



CEN-CENELEC GUIDE 28

**Guidelines for the public access
of Eurocodes and their National
Annexes and Harmonized
European Standards under the
Construction Products Regulation**

Edition 1, 2014-06-19



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1 Scope

This Guide makes recommendations to CEN-CENELEC Members and National Committees on improving access to Eurocodes and the harmonized standards that support the CPR, to ensure:

- a common approach;
- the adoption of best practice;
- protection of the value of CEN-CENELEC IPR;
- compliance with Guide 10.

While taking into account that each national Member has developed its own solutions, this Guide provides some examples about possible measures that may be considered for access to Harmonized standards under the Construction Products Regulation. These harmonized standards can be identified, as their reference is regularly published in the Official Journal of the EU in the context of the CPR, and these references can also be found on the website of the European Commission¹.

In addition, this Guide also refers to Eurocodes and their national annexes. More information about these standards can be found on the CEN Website.

2 Normative References

The legislative and normative references used in preparing this guide are set out in Annex A.

3 Standards and Regulations

For more than 30 years, the relationship between standards and regulations in Europe has been governed by the principles of the New Approach. Under this approach, European Directives set mandatory essential requirements and Harmonized European Standards support them by establishing means of compliance which are voluntary and non-exclusive.

While the drafting and maintenance of European Directives and other European and national technical regulations is financed by taxation, there is no single means of funding standards development. National Standardization organizations receive funding from many different sources, according to the nature of their organization, their history, local traditions, social and economic conditions and other factors.

However, the sale of standards is a key element in the funding of the European standards system. This is widely regarded as fair, because the people who benefit most from the system are the voluntary users of standards, so it is reasonable that they should bear most of the cost of their development and maintenance.

This model has served Europe well for over 30 years, but the principles of the New Approach have been compromised by recent developments in the construction sector, and many CEN-CENELEC National standardization Bodies and National Committees are now coming under pressure to make Harmonized standards accessible in ways that pose a challenge to the financial viability of the CEN-CENELEC system.

This Guide is intended to assist CEN-CENELEC Members to address these new challenges.

¹ http://ec.europa.eu/enterprise/policies/european-standards/harmonised-standards/construction-products/index_en.htm

4 Standardization in the construction sector

4.1 Harmonized Standards in relation to the Construction Products Regulation (CPR)

The Construction Products Regulation (Regulation 305/2011) replaced the Construction Products Directive as from July 2013. This Regulation explicitly states in its Article 4 that when a construction product is covered by a harmonized standard, the performance of this product has to be assessed before placing the product on the market by issuing a “Declaration of Performance” (DoP).

Each manufacturer has to know which characteristics are regulated at national level and need to be declared in the DoP for the purpose of CE marking. The CE marking, together with the associated DoP, can differ from country to country, because the regulated performance characteristics are different from country to country.

The DoP has to be made by using the assessment methods included in the relevant harmonized European standards, in conjunction with Annex ZA (Annex ZZ in the case of CENELEC standards).

Annex ZA of the harmonized standards under the CPR includes the essential characteristics that:

- are regulated in at least one Member State;
- have been notified to the EC by Member States;
- have been identified in a Mandate;
- and thus have to be mentioned in the DoP.

These provisions of the CPR imply that the voluntary use of harmonized standards is put into question and may constitute a deviation from the principle of the New Approach in some cases.

However, the requirement to establish a DoP when a construction product is covered by a harmonized standard is subject to exemptions as defined in Article 5 (Derogations from drawing up a DoP) of the Regulation EU 305/2011 on Construction Products. In addition, Article 37 (for micro-enterprises) and Article 38.1 (products individually manufactured or custom-made in a non-series process) of the Regulation 305/2011 on Construction Products provide the use of simplified procedures enabling the use of methods differing from those contained in the applicable harmonized standard.

4.2 Eurocodes and their National Annexes

The Eurocodes are a comprehensive set of standards for the design of building and civil engineering works, that have been developed to ensure that designs fully comply with the Basic Requirement n°1 (mechanical resistance and stability) and partially comply with Basic Requirement n°2 (safety in case of fire) and Basic Requirement n°4 (safety in use) and also to determine the performance of structural construction products.

Eurocodes include recommended values for all parameters but allow individual countries the possibility to define their own National Determined Parameters (NDPs), to suit local geographical, geological and climatic conditions.

NDPs are published in each EU Member State as a National Annex, which may be a separate document to be used in conjunction with the relevant Eurocode, or may be incorporated in the national implementation of the Eurocode. In many EU Member States the National Annex is developed by the local NSB but in some countries the NDPs are determined and published by other bodies.

There are also differences in the status given to the Eurocodes. In most EU Member States, the use of Eurocodes merely gives a presumption of conformity with their national regulations, but in many cases Eurocodes are called up in national legislation, either by incorporation or by reference.

