

**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 relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

(1) The rules of Member States require that construction works be designed and executed so as not to endanger the safety of persons, domestic animals or property nor damage the environment.

(2) Those rules have a direct influence on the requirements of construction products. Those requirements are consequently reflected in national product standards, national technical approvals and other national technical specifications and provisions related to construction products. Due to their disparity, those requirements hinder trade within the Union.

(3) This Regulation should not affect the right of Member States to specify the requirements they deem necessary to ensure the protection of health, the environment and workers when using construction products.

(4) Member States have introduced provisions, including requirements, relating not only to safety of buildings and other construction works but also to health, durability, energy economy, protection of the environment, economic aspects, and other important aspects in the public interest. Laws, regulations, administrative measures or case-law, established either at Union or Member State level, concerning construction works may have an impact on the requirements of construction products. Since their effect on the functioning of the internal market is likely to be very similar, it is appropriate to consider such laws, regulations, administrative measures or case-law as 'provisions' for the purposes of this Regulation.

(5) Where applicable, provisions for an intended use or uses of a construction product in a Member State, aimed at fulfilling basic requirements for construction works, determine the essential characteristics the performance of which should be declared. In order to avoid an empty declaration of performance, at least one of the essential characteristics of a construction product which are relevant for the declared use or uses should be declared.

(6) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products <sup>(3)</sup> aimed to remove technical barriers to trade in the field of construction products in order to enhance their free movement in the internal market.

(7) In order to achieve that objective, Directive 89/106/EEC provided for the establishment of harmonised standards for construction products and provided for the granting of European technical approvals.

(8) Directive 89/106/EEC should be replaced in order to simplify and clarify the existing framework, and improve the transparency and the effectiveness of the existing measures.

<sup>(1)</sup> OJ C 218, 11.9.2009, p. 15.

<sup>(2)</sup> Position of the European Parliament of 24 April 2009 (OJ C 184 E, 8.7.2010, p. 441), position of the Council at first reading of 13 September 2010 (OJ C 282 E, 19.10.2010, p. 1), position of the European Parliament of 18 January 2011 (not yet published in the Official Journal) and decision of the Council of 28 February 2011.

<sup>(3)</sup> OJ L 40, 11.2.1989, p. 12.

- (9) This Regulation should take account of the horizontal legal framework for the marketing of products in the internal market, established by Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products <sup>(1)</sup> as well as by Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products <sup>(2)</sup>.
- (10) The removal of technical barriers in the field of construction may only be achieved by the establishment of harmonised technical specifications for the purposes of assessing the performance of construction products.
- (11) Those harmonised technical specifications should include testing, calculation and other means, defined within harmonised standards and European Assessment Documents for assessing performance in relation to the essential characteristics of construction products.
- (12) The methods used by the Member States in their requirements for construction works, as well as other national rules relating to the essential characteristics of construction products, should be in accordance with harmonised technical specifications.
- (13) Where appropriate, classes of performance in relation to the essential characteristics of construction products should be encouraged to be used in harmonised standards, so as to take account of different levels of basic requirements for construction works for certain construction works as well as of the differences in climate, geology and geography and other different conditions prevailing in the Member States. On the basis of a revised mandate, the European standardisation bodies should be entitled to establish such classes in cases where the Commission has not already established them.
- (14) Where an intended use requires threshold levels in relation to any essential characteristic to be fulfilled by construction products in Member States, those levels should be established in the harmonised technical specifications.
- (15) When assessing the performance of a construction product, account should also be taken of the health and safety aspects related to its use during its entire life cycle.
- (16) Threshold levels determined by the Commission pursuant to this Regulation should be generally recognised values for the essential characteristics of the construction product in question with regard to the provisions in Member States and should ensure a high level of protection within the meaning of Article 114 of the Treaty on the Functioning of the European Union (TFEU).
- (17) Threshold levels can be of a technical or regulatory nature, and may be applicable to a single characteristic or to a set of characteristics.
- (18) The European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) are recognised as the competent organisations for the adoption of harmonised standards in accordance with the general guidelines for cooperation between the Commission and those two organisations signed on 28 March 2003. Manufacturers should use those harmonised standards when the references to them have been published in the *Official Journal of the European Union* and in accordance with the criteria established under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services <sup>(3)</sup>. Once a sufficient level of technical and scientific expertise on all the relevant aspects is attained, recourse to harmonised standards with regard to construction products should be increased, including, where appropriate, and after consultation of the Standing Committee on Construction, by requiring, by means of mandates, that those standards be developed on the basis of existing European Assessment Documents.
- (19) The procedures under Directive 89/106/EEC for assessing performance in relation to the essential characteristics of construction products not covered by a harmonised standard should be simplified in order to make them more transparent and to reduce costs to manufacturers of construction products.
- (20) 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.
- (21) Manufacturers of construction products should be allowed to request European Technical Assessments to be issued for their products on the basis of the guidelines for European technical approval established under Directive 89/106/EEC. The right to use those guidelines as European Assessment Documents should therefore be ensured.

<sup>(1)</sup> OJ L 218, 13.8.2008, p. 30.

<sup>(2)</sup> OJ L 218, 13.8.2008, p. 82.

<sup>(3)</sup> OJ L 204, 21.7.1998, p. 37.

- (22) The establishment of draft European Assessment Documents and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (hereinafter referred to as 'TABs') designated by Member States. In order to ensure that TABs have the necessary competence for carrying out those tasks, the requirements for their designation should be set out at Union level.
- (23) TABs should establish an organisation (hereinafter referred to as an 'organisation of TABs'), supported, where applicable, through Union financing, to coordinate procedures for the establishment of draft European Assessment Documents and for the issuing of the European Technical Assessments, ensuring the transparency and the necessary confidentiality of those procedures.
- (24) Except in the cases laid down in this Regulation, the placing on the market of a construction product which is covered by a harmonised standard or for which a European Technical Assessment has been issued should be accompanied by a declaration of performance in relation to the essential characteristics of the construction product in accordance with the relevant harmonised technical specifications.
- (25) Where applicable, the declaration of performance should be accompanied by information on the content of hazardous substances in the construction product in order to improve the possibilities for sustainable construction and to facilitate the development of environment-friendly products. Such information should be provided without prejudice to the obligations, particularly with regard to labelling, laid down in other instruments of Union law applicable to hazardous substances and should be made available at the same time and in the same form as the declaration of performance so as to reach all potential users of construction products. Information on the content of hazardous substances should initially be limited to substances referred to in Articles 31 and 33 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency<sup>(1)</sup>. However, the specific need for information on the content of hazardous substances in construction products should be further investigated with a view to completing the range of substances covered so as to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials. This Regulation is without prejudice to Member States' rights and obligations pursuant to other instruments of Union law that may apply to hazardous substances, in particular, Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market<sup>(2)</sup>, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy<sup>(3)</sup>, Regulation (EC) No 1907/2006, Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste<sup>(4)</sup> and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures<sup>(5)</sup>.
- (26) It should be possible for the declaration of performance to be numbered in accordance with the product-type reference number.
- (27) It is necessary to provide for simplified procedures for the drawing up of declarations of performance in order to alleviate the financial burden of enterprises, in particular small and medium-sized enterprises (SMEs).
- (28) In order to ensure that the declaration of performance is accurate and reliable, the performance of the construction product should be assessed and the production in the factory should be controlled in accordance with an appropriate system of assessment and verification of constancy of performance of the construction product. Several systems could be chosen to be applied for a given construction product, in order to take into account the specific relationship of some of its essential characteristics to the basic requirements for construction works.
- (29) Given the specificity of construction products and the particular focus of the system for their assessment, the procedures for the conformity assessment provided for in Decision No 768/2008/EC, and the modules set out therein, are not appropriate. Specific methods should therefore be established for the assessment and verification of constancy of performance in relation to the essential characteristics of construction products.
- (30) Due to the difference in the meaning of the CE marking for construction products, when compared to the general principles set out in Regulation (EC) No 765/2008, specific provisions should be put in place to ensure the clarity of the obligation to affix the CE marking to construction products and the consequences thereof.

<sup>(1)</sup> OJ L 396, 30.12.2006, p. 1.

<sup>(2)</sup> OJ L 123, 24.4.1998, p. 1.

<sup>(3)</sup> OJ L 327, 22.12.2000, p. 1.

<sup>(4)</sup> OJ L 312, 22.11.2008, p. 3.

<sup>(5)</sup> OJ L 353, 31.12.2008, p. 1.

- (31) By affixing the CE marking or having such marking affixed to a construction product, manufacturers should indicate that they take responsibility for the conformity of that product with its declared performance.
- (32) The CE marking should be affixed to all construction products for which the manufacturer has drawn up a declaration of performance in accordance with this Regulation. If a declaration of performance has not been drawn up, the CE marking should not be affixed.
- (33) The CE marking should be the only marking of conformity of the construction product with the declared performance and compliance with applicable requirements relating to Union harmonisation legislation. However, other markings may be used, provided that they help to improve the protection of users of construction products and are not covered by existing Union harmonisation legislation.
- (34) To avoid the unnecessary testing of construction products for which performance has already been sufficiently demonstrated by stable test results or other existing data, the manufacturer should be allowed, under conditions set up in the harmonised technical specifications or in a Commission decision, to declare a certain level or class of performance without testing or without further testing.
- (35) To avoid duplicating tests already carried out, a manufacturer of a construction product should be allowed to use the test results obtained by a third party.
- (36) Conditions should be defined for the use of simplified procedures for the assessment of the performance of construction products, in order to reduce as far as possible the cost of placing them on the market, without reducing the level of safety. The manufacturers using such simplified procedures should demonstrate appropriately the fulfilment of those conditions.
- (37) In order to enhance the impact of market surveillance measures, all simplified procedures provided for in this Regulation for the assessment of the performance of construction products should apply only to natural or legal persons which manufacture the products they place on the market.
- (38) To further decrease the cost to micro-enterprises of placing construction products, which they have manufactured, on the market, it is necessary to provide for simplified procedures for the assessment of performance when the products in question do not imply significant safety concerns while complying with the applicable requirements, whatever the origin of those requirements. Enterprises applying those simplified procedures should, in addition, demonstrate that they qualify as micro-enterprises. Moreover, they should follow the applicable procedures for verification of constancy of performance provided for in the harmonised technical specifications for their products.
- (39) For an individually designed and manufactured construction product, the manufacturer should be allowed to use simplified procedures for the assessment of performance, where it can be demonstrated that the product placed on the market complies with the applicable requirements.
- (40) The interpretative framework for the definition of 'non-series process', to be applied to different construction products covered by this Regulation, should be established by the Commission in consultation with the Standing Committee on Construction.
- (41) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they place or make available on the market only construction products which are in compliance with the requirements of this Regulation, which aim to ensure the performance of construction products and fulfil basic requirements for construction works. In particular, importers and distributors of construction products should be aware of the essential characteristics for which there are provisions on the Union market, and of the specific requirements in Member States in relation to the basic requirements for construction works, and should use this knowledge in their commercial transactions.
- (42) It is important to ensure the accessibility of national technical rules so that enterprises, and in particular SMEs, can gather reliable and precise information about the law in force in the Member State where they intend to place or make available on the market their products. Member States should therefore designate Product Contact Points for Construction for this purpose. In addition to the tasks defined in Article 10(1) of Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State <sup>(1)</sup>, Product Contact Points for Construction should also provide information on rules applicable to the incorporation, assembling or installation of a specific type of construction product.

