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THE EUROPEAN UNION**

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from : General Secretariat of the Council

to : Working Party on Technical Harmonisation (Construction Products)

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No. Cion prop. : 10037/08 MI 167 ENT 110 COMPET 197 CODEC 676

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Subject : Proposal for a Regulation of the European Parliament and of the Council  
laying down harmonised conditions for the marketing of the construction products

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Delegations will find below an updated document reflecting the outcome of the Working Party meetings on 13 June, 18 July, 2 September and 6 November 2008; furthermore written comments received by delegations have been integrated. Delegations' comments are reported in footnotes. Modifications to the body of the text are suggested by the Presidency and marked as **bold** **underlined**, ~~strikethrough~~ or underlined.

At this stage of the negotiations, the UK and MT, PL delegations maintain parliamentary scrutiny reservation. All delegations maintain a general scrutiny reservation.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**LAYING DOWN HARMONISED CONDITIONS FOR THE MARKETING OF THE**  
**CONSTRUCTION PRODUCTS<sup>1</sup>**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>34</sup>,

Having regard to the opinion of the Committee of the Regions<sup>5</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>6</sup>,

Whereas:

- (1) The rules of Member States require that construction works are designed and executed so as not to endanger the safety of persons, domestic animals and property.<sup>7</sup>

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<sup>1</sup> All delegations: General scrutiny reservation on the text.

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> Opinion of the Committee of the Region has/has not been requested by Coreper.

<sup>5</sup> OJ C , , p. .

<sup>6</sup> OJ C , , p. .

<sup>7</sup> SE: Use wording: "...domestic animals, property and to minimize the effects on the environment."

<sup>8</sup> SE: Add a new recital: This Regulation applies without prejudice to the rules laid down in Directives 92/42/EEC, 95/16/EC, 2000/9/EC, 2001/95/EC, 2004/22/EC, 2005/32/EC and 2006/42/EC.

- (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. By their disparity, those requirements hinder trade within the Community.
- (3) 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>9</sup>, aimed at the removal of technical barriers to trade in the field of construction products, in order to enhance their free movement in the internal market.
- (4) 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.
- (5) 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.
- (6) It is necessary to provide for simplified procedures for drawing up declarations of performance in order to alleviate the financial burden of SMEs and in particular of micro-enterprises.<sup>10</sup>
- (7) Regulation [...] of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and Decision [...] of the European Parliament and of the Council on a common framework for the marketing of products provide for a horizontal legal framework for the marketing of products in the internal market. Therefore this Regulation should take account of that legal framework.
- (8) 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.

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<sup>9</sup> JO L 40, 11.2.1989, p.12. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OV L 284, 31.10.2003. p. 1.).

<sup>10</sup> SE/FR/HU: Provisions on micro-enterprises need further scrutiny with regard to health, safety and competition issues.

- (9) Those harmonised technical specifications should include testing, calculation and other means, defined within harmonised standards and European Assessment Documents (EAD) for assessing performance in relation to the essential characteristics of construction products.
- (10) The methods used by the Member States in their requirements for works, as well as other national rules in relation to the essential characteristics of construction products, should be in accordance with harmonised technical specifications.
- (11) It is necessary to establish basic works requirements in order to provide the basis for the preparation of the mandates and harmonized standards and for the elaboration of the EADs for construction products.
- (12) Where appropriate, performance levels in relation to the essential characteristics, to be fulfilled by construction products in Member States should be established in the harmonized technical specifications so as to take account of different levels of basic works requirements for certain works as well as of the differences in climate, geology and geography and other different conditions prevailing in the Member States.
- (13) The European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) are recognized as the competent organisations for the adoption of harmonized standards in accordance with the general guidelines for cooperation between the Commission and those two organisations signed on 28 March 2003.
- (14) Those harmonised standards should provide the appropriate tools for the harmonised assessment of the performance in relation to the essential characteristics of construction products. Harmonised standards should be established on the basis of mandates adopted by the Commission, covering the relevant families of construction products, in accordance with Article 6 of Directive 98/34/EC.<sup>11</sup>

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<sup>11</sup> PL: Add: "The Commission should take the actions aiming at the enlargement of construction products covered by harmonized standards."

- (15) 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.
- (16) In order to allow manufacturers and importers of construction products to draw up a declaration of performance for construction products which are not covered by a harmonised standard it is necessary to provide for a European Technical Assessment.
- (17) To provide the manufacturer and the importer with additional flexibility for the assessment of the performance of the construction product he intends to place on the market, he should be entitled to request a European Technical Assessment also in a case in which the product is covered by a harmonised standard.<sup>12</sup>
- (18) Manufacturers and importers of construction products should be allowed to request European Technical Assessments to be carried out for their products on the basis of the guidelines for European technical approval established under Directive 89/106/EEC. Therefore, the continuing validity of these guidelines<sup>13</sup> as EADs should be ensured.
- (19) The establishment of draft EADs<sup>14</sup> and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (TAB) designated by Member States. In order to ensure that TABs have necessary competence for carrying out those tasks, the requirements for their designation should be set out at Community level. Therefore it is also necessary to provide for periodical evaluations of TABs by TABs from other Member States.
- (20) The TABs should establish an organisation to coordinate the procedures for the establishment of draft EADs<sup>15</sup> and for issuing of the European Technical Assessments.

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<sup>12</sup> UK: Clarify relationship between recital 17, Article 7 and Article 21. Wording should better reflect that a harmonised standard takes priority over an ETA. Cion: Open to some clarification in this recital 17 or in Article 21. PL: Replace "in which the product is covered by a harmonised standard" by "when the existing harmonized standard may not be fully applied for a specific product e.g. in the case of innovation".

<sup>13</sup> PL: Also refer here to CUAPs, not only guidelines (twice).

<sup>14</sup> PL: Delete "draft" in order to avoid gaps of responsibility for EADs.

<sup>15</sup> PL: Delete "draft" in order to avoid gaps of responsibility for EADs.

- (21) The placing on the market of construction products which are 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 product in accordance with the relevant harmonised technical specifications.
- (22) The manufacturer should be entitled not to make a declaration of performance for those essential characteristics of construction products for which no requirements exist where he intends to place the product on the market.
- (23) When no requirements related to the essential characteristics of construction products exist where the manufacturer intends to place the product on the market, he should be allowed to place such a product on the market without a declaration of performance.
- (24) It is necessary to provide for simplified procedures for drawing up declarations of performance in order to alleviate the financial burden of SMEs and in particular of micro-enterprises.
- (25) 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.
- (26) Given the specificity of construction products and the particular focus of the system for their assessment, the procedures for the conformity assessment foreseen in the Decision (EC) ....., and the modules set out in that Decision, are not appropriate for those products. Therefore, specific methods should be established for the assessment and verification of constancy of performance in relation to the essential characteristics of construction products.
- (27) 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) ..., 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 of that affixing.
- (28) By affixing or having affixed the CE marking to construction product, the manufacturer should take responsibility for the conformity of that product with its declared performance.

- (29) The CE marking should<sup>16</sup> 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, CE marking should not be affixed.
- (30) The CE marking should be the only marking which attests conformity of the construction product with the declared performance and with applicable requirements. Therefore, no additional markings should be imposed to the construction products bearing it by the Member States nor 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 requirements for this use in that Member State correspond to the declared performance.
- (31) To avoid unnecessary testing of construction products, for which performance has already sufficiently been demonstrated by stable previous 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.
- (32) 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.
- (33) To decrease the cost of placing products on the market for micro-enterprises, it is necessary to provide for simplified procedures for assessment and verification of constancy of performance, when the products in question do not imply significant safety concerns.
- (34) For individually designed and manufactured construction products the manufacturer should be allowed to use simplified procedures for assessment and verification of constancy of performance, where the compliance of the product placed on the market with the applicable regulatory provisions can be demonstrated.

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<sup>16</sup> DK: "shall" instead of "should".

- (35) 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 market their products. Product Contact Points established by the Regulation (EC) N° ... of the European Parliament and of the Council of [...2008] laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC should therefore provide information also on rules applicable to the incorporation, assembling or installation of a specific type of construction product.
- (36) For the purposes of ensuring an equivalent and consistent enforcement of Community harmonisation legislation, effective market surveillance should be operated by the Member States. Regulation (EC) N° ... of the European Parliament and of the Council of [...2008] setting out the requirements for accreditation and market surveillance relating to the marketing of products provides the basic conditions for the functioning of such market surveillance.
- (37) The responsibility of Member States for safety, health and other matters covered by the basic works requirements on their territory should be recognized in a safeguard clause providing for appropriate protective measures.
- (38) Since it is necessary to ensure throughout the Community a uniform level of performance of bodies carrying out 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 performance assessment bodies seeking to be notified for the purposes of this Regulation. Provisions should also be made for the availability of adequate information about such bodies and for their monitoring.
- (39) In order to ensure a coherent level of quality in 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 these tasks to the Commission and the other Member States.



- (40) Since the objectives of the proposed action, namely to achieve the proper functioning of the Internal Market for construction products by means of harmonised technical specifications for expressing the performance of construction products, cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in this Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (41) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>17</sup>.
- (42) In particular the Commission should be empowered to establish conditions under which the declaration of performance may be available on a web site, to determine the period during which manufacturers, importers and distributors should keep the technical documentation and the declaration of performance available, to establish classes of performance in relation to the essential characteristics of construction products, to establish the system of assessment of performance and verification of constancy of the declared performance to be applied to a given construction product or family of construction products, to establish the format of the European Technical Assessment, to establish procedures for carrying out the evaluation of TABs and to amend Annexes I to V. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (43) 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.<sup>18</sup>

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<sup>17</sup> OJ L184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L200, 22/7/2006, p.11).

<sup>18</sup> BG/CY: More explanations are needed on the future role of the Standing Committee.

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS<sup>19</sup>**

#### *Article 1*

#### *Subject matter<sup>20</sup>*

This Regulation lays down rules on how to express the performance<sup>21</sup> of construction products in relation to their essential characteristics and on the use<sup>22</sup> of CE marking on those products.

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- <sup>19</sup> AT: Clause on sanctions for economic operators could be inserted. Cion: Not necessary, covered by the horizontal Regulation. Several delegations: Clarify relationship to subsidiarity, notably with regard to the aim of enhanced use of construction products in practice. Cion: Subsidiarity is important, however what needs to be said in this context would be more appropriate in a Statement than in articles or annexes. Several delegations: Useful precisions on the CE marking should not lead to a complete overhaul of the existing system.
- <sup>20</sup> ES/AT/UK: Reflect the title of the legal act "marketing of construction products" somehow in Art. 1. Cion/BE: Possible in recitals, not best place in Art. 1. RO: The Regulation should clarify the relationship with the Mutual Recognition Regulation No. 764/2008 for those construction products not covered by harmonised technical specifications. PL: Title of the Regulation should be "...harmonised rules on the assessment and a declaration of the performance of construction products." Article 1 should read: "...lays down the conditions for placing construction products on the market and rules how to express the performance of construction products in relation to ..."
- <sup>21</sup> PT: Suggests "express and to assess the performance...". The obligations for economic operators and assessment bodies could also be mentioned as forming part of the scope. Cion: Impossible to include everything in Article 1. DE/CZ: Simplify to: "This Regulation lays down rules on the placing and the making available on the market of construction products in relation to their essential characteristics (rest deleted)." AT: Use wording "rules on the assessment and declaration of the performance of construction products...".
- <sup>22</sup> SE/FR: Add "use and meaning of...". Cion: "Rules on meaning" does not make sense in the chosen wording. HU: Add exemption for semi-finished or unprocessed products and re-used products from demolition buildings. Cion: Exemption would be too far-reaching. UK/BE: Insert something on the aim, e.g. removing barriers to trade, use or other restrictions on the internal market AT: Use wording "essential characteristics, for the purpose of removing and avoiding related restrictions on making them available on the market and defines the specific meaning and the use of...". DE: Clarify here or in Art. 5 that the DoP should cover all essential characteristics.

## Article 2

### Definitions

For the purposes of this Regulation the following definitions shall apply:<sup>23</sup>

1. *"construction product"* means any product or kit <sup>24</sup>which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof so that the dismantling of the product decreases the performance of the construction works and the dismantling or replacement of the product constitute construction operations;<sup>25</sup>
2. *"works"* means buildings and civil engineering works;<sup>26</sup>
3. *"essential characteristics"* means those characteristics of the construction product which relate to the basic works requirements;<sup>27</sup>
4. *"harmonised technical specifications"* means harmonised standards and European Assessment Documents;<sup>28</sup>
5. *"making available on the market"* means any supply of a construction product for distribution or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge;<sup>29</sup>
6. *"placing on the market"* means the first making available of a construction product on the Community market;

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<sup>23</sup> AT: Suggests different wording for definitions of "construction product", "essential characteristics", "harmonised standard", "European Assessment Document", "product-type".

SE: Use exact definitions from horizontal Regulation/Decision as far as possible.

<sup>24</sup> DE: Add "...kit having essential characteristics and ..." PL: Reword to read: "...any single product or kit which is produced and placed on the market for incorporation in construction works or parts thereof (rest deleted)". Insert a separate definition of "kit".

<sup>25</sup> DE: Add new definition 1 (a): "performance of construction work" means the performance of the construction work in terms of one, some or all of the three sustainability categories which relate to construction works".

<sup>26</sup> DE: Definition should be on "construction works".

<sup>27</sup> PL: Add new definition "3 (a): "performance of construction products" means the performance related to the relevant essential characteristics, expressed by value, level, class, threshold values or by a description."

<sup>28</sup> PL: Replace EADs by ETAs here.

<sup>29</sup> PT: Clarify whether products that are assembled or produced on construction sites for the own use are exempted.

7. "*manufacturer*" means any natural or legal person who manufactures a construction product or who has such a product manufactured, under his name or trademark;<sup>30</sup>
8. "*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;
9. "*importer*" means any natural or legal person established within the Community, who places a construction product from a third country on the Community market;
10. "*economic operators*" means the manufacturer, the importer, distributor and the authorised representative;<sup>31</sup>
11. "*authorised representative*" means any natural or legal person established within the Community who has received mandate from the manufacturer to act on his behalf for specific tasks;<sup>32</sup>
12. "*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;
13. "*European Assessment Document*" means a document adopted by the organisation of Technical Assessment Bodies;<sup>33</sup>
14. "*accreditation*" has the meaning assigned to it by Regulation (EC) No [...];

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<sup>30</sup> LT: In order to mirror Art. 4 include here that a manufacturer can also place a product on the market. BG suggests: "*manufacturer*" shall mean any natural or legal person who manufactures a construction product or has such a product designed or manufactured, and markets that product under his name or trademark."

<sup>31</sup> BG suggests: "*economic operators*" shall mean the manufacturer, the authorised representative, the importer and the distributor."

<sup>32</sup> BG suggests: "*authorised representative*" shall mean any natural or legal person established within the Community who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks.

<sup>33</sup> AT: Definition is too unprecise.

15. “*withdrawal*” means any measure aimed at preventing the making available on the market of a construction product in the supply chain;<sup>34</sup>
16. “*recall*” means any measure aimed at achieving the return of a construction product that has already been made available on the market;<sup>35</sup>
17. “*product-type*” means the performance of a construction product produced using a given combination of raw materials or other elements in a specific production process<sup>36</sup>;
18. “*factory production control*” means the permanent internal control of the production<sup>37</sup> in a factory;
19. “*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>38</sup>;

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<sup>34</sup> BG suggests: “*withdrawal*” shall mean any measure aimed at preventing a construction product in the supply chain from being made available on the market.

<sup>35</sup> BG suggests “*recall*” shall mean any measure aimed at achieving the return of a construction product that has already been made available to the end user.”

<sup>36</sup> UK/DE: Clearer definition needed. PL: Reword to “...means the set of the representative performances of a construction product...” DK: Way of defining “product-type” does not seem to fit to the content of the provision in Art. 5.

<sup>37</sup> DE: Use wording “product and production in a factory”. PL: Use wording “production of the product in a factory.”

<sup>38</sup> OJ L 124, 20.5.2003, p. 36.

20. “*life cycle*” means the consecutive and interlinked stages of a product life, from raw material acquisition or generation from natural resources to final disposal.

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<sup>39</sup> ES: Add definitions of "Declaration of performance" and "EAD". Cion: Unnecessary, description in following articles is sufficient. AT: Add definitions on "Performance", "Declaration of performance", "Technical documentation", "Performance assessment body", "Conformity", "Requirement". UK/PT: Add definition of "notified body." PL suggests: “notified body” means testing laboratory, inspection body or certification body notified the Member State to perform tasks related to the assessment and verification of constancy of performance of construction products.” BG: Add definitions on “construction operations”, “individually manufactured products” “applicable attestation”. NL: Add definition of "conformity marking". DE: Add definitions for "performance", "performance assessment body", "requirement", "expected life", "working life", "product life", SE/DE: Add "service life". RO: Add definitions for "technical assessment body", "without testing", "without further testing", "family of construction products", "performance", "levels of performance", "classes of performance", "non-essential elements" (subject to reg. procedure with scrutiny). Several delegations: Add definition of European Technical Assessment (ETA). Cion: Open to this latter idea. PL suggests: “European Technical Assessment” means technical specification of the construction product developed on the basis of a technical assessment performed by a Technical Assessment Body (TAB) in accordance with the methods and criteria adopted by the TABs acting jointly in the European organization of TABs organization, referred to in art. 20(2).” FI: Add definition of "basic works requirements": - "*Basic works requirements*" are given to enable determination of the essential production characteristics of construction products.

### Article 3

#### *Basic works requirements and essential product characteristics*

1. The essential characteristics of construction products<sup>40</sup> shall be laid down in harmonised technical specifications<sup>41</sup> in relation to the basic works requirements which are set out in Annex I.<sup>42</sup>

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<sup>40</sup> DE: Delete "of construction products" as being redundant.

<sup>41</sup> BG/SE: Clarify in the text who is responsible for essential characteristics and harmonised technical specifications. SE/IT: Clarify the different set of documents when compared to Construction Products Directive.

<sup>42</sup> ES: Use longer wording in Art. 3 or else shift the whole text to Article 4 (3). Cion: Reservation. AT: Add: "set out in Annex I and, if applicable, in relation to other requirements for making available construction products on the market". DK: Use wording: "in relation to requirements existing in the EU or Member States in the field of the basic works requirements..."