In these cases, the use of Eurocodes is mandatory and this often leads to additional pressure being placed on the NSB to make the Eurocodes and their National Annexes freely available to all users.

5 Availability of standards

5.1 General

European Standards are publicly accessible to any interested party, in a variety of formats and media from all CEN-CENELEC Members. The cost of this access varies from country to country to reflect local market conditions.

In addition to the various forms of paid access, all standards can be normally consulted free of charge in the libraries of the Members and in other public and private libraries and similar document resources. Standards users will often be within a reasonable distance of one of these free access outlets.

These and other measures have been put in place by Members as a matter of national policy for many years and further reinforced as a response to **Regulation (EU) 1025/2012** on European standardization.

5.2 Legal considerations

In several countries, some people have not been content with these measures to make standards widely accessible and have launched legal challenges to the CEN and CENELEC copyright in standards called up in regulations, whether by reference or incorporation.

In these cases, CEN-CENELEC Members have mounted robust and successful defences of the CEN and CENELEC copyright, on the basis that Standards are voluntary documents containing intellectual property of demonstrable economic value that is protected by national laws and international agreements, even where they are supporting public policies, or are referenced in technical regulations.

A summary of some of these cases is set out in Annex B.

6 Policy considerations

All measures taken by CEN-CENELEC Members to make access to standards easier for different classes of users is subject to the provisions of CEN-CENELEC Guide 10.

7 Improved access to standards: Good practice

CEN-CENELEC Members have pioneered a number of approaches to improving access to standards by different user groups, especially in the case for harmonized standards under the Construction Products Regulation (or their ZA annexes) and Eurocodes and their National Annexes.

The good practices proposed in this Guide are based on the actual experiences of CEN National Standardization Bodies and CENELEC National Committees and they all comply with CEN-CENELEC Guide 10 in order to facilitate the widest distribution and use of the CEN and CENELEC Publications that is consistent with the protection of CEN and CENELEC copyright and the sustainability of the CEN-CENELEC system.

These services are of three kinds:

- free services paid by the NSB;
- services paid by a sponsor;
- discounted services to promote the wider use of standards, particularly amongst SMEs.

8 Free Services paid by the NSB

8.1 Free information services

Members provide a free information service to help customers identify the standards they need.

Typically, these services include:

- telephone enquiry service at standard telephone rates;
- free online or e-mail enquiry service;
- on site information centre to assist users of the Member's library;
- on line catalogue with simple and advanced search options.

For more complex and advanced enquiries requiring research or special expertise, Members will typically charge the enquirer a fee to cover the cost of the enquiry and the maintenance of the service.

8.2 Free access to standards through the NSB's information centres and libraries

Members maintain libraries of their standards and these may be accessed free of charge, in print or on-line, by visitors to their headquarters and regional offices.

In many countries this service is mandated by the national government.

8.3 Free access to standards through public libraries

Members are usually required to send copies of all their standards to their local National Deposit Libraries where they may be accessed on site free of charge.

Some Members extend these access rights to additional public libraries, subject to suitable controls to protect the copyright.

8.4 Free or sponsored access through some educational institutions

Several Members have special agreements with universities and other recognised educational institutions aimed at promoting standards use in the academic world and amongst future professionals. These agreements allow academic staff and students to have controlled read-only access to standards and collections of standards, subject to appropriate verifications.

The accessed documents are watermarked with a personalized identification, and relevant copyright statements are shown on the screen and/or in any pages of the file.

Digital Right Management (DRM) may be required in accordance with the Member policy.

These services are sometimes offered to the educational bodies for free, or by, payment of a discounted fee.

9 Access to standards paid by a sponsor

9.1 Sponsored access through the NSB

Rather than selling standards and services to individual customers, the Members may reach an agreement with a sponsor, which may be a Public Authority or a private organization, to develop and maintain a platform which gives online read-only access to selected publications to a specified user group free of charge.

This model has already been applied by some Members in the case of Eurocodes and their National Annexes.

This access is controlled by registration and is restricted to the specified user group. Access is therefore subject to a verification process and the user's acceptance of the terms and conditions of use. Access is read-only and controlled in accordance with the Member's DRM policy.

The accessed documents are watermarked with a personalized identification, and relevant copyright statements are shown on the screen and/or in any pages of the file.

Access from outside the national borders is prohibited.

Typically, the standards are in the national language only.

The Member is at least compensated for the cost of developing and maintaining the platform and any other applicable cost by:

- a fixed annual fee; or
- a variable fee based on the number of standards accessed

9.2 Sponsored access through third parties

Several Members have special agreements with recognised bodies, such as Chambers of Commerce, industry and trade associations and professional bodies, which allow their memberships free access to standards through dedicated portals, either hosted by the bodies or by the Member on their behalf, for an appropriate fee.

Access is subject to registration and verification and acceptance of the terms and conditions of use.

