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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) 4359 final

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

Delegations will find attached document C(2015) 4359 final.

Encl.: C(2015) 4359 final



Brussels, 1.7.2015
C(2015) 4359 final

COMMISSION DELEGATED DECISION

of 1.7.2015

on the applicable systems to assess and verify constancy of performance of wastewater engineering 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.

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 97/464/EC³ established accordingly the appropriate procedure for the AoC for wastewater engineering products, as listed in Annex I to this Decision. The subsequent amendment of this Decision⁴ has clarified the scope and the manner of its practical application for these products, in particular in relation to certain essential characteristics. However, no consolidated version of the Decision has been formally adopted.

Furthermore, Decision 97/464/EC as amended makes reference to the system of classification established by Table 1 of Commission Decision 2000/147/EC⁵ when dealing with the reaction to fire performance of all wastewater engineering products. However, some such products, more specifically manhole tops and gully tops, are intended to be used in a horizontal manner and thus should be linked to the classification comprised in Table 2 of Commission Decision 2000/147/EC. This was also presented as the reason for the present request to apply Article 28 of Regulation (EU) No 305/2011 for these products.

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, in particular the experiences from the application of Decision 97/464/EC and on the behaviour of the products in question during their working life, have led the Commission to keep to the present choices of systems 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 it in this context.

¹ OJ L 88, 4.4.2011, p. 5.

² OJ L 40, 11.2.1989, p. 12.

³ OJ L 198, 25.7.1997, p 33.

⁴ OJ L 302, 29.9.2004, p 6.

⁵ 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).

For the reaction to fire performance, the customary choice of systems 1, 3 or 4 should be considered appropriate also for these 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 97/464/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 97/464/EC are presented in the draft Decision in a consolidated manner, thus replacing Decision 97/464/EC as amended 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.

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 [97/464/EC](#), the draft Decision should therefore keep to the present choices of AVCP systems to be applicable for wastewater engineering 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 further development of the respective European harmonised standard, 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 wastewater engineering 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/EEC⁶, and in particular Article 60(h) thereof,

Whereas:

- (1) The procedure for attesting the conformity of wastewater engineering products with the applicable technical specifications has been established in Commission Decision 97/464/EC⁷.
- (2) Decision 97/464/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 wastewater engineering products, notably manhole tops and gully tops.
- (3) The systems set out in Annex V to Regulation (EU) No 305/2011 should be more adequately chosen to assess the performance of wastewater engineering 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 97/464/EC should be repealed and replaced in the interest of clarity and transparency,

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies to the wastewater engineering products set out in Annex I.

⁶ OJ L 88, 4.4.2011, p. 5.

⁷ Commission Decision of 27 June 1997 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards waste water engineering products (OJ L 198, 25.7.1997, p. 33).

Article 2

The wastewater engineering 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 97/464/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