

To CE mark or not to CE mark: that is the question

Shaun Spurrell of Isedio provides an insight as to whether a construction product should bear the CE mark or not. He explains that a component within a construction product bearing a CE logo does not necessarily mean that the construction product itself is CE marked. He also shares his experience of achieving a CE mark for his joint former products by attaining a European Technical Assessment.

There are many sources of information regarding CE marking. Two of these sources are the Government website, www.gov.uk and the European Commission website, www.ec.europa.eu. Gov.uk currently states that “CE marking is mandatory, but only for those products which are covered by the scope of one or more of the New Approach Directives”. Although this sounds straightforward, in reality the process of CE marking is much more complex.

Both websites provide the same list of product categories that require CE marking and each category is covered by a relevant directive. At present the list contains some 25 product categories beginning with ‘active implantable medical devices’ and ending with ‘simple pressure vessels’. The product category ‘construction products’ is included in that list.

Construction products are defined as “any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works”. Isedio’s industrial concrete floor joints clearly fall within the scope of that definition.

The European Commission website provides some top-level CE marking guidance for all types of manufacturers (www.ec.europa.eu/growth/single-market/ce-marking/manufacturers_en).

As soon as CE marking for our product category came in to effect, as a manufacturer, we had a responsibility to determine which directive covered our products and whether they needed to be CE marked. It is worth noting that not all products within a product category may be required to be CE marked. In our experience with suppliers and customers, this is where the CE marking confusion begins.

The first step towards understanding our CE marking obligations was to identify the applicable directive(s). Since our products are defined as construction products, we investigated how to comply with the legal requirements of the directive entitled Regulation (EU) No 305/2011 (setting out harmonised conditions for the marketing of construction products), commonly known as ‘the 2011 Regulation’, which came in to force from 24 April 2011 (<https://bit.ly/2Aj13sY>). This piece of European legislation repealed Council Directive 89/106/EEC, which was introduced on 21 December 1988.

The general purpose of the 2011 Regulation is to ensure the free movement of all construction products within the European Economic Area (EEA). This is achieved by harmonising national laws with respect to the essential requirements applicable to those products in terms of health and safety. In essence, the European legislation is trying to ensure that construction products made

available on the market within the EEA, whether produced inside or outside the EEA, are compliant to a Standard, manufactured to an audited method and therefore safe.

Our next action was to determine if any relevant harmonised European Norm (hEN) Standards for floor joints were in existence. As far as we were aware there were no such Standards. After extensive research, we were satisfied that there were no relevant hENs available, thus confirming that we were not 'obliged' to CE mark our products, even though our products fell within a product category covered by a directive.

For some time, our position remained unchanged and we abided by the law by not CE marking our products. Initially, not marking products seemed counter-intuitive and only once a thorough understanding of the requirements of CE marking was gained did it make sense. However, some customers enquired, "Why are your products not CE marked?". Our response to this was, "There is no relevant hEN that covers our products and therefore we cannot issue a Declaration of Performance (DoP) and without a DoP we cannot CE mark". While under no obligation to CE mark our products, these customers were wishing to comply with their understanding of the 2011 Regulation and purchase only CE-marked construction products.

Since customers expected us to CE mark, even though there was no obligation to do so, the situation was made even more confusing by competitors who were applying the CE logo to a component within their construction product. If no other information is available, it is natural to assume, albeit incorrectly, that the entire construction product is CE marked. We needed to de-mystify this situation for customers. The best way forward was to determine whether we could still CE mark our products in the absence of a hEN, so we further examined the contents of the 2011 Regulation. Legal documentation can be extremely complex and difficult for the layman to understand. However, we identified a number of key paragraphs within the regulation, that when reviewed in conjunction with each other provide a much clearer picture of when and when not to CE mark:

Statement 1: Article 4, paragraph 1 states, "When a construction product is covered by a harmonised standard or conforms to a European Technical Assessment which has been issued for it, the manufacturer shall draw up a declaration of performance when such a product is placed on the market".

Statement 2: Paragraph (20), prior to Article 1, states, "In order to allow a manufacturer of a construction product to draw up a declaration of performance for a construction product which is not covered or not fully covered by a harmonised standard, it is necessary to provide for a European Technical Assessment".

Statement 3: Article 8, paragraph 2 states, "The CE marking shall be affixed to those construction products for which the manufacturer has drawn up a declaration of performance in accordance with Articles 4 and 6. If a declaration of performance has not been drawn up by the manufacturer in accordance with Articles 4 and 6, the CE marking shall not be affixed".

Statement 4: Article 9, paragraph 2 states, "The CE marking shall be followed by the last two digits of the year in which it was first affixed, the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity, the unique identification code of the product type, the reference number of the declaration of performance, the level or class of the performance declared, the reference to the harmonised technical specification applied, the identification number of the

notified body, if applicable, and the intended use as laid down in the harmonised technical specification applied”.

We determined from Statement 1 that when a hEN exists the manufacturer shall draw up a DoP. In Statement 3 we are advised that in drawing up the DoP, the manufacturer shall then CE mark the product accordingly. Equally, we are advised that if no DoP has been drawn up then the CE mark shall not be affixed.

