Approvals (ETAs) have issued under the Construction Products Directive. Under the Construction Products Regulation, the corresponding term European Technical Assessment will be used.

5. MARKET SURVEILLANCE

In the context of construction products, market surveillance refers to the activities carried out and the measures taken by market surveillance authorities (i.e. enforcement authorities) to ensure that construction products comply with the requirements set out in the Construction Products Regulation and therefore do not endanger the health, safety or any other aspect of public interest protection.

Under the new regulations, building control authorities have been designated as the principal market surveillance authorities for construction products that fall within the scope of the Construction Products Regulation although the Minister may also appoint other bodies and/or persons for specific product areas should the need arise. This broadly mirrors the position that was in place under the *European Communities (Construction Products) Regulations 1992* (as amended) which gave effect to the now repealed *Council Directive 89/106/EEC on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products* (known as the 'Construction Products Directive' or 'CPD').

On foot of the new regulations which replace the previous regulatory regime in relation to the Construction Products Directive, all building control authorities are now requested to appoint authorised officers under Regulation 11 of the *European Union (Construction Products) Regulations 2013*. On appointment, authorised officers can avail of the wide ranging powers set out in Regulations 12 to 14 in order to: -

- enter buildings, land and vessels to undertake such evaluations, examinations, tests or inspections of a construction product,
- request technical information to ascertain if a construction product is compliant with the requirements of the Construction Products Regulation,
- take copies of records, or extracts from files, to facilitate the evaluation, examination or inspection of a construction product,
- require an employee or a person in charge to provide information in a legible form on a construction product,
- require explanations in relation to a construction product from an employee or a person in charge,
- take photographs of a construction product, the place of manufacture and/or the place of storage of the construction product,
- bring persons and/or equipment to the place of manufacture or storage of a construction product to assist in such evaluations, examinations, tests or inspections as are considered necessary,
- take samples of a construction product for testing,
- issue a notice to require corrective actions to be taken by an economic operator within a specified period of time, and, in the event of a serious risk being identified, to
- request the Minister to prohibit or restrict a construction product from being made available on the market, to withdraw it from the market or to recall it, or to make its use subject to special conditions as deemed appropriate.

Given the commercial sensitivities that may be involved, it is incumbent on all building control authorities to take reasonable measures to guarantee the confidentiality of the technical documentation and such other information as may be supplied by an economic operator under these regulations in support of a product's compliance.

6. FUTURE DEVELOPMENTS

Notwithstanding the requirements of the Construction Products Regulation, you are advised to note that, earlier this year, the European Commission brought forward a proposal for a regulation on market surveillance which (when adopted) will repeal the market surveillance provisions of Regulation (EU) No. 765/2008 and the supporting market surveillance provisions in each of the product safety Directives / Regulations that fall within scope of the European Union's new legislative framework, including construction products under the Construction Products Regulation.

Furthermore, proposals have been put forward to establish a European Market Surveillance Forum as well as plans to develop a multi-annual market surveillance programme which will provide, inter alia, for the development of key performance benchmarks for market surveillance, guidance on product traceability, promote joint enforcement activities, general risk assessment methodology and greater use of the RAPEX and the *Information and Communication System on Market Surveillance* (known as 'ICSMS' – a European Union platform for the reliable exchange of information among market surveillance authorities - the system allows for information on non-compliant products, e.g. test results, product identification data, photographs, economic operator information, risk assessments, accident information, information on measures taken by surveillance authorities etc., to be shared quickly and efficiently among market surveillance authorities).

While the proposed regulation is at an early stage, it is anticipated that the Commission will drive for greater and more consistent market surveillance among Member States across all product areas, including construction products, going forward. Against this background, it is unlikely that the current approach to market surveillance in relation to construction products, which is largely reactive, will satisfy the future demands of the Commission in this regard.

7. SERIOUS RISK AND RISK ASSESSMENT

Where a serious risk has been identified in respect of a construction product on the basis of a risk assessment, a building control authority may by notice under Regulation 14(1) require an economic operator to take corrective actions within a specified period of time. Failure by an economic operator to comply with the conditions of such a notice constitutes an offence under the regulations and may result, under Regulation 14(3), in a building control authority requesting the Minister to: -

- prohibit or restrict the construction product from being made available on the market,
- withdraw it from the market if already available on the market,
- recall it from the market if already available on the market, or
- make its use subject to special conditions.

