

EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Director-General

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Mr Konstandinos Diamandouros
Head of Office
European Union Road Federation
Place Stéphanie 6/B
1050 Brussels

Subject: In situ concrete road barriers

Dear Mr Diamandouros,

On 8 April 2013, a letter on road safety barriers was sent to the European Road Federation which has provoked reactions from manufacturers who considered that their products were discriminated and requested the EC services to clarify if in situ road barriers need to be CE marked.

As we wrote in that letter, the issue is highly technical and legally complex and the EC services have recently examined it again in the framework of the High Level Forum on Construction for increasing the competitiveness of the European industry. The outcome is a specific analysis of innovative products within Regulation (EU) 305/2011 (the CPR). These discussions have been further prompted by the introduction of additional innovation related criteria in the context of the Public Procurement Directive.

Indeed, contemporary or innovative construction practices often foresee the manufacturing of construction products either in close vicinity of the construction site or on the site itself (in situ). When examining the concept of a construction product in the framework of the CPR, the foremost attention should thus not be on the location of its manufacturing but on whether it is a construction product or not.

In light of the above reflections we consider useful to complete our answer of 8 April 2013, and to clarify that the EC services consider that in situ concrete road barriers based on a proprietary design which are commercialised as products to be installed on the road are construction products under the CPR and covered by EN 1317-5:2007+A2:2012.

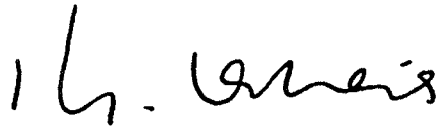
In the Annex to the present letter you will find the detailed technical and legal arguments on which our position is based.

Taking into account that the provisions of Regulation (EU) 305/2011 are applicable to the above in situ concrete road barriers and the fact that the relevant coexistence period has ended on 1/1/2011, these in situ concrete barriers must be CE marked on the basis of

the standard EN 1317-5:2007+A2:2012 and their manufacturers must issue a Declaration of Performance in line with Regulation (EU) 305/2011.

I hope the above clarifies the Commission's position on this matter and I would invite you to disseminate this information to your members and relevant stakeholders. Additionally, the Commission will disseminate this information to the relevant Member States' authorities.

My services remain at your disposal in case you consider that further clarifications or a detailed discussion would be necessary.



Daniel Calleja

Encl: Examination of in situ concrete road barriers based on a proprietary design which are commercialised as products to be installed on the road

C.c.: Mr Gonçalo Ascensão, CEN/CENELEC

Annex

Examination of in situ concrete road barriers based on a proprietary design which are commercialised as products to be installed on the road

The following arguments speak for considering that in situ concrete road barriers based on a proprietary design which are commercialised as products to be installed on the road are construction products under the CPR.

In this case the manufacturer holds a proprietary design and offers to a road authority to install the barrier with a specific performance for which the manufacturer takes responsibility.

These types of in situ concrete road barriers present the following characteristics:

- They are permanently installed on the road (which is the construction work in this case);
- Their performance affects the safety of the road, more specifically Basic Works Requirement Nr. 4 of Regulation (EU) 305/2011;
- They are produced by a mobile production unit on site of the road according to a proprietary design;
- The performance of the in situ barriers can be assessed by applying the harmonised EN 1317-5:2007+A2:2012. The assessment can take place on a specimen in the lab, as it is the case with e.g. steel barriers;
- The manufacturer can affix the CE marking on the accompanying documents in line with CPR Art. 9(1), e.g. on the drawings which are the basis for producing the in situ concrete road barrier;
- The CE marking can be affixed before placing the product on the market as required by the CPR, Art. 9(3). In this case “placing on the market” is the moment when the manufacturer signs a contract with a (road) authority to produce and to install a specific in situ barrier on a road.

Further to the above, the relevant mandate M/111 to CEN did not exclude in situ concrete road barriers. The provisions of the current harmonised EN 1317-5:2007+A2:2012 elaborated on the basis of that mandate do not exclude in situ concrete road barriers either. Furthermore, all clauses on the assessment and verification of constancy of performance (including factory production control in clause 6.3 of the standard) can be applied for in situ concrete road barriers.