

EOTA Position on possible amendment of Annex II of the Construction Products Regulation (EU) 305/2011 (CPR)

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I. Main concern (Introduction)

The Construction Products Regulation (EU) No 305/2011 (CPR) came fully into force in 2013. Over the last 2 ½ years EOTA being the organization of Technical Assessment Bodies (TABs) and Technical Assessment Bodies in the Member States as well as involved stakeholders had the possibility to gather experience in the practical implementation of the Regulation. The experience in the use of the Annex II of the Regulation as the obligatory rule for the procedure of drafting and adoption of European Assessment Documents (EAD) and their publication (together with Art. 22 of the Regulation) is resulting in conclusions for possible amendments of this Annex II, as introduced thereafter.

This is related on one hand to the procedure of drafting the EAD, but also on the other hand to the appropriate use of adopted EADs by the various bodies involved (e.g. for notification procedure for potential notified bodies; for market surveillance bodies when Declaration of Performances referred to issued European Technical Assessments (ETA) and related EAD are concerned, etc.).

The Annex II shall serve to the involved industry (manufacturers having applied for an ETA) in an appropriate way, means avoiding a too much burdensome and delaying procedure, in order to have a well-established tool for CE marking of products not covered by harmonized standards.

A smart system should ensure for manufacturers to CE mark their construction products within a reasonable time schedule, whereas the preparation of the concerned harmonized technical specifications (EADs) and ensuring their fast publication of their references in the Official Journal of the European Union is considered as the main goal, implementing the conditions given in Art. 31 of the Regulation (EU) No 305/2011.

This means, in the amendment of the Annex II focus should be given on

- a) to minimize the administrative burden in procedural affairs and in the timing and
- b) to establish clearly the appropriate and on time involvement

for **all** relevant stakeholders (TABs, EOTA, EC, GNB, NB).

II. Therefore (Consequences)

1. The development of EADs as harmonized technical specifications should support the intention of manufacturer(s) for individual (innovative) products but also, where appropriate to leave the “tailor-made” EAD concept, a concerned group of manufacturers with common interest, to CE mark their product(s) and to demonstrate compliance of their product with applicable requirements within the Member States in a predictable/determinable time frame.
2. The needs of Art. 4 of the Regulation shall be taken into account appropriately: Means, for drawing up of a Declaration of Performance once the EAD has been adopted and the ETA has been issued, including the involvement of bodies undertaking third party tasks in the attestation and verification of constancy of performance for AVCP systems 1+, 1 and 2+ the Annex II may foresee appropriate procedures. The involvement of the notified body should be foreseen in a way that this need will not become a bottleneck.
3. Dissolving of obligations regarding confidentiality issues in the further development of already adopted EADs (e.g. amendments of EADs, possible clustering of adopted EADs for product groups with same intended use).

Thus, EOTA would be interested to undertake action for clarifying certain provisions in the Annex II and elaborate a concerned proposal for an amendment of Annex II. This is supported by concerned statement of the European Commission to EOTA on this issue.

III. Concerns

1 – Development and adoption of EAD – Art. 20/Art 21 (1) c and Annex II:

- Interaction between principles given in in Art. 20 of the Regulation and details in Annex II: Clearing up of principles and details necessary.
- Consultations according to Art. 21(1)c – Procedural questions and timing (e.g. establishment of new AVCP decisions).
- Consultation of the European Commission: Development of the consultation in the direction of observations in the frame of regular evaluations of the process, but not on each individual EAD. Clarification of the role of the Commission in the EAD adoption phase Annex II cl. 8.
- Well-established procedure for the involvement of Commission representative in the development of EADs and not at its end.
- Involvement of the manufacturer in the development of the EAD and not at its end (in particular relevant in case of not tailor-made EADs).
- Consideration of appropriate handling of confidentiality obligations for the development of EADs in case of parallel and similar applications for ETAs.
- Establishment of procedure in case of development of EAD for concerned group of manufacturers with common interest, including appropriate involvement of the industry.
- Cleaning up of Annex II with respect to items referring to the handling of the ETA request us such: Annex II solely referring to the development of EADs.

2 – Publication of EAD references in OJEU and use of adopted EADs for notification procedures – Annex II.8:

- Clarification of Annex II cl. 8 for publication of references of EADs in OJEU: Resolving of contradictions given in current version of cl. 8.

- Appropriate involvement of notified bodies and use of adopted EADs by notified bodies, when relevant (AVCP systems 1+, 1 and 2+).
- Clarification in the use of EADs by Market Surveillance bodies on basis of issued ETAs and related DoPs.

3 – Amendment of adopted EADs:

- Amendment of EADs based on individual request of manufacturer and/or based on need to cope with updated state-of-the-art and/or new regulations in MS on basis of initiative of EOTA. Annex II should establish basic cornerstones. Therefore, possible procedure for amendments of EADs shall be established, independent of the conditions given in Art. 21(2) and Art. 26 of the Regulation.
- Consideration of appropriate handling of confidentiality obligations for the development of EADs in case of amendments of EADs.

Background: Amendments of harmonized technical specifications, such as EADs, after publication of their reference in the OJEU are likely and necessary in order to ensure state-of-art within the harmonization process. Such amendments might be already requested when the EAD has been adopted and is further processed for publication. Thus, amending of harmonized technical specifications creates a constantly and repeating circuit (helix of development). Art 21, 26 and Annex II explicitly considers individual ETA requests only and seem to be not covering this issue. The principles of Art 20 have to be applied.

EOTA is the **European Organisation for Technical Assessments** registered in Brussels (Belgium).

More than 50 Technical Assessment Bodies (**TAB**) assess construction products, systems and kits - not or not fully covered by harmonized standards (hEN) - upon **individual requests** of manufacturers for a European Technical Assessment (**ETA**). In parallel, they document the methods and criteria for assessing the performance of such products in so called European Assessment Documents (**EAD**) for public information. References of all issued ETAs are stored in the ETA Public Database, which is managed by EOTA.

Once adopted by EOTA and the European Commission the references of EADs are cited in the Official Journal of the European Union (**OJEU**), and if an ETA has been issued against. The EOTA Secretariat provides the coordination tools for TABs necessary for the EAD development and facilitates the communication towards the European Commission.

More information on www.eota.eu.