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Judicial review of laws proceedings initiated against "TR Maintenance" in Bavaria and North Rhine-Westphalia

On 14 October 2021, three major manufacturers of maintenance products for reinforced concrete applied to the Higher Administrative Court of Bavaria and the Higher Administrative Court of North Rhine-Westphalia to declare the product-related parts of the Technical Rule (DIBt) Maintenance of Concrete Structures ("TR Maintenance") and the DAfStb Guideline – Protection and Repair of Concrete structural components ("Repair Guideline") null and void.

The manufacturers are of the view that both sets of rules contravene the European Construction Products Regulation, because they include numerous unlawful national requirements for harmonised construction products. With the applications for the judicial review of laws proceedings, the years-long disputes about the technical rules for concrete maintenance in Germany can now be clarified in court.

The German Institute for Building Technology (DIBt) published the TR Maintenance in January 2021. This was done together with the version 2020/1 of the Model Administrative Rules on Technical Building Regulations (MVV TB), in which reference is made to the TR Maintenance and the Repair Guideline. The DIBt acted on behalf of the Conference of Construction Ministers of the German Federal States (ARGEBAU). Meanwhile, 11 federal states have introduced the TR Maintenance into their building law, including Bavaria and North Rhine-Westphalia.

With the introduction of the TR Maintenance, Germany is deliberately seeking confrontation with the European Commission. During the notification process, the Commission had advised Germany that the rules were violating EU-law and demanded an adaptation. But this did not happen.

Instead, Germany wants to impose on the repair products (standardised in the harmonised EN 1504) an additional, far-reaching national testing and monitoring regime pursuant to the TR Maintenance that has no link to the European provisions. The reason brought forward for this is building safety – even though the manufacturers hold that there is no reason to fear that building safety is put at risk by repair products. In order

to finally resolve the conflict, the companies Sika Deutschland, Sto and MC-Bauchemie have submitted applications for the judicial review of laws proceedings to the Higher Administrative Court of Bavaria and the Higher Administrative Court of North Rhine-Westphalia.

Even earlier, numerous manufacturers, such as DAW, KLB Kötztal, Köster Bauchemie, Mapei, Master Builders Solutions Deutschland, MC-Bauchemie, Pagel, Remmers, Sika Deutschland, StoCretec, Wacker Chemie and Webac, had filed a formal complaint to the European Commission against the rules and requested the Commission to initiate infringement proceedings in order to stop Germany's continued practice of imposing additional national requirements for harmonised construction products.

"It is particularly problematic that Germany continuously ignores the established case law of the European Court of Justice, the European Court and the Higher Administrative Court of Baden-Württemberg," says attorney-at-law Dr Held from the law firm held jaguttis, which specialises in European Union law. The law firm represents the legal interests of the manufacturers of the maintenance products and is handling the judicial review of laws proceedings.

Norbert Schröter (director-general of the German association of manufacturers of construction chemicals Deutsche Bauchemie e.V.) adds: "It has been the express political will for many years to reduce the number of bureaucratic provisions in the construction sector. Exploding building prices are making the situation even worse. In the described situation, I cannot understand why DIBt and ARGEBAU want to enforce an obviously grossly deficient set of rules which massively impairs efficient planning and construction processes. The associated loss of revenue for our industry will hit engineering and construction businesses even harder – because without products, there are no planning, supervision and construction contracts either."

Against this background, the construction chemicals industry hopes that the situation will soon be clarified by the highest administrative courts of the German federal states.



Foto: Deutsche Bauchemie

As an industry association, Deutsche Bauchemie represents the entire construction chemicals industry in Germany. In 2020, the more than 130 member companies with around 32.000 employees generated sales of 8.8 billion euros. This corresponds to half of the European market volume and about a quarter of the world market. Under the umbrella of the German Chemical Industry Association (VCI), Deutsche Bauchemie has been representing the interests of its member companies for over 70 years, to the public, political actors, authorities, other industry sectors, science and the press.

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