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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.5.2008  
COM(2008) 311 final

2008/0098 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**LAYING DOWN HARMONISED CONDITIONS FOR THE MARKETING OF THE**  
**CONSTRUCTION PRODUCTS**

(presented by the Commission)

{SEC(2008) 1900}  
{SEC(2008) 1901}

## EXPLANATORY MEMORANDUM

Following a wide consultation of stakeholders and an impact assessment, the Commission, within its Better Regulation/Simplification programme, proposes replacing Council Directive 89/106/EEC by a Regulation with the aim to better define the objectives of Community legislation and make its implementation easier by providing some simplified mechanisms especially addressed to alleviate the administrative burden for enterprises and, in particular, for SMEs.

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Grounds for and objectives of the proposal**

The objective of the Construction Products Directive (89/106/EEC)<sup>1</sup>, referred to hereafter as the CPD, is to ensure free circulation and use of construction products in the Internal Market.

In October 2005, the Commission launched a three year rolling programme for simplification as part of its Better Regulation: Simplification Strategy<sup>2</sup>. The aim is to make legislation less burdensome, easier to apply and thus more effective, while also preserving EU policy objectives. This includes considering whether the approach originally chosen is the most effective one for meeting the objectives of the legislation. Simplification of the CPD is one of the initiatives under this Strategy, with the aim being “to clarify and reduce the administrative burden of the CPD, in particular for SMEs, through increased flexibility in the formulation and use of technical specifications, lighter certification rules, and the elimination of the implementation obstacles that so far have hampered the creation of a full internal market for construction products”<sup>3</sup>.

Construction products are intermediate products intended to be incorporated in construction works. The concepts of safety or general interest thus apply to construction products only to the extent to which they contribute to the fulfilment of the requirements of the works in which they are to be incorporated.

The New Approach is not the appropriate legislative technique for achieving the objective of ensuring free circulation and use of the construction products. However, in the proposed Regulation, the New Legal Framework, as defined by the package on the internal market for goods<sup>4</sup>, is followed in areas such as the criteria for notification of bodies carrying out third party tasks in the process of attestation of declared performance, or market surveillance provisions.

In this context, the meaning of the CE marking defined in this proposal is specific for construction products: it attests that the information accompanying the product has been

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<sup>1</sup> OJ L40 of 11.2.1989, p.12, as amended by Council Directive 93/68/EEC, OJ L220 of 30.8.1993, p.1.

<sup>2</sup> European Commission (2005):COM (2005) 535 final: Communication of the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions – Implementing the Community Lisbon Programme: A Strategy for Simplification of the Regulatory Environment, Brussels.

<sup>3</sup> EC MEMO/05/394 and MEMO/06/426

<sup>4</sup> COM(2007) 36 final

obtained in accordance with the proposed Regulation and, therefore, must be considered accurate and reliable.

Other specificities for construction products, which necessitate deviation from the New Legal Framework, include the systems of attestation of declared performance; the modules proposed in the New Legal Framework could not be applied without substantial adaptation for this sector. However, some slight modifications are proposed to the systems currently in force under the CPD.

In short, the objective of the Regulation is not to define the safety of the products, but to ensure that reliable information is presented in relation to their performances. This is achieved by providing a common technical language to be used by manufacturers when placing products on the market and by public authorities when defining the technical requirements of works which influence, either directly or indirectly, the products to be used in those works. This common technical language is set out in the harmonised technical specifications (harmonised European standards (hEN) and European Assessment Documents (EAD)) developed under this Regulation.

The basic works requirements (BWR) are proposed to comprise the national and European regulatory requirements for construction works. The common technical language of the harmonised technical specifications is to provide the necessary tools for describing and assessing the required characteristics of the construction products; its use should therefore enable the national authorities to carry out all the necessary checks on the products in question, as well as the constructors to utilise them in the most appropriate and efficient manner. When the performances of products are set out by Member States authorities or declared by manufacturers, this is to be done through this common technical language.

## **1.2. Consistency with other policies and objectives of the Union**

The general policy objective and the more specific/operational objectives pursued by the CPD revision are not only fully consistent with several of the basic Community policies, such as the Lisbon Strategy and the policies aiming at better and simplified regulation, but are even a direct and necessary consequence of them.

In particular, the strategies related to sustainable development are to be taken into account through the application of the BWRs, continuing as the basis for formulating technical specifications for construction products.

