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Position paper of EOTA related to the „Supporting study for the evaluation of the relevance of EOTA tasks“

BRE, ecorys, vito – December 2016

Introduction

According to Art. 34 (2) of the Construction Products Regulation[1] (CPR) it is a task for the Commission Services to „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 …”.

In order to comply with this task the Commission Services have contracted the aforementioned consortium under the lead of BRE to provide them with a relevant study. This study has been finished in December 2016 and made available by the Commission Services to stakeholders.

For the definition of the tasks of EOTA which had to be evaluated the study makes reference to Art. 31 (4) CPR. Furthermore, Art. 20 (1) CPR is used in order to provide for key indicators related to the procedures of EOTA, here with a focus on the core task of EOTA, i.e. to elaborate and adopt EADs.

EOTA appreciates the general outcomes of the study:

- The EOTA CE marking route is important to gaining access to international markets as well as the EU market. It has been confirmed that this was related to the value of the ETA, as well as the CE mark itself.
- EOTA is fulfilling the objective set out in Art 31(1) of the CPR and is carrying out all of the tasks foreseen in Art 31(4) of the CPR.
- Manufacturers demonstrated benefits from being able to CE Mark using ETAs through the development of EADs, and Technical Assessment Bodies (TABs) saw benefits from the co-ordination activities of EOTA.

These very positive results have been accompanied by proposals related to structure and procedures of EOTA which are commented on in the following.

Proposals related to structure and procedures of EOTA

1. *There should be better communication with CEN, GNB, and AdCo CPR to increase effectiveness and efficiency. This could include consultation on the scope of proposed EADs at an early stage to prevent overlaps in the work of both EOTA and CEN.*
   Comment: EOTA is in contact with the said organisations. However, the proposed consultations would not be in line with the provisions of the CPR requesting EOTA to maintain a high level of confidentiality. I.e., the mere fact that an ETA application has been made as well as, even more, its scope and, of course, the content of the subsequent procedure for elaboration and adoption of an EAD are to be treated as confidential.
2. *Comments made by the EC on EADs should be collated and disseminated to all TABs as part of the best practice task.*
   Comment: This is done regularly by the EOTA secretariat.

[1] **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**

3. *There should be greater co-operation between TABs in the development of ETAs to reduce overlap and duplication. This could be achieved by the development of a logging system which allowed EOTA to identify when EADs are being for similar products.*
   Comment: An overlap of ETAs does not and cannot exist because ETAs are issued for a specific manufacturer and for a specific and clearly identified product with a specific intended use. It might be very well the case that a similar ETA covering the same intended use and dealing with the same set of essential characteristics is to be issued for another manufacturer.
   As far as a possible overlap in the scope of EADs is concerned, this is avoided by coordinating the work of TABs in the Technical Board of EOTA and by checks of the EOTA secretariat which will in the future be supported by implementing a new electronic filing system (SharePoint).
4. *Transparency: the development of EADs needs to be more tightly controlled with timescales and input made clear to manufacturers at the outset. This may require greater resources to allow the timescales set out in CPR Annex II to be adhered to by EOTA, TABs and the EC.*
   Comment: That's correct. However, most uncertainties related to the time schedule of EAD development procedures are based on comments of the EC services not within the time frame as given in Annex II no 7 CPR. Also the procedures set out in Art. 27 of the CPR, when relevant for the development of an EAD, are to be considered as bottleneck for a timely finalization of an EAD.
5. *EOTA should have greater technical expertise, either by the establishment of product specific groups within the technical board or by changing the terms of reference of the EOTA consultant in order to provide technical support.*
   Comment: Since years the structure of EOTA comprises Working Groups dedicated to product families and set up by representatives of the TABs designated for the respective product family. Besides those WGs, Project Teams have been established with the task to deal on a more general level with horizontal issues as e.g. fire safety or dangerous substances or issues related to BWR 7 which have not been dealt with under the CPD. The EOTA consultant is not under contract with EOTA but under contract with the Commission Services.
6. *The systems in place to control the financing of EOTA, the financing of the development of EADs, and the funding of TABs should be reviewed and strengthened. In particular, consideration should be given to stronger controls to confirm the expenditure by TABs and EOTA when developing EADs. Some form of independent third party involvement in the governance of EOTA should be considered (non-executive directors) with a specific role to insure accountability and transparency in expenditure within the limits of confidentiality.*
   Comment: The financing of EOTA is controlled externally by an auditor and - as concerns the EU grant report - as well as by the Commission Services. TABs get reimbursed for the development of EADs on a flat-rate basis, as agreed within EOTA and with the Commission Services. The EOTA Treasurer is supported by the Financial Working Group having financial experts from TABs amongst its members. In general, the funding of TABs is not provided for in the CPR and is, thus, a matter of the TAB‘s specific situation.
7. *The EOTA tasks set out in the Grant Agreements could be more clearly linked to the CPR objectives – simplify and clarify the existing framework, and improve the transparency and the effectiveness of the organisation of TABs in completing the tasks set out in CPR Art 31(4).*
   Comment: This would be a matter of negotiations with the Commission Services. However, the tasks of EOTA are clearly set out in the CPR. Furthermore, possible changes in the concept for the Grant need to be evaluated regarding their effectiveness in advance.
8. *The possibility of simplified procedures (analogous to those in the CPR for hENs) for SMEs should be considered. Confidentiality will make the sharing of test data difficult but clarity on allowing micro-enterprises and SMEs to use Art 37 and Art 38 would be beneficial.*
   Comment: A precondition for the application of Art. 37 and 38 CPR is a fully applicable harmonised standard. Under this condition, those articles provide for specific possibilities. However, an ETA is already a specific solution.