<sup>(1)</sup> OJ L 218, 13.8.2008, p. 21.



- (43) In order to facilitate the free movement of goods, Product Contact Points for Construction should provide, free of charge, information about provisions aimed at fulfilling basic requirements for construction works applicable to the intended use of each construction product in the territory of each Member State. Product Contact Points for Construction may also provide economic operators with additional information or observations. For additional information, Product Contact Points for Construction should be allowed to charge fees that are proportionate to the costs of providing such information or observations. Member States should furthermore ensure that sufficient resources are allocated to the Product Contact Points for Construction.
- (44) Since the creation of Product Contact Points for Construction should not interfere with the allocation of functions among competent authorities within the regulatory systems of the Member States, it should be possible for Member States to set up Product Contact Points for Construction in accordance with regional or local competences. Member States should be able to entrust the role of Product Contact Points for Construction to existing contact points established in accordance with other Union instruments, in order to prevent the unnecessary proliferation of contact points and to simplify administrative procedures. In order not to increase administrative costs for enterprises and competent authorities, Member States should also be able to entrust the role of Product Contact Points for Construction not only to existing services within the public administration, but also to national SOLVIT centres, chambers of commerce, professional organisations and private bodies.
- (45) The Product Contact Points for Construction should be able to carry out their functions in a manner that avoids conflicts of interest, particularly in respect of the procedures for obtaining the CE marking.
- (46) For the purposes of ensuring an equivalent and consistent enforcement of Union harmonisation legislation, effective market surveillance should be operated by the Member States. Regulation (EC) No 765/2008 provides the basic conditions for the functioning of such market surveillance, notably for programmes, financing and penalties.
- (47) The responsibility of Member States for safety, health and other matters covered by the basic requirements for construction works on their territory should be recognised in a safeguard clause providing for appropriate protective measures.
- (48) Since it is necessary to ensure throughout the Union a uniform level of performance of bodies carrying out the assessment and verification of constancy of performance of construction products, and since all such bodies should perform their functions to the same level and under conditions of fair competition, requirements should be set for those bodies seeking to be notified for the purposes of this Regulation. Provision should also be made for the availability of adequate information about such bodies and for their monitoring.
- (49) In order to ensure a coherent level of quality in the assessment and verification of constancy of performance of construction products, it is also necessary to establish requirements applicable to the authorities responsible for notifying the bodies carrying out those tasks to the Commission and the other Member States.
- (50) In accordance with Article 291 TFEU, rules and general principles for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup> continues to apply, with the exception of the regulatory procedure with scrutiny, which is no longer applicable.
- (51) For the purposes of achieving the objectives of this Regulation, the Commission should be empowered to adopt certain delegated acts in accordance with Article 290 TFEU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (52) In particular, the Commission should be empowered to adopt delegated acts outlining the conditions for the use of websites to make available the declaration of performance.
- (53) Since a period of time is required to ensure that the framework for the proper functioning of this Regulation is in place, its application should be deferred with the exception of the provisions concerning the designation of TABs, notifying authorities and notified bodies, the establishment of an organisation of TABs and the establishment of the Standing Committee on Construction.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

- (54) The Commission and the Member States should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users of construction products, of the establishment of a common technical language, the distribution of responsibilities between individual economic operators and users, the affixing of the CE marking on construction products, the revision of the basic requirements for construction works and the systems of assessment and verification of constancy of performance.
- (55) The basic requirement for construction works on sustainable use of natural resources should notably take into account the recyclability of construction works, their materials and parts after demolition, the durability of construction works and the use of environmentally compatible raw and secondary materials in construction works.
- (56) For the assessment of the sustainable use of resources and of the impact of construction works on the environment Environmental Product Declarations should be used when available.
- (57) Wherever possible, uniform European methods should be laid down for establishing compliance with the basic requirements set out in Annex I.
- (58) Since the objective of this Regulation, namely to achieve the proper functioning of the internal market for construction products by means of harmonised technical specifications to express the performance of construction products, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Subject matter

This Regulation lays down conditions for the placing or making available on the market of construction products by establishing

harmonised rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products.

#### Article 2

#### Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'construction product' means 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;
2. 'kit' means a construction product placed on the market by a single manufacturer as a set of at least two separate components that need to be put together to be incorporated in the construction works;
3. 'construction works' means buildings and civil engineering works;
4. 'essential characteristics' means those characteristics of the construction product which relate to the basic requirements for construction works;
5. 'performance of a construction product' means the performance related to the relevant essential characteristics, expressed by level or class, or in a description;
6. 'level' means the result of the assessment of the performance of a construction product in relation to its essential characteristics, expressed as a numerical value;
7. 'class' means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product;
8. 'threshold level' means a minimum or maximum performance level of an essential characteristic of a construction product;
9. 'product-type' means the set of representative performance levels or classes of a construction product, in relation to its essential characteristics, produced using a given combination of raw materials or other elements in a specific production process;
10. 'harmonised technical specifications' means harmonised standards and European Assessment Documents;

11. 'harmonised standard' means a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC, on the basis of a request issued by the Commission, in accordance with Article 6 of that Directive;
12. 'European Assessment Document' means a document adopted by the organisation of TABs for the purposes of issuing European Technical Assessments;
13. 'European Technical Assessment' means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document;
14. 'intended use' means the intended use of the construction product as defined in the applicable harmonised technical specification;
15. 'Specific Technical Documentation' means documentation demonstrating that methods within the applicable system for assessment and verification of constancy of performance have been replaced by other methods, provided that the results obtained by those other methods are equivalent to the results obtained by the test methods of the corresponding harmonised standard;
16. 'making available on the market' means any supply of a construction product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
17. 'placing on the market' means the first making available of a construction product on the Union market;
18. 'economic operator' means the manufacturer, importer, distributor or authorised representative;
19. 'manufacturer' means any natural or legal person who manufactures a construction product or who has such a product designed or manufactured, and markets that product under his name or trademark;
20. 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a construction product available on the market;
21. 'importer' means any natural or legal person established within the Union, who places a construction product from a third country on the Union market;
22. 'authorised representative' means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;
23. 'withdrawal' means any measure aimed at preventing a construction product in the supply chain from being made available on the market;
24. 'recall' means any measure aimed at achieving the return of a construction product that has already been made available to the end-user;
25. 'accreditation' has the meaning assigned to it by Regulation (EC) No 765/2008;
26. 'factory production control' means the documented, permanent and internal control of production in a factory, in accordance with the relevant harmonised technical specifications;
27. 'micro-enterprise' means a micro-enterprise as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises <sup>(1)</sup>;
28. 'life cycle' means the consecutive and interlinked stages of a construction product's life, from raw material acquisition or generation from natural resources to final disposal.

### Article 3

#### Basic requirements for construction works and essential characteristics of construction products

1. The basic requirements for construction works set out in Annex I shall constitute the basis for the preparation of standardisation mandates and harmonised technical specifications.
2. The essential characteristics of construction products shall be laid down in harmonised technical specifications in relation to the basic requirements for construction works.
3. For specific families of construction products covered by a harmonised standard, the Commission shall, where appropriate and in relation to their intended uses as defined in harmonised standards, determine by means of delegated acts in accordance with Article 60, those essential characteristics for which the manufacturer shall declare the performance of the product when it is placed on the market.

<sup>(1)</sup> OJ L 124, 20.5.2003, p. 36.

Where appropriate, the Commission shall also determine, by means of delegated acts in accordance with Article 60, the threshold levels for the performance in relation to the essential characteristics to be declared.

## CHAPTER II

### DECLARATION OF PERFORMANCE AND CE MARKING

#### Article 4

##### Declaration of performance

1. 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.

2. When a construction product is covered by a harmonised standard or conforms to a European Technical Assessment which has been issued for it, information in any form about its performance in relation to the essential characteristics, as defined in the applicable harmonised technical specification, may be provided only if included and specified in the declaration of performance except where, in accordance with Article 5, no declaration of performance has been drawn up.

3. By drawing up the declaration of performance, the manufacturer shall assume responsibility for the conformity of the construction product with such declared performance. In the absence of objective indications to the contrary, Member States shall presume the declaration of performance drawn up by the manufacturer to be accurate and reliable.

#### Article 5

##### Derogations from drawing up a declaration of performance

By way of derogation from Article 4(1) and in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used, a manufacturer may refrain from drawing up a declaration of performance when placing a construction product covered by a harmonised standard on the market where:

(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;

(b) the construction product is manufactured on the construction site for its incorporation in the respective 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; or

(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.

#### Article 6

##### Content of the declaration of performance

1. The declaration of performance shall express the performance of construction products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications.

2. The declaration of performance shall contain, in particular, the following information:

(a) the reference of the product-type for which the declaration of performance has been drawn up;

(b) the system or systems of assessment and verification of constancy of performance of the construction product, as set out in Annex V;

(c) the reference number and date of issue of the harmonised standard or the European Technical Assessment which has been used for the assessment of each essential characteristic;

(d) where applicable, the reference number of the Specific Technical Documentation used and the requirements with which the manufacturer claims the product complies.

3. The declaration of performance shall in addition contain:

(a) the intended use or uses for the construction product, in accordance with the applicable harmonised technical specification;

(b) the list of essential characteristics, as determined in the harmonised technical specification for the declared intended use or uses;



- (c) the performance of at least one of the essential characteristics of the construction product, relevant for the declared intended use or uses;
- (d) where applicable, the performance of the construction product, by levels or classes, or in a description, if necessary based on a calculation in relation to its essential characteristics determined in accordance with Article 3(3);
- (e) the performance of those essential characteristics of the construction product which are related to the intended use or uses, taking into consideration the provisions in relation to the intended use or uses where the manufacturer intends the product to be made available on the market;
- (f) for the listed essential characteristics for which no performance is declared, the letters 'NPD' (No Performance Determined);
- (g) when a European Technical Assessment has been issued for that product, the performance, by levels or classes, or in a description, of the construction product in relation to all essential characteristics contained in the corresponding European Technical Assessment.

4. The declaration of performance shall be drawn up using the model set out in Annex III.

5. The information referred to in Article 31 or, as the case may be, in Article 33 of Regulation (EC) No 1907/2006, shall be provided together with the declaration of performance.

#### Article 7

##### Supply of the declaration of performance

1. A copy of the declaration of performance of each product which is made available on the market shall be supplied either in paper form or by electronic means.

However, where a batch of the same product is supplied to a single user, it may be accompanied by a single copy of the declaration of performance either in paper form or by electronic means.

