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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: 8 July 2015

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

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No. Cion doc.: C(2015) 4550 final

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Subject: COMMISSION DELEGATED DECISION of 8.7.2015 on the applicable  
systems to assess and verify constancy of performance of ventilation ducts  
and pipes for air ventilation 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(2015) 4550 final.

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Encl.: C(2015) 4550 final



Brussels, 8.7.2015  
C(2015) 4550 final

**COMMISSION DELEGATED DECISION**

**of 8.7.2015**

**on the applicable systems to assess and verify constancy of performance of ventilation ducts and pipes for air ventilation 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/EEC<sup>1</sup>, 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.

For ventilation ducts and pipes, an appropriate decision for establishing the AVCP systems does not yet exist. This has been stated also by European Organisation of Technical Assessments (EOTA) as a reason for the request to apply Article 28 of Regulation (EU) No 305/2011 for these products, comprising also a proposal for the choice of these systems.

Pursuant to Article 28(2), this choice should aim at the least onerous system for the manufacturers, when account is taken of all the relevant considerations. Under the existing circumstances, experience on the behaviour of the products in question during their working life has demonstrated that the assessment of their performance should be carried out by a third party before their placing on the market, but that more onerous systems cannot be considered necessary. These aspects have led the Commission to choose system 3 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.

Furthermore, 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 previous Commission Decisions on attestation of conformity under Council Directive 89/106/EEC (Construction Products Directive) should however be used in the tables included in Annex II, 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 Annex I.

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

## **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 3 October 2014 and also submitted for a written consultation of experts between 19 September and 17 October 2014. 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 ventilation ducts and pipes, 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, the draft Decision should therefore establish system 3 as the least onerous one for ventilation ducts and pipes intended to be used in construction works for air ventilation, 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 8.7.2015

## on the applicable systems to assess and verify constancy of performance of ventilation ducts and pipes for air ventilation 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 60(h) thereof,

Whereas:

- (1) The assessment and verification of constancy of performance of ventilation ducts and pipes intended to be used for air ventilation should be carried out in accordance to the systems set out in Annex V to Regulation (EU) No 305/2011.
- (2) It is therefore necessary to establish which systems of assessment and verification of constancy of performance are applicable to ventilation ducts and pipes intended to be used for air ventilation. This should enable manufacturers to access the internal market more efficiently, thus contributing to greater competitiveness of the construction industry as a whole
- (3) This Decision should only apply to products not within the scope of other corresponding acts of Union law. Thus, it should not apply to ducts and pipes used for fixed fire-fighting systems since they are already covered by Commission Decision 96/577/EC<sup>3</sup> and Commission Decision 1999/472/EC<sup>4</sup>,

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

<sup>3</sup> Commission Decision 96/577/EC 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 fixed fire-fighting systems (OJ L 254, 08.10.1996, p. 44).

<sup>4</sup> Commission Decision 1999/472/EC of 1 July 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards pipes, tanks and ancillaries not in contact with water intended for human consumption (OJ L 184, 17.07.1999, p. 42).

HAS ADOPTED THIS DECISION:

*Article 1*

This Decision applies to ventilation ducts and pipes intended to be used in construction works for air ventilation as set out in Annex I.

*Article 2*

The 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*

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, 8.7.2015

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