<sup>43</sup> PL: Add new para.: "The scope of the basic requirements covered by this regulation is set out in Annex 1."

## CHAPTER II

### DECLARATION OF PERFORMANCE AND CE MARKING

#### *Article 4*

#### *Conditions for drawing up declaration of performance<sup>44</sup>*

1. The manufacturer or the importer<sup>45</sup> when placing a construction product on the market shall make a declaration of performance if the following conditions are met:<sup>46</sup>
  - (a) the construction product is covered by a harmonised standard, or a European Technical Assessment<sup>47</sup> has been issued for that product<sup>48</sup>; and

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<sup>44</sup> ES: Refer to marketing of products in the title.

<sup>45</sup> PT/BG: Delete references to "importer" throughout the article.

<sup>46</sup> FR/IT: Obligation to draw up a DoP should be without exception in order to stress manufacturers' responsibility. Differences could be clarified by referring to the content of the DoP, e.g. whether a harmonised standard exists or not. Indent (b) can thus be deleted. ES: Define better the concept of DoP either in this article or in Art.2 and clarify that a DoP is obligatory for the marketing of products. BG: Use wording "where the following conditions..."

<sup>47</sup> SI: Align with Article 5 (2) in replacing "ETA" by "EAD or STD". AT: Use wording "European Technical Assessment Document". PL: Clarify situation when issuing of the ETA was voluntary. DE: Use wording: "the construction product or the product family is covered by a Commission Decision on the system of assessment and verification of constancy of performance, and". CY: Make reference to Cion Decision on the system of assessment and verification of constancy of performance according to Art. 19. BE: Use wording: "construction product belongs to a family covered by...". UK: Keep text as it is.

<sup>48</sup> NL: Use wording "...has been issued on his request for that product".



- (b) the requirements<sup>49</sup> in relation to essential characteristics of that product exist<sup>50</sup> where the manufacturer or importer intends to place the product on the market.<sup>51</sup>

The manufacturer or the importer may make a declaration of performance where the requirements referred to in point (b) do not exist.<sup>52</sup>

2. The declaration of performance<sup>53</sup> referred to in paragraph 1 shall cover at least<sup>54</sup> the essential characteristics for which requirements<sup>55</sup> referred to in point b of paragraph 1 exist.<sup>56</sup>
3. Member States shall presume the declaration of performance drawn up by the manufacturer or the importer to be accurate and reliable.<sup>57</sup>

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<sup>49</sup> AT: Use wording "mandatory requirements in relation..." DE: Delete "the"; add: "essential characteristics of that product, or in relation to the basic works requirements which are set out in Annex I, exist..." UK: Refer to the "intended use". Cion: Sceptical to such a wording.

<sup>50</sup> BE/PT: Legal consequences are unclear, if the requirements do not exist. AT: Use wording "...exist at least for one possible use of the construction product where the manufacturer..."

<sup>51</sup> PL: Add: "...with regard to the given use in the Member State, where the manufacturer or importer..." Clarify the character of the DoP. If the DoP is voluntary, point (a) should read: "the construction product is covered by a harmonized standard or European Technical Assessment for which the transitional periods have expired accepted in accordance with the procedure referred to in art. 51(2)." If the DoP is obligatory, the whole para. 1 should read: The manufacturer or the importer may make a declaration of performance when the construction product is covered by a harmonized standard or European Technical Assessment issued for that product." (this implies deletion of (b).)

<sup>52</sup> DE/NL/PT: Provision with "may" could create a loophole, if the manufacturer does not make any DoP in these cases. Unclear what this would mean for free circulation of his products. Cion: Article 5 clarifies obligations further; if a harmonised standard does not exist, the DoP is different in content. See also recital 23.

<sup>53</sup> Following a remark by BE, the Cion clarified that different DoPs are possible for different uses of the product, not for different countries.

<sup>54</sup> BE: Clarify which other characteristics may be covered by the DoP. PT: Shift Art. 4 (2) to Article 5 as describing the content. Align to Article 5 (1) for coherence.

<sup>55</sup> AT: Use wording: "any requirement for any intended use..."

<sup>56</sup> PL: Reword to "...for which requirements exist in the MS in which the product is intended to be used."

<sup>57</sup> AT: Suggests "...shall presume the values, levels or classes of the declaration of performance ..." SI: Add language provision. Cion: Unnecessary, covered by horizontal Regulation.

## Article 5

### Content of the declaration of performance

1. The declaration of performance shall express the performance of construction products<sup>58</sup> in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications.<sup>59</sup>
2. The declaration of performance shall contain the following information:<sup>60</sup>
  - (a) the product-type<sup>61</sup> for which it has been drawn up;
  - (b) the list of the essential characteristics of the construction product<sup>62</sup> for which the performance is declared, and the levels or classes<sup>63</sup> of that performance;<sup>64</sup>

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<sup>58</sup> DE: Shorten to "...shall express the essential characteristics of construction products in accordance..." BE: Add in the end "and its intended use".

<sup>59</sup> AT/UK/SI/IT: Suggests different wording. "...in accordance with the relevant harmonised standard or European technical assessment." DE/BE/NL: Add reference to STD. Cion: Reservation. SI: Specify, to which harmonised technical specifications reference is made.

<sup>60</sup> DE: Use wording "shall contain, in particular the following...".

DE/NL/BE/BG/SE/IT/SI/UK/CZ/CY: Add "the intended use of the product" so as to avoid lacunae. Cion: Sceptical, as manufacturer cannot always foresee intended use and cannot take responsibility. BE: Specify which persons are entitled to sign the DoP. SK: Mention "the proper installation of the product". PL/RO: Simplify to "The declaration of performance shall be prepared according to Annex III (rest deleted)."

<sup>61</sup> DE/UK: Should be "product" not "product-type". Cion: Any interpretations can be clarified through the definition of "product-type" in Article 2. DK: Add "has been drawn up, and, where relevant, the intended use as defined in the harmonised technical specification."

<sup>62</sup> PT: Add "product or product-type..." DE: Add: "...of the construction product covered by a harmonised standard, EAD or STD and the characteristics for which..."

<sup>63</sup> AT/NL/BG/SI/DE/PL/CZ: Add: "the values, levels or classes..." BE/IT: "declared values, levels or classes..." SE/DE: Add: "...of that performance, if relevant." Cion: Flexible to these suggestions. SE: The list of essential characteristics should include a declaration of substances and preparations which meets the criteria set out in Annex (xx)"; see also remark to BWR no. 7. CY: Add also the reference number of the notified body or the TAB (where relevant).

<sup>64</sup> CZ/SK: Mention certificates, protocols, tests, etc. Cion: Does not add much to traceability. UK: Mention "suitability for use", on a voluntary basis. Cion: little use if not legally binding.

- (c) the reference number<sup>65</sup> of the harmonised standard, the European Assessment Document<sup>66</sup> or the Specific Technical Documentation, which has been used for the assessment of each<sup>67</sup> essential characteristic.<sup>68</sup>

69

## Article 6

### *Form of the declaration of performance*

1. A copy of the declaration of performance shall be supplied with each product<sup>70</sup> which is made available on the market.<sup>71</sup>

However, where a batch of the same product is delivered to a single user, it may be accompanied by one **single** copy of the declaration of performance.<sup>72</sup>

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<sup>65</sup> For Legal Linguists: "Reference number" should read "Referenznummer" or "Bezugsnummer" in German (throughout). AT/DE: Should read: "reference number and date of issue of the...". Cion: Could be acceptable.

<sup>66</sup> AT/SI: Replace "EAD" by "ETA" UK: Use "EAD, ETA or STD". Cion: Reservation.

<sup>67</sup> AT: Add: "...for the assessment and the related declaration of performance of each..." PL: Reword the whole (c) and add new (d) and (e): "(c): the reference number of the harmonized standard or the European Technical Assessment which has been used for the assessment of the essential characteristics, cited in a declaration of performance (d) the number allowing to identify the Specific Technical Documentation, if relevant (e) the product-type and scope of use (designation), if determined in harmonized technical specification. BE: Clarify in the wording that EAD/ETD can always be requested, even in the absence of a harmonised standard. Cion: Agrees with the substance, but no need to change the text.

<sup>68</sup> MT: Add new (d): "any other information where applicable and deemed relevant." SE: Add new indent on possibilities for an environmental declaration, including recycling, re-use and waste disposal in conformity with works Nr 7; as manufacturers already have the necessary information for environmental declaration. Cion: Sceptical, both requests would go beyond essential characteristics.

<sup>69</sup> BE: Add new para. 3: "The level of seniority of the signatory is sufficient for engaging the manufacturer, the importer or the distributor."

<sup>70</sup> PL/SE: Use wording "...each construction product placed on the market in accordance with Article 4..." DK: Use wording: "...shall be supplied either by electronic means or as a hard copy with each product..." PL: A central database of declarations might be convenient. Cion: Sceptical to both ideas.

<sup>71</sup> SE/PL: Shift language provisions from Art. 13 to Art. 6. Cion: Flexible to this idea. CY: Add a language provision, leaving the decision on which language to be used to the Member State. IT: Add following language provision: "A copy of the DoP, drawn up in the official languages of the Member State where the product is made available and in a form easily understandable by users, shall be supplied ..."

<sup>72</sup> MT: Add "new approach" provision: "A copy of the DoP shall be made available to the relevant competent authorities and to economic operators in the supply chain".

2. The copy of the declaration of performance may be supplied by electronic means only with the express agreement of the recipient.<sup>73</sup>
3. By way of derogation from paragraphs 1 and 2, the content of<sup>74</sup> the declaration of performance may be made available on a web site<sup>75</sup> in accordance with conditions established by the Commission.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).<sup>76</sup>

4. The declaration of performances shall be drawn up using the model set out in Annex III.<sup>77</sup>

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<sup>73</sup> NL/PL: Delete "only with the express agreement of the recipient." PL: Add "written declaration shall be supplied at the request of the recipient."

<sup>74</sup> NL/MT: Delete (2) and replace this sentence by: "The content of the declaration of performance might be made available on a website in accordance with Annex 6." DK: Delete (2). Cion/IT/DE: Sceptical, the final users often need a copy. IT: If "intended use" is not an essential characteristic in Article 5, then some mentioning of it should be possible in Article 6. AT/BE: Delete "the content of".

<sup>75</sup> FI: Simplify to: "...declaration of performance may be supplied in accordance...". Comitology will set the details anyway. UK: Specify more conditions for web-site provisioning. DK: "...web-site, if a precise web-address is included on the CE-mark itself in accordance..."

<sup>76</sup> BE: Link to the regulatory procedure with scrutiny could be phrased in a different way; "measures" is not correct, rather "conditions". N.B.: One could delete this identical paragraph in the articles and mention instead Articles 6 (3), 10 (2), 18 (2), 19 (2), 21 (2) and 24 (2) in Article 50 (1).

<sup>77</sup> RO/CZ/SK/ES/MT/PL: Replace by "The declaration of performance shall contain the information set out in Annex III" and shift this para. to Art. 5 (2). Cion: Could be acceptable. PT: Shift 6 (4) to 5 (2) as it is. IT: Legal value of DoP has to be clarified through a provision in Article 6. UK: Either align Annex III exactly to Art. 5 (2) (a) or else use a more open wording here.

*Article 7*  
*Use of CE marking*

1. The CE marking shall be affixed only<sup>78</sup> to those construction products, for which the manufacturer<sup>79</sup> has drawn up a declaration of performance in accordance with Articles 4, 5 and 6.<sup>80</sup>

If a declaration of performance has not been drawn up by the manufacturer<sup>81</sup> in accordance with Articles 4, 5 and 6, the CE marking may not be affixed to construction products.<sup>82</sup>

By affixing or having affixed the CE marking the manufacturer<sup>83</sup> shall take responsibility for the conformity of the construction product<sup>84</sup> with the declared performance.<sup>85</sup>

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<sup>78</sup> PL: Use "solely" instead of "only". BE/IT: Delete "only".

<sup>79</sup> BE/CY: Add "manufacturer, or the importer has drawn up a ..."

<sup>80</sup> RO/PT/IT: Replace by "products for which a declaration of performance has been drawn up in accordance..." BE/LT/IT: Clarify situation of CE marking where DoP is not mandatory. ES: Either add definition of CE marking in Art.2 or refer to New Approach regulation or define the concept here. SE: Clarify the situation with regard to other legal acts requiring marking, e.g. the revised eco-design directive, here or in Art. 4. IT: If the CE marking is indeed obligatory, the Regulation should describe conformity assessment in much greater detail. A substantial link to Art. 30 should be made in the wording. Cion: This article is procedural in nature, if something is not described here, but in other parts of Community harmonisation legislation or in national legislation, these other provisions continue to apply. However, Article 4 makes clear that if the DoP is mandatory, the CE marking is the logical consequence.

<sup>81</sup> RO/PT/IT: Delete "by the manufacturer" to cover importers.

<sup>82</sup> PT/PL/DE: Delete second sub-para. Cion: Second sub-para. says the same as first one, but was inserted just for clarification. MT/UK/CY: Use word "shall not be affixed..."

<sup>83</sup> RO/PT/IT/BE: Add "the manufacturer, and if applicable, the importer shall..."

<sup>84</sup> PL: Clarify scope of the responsibility, where the manufacturer has only determined a product-type according to Art. 26.

<sup>85</sup> DE: Rephrase to: "...of the construction product with all applicable requirements in this regulation and in other relevant acts of Community harmonisation legislation providing for its affixing. BE: Suggests wording: "...at the minimum with the declared performance."

2. The CE marking shall be the only marking which attests conformity of the construction product with the declared performance.<sup>86</sup>

Member States shall not introduce national measures or shall withdraw any references<sup>87</sup> to a conformity marking other than the CE marking.<sup>88</sup>

3. Member States shall not prohibit or impede, within their territory or under their 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 this use in that Member State ~~correspond to the declared performance~~.<sup>89</sup>

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<sup>86</sup> ES: Delete "only", thus leaving "...shall be the marking with attests..." LT: Clarify relationship to other voluntary markings. IT: Start Art. 7 (2) and 7 (3) with the clarifying clause "When the conditions of Art. 4 (1) are met, ...". Cion: Art. 30 of horizontal Regulation is clear enough. Performance is indicated by the CE marking, not by any other marking, market driven markings fall out of scope of this Regulation. DE suggests: The CE marking shall be the only marking of conformity indicating that the construction product is in conformity with Community harmonisation legislation and attests in particular conformity of the construction product with the declared performance in relation to Articles 4, 5 and 6. PL: Add "...declared performance obtained according to the harmonised technical specification."

<sup>87</sup> DE: Start para. by "In this respect, Member States..." PL: Use wording "any new national measures" and "existing references".

<sup>88</sup> AT/BE suggest: "...references to an other conformity marking other than the CE marking of construction products covered by CE marking." SE/DE: Replace "national measures" by "national markings." Cion: Too limited, "provisions" is what is meant. DE: Add "for harmonised legislation according to this Regulation" or a similar wording. PL suggests: "...conformity marking of the products covered by this Regulation, with the declared performance other than the CE marking." NL: Add simply "for products covered by this Regulation". Cion: Some adaptation of the wording along the lines of the PL suggestion may be possible. BE: Add "other than the CE marking except if the possibility is explicitly foreseen in the Directives on Public Procurement 2004/17/EC and 2004/18/EC." ES: Relationship to other European markings (including voluntary ones) is not very clear. Delete this whole sub-paragraph.

<sup>89</sup> NL/BE: Clarify whether subsidiarity allows that national measures prescribe certain type of products for certain uses. Cion: Subsidiarity allows it, this has nothing to do with CE marking in this article. DE: Use wording "requirements for placing on the market and for this use..." BE: Add "...or to a lower level of performance. When in a Member State requirements exist, only construction products bearing CE marking with a declared performance, drawn up by the manufacturer in accordance with Articles 4, 5 and 6, higher or corresponding to that Member State requirements, may be made available on the market." CZ suggests: "...the CE marking, if the characteristics laid down in the declaration correspond to the requirements for that use in the Member State."

4. Member States shall ensure that the use of construction products bearing the CE marking shall not be impeded<sup>90</sup> 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 this use in that Member State** ~~correspond to the declared performance~~.<sup>91</sup>

## Article 8

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

1. The CE marking shall be subjected to the general principles set out in Article **30** of Regulation (EC) N° ...<sup>92</sup>
2. The CE marking shall be affixed visibly, legibly and indelibly to the construction product or to its data plate.<sup>93</sup> 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.<sup>94</sup>

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<sup>90</sup> PL: Add "be impeded, if the requirements for that use in the Member State correspond to the declared performance, by rules or conditions..." CZ suggests: "...be impeded, if the characteristics laid down in the declaration correspond to the requirements for that use in the Member State, by rules...public mandate."

<sup>91</sup> SE: Add a new indent stating that a CE marking shall also be affixed where other Community harmonisation legislation requires it. In these cases, the provisions of these other acts will apply and not this Regulation. Cion: Will check whether this addition is necessary. DE: Use wording "requirements for placing on the market and for this use...". PL: Add a new paragraph as follows: "Member States shall undertake appropriate measures to make sure that regulations applied on their territory concerning the design and erection of building works related to the construction products, are expressed in compliance with the essential characteristics included in the harmonized standards and European Assessment Documents."

<sup>92</sup> AT: Art. 8 (1) is not necessary, because the horizontal Regulation applies anyway - see also the relationship mentioned in recital 27, as an alternative to deletion, add here: "...as far as this Regulation does not contain more specific provisions." Cion: Art. 8 (1) is useful for clarification in connection with Article 7. If delegations insist, recital 27 can be adjusted. BE: Add "Importers acting as mentioned in Art. 12 (2) shall affix the CE marking." LT: Better describe general rules here in Article 8.

<sup>93</sup> PL: Replace "its data plate" by "a label."

<sup>94</sup> SK/PT/AT: Define which accompanying documents are meant. Cion: This depends on the product. No need to limit this to legally obligatory documents.

3. The CE marking shall be followed by the two last digits of the year in which it was affixed<sup>95</sup>, the name or the identifying mark of the **manufacturer** ~~producer~~<sup>96</sup>, the unique identification code<sup>97</sup> of the construction product and the number of the declaration of performance.<sup>98</sup>
4. 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 indicating a special risk or use.<sup>99</sup>

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<sup>95</sup> Several delegations: concern on interpretation of "affixed", call for replacement with "manufactured". Cion: explains concept as distinguished from marketing. UK: Use wording: "year of the date on the declaration of performance, the name..."