2. A paper copy of the declaration of performance shall be supplied if the recipient requests it.

3. By way of derogation from paragraphs 1 and 2, the copy of the declaration of performance may be made available on a web site in accordance with conditions to be established by the Commission by means of delegated acts in accordance with Article 60. Such conditions shall, inter alia, guarantee that the

declaration of performance remains available at least for the period referred to in Article 11(2).

4. The declaration of performance shall be supplied in the language or the languages required by the Member State where the product is made available.

#### Article 8

##### General principles and use of CE marking

1. The general principles set out in Article 30 of Regulation (EC) No 765/2008 shall apply to the CE marking.

2. 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.

By affixing or having affixed the CE marking, manufacturers indicate that they take responsibility for the conformity of the construction product with the declared performance as well as the compliance with all applicable requirements laid down in this Regulation and in other relevant Union harmonisation legislation providing for its affixing.

The rules for affixing the CE marking provided for in other relevant Union harmonisation legislation shall apply without prejudice to this paragraph.

3. For any construction product covered by a harmonised standard, or for which a European Technical Assessment has been issued, the CE marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics, covered by that harmonised standard or by the European Technical Assessment.

In this respect, Member States shall not introduce any references or shall withdraw any references in national measures to a marking attesting conformity with the declared performance in relation to the essential characteristics covered by a harmonised standard other than the CE marking.

4. A Member State shall not prohibit or impede, within its territory or under its responsibility, the making available on the market or the use of construction products bearing the CE marking, when the declared performances correspond to the requirements for such use in that Member State.

5. A Member State shall ensure that the use of construction products bearing the CE marking shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate, when the declared performances correspond to the requirements for such use in that Member State.

6. The methods used by the Member States in their requirements for construction works, as well as other national rules in relation to the essential characteristics of construction products, shall be in accordance with harmonised standards.

#### Article 9

##### Rules and conditions for the affixing of CE marking

1. The CE marking shall be affixed visibly, legibly and indelibly to the construction product or to a label attached to it. Where this is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging or to the accompanying documents.

2. The CE marking shall be followed by the two last 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.

3. The CE marking shall be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark notably indicating a special risk or use.

#### Article 10

##### Product Contact Points for Construction

1. Member States shall designate Product Contact Points for Construction pursuant to Article 9 of Regulation (EC) No 764/2008.

2. Articles 10 and 11 of Regulation (EC) No 764/2008 shall apply to Product Contact Points for Construction.

3. With regard to the tasks defined in Article 10(1) of Regulation (EC) No 764/2008, each Member State shall ensure that the Product Contact Points for Construction provide information, using transparent and easily understandable terms, on the provisions within its territory aimed at fulfilling

basic requirements for construction works applicable for the intended use of each construction product, as provided for in Article 6(3)(e) of this Regulation.

4. Product Contact Points for Construction shall be able to carry out their functions in a manner that avoids conflicts of interest, particularly in respect of the procedures for obtaining the CE marking.

#### CHAPTER III

##### OBLIGATIONS OF ECONOMIC OPERATORS

#### Article 11

##### Obligations of manufacturers

1. Manufacturers shall draw up a declaration of performance in accordance with Articles 4 and 6, and affix the CE marking in accordance with Articles 8 and 9.

Manufacturers shall, as the basis for the declaration of performance, draw up technical documentation describing all the relevant elements related to the required system of assessment and verification of constancy of performance.

2. Manufacturers shall keep the technical documentation and the declaration of performance for a period of 10 years after the construction product has been placed on the market.

Where appropriate, the Commission may, by means of delegated acts in accordance with Article 60, amend that period for families of construction products on the basis of the expected life or part played by the construction product in the construction works.

3. Manufacturers shall ensure that procedures are in place to ensure that series production maintains the declared performance. Changes in the product-type and in the applicable harmonised technical specifications shall be adequately taken into account.

Manufacturers shall, where deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance of a construction product, carry out sample testing of construction products placed or made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming products and of product recalls, and keep distributors informed of any such monitoring.

4. Manufacturers shall ensure that their construction products bear a type, batch or serial number or any other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the construction product.

5. Manufacturers shall indicate on the construction product or, where that is not possible, on its packaging or in a document accompanying it, their name, registered trade name or registered trade mark and their contact address. The address shall indicate a single point at which the manufacturer can be contacted.

6. When making a construction product available on the market, manufacturers shall ensure that the product is accompanied by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users.

7. Manufacturers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, if appropriate, to withdraw or recall it. Furthermore, where the product presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States in which they made the construction product available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

8. Manufacturers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance and compliance with other applicable requirements in this Regulation, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by construction products which they have placed on the market.

#### Article 12

##### Authorised representatives

1. A manufacturer may appoint, by written mandate, an authorised representative.

The drawing up of technical documentation shall not form part of the authorised representative's mandate.

2. An authorised representative shall perform the tasks specified in the mandate. The mandate shall allow the authorised representative to carry out at least the following tasks:

(a) keep the declaration of performance and the technical documentation at the disposal of national surveillance authorities for the period referred to in Article 11(2);

(b) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance and compliance with other applicable requirements in this Regulation;

(c) cooperate with the competent national authorities, at their request, on any action taken to eliminate the risks posed by construction products covered by the mandate of the authorised representative.

#### Article 13

##### Obligations of importers

1. Importers shall place on the Union market only construction products which are compliant with the applicable requirements of this Regulation.

2. Before placing a construction product on the market, importers shall ensure that the assessment and the verification of constancy of performance has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation referred to in the second subparagraph of Article 11(1) and the declaration of performance in accordance with Articles 4 and 6. They shall also ensure that the product, where required, bears the CE marking, that the product is accompanied by the required documents and that the manufacturer has complied with the requirements set out in Article 11(4) and (5).

Where an importer considers or has reason to believe that the construction product is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, the importer shall not place the construction product on the market until it conforms to the accompanying declaration of performance and it complies with the other applicable requirements in this Regulation or until the declaration of performance is corrected. Furthermore, where the construction product presents a risk, the importer shall inform the manufacturer and the market surveillance authorities thereof.

3. Importers shall indicate on the construction product or, where that is not possible, on its packaging or in a document accompanying the product their name, registered trade name or registered trade mark and their contact address.

4. Importers shall ensure that, when making a construction product available on the market, the product is accompanied by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users.

5. Importers shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declaration of performance and compliance with other applicable requirements in this Regulation.

6. Importers shall, when deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance of a construction product, carry out sample testing of construction products placed or made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming products and of product recalls, and shall keep distributors informed of any such monitoring.

7. Importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, where appropriate, to withdraw or recall it. Furthermore, where the product presents a risk, importers shall immediately inform the competent national authorities of the Member States in which they made the construction product available thereof, giving details, in particular, of the non-compliance and of any corrective measures taken.

8. Importers shall, for the period referred to in Article 11(2), keep a copy of the declaration of performance at the disposal of the market surveillance authorities and ensure that the technical documentation is made available to those authorities, upon request.

9. Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance and compliance with other applicable requirements in this Regulation, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by construction products which they have placed on the market.

#### Article 14

##### **Obligations of distributors**

1. When making a construction product available on the market, distributors shall act with due care in relation to the requirements of this Regulation.

2. Before making a construction product available on the market distributors shall ensure that the product, where required, bears the CE marking and is accompanied by the documents required under this Regulation and by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users. Distributors shall also ensure that the manufacturer and the

importer have complied with the requirements set out in Article 11(4) and (5) and Article 13(3) respectively.

Where a distributor considers or has reason to believe that a construction product is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, the distributor shall not make the product available on the market until it conforms to the accompanying declaration of performance and it complies with the other applicable requirements in this Regulation or until the declaration of performance is corrected. Furthermore, where the product presents a risk, the distributor shall inform the manufacturer or the importer thereof, and the market surveillance authorities.

3. A distributor shall ensure that, while a construction product is under his responsibility, storage or transport conditions do not jeopardise its conformity with the declaration of performance and compliance with other applicable requirements in this Regulation.

4. Distributors who consider or have reason to believe that a construction product which they have made available on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, shall make sure that the corrective measures necessary to bring that product in conformity, to withdraw it or recall it, as appropriate, are taken. Furthermore, where the product presents a risk, distributors shall immediately inform the competent national authorities of the Member States in which they made the product available thereof, giving details, in particular, of the non-compliance and of any corrective measures taken.

5. Distributors shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance and compliance with other applicable requirements in this Regulation in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by construction products which they have made available on the market.

#### Article 15

##### **Cases in which obligations of manufacturers apply to importers and distributors**

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation and shall be subject to the obligations of a manufacturer pursuant to Article 11, where he places a product on the market under his name or trademark or modifies a construction product already placed on the market in such a way that conformity with the declaration of performance may be affected.

## Article 16

**Identification of economic operators**

For the period referred to in Article 11(2), economic operators shall, on request, identify the following to market surveillance authorities:

- (a) any economic operator who has supplied them with a product;
- (b) any economic operator to whom they have supplied a product.

## CHAPTER IV

**HARMONISED TECHNICAL SPECIFICATIONS**

## Article 17

**Harmonised standards**

1. Harmonised standards shall be established by the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of requests (hereinafter referred to as 'mandates') issued by the Commission in accordance with Article 6 of that Directive after having consulted the Standing Committee on Construction referred to in Article 64 of this Regulation (hereinafter referred to as 'Standing Committee on Construction').

2. Where stakeholders are involved in the process of developing harmonised standards pursuant to this Article, the European standardisation bodies shall ensure that the various categories of stakeholders are in all instances represented in a fair and equitable manner.

3. Harmonised standards shall provide the methods and the criteria for assessing the performance of the construction products in relation to their essential characteristics.

When provided for in the relevant mandate, a harmonised standard shall refer to an intended use of products to be covered by it.

Harmonised standards shall, where appropriate and without endangering the accuracy, reliability or stability of the results, provide methods less onerous than testing for assessing the performance of the construction products in relation to their essential characteristics.

4. The European standardisation bodies shall determine in harmonised standards the applicable factory production control, which shall take into account the specific conditions of the manufacturing process of the construction product concerned.

The harmonised standard shall include technical details necessary for the implementation of the system of assessment and verification of constancy of performance.

5. The Commission shall assess the conformity of harmonised standards established by the European standardisation bodies with the relevant mandates.

The Commission shall publish in the *Official Journal of the European Union* the list of references of harmonised standards which are in conformity with the relevant mandates.

The following shall be indicated for each harmonised standard in the list:

- (a) references of superseded harmonised technical specifications, if any;
- (b) date of the beginning of the coexistence period;
- (c) date of the end of the coexistence period.

The Commission shall publish any updates to that list.

From the date of the beginning of the coexistence period it shall be possible to use a harmonised standard to make a declaration of performance for a construction product covered by it. National standardisation bodies are under the obligation to transpose the harmonised standards in conformity with Directive 98/34/EC.

Without prejudice to Articles 36 to 38, from the date of the end of the coexistence period, the harmonised standard shall be the only means used for drawing up a declaration of performance for a construction product covered by it.

