

353084 "Brandveiligheidsaspecten bouwproducten en bouwdelen"

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EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Industrial Transformation and Advanced Value Chains

Clean Technologies and Products

Head of Unit

Brussels,
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Subject: Coexistence period for doors

Dear Mr Koos,

Many thanks for your paper on the consequences of the decision not to prolong the coexistence periods for ENs 14351-1, 13241 and 16034, as well as on the delay for publishing the reference to EN 14351-2 in the OJEU. Your claims comprise more precisely the following four measures:

1. cite EN 14351-2 in the OJEU without any further delay;
2. extend the coexistence period for EN 16034 beyond 01 November 2019;
3. ensure that this coexistence period is aligned with the coexistence period for EN 14351-2;
4. finalise the supporting standards (EN 15269 & 17020 series) for extended field of application.

1. *Citation of EN 14351-2*

The Commission services have indeed received from CEN the adopted EN 14351-2 for its citation in the OJEU. Within our scrutiny of this standard, prescribed to be carried out in Article 17(5) of Construction Products Regulation (305/2011/EU, the CPR), and strongly necessitated by the ECJ judgement in case C-613/14 (*James Elliott*), we have spotted several significant legal deficiencies. Accordingly, this standard cannot be cited. Some of the more profound ones have been listed here below:

- The structure for the assessment and verification of constancy of performance (AVCP) of these products according to the standard differs from the currently applicable Commission Decision (Decision 95/204/EC);
- The standard contains several additional characteristics outside Annex ZA concerning properties linked to the basic work requirements (BWR, Annex I to the CPR). This goes against the recent judgements of the ECJ (cf. in particular case T-229/17), where the Court has demanded exhaustiveness for the harmonised structure based on the CPR;
- A Delegated Act on a new classification inserted into the standard has not yet been adopted (cf. Article 27(2) of the CPR). Without this Delegated Act, the standard goes beyond the competences attributed to CEN under the CPR;
- The standard has used undated references to other standards which is not compatible with the principle of legal certainty, one of the core principles of law that we are invited to apply when assessing harmonised standards which, according to the above mentioned ruling in the *James Elliott* case, have become somehow part of the EU law.

As these deficiencies mostly also have an impact on the safety of the doors, amongst them fire doors, it would appear inopportune for us to recommend the citation of this standard without thorough amendments to it.

2. *Extending the coexistence period for EN 16034*

The decision not to prolong the coexistence period of ENs 14351-1, 13241 and 16034 was taken for several reasons, both of technical and principal nature. Firstly, the development of harmonised standards for products within this family (doors and windows) has been very slow, with an initial mandate stemming from the 90's, which makes it utterly unpredictable to estimate when also EN 14351-2 could have been adjusted thoroughly enough to merit its citation in the OJEU. By prolonging the coexistence period the European Commission would condone the continuing use of the outdated technical solutions contained in the previous version of the standards, and therefore disregard technical progress. For these reasons, the European Commission is not in a position to defend politically outcomes resulting in such safety concerns.

Furthermore, the amendments to coexistence periods (their prolongations) are to be carried out with the same procedure as any other publication of references to standards in the OJEU. They take around three months on average. Hence, the coexistence period cannot be prolonged anymore for 1 November 2019. At the same time, it would not be possible to reinstate the coexistence period once it has elapsed. Accordingly, the door of prolongation has to be considered definitively closed.

This does not mean that the access to the market were closed for the respective products. The access might even become easier under mutual recognition rules, subject to the practice of the Member States. We are confident that the Member States will pending the further elaboration of standard EN 14351-2 set up reasonable national criteria that reflect

the state of the art, whilst not creating a disproportionate burden. We are also confident that the Member States will respect the principle of mutual recognition.

3. *Aligning the coexistence periods for different hENs*

The alignment of coexistence periods for door standards has always been favoured by the European Commission. However, this can of course concern only standards which have been deemed of satisfactory quality for their citation in the OJEU: as EN 14351-2 cannot be considered to have reached such a quality and thus will remain uncited during the foreseeable future, at this moment no decisions need to be taken on the alignment issue.

4. *Need for supporting (EXAP) standards*

In the context of the expiry of the coexistence period for the three harmonised standards already cited for this product family, you have emphasised in your paper the urgent need for finalising the supporting standards (EN 15269 & 17020 series) for extended field of application. Here the European Commission services fully agree with your concerns: we have therefore foreseen a specific meeting on 28 October 2019 to facilitate these purposes, a meeting where you have also been invited. Again, the delivery of such supporting standards is thus not impeded or slowed down by any European Commission actions: the reasons for delays have to be searched elsewhere.

Conclusively, while the European Commission cannot at this point of time take up the three first measures you have been asking for, our intention is to discuss the situation with the whole doors and windows constituency. In particular, we would like to analyse how the root cause of the issue, the delayed elaboration of EN 14351-2, can be remedied in a joint effort directed towards the responsible CEN TC 33.

This discussion is to be achieved by a dedicated meeting. All the parties concerned, many of which have approached the Commission at different levels, have been invited to this meeting; this goes for you, as well. Unfortunately this event, though planned since August, had to be postponed until 19 November 2019 owing to the lack of availability amongst the invitees on any earlier occasions proposed.

We would be pleased to meet you on the occasion of this meeting and hope for progress to be made subsequently in the forum responsible for the current situation: CEN TC 33.

Yours sincerely,

(e-signed)

Fulvia RAFFAELLI