Copyright statements are shown on the screen and/or in any pages of the file.

The accessed documents are watermarked with a personalized identification, and relevant copyright statements are shown on the screen and/or in any pages of the file.

DRM may be applied in accordance with the Member policy.

10 Discounted services

10.1 Sponsored translations

The availability of standards in the national language promotes their wider use but in many cases this is too expensive or would require the translated standards to be priced at a level which the local market would find prohibitive.

Several national governments have signed agreement with their National Standardization Bodies and National Committees to subsidise translation of standards held to be important for public policy, including harmonized standards in critical sectors, such as construction.

This allows these standards to be made available at much lower prices than might otherwise be possible.

10.2 Flat fee online access

Several Members provide online access to a pre-determined collection of standards for a flat fee, which is usually heavily discounted. The customers may either access the entire collection or can select individual standards up to an agreed number.

These services usually offer very flexible options and offer good value for money. They are especially useful for promoting the use of standards by SMEs. Some services of this kind offer additional information on the relationship of the standards to regulations.

The user has to accept the terms and conditions of use for the service, either at the time of contract, or when accessing the standards. These may specify that the access is read only or may allow a specified number of printed copies.

The accessed documents are watermarked with a personalized identification, and relevant copyright statements are shown on the screen and/or in any pages of the file.

DRM may be applied in accordance with the NSB's policy.

10.3 Bundling discounts

Most Members offer discounts on sector or subject specific bundles of standards or standards bought in more than one format, for example:

- paper and PDF;
- HTML and PDF;
- PDF and eBook.

In addition to this normal marketing and sales activity, these bundles may be sponsored by a third party as a promotional aid. In these cases, the bundle may be offered at an additional discount, either for general sale or for distribution to the third party's own members, customers or suppliers.

Annex A (informative)

Legislative and normative references

For the purposes of drafting these guidelines, the following regulations and guidelines have been taken into account:

Regulation 1025/2012

Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council Text with EEA relevance¹

Regulation 305/2011

Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC Text with EEA relevance²

CEN-CENELEC Guide 10 *Guidelines for the distribution and sales of CEN-CENELEC publications*

Annex B

(informative)

Some Court decisions and legal rulings on the copyright in standards

B.1 Netherlands

B.1.1 Judgment of the Supreme Court of the Netherlands

The Supreme Court of the Netherlands rules that standards shall not be seen as generally binding regulations of the state.

In its judgment of 22 June 2012, the Supreme Court of the Netherlands confirmed that standards are not to be seen as generally binding state regulations, so there is no requirement for them to be made available to users free of charge, even when reference is made to them in national laws.

This Supreme Court ruling confirmed similar rulings by lower courts, who specifically ruled that NEN standards referenced in the Dutch Building Regulations are not to be considered as compulsory legislative/administrative acts and so are exempt from the requirement that public legislative/administrative acts of the State must be made available to the citizens free of charge.

Consequently, The Supreme Court confirmed that the copyright in NEN standards is not affected by reference in legal regulations.

B.2 Germany

B.2.1 German Copyright Law

The German Copyright Law (Art 5 (3)) clearly states that private standards collections are protected by copyright, even in cases where laws, regulations, decrees or public notices refer to them without citing their actual wording.

The explanatory memorandum of 2002 relating to the Act states that setters of technical rules rely on the sales of their documents to finance their non-profit work, thus establishing that the financing of standards work has a higher priority than the wish to have free access to technical rules referenced in legislation.

B.2.2 Judgment of the German Federal Administrative Court on the copyright of standards

The Federal Administrative Court ruled on 27 June 2013 (3 C 21/12) that the obligation to pay costs does not represent an unreasonable hinder for access to legal provisions and is therefore not constitutionally objectionable. Like the two lower courts before it, the Federal Administrative Court expressly confirmed that it was absolutely appropriate to finance the development of technical standards through their sale.

The DIN standard, adopting the European standard, has been deposited with the German Patent and Trade Mark Office in Munich. The standard can also be consulted there. In addition, it can also be consulted free of charge at the repositories for DIN Standards established throughout Germany, which the Court considered to be located within a reasonable travelling distance.

Furthermore, the Court argued that the fact that a technical standard protected by copyright must be purchased does not in itself unreasonably hinder access. There is also a charge for obtaining the printed version of official publications such as the Federal Law Journal or the Law Journal of the Länder, should an individual decide that inspection in a public library or online database does not suffice.

In addition, it is to be taken into account that, in referring to DIN Standards or similar technical rules, the legislator makes use of private expertise. In turn, the private standardisation body recoups a considerable proportion of the expenses incurred in drawing up standards through the subsequent exploitation of its copyrighted material.

Consequently, in its reform of section 5 of the Copyright Act, the legislator accepted, in principle, that the output of the activities of private standardisation bodies is not to be considered as being free of charge.