At the end of the coexistence period, conflicting national standards shall be withdrawn and Member States shall terminate the validity of all conflicting national provisions.

## Article 18

**Formal objection against harmonised standards**

1. When a Member State or the Commission considers that a harmonised standard does not entirely satisfy the requirements set out in the relevant mandate, the Member State concerned or the Commission, after having consulted the Standing Committee on Construction, shall bring the matter before the Committee set up pursuant to Article 5 of Directive 98/34/EC, giving its arguments. That Committee shall, after having consulted the relevant European standardisation bodies deliver its opinion without delay.



2. In the light of the opinion of the Committee set up pursuant to Article 5 of Directive 98/34/EC, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the harmonised standard concerned in the *Official Journal of the European Union*.

3. The Commission shall inform the European standardisation body concerned of its decision and, if necessary, request the revision of the harmonised standard concerned.

#### Article 19

##### European Assessment Document

1. Following a request for a European Technical Assessment by a manufacturer, a European Assessment Document shall be drawn up and adopted by the organisation of TABs for any construction product not covered or not fully covered by a harmonised standard, for which the performance in relation to its essential characteristics cannot be entirely assessed according to an existing harmonised standard, because, inter alia:

- (a) the product does not fall within the scope of any existing harmonised standard;
- (b) for at least one essential characteristic of that product, the assessment method provided for in the harmonised standard is not appropriate; or
- (c) the harmonised standard does not provide for any assessment method in relation to at least one essential characteristic of that product.

2. The procedure for adopting the European Assessment Document shall respect the principles set out in Article 20 and shall comply with Article 21 and Annex II.

3. The Commission may adopt delegated acts in accordance with Article 60 to amend Annex II and establish supplementary procedural rules for the development and adoption of a European Assessment Document.

4. Where appropriate, the Commission, after having consulted the Standing Committee on Construction, shall take existing European Assessment Documents as a basis for the mandates to be issued pursuant to Article 17(1) with a view to developing harmonised standards as regards the products referred to in paragraph 1 of this Article.

#### Article 20

##### Principles for the development and adoption of European Assessment Documents

1. The procedure for developing and adopting European Assessment Documents shall:

- (a) be transparent to the manufacturer concerned;
- (b) define appropriate mandatory time limits in order to avoid unjustified delay;
- (c) take appropriately into account the protection of commercial secrecy and confidentiality;
- (d) allow for adequate participation by the Commission;
- (e) be cost-effective for the manufacturer; and
- (f) ensure sufficient collegiality and coordination amongst TABs designated for the product in question.

2. The TABs shall, together with the organisation of TABs, bear the full costs of the development and adoption of European Assessment Documents.

#### Article 21

##### Obligations of the TAB receiving a request for a European Technical Assessment

1. The TAB receiving a request for a European Technical Assessment shall inform the manufacturer if the construction product is covered, fully or partially, by a harmonised technical specification as follows:

- (a) where the product is fully covered by a harmonised standard, the TAB shall inform the manufacturer that, in accordance with Article 19(1), a European Technical Assessment cannot be issued;
- (b) where the product is fully covered by a European Assessment Document, the TAB shall inform the manufacturer that such a document will be used as the basis for the European Technical Assessment to be issued;
- (c) where the product is not covered, or not fully covered, by any harmonised technical specification, the TAB shall apply the procedures set out in Annex II or those established in accordance with Article 19(3).

2. In the cases referred to in points (b) and (c) of paragraph 1, the TAB shall inform the organisation of TABs and the Commission of the content of the request and of the reference to a relevant Commission decision for assessment and verification of constancy of performance, which the TAB intends to apply for that product, or of the lack of such a Commission decision.

3. If the Commission considers that an appropriate decision for assessment and verification of constancy of performance does not exist for the construction product, Article 28 shall apply.

#### Article 22

##### **Publication**

European Assessment Documents adopted by the organisation of TABs shall be sent to the Commission, which shall publish a list of references of the final European Assessment Documents in the *Official Journal of the European Union*.

The Commission shall publish any updates to that list.

#### Article 23

##### **Dispute resolution in cases of disagreement between TABs**

If the TABs do not agree upon the European Assessment Document within the time limits provided for, the organisation of TABs shall submit this matter to the Commission for appropriate resolution.

#### Article 24

##### **Content of the European Assessment Document**

1. A European Assessment Document shall contain, at least, a general description of the construction product, the list of essential characteristics, relevant for the intended use of the product as foreseen by the manufacturer and agreed between the manufacturer and the organisation of TABs, as well as the methods and criteria for assessing the performance of the product in relation to those essential characteristics.

2. Principles for the applicable factory production control to be applied shall be set out in the European Assessment Document, taking into account the conditions of the manufacturing process of the construction product concerned.

3. Where the performance of some of the essential characteristics of the product can appropriately be assessed with methods and criteria already established in other harmonised technical specifications or the Guidelines referred to in Article 66(3), or used in accordance with Article 9 of Directive 89/106/EEC before 1 July 2013 in the context of issuing European technical approvals, those existing methods and criteria shall be incorporated as parts of the European Assessment Document.

#### Article 25

##### **Formal objections against European Assessment Documents**

1. Where a Member State or the Commission considers that a European Assessment Document does not entirely satisfy the

demands to be met in relation to the basic requirements for construction works set out in Annex I, the Member State concerned or the Commission shall bring the matter before the Standing Committee on Construction, giving its arguments. The Standing Committee on Construction shall, after having consulted the organisation of TABs, deliver its opinion without delay.

2. In the light of the opinion of the Standing Committee on Construction, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the European Assessment Documents concerned in the *Official Journal of the European Union*.

3. The Commission shall inform the organisation of TABs accordingly and, if necessary, request the revision of the European Assessment Document concerned.

#### Article 26

##### **European Technical Assessment**

1. The European Technical Assessment shall be issued by a TAB, at the request of a manufacturer on the basis of a European Assessment Document established in accordance with the procedures set out in Article 21 and Annex II.

Provided that there is a European Assessment Document, a European Technical Assessment may be issued even in the case where a mandate for a harmonised standard has been issued. Such issuing shall be possible until the beginning of the coexistence period as determined by the Commission in accordance with Article 17(5).

2. The European Technical Assessment shall include the performance to be declared, by levels or classes, or in a description, of those essential characteristics agreed by the manufacturer and the TAB receiving the request for the European Technical Assessment for the declared intended use, and technical details necessary for the implementation of the system of assessment and verification of constancy of performance.

3. In order to ensure the uniform implementation of this Article, the Commission shall adopt implementing acts to establish the format of the European Technical Assessment in accordance with the procedure referred to in Article 64(2).

#### Article 27

##### **Levels or classes of performance**

1. The Commission may adopt delegated acts in accordance with Article 60, to establish classes of performance in relation to the essential characteristics of construction products.

2. Where the Commission has established classes of performance in relation to the essential characteristics of construction products, the European standardisation bodies shall use those classes in harmonised standards. The organisation of TABs shall where relevant use those classes in European Assessment Documents.

Where classes of performance in relation to the essential characteristics of construction products are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards, on the basis of a revised mandate.

3. When provided for in the relevant mandates, the European standardisation bodies shall establish in harmonised standards threshold levels in relation to essential characteristics and, when appropriate, for intended uses, to be fulfilled by construction products in Member States.

4. Where the European standardisation bodies have established classes of performance in a harmonised standard, the organisation of TABs shall use those classes in the European Assessment Documents where they are relevant for the construction product.

When deemed appropriate, the organisation of TABs may, with the agreement of the Commission and after consulting the Standing Committee on Construction, establish in the European Assessment Document classes of performance and threshold levels in relation to the essential characteristics of a construction product within its intended use as foreseen by the manufacturer.

5. The Commission may adopt delegated acts in accordance with Article 60, to establish conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing.

Where such conditions are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards, on the basis of a revised mandate.

6. When the Commission has established classification systems in accordance with paragraph 1, Member States may determine the levels or classes of performance to be respected by construction products in relation to their essential characteristics only in accordance with those classification systems.

7. The European standardisation bodies and the organisation of TABs shall respect the regulatory needs of Member States when determining threshold levels or classes of performance.

#### Article 28

### Assessment and verification of constancy of performance

1. Assessment and verification of constancy of performance of construction products in relation to their essential characteristics shall be carried out in accordance with one of the systems set out in Annex V.

2. By means of delegated acts in accordance with Article 60, the Commission shall establish and may revise, taking into account in particular the effect on the health and safety of people, and on the environment, which system or systems are applicable to a given construction product or family of construction products or a given essential characteristic. In doing so, the Commission shall also take into account the documented experiences forwarded by national authorities with regard to market surveillance.

The Commission shall choose the least onerous system or systems consistent with the fulfilment of all basic requirements for construction works.

3. The system or systems thus determined shall be indicated in the mandates for harmonised standards and in the harmonised technical specifications.

#### CHAPTER V

### TECHNICAL ASSESSMENT BODIES

#### Article 29

### Designation, monitoring and evaluation of TABs

1. Member States may designate TABs within their territories, notably for one or several product areas listed in Table 1 of Annex IV.

Member States which have designated a TAB shall communicate to the other Member States and the Commission its name and address and the product areas for which that TAB is designated.

2. The Commission shall make publicly available by electronic means the list of TABs indicating the product areas for which they are designated, endeavouring to achieve the highest possible level of transparency.

The Commission shall make any updates to that list publicly available.

3. Member States shall monitor the activities and competence of the TABs they have designated, and evaluate them in relation to the respective requirements set out in Table 2 of Annex IV.

Member States shall inform the Commission of their national procedures for the designation of TABs, of the monitoring of their activity and competence, and of any changes to that information.

4. The Commission shall adopt guidelines for carrying out the evaluation of TABs, after consulting the Standing Committee on Construction.

#### Article 30

##### Requirements for TABs

1. A TAB shall carry out the assessment and issue the European Technical Assessment in a product area for which it has been designated.

The TAB shall satisfy the requirements set out in Table 2 of Annex IV within the scope of its designation.

2. A TAB shall make publicly available its organigram and the names of the members of its internal decision-making bodies.

3. Where a TAB no longer complies with the requirements referred to in paragraph 1, the Member State shall withdraw the designation of that TAB for the relevant product area and inform the Commission and the other Member States thereof.

#### Article 31

##### Coordination of TABs

1. The TABs shall establish an organisation for technical assessment.

2. The organisation of TABs shall be considered a body pursuing an aim of general European interest within the meaning of Article 162 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup>.

3. The common cooperation objectives and the administrative and financial conditions relating to the grants awarded to the organisation of TABs may be defined in a framework partnership agreement signed by the Commission and that organisation, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(2)</sup> (the Financial Regulation) and Regulation (EC, Euratom) No 2342/2002. The European Parliament and the

Council shall be informed of the conclusion of any such agreement.

