

4th MEETING OF THE EUROPEAN HERITAGE LEGAL FORUM (EHLF)

Afternoon session – TOP 4 CONSTRUCTION
PRODUCTS CERTIFICATION. European
Construction Products
Directive (89/106EC)

Report by Wolfgang Karl Göhner

1908 - 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Regierungsdirektor

Vice-President of the Working Group on Law and Taxes of the German National Committee on the Protection of Monuments (DNK)

Member of the Secretariat & German Representative in the European Heritage Legal Forums (EHLF)

Member of the German Mirror Committee "Protection of Cultural Heritage" (CEN/TC 346)

Permanent legal Adviser of the Bavarian State Conservation Office (BLfD)
- The Data Protection Officer -
Coordinator for International Affairs

Visiting Lecturer of the Otto-Friedrich-University Bamberg

Vice-President of the Union of Higher Civil Servants in Bavaria (VHBB) e. V.

Homepage: <http://w-goehner.de> (Rechtsprechung, Denkmalschutzgesetze, Veröffentlichungen)



Legislative Procedure

May 25th, 2010:

Political agreement on draft regulation
by the Competitiveness Council

(<http://www.europarl.europa.eu/oeil/resume.jsp?id=5642292&eventId=1112632&backToCaller=COUNCIL>)

1908 – 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

In detail:

Article 4a (new) on the derogations from drawing up a Declaration of Performances says:

(c)“the construction product is manufactured in a traditional manner and in a non-industrial process for adequately renovating buildings officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules.”



1908 – 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Explanation:

- These special regulations are very important for the protection of historical monuments in Europe and in the interest of micro, small [and medium-sized?] enterprises (SMEs).
- Besides, there is a problem with so-called “modern buildings”;
- not seldom they are manufactured in a (partially) industrial process in the sense of the new Regulation, on the other hand there are construction products, which are manufactured on historical standards, but potentially not completely in a traditional manner (by hand, single-unit production), but rather in serial fabrication in case needed (e. g. in case of renovation of an historic area, estate or settlement);
- Clarification would not be necessary, if it is clear that these construction products are regarded as “manufactured in a traditional manner or in a non-industrial process.”



1908 – 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Ideal version:

“the construction product is manufactured according to the guidelines for historical monuments for adequately renovating construction works”

therefore German proposal:

“the construction product is manufactured in a traditional manner or in a non-industrial process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules.”



Legislative Procedure

Sept. 6th, 2010:

Council: Statement on common position
by the Council and several Member States

(<http://register.consilium.europa.eu/pdf/en/10/st12/st12978-ad01.en10.pdf>)

1908 – 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Legislative Procedure

Sept. 13th, 2010:

Council position, adopted at 1st. reading

Art 5 on the derogations from drawing up a Declaration of Performances says:

(a) “the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules;”



Legislative Procedure

German proposal:

„the construction product is manufactured according to the guidelines for historical monuments for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules.“



Legislative Procedure

Sept. 20th, 2010:

**Commission: Communication from
the Commission to the EP on the
common position**

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0500:FIN:EN:PDF>)

1908 – 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Legislative Procedure

Sept. 20th, 2010:

„3.3. New provisions introduced by the Council and the Commission’s position

The Council introduced a new set of formulations for Articles 3 – 6, more specifically by including a provision in Article 3(3) delegating the Commission decision-making powers on determining the essential characteristics always to be declared, by providing in Article 5 with a set of derogations from the general principle of mandatory declaration of performance, and by elaborating further in Article 6 on the minimum contents of this declaration, notably ensuring that the performance of at least one essential characteristic would always be declared, by levels or classes.

The Commission regrets that Articles 3 – 6, as adopted by the Council, could impose unnecessary administrative and testing burdens on enterprises, and thus not remain in line with the principles of Better Regulation.”



Legislative Procedure

Oct. 14th, 2010:

Draft recommendation for Second Reading
by the Committee on the Internal Market and
Consumer Protection (183 Amendments)

([http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-
//EP//NONSGML+COMPARL+PE-
448.894+03+DOC+WORD+V0//EN&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-448.894+03+DOC+WORD+V0//EN&language=EN))

Legislative Procedure

Amendment to Art 5 point a:

(a) the assessment and verification of constancy of performance is established on the basis of System 3 or 4 and the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules”;

1908-2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Legislative Procedure

Nov. 11th, 2010:

Meeting with rapporteur and shadow rapporteurs:

Drafting of 7 Compromise Amendments (out of 183!!)

Compromise Amendment 2 to Art. 5 point c:

"(c) "the construction product is manufactured in a traditional manner or in a manner appropriate to heritage conservation and in a non-industrial process, *particularly* for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules."



Legislative Procedure

German position:

- Compromise Amendment 2 – „well balanced compromise“
- Interpretation of the word „particularly“ so far, that it will be possible and legal, to use art. 5 lit. c also in the case of industrial manufactured products in a monument, f. e. in station buildings about 1900. We all have to try to solve this small problem for the sake of cultural heritage.

1908-2008



100 JAHRE
BAYERISCHES LANDESAMT
FÜR DENKMALPFLEGE



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Legislative Procedure

Nov. 25th, 2010:

Meeting of the Council:

Comment on Amendment 2 to Art. 5 point c (cancelling of „particularly“)

Compromise Amendment 2 to Art. 5 point c:

"(c) "the construction product is manufactured in a traditional manner **or in a manner appropriate to heritage conservation** and in a non-industrial process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules."



Legislative Procedure

Forecasts:

Jan. 18th, 2011:

EP plenary sitting, 2nd reading



1908 – 2008



UNIVERSITÄT BAMBERG

Wolfgang Karl Göhner

Conclusion:

The special requirements for construction products which are used in the field of monument conservation have been recognized on EU level.

So the Member States will be able to retain the appropriate regulations on national or federal state level based on EU legal foundation.

However, in order to reach the best possible provisions for cultural heritage in European Law a clear statement on the defined standard of cultural heritage itself is missing.

The inactivity of the EU to formulate an exceptional rule in accordance with the EU-Treaty to preserve the cultural roots, the identity and the architectural and archaeological heritage of Europe is not ideal.