<sup>96</sup> BE: Reference to identifying mark is not practical. DE: Manufacturers should be free to add more, so wording should be "by at least the two last digits..." CY: Use wording "the manufacturer or the importer".

<sup>97</sup> RO/DK: Specify somewhere the details (or principles) of the unique identification code, including a wording on data protection. PL: Clarify the relationship to traceability code of General Product Safety Directive. BE/DE: Clarify who is responsible for checking the uniqueness of the code. PT: In view of harmonisation, add more criteria for the unique identification code, maybe in an Annex. Currently, the code differs a lot from sector to sector. Cion: Uniqueness is necessary for traceability, some details may be regulated at Member State level. The unique identification code is not identical to the code mentioned in GPSD, other details could be regulated through Annex II.

<sup>98</sup> FI: Add "...and the number of the notified body." Cion: Positive to this idea. PL: Add the following new sub-paragraph: "The rules of establishing the unique identification code of the construction product and the rules of the numbering the declaration of performances shall be defined according to the provisions of defined in the art. 51(2)."

<sup>99</sup> PL: Delete "or use". NL: Clarify, which circumstances "risk or use" refers to. AT/PT: Clarify whether national or European pictograms/marks are meant, as an alternative delete 8 (4). IT: Add wording that these marks may not impede other products from being placed on the market. Cion: Art. 8 (4) should only clarify the relationship to eco-labels and similar marks (which are not conformity markings).



## Article 9

### Product Contact Points<sup>100</sup>

Each Member State shall ensure that the Product Contact Points established in accordance with Regulation (EC) N° .... also provide<sup>101</sup> the information on any technical rules or<sup>102</sup> regulatory provisions applicable to the incorporation, assembling or installation<sup>103</sup> of a specific type of construction product in the territory of that Member State.

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<sup>100</sup> Following a remark by NL, the Cion clarified that PCPs can also be incorporated into existing structures.

<sup>101</sup> SE: Reword to read: "that Product Contact Points are established and obliged to provide the information on ..."

<sup>102</sup> NL/IT/SE/PL/DE/ES/FI: Either delete "...any technical rules or..." (otherwise too burdensome) or add at the end "insofar as Member States have regulatory provisions on these issues". SE/BE: Clarify in which language the information has to be given, in what level of detail and in which written or electronic format. BG: Commission should draft a guide on level of detail required and language provisions. Clarify, if all kind of information mentioned here is meant to mirror the obligatory information as described in the Mutual Recognition Regulation; if however additional information is implied here, clarify that then it is possible to charge fees for it. PL: Responsibility for accuracy of information is not clear. AT: The wording is ok, if it is common understanding that this information refers to additional information within the meaning of the Mutual Recognition Regulation (not free of charge), otherwise it is too burdensome. DK: In order to clarify the situation add a second para, stating "Member States may charge a user fee for this information service." PL/DE: Unclear whether information on "intended use(s)" should be included or not. DE: Add in the end: "...with regard to the use in question of the construction product". DE: Add a recital on the possibility of fees charged by the product contact points. FI: Use wording "provide the available information" or "make information available" in order to clarify manufacturers' duty to cooperate. SE: Make sure that the information requirement is harmonised throughout the EU.

<sup>103</sup> ES: Delete references to "incorporation, assembling or installation". Clarify whether information on harmonised standards would be free of charge. MT: Delete the article, recital 35 and the Mutual Recognition Regulation are sufficient. Cion: Sceptical to changes to the text. PL: Rephrase to "...provisions applicable to making the product available on the market and to the type and level of the requirements connected with a given scope of its usage. The PCP provide information applicable to the incorporation, assembling or installation of a specific type of construction product in the territory of that Member State in the scope in which they are covered by that Regulation."

<sup>104</sup> DE: Add a second para. as follows: "(1a) The Product Contact Point shall be independent from performance assessment bodies or Technical assessment bodies."

# CHAPTER III

## OBLIGATIONS OF ECONOMIC OPERATORS

### Article 10

#### *Obligations of manufacturers<sup>105</sup>*

1. Manufacturers shall draw up the required technical documentation<sup>106</sup> describing all the relevant elements<sup>107</sup> related to the applicable attestation of declared performance.<sup>108</sup>

Manufacturers shall draw up the declaration of performance in accordance with Articles 4, 5 and 6, and affix CE marking in accordance with Articles 7 and 8.<sup>109</sup>

2. Manufacturers shall keep the technical documentation<sup>110</sup> and the declaration of performance for the period determined by the Commission for each family of construction products on the basis of expected life and the role of the construction product in the works.<sup>111</sup>

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

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<sup>105</sup> NL: Clarify relationship of obligations for economic operators here and obligations in the horizontal Regulation. FI: Refer frequently to the horizontal framework instead of repeating the obligations in Art. 10-15.

<sup>106</sup> ES: Define the concept of "technical documentation" either in this article or in Art. 2. AT: Define minimum content of the technical documentation and language requirements.

<sup>107</sup> PL: Replace "all the relevant elements" by "all the elements".

<sup>108</sup> PL: Use wording "applicable system of the assessment and verification of constancy of the performance". AT: Clarify the difference between "declaration" and "attestation". BG: Use wording: "...related to the design, manufacturing, assessment and verification of constancy of declared performance".

<sup>109</sup> LT: In order to be coherent with Art. 13 (2), add a provision that it is up to the manufacturer or the authorised representative to draw up instructions and safety information.

<sup>110</sup> AT: Clarify who will keep the technical documentation if the manufacturer is no longer available e.g. in case of bankruptcy. NL: Add a wording on cases like bankruptcy or the ceasing to exist of firms.

<sup>111</sup> ES: Specify the period better, "expected life" is not a well-defined criterion.

3. Manufacturers shall ensure that procedures are in place<sup>112</sup> in order for series production to maintain the declared performance.<sup>113</sup> Changes in the product-type and changes in the applicable harmonised technical specifications shall be adequately taken into account.
- Manufacturers shall, in all cases where appropriate, carry out sample testing of marketed construction products, investigating, and, if necessary,<sup>114</sup> keeping a register of complaints, and keeping distributors informed of such monitoring.
4. Manufacturers shall ensure that their construction products bear a type, batch or serial number or any other element<sup>115</sup> 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 their name, registered trade name or registered trade mark and the address at which they can be contacted<sup>116</sup> on the construction product or, where not possible on its packaging or in a document accompanying the construction product.
6. 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 declared performance<sup>117</sup>, shall immediately take the necessary corrective measures to bring that construction product in conformity or withdraw it from the market and recall it from end users<sup>118</sup>, if appropriate. They shall immediately inform the national authorities of the Member States where they made the construction product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.

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<sup>112</sup> BE: Replace "procedures" by a longer reference to a system of Factory Production Control (FPC)."

<sup>113</sup> DE/PL: Add "...declared performance and the conformity with the applicable Community harmonisation legislation."

<sup>114</sup> NL: Delete "if necessary." FI: Delete the whole second subparagraph.

<sup>115</sup> ES: Clarify what is meant by "any other element". Is it the number of the DoP or another internal number which allows traceability ?

<sup>116</sup> RO: Add: "... be contacted and the unique identification code of the construction product on the..."

<sup>117</sup> DE/PL: Use wording "not in conformity with the applicable Community harmonisation legislation and the declared performance..."

<sup>118</sup> UK: Delete "from end users" in order to create consistency with Art. 46, 48 (1) and 49 (2).

7. Manufacturers shall, upon the basis of a reasoned request of the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with<sup>119</sup> the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have placed on the market.

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## *Article 11*

### *Authorised representatives*

1. Manufacturers may appoint, by a written mandate, an authorised representative.<sup>121</sup>

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

2. Where a manufacturer has appointed an authorised representative, the latter shall at least do the following:<sup>122</sup>

- (a) keep the declaration of performance and the technical documentation at the disposal of national surveillance authorities for the period referred to Article 10(2);
- (b) on request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the product with the declared performance;<sup>123</sup>

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<sup>119</sup> DE/PL: Use wording "of the construction product with the applicable Community harmonisation legislation and the declared performance...".

<sup>120</sup> BE: Add a new para. 8: "Manufacturers shall co-operate with notified bodies in their duties and more particularly when a certificate of conformity has to be issued".

<sup>121</sup> AT/SK: Clarify whether this possibility also applies to manufacturers established within the Community and whether more than one authorised representative may be appointed. CY: The written mandate given by the manufacturer to the authorized representative should include specific obligations.

<sup>122</sup> AT: Clarify whether the drawing up of a DoP can be a task mandated to the authorised representative.

<sup>123</sup> DE/PL: Use wording "...with the applicable Community harmonisation legislation and the declared performance".

- (c) co-operate with the competent authorities, at the request of the latter, on any action to avoid the risks posed by construction products covered by their mandate.

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## Article 12

### *Obligations of importers*<sup>125</sup>

1. When placing a construction product on the Community market importers shall act with due care in relation to the requirements of this Regulation.<sup>126</sup>
2. Before placing a construction product on the market importers shall ensure that the assessment and the verification of constancy of the declared performance has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation referred to in the first subparagraph of Article 10(1). They shall draw up<sup>127</sup> the declaration of performance in accordance with Articles 4, 5 and 6.<sup>128</sup> They shall also ensure that the product bears the required CE marking, is accompanied by the required documents and that the manufacturer has respected the requirements set out in Articles 10(4) and 10(5).<sup>129</sup>

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<sup>124</sup> SK: Add a new (d): shall draw up the declaration of performance in accordance with Articles 4-6. He shall also ensure that the product bears the required CE marking, is accompanied by the required documents and that the manufacturer has respected the requirements set out in Articles 10 (4) and 10 (5). LT: In order to be coherent with Art. 13 (2), add a provision that it is up to the manufacturer or the authorised representative to draw up instructions and safety information.

<sup>125</sup> BG: Mirror the text from horizontal Decision.

<sup>126</sup> NL: Add in the end: "...and make a thorough inquiry on the prevailing building regulations, related to the CE marking, in the Member States of destination. They inform their manufacturers accordingly."

<sup>127</sup> PL: Rephrase to: "Before placing a construction product on the market importers shall obtain from the manufacturer a copy of the technical documentation referred to in art. 10 (1), first paragraph, and they shall ensure its upgrading. On the basis of the technical documentation received, the importers shall draw up the ..."

<sup>128</sup> NL: Add "...articles 4, 5 and 6 in case the manufacturer did not draw up this declaration". FI: Align Art. 12 (2) to Art. 7 (1) in order to impose feasible obligations on importers. BG: Impossible for the importer to draw up a d.o.p., modify this requirement.

<sup>129</sup> LT: Add a language requirement, that the importer has to convey the information drawn up by the manufacturer or authorised representative, also to be coherent with Art. 10,11 and 13.

Where an importer considers or has reason to believe that the construction product is not in conformity with the declaration of performance, he may not place the construction product on the market until it conforms to the accompanying declaration of performance or until declaration of performance is corrected.<sup>130</sup>

3. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the construction product or, where not possible, on its packaging or in a document accompanying the product.
4. Importers shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declared performance.
5. Importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with<sup>131</sup> the declaration of performance, shall immediately take the necessary corrective measures to bring that construction product in conformity or withdraw it from the market and recall it from end users, if appropriate. They shall immediately inform the national authorities of the Member States where they made the construction product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.<sup>132</sup>
6. Importers shall, for the period referred to in Article 10(2), keep a copy of the declaration of performance at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

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<sup>130</sup> DE/PL: Art. 12 (2), second sub-para. should read: "Where an importer considers or has reason to believe that the construction product is not in conformity with the applicable Community harmonisation legislation or the declaration of performance, he may not place the construction product on the market until it has been brought into conformity with ~~conforms to the applicable Community harmonisation legislation and~~ the accompanying declaration of performance or until the declared performance declaration of performance is corrected."

<sup>131</sup> DE/PL: Use wording "...conformity with applicable Community harmonisation legislation or the declared performance..."

<sup>132</sup> NL: Add a new subparagraph: "Importers share and keep - in cooperation with their manufacturers- a register of complaints. They inform each other about complaints from their customers."

7. Importers shall, on the basis of a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance.<sup>133</sup> They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have placed on the market.

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### *Article 13*

#### *Obligations of distributors*

1. When making a 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 bears the required CE marking<sup>135</sup> and is accompanied by the documents required under this Regulation and by instructions and safety information in a language easily understood by users in the Member State<sup>136</sup> where the product is made available on the market<sup>137</sup> and that the manufacturer and the importer have complied with the requirements set out in Article 10(4), Article 10(5) and Article 12(3) respectively.

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<sup>133</sup> DE/PL: Use wording: "...the construction product with the applicable Community harmonisation legislation and the declared performance."

<sup>134</sup> BE: Add a new para. 8.: "Importers shall co-operate with notified bodies, particularly when audit-testings before placing a product on the market are foreseen in the systems of assessment and verification of constancy of performance, in annex V."

<sup>135</sup> PL: Given that not all construction products will bear the CE marking, the wording should be adjusted. "...market distributors shall make sure whether the product bearing the CE marking is accompanied by the documents...".

<sup>136</sup> RO/ES/CZ/FI/IT: Replace "in a language easily understood by users in the Member State" by "in the official languages of the Member State". NL: Replace by "in the official language or languages of the Member State in which the product is to be used. LT: The task of ensuring that instructions and safety information is available in the relevant language should fall on importers or distributors. PL: Delete "and by instructions and safety information in a language easily understood by users in the Member State". RO: Clarify which "accompanying documents" is reference being made to.

<sup>137</sup> IT: Add "and in a linguistic form easily understandable by users."

Where a distributor considers or has reason to believe that a construction product is not in conformity with the declaration of performance, he may make the product available on the market only after it conforms to the accompanying declaration of performance or until declaration of performance is corrected.. The distributor shall inform the manufacturer or the importer to this effect as well as the market surveillance authorities, when the product presents a risk.<sup>138</sup>

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 declared performance.
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<sup>139</sup> declaration of performance, shall immediately make sure that the necessary corrective measures to bring that product in conformity or withdraw it from the market and recall it from end users are taken, if appropriate. They shall immediately inform the national authorities of the Member States where they made the product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.
5. Distributors shall, on the basis of a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance<sup>140</sup>. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have made available on the market.

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<sup>138</sup> DE/PL: Re-word the second sub-para as follows: "Where a distributor considers or has reason to believe that a construction product is not in conformity with the applicable Community harmonisation legislation or the declaration of performance, he may make the product available on the market only after it has been brought into conformity with the applicable Community harmonisation legislation and conforms to the accompanying declaration of performance or until the declared declaration of performance is corrected. The distributor shall inform the manufacturer or the importer to this effect as well as the market surveillance authorities, when the product presents a risk.

<sup>139</sup> DE/PL: Use wording: "...conformity with the applicable Community harmonisation legislation or the..."

<sup>140</sup> DE/PL: Use wording "...with the applicable Community harmonisation legislation and the declared performance."



## Article 14

### *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, when 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 declared performance<sup>141</sup>, may be affected and consequently he shall be subject to the obligations of the manufacturer under Article 10.<sup>142</sup>

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## Article 15

### *Identification of economic operators*

Economic operators<sup>144</sup> shall be able, on request, to identify the following to the market surveillance authorities, for a period referred to in Article 10(2):

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

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<sup>141</sup> DE/PL: Use wording "...that conformity with the applicable Community harmonisation legislation and the declared performance...".

<sup>142</sup> NL: Add "...in case harmonized technical specifications provide possible modifications of the product and the distributor wants to market the modified product again under the CE-marking.

<sup>143</sup> DE: Add the following Article 14a: *Cases in which obligations of distributors apply to manufacturers* - "A manufacturer shall be considered a distributor for the purposes of this Regulation, when he places a product on the market."

<sup>144</sup> NL: Restrict this obligation to "manufacturers, authorised representatives, importers and major wholesalers", thereby excluding smaller distributors.

## CHAPTER IV

### HARMONISED TECHNICAL SPECIFICATIONS

#### *Article 16*

#### *Harmonised standards*

1. Harmonised standards<sup>145</sup> shall be established by the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of mandates adopted by the Commission in accordance with Article 6 of that Directive.<sup>146</sup>
2. Harmonised standards shall provide the methods and the criteria for assessing the performance of the construction products in relation to their essential characteristics.<sup>147</sup>

Harmonised standards shall, where appropriate, provide methods less onerous than testing for assessing the performance of the construction products in relation to their essential characteristics.<sup>148 149</sup>

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<sup>145</sup> RO: Add a clear definition of harmonised technical specifications/standards. Prsd: highlights benefits of case by case approach. ES: Make clear in the wording that only Annex Z of the harmonised standard will be compulsory.

<sup>146</sup> AT/BE/SE/CY: Mention Committee according to Article 51. PT: Mention Committee of Directive 2006/123. Cion: Would interfere with valid comitology rules. ES: Specify that a harmonised standard is only obligatory with regard to the relevant provision in the annexes. Cion: Correct in substance, but no need to change Article 16. DE: Add in the end: "...and shall support the relevant requirements of other applicable Community harmonisation legislation."

<sup>147</sup> AT/NL suggest different wording: "...shall establish the essential characteristics and provide the methods and the criteria for assessing the performance of the construction products in relation to them. Cion: Reservation, it is in the mandate, not in the standard. NL: Clarify the scope of the harmonised standard and whether "intended use" can be included. Cion: No, "intended use" as such does not apply to every standard or product. DE: Clarify by saying: "...essential characteristics and their performance over time and shall indicate the intended use of the construction product in the construction works".

<sup>148</sup> ES: Add "...as long as they guarantee the same level of safety."

<sup>149</sup> ES/DE: Sometimes both national standards and harmonised standards apply, clarify precedence in case of any conflict. Cion: Reservation; the principal roles of EU level and Member State level cannot be modified or regulated through this article. PL: Replace "testing for assessing the performance by "those for determination of the performance" in order to exclude inappropriate methods such as tabular calculation. ES: Replace the whole second subparagraph by: "Provided that assessing the performance of the construction products in relation to their essential characteristics is drawn up with identical guarantee, the harmonised standards could provide methods less onerous than testing."