The common technical language required for correct functioning of the Internal Market can therefore also be used as a powerful tool at the service of the environmental policies of the Union and of Member States in this field.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1. Consultation methods and general profile of the respondents**

An open consultation was conducted over the internet between 17.03.2006 and 15.06.2006. A total number of 319 replies were received, which is considered a good rate of response. All relevant actors concerned by the CPD including industry, public administrations and other interested parties were represented in the survey answers, either through individual or grouped responses. Industrial representation in the responses can be considered as good: 94 sector

associations, both at European and at National level, and 102 individual manufacturers reacted to the questionnaire.

- A summary report of the replies received is available at:

[http://ec.europa.eu/enterprise/construction/cpdrevision/consultation\\_results\\_en.pdf](http://ec.europa.eu/enterprise/construction/cpdrevision/consultation_results_en.pdf)  
[http://ec.europa.eu/enterprise/construction/cpdrevision/consultation\\_statistics\\_en.pdf](http://ec.europa.eu/enterprise/construction/cpdrevision/consultation_statistics_en.pdf)

- The main findings include:

- Nearly all the replies confirm **the need for a harmonised legislative framework**. Mutual recognition is generally viewed as not sufficient to achieve free circulation;
- An absolute **need for clarification** is also confirmed concerning the fundamental elements of the CPD: the general approach (performance based versus prescriptive approach), the meaning and the status (compulsory or not) of CE marking, the acceptance of CE marking by the national authorities and the users of construction products as a reliable marking, as well as the role of standards and European technical approvals;
- The CPD clearly leaves **room for simplification**. The systems of attestation of conformity should be simplified and reduced in number. The European technical approval route for CE marking is perceived as necessary, but the administrative procedures for its delivery must be streamlined and guidelines for European technical approval (ETAG) should disappear. The “no performance determined” (NPD) option should be maintained, but needs better definition as a means of simplifying the application of the CPD and avoiding unnecessary costs for companies;
- Demonstrated concern exists about the potential specific **effects** of the CPD **on small and medium-sized enterprises (SMEs)**. Particular emphasis is given to the need for appropriate treatment specifically for non-series products. Besides, any changes to the CPD should not place undue burden on the business activity of SMEs;
- Finally, a unanimous request is brought up for **reinforcing the credibility** of the whole system, notably by strengthening the criteria for designation and notification of bodies and by a better coordination of market surveillance.

## 2.2. Impact assessment of policy alternatives

As part of the policy on better regulation the Commission implemented an impact assessment of policy alternatives. Three options were considered: Option 1 – No EU action: no change; Option 2 – No legislation; Option 3 – Revision of the CPD.

### *Option 1 - No EU action: no change*

The baseline option is for the CPD to continue to be in force as it currently exists. Its requirements would not be clarified or simplified in any other manner than the changes related to the natural evolution of the legislation in its current form and to legislation applicable to this field beyond the CPD.

However, some of the existing divergences in national requirements and in testing and certification regimes could be reduced through already initiated means of administrative cooperation between national authorities.

Nevertheless, the in-depth analysis of this option demonstrates that many of the current problems, such as the unclear meaning of CE marking, the different approaches to CE marking (mandatory, non-mandatory), the complexity of the system, the insufficient acceptance of CE marking and the proliferation of national marks, will continue to exist. This is confirmed by the most recent data on complaints and infringements in areas already covered by harmonised technical specifications. Thus, the CPD would continue to fail to meet its objective of free circulation and use of construction products in the Internal Market.

### ***Option 2 - No legislation***

This option would imply a repeal of the CPD without any substitute, and a reversion to mutual recognition taking into account the New Legal Framework.

In practice the Internal Market would be based exclusively on the principle that a product lawfully marketed in one Member State can be marketed in any other Member State, even if the product does not fully comply with the technical rules of the destination Member State, as long as a Member State has not sufficiently justified reasons for banning the product on the market in its territory.

COM(1999)299 final on improving the application of the principle of mutual recognition in the Single Market identified construction in the top five sectors for infringements of mutual recognition, between 1996 and 1998, under Article 28 (former Article 30) of the Treaty. By the time of COM(2002)419 final, the number of infringements in the construction sector had increased marginally over the period 1998-2001 to rank in the top four industry sectors. The most recent available data confirms these trends and shows that mutual recognition is not sufficient for assuring efficient functioning of the internal market for construction products.

In May 2006, the stakeholder consultation showed that manufacturers almost unanimously consider that mutual recognition would not be able to achieve the free circulation and use of construction products in the internal market.

The external study<sup>5</sup>, contracted for preparing the Impact Assessment of the revision of the CPD, analysed whether or not the 'no legislation' option would address the problems identified in relation to the CPD. Unsurprisingly, given the above discussion, the conclusion was that this option would not fulfil the objective of free circulation of construction products in the Internal Market.