4. The organisation of TABs shall at least carry out the following tasks:

(a) organise the coordination of the TABs and, if necessary, ensure cooperation and consultation with other stakeholders;

(b) ensure that examples of best practice are shared between TABs to promote greater efficiency and provide a better service to industry;

(c) coordinate the application of the procedures set out in Article 21 and in Annex II, as well as provide the support needed to that end;

(d) develop and adopt European Assessment Documents;

(e) inform the Commission of any question related to the preparation of European Assessment Documents and of any aspects related to the interpretation of the procedures set out in Article 21 and in Annex II and suggest improvements to the Commission based on experience gained;

(f) communicate any observations concerning a TAB not fulfilling its tasks in accordance with the procedures set out in Article 21 and in Annex II to the Commission and the Member State which designated the TAB;

(g) ensure that adopted European Assessment Documents and references to European Technical Assessments are kept publicly available.

The organisation of TABs shall have a Secretariat in order to carry out these tasks.

5. Member States shall ensure that the TABs contribute with financial and human resources to the organisation of TABs.

#### Article 32

##### Union financing

1. Union financing may be granted to the organisation of TABs for the implementation of the tasks referred to in Article 31(4).

2. The appropriations allocated to the tasks set out in Article 31(4) shall be determined each year by the budgetary authority within the limits of the financial framework in force.

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 1.

<sup>(2)</sup> OJ L 248, 16.9.2002, p. 1.

*Article 33***Financing arrangements**

1. Union financing shall be provided, without a call for proposals, to the organisation of TABs to carry out the tasks referred to in Article 31(4) for which grants can be awarded in accordance with the Financial Regulation.

2. The activities of the Secretariat of the organisation of TABs, referred to in Article 31(4), may be financed on the basis of operating grants. In the event of renewal, the operating grants shall not be decreased automatically.

3. Grant agreements may authorise flat-rate cover of the beneficiary's overheads up to a maximum of 10 % of total eligible direct costs for actions, except where the beneficiary's indirect costs are covered by an operating grant financed from the general budget of the Union.

*Article 34***Management and monitoring**

1. The appropriations determined by the budgetary authority for the financing of tasks set out in Article 31(4) may also cover administrative expenses relating to preparation, monitoring, inspection, auditing and evaluation which are directly necessary for the achievement of the objectives of this Regulation, and in particular studies, meetings, information and publication activities, expenses relating to informatics networks for the exchange of information and any other expenditure on administrative and technical assistance which the Commission may use for activities related to the development and adoption of European Assessment Documents and the issuing of European Technical Assessments.

2. The Commission shall evaluate the relevance of the tasks set out in Article 31(4) that receive Union financing in the light of the requirements of Union policies and legislation, and inform the European Parliament and the Council of the outcome of that evaluation by 1 January 2017 and every 4 years thereafter.

*Article 35***Protection of the Union's financial interests**

1. The Commission shall ensure that when the activities financed under this Regulation are implemented, the Union's financial interests are protected by the application of preventive measures against fraud, corruption and other illegal activities, by effective checks and by the recovery of amounts unduly paid and, if irregularities are detected, by effective, proportionate and dissuasive penalties, in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>(1)</sup>, Council

Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>(2)</sup> and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>(3)</sup>.

2. For the activities financed under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Union law or any breach of a contractual obligation resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Union or budgets managed by it by an unjustified item of expenditure.

3. Any agreements and contracts resulting from this Regulation shall provide for monitoring and financial control by the Commission or any representative which it authorises and for audits by the Court of Auditors, which, if necessary, may be conducted on-the-spot.

## CHAPTER VI

**SIMPLIFIED PROCEDURES***Article 36***Use of Appropriate Technical Documentation**

1. In determining the product-type, a manufacturer may replace type-testing or type-calculation by Appropriate Technical Documentation demonstrating that:

(a) for one or several essential characteristics of the construction product, which the manufacturer places on the market, that product is deemed to achieve a certain level or class of performance without testing or calculation, or without further testing or calculation, in accordance with the conditions set out in the relevant harmonised technical specification or a Commission decision;

(b) the construction product, covered by a harmonised standard, which the manufacturer places on the market corresponds to the product-type of another construction product, manufactured by another manufacturer and already tested in accordance with the relevant harmonised standard. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results of this other product. The manufacturer may use the test results obtained by another manufacturer only after having obtained an authorisation of that manufacturer, who remains responsible for the accuracy, reliability and stability of those test results; or

<sup>(1)</sup> OJ L 312, 23.12.1995, p. 1.

<sup>(2)</sup> OJ L 292, 15.11.1996, p. 2.

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 1.



(c) the construction product, covered by a harmonised technical specification, which the manufacturer places on the market is a system made of components, which the manufacturer assembles duly following precise instructions given by the provider of such a system or of a component thereof, who has already tested that system or that component for one or several of its essential characteristics in accordance with the relevant harmonised technical specification. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results for the system or the component provided to him. The manufacturer may use the test results obtained by another manufacturer or system provider only after having obtained an authorisation of that manufacturer or system provider, who remains responsible for the accuracy, reliability and stability of those test results.

2. If the construction product referred to in paragraph 1 belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1 + or 1, as set out in Annex V, the Appropriate Technical Documentation referred to in paragraph 1 shall be verified by a notified product certification body as referred to in Annex V.

#### Article 37

##### Use of simplified procedures by micro-enterprises

Micro-enterprises manufacturing construction products covered by a harmonised standard may replace the determination of the product-type on the basis of type-testing for the applicable systems 3 and 4 as set out in Annex V by using methods differing from those contained in the applicable harmonised standard. Those manufacturers may also treat construction products to which system 3 applies in accordance with provisions for system 4. When a manufacturer uses these simplified procedures, the manufacturer shall demonstrate compliance of the construction product with the applicable requirements by means of a Specific Technical Documentation and shall demonstrate the equivalence of the procedures used to the procedures laid down in the harmonised standards.

#### Article 38

##### Other simplified procedures

1. In relation to construction products covered by a harmonised standard and which are individually manufactured or custom-made in a non-series process in response to a specific order, and which are installed in a single identified construction work, the performance assessment part of the applicable system, as set out in Annex V, may be replaced by the manufacturer by Specific Technical Documentation demonstrating compliance of that product with the applicable requirements and equivalence of the procedures used to the procedures laid down in the harmonised standards.

2. If the construction product referred to in paragraph 1 belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1 + or 1, as set out in Annex V, the Specific Technical Documentation shall be verified by a notified product certification body as referred to in Annex V.

#### CHAPTER VII

##### NOTIFYING AUTHORITIES AND NOTIFIED BODIES

#### Article 39

##### Notification

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance under this Regulation (hereinafter referred to as 'notified bodies').

#### Article 40

##### Notifying authorities

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of the bodies to be authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance for the purposes of this Regulation, and for the monitoring of notified bodies, including their compliance with Article 43.

2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by their national accreditation bodies within the meaning of, and in accordance with, Regulation (EC) No 765/2008.

3. Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article 41. In addition, it shall have arrangements to cover liabilities arising from its activities.

4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

#### Article 41

##### Requirements relating to notifying authorities

1. The notifying authority shall be established in such a way that no conflicts of interest with notified bodies occur.

2. The notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.

3. The notifying authority shall be organised in such a way that each decision relating to notification of a body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance is taken by competent persons different from those who carried out the assessment.

4. The notifying authority shall not offer or provide activities performed by notified bodies, or consultancy services on a commercial or competitive basis.

5. The notifying authority shall safeguard the confidentiality of the information obtained.

6. The notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

#### Article 42

##### Information obligation for Member States

Member States shall inform the Commission of their national procedures for the assessment and notification of bodies to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance and the monitoring of notified bodies, and of any changes thereto.

The Commission shall make that information publicly available.

#### Article 43

##### Requirements for notified bodies

1. For the purposes of notification, a notified body shall meet the requirements set out in paragraphs 2 to 11.

2. A notified body shall be established under national law and have legal personality.

3. A notified body shall be a third-party body independent from the organisation or the construction product it assesses.

A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of construction products which it assesses, can on condition that its independence and the absence of any conflict of interest are demonstrated, be considered to be such a body.

4. A notified body, its top-level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of performance shall not be the designer, manufacturer, supplier,

installer, purchaser, owner, user or maintainer of the construction products which it assesses, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the notified body or the use of products for personal purposes.

A notified body, its top-level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of performance shall not become directly involved in the design, manufacture or construction, marketing, installation, use or maintenance of those construction products, nor represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement and integrity related to the activities for which they have been notified. This shall, in particular, apply to consultancy services.

A notified body shall ensure that activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity and impartiality of its assessment and/or verification activities.

5. A notified body and its personnel shall carry out the third party tasks in the process of assessment and verification of constancy of performance with the highest degree of professional integrity and requisite technical competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their assessment and/or verification activities, especially from persons or groups of persons with an interest in the results of those activities.

6. A notified body shall be capable of carrying out all the third party tasks in the process of assessment and verification of constancy of performance assigned to it in accordance with Annex V in relation to which it has been notified, whether those tasks are carried out by the notified body itself or on its behalf and under its responsibility.

At all times and for each system of assessment and verification of constancy of performance and for each kind or category of construction products, essential characteristics and tasks in relation to which it has been notified, the notified body shall have the following at its disposal:

(a) the necessary personnel with technical knowledge and sufficient and appropriate experience to perform the third party tasks in the process of assessment and verification of constancy of performance;

- (b) the necessary description of procedures according to which the assessment of performance is carried out, ensuring the transparency and the ability of reproduction of these procedures; it shall have appropriate policies and procedures in place that distinguish between the tasks it carries out as a notified body and other activities;
- (c) the necessary procedures to perform its activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

A notified body shall have the means necessary to perform the technical and administrative tasks connected with the activities for which it is notified in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out the activities in relation to which the body has been notified, shall have the following:

- (a) sound technical and vocational training covering all the third party tasks in the process of assessment and verification of constancy of performance within the relevant scope for which the body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments and verifications they carry out and adequate authority to carry out such operations;
- (c) appropriate knowledge and understanding of the applicable harmonised standards and of the relevant provisions of the Regulation;
- (d) the ability required to draw up the certificates, records and reports to demonstrate that the assessments and the verifications have been carried out.

8. The impartiality of the notified body, its top-level management and assessment personnel shall be guaranteed.

The remuneration of the notified body's top-level management and assessment personnel shall not depend on the number of assessments carried out or on the results of such assessments.

9. A notified body shall take out liability insurance unless liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible for the assessment and/or the verification performed.

10. The personnel of the notified body shall be bound to observe professional secrecy with regard to all information gained in carrying out its tasks under Annex V, except in relation to the competent administrative authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

11. A notified body shall participate in, or ensure that its assessment personnel is informed of, the relevant standardisation activities and the activities of the notified body coordination group established under this Regulation and shall apply as general guidance the administrative decisions and documents produced as a work result of that group.

#### Article 44

##### **Presumption of conformity**

A notified body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance which demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, shall be presumed to comply with the requirements set out in Article 43 in so far as the applicable harmonised standards cover those requirements.