3. The European standardisation bodies shall determine in harmonised standards the applicable factory production control<sup>150</sup>, which shall take into account the specific conditions of the manufacturing process of the construction product concerned.<sup>151</sup>
4. <sup>152</sup>The Commission shall assess the conformity of harmonised standards established by the European standardisation bodies with the relevant mandate.<sup>153</sup>

The Commission shall publish in the *Official Journal of the European Union* the list of references of harmonised standards<sup>154</sup> which are in conformity with the relevant mandates, and set the date of applicability of those standards.<sup>155</sup>

The Commission shall publish any updates to that list.

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<sup>150</sup> UK: Wording "factory control" is not appropriate for handmade products; highlights importance of wide standards not to prejudice SMEs.

<sup>151</sup> DE: Add in the end: "...and all further technical details necessary for the proper implementation of the system of assessment and verification of constancy of performance."

<sup>152</sup> PL: Add a new first sub-paragraph: "When preparing the mandates for harmonised standards, the Commission shall – firstly – take into consideration the construction products placed on the market on the basis of other harmonised specifications".

<sup>153</sup> DE: Specify in greater detail the content of the mandate (quality assurance, conformity assessment, third-party control etc.)

<sup>154</sup> UK: Add provision on frequency of publications. Cion: Reservation. FI: Add language provision on harmonised standards themselves. Cion: Would require a principal horizontal provision or a change in the CEN system, cannot be regulated by Constructions Products Regulation alone.

<sup>155</sup> AT/BE/PT/DE: Wording should be: "...date of start of the possible and of the mandatory use for CE-marking as well as the end of application of those...". Cion: Flexible. Prsd: Could be dealt with through comitology. BE: Add reference to national standards transposing harmonised standards. Cion: Not usual anymore in legal drafting, but can be checked, if necessary. BE: Add provision on how to amend standards. Cion: This is done in the CEN system, not through Articles 16 and 17. DE: Clarify what happens if the periods of double application elapse, whether products may still be placed on the market.

## Article 17

### *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 Commission or the Member State concerned shall bring the matter before the Committee set up by Article 5 of Directive 98/34/EC, giving its arguments.<sup>156</sup> The Committee shall, after having consulted with the relevant European standardisation bodies, deliver its opinion without delay.<sup>157</sup>
2. In the light of the Committee's opinion, the Commission shall decide<sup>158</sup> 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 and, if necessary, request the revision of the harmonised standards concerned.<sup>159</sup>

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<sup>156</sup> AT: Reference should rather be to the Standing Committee acc. to Article 51.  
DE/UK/SE/BE/ES/IT: Consult first Standing Committee then Dir. 98/34 Committee. IT: Clarify the modalities of consultation of Member States. Cion: Sceptical, the role of the Committees in case of formal objections has to follow the horizontal Regulation.

<sup>157</sup> AT: Add the following sentence: "In case of alteration of the status of a harmonised standard the Committee set up by Article 5 of the Directive 98/34/EG shall be informed." FI: Answers of Member States should be made available together with the opinion.

<sup>158</sup> DE: Add a deadline, at least "without delay". Cion: Against.

<sup>159</sup> DE: A similar provision to Art.17 is needed in case of a formal objection against a EAD. Cion: Will check whether a parallel article is needed. ES: Provide for the possibility of smaller modifications, not always a total revision of the standard.

<sup>160</sup> DE: Add a new article 17a: "*Formal objection against European Assessment Documents*: 1. When a Member State or the Commission considers that a European Assessment Document does not entirely comply with the provisions set out in Article 20(1) to (2) or Annex II or in other provisions of EC harmonisation legislation, the Commission or the Member State concerned shall bring the matter before the Committee set up by Article 51(3), giving its arguments. The Committee shall, after having consulted with the organisation referred to in Article 20(3), deliver its opinion without delay. 2. In the light of the Committee's opinion, 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 Document concerned in the Official Journal of the European Union. 3. The Commission shall inform the organisation referred to in Article 20(3), and, if necessary, request the revision of the European Assessment Document.

*Article 18 [17]*

*Levels or classes of performance*

1. The Commission may establish<sup>161</sup> classes of performance in relation to the essential characteristics of construction products.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).<sup>162</sup>

2. 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.<sup>163</sup>

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.<sup>164</sup>

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<sup>161</sup> RO: Clarify difference between "establish" here and "determine" in para. 4.

<sup>162</sup> RO: Adapt this standard clause to the requirements of this article.

<sup>163</sup> RO: Add: "...harmonised standards only on the basis of mandates given by the Commission." Cion: Sceptical, too restrictive. AT/PL: Include a role for the TABs by adding: "...in harmonised standards and by the organisation of Technical Assessment Bodies referred to in Article 25(1) in European Assessment Documents." BE: Either involve TABs or replace "in harmonised standards" by "in harmonised standards or EADs" (throughout). FI/IT/SE: Enlarge role of Member States, here and in para. 4. IT: Sceptical to the suggestions by AT and BE. FI: Commission should fix classes, Member States should always be allowed to determine the level.

<sup>164</sup> PT: Revert the order of the two sub-paras. of para. 2.

3. The European standardisation bodies<sup>165</sup> may set in harmonised standards technical specifications the conditions under which a product shall be deemed to satisfy a certain level or class of performance without testing or without further testing.<sup>166 167</sup>
4. Member States may determine the levels, values or classes of performance<sup>168</sup> in relation to the essential characteristics of construction products only in accordance with the classification systems established by the European standardisation bodies in harmonised standards, or by the Commission.<sup>169 170</sup>

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<sup>165</sup> AT: Add "...bodies and the organisation of Technical Assessment Bodies referred to in Article 25(1) may..."

<sup>166</sup> ES/DE: Insert consultation of the Standing Committee in the procedures acc. to paragraphs 2 and 3. Cion: Sceptical to this idea. UK/SE: Align procedures of Art. 18 to those of Art. 17, in order to give Member States and Commission a better defined role. UK/SE/PL: Clarify status of existing and future guidance documents and mention something on how they are adopted.

<sup>167</sup> SE: Suggests following para. 3.: "The Commission may also set conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2). Where such conditions are not set by the Commission, they may be established by European harmonisation bodies in harmonised standards." RO: Include definitions of "without testing", "without further testing", "levels/classes of performance" in Article 2. PL: Add following sub-paragraph: "In relation to the performance classes laid down by the Commission, European standardisation bodies shall establish the conditions under which a product shall be without testing or without further testing deemed to satisfy the defined level of the performance on the basis of the relevant Commission decisions taken in accordance with art. 51 (2)." IT: Add the following: "These conditions shall be verified at regulatory level and shall be defined by a Commission Decision after consultation of committee of Art.51."

<sup>168</sup> RO: Use wording: "Member States may establish the levels of performance or, where classes of performance in relation to the essential characteristics of construction products are not established by the Commission or in harmonised standards, the classes of..." Cion: Sceptical. PL: Use "apply the levels" instead of "determine the levels". DE: Mention "upper and lower limits" that Member States are allowed to set. Prsdy: Suggests to find a broader wording clarifying that there are various ways on how to fix classes, values and levels.

<sup>169</sup> FI: Shorten the text to read: "established by the Commission." NL: Role of European standardisation bodies is too strong here. AT: Use wording: "...harmonised standards or by the organisation of Technical Assessment Bodies referred to in Article 25(1) in European Assessment Documents, or by the Commission." PT: Add a provision on determining levels or classes also for EADs. Cion: Open to this suggestion. ES: Regulation should clarify the status of current "Guidance Papers".

<sup>170</sup> DE: Add a new second sub-para. of (4) and a new (4a): "The range of the classification system, classes or levels according No. (1) and (2) shall be compatible with the applicable requirements. (4a): The establishment of levels and classes concerning health, safety, environmental protection and consumer protection, will take into account to allow Member States to regulate a high level of protection."

*Article 19 [18]*

*Assessment and verification of constancy of performance<sup>171</sup>*

1. Assessment and verification of constancy of the declared performance of construction products<sup>172</sup> in relation to their essential characteristics shall be carried out in accordance with one of the systems set out in Annex V.<sup>173</sup>
2. The Commission shall establish which system<sup>174</sup> is applicable to a given construction product or family of construction products according to the following criteria:<sup>175</sup>
  - (a) the importance of the part played by the product with respect to the basic works requirements;
  - (b) the nature of the product;
  - (c) the effect of the variability<sup>176</sup> of the essential characteristics of construction product during the service life<sup>177</sup> of the product;

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<sup>171</sup> BE: In the whole article the obligations of manufacturers are insufficiently described. UK: Reservation, as it is doubtful whether assessment and verification provisions really lead to simplification. PL: Insert "declared performance in the title."

<sup>172</sup> Cion explained that the system to assess and verify the constancy of a declared performance of a construction product is needed in order to mirror the relevant provision of the horizontal Regulation. For construction products however, "assessment of constancy of performance" and not just "assessment of conformity" is the correct concept, thus the provision has to be more detailed. AT: Unclear, whether this means that for each characteristic of a product a separate system according to Annex V will be established along the criteria of Art. 19.2 .

<sup>173</sup> BE: Annex V should specify the validity/duration of certificates issued. SK: Use wording "at least one of the systems set out..." Cion: Not necessary. SE : Clarification needed whether Art. 19 and the use of notified bodies as referred to in Art. 19 (1), is intended to be applied only for conformity assessment based on harmonized standards or also for the European Technical Assessment procedure.

<sup>174</sup> Following a question by BE, the Cion explained that these systems also apply in cases where the manufacturers has voluntarily chosen to declare some types of performance (Art. 4 (1)(b), because as soon as a DoP has been issued, one of the systems applies.

<sup>175</sup> MT: Align provisions further to horizontal Regulation, although it is understood that modules and systems are not the same thing. Clarify link to eco-design directive. Cion: Link is automatic, either Member States legislation or European legislation can always set out essential requirements that certain products have to fulfill.

<sup>176</sup> PL: Use wording "the probability and the effect of the variability..."

<sup>177</sup> SE: Definiton of service life needed, maybe in Art. 2.

(d) the susceptibility to defects in the product manufacture.<sup>178</sup>

In each case, the Commission shall choose the least onerous system consistent with safety.<sup>179 180</sup>

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).<sup>181</sup>

3. The system thus determined shall be indicated in the mandates for harmonised standards and in the harmonised technical specifications.<sup>182</sup>

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<sup>178</sup> FI: Add the following wording: "The Commission may establish the applicable system based on horizontal criteria to achieve reliable CE-marking information." Cion: Generic wording is ok, but details should be left to Comitology.

<sup>179</sup> Several alternative wordings have been proposed, e.g. "consistent with the basic works requirements", "consistent with health, energy saving, sustainability, hygienic aspects, environmental protection, public protection objectives etc...", "in particular with health, safety and sustainability"Cion is open to check the wording.

<sup>180</sup> SE: Insert a new subparagraph: "In cases where a construction product is subject to several essential characteristics, the Commission may decide on different assessment systems that may apply for the characteristics concerned. In these cases a manufacturer may use the most onerous assessment system applied for all essential characteristics. The Commission may also decide that one certain assessment system should be used for a specific essential characteristic for all construction products."

<sup>181</sup> NL: Reservation on normal comitology provision here, Standing Committee should be involved.

<sup>182</sup> DE: Replace "technical specifications" by "standards".



*Article 20 [19]*  
*European Assessment Document*<sup>183</sup>

1. The European Assessment Document (EAD) shall be adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1)<sup>184</sup> following a request for a European Technical Assessment by a manufacturer or an importer<sup>185</sup>, in accordance with the procedure set out in Annex II.<sup>186</sup>
2. The organisation of Technical Assessment Bodies referred to in Article 25(1) shall establish in the EAD the methods and the criteria for assessing the performance in relation to those essential characteristics of the construction product, which are related to the use intended by the manufacturer.<sup>187 188</sup>

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<sup>183</sup> CZ: It will be very difficult in practice to create EADs of a quality similar to a harmonised standard via the currently proposed provisions of Art. 20 - 25.

<sup>184</sup> ES: Clarify that we normally refer to an already existing organisation here. CZ: Either the organisation of TABs should work "on the basis of a mandate by the Commission", or else the organisation of TABs should get an exact parallel provision for EADs to that suggested for European standardisation bodies for harmonised standards in Art.18. BE/AT: Clarify here or in Art. 21 that an EAD - if a harmonised standard already exists - can only be complementary. ES/NL: Restrict EADs to cases, where a harmonised standard does not exist. Cion: There are cases where harmonised standards and EADs might co-exist.

<sup>185</sup> PL: Provisions on the request for a Technical Assessment by a manufacturer might need some adaptations. See also recital 17. ES/PT/DE: To follow any request by any manufacturer might be too burdensome for the organisation of TABs. Delete this. Cion: Not every request will require a complete new EAD. The organisation of TABs can take internal measures to avoid being burdened with too many requests. PT/BG: Delete "or importer" here and in Art. 21 (1). BG: Deletion of importer also requires changes in Annex II. Cion: Against deletion, importer is responsible in case of third-country manufacturers.

<sup>186</sup> IT/CZ/DE: Time-frame for the procedure of Annex II is too rigid. More flexibility needed. AT: Procedure of Annex II is too burdensome and too detailed regarding innovative or small series production. A general wording on TABs and how to grant EADs would be sufficient. Cion: Open to improvements of Annex II. AT: Add: "...manufacturer and which are consistent with applicable methods and criteria provided in harmonised standards." Different methods should be avoided, if those are already covered by a harmonised standard.

<sup>187</sup> DE: Re-phrase as follows: "...to those essential characteristics of the construction product, which are covered by the EAD related to the placing on the market and the use of the product in construction works."

<sup>188</sup> SE: Clarify that the organisation of TABs does not always need new tests etc., but can rely on standard methods, also contained in harmonised standards; add 20 (3a): "Common European test methods should be used if they are available and suitable for the construction product."

3. The organisation of technical assessment bodies referred to in Article 25(1) shall determine in the EAD the specific factory production control to be applied, taking into account the particular conditions of the manufacturing process of the construction product concerned.<sup>189 190</sup>

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<sup>189</sup> ES: Clarify the link between EAD and the system of assessment and verification of constancy of performance and make clear who will set up or decide the application system.

<sup>190</sup> DE: Delete the whole para. 3 as covered by para.2 and Annex II in substance. NL: Delete the word "specific". IT: Add the following sentence: "Consolidated European test and classification methods, if already defined, are considered in EAD".

1. The European Technical Assessment (ETA) shall be issued by a Technical Assessment Body, for any construction product,<sup>191</sup> at the request of a manufacturer or importer<sup>192</sup> on the basis of a EAD in accordance with the procedure set out in Annex II.<sup>193</sup>
2. The Commission shall establish the format of the ETA.<sup>194</sup>

<sup>191</sup> DE: Wording "any construction product" is technically not correct, there are exceptions. Better wording would be: "for ~~any~~ construction products not yet or only partly covered by a harmonised standard, at the request of a manufacturer or importer ~~on the basis of a EAD~~ in accordance with the procedure set out in Annex II." Furthermore, add a language provision on the ETA, here or in Annex II. AT: Use wording: "...for any construction product for those essential characteristics, which are related to the use intended by the manufacturer and which are not or not yet covered by a harmonised standard, at the request..." PL suggests: for innovative construction products that are not covered by harmonised standard, or when the existing harmonised standard may not be applied, at the request of a manufacturer or..." UK: Such requests should only be possible if a harmonised standard does not exist or in very special other cases. IT: Use wording: "...any construction product if the manufacturer shows the product's deviation from the concerning harmonized standard or the impossibility to use an harmonized standard to evaluate the performances related to essential characteristics of the product, at the request..."

<sup>192</sup> BE: Add "distributor". Cion: Unnecessary, if distributors take over manufacturer's role, provision will apply automatically.

<sup>193</sup> ES: Add wording on the appropriateness of the product for different uses. DE: Wording should permit that the ETA contains instructions for intended use. Cion: Sceptical, ETA concentrates on essential characteristics and does not include a whole evaluation of the product. DE: Clarify whether an ETA can be issued, if an EAD has not yet been elaborated, in order to avoid that manufacturers have to wait too long. Cion: Difficult to impose time-frames, harmonised standards and EADs need some time to be set up. AT: Procedure of Annex II is too detailed and rigid, definition of rights and obligations would be a better solution. NL: Modify the wording "...shall be issued in case there is no harmonised standard applicable or the concerned harmonised standard is not fully applicable by..." BE suggests completely new para. 1 as follows: European Technical Assessment may be granted to:  
(a) products for which there is neither a harmonized standard, nor a recognized national standard, nor a mandate for a harmonized standard, and for which the Commission, after consulting under procedure of article 4 of Decision 1999/468/EC the Committee referred to in Article 51, considers that a standard could not, or not yet, be elaborated; and  
(b) products which differ significantly from harmonized or recognized national standards. Even in the case where a mandate for a harmonized standard has been issued, the provisions referred to in (a) do not exclude the granting of European technical Assessment for products for which European Assessment Document for such approval exist. This shall apply until the entry into force of the harmonized standard in the Member States.

<sup>194</sup> BE: It should be clear that "format" includes duration/validity. Cion: No need to change the text here.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2). <sup>195</sup>

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<sup>195</sup> DK: In order to avoid a lower quality in case of ETAs than in case of harmonised standards, the para. 2 should be split and reorganised as follows: "(2). The Commission shall establish the format of the ETA. (3). The Commission can decide, as a measure, designed to amend non-essential elements of this Regulation, that future ETAs only can be issued if the respective product is not covered by a harmonised standard. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2). (4). If an ETA is issued for a product already covered by a harmonised standard, the level of security and safety of the harmonised standard shall apply for the ETA."

## CHAPTER V

### TECHNICAL ASSESSMENT BODIES

#### *Article 22 [21]*

#### *Designation of Technical Assessment Bodies<sup>196</sup>*

1. Member States may designate Technical Assessment Bodies (TAB)<sup>197</sup> for product areas listed in Table 1 of Annex IV.<sup>198</sup>

Member States which have designated a TAB shall communicate to the other Member States and the Commission<sup>199</sup> the name, the address of that TAB and the product areas for which that TAB is designated.

2. The Commission shall make publicly available the list of TABs indicating the product areas for which they are designated.

The Commission shall make publicly available any updates to that list.<sup>200</sup>

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<sup>196</sup> FI: Wording of Articles 22-25 is too far-reaching, provisions from the horizontal Regulation are sufficient. SE: Ok. with the principle of this Chapter, but the EAD/ETA procedure should be changed as follows: -- appropriate parts of the well established system for assessment of notified bodies should be used to evaluate the technical assessment bodies, (TABs) in order to secure their competence, through the use of accreditation and European standards --- the standing committee of construction shall be informed about requests for EADs and about the evaluation of the bodies applying EADs; -- using established European methods in EAD/ETA should be mandatory if such methods exist.

