



Council of the
European Union

Brussels, 3 July 2015
(OR. en)

10541/15

MI 441
ENT 131
COMPET 331
DELECT 81

COVER NOTE

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

date of receipt: 1 July 2015

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

No. Cion doc.: C(2015) 4380 final

Subject: COMMISSION DELEGATED DECISION of 1.7.2015 on the applicable
systems to assess and verify constancy of performance of geosynthetics
and related products pursuant to Regulation (EU) No 305/2011 of the
European Parliament and of the Council

Delegations will find attached document C(2015) 4380 final.

Encl.: C(2015) 4380 final



Brussels, 1.7.2015
C(2015) 4380 final

COMMISSION DELEGATED DECISION

of 1.7.2015

**on the applicable systems to assess and verify constancy of performance of geosynthetics
and related products 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

According to Article 28 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC¹, assessment and verification of constancy of performance (AVCP) of construction products in relation to their essential characteristics is to be carried out in accordance with the systems set out in Annex V to Regulation (EU) No 305/2011.

Pursuant to Articles 28(2) and 60(h) of Regulation (EU) No 305/2011, the Commission is delegated the task of establishing the AVCP systems of construction products, relating to a given product, a given product family or a given essential characteristic, taking into account the considerations laid down in these provisions.

In accordance with Article 21(2) of Regulation (EU) No 305/2011, the Commission is to be informed of a request for a European Technical Assessment (ETA), for which a European Assessment Document (EAD) is to be drawn up. Pursuant to Article 21(3), the Commission is then to decide, whether an appropriate Commission Decision (or a delegated act under the said Regulation) exists for AVCP of the construction products to be covered by the EAD under preparation, and apply Article 28 if such a decision does not exist yet.

Pursuant to Council Directive 89/106/EEC (Construction Products Directive)², the Commission adopted Decisions on the appropriate procedure for the attestation of conformity (AoC) for several product families. These acts are deemed valid also under the application of Regulation (EU) No 305/2011, taking into consideration Article 65(2) of this Regulation, and thus continue to provide a legal base for the choice of AVCP systems of construction products respectively under the scope of each one of these Decisions.

Commission Decision 96/581/EC³ established accordingly the appropriate procedure for the AoC for geotextiles, as listed in Annex I to this Decision. In Decision 96/581/EC, however, no distinctions were made for the reaction to fire performance of these products. The situation remained the same even after the adoption of Commission Decision 2000/147/EC⁴ with a new classification for reaction to fire performance of construction products, while Commission Decision 2001/596/EC⁵, accordingly amending a large number of previous AoC Decisions, did not cater for such a change to Decision 96/581/EC. This has been stated by European Organisation of Technical Assessments (EOTA) as a reason for the request now to apply Article 28 of Regulation (EU) No 305/2011 for these products, comprising also a proposal for the choice of AVCP systems for the reaction to fire performance of geosynthetics and related products. For these reasons, Decision 96/581/EC should be amended.

Pursuant to Article 28(2), the choice of these systems should aim at the least onerous system for the manufacturers, when account is taken of all the relevant considerations. These aspects,

¹ OJ L 88, 4.4.2011, p. 5.

² OJ L 40, 11.2.1989, p. 12.

³ OJ L 254, 8.10.1996, p 59.

⁴ OJ 50, 23.2.2000, p. 14. Decision as amended by Decision 2003/632/EC (L 220, 3.9.2003, p. 5) and by Decision 2006/751/EC of 27 October 2006 (L 305, 4.11.2006, p. 8).

⁵ OJ L 209, 2.8.2001, p 33.

in particular the experiences from the application of Decision 96/581/EC and on the behaviour of the products in question during their working life, have led the Commission to keep to the main present choice of system 2+, as foreseen in Annex V to Regulation (EU) No 305/2011, in the draft Decision to be applicable for the products in question, for all other essential characteristics than reaction to fire. No other substantial changes should therefore be envisaged to Decision 96/581/EC in this context.

For the reaction to fire performance, the customary choice of systems 1, 3 or 4 should be considered appropriate also for geosynthetics and related products. In this part, a formulation differing from the approach followed in the Commission Decisions on AoC procedures should however be used in Table 2 of Annex II to the draft Decision, since pursuant to Article 28(2) of Regulation (EU) No 305/2011, the AVCP systems to be established can be differentiated only on the basis of the families of construction products or concerning certain essential characteristics. To distinguish between situations where system 1, system 3 or system 4 is chosen to be applied for reaction to fire, the only manner to proceed is thus to make reference to different subfamilies of products. These distinctions should also be clear and unambiguous, and they should not exclude any subfamilies of the whole product family covered by the draft Decision, as defined in its Annex I.