### ***Option 3 - Revision of the CPD: the preferred option***

Option 3, to revise the Community legislation, is the preferred option. It consists of a package which mirrors the existing necessity and scores best in the Impact Assessment. It is the only one fully corresponding to the issues and problems requiring action as well as to the findings of the stakeholder consultation undertaken in this respect. It addresses the main identified problem drivers in an optimal way and allows the best possible improvements with regard to those who are affected. It also safeguards the general *acquis* and the technical specifications established under the current CPD. Finally it strictly respects the balanced subsidiarity achieved in the field of construction, i.e. Member States are competent for the rules of design

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<sup>5</sup> by Risk & Policy Analysts Ltd (RPA), UK

and building of works, while EU legislation ensures the Internal Market for the products used in such works.

### **3. ADDRESSING THE IDENTIFIED PROBLEMS**

#### **3.1. Clarification needs**

The proposed Regulation contains a precise definition of its subject matter as well as definitions of the most pertinent concepts in the field of the Internal Market for construction products. Even more importantly, the specific meaning of CE marking for construction products is determined clearly: This will help to avoid confusion with other pieces of legislation providing for its affixing.

CE marking for construction products entails the declaration of relevant information in relation to the performance of the product, accompanying the placing on the market of that product; in addition, this information is to have been obtained following the provisions of the Regulation.

To ease the burden on SMEs, specific provisions for micro-enterprises and for individual products are foreseen.

Moreover, the specific role and meaning of the harmonised technical specifications, i.e. harmonised standards and EADs, are also clarified: they should be based on the concept of performance. As a consequence of this, the role of harmonised technical specifications is to provide test or calculation methods which should be the most appropriate ones for assessing and verifying constancy of the performances of the respective products.

Finally, CE marking will be mandatory for declaring the performances of products covered by the harmonised standards. Still, the proposal preserves the voluntary character of the harmonised standards by offering to the manufacturers the alternative route of the European Technical Assessment (ETA) for obtaining CE marking.

#### **3.2. Reinforcing the credibility of the system**

The proposal, following the New Legal Framework, introduces new and stricter criteria for the notification of bodies carrying out third party tasks in the process of assessment and verification of constancy of performance. Along the same lines, the proposal defines stringent criteria also for the designation of Technical Assessment Bodies (TAB). As a result, one can expect a greater acceptance of CE marking by Member States' authorities and by clients (designers, contractors and owners), as the only marking attesting compliance of the construction products with declared performances.

Furthermore, the provisions on safeguard procedure of the New Legal Framework are included in this proposal: this will also enhance the credibility of the whole system.

#### **3.3. Simplification needs**

Simplification is the main objective of this proposal. Coinciding with the experience gained through the application of the CPD, and further to the simplifications induced by clarification, the proposal also includes an important number of measures aimed at simplifying the route to CE marking, thereby reducing the administrative burden of enterprises and in particular of

micro-enterprises. Some of these measures apply directly such as those related to micro-enterprises, which will be given simplified access to CE marking, where the products they place on the market do not imply significant safety concerns. Specific simplified measures are also foreseen for dealing with individual and non-series products.

The procedures for obtaining a European Technical Assessment (ETA) are also to be simplified and clarified. Besides, European standardisation bodies and Technical Assessment Bodies are encouraged to replace testing in the harmonised technical specifications by other less onerous methods, such as descriptive methods, and to introduce classes, as far as possible, in the harmonised standards in order to facilitate the use of the concepts “without testing” or “without further testing”.

Finally, the introduction of the Specific Technical Documentation (STD) will facilitate the sharing of tests results performed by a third party, as well as the cascading of testing, i.e. the transfer of testing results from upstream to downstream stages of production or from a systems provider or a models designer to the assembler of such systems or models.

These measures are expected to significantly reduce the administrative cost of placing construction products on the European market without decreasing the levels of safety for construction works. The most significant simplification measures foreseen in the proposal can be grouped as follows:

### *3.3.1. Measures of general application*

#### *Systems of assessment and verification of constancy of performance*

- Change from 6 to 5 systems by the elimination of the former system 2;
- Simplification of the former system 1+ by the removal of audit testing on the construction site and on the market. This system, which is the most demanding according to the CPD, requires, in addition to the tests performed in the production plant before placing the product on the market, a set of tests that can be performed on the product either already on the market or on the construction site. The requirement for such tests has been removed.
- Introduction of « **witness tests** », i.e. the possibility of performing tests in the manufacturer’s production plant, in order to avoid moving samples of products to the notified body’s laboratory.

#### *Methods intended to reduce the cost of testing*

- Introduction of a soft system where the manufacturer’s declaration of performances is simply supported by a **Specific Technical Documentation (STD)**, which the manufacturer keeps in the factory at disposal of the market surveillance authorities.