<sup>197</sup> ES: Add "within their territory." Cion: Unnecessary. IT: Clarify whether TABs can be public or semi-public bodies. Give more flexibility to Member States concerning the designation method. Cion: TABs can be public, however general competition rules apply to them.

<sup>198</sup> AT/IT: Too restrictive, either delete "for product areas listed in Table 1 of Annex IV" or add "or for other construction products" here or in Annex IV. IT: Designation method does not necessarily have to refer to "product areas". UK: Against AT suggestion, in favour of mentioning sub-families of products, too. Cion: The concept of TABs organised along product area lines is not new. SI: Use wording "one or more product areas", as the same TAB can cover several areas. PT: Use wording "for all or some of the product areas..." PL: Use wording "Technical Assessment Bodies (TAB), together with indication of the assessed construction products."

<sup>199</sup> IT: Mention the existing system. Cion: Current wording is better to cover all eventualities.

<sup>200</sup> PT: Refer to Official Journal here. Cion: Against, not required by horizontal regulation.

Article 23 [22]

Requirements for TABs

1. The TAB shall satisfy the requirements set out in Table 2 of Annex IV.<sup>201</sup>
2. Where a TAB no longer complies with the requirements referred to in paragraph 1, the Member State shall withdraw the designation of that TAB **and inform the Commission and the other Member States of this withdrawal.**<sup>202</sup>
3. Member States shall inform the Commission and the other Member States of their national procedures for the assessment of TABs<sup>203</sup>, of the monitoring of their activity, and of any changes to that information.<sup>204</sup> The Commission shall make that information publicly available.<sup>205</sup>

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<sup>201</sup> SE: Clarify that a TAB can be a notified body, e.g. by a new 23 (1a): "After notification referred to in Chapter VII, a TAB can also act as a Performance Assessment Body (notified body)." Cion: Difficult to put this explicitly to a legal text. IT: Add a provision similar to that for notified bodies (Art. 33 (8)): "The remuneration of its personnel shall not depend on the number of assessments carried out or on the results of such assessments." PL suggests alternative wording: "The TAB shall satisfy the requirements within the scope of its essential competence covering the products assessment and a way for provision of the consistency of their characteristics during the current production process, impartiality and the management set out by the Commission in accordance with art. 51 (2)."

<sup>202</sup> Addition following a RO suggestion, supported by the Cion. SI: Make clear that the withdrawal can be linked to only certain product areas (no total withdrawal). BE: Clarify what happens to ETAs that are in the process of being issued - in case of such a withdrawal.

<sup>203</sup> AT/NL: The doubled procedures "assessment by Member States" in Art. 23 and "peer evaluation" in Art. 24 seem very burdensome. Clarify that Art. 24 is a permanent updating of the initial assessment of Art. 23 or else merge the procedures or delimit them more exactly and describe responsibilities of TABs and the Commission. Cion: Open to give more explanations in Article 23.

<sup>204</sup> RO: Clarify whether a consultation procedure is provided here.

<sup>205</sup> IT: Shift Art. 23 (3) to Art. 22 where it fits better.

*Article 24 [23]*  
*Evaluation of TABs<sup>206 207</sup>*

1. The TABs shall **evaluate** ~~verify~~ whether other TABs fulfil the respective criteria set out in Table 2 of Annex IV.

The evaluation shall be organised by the organisation referred to in Article 25(1) and<sup>208</sup> shall take place once every four years, within the product areas listed in Table 1 of Annex IV, for which the TABs have been designated.

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<sup>206</sup> NL: General reservation on the usefulness of this peer evaluation article. ES: Delete the article or replace by arbitration procedure.

<sup>207</sup> PL: Replace the whole article by the following wording closer to the horizontal Regulation: 1. TABs are subject to the peer evaluation to be organized by the organization referred to in art. 25(1); 2. The parties concerned have the right to participate in the system created for the surveillance over the peer evaluation, but not in the individual procedures of the peer evaluation; 3. Member States guarantee the systematical submission to the peer evaluation by their TAB, in accordance with the requirements referred to in para 1; 4. The peer evaluation is to be performed on the basis of fair and transparent criteria and evaluation procedures, particularly in relation to the requirements concerning the structure, human resources and procedures, confidentiality, and complaints; 5. The peer evaluation confirms whether the TABs comply with the requirements referred to in art. 23; 6. The results of the peer evaluation are to be published and communicate to all the MS and the Commission by the organization referred to in 25 (1); 7. The Commission cooperating with the MS performs the supervision over the rules and appropriate functioning of the peer evaluation.

<sup>208</sup> RO: Reword to: "...in Article 25 (1). In this respect, for every TAB to be evaluated, the organisation should designate an evaluation group consisting of representatives of at least three TABs appointed by the organisation. The evaluation shall take place..." or find a similar method for the designation of evaluators. Cion: Procedures can be installed to avoid competition problems or conflicts of interest. IT/BG: Against evaluation by other TABs. BG: Evaluation of TABs should rather be done as for notified bodies, not as for national accreditation bodies (horizontal regulation).

2. The Commission shall establish procedures for carrying out the evaluation, including appropriate appeals procedures against decisions<sup>209</sup> taken as a result of the evaluation.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

The evaluation of a TAB may not be carried out by a TAB from the same Member State.

3. The organisation referred to in Article 25(1) shall communicate the results of the evaluations of TABs to all Member States and the Commission.

The Commission shall, in cooperation with Member States, monitor the respect of the rules and the proper functioning of the evaluation of TABs.

#### *Article 25 [24]*

##### *Co-ordination of TABs*

1. The TABs shall establish an organisation for technical assessment, hereinafter "organisation of TABs".
2. The organisation of TABs shall carry out the following tasks:
  - (a) co-ordinate the application of the rules and procedures set out in Article 19 and Annex II,<sup>210</sup> as well as provide the support needed to that end;
  - (b) inform the Commission twice a year<sup>211</sup> of any question related to the preparation of EADs and of any aspects related to the interpretation of the rules and procedures set out in Article 19 and Annex II;<sup>212</sup>

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<sup>209</sup> UK: Clarify which decisions are taken by whom in case that a TAB fails a peer evaluation.  
Cion: Wording could indeed be improved.

<sup>210</sup> PL: Replace these procedures by "procedures set out in Articles 20, 21 and 24, as well...".

<sup>211</sup> PL: Delete "twice a year".

<sup>212</sup> PL: Replace these procedures by "procedures set out in Articles 20, 21 and 24."



- (c) adopt EADs;
  - (d) organise the evaluation of the TABs;<sup>213</sup>
  - (e) ensure the co-ordination of the TABs.
3. The Commission may provide assistance to the organisation of TABs in carrying out the tasks referred to in point (e) of paragraph 2.<sup>214</sup> The Commission may conclude a framework partnership agreement with the organisation of TABs to that end.<sup>215</sup>
4. Member States shall ensure that the TABs contribute with financial and human resources to the organisation of TABs.<sup>216</sup>

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<sup>213</sup> PL: Use wording "peer evaluation".

<sup>214</sup> PL: Delete "point (e) of".

<sup>215</sup> BG: Mention eligibility for Community financing (Art. 32 of Reg. 765/2008).

<sup>216</sup> DE: Add in the end: "...but shall not subsidize bodies designated according to Article 22 when acting as TABs." CY: Provision could be misunderstood as limiting the establishment of public TABs which should not be the case.

## CHAPTER VI

### SIMPLIFIED PROCEDURES<sup>217</sup>

#### *Article 26 [25]*

#### *Use of Specific Technical Documentation*

1. When the manufacturer<sup>218</sup> determines the product-type he may replace type-testing or type-calculation by a Specific Technical Documentation (STD) demonstrating that:<sup>219</sup>
  - (a) for one or several essential characteristics of the construction product he 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 Commission decision<sup>220</sup>; **or**
  - (b) the construction product he places on the market shares the product-type with another construction product, manufactured by another manufacturer and already tested in accordance with the relevant harmonised technical specification<sup>221</sup>. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results of this another product; **or**

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<sup>217</sup> HU/AT: Scrutiny reservation on scope and details of simplified procedures. FI: Scrutiny reservation on the exact wording, but in general positive to the provisions of Art. 26-28. CY: It should be clarified that Art. 26-28 only deal with the assessment of declared performance and that the STD cannot demonstrate compliance with all applicable requirements.

<sup>218</sup> AT: Wording is not consistent with Annex V, replace "manufacturer" by "notified body" or at least add "or the notified body". Suggests as an alternative: "For the determination of the performances of the product type testing or type calculation may be replaced by..." SK/BE: Use wording "manufacturer or importer". Cion: If an importer takes over the manufacturer's role, the rights and obligations automatically fall on him.

<sup>219</sup> PL/RO: Make clear that reference to harmonised technical specification is always necessary. Cion: Wording is sufficient. RO/DE: Simplified procedures should only be possible if they do not compromise on safety and similar requirements. Cion: Open to add some more words in this respect. SE: Simplified procedures should not be possible without factory production control. Cion: Against.

<sup>220</sup> UK: Add: "Commission decision, which should also be set out in the technical specification, or". ES: Add "The Committee established by Article 51 of this Regulation must be consulted."

<sup>221</sup> UK: Add: "specification and the criteria for sharing set out therein."

- (c) the construction product he places on the market is a system made of components, which he 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.<sup>222</sup>

The manufacturer may use the test results obtained by another manufacturer only after having obtained an authorisation of that manufacturer<sup>223</sup>, 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<sup>224</sup> is system 1 or 2,<sup>225</sup> as set out in Annex V, the STD shall be verified by a relevant certification body<sup>226</sup> as referred to in Annex V.<sup>227</sup>

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<sup>222</sup> UK: No need to change the text of (c ), but Cion should review Guidance Paper C "kits and systems".

<sup>223</sup> ES: Add "manufacturer (clause b) or of the provider (clause c), who remain responsible..."

<sup>224</sup> CY: The verification of constancy of performance should be indicated on the Certificate issued by the relevant certification body (also applies to Art. 27 (2) and 28 (2)).

<sup>225</sup> PT/CY: "system 1, 2 or 3". AT/DE: "system 1, 2 or 4." Cion: Prefers to stick to 1 or 2 only.

<sup>226</sup> AT: Replace "relevant certification body" by "notified certification body". Cion: Too obvious, redundant. AT: Add: "and for system 4 by a notified testing laboratory, as...".

<sup>227</sup> RO: Add new paragraphs 2a to Articles 26, 27 and 28: "Where the fulfilment of the basic works requirement "mechanical resistance and stability" is influenced by major perturbing geological conditions such as earthquakes, Member States may decide that for specified families of construction products for which the applicable system for assessment and verification of constancy of performance is 1 or 2, as set out in Annex V the use of a simplified procedure is not allowed." Cion: Will check whether this is necessary. SE: Add a new para 2a: "The manufacturer using STD is responsible that the performance of his product complies with test results obtained from another manufacturer." Cion: Sceptical, general responsibility of manufacturer has nothing to do with simplified procedure here.

Article 27 [26]

*Use of Specific Technical Documentation by micro-enterprises*

1. **Manufacturers which are** micro-enterprises may replace the applicable system for assessment of the declared performance of construction product by a STD.<sup>228</sup> The STD shall demonstrate the compliance of the construction product with the applicable requirements.<sup>229</sup>

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<sup>228</sup> NL/DK/CY: Provision has good intentions, but might lead to imbalances with regard to competition. PT/PL: Delete articles 27 and 28. ES/BE/SE: Delete Article 27. IT: Art.27 and 28 procedures should not be possible with regard to safety requirements. In general, specific procedures should not depend on the size of enterprises or number of products and can be better provided for through details in harmonised standards or ETAs. UK/BE: Scrutiny reservation, it has to be clarified that any simplified procedure is still robust with regard to safety requirements etc. Cion: The simplified procedure is only to assess declared performance and does not soften other manufacturer's obligations. AT: Should read: "...the applicable system according to Annex V by a STD. The STD shall demonstrate the constancy of performance of the construction product (rest deleted)" Cion: Could be misleading and wrongly interpreted. AT: Unclear from the wording what the simplified procedure would imply regarding the requirement of a DoP, the affixing of the CE marking and the factory production control within system 1 or 2. DK: Clarify that only parts of the attestation of performance can be replaced by a STD and clarify which parts. BG: Restrict this possibility to cases where the old system 2 of the CPD is applied.

<sup>229</sup> BE/ES: It becomes difficult for importers to check this and thus to fulfill their obligations. AT: Add: "The STD should include the results of the verification by the involved notified body."

2. If a construction product belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1 or 2,<sup>230</sup> as set out in Annex V, the STD shall be verified by a relevant certification body as referred to in Annex V.<sup>231</sup>

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<sup>230</sup> UK/CY/DK: "system 1, 2 or 3". AT: "system 1, 2 or 4". Cion: Against.

<sup>231</sup> AT: Suggests: "...verified by a notified certification body as referred to in Annex V and in the case of system 4 by a notified testing laboratory." Add new (2a): "The result of the verification and the involved notified body shall be indicated in the STD".

<sup>232</sup> DE suggests a complete re-draft as follows: Article 27 *Use of Specific Technical Documentation by Small and Medium-Sized Enterprises* ~~micro-enterprises~~

1. Small and Medium-Sized Enterprises ~~Micro-enterprises~~ may replace the applicable harmonised technical specification relevant system for the assessment and declaration of performance of the essential characteristics of the declared performance of construction product by a STD. A STD may be used as well where harmonised technical specifications are not yet available but the product family is covered by a Commission Decision on the assessment and verification of constancy of performance. The STD shall demonstrate the compliance of the construction product with the applicable requirements for placing on the market and the intended use of the product provided for by the manufacturer where the manufacturer intends to place the construction product on the market. 2. If a construction product belongs to a family of construction products for which -- the applicable system for assessment and verification of constancy of performance is system 1 or 2 as set out in Annex V, or -- system 3 is required by a Commission Decision on the assessment and verification of constancy of performance for safety reasons, the STD shall be verified by a relevant Technical Assessment Body ~~certification body~~ as referred to in Article 22. The provisions of Annex II shall not apply. ~~Annex V~~.

## Article 28 [27]

### *Use of Specific Technical Documentation for individually manufactured products*

1. For a construction product designed and manufactured in a non-industrialised production process<sup>233</sup> in response to a specific order, and installed in a single identified work, the manufacturer may replace<sup>234</sup> the applicable system for assessment of performance by a STD, demonstrating compliance of that product with the applicable requirements.
2. If a construction product belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1 or 2, as set out in Annex V, the STD shall be verified by a relevant certification body as referred to in Annex V.<sup>235</sup>

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<sup>233</sup> SE/AT/ES/NL: Replace "designed and manufactured in a non-industrialised production process" by "individually manufactured" and define "individually manufactured product" in Art.2. Cion: Better find a useful wording here, suggestions for a definition in Art. 2 always seemed controversial. SE/CY: As an alternative, just delete "non-industrialised". BE: Clarify whether the STD would be "individual" as well in these cases. AT/LT/UK/ES/DK: Define "individually manufactured product" and "non-industrialised production process".

<sup>234</sup> AT: Clarify what "replacing" means, e.g. no DoP, no type testing etc. Use wording: "the applicable system according to Annex V by a STD demonstrating the ordered performance of that product."

<sup>235</sup> CY/DK: Give also attention to system 3. AT: Suggests: "...verified by a notified certification body as referred to in Annex V and in the case of system 4 by a notified testing laboratory." Add new (2a): "The result of the verification and the involved notified body shall be indicated in the STD."

<sup>236</sup> DE suggests complete re-drafting as follows: 1. For a construction product designed and manufactured ~~in a non-industrialised production process~~ in response to a specific order, and installed in a single identified construction work, the manufacturer may replace the applicable harmonized technical specification relevant system for the assessment of the performance and for declaring essential characteristics by a STD. The STD shall demonstrate ~~demonstrating~~ compliance of the that construction product with the applicable requirements relevant for the identified construction work. 2. If a construction product belongs to a family of construction products for which -- the applicable system for assessment and verification of constancy of performance is system 1 or 2 as set out in Annex V, or -- the Commission Decision on the assessment and verification of constancy of performance requires for safety reasons system 3, the STD shall be verified by a relevant Technical Assessment Body ~~certification body~~ as referred to in Article 22. The provisions of Annex II shall not apply.

## CHAPTER VII

### NOTIFYING AUTHORITIES AND NOTIFIED BODIES<sup>237</sup>

#### *Article 29 [28]*

##### *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<sup>238</sup> of constancy of performance under this Regulation.<sup>239</sup>

#### *Article 30 [29]*

##### *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<sup>240</sup> and notification<sup>241</sup> of the bodies to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance for the purposes of this Regulation, and for the monitoring of notified bodies, including<sup>242</sup> compliance with the provisions of Article 33.

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<sup>237</sup> UK: The reference provision from horizontal Regulation on "Accredited in-house bodies" should also be included here. FI: In Chapter VII, insert a general reference to the horizontal Regulation and include here only those provisions where specific rules for construction products should apply. AT: Apply consistent terminology throughout, preferable always "notified body" where possible and not "performance assessment body", "certification body", "inspection body", etc, etc. Cion: There is a logical structure implied; at a certain stage a performance assessment body becomes a notified body.

<sup>238</sup> PT: "and verification" is not necessary to mention. Cion: Wording should stay as it is.

<sup>239</sup> SE: Add "These bodies are thereafter called "notified bodies". In following articles "performance assessment bodies" should be replaced by "notified bodies". DE: Define "performance assessment body". The rest of Article 30 should stay as close as possible to the horizontal framework.

<sup>240</sup> IT: Use wording "for the assessment based on criteria of Art. 33, and notification..."

<sup>241</sup> DE/NL: Simplify into: "responsible for [...] notification of the bodies..." ES: Clarify that notification has to be carried out within the territory of the relevant Member State.

<sup>242</sup> IT: Replace "including" by "finalised to ascertain the maintenance of..."