In the event that any of the restrictive measures mentioned above are applied in respect of a construction product, the Minister is obliged under Regulation 14(6) to notify the European Commission and other Member States of the European Union through the *Community Rapid Information System* (known as 'RAPEX'). In advance of issuing a request to the Minister under Regulation 14(3), a building control authority should have regard to the relevant provisions of Articles 56 or 58 of the Construction Products Regulation and Articles 20 to 22 of Regulation (EU) No. 765/2008.

Building control authorities should note that RAPEX Guidelines were established under *Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC*

(the *General Product Safety Directive*). Appendix 5 to the Guidelines sets out the risk assessment method to be used by market surveillance authorities to assess the level of risks posed by consumer products to the health and safety of consumers and to decide whether a RAPEX notification is necessary. A copy of the Commission Decision may be accessed on the European Commission's website⁴ at: -

Commission Decision 2010/15/EU

While the purpose of the existing RAPEX Guidelines is to provide a transparent and practicable method for appropriate use by market surveillance authorities when they assess the risks of non-food consumer products within the framework of the General Products Safety Directive, nevertheless the general principles set out have broad application. Building control authorities are advised to have regard to the RAPEX Guidelines should the need arise for a risk assessment on a construction product.

As a final point in this matter, it should be noted that the European Commission is currently developing a proposal for a risk assessment methodology which will update the general risk assessment methodology available in the RAPEX Guidelines so that they cover the other risks and allow market surveillance authorities to identify not only consumer but also other products representing risk in a consistent and reliable way. The Department will inform building control authorities when the risk assessment methodology has been completed by the Commission.

8. RAPEX

RAPEX was established under Article 12 of the General Product Safety Directive as the European Union's rapid alert system to facilitate the rapid exchange of information between Member States and the Commission on measures taken to prevent or restrict the marketing or use of products posing a serious risk to the health and safety of consumers with the exception of food, pharmaceutical and medical devices, which are covered by other mechanisms. Since the introduction in 2010 of the European Union's new legislative framework, RAPEX was extended to products that fall within the scope of Community harmonisation legislation which may pose a serious risk to the health and safety of professional users or any other aspect of public interest protection.

Notifications under the RAPEX only relate to products for which a serious risk has been identified, whether through a complaint or through the actions of a market surveillance authority. In notifying the European Commission of any restrictive measures taken in connection with the recall, withdrawal or prohibition of the marketing of products presenting a serious risk, Member States should also provide details of any measures recommended or agreed with economic operators as well as voluntary measures taken by economic operators with respect to such products.

In the case of Ireland, the *National Consumer Agency* has been the single contact point for RAPEX notifications since 2004. Should a RAPEX notification be deemed necessary in respect of a construction product and in order to fulfill the requirements of Regulation 14(6), the Minister will liaise with the National Consumer Agency in the matter. However, in tandem with a request under Regulation 14(3), it will be necessary for a building control authority to provide the Minister with the following: -

- a completed RAPEX notification form (copy enclosed),
- a photograph(s) of the affected construction product or batch of construction products,

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:022:0001:0064:EN:PDF>

- a copy of a test report(s) on the affected construction product or batch of construction products, and
- a copy of a risk assessment in relation to the affected construction product or batch of construction products.

You may also wish to note that on Friday of each week, the European Commission publishes a weekly overview of the products posing a serious risk as reported by the national authorities under the RAPEX. In respect of each product, this weekly overview gives information on the product, the identified risk and the measures that were taken in the notifying country. The weekly overview may be accessed on the European Commission's website⁵ at: -

[Weekly RAPEX Notifications](#)

9. AWARENESS & INFORMATION

The Construction Products Regulation represents a change for all those involved in the construction sector, from manufacturers, importers and distributors to the users of construction products. The Department would envisage that there will be an ongoing need to promote awareness amongst economic operators of their obligations under the Construction Products Regulation. It will also be essential for Building Control Officers, designers, specifiers and purchasers to understand the impact of the Construction Products Regulation, the meaning of CE Marking and the contents of *Declarations of Performance*.