#### Article 45

##### **Subsidiaries and subcontractors of notified bodies**

1. Where a notified body subcontracts specific tasks connected with the third party tasks in the process of assessment and verification of constancy of performance or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 43, and shall inform the notifying authority accordingly.

2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.

3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.

4. The notified body shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of any subcontractor or the subsidiary and the tasks carried out by such parties under Annex V.

*Article 46***Use of facilities outside the testing laboratory of the notified body**

1. On request of the manufacturer and where justified by technical, economic or logistic reasons, notified bodies may decide to carry out the tests referred to in Annex V, for the systems of assessment and verification of constancy of performance 1+, 1 and 3 or have such tests carried out under their supervision, either in the manufacturing plants using the test equipments of the internal laboratory of the manufacturer or, with the prior consent of the manufacturer, in an external laboratory, using the test equipments of that laboratory.

Notified bodies carrying out such tests shall be specifically designated as competent to work away from their own accredited test facilities.

2. Before carrying out those tests, the notified body shall verify whether the requirements of the test method are satisfied and shall evaluate whether:

- (a) test equipment has an appropriate calibration system and the traceability of the measurements is guaranteed;
- (b) the quality of the test results is ensured.

*Article 47***Application for notification**

1. A body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance shall submit an application for notification to the notifying authority of the Member State in which it is established.

2. The application shall be accompanied by a description of the activities to be performed, the assessment and/or verification procedures for which the body claims to be competent, an accreditation certificate, where one exists, issued by the national accreditation body within the meaning of Regulation (EC) No 765/2008, attesting that the body meets the requirements laid down in Article 43.

3. Where the body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 43.

*Article 48***Notification procedure**

1. Notifying authorities may notify only bodies which have satisfied the requirements laid down in Article 43.

2. They shall notify the Commission and the other Member States, notably using the electronic notification tool developed and managed by the Commission.

Exceptionally, for cases set out in point 3 of Annex V, for which the appropriate electronic tool is not available, a hard copy of the notification shall be accepted.

3. The notification shall include full details of the functions to be performed, reference to the relevant harmonised technical specification and, for the purposes of the system set out in Annex V, the essential characteristics for which the body is competent.

However, reference to the relevant harmonised technical specification is not required in the cases set out in point 3 of Annex V.

4. Where a notification is not based on an accreditation certificate as referred to in Article 47(2), the notifying authority shall provide the Commission and the other Member States with all documentary evidence which attests to the notified body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 43.

5. The body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within 2 weeks of notification where an accreditation certificate is used or within 2 months of notification where an accreditation certificate is not used.

Only such a body shall be considered as a notified body for the purpose of this Regulation.

6. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

*Article 49***Identification numbers and lists of notified bodies**

1. The Commission shall assign an identification number to each notified body.

It shall assign a single such number even where the body is notified under several Union acts.

2. The Commission shall make publicly available the list of bodies notified under this Regulation, including the identification numbers that have been allocated to them and the activities for which they have been notified, notably using the electronic notification tool developed and managed by the Commission.

The Commission shall ensure that this list is kept up-to-date.

#### Article 50

##### Changes to the notification

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 43, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw the notification as appropriate, depending on the seriousness of the failure to meet those requirements or to fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly, notably using the electronic notification tool developed and managed by the Commission.

2. In the event of withdrawal, restriction or suspension of notification or where the notified body has ceased its activity, the notifying Member State concerned shall take the appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

#### Article 51

##### Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.

2. The notifying Member State shall provide the Commission, on request, with all information related to the basis for notification or the maintenance of the competence of the body concerned.

3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.

4. Where the Commission ascertains that a notified body does not meet, or no longer meets, the requirements for its notification, it shall inform the notifying Member State

accordingly and request it to take the necessary corrective measures, including withdrawal of notification, if necessary.

#### Article 52

##### Operational obligations for notified bodies

1. Notified bodies shall carry out third party tasks in accordance with the systems of assessment and verification of constancy of performance provided for in Annex V.

2. Assessments and verifications of constancy of performance shall be carried out with transparency as regards the manufacturer, and in a proportionate manner, avoiding an unnecessary burden for economic operators. The notified bodies shall perform their activities taking due account of the size of the undertaking, the sector in which the undertaking operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing, the notified bodies shall nevertheless respect the degree of rigour required for the product by this Regulation and the part played by the product for the fulfilment of all basic requirements for construction works.

3. Where, in the course of the initial inspection of the manufacturing plant and of factory production control, a notified body finds that the manufacturer has not ensured the constancy of performance of the manufactured product, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate.

4. Where, in the course of the monitoring activity aiming at the verification of the constancy of performance of the manufactured product, a notified body finds that a construction product no longer has the same performance to that of the product-type, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw its certificate if necessary.

5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

#### Article 53

##### Information obligations for notified bodies

1. Notified bodies shall inform the notifying authority of the following:

(a) any refusal, restriction, suspension or withdrawal of certificates;



- (b) any circumstances affecting the scope of, and conditions for, notification;
- (c) any request for information on assessment and/or verification of constancy of performance activities carried out which they have received from market surveillance authorities;
- (d) on request, third party tasks in accordance with the systems of assessment and verification of constancy of performance carried out within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

2. Notified bodies shall provide the other bodies notified under this Regulation carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and for construction products covered by the same harmonised technical specification with relevant information on issues relating to negative and, on request, positive results from these assessments and/or verifications.

#### Article 54

##### Exchange of experience

The Commission shall provide for the organisation of exchange of experience between the Member States' national authorities responsible for policy on notification.

#### Article 55

##### Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between bodies notified pursuant to Article 39 are put into place and properly operated in the form of a group of notified bodies.

Member States shall ensure that the bodies notified by them participate in the work of that group, directly or by means of designated representatives, or shall ensure that the representatives of notified bodies are informed thereof.

#### CHAPTER VIII

##### MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES

#### Article 56

##### Procedure to deal at national level with construction products presenting a risk

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 20 of Regulation (EC) No 765/2008 or where they have sufficient reason to

believe that a construction product covered by a harmonised standard or for which a European Technical Assessment has been issued does not achieve the declared performance and presents a risk for the fulfilment of the basic requirements for construction works covered by this Regulation, they shall carry out an evaluation in relation to the product concerned covering the respective requirements laid down by this Regulation. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the construction product does not comply with the requirements laid down in this Regulation, they shall without delay require the relevant economic operator to take all appropriate corrective actions to bring the product into compliance with those requirements, notably with the declared performance, or to withdraw the product from the market, or recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the notified body accordingly, if a notified body is involved.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second subparagraph of this paragraph.

2. Where the market surveillance authorities consider that the non-compliance is not limited to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.

3. The economic operator shall ensure that all appropriate corrective action is taken in respect of all the construction products concerned which that economic operator has made available on the market throughout the Union.

4. Where the relevant economic operator, within the period referred to in the second subparagraph of paragraph 1, does not take adequate corrective action, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the construction product on the national market or to withdraw the construction product from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5. The information referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant construction product, the origin of the construction product, the nature of the non-compliance alleged and the risk involved, the nature and duration of national measures taken as well as the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:

- (a) failure of the product to achieve the declared performance and/or to meet the requirements related to the fulfilment of basic requirements for construction works laid down in this Regulation;
- (b) shortcomings in the harmonised technical specifications or in the Specific Technical Documentation.

6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the construction product concerned, and, in the event of disagreement with the notified national measure, of their objections.

7. Where, within 15 working days of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State in relation to the construction product concerned, that measure shall be deemed justified.

8. Member States shall ensure that appropriate restrictive measures are taken without delay in respect of the construction product concerned, such as withdrawal of the product from their market.

#### Article 57

##### Union safeguard procedure

1. Where, on completion of the procedure set out in Article 56(3) and (4), objections are raised against a measure taken by a Member State or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide whether the measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator(s).

2. If the national measure is considered justified, all Member States shall take the necessary measures to ensure that the non-compliant construction product is withdrawn from their markets and shall inform the Commission accordingly. If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.

3. Where the national measure is considered to be justified and the non-compliance of the construction product is attributed to shortcomings in the harmonised standards as referred to in Article 56(5)(b), the Commission shall inform the relevant European standardisation body or bodies and shall bring the matter before the Committee set up pursuant to Article 5 of Directive 98/34/EC. That Committee shall consult with the relevant European standardisation body or bodies and deliver its opinion without delay.

Where the national measure is considered to be justified and the non-compliance of the construction product is attributed to shortcomings in the European Assessment Document or in the Specific Technical Documentation as referred to in Article 56(5)(b), the Commission shall bring the matter before the Standing Committee on Construction and subsequently adopt the appropriate measures.

#### Article 58

##### Complying construction products which nevertheless present a risk to health and safety

1. Where, having performed an evaluation pursuant to Article 56(1), a Member State finds that, although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic requirements for construction works, to the health or safety of persons or to other aspects of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk, to withdraw the construction product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, which it may prescribe.

2. The economic operator shall ensure that any corrective action is taken in respect of all the construction products concerned which that economic operator has made available on the market throughout the Union.

3. The Member State shall immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the construction product concerned, the origin and the supply chain of the product, the nature of the risk involved and the nature and duration of the national measures taken.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide whether the measure is justified or not and, where necessary, propose appropriate measures.

5. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator(s).

#### Article 59

##### Formal non-compliance

1. Without prejudice to Article 56, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

- (a) the CE marking has been affixed in breach of Article 8 or 9;
- (b) the CE marking has not been affixed, when required, in accordance with Article 8(2);
- (c) without prejudice to Article 5, the declaration of performance has not been drawn up, when required, in accordance with Article 4;
- (d) the declaration of performance has not been drawn up in accordance with Articles 4, 6 and 7;
- (e) the technical documentation is either not available or not complete.

2. Where the non-compliance referred to in paragraph 1 continues, the Member State shall take all appropriate measures to restrict or prohibit the making available on the market of the construction product or ensure that it is recalled or withdrawn from the market.

#### CHAPTER IX

##### FINAL PROVISIONS

#### Article 60

##### Delegated acts

For the purposes of achieving the objectives of this Regulation, in particular removing and avoiding restrictions on making construction products available on the market, the following matters shall be delegated to the Commission in accordance with Article 61, and subject to the conditions laid down in Articles 62 and 63:

- (a) the determination, where appropriate, of the essential characteristics or threshold levels within specific families of construction products, in relation to which, in accordance with Articles 3 to 6, the manufacturer shall declare, in relation to their intended use, by levels or classes, or in a description, the performance of the manufacturer's product when it is placed on the market;
- (b) the conditions on which a declaration of performance may be electronically processed, in order to make it available on a web site in accordance with Article 7;
- (c) the amendment of the period for which the manufacturer shall keep the technical documentation and the declaration of performance after the construction product has been placed on the market, in accordance with Article 11, based on the expected life or the part played by the construction product in the construction works;
- (d) the amendment of Annex II and where necessary the adoption of supplementary procedural rules in accordance with Article 19(3) in order to ensure compliance with the principles in Article 20, or the application in practice of the procedures set out in Article 21;
- (e) the adaptation of Annex III, table 1 of Annex IV, and Annex V in response to technical progress;
- (f) the establishment and adaptation of classes of performance in response to technical progress in accordance with Article 27(1);
- (g) the conditions on which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing in accordance with Article 27(5), provided that the fulfilment of the basic requirements for construction works is not thereby jeopardised;
- (h) the adaptation, establishment and revision of the systems of assessment and verification of constancy of performance in accordance with Article 28, relating to a given product, a given product family or a given essential characteristic, and in accordance with:
  - (i) the importance of the part played by the product or those essential characteristics with respect to the basic requirements for construction works;
  - (ii) the nature of the product;

- (iii) the effect of the variability of the essential characteristics of the construction product during the expected life of the product; and
- (iv) the susceptibility to defects in the product's manufacture.