2. Where notification is based on an accreditation certificate, Member States may decide that the assessment<sup>243</sup> 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....
3. Where the notifying authority delegates, subcontracts or otherwise entrusts the assessment,<sup>244</sup> notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, the delegated,<sup>245</sup> or otherwise entrusted body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in Article **31**. In addition, such body shall have arrangements to cover liabilities<sup>246</sup> arising from its activities.
4. The notifying authority shall take full responsibility<sup>247</sup> for the tasks performed by delegated<sup>248</sup> or otherwise entrusted body.

*Article 31 [30]*

*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.

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<sup>243</sup> DE: Make it obligatory to avoid parallel procedures: "Notification shall be based on an accreditation certificate. Member States will decide that the assessment and..." PL: Use wording: "The notification should be carried out on the basis of the accreditation certificate of a national accreditation body in the understanding and according to the regulation (EC) Nr.... Member States may decide that the assessment and monitoring referred to in para 1 is carried out by that body." Cion: Obligatory accreditation would not be in line with horizontal framework, but may be discussed and could be proposed by the Council for the construction products.

<sup>244</sup> DE: Delete "assessment".

<sup>245</sup> RO: Add "subcontracted or..."

<sup>246</sup> AT: Details on how liability could be covered should be set out in an Annex. Cion: Against.

<sup>247</sup> PT: This responsibility should only come into effect for non-public bodies. Cion: Against.

<sup>248</sup> RO: Add "subcontracted or..."



3. The notifying authority shall be organised in such a way that each decision relating to notification of a performance assessment body<sup>249</sup> is taken by competent persons different from those who carried out the assessment.
4. The notifying authority shall not offer or provide any activities that notified bodies perform, 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.<sup>250</sup>

### *Article 32 [31]*

#### *Information obligation for the notifying authorities*

Member States shall inform the Commission and the other Member States<sup>251</sup> of their national procedures for the assessment and notification of performance assessment bodies<sup>252</sup> and the monitoring of notified bodies<sup>253</sup>, and of any changes to that information.

The Commission shall make that information publicly available.

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<sup>249</sup> SE: "performance assessment body" should be replaced by "notified body". Cion: Possible to add "performance assessment body authorised to carry out third-party tasks", but this is not indispensable.

<sup>250</sup> PT: Add a provision stating that "the procedure and rules with regard to the functioning of notifying authorities should be made public."

<sup>251</sup> UK: Unclear which new information requirement, if any, is implied here. Delete "and the other Member States". RO: Information to other Member States goes beyond horizontal Decision. To be clarified whether a consultation procedure is implied. Cion: No, just information. The provision is however necessary, because this information is not covered by NANDO.

<sup>252</sup> SE: "performance assessment bodies" should be replaced by "notified bodies".

<sup>253</sup> PT: Simplify to "assessment, notification and monitoring of notified bodies". Cion: Against, some information goes prior to the notification, other parts of information later.

*Article 33 [32]*

*Requirements for notified bodies*

1. For the purposes of notification, a performance assessment body<sup>254</sup> shall meet the requirements set out in paragraphs 2 to 11.
2. The performance assessment body shall be established under national law and have legal personality.
3. The performance assessment body shall be a third-party body independent from the organisation or the construction product it assesses.<sup>255</sup>

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.<sup>256</sup>

4. The performance assessment body<sup>257</sup>, 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 the declared performance shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the construction products which they assess, 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 the products for personal purposes.

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<sup>254</sup> UK: Replace "performance assessment body" by "notified body" throughout the text. DE: Replace "performance assessment body" by "body according to Annex II, para. 2."

<sup>255</sup> PL suggests wording: "...third-party body impartial in relation to all the circles, groups and persons who are directly and indirectly linked with construction products".

<sup>256</sup> DE: Delete second sub-para. of (3), as the substance is already covered by para. 2 and by the first sub-paragraph. Cion: Though legally not indispensable it might be useful for clarification.

<sup>257</sup> SE: "performance assessment body" should be replaced by "notified body".

They shall not become directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those construction products, nor represent the parties engaged in those activities. They shall not engage any activity that may conflict with their independence or judgement and integrity related to the activities for which they have been notified. **This shall in particular apply to consultancy services.**

The 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. The 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. The 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 such a body in accordance with Annex V and for 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, characteristics and tasks for which it is notified, the notified body shall have at its disposal the necessary:

- (a) 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) description of procedures according to which the assessing of performance is carried out, ensuring the transparency and the ability of reproduction of these procedures. It shall have appropriate policy and procedures in place that distinguish between tasks carried out as notified body and any other activity;

- (c) procedures to perform their activities taking into consideration the size, the sector, the structure of the undertakings, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

It 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, for 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 the declared performance of 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. The notified body shall take out liability insurance<sup>258</sup> unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the assessment and/or the verification performed.

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<sup>258</sup> AT/NL: Define criteria for liability insurance for notified bodies in a separate Annex. Cion: Would be deviation from horizontal framework. CY: Add provision stating that liability should take into account the risks related to the notification.

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. The 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 co-ordination group established under this Regulation and apply as general guidance the administrative decisions and documents produced as a work result of that group.

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<sup>259</sup> PT/IT: Add a provision concerning a list of declarations of performance issued by notified bodies. CY: At least web-site availability of such a list should be required.

## Article 34

### *Presumption of conformity<sup>260</sup>*

When a performance assessment body<sup>261</sup> can demonstrate its conformity with the criteria laid down in the relevant harmonised standards<sup>262</sup> or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall be presumed<sup>263</sup> to comply with the requirements set out in Article 33 insofar as the applicable harmonised standards cover these requirements.

## Article 35 [33]

### *Subsidiaries and subcontracting of notified bodies*

1. Where the 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 33, and inform the notifying authority.<sup>264</sup>
2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.

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<sup>260</sup> UK: The article mirrors the horizontal Decision, but does not seem to fit for this legal act which does not set out attestation modules. SI: Clarify scope and purpose of this article. PT/AT/IT/UK: Add more wording clarifying that the standards mentioned here relate to the harmonised standards for notified bodies. Cion: Indeed, the standards meant here are one way for the bodies to show compliance with some (but not necessarily all) requirements of Article 33. The wording can be adapted, if necessary. DE/PL: Even after clarification by the Cion, delete Article 34 as being in contradiction to Article 30.

<sup>261</sup> SE: "performance assessment body" should be replaced by "notified body".

<sup>262</sup> CZ: Reword to "performance assessment body demonstrates its ability to cover the requirements of the third party according to the relevant harmonised standards..."

<sup>263</sup> AT: Prefers active grammar: "the notifying authorities shall presume that the performance assessment body complies..." Cion: Usual wording is passive.

<sup>264</sup> IT: Modify as follows: "...meets the requirements set out in Article 33. The notifying authority, on the basis of the criteria of Art. 33, verifies the suitability of the subcontractor and authorizes the sub-contract." NL/SK: Specify the tasks of the subcontractor in greater detail. It should not be possible to subcontract all tasks. Clarify which requirements of Article 33 will also fall on subcontractors. Cion prefers to stick to wording of the horizontal framework concerning subcontracting possibilities.

3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.<sup>265</sup>
4. The notified body shall keep at the disposal of the national authorities<sup>266</sup> the relevant documents concerning the assessment of the subcontractor's or subsidiary's qualifications and the work carried out by the subcontractor or the subsidiary under Annex V.

#### *Article 36 [34]*

##### *Witness tests*

1. Where justified by technical, economical or logistic reasons, notified bodies may decide to carry out the tests referred to in Annex V, 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<sup>267</sup> or, with the prior consent of the manufacturer, in a private or public laboratory, using the test equipments of that laboratory.
2. Before carrying out those tests, the notified body shall check whether the test equipment has an appropriate calibration system and whether that system is operational.<sup>268</sup>

#### *Article 37 [35]*

##### *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<sup>269</sup> for notification to the notifying authority of the Member State in which it is established.

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<sup>265</sup> ES: Delete (3); reference to client does not fit here. Cion: Against deletion.

<sup>266</sup> RO: Use wording national notifying authorities. Cion: Flexible.

<sup>267</sup> ES: Add "of the manufacturer of the products in question" or a similar wording.

<sup>268</sup> UK: Add the following: "Notified bodies carrying out such tests should be specifically assessed for competence to work away from their own accredited test facilities". PL: Use wording: "...whether the test equipment is under a metrology supervision and whether this supervision ensures the measurement coherence." PT: Use wording "...is fit for intended use and operational".

<sup>269</sup> Following a remark by the NL delegation, the Cion made clear that even accredited bodies having received their notification according to the current system will have to comply with some new criteria after 2011. In this regard, they cannot simply be extended from the requirement to apply (again) for notification.

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, as well as by an accreditation certificate, where it exists, delivered by the national accreditation body within the meaning of Regulation (EC) No ..., attesting that the body meets the requirements laid down in Article 33.
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 33.

### *Article 38 [36]*

#### *Notification procedure*

1. Notifying authorities may notify only bodies which have satisfied the requirements laid down in Article 33.
2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.

Exceptionally, for horizontal notifications referred to in the second subparagraph of paragraph 3, for which the appropriate electronic tool is not available, hard copy of the notification shall be accepted.<sup>270</sup>

3. The notification shall include full details of the functions to be performed, reference to the relevant harmonised technical specification<sup>271</sup> and, for the purposes of the system set out in point 1.4 of Annex V<sup>272</sup>, the essential characteristics<sup>273</sup> for which the body is competent.

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<sup>270</sup> UK: Scrutiny reservation on the technical possibilities and practical implications concerning horizontal notifications. RO: NANDO system would be sufficient, thus revise this subparagraph. Furthermore, define "horizontal notification" in Article 2. AT: Delete second subparagraph as hard copies for horizontal notifications are not practical and details can be defined elsewhere.

<sup>271</sup> CZ: Use wording "technical specification/specifications".

<sup>272</sup> AT: Use wording "points 1.1., 1.2 and 1.4."

<sup>273</sup> UK: Replace "essential characteristics" by "test methods". IT: Replace "essential characteristics" by "specific test methods supporting essential characteristics".



However, reference to the relevant harmonised technical specification is not required in the following cases of essential characteristics:<sup>274</sup>

- (a) reaction to fire;
- (b) resistance to fire;
- (c) external fire performance;
- (d) noise absorption.<sup>275</sup>

4. Where a notification is not based on an accreditation certificate, the notifying authority shall provide the Commission and the other Member States with all documentary evidence which attests the notified body's competence and the arrangements in place to ensure that the body will be regularly monitored and will continue to satisfy the requirements laid down in Article 33.
5. The body concerned may perform the activities of a notified body only where no objections have been raised by the Commission and the other Member States within two weeks<sup>276</sup> following a notification in case of an accreditation certificate is used and within two months following a notification in case accreditation is not used.<sup>277</sup>

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.

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<sup>274</sup> UK: Modify wording to "...is not required for test methods supporting the following essential characteristics;" FI: Shift this list to an Annex in order to make future modifications easier.

<sup>275</sup> UK/RO: Add a point "(e) dangerous substances".

<sup>276</sup> CZ: Prefers "thirty days".

<sup>277</sup> UK: Wording should be: "in a ~~the~~ case ~~of~~ where an accreditation certificate is used and within two months following a notification in a case where accreditation is not used."

### *Article 39 [37]*

#### *Identification numbers and lists of notified bodies*

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

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

2. The Commission shall make publicly available the list of the bodies notified under this Regulation, including the identification numbers that have been allocated to them and the activities for which they have been notified.<sup>278</sup>

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

### *Article 40 [38]*

#### *Changes to the notification*

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements set out in Article 33, 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 fulfil those obligations. It shall immediately inform the Commission and the other Member States thereof.<sup>279</sup>
2. In the case of withdrawal, restriction or suspension of notification or where the notified body has ceased activity, the notifying Member State concerned shall take the appropriate steps to ensure that the files are either processed<sup>280</sup> by another notified body or kept available for the responsible notifying and market surveillance authorities on request.

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<sup>278</sup> UK: Unclear whether this implies new technical requirements.

<sup>279</sup> RO: Add "thereof, using the electronic notification tool developed and managed by the Commission."

<sup>280</sup> CZ: Add clarification "processed with the consent of the applicant ..."

*Article 41 [39]*

*Challenge of the competence of notified bodies*

1. The Commission shall investigate all cases where it doubts or doubt is brought to its attention as to the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities placed on it.
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 information<sup>281</sup> 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 thereof and request it to take the necessary corrective measures, including de-notification, if necessary.

*Article 42 [40]*

*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 in a proportionate manner, avoiding unnecessary burden for economic operators. The notified bodies shall perform their activities taking into consideration the size, the sector, the structure of the undertakings involved, the relative complexity of the technology used by the construction products and the serial character of the production.<sup>282</sup>

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<sup>281</sup> RO: Explain difference to horizontal Decision which says "all sensitive information".

<sup>282</sup> DE: Leave only the first sentence of para. 2 and delete the whole rest (originates from horizontal Decision but does not fit here). UK: Would prefer exact wording from horizontal Decision in the first sub-para.

In so doing it shall nevertheless respect the degree of rigour required for the product by this Regulation and the role of the product in the safety of the works.<sup>283</sup>

3. Where, in the course of the monitoring activity aiming at the verification of the constancy of the manufactured product performances, a notified body finds that a construction product no longer has the same performance compared 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.
4. 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 43 [41]*

##### *Information obligation 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.

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<sup>283</sup> UK: Replace "and the role of the product in the safety of the works" by "in particular as decided from the criteria set out in Article 19." BG: Add the wording from the horizontal framework: "Where, in the course of the initial inspection of the manufacturing plant and of FPC, a NB finds that the manufacturer has not ensured the constancy of the manufactured product performances, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate."

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 covering the same construction products with relevant information on issues relating to negative and, on request, positive results from these assessments and/or verifications.<sup>284</sup>

*Article 44 [42]*

*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 45 [43]*

*Coordination of notified bodies*

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under Article 29 is put into place and properly operated in the form of groups of notified bodies both at the sectoral and cross sectoral level.<sup>285</sup>

Member States shall ensure that the bodies notified by them participate to the work of those groups, directly or by designated representatives.<sup>286</sup>

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<sup>284</sup> UK: Meaning of "negative" and "positive" is not straightforward in this context.

<sup>285</sup> UK: For a sector-specific Regulation it should read: "notified under Article 29 is put into place and properly operated in the form of a group of notified bodies".

<sup>286</sup> FI: Obligation to Member States seems excessive.

## CHAPTER VIII

### MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES

#### *Article 46 [44]*

*Procedure to deal at national level with construction products presenting a risk ~~at national level~~*<sup>287</sup>

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 18<sup>288</sup> of Regulation (EC) No ... or where they have sufficient reason<sup>289</sup> to believe that a construction product does not achieve the declared performances and/or presents a risk for the health or safety of persons or for other issues of public interest protection<sup>290</sup> covered by this Regulation, they shall perform an evaluation in relation to the product concerned covering all the requirements<sup>291</sup> laid down by this Regulation.<sup>292</sup> The concerned economic operators shall cooperate in any necessary way<sup>293</sup> 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 by 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<sup>294</sup> or to

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<sup>287</sup> FR: Some fine-tuning is necessary concerning the procedures in cases where products present a risk and should be immediately withdrawn from the market. BG: In Chapter VIII, insert a general reference to the horizontal Regulation and include here only those provisions where specific rules for construction products should apply.

<sup>288</sup> To be checked: Reference might be Art. 20.

<sup>289</sup> HU: Reservation on wording "sufficient reason". Cion: Wording can stay as it is.

<sup>290</sup> AT: Clarify if the procedure can also be applied for non-harmonised construction products and non-CE-marked construction products. Cion: Yes in principle, although less relevant in practice. The case of risk requires rapid action and the authorities should not be obliged to check whether a certain product falls in part or total outside this Regulation.

<sup>291</sup> AT/NL: Delete "all"; "the requirements" is sufficient. SI: Clarify scope of "performing an evaluation". Prsdy: "all the requirements as relevant..." could be a compromise.

<sup>292</sup> AT: Add "The activities of market surveillance authorities can also extend to construction products stored on the construction site.", in order to meet practical requirements for products not stored at distributor's premises.

<sup>293</sup> HU: Suggests wording: "economic operators must duly cooperate in all necessary ways with..."

<sup>294</sup> AT: Add "requirements and declared performances or to..."

withdraw the product from the market<sup>295</sup> or recall it within such reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body.<sup>296</sup>

Article 19<sup>297</sup> of Regulation (EC) N°... applies to the measures referred to above.

2. Where the market surveillance authorities consider<sup>298</sup> that the non-compliance is not limited to the national territory, they shall inform the Commission and the other Member States of the results of the evaluation<sup>299</sup> and of the actions which they have required the economic operator to take.
3. The economic operator shall ensure that any corrective actions<sup>300</sup> are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.<sup>301</sup>
4. Where the relevant economic operator, within the period referred to in the second subparagraph of paragraph 1, does not take adequate corrective actions, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available<sup>302</sup> of the construction product on the national market or to withdraw the construction product from that market or to recall it.

They shall inform the Commission and the other Member States, without delay, of such measures.

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<sup>295</sup> IT/SK: For construction products a "withdrawal" from the market is not always realistic, it would rather come to a ban on use at the construction site.

<sup>296</sup> UK: Add "...inform the relevant notified body if one is involved." RO: Add "...notified body and the national notifying authority." SI: To be explained why the notified body and no other actor has to be informed. CY: Information requirement should be from the bodies to others, not to the body. Cion: Hesitant to change wording from the horizontal framework here.

<sup>297</sup> To be checked: Reference might be Art. 21.

<sup>298</sup> SI: Replace "consider" by "establish by evidence".

<sup>299</sup> SI: Add more details on content and method of this information. PL: Delete "and the other Member States".

<sup>300</sup> RO: Use wording "all corrective actions".

<sup>301</sup> Following a remark by the AT delegation, the Cion clarified that a decision by one market surveillance authorities might indeed imply consequent action by other market surveillance authorities. However, withdrawal from the market is only one possibility among several corrective actions.

<sup>302</sup> RO: "Restriction of making available on the market" is a concept to be defined in Article 2.