Through the STD, the following tools are created:

- **Without testing** : under certain conditions, to be defined in the harmonised technical specifications or by a Commission decision, the product must be considered without testing, as being suitable for a specific use or able to reach a specific level or class of performance;

- **Without further testing:** in the same way, on the basis of a number of tests carried out by a third party, and under certain conditions, to be defined in the harmonised technical specifications or by a Commission decision, the product must be considered without further testing, as being suitable for a specific use or able to reach a specific level or class of performance;
- **Sharing type testing:** Manufacturer will be able to use the results of tests carried out by a third party as long as his product shares the factors determining this product-type, i.e. they use the same basic materials and are manufactured using similar production systems;
- **Cascading type testing:** Manufacturers assembling kits or systems can use the results of the tests performed by the providers of such kits or systems, under their authorisation and instructions. In addition, tests performed in upstream stages of the production process shouldn't be repeated in downstream stages, provided that the performance characteristics are not modified. These measures will have important effects in the reduction of the cost of products placed on the market without reducing the safety of the works being built. They will particularly benefit the SMEs.

Further to the above concrete measures, the technical specification writers are formally requested to use, in their technical specifications, evaluation methods that are less onerous than testing, whenever possible.

### 3.3.2. *Measures of specific application*

#### ***Treatment of individually manufactured products***

The treatment of individually manufactured products is also simplified by using the new STD. Again, this simplification measure applies to all the companies manufacturing such products, but has special relevance for SMEs and, in particular, for artisans and micro-enterprises.

#### ***Treatment of micro-enterprises***

Moreover, the proposal foresees specific treatment for **micro-enterprises**, which are given the possibility of replacing the applicable system for assessment and verification of constancy of performance by a STD, without the intervention of a third party, except for products having a very important role in assuring the safety of the works.

### 3.3.3. *European Technical Assessment (ETA) system*

Pursuant to the CPD, the system of European technical approvals is the route to CE marking reserved for products not covered by any harmonised standards. This system has frequently been criticised mainly owing to its complexity, cost and lack of transparency.

Firstly, it should be considered that, in the absence of a harmonised standard, the work of issuing a European technical approval consists basically of creating a new technical specification, i.e. determining the tests or other assessment methods to be applied to a product for evaluating its performance. This is, in fact, a complex and difficult task, necessary in order to allow the product to be placed on the market with CE marking. This practice has existed in MS for years, which explains the existence of solid national bodies in this field.

The results of the stakeholder consultation indicated that this route is still needed and valid but that improvements are necessary. The objective of the revision is therefore to simplify the

system as much as possible, by simplifying the procedures, making the system more transparent and by giving a bigger role to the manufacturer in deciding the content of the assessment.

The main changes proposed for the system can be summarised as follows:

1. European Technical Assessments (ETA) are to continue as a voluntary route to CE marking, as an option to the use of harmonised standards. A ETA could be carried out even when a harmonised standard exists for the same product, thereby giving more flexibility and choice to the manufacturer.
2. At present, the CPD does not contain criteria related to sectoral competence of Technical Assessment Bodies. On the contrary, the proposal explicitly sets strict criteria for them, including those related to sectoral competence, but also to technical competences in one or more of 11 defined sectoral domains.
3. The current system recognises two routes for European technical approvals, the Guidelines (ETAGs) and the Common Understanding Assessment Procedure (CUAP). These two are to be replaced by a single simplified route, the European Assessment Document (EAD).
4. The manufacturer is given a crucial role in the development of the EAD, as he decides which characteristics have to be dealt with; he intervenes in the procedure and he signs the definitive contract only when he knows the exact work programme, the timing and the cost of the procedure.
5. In terms of timing, the proposed procedure foresees, as objectives, 4.5 months for the elaboration of the EAD, as compared to estimated averages (not foreseen in the CPD) of 14.5 months for a CUAP and more than 24 months for the preparation of a ETAG.

#### **4. LEGAL ELEMENTS OF THE PROPOSAL**

##### **4.1. Summary of the proposed action**

The proposed Regulation foresees the repeal of the CPD. In general, when an act is repealed the principle of "parallel; forms" applies, that is to say, the repeal of a Directive would be effected by a replacement Directive. However, due to the particular circumstances of this case, namely:

- considerations linked to the effectiveness of the Regulation as far as the fulfilment of the Internal Market objectives are concerned;
- experience with the current CPD, showing important differences in the content and the timing of the transpositions by Member States, which have had negative implications on the functioning of the Internal Market for construction products.
- practical difficulties caused by the different transpositions, well exemplified by the present situation concerning the status of CE marking. The CPD has been transposed in such a way that CE marking is considered voluntary in 4 Member States and mandatory in the rest.