While the Department has been working, and will continue to work, on various information campaigns to increase awareness of the requirements of the Construction Products Regulation by means of direct contact with industry stakeholders, professional bodies and State agencies as well as through published information, articles and guidance notes etc., we believe that the Building Control Authority as the market surveillance authority also has a key role to play in communicating relevant information on the Construction Products Regulation. Increasing awareness and visibility of the market surveillance authority will ultimately lead to greater compliance among the relevant economic operators.

In June 2012, the Building Regulations Advisory Body, in consultation with this Department and other stakeholders, prepared an information paper setting out the general objectives behind the Construction Products Regulation, the requirements that must be fulfilled in order to place construction products onto the market and the particular implications for manufacturers, importers and distributors that arise when the Regulation enters into force fully on 1 July 2013. The information paper also provided some brief information for specifiers, designers and builders when using these construction products.

This information paper has recently been revised and updated over the course of the past twelve months and copies are attached with this circular which may be disseminated to economic operators and other interested parties within your functional area. Further copies of the information paper are available from the Department's website⁶ at: -

[Construction Products Regulation - Information Paper](#)

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<http://ec.europa.eu/consumers/safety/rapex/alerts/main/index.cfm?event=main.listNotifications&CFID=1315570&CFTOKEN=19407819&jscsessionid=09009cf90e9b1776e9a7b535510416920708>

⁶ <http://www.environ.ie/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownload,30649,en.pdf>

10. IMPLEMENTATION & ACTION

In the interest of promoting increased awareness of the Construction Products Regulation and the national market surveillance provisions applicable under the *European Union (Construction Products) Regulations 2013*, the Department would now request that each building control authority take the following key actions: -

- appoint authorised officers under Regulation 11 of the *European Union (Construction Products) Regulations 2013*,
- advise the Department (by email to buildingstandards@environ.ie) of the name / contact details for each authorised officer appointed under Regulation 11 of the *European Union (Construction Products) Regulations 2013*,
- incorporate material on the Construction Products Regulation on your organisation's website, including contact details for authorised officers appointed under Regulation 11 of the *European Union (Construction Products) Regulations 2013*,
- host a link on your organisation's website to the Department's *Construction Products Regulation – Information Paper*⁷,
- include a copy of the Department's *Construction Products Regulation – Information Paper*⁸ with each planning approval / valid commencement notice acknowledged in order to continue to raise awareness among specifiers, designers and builders of the need to look for the CE Marking on construction products and the accompanying *Declarations of Performance*,
- review information available locally which may be used to identify economic operators within your functional area that are likely to be affected by the Construction Products Regulation. Those identified should also be sent a copy of the Department's *Construction Products Regulation – Information Paper* together with a short explanatory note to make them aware of the new requirements on construction products.

Please note that, in stark contrast to the requirements under the preceding Construction Products Directive, CE Marking is now mandatory and *Declarations of Performance* are now required in respect of all construction products that fall within the scope of the Construction Products Regulation. These requirements affect all economic operators regardless of whether they export construction products or not.

Your attention is also drawn to the fact that harmonised European standards continue to be developed and updated on a continuous basis in accordance with the latest technical developments. In such circumstances, transitional arrangements typically apply for a specified period in advance of a new harmonised European standard entering into force. In this context, you may wish to note that some economic operators may acquire obligations under the Construction Products Regulation over time, e.g. structural steel fabricators will fall within scope of the Construction Products Regulation arising from the entering into force of *EN 1090 - Execution of steel structures and aluminium structures - Part 1: Requirements for conformity assessment of structural components* on 1 July 2014.

11. ENQUIRIES

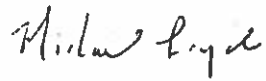
Further enquires about this circular should be addressed to Ms. Marion Kiernan, Assistant Principal (Tel: 01 888 2386) or to Mr. Paris Beausang, Higher Executive Officer (Tel: 01 888 2321), or alternatively by e-mail to buildingstandards@environ.ie.

⁷ http://www.environ.ie/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownload_30649,en.pdf

⁸ Hard copies are attached which can be disseminated to specifiers, designers and builders and other economic operators for the purposes of continuing to raise awareness of the Construction Products Regulation.

The Department looks forward to hearing from you on the key actions outlined in section 10 of this circular.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Layde". The signature is written in a cursive style with a large initial "M".

Michael Layde
Assistant Secretary

c.c. To each Building Control Authority