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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 January 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 26.1.2017 on the  
classification of frost resistance performance for clay tiles under EN 1304  
pursuant to Regulation (EU) No 305/2011 of the European Parliament and  
of the Council

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Delegations will find attached document C(2017) 315 final.

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Encl.: C(2017) 315 final



Brussels, 26.1.2017  
C(2017) 315 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 26.1.2017**

**on the classification of frost resistance performance for clay tiles under EN 1304  
pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the  
Council**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC<sup>1</sup> acknowledges two main alternatives to establish classes of performance in relation to the essential characteristics of construction products. According to Articles 27(1) and 60(f), this can be done by delegated acts of the Commission, whereas Article 27(2) allows for the use of harmonised standards for this purpose, on the basis of a revised mandate. In accordance with Article 27(2), first subparagraph, where the Commission has established such classes, the European standardisation bodies shall use those classes in harmonised standards.

According to the definition comprised in Article 2(7) of Regulation (EU) No 305/2011, “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product. Classes in Regulation (EU) No 305/2011 are thus always expressing a given range of determined performance of the product.

Moreover, Regulation (EU) No 305/2011 does not distinguish, unlike its predecessor Council Directive 89/106/EEC, different kinds of classes depending on their origin. Classes of performance established by the Commission and such classes established by the European standardisation bodies are thus to be acknowledged and respected quite in the same manner.

Furthermore, the whole classification of performance would need to be defined open-ended, entailing all possible levels of performance in relation to a given essential characteristic for the products covered by the standard in question. Otherwise, also a threshold level for such performance would be established at the same time.

The reference to the European product standard EN 1304 on clay roofing tiles and fittings was first published under Directive 89/106/EEC in the Official Journal of the European Union in 2005, related to the version EN 1304:2005 of this standard. This version did not contain a classification for the performance of the products covered by it in relation to its essential characteristic frost resistance. However, European Committee for Standardisation (CEN) has submitted to the Commission a new version of this standard, EN 1304:2013, which comprises a classification for this performance, with three classes of performance introduced.

The assessment methods for determining the performance of products covered by the standard EN 1304 in relation to frost resistance have been gradually harmonised in CEN. From the initial situation of several national test methods, the first step was taken in 1998, when the standard EN 539-2 was published, containing four test methods. A fifth, comprehensive test method was added to EN 539-2 in its 2006 version and confirmed as the unique harmonised test method for these purposes in EN 539-2:2013. The new version of the product standard in question, EN 1304:2013, refers to EN 539-2:2013 as the source of the assessment method to be used in this context. The classification included in EN 1304:2013 corresponds to the contents of EN 539-2:2013. Both the harmonised assessment method and the classification linked to it thus represent important steps forward towards the consolidation of the internal market for the products in question.

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<sup>1</sup> OJ L 88, 4.4.2011, p. 5.

Within EN 1304, the essential characteristic frost resistance concerns only products intended for external use. For such products, it has been deemed necessary to adjust also the scope of EN 1304, so as to ensure that the classification foreseen for their performance in relation to frost resistance covers all levels of performance for the products within this scope. The development of such a new version of EN 1304 is currently underway in CEN.

Since under the application of Regulation (EU) No 305/2011 the introduction of such a new classification into a harmonised standard by the European standardisation bodies themselves would require the issuing of a new revised mandate, which has not taken place, it has been considered more opportune to proceed with this draft delegated Regulation.

It has not been considered appropriate to include other performance classifications contained in the standard EN 1304 within the scope of the draft Regulation, because pursuant to Regulation (EU) No 305/2011 such classifications comprised in harmonised standards, the reference to which has been published under Directive 89/106/EEC in the Official Journal of the European Union, are to be deemed applicable under Regulation (EU) No 305/2011 without any further actions necessitated.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The draft Regulation was submitted for a written consultation of experts between 22 April and 27 May 2016. Before that, all Member States were presented an opportunity to nominate experts to participate in it. In addition to these experts, also other external stakeholders were consulted. The documents relevant to the written consultation were transmitted simultaneously to the European Parliament and to the Council, as foreseen in the Common Understanding on delegated acts. The observations presented in this context have been taken into account when preparing the final draft version of this act for the inter-service consultation. It was published for public feedback on the Better Regulation Portal from 3 November to 1 December 2016; no feedback was received.

## **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Pursuant to Article 27 of Regulation (EU) No 305/2011, classes of performance may be established in relation to the essential characteristics of construction products. According to Articles 27(1) and 60(f), this can be done by delegated acts of the Commission. In accordance with Article 27(2), first subparagraph, where the Commission has established such classes, the European standardisation bodies shall use those classes in harmonised standards.

According to Article 2(7) of Regulation (EU) No 305/2011, “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product. Regulation (EU) No 305/2011 does not distinguish different kinds of classes. Classes of performance established by the Commission and such classes established by the European standardisation bodies are thus to be acknowledged and respected quite in the same manner.

Since under the application of Regulation (EU) No 305/2011 the introduction of new classifications of performance into harmonised standards by the European standardisation bodies themselves would require the issuing of new revised mandates, which has not taken place, it has been considered more opportune to proceed with this draft delegated Regulation.

For these reasons, the draft Regulation should be adopted to establish new classes of performance for clay tiles under the European standard EN 1304.

The draft Regulation conforms to the principle of proportionality. It results in alleviating certain difficulties caused by the impact of Regulation (EU) 305/2011 on the establishment of classification systems for the performance of construction products, and therefore can be assessed to benefit the whole European construction sector.

COMMISSION DELEGATED REGULATION (EU) .../...

of 26.1.2017

**on the classification of frost resistance performance for clay tiles under EN 1304 pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC<sup>2</sup>, and in particular Article 27(1) thereof,

Whereas:

- (1) Where the Commission has not established classes of performance in relation to the essential characteristics of construction products, according to Article 27(2) of Regulation (EU) No 305/2011 they may be established by the European standardisation bodies, but only on the basis of a revised mandate.
- (2) The European product standard EN 1304 on clay roofing tiles and fittings is a standard that has been harmonised under Council Directive 89/106/EEC<sup>3</sup> since 2005.
- (3) A new classification of the frost resistance performance for clay tiles under EN 1304, when intended for external use, has been included within the new version of that standard. This classification is based on a gradual development of harmonised assessment methods and thus represents a step forward for the consolidation of the internal market for the products in question.
- (4) For that new classification, a revised mandate has not been issued.
- (5) A new classification system to be used for products covered by EN 1304, when intended for external use should therefore be established,

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<sup>2</sup> OJ L 88, 4.4.2011, p. 5.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The performance of clay tiles intended for external use, in relation to their essential characteristic frost resistance, shall be classified in accordance with the classification system set out in the Annex.

*Article 2*

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

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

Done at Brussels, 26.1.2017

*For the Commission*  
*The President*  
*Jean-Claude Juncker The President*  
*Jean-Claude JUNCKER*