Industry is very unsatisfied with this situation; still, this dilemma has not been resolved until now.

For these reasons, it is considered that the most effective means of replacing the CPD is by means of a directly applicable instrument. A Regulation is therefore chosen to be proposed as the most appropriate act, being directly applicable. The problem of divergent interpretation and implementation by Member States is thus expected to be avoided.

#### **4.2. Legal basis**

The proposal is based on Article 95 of Treaty.

#### **4.3. Subsidiarity**

The proposal is based on a clear principle of distribution of competences and responsibilities between the Union and Member States in the field of the construction process.

Member States are responsible for ensuring that building and civil engineering works on their territory are designed and built in a way that does not endanger the safety of persons, domestic animals and property while respecting other basic requirements in the interest of general well-being.

On the other hand, the objective of this act of Community legislation is to provide the framework for the achievement of the Internal Market for construction products, for which the Treaty gives the responsibility to the Union.

The removal of technical barriers in the construction field, to the extent that they cannot be removed by mutual recognition of equivalence among all the Member States, may only be achieved by the establishment of a common technical language by which manufacturers will express the performance in relation to the essential characteristics of the construction products they place on the market. The proposed legislation predominantly aims to provide the necessary requirements for establishing this harmonised technical language.

#### **4.4. Proportionality principle**

The proposal is very largely built on existing practices, procedures and infrastructures which it consolidates, clarifies and simplifies, rather than creating new measures and infrastructures.

Concerning the reinforcing of the criteria for the notification of bodies carrying out third party tasks in the process of assessment and verification of constancy of performance, as well as the safeguard clause provisions, the New Legal Framework is strictly followed.

Criteria for the designation and notification of the technical assessment bodies follow the same line with some adaptations taking into account the specific functions these bodies will undertake.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**LAYING DOWN HARMONISED CONDITIONS FOR THE MARKETING OF THE**  
**CONSTRUCTION PRODUCTS**

**(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>6</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Having regard to the opinion of the Committee of the Regions<sup>8</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>9</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.
- (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>10</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.

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

<sup>7</sup> OJ C [...], [...], p. [...].

<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> OJ C [...], [...], p. [...].

<sup>10</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.).

- (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.
- (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.
- (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.

- (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.
- (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 as EADs should be ensured.
- (19) The establishment of draft EADs 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 and for issuing of the European Technical Assessments.
- (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 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.

- (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>11</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.

HAVE ADOPTED THIS REGULATION:

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

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Subject matter*

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

#### *Article 2*

##### *Definitions*

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

1. *"construction product"* means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof 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;
2. *"works"* means buildings and civil engineering works;
3. *"essential characteristics"* means those characteristics of the construction product which relate to the basic works requirements;
4. *"harmonised technical specifications"* means harmonised standards and European Assessment Documents;
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;
6. *"placing on the market"* means the first making available of a construction product on the Community market;
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;
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;

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;
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;
14. “*accreditation*” has the meaning assigned to it by Regulation (EC) No [...];
15. “*withdrawal*” means any measure aimed at preventing the making available on the market of a construction product in the supply chain;
16. “*recall*” means any measure aimed at achieving the return of a construction product that has already been made available on the market;
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;
18. “*factory production control*” means the permanent internal control of the production 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>12</sup>;
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.

### *Article 3*

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

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

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<sup>12</sup> OJ L 124, 20.5.2003, p. 36.

## **CHAPTER II**

### **DECLARATION OF PERFORMANCE AND CE MARKING**

#### *Article 4*

##### *Conditions for drawing up declaration of performance*

1. The manufacturer or the importer when placing a construction product on the market shall make a declaration of performance if the following conditions are met:
  - (a) the construction product is covered by a harmonised standard, or a European Technical Assessment has been issued for that product; and
  - (b) the requirements in relation to essential characteristics of that product exist where the manufacturer or importer intends to place the product on the market.

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

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

#### *Article 5*

##### *Content of the declaration of performance*

1. The declaration of performance shall express the performance of construction products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications.
2. The declaration of performance shall contain the following information:
  - (a) the product-type for which it has been drawn up;
  - (b) the list of the essential characteristics of the construction product for which the performance is declared, and the levels or classes of that performance;
  - (c) the reference number of the harmonised standard, the European Assessment Document or the Specific Technical Documentation, which has been used for the assessment of each essential characteristic.