#### Article 61

##### Exercise of the delegation

1. The power to adopt delegated acts referred to in Article 60 shall be conferred on the Commission for a period of 5 years from 24 April 2011. The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the 5-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 62.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 62 and 63.

#### Article 62

##### Revocation of the delegation

1. The delegation of power referred to in Article 60 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

#### Article 63

##### Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification.

At the initiative of the European Parliament or the Council, that period shall be extended by 3 months.

2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

#### Article 64

##### Committee

1. The Commission shall be assisted by a Standing Committee on Construction.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3. Member States shall ensure that the members of the Standing Committee on Construction are able to carry out their functions in a manner that avoids conflicts of interest, particularly in respect of the procedures for obtaining the CE marking.

#### Article 65

##### Repeal

1. Directive 89/106/EEC is repealed.

2. References to the repealed Directive shall be construed as references to this Regulation.

#### Article 66

##### Transitional provisions

1. Construction products which have been placed on the market in accordance with Directive 89/106/EEC before 1 July 2013 shall be deemed to comply with this Regulation.

2. Manufacturers may draw up a declaration of performance on the basis of a certificate of conformity or a declaration of conformity, which has been issued before 1 July 2013 in accordance with Directive 89/106/EEC.

3. Guidelines for European technical approval published before 1 July 2013 in accordance with Article 11 of Directive 89/106/EEC may be used as European Assessment Documents.

4. Manufacturers and importers may use European technical approvals issued in accordance with Article 9 of Directive 89/106/EEC before 1 July 2013 as European Technical Assessments throughout the period of validity of those approvals.

*Article 67*

**Reporting by the Commission**

1. By 25 April 2014, the Commission shall assess the specific need for information on the content of hazardous substances in construction products and consider the possible extension of the information obligation provided for in Article 6(5) to other substances, and shall report thereon to the European Parliament and to the Council. In its assessment, the Commission shall take into account, inter alia, the need to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials.

If appropriate, the report shall, within 2 years of its submission to the European Parliament and to the Council, be followed up by appropriate legislative proposals.

2. By 25 April 2016, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation, including on Articles 19, 20, 21, 23, 24 and 37 on the basis of reports provided by Member States, as well as by other relevant stakeholders, accompanied, where relevant, by appropriate proposals.

*Article 68*

**Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

However, Articles 3 to 28, Articles 36 to 38, Articles 56 to 63, Articles 65 and 66, as well as Annexes I, II, III and V shall apply from 1 July 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 9 March 2011.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
GYŐRI E.



## ANNEX I

**BASIC REQUIREMENTS FOR CONSTRUCTION WORKS**

Construction works as a whole and in their separate parts must be fit for their intended use, taking into account in particular the health and safety of persons involved throughout the life cycle of the works. Subject to normal maintenance, construction works must satisfy these basic requirements for construction works for an economically reasonable working life.

## 1. Mechanical resistance and stability

The construction works must be designed and built in such a way that the loadings that are liable to act on them during their constructions and use will not lead to any of the following:

- (a) collapse of the whole or part of the work;
- (b) major deformations to an inadmissible degree;
- (c) damage to other parts of the construction works or to fittings or installed equipment as a result of major deformation of the load-bearing construction;
- (d) damage by an event to an extent disproportionate to the original cause.

## 2. Safety in case of fire

The construction works must be designed and built in such a way that in the event of an outbreak of fire:

- (a) the load-bearing capacity of the construction can be assumed for a specific period of time;
- (b) the generation and spread of fire and smoke within the construction works are limited;
- (c) the spread of fire to neighbouring construction works is limited;
- (d) occupants can leave the construction works or be rescued by other means;
- (e) the safety of rescue teams is taken into consideration.

## 3. Hygiene, health and the environment

The construction works must be designed and built in such a way that they will, throughout their life cycle, not be a threat to the hygiene or health and safety of workers, occupants or neighbours, nor have an exceedingly high impact, over their entire life cycle, on the environmental quality or on the climate during their construction, use and demolition, in particular as a result of any of the following:

- (a) the giving-off of toxic gas;
- (b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or outdoor air;
- (c) the emission of dangerous radiation;
- (d) the release of dangerous substances into ground water, marine waters, surface waters or soil;
- (e) the release of dangerous substances into drinking water or substances which have an otherwise negative impact on drinking water;
- (f) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid waste;
- (g) dampness in parts of the construction works or on surfaces within the construction works.

#### 4. Safety and accessibility in use

The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents or damage in service or in operation such as slipping, falling, collision, burns, electrocution, injury from explosion and burglaries. In particular, construction works must be designed and built taking into consideration accessibility and use for disabled persons.

#### 5. Protection against noise

The construction works must be designed and built in such a way that noise perceived by the occupants or people nearby is kept to a level that will not threaten their health and will allow them to sleep, rest and work in satisfactory conditions.

#### 6. Energy economy and heat retention

The construction works and their heating, cooling, lighting and ventilation installations must be designed and built in such a way that the amount of energy they require in use shall be low, when account is taken of the occupants and of the climatic conditions of the location. Construction works must also be energy-efficient, using as little energy as possible during their construction and dismantling.

#### 7. Sustainable use of natural resources

The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and in particular ensure the following:

- (a) reuse or recyclability of the construction works, their materials and parts after demolition;
  - (b) durability of the construction works;
  - (c) use of environmentally compatible raw and secondary materials in the construction works.
-

## ANNEX II

**PROCEDURE FOR ADOPTING A EUROPEAN ASSESSMENT DOCUMENT****1. Request for a European Technical Assessment**

When a manufacturer makes a request for a European Technical Assessment to any TAB for a construction product, and after the manufacturer and the TAB (hereinafter referred to as the 'responsible TAB') have signed an agreement of commercial secrecy and confidentiality, unless the manufacturer decides otherwise, the manufacturer shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the manufacturer and details of the factory production control the manufacturer intends to apply.

**2. Contract**

For construction products referred to in Article 21(1)(c), within 1 month from the reception of the technical file, a contract shall be concluded between the manufacturer and the responsible TAB for the production of the European Technical Assessment, defining the work programme for drawing up the European Assessment Document, including:

- the organisation of work within the organisation of TABs,
- the composition of the workgroup to be established within the organisation of TABs, designated for the product area in question,
- the coordination of TABs.

**3. Work programme**

After the conclusion of the contract with the manufacturer, the organisation of TABs shall inform the Commission of the work programme for drawing up the European Assessment Document, the schedule for its execution and indicating the assessment programme. This communication shall take place within 3 months of receipt of the request for a European Technical Assessment.

**4. The draft European Assessment Document**

The organisation of TABs shall finalise a draft European Assessment Document by means of the working group coordinated by the responsible TAB and shall communicate such draft to the parties concerned within 6 months of the date the Commission was informed of the work programme.

**5. Commission Participation**

A Commission representative may participate, as observer, to all the parts of the execution of the work programme.

**6. Extension and delay**

Any delay in relation to the time limits set in Sections 1 to 4 in this Annex shall be reported by the working group to the organisation of TABs and to the Commission.

If an extension of the time limits for developing the European Assessment Document can be justified, notably by the absence of a Commission decision on the applicable system of assessment and verification of constancy of performance for the construction product or by the need to develop a new test method, an extended time limit shall be set by the Commission.

**7. Amendments and adoption of a European Assessment Document**

The responsible TAB shall communicate the draft European Assessment Document to the manufacturer, who shall have 15 working days to react thereto. Thereafter, the organisation of TABs shall:

- (a) if applicable, inform the manufacturer as to how his reactions have been taken into account;
- (b) adopt the draft European Assessment Document; and
- (c) send a copy to the Commission.

If, within 15 working days of receipt, the Commission communicates to the organisation of TABs its observations on the draft European Assessment Document, the organisation of TABs, after having been given the opportunity to comment, shall amend the draft accordingly and shall send a copy of the adopted European Assessment Document to the manufacturer and to the Commission.

8. Final European Assessment Document to be published

As soon as the first European Technical Assessment is issued by the responsible TAB on the basis of the adopted European Assessment Document, that European Assessment Document shall be adjusted, if appropriate, based on experiences gained. The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union, for publication of its reference. The organisation of TABs shall keep the European Assessment Document available by electronic means as soon as the product has been CE-marked.

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ANNEX III

DECLARATION OF PERFORMANCE

No. ....

- 1. Unique identification code of the product-type: .....
- 2. Type, batch or serial number or any other element allowing identification of the construction product as required pursuant to Article 11(4):  
.....
- 3. Intended use or uses of the construction product, in accordance with the applicable harmonised technical specification, as foreseen by the manufacturer:  
.....  
.....
- 4. Name, registered trade name or registered trade mark and contact address of the manufacturer as required pursuant to Article 11(5):  
.....  
.....
- 5. Where applicable, name and contact address of the authorised representative whose mandate covers the tasks specified in Article 12(2):  
.....  
.....
- 6. System or systems of assessment and verification of constancy of performance of the construction product as set out in Annex V:  
.....  
.....
- 7. In case of the declaration of performance concerning a construction product covered by a harmonised standard:  
.....  
(name and identification number of the notified body, if relevant)  
performed ..... under system .....  
(description of the third party tasks as set out in Annex V)  
and issued .....  
(certificate of constancy of performance, certificate of conformity of the factory production control, test/calculation reports – as relevant)
- 8. In case of the declaration of performance concerning a construction product for which a European Technical Assessment has been issued:  
.....  
(name and identification number of the Technical Assessment Body, if relevant)  
issued .....  
(reference number of the European Technical Assessment)  
on the basis of .....  
(reference number of the European Assessment Document)



performed ..... under system .....  
(description of the third party tasks as set out in Annex V)

and issued .....  
(certificate of constancy of performance, certificate of conformity of the factory production control, test/calculation reports – as relevant)

9. Declared performance

Notes to the table.