In addition, the amendment of Decision 96/581/EC is an opportunity to adapt its wording to the terminology and the concepts used in Regulation (EU) No 305/2011.

Finally, for reasons of simplification and legal transparency, the amendments to Decision 96/581/EC are presented in the draft Decision in a consolidated manner, thus replacing Decision 96/581/EC by it.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft Decision was discussed in the meeting of the Advisory Group for Construction (the AG) on 19 January 2015 and also submitted for a written consultation of experts between 23 December 2014 and 19 January 2015. Before these steps, all Member States were presented an opportunity to nominate experts to participate in them. In addition to these experts, also other external stakeholders were consulted. The documents discussed in the AG and 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 these contexts have been taken into account when preparing the final draft version of this act for the inter-service consultation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Pursuant to Articles 28(2) and 60(h) of Regulation (EU) No 305/2011, AVCP systems of construction products, as set out in Annex V to Regulation (EU) No 305/2011, are to be established by delegated acts of the Commission, to be applicable to a given product, a given product family or a given essential characteristic, taking into account the considerations laid down in these provisions.

According to Article 21(2) of Regulation (EU) No 305/2011, the Commission is to be informed of a request for a European Technical Assessment (ETA), for which a European

Assessment Document (EAD) is to be drawn up. Pursuant to Article 21(3), the Commission is then to decide, whether an appropriate Commission Decision (or a delegated act under the said Regulation) exists for AVCP of the construction products to be covered by the EAD under preparation, and apply Article 28 if such a decision does not exist yet. For geotextiles, in relation to their reaction to fire performance, an appropriate decision for establishing the AVCP systems does not yet exist.

When establishing the AVCP systems, pursuant to Article 28(2) of Regulation (EU) No 305/2011, the Commission shall choose the least onerous systems consistent with the fulfilment of all basic requirements for construction works. Pursuant to Article 60(h) of Regulation (EU) No 305/2011, this shall be done in accordance with the impact of the product to this fulfilment during its expected working life.

Based on these provisions and the factual experience gathered on the behaviour and use of the family of construction products in question, as well as the application of Commission Decision 96/581/EC, the draft Decision should therefore keep to the main present choice of AVCP system 2+ to be applicable for geosynthetics and related products, for all other essential characteristics than reaction to fire. For reaction to fire performance, the customary choice of systems 1, 3 or 4 should be considered appropriate, with the differentiation carried out on the basis of distinction of separate subfamilies of these products.

The draft Decision conforms to the principle of proportionality. It is required for the adoption and the use of the respective European Assessment Document, which process already is underway. For these reasons, the draft Decision is expected to serve the interests of the construction sector as a whole.

COMMISSION DELEGATED DECISION

of 1.7.2015

on the applicable systems to assess and verify constancy of performance of geosynthetics and related products 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/EEC¹, and in particular Article 60(h) thereof,

Whereas:

- (1) The procedure for attesting the conformity of geosynthetics and related products with the applicable technical specifications has been established in Commission Decision 96/581/EC².
- (2) Decision 96/581/EC does not lay down detailed criteria for the choice of systems to assess and verify constancy of performance for the reaction to fire of geosynthetics and related products.
- (3) The systems set out in Annex V to Regulation (EU) No 305/2011 should be more adequately chosen to assess the performance of geosynthetics and related products.. This should enable manufacturers to access the internal market more efficiently, thus contributing to greater competitiveness of the construction industry as a whole.
- (4) Decision 96/581/EC should therefore be repealed and replaced in the interest of clarity and transparency,

¹ OJ L 88, 4.4.2011, p. 5.

² Commission Decision of 24 June 1996 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards geotextiles (OJ L 254, 8.10.1996, p. 59).

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies to the geosynthetics and related products set out in Annex I.

Article 2

The geosynthetics and related products referred to in Article 1 shall be assessed and verified for constancy of performance in relation to their essential characteristics in accordance with the systems specified in Annex II.

Article 3

Decision 96/581/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision.

Article 4

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

Done at Brussels, 1.7.2015

For the Commission
The President
Jean-Claude JUNCKER