*Article 6*  
*Form of the declaration of performance*

1. A copy of the declaration of performance shall be supplied with each product which is made available on the market.

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

2. The copy of the declaration of performance may be supplied by electronic means only with the express agreement of the recipient.
3. By way of derogation from paragraphs 1 and 2, the content of the declaration of performance may be made available on a web site 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).

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

*Article 7*  
*Use of CE marking*

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

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

By affixing or having affixed the CE marking the manufacturer shall take responsibility for the conformity of the construction product with the declared performance.

2. The CE marking shall be the only marking which attests conformity of the construction product with the declared performance.

Member States shall not introduce national measures or shall withdraw any references to a conformity marking other than the CE marking.

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 requirements for this use in that Member State correspond to the declared performance.
4. Member States shall ensure that the use of construction products bearing the CE marking shall not be impeded by rules or conditions imposed by public bodies or

private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate, when the requirements for this use in that Member State correspond to the declared performance.

#### *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 26a of Regulation (EC) N° ...
2. The CE marking shall be affixed visibly, legibly and indelibly to the construction product or to its data plate. 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.
3. The CE marking shall be followed by the two last digits of the year in which it was affixed, the name or the identifying mark of the producer, the unique identification code of the construction product and the number of the declaration of performance.
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.

#### *Article 9*

##### *Product Contact Points*

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

## **CHAPTER III**

### **OBLIGATIONS OF ECONOMIC OPERATORS**

#### *Article 10* *Obligations of manufacturers*

1. Manufacturers shall draw up the required technical documentation describing all the relevant elements related to the applicable attestation of declared performance.

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.

2. Manufacturers shall keep the technical documentation 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.

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).

3. Manufacturers shall ensure that procedures are in place in order for series production to maintain the declared performance. 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, 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 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 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, 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.

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 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.

*Article 11*  
*Authorised representatives*

1. Manufacturers may appoint, by a written mandate, an authorised representative.  
  
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:
  - (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;
  - (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.

*Article 12*  
*Obligations of importers*

1. When placing a construction product on the Community market importers shall act with due care in relation to the requirements of this Regulation.
2. Before placing a construction product on the market importers shall ensure that the assessment and the verification of constancy of 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 the declaration of performance in accordance with Articles 4, 5 and 6. 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).

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.

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 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.
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.
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. 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.

*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 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 where the product is made available on the market 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.

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.

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 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. 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.

#### *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, may be affected and consequently he shall be subject to the obligations of the manufacturer under Article 10.

#### *Article 15*

##### *Identification of economic operators*

Economic operators 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.

## CHAPTER IV HARMONISED TECHNICAL SPECIFICATIONS

### *Article 16 Harmonised standards*

1. Harmonised standards shall be established by the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of mandates adopted by the Commission in accordance with Article 6 of that Directive.
2. Harmonised standards shall provide the methods and the criteria for assessing the performance of the construction products in relation to their essential characteristics.  
  
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.
3. The European standardisation bodies shall determine in harmonised standards the applicable factory production control, which shall take into account the specific conditions of the manufacturing process of the construction product concerned.
4. The Commission shall assess the conformity of harmonised standards established by the European standardisation bodies with the relevant mandate.

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

The Commission shall publish any updates to that list.

### *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. The Committee shall, after having consulted with the relevant European standardisation bodies, 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 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.

*Article 18 [17]*  
*Levels or classes of performance*

1. The Commission may establish 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).

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.

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.

3. The European standardisation bodies may set in harmonised 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.
4. Member States may determine the levels or classes of performance 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.

*Article 19 [18]*  
*Assessment and verification of constancy of performance*

1. Assessment and verification of constancy of the declared performance of construction products in relation to their essential characteristics shall be carried out in accordance with one of the systems set out in Annex V.
2. The Commission shall establish which system is applicable to a given construction product or family of construction products according to the following criteria:
  - (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 of the essential characteristics of construction product during the service life of the product;
  - (d) the susceptibility to defects in the product manufacture.

In each case, the Commission shall choose the least onerous system consistent with safety.

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).

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

*Article 20 [19]*  
*European Assessment Document*

1. The European Assessment Document (EAD) shall be adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1) following a request for a European Technical Assessment by a manufacturer or an importer, in accordance with the procedure set out in Annex II.
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.
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.

*Article 21 [20]*  
*European Technical Assessment*

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

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).

## **CHAPTER V**

### **TECHNICAL ASSESSMENT BODIES**

#### *Article 22 [21]*

#### *Designation of Technical Assessment Bodies*

1. Member States may designate Technical Assessment Bodies (TAB) for product areas listed in Table 1 of Annex IV.

Member States which have designated a TAB shall communicate to the other Member States and the Commission 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.