- 1. Column 1 shall contain the list of essential characteristics as determined in the harmonised technical specifications for the intended use or uses indicated in point 3 above.
- 2. For each essential characteristic listed in column 1 and in compliance with the requirements of Article 6, column 2 shall contain the declared performance, expressed by level or class, or in a description, related to the corresponding essential characteristics. The letters 'NPD' (No Performance Determined) shall be indicated where no performance is declared.
- 3. For each essential characteristic listed in column 1, column 3 shall contain:
  - (a) dated reference of the corresponding harmonised standard and, where relevant, the reference number of the Specific or Appropriate Technical Documentation used;
  - or
  - (b) dated reference of the corresponding European Assessment Document where available and reference number of the European Technical Assessment used.

| Essential characteristics<br>(see Note 1) | Performance<br>(see Note 2) | Harmonised technical specification<br>(see Note 3) |
|---|-----------------------------|--|
|   |                             |  |
|   |                             |  |
|   |                             |  |

Where pursuant to Article 37 or 38 the Specific Technical Documentation has been used, the requirements with which the product complies:

.....  
.....

10. The performance of the product identified in points 1 and 2 is in conformity with the declared performance in point 9.

This declaration of performance is issued under the sole responsibility of the manufacturer identified in point 4.

Signed for and on behalf of the manufacturer by:

.....  
(name and function)

.....  
(place and date of issue)

.....  
(signature)

\_\_\_\_\_

## ANNEX IV

**PRODUCT AREAS AND REQUIREMENTS FOR TABS****Table 1 — Product areas**

| AREA CODE | PRODUCT AREA  |
|-----------|---|
| 1         | PRECAST NORMAL/LIGHTWEIGHT/AUTOCLAVED AERATED CONCRETE PRODUCTS.  |
| 2         | DOORS, WINDOWS, SHUTTERS, GATES AND RELATED BUILDING HARDWARE.  |
| 3         | MEMBRANES, INCLUDING LIQUID APPLIED AND KITS (FOR WATER AND/OR WATER VAPOUR CONTROL).   |
| 4         | THERMAL INSULATION PRODUCTS.<br>COMPOSITE INSULATING KITS/SYSTEMS.  |
| 5         | STRUCTURAL BEARINGS.<br>PINS FOR STRUCTURAL JOINTS.   |
| 6         | CHIMNEYS, FLUES AND SPECIFIC PRODUCTS.  |
| 7         | GYPSUM PRODUCTS.  |
| 8         | GEOTEXTILES, GEOMEMBRANES, AND RELATED PRODUCTS.  |
| 9         | CURTAIN WALLING/CLADDING/STRUCTURAL SEALANT GLAZING.  |
| 10        | FIXED FIRE FIGHTING EQUIPMENT (FIRE ALARM/DETECTION, FIXED FIREFIGHTING, FIRE AND SMOKE CONTROL AND EXPLOSION SUPPRESSION PRODUCT). |
| 11        | SANITARY APPLIANCES.  |
| 12        | CIRCULATION FIXTURES: ROAD EQUIPMENT.   |
| 13        | STRUCTURAL TIMBER PRODUCTS/ELEMENTS AND ANCILLARIES.  |
| 14        | WOOD BASED PANELS AND ELEMENTS.   |
| 15        | CEMENT, BUILDING LIMES AND OTHER HYDRAULIC BINDERS.   |
| 16        | REINFORCING AND PRESTRESSING STEEL FOR CONCRETE (AND ANCILLARIES).<br>POST TENSIONING KITS.   |
| 17        | MASONRY AND RELATED PRODUCTS.<br>MASONRY UNITS, MORTARS, AND ANCILLARIES.   |
| 18        | WASTE WATER ENGINEERING PRODUCTS.   |
| 19        | FLOORINGS.  |
| 20        | STRUCTURAL METALLIC PRODUCTS AND ANCILLARIES.   |
| 21        | INTERNAL & EXTERNAL WALL AND CEILING FINISHES. INTERNAL PARTITION KITS.   |
| 22        | ROOF COVERINGS, ROOF LIGHTS, ROOF WINDOWS, AND ANCILLARY PRODUCTS.<br>ROOF KITS.  |
| 23        | ROAD CONSTRUCTION PRODUCTS.   |
| 24        | AGGREGATES.   |
| 25        | CONSTRUCTION ADHESIVES.   |

| AREA CODE | PRODUCT AREA  |
|-----------|---|
| 26        | PRODUCTS RELATED TO CONCRETE, MORTAR AND GROUT.                                       |
| 27        | SPACE HEATING APPLIANCES.   |
| 28        | PIPES-TANKS AND ANCILLARIES NOT IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION. |
| 29        | CONSTRUCTION PRODUCTS IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.           |
| 30        | FLAT GLASS, PROFILED GLASS AND GLASS BLOCK PRODUCTS.                                  |
| 31        | POWER, CONTROL AND COMMUNICATION CABLES.  |
| 32        | SEALANTS FOR JOINTS.  |
| 33        | FIXINGS.  |
| 34        | BUILDING KITS, UNITS, AND PREFABRICATED ELEMENTS.                                     |
| 35        | FIRE STOPPING, FIRE SEALING AND FIRE PROTECTIVE PRODUCTS.<br>FIRE RETARDANT PRODUCTS. |

Table 2 — Requirements for TABs

| Competence                    | Description of competence  | Requirement   |
|-------------------------------|--|---|
| 1. Analysing risks            | Identify the possible risks and benefits for the use of innovative construction products in the absence of established/consolidated technical information regarding their performance when installed in construction works.  | A TAB shall be established under national law and have legal personality. It shall be independent from the stakeholders and from any particular interests.<br><br>In addition, a TAB shall have staff with:   |
| 2. Setting technical criteria | Transform the outcome of the risk analysis into technical criteria for evaluating behaviour and performance of the construction products regarding the fulfilment of applicable national requirements;<br><br>provide the technical information needed by those participating in the building process as potential users of the construction products (manufacturers, designers, contractors, installers). | (a) objectivity and sound technical judgement;<br>(b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States where it is designated, concerning product areas for which it is to be designated;<br>(c) general understanding of construction practice and detailed technical knowledge, concerning product areas for which it is to be designated;  |
| 3. Setting assessment methods | Design and validate appropriate methods (tests or calculations) to assess performance for essential characteristics of construction products, taking into account the current state of the article.  | (d) detailed knowledge of specific risks involved and the technical aspects of the construction process;<br>(e) detailed knowledge of the existing harmonised standards and test methods within the product areas for which it is to be designated;<br>(f) appropriate linguistic skills.<br><br>The remuneration of the TAB personnel shall not depend on the number of the assessments carried out or on the results of such assessments. |

| Competence   | Description of competence   | Requirement   |
|--|---|---|
| 4. Determining the specific factory production control | Understand and evaluate the manufacturing process of the specific product in order to identify appropriate measures ensuring product constancy through the given manufacturing process. | A TAB shall have staff with appropriate knowledge of the relationship between the manufacturing processes and product characteristics related to factory production control.  |
| 5. Assessing the product                               | Assess the performance for essential characteristics of construction products on the basis of harmonised methods against harmonised criteria.   | In addition to the requirements listed in points 1, 2 and 3, a TAB shall have access to the necessary means and equipment for the assessment of the performance for essential characteristics of construction products within the product areas for which it is to be designated.   |
| 6. General management                                  | Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.   | <p>A TAB shall have:</p> <ul style="list-style-type: none"> <li>(a) a proven record of respect of good administrative behaviour;</li> <li>(b) a policy and the supporting procedures to ensure confidentiality of sensitive information within the TAB and all its partners;</li> <li>(c) a document control system to ensure registration, traceability, maintenance and archiving of all relevant documents;</li> <li>(d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods;</li> <li>(e) a procedure to deal objectively with appeals and complaints.</li> </ul> |

## ANNEX V

**ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE**

1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE
  - 1.1. System 1+ – Declaration of the performance of the essential characteristics of the construction product by the manufacturer on the basis of the following items:
    - (a) the manufacturer shall carry out:
      - (i) factory production control;
      - (ii) further testing of samples taken at the factory in accordance with the prescribed test plan;
    - (b) the notified product certification body shall issue the certificate of constancy of performance of the product on the basis of:
      - (i) determination of the product-type on the basis of type testing (including sampling), type calculation, tabulated values or descriptive documentation of the product;
      - (ii) initial inspection of the manufacturing plant and of factory production control;
      - (iii) continuous surveillance, assessment and evaluation of factory production control;
      - (iv) audit-testing of samples taken before placing the product on the market.
  - 1.2. System 1 – Declaration of the performance of the essential characteristics of the construction product by the manufacturer on the basis of the following items:
    - (a) the manufacturer shall carry out:
      - (i) factory production control;
      - (ii) further testing of samples taken at the factory by the manufacturer in accordance with the prescribed test plan;
    - (b) the notified product certification body shall issue the certificate of constancy of performance of the product on the basis of:
      - (i) determination of the product type on the basis of type testing (including sampling), type calculation, tabulated values or descriptive documentation of the product;
      - (ii) initial inspection of the manufacturing plant and of factory production control;
      - (iii) continuous surveillance, assessment and evaluation of factory production control.
  - 1.3. System 2+ – Declaration of the performance of the essential characteristics of the construction product by the manufacturer on the basis of the following items:
    - (a) the manufacturer shall carry out:
      - (i) determination of the product-type on the basis of type testing (including sampling), type calculation, tabulated values or descriptive documentation of the product;
      - (ii) factory production control;
      - (iii) testing of samples taken at the factory in accordance with the prescribed test plan;



- (b) the notified production control certification body shall issue the certificate of conformity of the factory production control on the basis of:
    - (i) initial inspection of the manufacturing plant and of factory production control;
    - (ii) continuous surveillance, assessment and evaluation of factory production control.
- 1.4. System 3 – Declaration of the performance of the essential characteristics of the construction product by the manufacturer on the basis of the following items:
- (a) the manufacturer shall carry out factory production control;
  - (b) the notified testing laboratory shall carry out determination of the product-type on the basis of type testing (based on sampling carried out by the manufacturer), type calculation, tabulated values or descriptive documentation of the product.
- 1.5. System 4 – Declaration of the performance of the essential characteristics of the construction product by the manufacturer on the basis of the following items:
- (a) the manufacturer shall carry out:
    - (i) determination of the product-type on the basis of type testing, type calculation, tabulated values or descriptive documentation of the product;
    - (ii) factory production control;
  - (b) no tasks for the notified body.
2. BODIES INVOLVED IN THE ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE
- With respect to the function of notified bodies involved in the assessment and verification of constancy of performance for construction products, distinction shall be made between:
- (1) product certification body: a governmental or non-governmental notified body, possessing the necessary competence and responsibility to carry out a product certification in accordance with given rules of procedure and management;
  - (2) factory production control certification body: a notified body, governmental or non-governmental, possessing the necessary competence and responsibility to carry out factory production control certification in accordance to given rules of procedure and management;
  - (3) testing laboratory: a notified laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of materials or construction products.
3. CASES OF ESSENTIAL CHARACTERISTICS WHERE REFERENCE TO A RELEVANT HARMONISED TECHNICAL SPECIFICATION IS NOT REQUIRED
- 1. Reaction to fire.
  - 2. Resistance to fire.
  - 3. External fire performance.
  - 4. Noise absorption.
  - 5. Emissions of dangerous substances.
-