5. The information referred to in paragraph 4 shall provide all available details, in particular as regards the necessary data for the identification of the non-compliant construction product, the origin of the construction product, the nature of the risk involved, the nature and duration of national measures taken as well as the view points put forward by the economic operator concerned. 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 meet the requirements<sup>303</sup> related to the health or safety of persons or to other issues of public interest protection laid down by this Regulation;<sup>304</sup>
  - (b) shortcomings in the harmonised technical specifications or in the STD.<sup>305</sup>
6. Member States other than the Member State which initiated the procedure shall without delay inform the Commission and the other Member States<sup>306</sup> of any measures adopted and of any additional information relating to the non-compliance of the construction product concerned at their disposal, and, in the event of disagreement with the notified national measure, of their objections.
7. Where, within fifteen working days<sup>307</sup> of receipt of the information referred to in paragraph 4, no objection has been raised<sup>308</sup> 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, the measure shall be deemed justified.

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<sup>303</sup> AT: Use wording: "product to achieve the declared performance and/or to meet the requirements...". Cion: This idea merits further reflection.

<sup>304</sup> UK: Replace the text of (a) with: "failure of the product to conform with the information provided in the declaration of performance or CE marking".

<sup>305</sup> UK: Delete "or in the STD". AT: Use wording "...harmonised technical specifications, ETAs, third-party tasks carried out according to Annex V or in the STD." Cion: The AT suggestion merits further reflection.

<sup>306</sup> DK: Provisions of Articles 46-49 should be complemented by a more formalised co-operation and exchange between market surveillance authorities. Cion: No need for it in this regulation, is covered in horizontal framework.

<sup>307</sup> CZ suggests thirty working days. Cion: Against. FI: Wording of the whole article 46 might lead to too tight working schedules for market surveillance authorities.

<sup>308</sup> SI: Method of information needs to be defined.



8. Member States shall ensure the appropriate restrictive measures are taken in respect of the construction product concerned, such as withdrawal of the product from their market, without delay.<sup>309</sup>

*Article 47 [45]*

*Community safeguard procedure*

1. Where, on completion of the procedure set out in Article 46(3) and (4), objections are raised against a national measure of a Member State or where the Commission considers the national measure to be contrary to Community legislation the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall proceed to the evaluation of the national measure. On the basis of the results of that evaluation, the Commission shall take a decision, indicating 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).<sup>310</sup>

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. Member States shall inform the Commission thereof. 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 46(5)(b), the Commission must inform the relevant European standardisation body (bodies) and bring the matter<sup>311</sup> before the Committee set up under Article 5 of Directive 98/34/EC. The Committee must consult with the relevant European standardisation body and deliver its opinion without delay.<sup>312</sup>

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<sup>309</sup> RO: Database for information on performance assessment and verification should be set up, also because it would facilitate information requirements for market surveillance authorities.

<sup>310</sup> SI: Add "and where necessary, propose appropriate measures."

<sup>311</sup> AT: Mention first an involvement of Standing Committee under Article 51.

<sup>312</sup> UK: Delete first sub-paragraph of (3).

Where the national measure is considered to be justified and the non-compliance of the construction product is attributed to shortcomings in the EAD or in the STD as referred to in Article 46(5)(b), the Commission shall adopt the appropriate measures.<sup>313</sup>

#### Article 48 [46]

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

1. Where a Member State after having performed an evaluation under Article 46(1) finds that although a construction product is in compliance with this Regulation, it presents a risk for the health or safety of persons or for other issues of public interest protection,<sup>314</sup> 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 or to withdraw the construction product from the market or recall it within such reasonable period<sup>315</sup>, commensurate with the nature of the risk, as it may prescribe.<sup>316</sup>
2. The economic operator shall ensure that any corrective actions are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.
3. The Member State shall immediately inform the Commission and the other Member States. The information shall provide all available details, in particular as regards the necessary data for the identification of the construction product concerned, the origin and the supply chain of the product, the nature of the risk involved, the nature and duration of national measures taken.

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<sup>313</sup> UK/PL: Clarify the "appropriate measures", as the shortcomings of EADs or STDs are within the responsibilities of different actors. Cion: This does not prevent the Cion from taking appropriate action. Shortcomings of a STD can lead to a situation where an action of one efficient market surveillance authority will have an effect - via the Commission - on an other Member State where the STD (with inherent shortcomings) had been issued. AT: Use wording "...shall bring the matter before the Committee set up under Article 51 of this Regulation and subsequently adopt the appropriate measures.

<sup>314</sup> AT: Add as a specificity of construction products: "...public interest protection, or its incorporation in a permanent manner in construction works or parts thereof presents a risk for the satisfaction of the basic works requirements, it shall..." NL: Article 48 seems more relevant for consumer products, for construction products the dangerous ones would normally be detected through Art. 46 procedure anyway. Cion: Even if the practical relevance is limited, there is no need to depart from the horizontal framework.

<sup>315</sup> HU: Prefers "immediately" instead of "within such reasonable period".

<sup>316</sup> UK: Reword or delete para. 1.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall proceed to the evaluation of the national measure. On the basis of the results of that evaluation, the Commission shall take a decision, indicating 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 49 [47]*

*Formal non-compliance*

1. Without prejudice to Article 46, 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 violation of Article 7 or Article 8;
  - (b) the CE marking has not been affixed, when required according to Article 7(1);
  - (c) the declaration of performance has not been drawn up, when required according to Article 4;
  - (d) the declaration of performance has not been drawn up in accordance with Articles 4, 5 and 6;
  - (e) the technical documentation is either not available or not complete.

2. Where the non-compliance referred to in paragraph 1 continues<sup>317</sup>, 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.<sup>318</sup>

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<sup>317</sup> SI: Use wording "continues after the national measures are taken, the Member State..."

<sup>318</sup> UK: Clarify the legal situation, if a CE-marked product is in conformity with a harmonised standard, but the standard is amended. Withdrawal from the market for all intended uses seems to be a too restrictive measure then. Clarify situation when a product is not CE-marked, but has a valid DoP. Cion: Products legally already present on the market are not concerned - see also Art. 53 (1)- only new products have to comply with new or updated standards; in the case of a missing CE-marking, the economic operator can be required to affix it or to withdraw the product. DE: Add a new Article 49a "*Administrative procedure*": (1) Member States shall bring into force the laws, regulations and administrative provisions for the administrative procedures required to execute this regulation complementary to the provisions foreseen in this regulation on the basis of the principles of the rule of law. (2) The competent national authorities may have access to all construction products and to the business rooms or other sites, where construction products are manufactured or otherwise kept, insofar this is necessary to fulfill their legal duties. They may do this beyond the usual business hours only in the case of danger in delay. IT: Add a new Article 49a with the following content: "(1) Member States shall designate a surveillance authority that is responsible for setting up and carrying out the necessary administrative procedures and the practical actions for Market surveillance for the purposes of this Regulation"(2) Member States shall bring into force the laws, regulations and administrative provisions for the administrative procedures required to execute this regulation complementary to the provisions foreseen in this regulation on the basis of the principles of the rule of law. (3) The competent national authorities may have access to all construction products and to the business rooms or other sites, where construction products are manufactured or otherwise kept, insofar this is necessary to fulfil their legal duties. They may do this beyond the usual business hours only in the case of danger in delay."

## CHAPTER IX

### FINAL PROVISIONS

#### *Article 50 [48]*

#### *Amendment of Annexes*

1. Commission may amend Annexes I to V.<sup>319</sup>
2. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).<sup>320</sup>

#### *Article 51 [49]*

#### *Committee<sup>321</sup>*

1. The Commission shall be assisted by a committee, called Standing Committee of Construction.<sup>322</sup>

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<sup>319</sup> FI: Replace with "II to V." BE: Clarify that Member States can add other requirements than those mentioned in Annex I. Cion: Should be done in a recital, if necessary, not in this article.

<sup>320</sup> AT: Add (2a): Before adoption of amendments of an Annex, the Committee referred to in Article 51 shall be consulted.

<sup>321</sup> Several delegations take the view that the Standing Committee should have a larger role in the detailed provisions. Cion: Not possible according to the horizontal legal acts and Comitology rules.

<sup>322</sup> IT: Add the following sentence: "Member States shall be represented at adequate level of administrative and technical competences".

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.<sup>323 324</sup>

*Article 52 [50]*

*Repeal*

1. Directive 89/106/EEC is repealed.<sup>325</sup>

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<sup>323</sup> UK: Scrutiny reservation on form and position of this paragraph. BE/AT: Reference should also be to Article 3.(consultative role of the Committee). DE: Add new para 2a: "Where reference is made to this paragraph, Article 3 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."

<sup>324</sup> BE: Add new para 2a on guidance papers : "Guidance papers may be elaborated by the Commission, in conformity to article 5a(1) to (4) of decision 1999/468/EC. " IT: Add new para (2a): The Committee may, at the request of its chairman or of a Member State, examine any question posed by practical application of this Regulation. The Committee must be consulted by the Commission : a) before any mandates of harmonized standards (see Article 16) b) before any decision about the definition of conditions referring to levels or classes of performances (see art. 18.3). The Committee must be consulted by the Commission or the Member States in case of formal objection against harmonized standards (see article 17.1)."

<sup>325</sup> UK/MT: Use wording "is repealed with effect from the date referred to in the first paragraph of Article 54 except in respect of [ add relevant provisions ] of that Directive when the date shall be 1 July 2011." Cion: Already covered through Article 54 which includes reference to Article 52.

2. References to the repealed Directive<sup>326</sup> shall be construed as references to this Regulation.<sup>327</sup>

*Article 53 [51]*

*Transitional provisions*

1. Construction products which have been placed on the market in accordance with Directive 89/106/EEC before 1 July 2011 shall be deemed to comply with this Regulation.
2. Manufacturers and importers may make a declaration of performance on the basis of a certificate of conformity or a declaration of conformity, which has been issued before 1 July 2011 in accordance with Directive 89/106/EEC.
3. Guidelines for European technical approval<sup>328</sup> which were published before 1 July 2011 in accordance with Article 11 of Directive 89/106/EEC may be used as EADs.
4. Manufacturers and importers may use European technical approvals issued in accordance with Article 9 of Directive 89/106/EEC before 1 July 2011 as European Technical Assessments throughout the period of validity of those approvals.<sup>329</sup>

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<sup>326</sup> DE: Use wording "...repealed Directive and the interpretative document and technical specifications pursuant to Article 3 and Article 4 of the repealed Directive shall be construed ..." This is necessary to cover Article 10 of the Drinking Water Directive (98/83/EC). Cion: Problem is covered by Art. 52 (2).

<sup>327</sup> UK: Add: "this Regulation and shall be read in accordance with the correlation table set out in Annex [xy]."

<sup>328</sup> PL: Give CUAPs the same status as Guidelines here. ES/BE: Quote guidance papers also in other articles of this Regulation. Cion: Does not concern Article 53. Status of guidance papers is unchanged, but it would be unusual for legislation to quote them in several articles.

<sup>329</sup> AT: Add a clause stating that the decisions on attestations of conformity remain valid for the purposes of Article 19.

<sup>330</sup> AT/RO suggest a new article on penalties: "The Member States shall lay down rules on penalties for economic operators, which may include criminal sanctions for serious infringements, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive and may be increased if the relevant economic operator has previously committed a similar infringement of the provisions of this Regulation. The Member States shall notify the Commission of those provisions by 1 July 2011 and shall notify it without delay of any subsequent amendment affecting them." Cion: Flexible to this suggestion.

*Article 54 [52]*

*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

However, Articles 3 to 21, 26, 27 and 28, Articles 46 to 50, 52 and 53 as well as Annexes I, II, III and V shall apply from 1 July 2011.<sup>331</sup>

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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<sup>331</sup> FI: To be clarified why different dates are indispensable.



## ANNEX I

### Basic works requirements<sup>332</sup>

Construction works as a whole and in their separate parts must be fit for their intended use.<sup>333</sup>

Subject to normal maintenance,<sup>334</sup> basic works requirements must be satisfied for an economically reasonable working life.<sup>335 336</sup>

#### **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 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.<sup>337</sup>

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<sup>332</sup> Following a remark by NL, the Cion clarified that it is possible to add other basic works requirements after adoption of the Regulation.

<sup>333</sup> DE: Add "...intended use and must take also into account the health and safety of persons and the protection of the environment during the construction phase and the life cycle of the works". SE: Add "...intended use as well as take into account the health and safety of persons and minimise the effects on the environment during the whole lifecycle of the constructions works".

<sup>334</sup> PT: Suggests modification to read: "Provided that construction works are subjected to normal maintenance, basic works..."

<sup>335</sup> SE: Replace "an economically reasonable working life" by "the whole life cycle of the works". BE: Add: "Member States are not obliged to develop regulations on each Basic works requirement mentioned below. On the other hand, Member States may impose additional Basic works requirements in their regulation submitted to the procedure of the Directive 98/34."

<sup>336</sup> SE: Cion should develop interpretative documents and guidance papers to (modified) BWRs.

<sup>337</sup> CZ: Add point (e): "occupants and animals can leave the works or be rescued by other means."

## 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 works are limited,
- (c) the spread of the fire to neighbouring construction works is limited,
- (ca) occupants can leave the works or be rescued by other means,<sup>338</sup>
- (d) the safety of rescue teams is taken into consideration.

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## 3. HYGIENE, HEALTH AND THE ENVIRONMENT<sup>340</sup>

The construction works must be designed and built in such a way that they will not be a threat neither to the hygiene nor health of the occupants and neighbours, nor exert an exceedingly high impact<sup>341</sup> over their entire life cycle to the environmental quality nor to 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;

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<sup>338</sup> WP agreed to introduce this point which had been overlooked in the Cion proposal. BE: Add "without any damage".

<sup>339</sup> LT: Add (e): "the possibility of safe evacuation of persons is taken into consideration." FI: Add "evacuation and rescue of humans and animals in buildings in case of fire."

<sup>340</sup> DE: Add "safety and the environment". SE: Clarify in the structure that No. 3 and 7 concern primarily the construction products while the other requirements concern the works. Clarify the "Life cycle"-concept of the product in No.3. AT: Concept of works related requirements (especially no.3 and no.7) needs some reflection, as the Regulation as such is on products and not on works. It should be clarified, that BWR 3 and BWR 7 also concern construction products (implicitly deriving from the life cycle concept) while the other BWRs only concern works.

<sup>341</sup> DE: Reword to: "...nor health or safety of construction workers, occupants and neighbours, nor have an unacceptable impact..." AT: "unacceptable impact" is better wording than "exceedingly high".

- (b) the emissions of dangerous substances<sup>342</sup>, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or out door air;
- (c) the emission of dangerous radiation;<sup>343 344</sup>
- (d) the release of dangerous substances into drinking water, ground water, marine waters or soil;
- (e) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid wastes;
- (f) the presence of dampness in parts of the works or on surfaces within the works.

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#### 4. SAFETY IN USE<sup>346</sup>

The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, and injury from explosion.<sup>347</sup>

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<sup>342</sup> AT: The term „substance“ should be defined. The definitions according to Article 3 of REACH and/or Article 2 Directive 67/548/EEC should be taken on board.

<sup>343</sup> LT: Replace "dangerous" by "ionising".

<sup>344</sup> DE/CZ/AT: Add a new point (ca): "the release of substances into water for human consumption in concentrations higher than is necessary for the purpose of the products use or in concentrations that, either directly or indirectly, reduce the protection of human health or change the organoleptic properties of the drinking water in a way that it becomes unacceptable to consumers" and delete "drinking water" in (d) consequently.

<sup>345</sup> LT: Add "(g): the microbial pollution on surfaces within the works."

<sup>346</sup> BE/SE/PT: Scrutiny reservation of the wording of No.4.

<sup>347</sup> NL: Add "of accidents or damage in service..." and "from explosion and burglaries". Furthermore add the aspect of "strength of the product". SE: Add "crushing". CZ: Add "or from fire."

## 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 down to a level that will not threaten their health and will allow them to sleep, rest and work in satisfactory conditions.<sup>348</sup>

## 6. ENERGY ECONOMY AND HEAT RETENTION<sup>349</sup>

The construction works and their heating, cooling and ventilation installations must be designed and built in such a way that the amount of energy required in use shall be low, when account is taken of the climatic conditions of the location and the occupants.

## 7. SUSTAINABLE USE OF NATURAL RESOURCES<sup>350</sup>

The construction works must be designed, built and demolished in such a way that the use of natural resources<sup>351</sup> is sustainable and ensure the following:

- (a) recyclability<sup>352</sup> of the construction works, their materials<sup>353</sup> and parts after demolition;
- (b) durability of the construction works;<sup>354</sup>

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<sup>348</sup> DE: End the sentence as follows: "...health and by that the conditions to sleep, rest and work are assured."

<sup>349</sup> AT: The interface with the extended scope of future Ecodesign-directive (COM (2008)399; 16.7.2008) should be checked.

<sup>350</sup> SE/FR: Basic works requirements concerning the environment could be spelled out in greater detail, including dangerous substances to be mentioned in the DoP and the life cycle criterion. Cion: This is more a task of national authorities than of European legal framework. AT: Basic works requirement No. 7 might give rise to a special transition period. Cion: No, transitional provisions of Art. 53-54 are sufficient. UK: Requirement No. 7 must stay workable in practice.

<sup>351</sup> SE: Add "natural resources, including the use of water,..."

<sup>352</sup> SE suggests: "recyclability and recovery..."

<sup>353</sup> AT: Add "materials or construction products..."

<sup>354</sup> SE: Add "...for the anticipated service life." NL: Replace "durability" by "sustainability".

- (c) use of environmentally compatible raw and secondary materials in <sup>355</sup>the construction works. <sup>356</sup> <sup>357</sup>

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<sup>355</sup> AT: Add "in construction products and in the construction works."

<sup>356</sup> SE: Use wording: "...raw, secondary materials and renewable materials if appropriate, in the construction works." NL: There is overlap with BWR for example with regard to "pollution or poisoning of water and soil". Clarify which product performances will fall under BWR 3 and which under BWR 7.

<sup>357</sup> BE/SE: Add BWR 8 "Accessibility" BE: Add BWR 9 "Security".

## **ANNEX II**

### **Procedure for adopting European Assessment Document and for issuing European Technical Assessment**<sup>358</sup>

1. Technical Assessment Body (TAB) shall carry out assessment and issue the European Technical Assessment (ETA) in the product area for which it has been designated.

The provisions of this Annex on manufacturers apply also to importers.

2. The elaboration and the adoption of a European Assessment Document shall be carried out in accordance with points 2.1. to 2.9.

- 2.1. The TAB receiving a ETA request (hereinafter "responsible TAB") for a construction product shall inform the organisation of TABs referred to in Article 25(1) and the Commission of the content of the request and of the reference to the Commission decision for assessment and verification of constancy of performance, which the TAB intends to apply for this product, or of the lack of such a Commission decision.