#### *Article 23 [22]*

#### *Requirements for TABs*

1. The TAB shall satisfy the requirements set out in Table 2 of Annex IV.
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.
3. Member States shall inform the Commission and the other Member States of their national procedures for the assessment of TABs, of the monitoring of their activity, and of any changes to that information. The Commission shall make that information publicly available.

#### *Article 24 [23]*

#### *Evaluation of TABs*

1. The TABs shall 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 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.

2. The Commission shall establish procedures for carrying out the evaluation, including appropriate appeals procedures against decisions 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, as well as provide the support needed to that end;
  - (b) inform the Commission twice a year 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;
  - (c) adopt EADs;
  - (d) organise the evaluation of the TABs;
  - (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. The Commission may conclude a framework partnership agreement with the organisation of TABs to that end.
4. Member States shall ensure that the TABs contribute with financial and human resources to the organisation of TABs.

## **CHAPTER VI**

### **SIMPLIFIED PROCEDURES**

#### *Article 26 [25]*

##### *Use of Specific Technical Documentation*

1. When the manufacturer determines the product-type he may replace type-testing or type-calculation by a Specific Technical Documentation (STD) demonstrating that:
  - (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;
  - (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. 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;
  - (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.

The manufacturer may use the test results obtained by another manufacturer only after having obtained an authorisation of that manufacturer, who remains responsible for the accuracy, reliability and stability of those test results.

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

#### *Article 27 [26]*

##### *Use of Specific Technical Documentation by micro-enterprises*

1. Micro-enterprises may replace the applicable system for assessment of the declared performance of construction product by a STD. The STD shall demonstrate the compliance of the construction 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.

*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 in response to a specific order, and installed in a single identified work, the manufacturer may replace 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.

## **CHAPTER VII**

### **NOTIFYING AUTHORITIES AND NOTIFIED BODIES**

#### *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 of constancy of performance under this Regulation.

#### *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 and notification 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 compliance with the provisions of Article 33.
2. Where notification is based on an accreditation certificate, Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by their national accreditation bodies within the meaning of and in accordance with Regulation (EC) No....
3. Where the notifying authority delegates, subcontracts or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, the delegated, or otherwise entrusted body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in Article 30. In addition, such body shall have arrangements to cover liabilities arising from its activities.
4. The notifying authority shall take full responsibility for the tasks performed by delegated 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.
3. The notifying authority shall be organised in such a way that each decision relating to notification of a performance assessment body 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.

*Article 32 [31]*  
*Information obligation for the notifying authorities*

Member States shall inform the Commission and the other Member States of their national procedures for the assessment and notification of performance assessment bodies and the monitoring of notified bodies, and of any changes to that information.

The Commission shall make that information publicly available.

*Article 33 [32]*  
*Requirements for notified bodies*

1. For the purposes of notification, a performance assessment body 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.

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

4. The performance assessment body, its top level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of 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.

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.

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 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.
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.

*Article 34  
Presumption of conformity*

When a performance assessment body can demonstrate its conformity with the criteria laid down in the relevant harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall be presumed 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.
2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.

4. The notified body shall keep at the disposal of the national authorities 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 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.

*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 for notification to the notifying authority of the Member State in which it is established.
2. The application shall be accompanied by a description of the activities to be performed, the assessment and/or verification procedures for which the body claims to be competent, 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.

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

However, reference to the relevant harmonised technical specification is not required in the following cases of essential characteristics:

- (a) reaction to fire;
  - (b) resistance to fire;
  - (c) external fire performance;
  - (d) noise absorption.
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 following a notification in case of an accreditation certificate is used and within two months following a notification in case accreditation is not used.

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

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

#### *Article 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.

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.
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 by another notified body or kept available for the responsible notifying and market surveillance authorities on request.

*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 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.

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.

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.
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.

*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.

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

## **CHAPTER VIII**

### **MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES**

#### *Article 46 [44]*

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

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 18 of Regulation (EC) No ... or where they have sufficient reason 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 covered by this Regulation, they shall perform an evaluation in relation to the product concerned covering all the requirements laid down by this Regulation. The concerned economic operators shall cooperate in any necessary way 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 or to withdraw the product from the market 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.

Article 19 of Regulation (EC) N°... applies to the measures referred to above.

2. Where the market surveillance authorities consider 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 and of the actions which they have required the economic operator to take.
3. 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.
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 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.

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 related to the health or safety of persons or to other issues of public interest protection laid down by this Regulation;
  - (b) shortcomings in the harmonised technical specifications or in the STD.
6. Member States other than the Member State which initiated the procedure shall without delay inform the Commission and the other Member States 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 of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State in relation to the construction product concerned, the measure shall be deemed justified.
  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.