Statement 2 confirms that in the absence of a hEN, if the manufacturer still wishes to CE mark the product when it is not obligatory, then the manufacturer must draw up a DoP after having achieved a European Technical Assessment (ETA) for that product. In order to achieve an ETA the manufacturer must first create an approved European Assessment Document (EAD) against which the ETA can be assessed. Once the ETA is awarded to the manufacturer by a Technical Assessment Body (TAB) the manufacturer can then draw up a DoP and CE mark the product accordingly. EADs and ETAs are self-funded by the manufacturer.

To summarise, in the absence of a hEN or an ETA/EAD, a DoP cannot be drawn up and therefore the CE mark must not be affixed to the construction product.

Statement 4 confirms that applying only the CE logo (see Figure 1) is insufficient for construction products. Many of us regularly see the lone CE logo on household and electrical goods and the common assumption is that just the CE logo is all that is required for CE marking. As far as construction products are concerned, much more information needs to be affixed to meet the requirements of the CE mark (see Figure 2).

Figure 1 – CE logo



Figure 2 – CE label for SHIELDJOINT comprising CE logo and additional information

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ETA-18/0148 11 JULY 2018
SHIELDJOINT In-situ concrete slab permanent joint former for internal and external concrete floors DOP-0836-CPR-SHJO-001
<small>See ETA-18/0148 for relevant characteristics Declaration of Performance at www.isedio.com/resources</small>

With our improved understanding and knowledge of the 2011 Regulation, our modified response to customers enquiring about CE marking was now, “There is no relevant hEN that covers our products and therefore we cannot issue a DoP and without a DoP we cannot CE mark. Likewise, there is no EAD available for us to create an ETA against, hence we cannot yet CE mark. However, we will be working towards achieving an ETA/EAD”.

Had we affixed the CE mark to our construction product when no hEN or ETA/EAD existed, we would have committed an offence. The Construction Products Regulations 2013 came into force on 1 July 2013 and states on page 4 that “A person who supplies a construction product to which the CE marking has been affixed in breach of any provision of Article 8 or 9 of the 2011 Regulation shall be guilty of an offence” (<https://bit.ly/2LzGPhj>). Additionally, partially affixing the CE mark, by only applying the CE logo and omitting all the other information as detailed in paragraph 2 of Article 9 of the 2011 Regulation, is unlawful.

By applying for an ETA/EAD, which would eventually allow us to affix a CE mark to our products legitimately, we would be taking a constructive approach to resolving the confusion over CE marking among some of our customers.

On 24 February 2016, we met with the British Board of Agrément (BBA), which is a TAB, and engaged it to help us to achieve an ETA/EAD for our products (namely Armourjoint, Armourjoint Pro, Shieldjoint, Expajoint, Steeldeckjoint and all related accessories). The ETA details the performance characteristics of our products.

Over the course of the next two years, the BBA and Isedio drafted several versions of the ETA/EAD and the final draft of the ETA was submitted to the European Organisation for Technical Assessment (EOTA). Following a review period, EOTA approved the ETA and the BBA awarded Isedio with ETA-18/0148 (see Figure 3) on 11 July 2018. Isedio is the first joint manufacturer to be awarded an ETA.

Figure 3 – ETA-18/0148



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Designated according to Article 29 of Regulation (EU) No 305/2011

Member of



www.eota.eu

European Technical Assessment	ETA-18/0148 of 11 July 2018
General Part	
Technical Assessment Body issuing the European Technical Assessment:	British Board of Agrément
Trade name of the construction product:	In-situ Concrete Slab Permanent Joint Formers
Product family to which the construction product belongs:	Product Area 20 - Structural metallic products and ancillaries
Manufacturer:	Isedio Limited 339 Two Mile Hill Road Kingswood Bristol United Kingdom BS15 1AN Tel: 01458 270600 e-mail: info@isedio.com website: www.isedio.com
Manufacturing plant:	Unit 10 Jubilee Park, Badger's Cross Lane Somerton Somerset United Kingdom TA11 7JF
This European Technical Assessment contains:	21 pages including three Annexes which form an integral part of this assessment
This European Technical Assessment is issued in accordance with Regulation (EU) No. 305/2011 on the basis of:	EAD 16-20-0089-03.02 In-situ Concrete Slab Permanent Joint Former

Only floor joint products that meet the requirements of ETA-18/0148 can be CE marked to this document and this document relates specifically to Isedio's products.

Achieving CE marking via the ETA process was a relatively time consuming and costly exercise, although well worth the effort. It was akin to creating a detailed technical Standard for our products.

Floor joints play an important role in the construction of industrial and logistics buildings as they provide protection to the slab panel arrises for many years and provide load transfer between adjacent slab panels. Compliance of a floor joint to an ETA by way of a DoP demonstrates that the product has undergone rigorous third-party review by a TAB and a buyer can have confidence in the performance of that product.

If a customer wishes to ensure that any construction products they are buying are CE marked in compliance with legislation, maybe the best question they should ask the prospective manufacturer is, “Which hEN Standard or ETA is your CE mark in accordance with?”. The next step would be to investigate whether the hEN or ETA exists and whether it is relevant to that construction product.

The CE mark and Construction Products Regulation provide progress towards free trade of compliant construction products throughout the EEA but the buyer must still make their own enquiries.

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