Sharing of test data, with the agreement of the owner of those data, is usual practice in TABs, not only under the CPR but also already under the former Construction Products Directive.

The processes of EOTA with regard to develop EADs and to issue ETAs are very suitable to get the individual manufacturers and their interests involved. This is especially of importance for SMEs which, thus, have more influence on the results than this would be possible based on standardization processes.

9. *The apparent confusion of roles in developing and funding EADs and organising and co-ordinating TABs should be reviewed and a division of responsibilities between the co-ordination of TABs and the development of EADs established.*

   Comment: The development of an EAD is the task for the respective responsible TAB (RTAB) together with the TABs designated for that specific product area and thus members of the relevant Working Group. The RTAB is convening the group. EOTA provides in its Statutes and Internal Regulations for the procedural structure and for the platform and tools for this work. The EOTA Technical Board (EOTA TB) is the body adopting the EADs. The TABs to be involved are subject to the designation of the concerned Member States according to Art 29(1) of the CPR; this is not in the hands of EOTA. Thus, there is no confusion between the development of EADs and the co-ordination of TABs.

10. *EOTA should place a greater emphasis on supporting the CE marking of innovative products by providing support to TABs and disseminating clear guidance on EADs and innovation to manufacturers through European trade associations.*

    Comment: Support to TABs is provided for by their active participation in the Technical Board, the Working Groups and the Project Teams of EOTA and by workshops on EOTA level. EOTA provides for regular meetings with stakeholders, related to general as well as to technical issues.

11. *CPR Annex II should be reviewed and revised to reflect actual responsibilities and timescales that are required to develop and cite EADs. This would support a greater clarity in informing manufacturers of timescales and the potential for delays.*

    Comment: EOTA supports this proposal. An EOTA proposal for the revision of Annex II will be sent to the Commission Services.

12. *Expertise in the development of EADs should be encouraged by EOTA through greater emphasis on the dissemination of best practice and lessons learned through EAD development. This will help to widen the group of TABs willing and competent to develop EADs and to raise the overall quality of EADs.*

    Comment: EOTA provides for workshops and written information on the procedures to develop EADs. With regard to the technical background, an exchange of best practices is offered in the technical committees as referred to above. In addition, TABs are designated by their respective Member States based on their technical competence.

    EOTA has strengthened its staff by employing a further technician in 2016. After a first period of education with regard to the tasks of EOTA and of the TABs as well as with the processes within EOTA, beside other actions, he will visit some TABs in 2017 as trainee. This will contribute to further enhance the exchange of best practices within EOTA.

13. *EOTA should include a Technical-Scientific Committee of some sort. Currently it is not possible to enter into a deep technical discussion in the Technical Board meetings .It is common to hire external experts to implement the technical reviews.*

    Comment: Of course there are technical discussions in TB, as far as relevant for the issues to be dealt with. In addition TABs are invited to participate actively in the aforementioned technical committees of EOTA. Each involvement of external experts, which already happens at a defined level for related aspects, shall take into account to maintain the confidentiality, where relevant. Besides the dedicated room given to the technical discussion on individual EAD Development Projects and the ETAG conversion projects in the TB, enough flexibility is given to work also on specific questions in an adhoc team which reports to the Technical Board. Furthermore, the horizontal group “PT 1 – Technical Management” provides for a pool of senior experts which might be called for all urgent technical adhoc questions by TABs.

14. *EOTA should provide detailed guidelines for TABs regarding the development of EADs. For instance, information on requirements for laboratories which TABs may use; information regarding inspections (control), sample checks, possible cooperation with notified institutions.*

    Comment: EOTA provides for a set of Guidance Documents and templates to TABs which form part of the so-called EOTA Consistency System Manual (EOTA CSM). In specific workshops (TAB in-house or in conjunction with TB meetings) on the ETA process the information is submitted following the train–the–trainers concept.

    The issuing of an ETA is within the responsibility of each TAB, not of EOTA. This includes the choice of test laboratories if the TAB does the testing not by itself. The Commission Services have highlighted, e.g. in the „Guidelines for the use of the EAD format", that inspection is not an issue for a TAB. The EAD format and the ETA format do correspond to this accordingly.

15. *EOTA should be made responsible for regularly informing market surveillance authorities regarding its members' interpretation of article 19 and the scope of existing EADs. Without such exchange, it is difficult for market surveillance to know which products are and which products are not covered by harmonized standards and where EADs are being used as the basis for CE Marking.*

    Comment: EOTA regularly participates in meetings of the AdCo Group of market surveillance authorities. In addition, more detailed cooperation with the AdCo Group has already been discussed and is envisaged. Of course, EOTA is ready to provide them with information on the scope and content of EADs, as soon as it is possible taking into account the confidentiality. Furthermore, the published EADs contain information about construction products and identifies, where relevant, deviations from hEN in chapter 1. The position of the AdCo group "Scope of hEN" is exchanged with EOTA Technical Management (TAB experts and EOTA TB).