*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).

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 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.

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.

*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, 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, commensurate with the nature of the risk, as it may prescribe.
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.
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, the Member State shall take all appropriate measures to restrict or prohibit the making available on the market of the construction product or ensure that it is recalled or withdrawn from the market.

## **CHAPTER IX**

### **FINAL PROVISIONS**

#### *Article 50 [48]* *Amendment of Annexes*

1. Commission may amend Annexes I to V.
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).

#### *Article 51 [49]* *Committee*

1. The Commission shall be assisted by a committee, called Standing Committee of Construction.
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.

#### *Article 52 [50]* *Repeal*

1. Directive 89/106/EEC is repealed.
2. References to the repealed Directive shall be construed as references to this Regulation.

#### *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 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.

*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.

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*  
[...]

**ANNEX I**  
**Basic works requirements**

Construction works as a whole and in their separate parts must be fit for their intended use.

Subject to normal maintenance, basic works requirements must be satisfied for an economically reasonable working life.

**1. MECHANICAL RESISTANCE AND STABILITY**

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

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

**2. SAFETY IN CASE OF FIRE**

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

- (a) the load-bearing capacity of the construction can be assumed for a specific period of time,
- (b) the generation and spread of fire and smoke within the works are limited,
- (c) the spread of the fire to neighbouring construction works is limited,
- (d) the safety of rescue teams is taken into consideration.

**3. HYGIENE, HEALTH AND THE ENVIRONMENT**

The construction works must be designed and built in such a way that they will not be a threat neither to the hygiene nor health of the occupants and neighbours, nor exert an exceedingly high impact 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;

- (b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or out door air;
- (c) the emission of dangerous radiation;
- (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.

#### **4. SAFETY IN USE**

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.

#### **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.

#### **6. ENERGY ECONOMY AND HEAT RETENTION**

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**

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

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

**ANNEX II**  
**Procedure for adopting European Assessment Document and for issuing European Technical Assessment**

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.
  - 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.

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.

- 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.

- 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)
2. Name or identification mark and address of (*authorised representative of the*)  
 manufacturer:  
 .....  
 .....
3. This declaration of performance is issued under the sole responsibility of the  
 manufacturer:  
 .....  
 .....
4. Identification of product (*allowing traceability*):  
 .....  
 .....
5. The performance of the product identified above is in conformity with the  
 declared performances under point 7.
6. The ..... (*name, number of the notified body, if*  
*relevant*)  
 performed ..... (*description of intervention*)  
 and issued ..... (*the certificate of conformity of the*  
*product, the certificate of conformity of the factory production control, the test*  
*reports - if relevant*):  
 .....  
 .....
7. Declaration of performance (*list, 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*)

Name of the declared essential characteristic	Level or class of performance for the declared essential characteristic	Reference of the harmonised technical specification / Specific Technical Documentation


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

.....

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

## ANNEX IV

### Product areas and requirements for Technical Assessment Bodies

Table 1 - Product areas

Area Code	Product Area	Families of construction products
A	<b>CIVIL ENGINEERING</b>	Geotextiles and related products - Circulation fixtures - Floorings, paving and road finishes - Aggregates - Road construction products - Pipes, tanks and ancillaries 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	<b>PREFABRICATED TOTAL/PARTIAL BUILDING UNITS</b>	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
C	<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

<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 - 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 – Vetures
<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>	Any construction product related to gas installation.
<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

**Table 2 - Requirements for technical assessment bodies**

<b>Competence</b>	<b>Description of competence</b>	<b>Requirement</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:
<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).	(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 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>3 Setting assessment methods</i></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><i>4 Determining the specific factory production control</i></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><i>5 Assessing the product</i></b>	Assess the performance for essential characteristics of	In addition to the requirements listed in points 1, 2 and 3, a TAB shall

	construction products on the basis of harmonised methods against harmonised criteria.	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.	<p>A TAB shall have:</p> <ul style="list-style-type: none"> <li>(a) a proven record of respect of good administrative behaviour;</li> <li>(b) a policy and the supporting procedures to ensure confidentiality of sensitive information within the TAB and all its partners;</li> <li>(c) a document control system to ensure registration, traceability, maintenance and archiving of all relevant documents;</li> <li>(d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods;</li> <li>(e) a procedure to deal objectively with appeals and complaints.</li> </ul>

**ANNEX V**  
**Assessment and verification of constancy of performance**

**1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE**

**1.1. System 1 - Declaration of the performance 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 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;
  - (iv) audit-testing of samples taken at the factory.

**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 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;
- (b) the notified body 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), 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.

**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 the characteristics or performance of materials or construction products.