- 2.2. The responsible TAB shall, in cooperation with the manufacturer, obtain the relevant information on the product and on its intended use. The responsible TAB shall inform the manufacturer if the product is covered, fully or partially, by another harmonised technical specification. The responsible TAB shall then draft a first contract to be concluded with the manufacturer, defining the terms for the elaboration of the work programme.

- 2.3. Within one month from the conclusion of the first contract, the manufacturer shall submit to the responsible TAB a technical file describing the product, its intended use and details of the factory production control he applies.

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<sup>358</sup> ES/PT: Procedure of Annex II takes insufficiently into account the problem of confidentiality. ES: Furthermore, it takes insufficiently into account that new tests will have to be developed for new types of products. The elaboration of EADs is also cost-intensive and has strong personnel requirements which are not easy to meet. SE: Role of Member States in this procedure is far too limited. NL: Annex II procedure is too burdensome, especially for niche products. Clarify why EADs are no longer based on mandates. Enlarge role of Standing Committee on Construction. Establish a working group whose members determine together for every EAD which regulations and product characteristics have to be assessed.

- 2.4. Within one month from the reception of the technical file, the responsible TAB shall prepare and send to the manufacturer the draft second contract and the draft work programme, containing all detailed aspects and actions it will undertake to assess the performance for the essential characteristics of the product in relation to the intended use.

The draft work programme shall include at least the following parts:

- (a) **part 1:** the assessment programme indicating test methods, calculation methods, descriptive methods, parameters and all other means, including the assessment criteria considered suitable for identifying the product, for assessing the performance for its essential characteristics in relation to the intended use, and the durability aspects for the relevant essential characteristics;
  - (b) **part 2:** the activities related to the initial inspection of the plant in which the product covered by the request is manufactured;
  - (c) **part 3:** the places where the tests will be carried out;
  - (d) **part 4:** expected time and costs.
- 2.5. After the conclusion of the second contract, comprising the agreed work programme, between the responsible TAB and the manufacturer, the responsible TAB shall send Part 1 of the work programme, together with the part of the technical file related to the description of the product and its intended use, to all the other TABs designated for the same construction products area, referred to in Table 1 of Annex IV. Those TABs shall constitute a working group, which shall be co-ordinated by the responsible TAB.<sup>359</sup>

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<sup>359</sup> PT: Procedure would be easier without a working group and with electronic diffusion only. ..  
DE: The working group should comprise only those TABs which have to contribute to the elaboration of an ETA. The ETA might be requested for some requirements only, which apply where the product is made available.

Within two weeks from the reception by all the TABs concerned of those documents from the responsible TAB, the working group shall establish the draft EAD, containing the assessment methods and criteria of the performance for the relevant essential characteristics, based on Part 1 of the work programme and on the pertinent and justified technical contributions provided by its members.<sup>360</sup>

- 2.6. The draft EAD shall then be communicated by the responsible TAB, together with the relevant part of the technical file, containing the description of the product and its intended use, to all the other TABs.

Within two weeks, these other TABs shall communicate to the responsible TAB the relevant information related to their national building regulations and other legal or administrative provisions applicable to the product and to its intended use, as appropriate. The responsible TAB shall inform the members of the working group and the manufacturer about the contents of these contributions.

- 2.7. The responsible TAB shall include these contributions, after consulting the working group, in the draft EAD, which it shall send to the organisation of TABs referred to in Article 25(1). After communicating the final draft EAD to the manufacturer, who shall have one week for his reactions, the organisation of TABs shall adopt the EAD as a provisional document. The organisation of TABs shall send a copy of the adopted provisional EAD to the manufacturer and the Commission. If the Commission communicates, within fifteen working days from reception, to the organisation of TABs its observations on the provisional EAD, it shall be amended accordingly by the organisation of TABs. After this period, the responsible TAB shall start the preparations for carrying out the assessment.
- 2.8. The responsible TAB shall carry out the assessment according to the provisions of the adopted provisional EAD and shall subsequently issue the corresponding ETA.

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<sup>360</sup> IT/PT/SE: Modalities for establishing the draft EAD are not realistic, especially the two weeks period seems to be too short. DK: Time-frame of Annex II is unrealistic; the TABs will in the interest of competitive services avoid unnecessarily long processes anyway.



- 2.9. As soon as the first ETA has been issued on the basis of a given provisional EAD by the responsible TAB, this EAD shall be adjusted, if appropriate, by the organisation of TABs on the basis of a proposal from the responsible TAB. The final EAD shall then be adopted by the organisation of TABs and sent to the Commission. The Commission shall publish the reference to the final EAD in the Series C of the *Official Journal of the European Union*.
3. When the reference to the final EAD has been published in the *Official Journal of the European Union*, the preparations for ETAs on the basis of any subsequent requests, concerning construction products with similar essential characteristics in relation to their intended use to the first request, shall be carried out according to this final EAD.
4. A Commission representative may attend, as observer, to all the meetings of the working group referred to in point 2.5.
5. If all the TABs and the manufacturer have not agreed upon the EAD, the organisation of TABs shall submit this matter to the Commission for appropriate resolution.

### ANNEX III

#### Declaration of performance

No. ....

1. No ..... (unique identification code of the product)<sup>361</sup>
2. Name or identification mark and address of (*authorised representative of the*)  
manufacturer:<sup>362</sup>  
  
.....  
  
.....<sup>363</sup>
3. This declaration of performance is issued under the sole responsibility of the  
manufacturer<sup>364</sup>.  
  
.....  
  
.....
4. Identification of product (*allowing traceability*):  
  
.....  
  
.....<sup>365</sup>
5. The performance of the product identified above is in conformity with the declared  
performances under point 7.

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<sup>361</sup> ES: Establish a common system of attribution of code numbers. PT: Delete "No." because a code is not necessarily numerical only.

<sup>362</sup> SK/LT: Add "importer" in accordance with Article 12.

<sup>363</sup> RO: Add new 2a. "Name or identification mark and address of importer (in case of imports from tertiary countries)".

<sup>364</sup> RO/LT: Add: "...manufacturer/importer (in case of imports from tertiary countries)".

<sup>365</sup> PT: Clarify what kind of information for traceability purposes is implied here. RO: Add new 4a: "Intended use of the product"; and new 4b.: "System of assessment and verification of constancy of performance carried out".

6. The ..... (name,<sup>366</sup> number of the notified body, if relevant)
- performed ..... (description of intervention<sup>367</sup>)
- and issued ..... (the certificate of conformity of the product, the certificate of conformity of the factory production control, the test reports<sup>368</sup> - if relevant):
- .....
- .....

7. Declaration of performance (list, <sup>369</sup> levels or classes and reference to the corresponding harmonised technical specification/Specific Technical Documentation used for the assessment of the performance for the declared essential characteristics)<sup>370</sup>

Name of the declared essential characteristic <sup>371</sup>	<sup>372</sup> Level or class of performance for the declared essential characteristic	Reference of the harmonised technical specification / Specific Technical Documentation <sup>373</sup>

Signed for and on behalf of: .....

.....

(place and date of issue) (name, function)(signature)

<sup>374</sup>

<sup>366</sup> AT/RO: Add "name, function according to Annex V.2 and number..."

<sup>367</sup> AT: Add: "intervention and applied system according to Annex V.1)"

<sup>368</sup> AT: Use wording: "test/calculation reports..."

<sup>369</sup> AT/NL: Use wording: "values, levels or classes".

<sup>370</sup> DE/NL/PL/DK: Add "and intended use".

<sup>371</sup> RO: Add "in accordance with hEN/EAD."

<sup>372</sup> AT/NL/IT: Use wording: "Value, level or class".

<sup>373</sup> AT: Use wording: "Reference No. and date of issue of the harmonised standard / European technical assessment/Specific Technical Documentation".

<sup>374</sup> SE: Add in the form everything which is also suggested for Article 5.

## ANNEX IV

### Product areas and requirements for Technical Assessment Bodies

Table 1 - Product areas<sup>375</sup>

Area Code	Product Area	Families of construction products
A	CIVIL ENGINEERING	Geotextiles and related products - Circulation fixtures - Floorings, paving and road finishes - Aggregates - Road construction products - Pipes, thanks and ancillaries <sup>376</sup> not in contact with water intended for human consumption - Floor beds including suspended ground floors, roads and other trafficked areas - Ultra thin layer asphalt concrete - Waste water engineering products - Falling rock protection kits - Liquid applied bridge-deck waterproofing kits - Expansion joints for road bridges
B	PREFABRICATED TOTAL/PARTIAL BUILDING UNITS	Timber frame and log prefabricated building kits - Cold storage building kits and cold storage building envelope kits - Prefabricated building units - Concrete frame building kits - Metal frame building kits

<sup>375</sup> NL: In order to make the whole enumeration more flexible, call the table 1 "Examples of product areas". BG: Make a unified list, families and sub-families in the EC mandates should be complete and all construction products should be bound by them.

<sup>376</sup> SE: In order to avoid conflict with Directive 97/23/EC use a modified name for this product family: "...ancillaries in systems, for heating with warm water or for the supply, distribution and discharge of water not in contact with..."

<b>C</b>	<b>LOAD BEARING MATERIALS AND COMPONENTS</b>	Structural timber products and ancillaries - Cement, building limes and other hydraulic binders - Reinforcing and pre-stressing steel for concrete - Structural metallic products and ancillaries - Products related to concrete, mortar and grout - Structural bearings - Precast concrete products - Prefabricated stairs kits - Light composite wood-based beams and columns - Post tensioning kits for the pre-stressing of structures - Anchor bolts
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<b>D</b>	<b>ROOFING AND BUILDING ENVELOPE</b>	Curtain walling kits - Roof coverings, Roof lights, roof windows and ancillary products - Flat glass, profiled glass and glass block products - External and internal doors and windows, roof openings and roof lights - Liquid applied roof waterproofing kits - Kits for exterior wall claddings - Structural sealant glazing systems - Kits of mechanically fastened flexible roof waterproofing membranes - Self supporting translucent roof kits - Prefabricated wood-based load-bearing stressed skin panels and self-supporting composite lightweight panels
<b>E</b>	<b>INTERNAL/EXTERNAL BUILDING COMPONENTS/KITS</b>	Sanitary appliances - Wood-based panels - Masonry and related products - Internal and external wall and ceiling finishes <sup>377</sup> - Gypsum products - Internal partition kits - Watertight covering kits for wet room floors and walls - Non-load bearing permanent shuttering kits based on hollow blocks or panels of insulating materials and/or concrete
<b>F</b>	<b>HEATING/VENTILATION/INSULATION</b>	Chimneys, Flues and specific products - Space heating appliances - Thermal insulating products - External thermal insulation composite kits - Inverted roof insulation kits – Vestures
<b>G</b>	<b>FIXATIONS SEALINGS/ADHESIVES</b>	Construction adhesives - Pins for structural joints / Connectors - Three dimensional nailing plates - Anchors bolts / Screws - Wall plates made of stainless steel. - Cavity trays - Fastener for external wall claddings and flat or pitched roofs - Connector for sandwich elements of concrete - Gas and watertight seals for pipes in wall and floor penetrations - Sealing kits, profiles and strips - Joints sealing compounds - Elastic suspended fixings - Tension Rods - Point fastener - Surface repellents and coating treatments - Levelling fasteners for roofs, walls and interior applications - Waterproofing products / treatments
<b>H</b>	<b>FIRE PROTECTION AND RELATED PRODUCTS</b>	Fire alarm, fire detection, fixed fire fighting, fire and smoke control and explosion suppression products - Fire stopping, fire sealing and fire protective products.
<b>I</b>	<b>ELECTRIC INSTALLATION</b>	Any construction product related to electric installation.
<b>J</b>	<b>GAS INSTALLATION</b> <sup>378</sup>	Any construction product related to gas installation.

<sup>377</sup> LT: Add here "flooring finishes".

<sup>378</sup> PT: Add more details for Areas I and J, similar to the other areas.

<b>K</b>	<b>WATER SUPPLY AND SEWAGE</b>	Kit consisting of a trap with partially mechanical closure, mounted in a non-trapped gully - Kit for manhole top consisting of Cover and additional rings made of plastic for different purposes - Piping kits for cold and hot water, including those intended for human consumption - Piping systems for drainage and sewerage with or without pressure - Flexible coupling for gravity and pressure sewerage and drainage pipe - Composition toilet
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**Table 2 - Requirements for technical assessment bodies**

<b>Competence</b>	<b>Description of competence</b>	<b>Requirement<sup>379</sup></b>
<b><i>1 Analysing risks</i></b>	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 independent from the stakeholders and from any particular interests. In addition, a TAB shall have staff with: (a) objectivity and sound technical judgement; (b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States, concerning product areas for which it is to be designated; (c) general understanding of construction practice <sup>380</sup> and detailed technical knowledge, concerning product areas for which it is to be designated; (d) detailed knowledge of specific risks involved and the technical aspects of the construction process; (e) detailed knowledge of the existing harmonised standards and test methods within the product areas for which it is to be designated; (f) appropriate linguistic skills.
<b><i>2 Setting technical criteria</i></b>	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; the technical information needed by those participating in the building process as potential users of the construction products (manufacturers, designers, contractors, installers).	

<sup>379</sup> NL: These requirements should not be the subject of peer reviews, at the margins they could be checked by an independent expert group being not an OTAB member.

<sup>380</sup> NL: "General understanding" is not quantifiable.

<b>3 Setting assessment methods</b>	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 art.	
<b>4 Determining the specific factory production control</b>	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.
<b>5 Assessing the product</b>	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.
<b>6 General management</b>	Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.	A TAB shall have: (a) a proven record of respect of good administrative behaviour; (b) a policy and the supporting procedures to ensure confidentiality of sensitive information within the TAB and all its partners; (c) a document control system to ensure registration, traceability, maintenance and archiving of all relevant documents; (d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods; (e) a procedure to deal objectively with appeals and complaints. <sup>381</sup>

<sup>381</sup> IT: Add similar requirement as for notified bodies in Artt. 33 (8): "The remuneration of the TAB personnel shall not depend on the number of the assessments carried out or on the results of such assessments."



## ANNEX V

### Assessment and verification of constancy of performance

#### **1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE<sup>382</sup>**

##### **1.1. System 1<sup>383</sup> - Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:**

- (a) the manufacturer shall carry out:
  - (i) factory production control (FPC);
  - (ii) further testing of samples taken at the factory according to the prescribed test plan;
- (b) the notified body<sup>384</sup> shall issue the certificate of conformity<sup>385</sup> of the product on the basis of:
  - (i) determination of the product-type<sup>386</sup> on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;
  - (ii) initial inspection of the manufacturing plant and of FPC;
  - (iii) continuous surveillance, assessment and evaluation of FPC;
  - (iv) audit-testing of samples taken at the factory.<sup>387</sup>

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<sup>382</sup> PT: Clarify the precedence order if two or more systems of assessment and verification could apply.

<sup>383</sup> AT/UK: Renumber the systems in order not to confuse it with existing systems under the Directive. ES/NL: Maintain the existing numbering system.

<sup>384</sup> AT: Use wording "notified certification body".

<sup>385</sup> AT/UK/Cion: At several places in Annex V "conformity" should be replaced by "performance" or "constancy of performance" in order to align to the pertinent provision of Article 19.

<sup>386</sup> PT: Should read "product type performance" here and in corresponding provisions of 1.2, 1.3., 1.4, 1.5.

<sup>387</sup> BE: Replace "taken at the factory" by "taken before placing the product on the Community market". PL: Combine and merge system 1 and 2 as being nearly identical now and leave "audit testing of samples" only as an option.

**1.2. System 2 - Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:**

- (a) the manufacturer shall carry out:
  - (i) factory production control;
  - (ii) further testing of samples taken at the factory by the manufacturer according to the prescribed test plan;
- (b) the notified body<sup>388</sup> shall issue the certificate of conformity of the product on the basis of:
  - (i) determination of the product type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;
  - (ii) initial inspection of the manufacturing plant and of FPC;
  - (iii) continuous surveillance, assessment and evaluation of FPC.

**1.3. System 3 - Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:**

- (a) the manufacturer shall carry out:
  - (i) determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;
  - (ii) factory production control;
  - (iii) testing of samples taken at the factory according to the prescribed test plan;

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<sup>388</sup> AT: Use wording "notified certification body".

(b) the notified body<sup>389</sup> shall issue the certificate of conformity of the FPC on the basis of:

- (i) initial inspection of the manufacturing plant and of FPC;
- (ii) continuous surveillance, assessment and evaluation of FPC.

**1.4. System 4 - Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:**

- (a) the manufacturer shall carry out factory production control;
- (b) the notified body shall carry out determination of the product-type on the basis of type testing (based on the sampling carried out by the manufacturer),<sup>390</sup> type calculation, tabulated values or descriptive documentation of the product;

**1.5. System 5 - Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of 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.

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<sup>389</sup> AT: Use wording "notified certification body".

<sup>390</sup> AT: Use following wording: "The notified testing laboratory shall carry out determination of the product-type on the basis of type testing (including sampling), type calculation..."

## 2. BODIES INVOLVED IN THE ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

With respect to the function of the notified bodies involved in the assessment and verification of constancy of performance of construction product, distinction shall be made between:

- (1) *certification body*: a notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a certification according to given rules of procedure and management;
- (2) *inspection body*: a notified body having the organization, staffing, competence and integrity to perform according to specified criteria the following functions: assessing, recommending for acceptance and subsequent audit of quality control operations of manufacturers, and selection and evaluation of construction products in the plant, according to specific criteria;
- (3) *testing laboratory*: a notified laboratory which measures, examines, tests, calibrates or otherwise determines<sup>391</sup> the characteristics or performance of materials or construction products.

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<sup>391</sup> PT: Delete the word "calibrates". ES: Use wording "calibrates, calculates..."

<sup>392</sup> RO: Add new point (4) calculation body. AT: Add the following provision: "If the notified certification body is not notified for the function of an inspection body,  
- the initial inspection of the manufacturing plant and of FPC or  
- the continuous surveillance, assessment and evaluation of FPC  
has to be performed (on behalf of the notified certification body) by a notified inspection body  
If the notified certification body is not notified for the function of a testing laboratory,  
- the determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product or  
-the audit-testing of samples taken at the factory  
has to be performed (on behalf of the notified certification body) by a notified testing laboratory."