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| From:            | Secretary-General of the European Commission,<br>signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 30 October 2013  |
| To:              | Mr Uwe CORSEPIUS, Secretary-General of the Council of the European<br>Union                  |

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| No. Cion doc.: | C(2013) 7086 final   |
| Subject:       | COMMISSION DELEGATED REGULATION (EU) No .../.. of<br>30.10.2013 on the conditions for making a declaration of performance on<br>construction products available on a website |

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Delegations will find attached document C(2013) 7086 final.

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Encl.: C(2013) 7086 final



Brussels, 30.10.2013  
C(2013) 7086 final

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 30.10.2013**

**on the conditions for making a declaration of performance on construction products  
available on a website**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE DELEGATED ACT**

Pursuant to Articles 7(3) and 60(b) 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, the Commission has been delegated the power to adopt delegated acts on the conditions on which a declaration of performance for a construction product may be made available on a website. By means of using this power, the procedures set out in Article 7(1) of Regulation (EU) No 305/2011 for the supply of copies of declarations of performance should be simplified to allow for the comprehensive uptake of new enabling information technologies and thus to reduce costs to manufacturers of construction products and the whole construction sector.

The swift adoption of the draft Regulation would empower the manufacturers of construction products to turn to more fluent means of placing their products on the market, when a full-scale use of the new technologies would contribute to much less paper being used and a faster pace of communication being achieved all through the supply chain. This would benefit also other actors involved, facilitate the consolidation of the Internal Market for these products and thus also have a favourable impact on the competitiveness of the European construction sector as a whole. The European enterprises, especially SMEs, are already encountering real daily problems when trying to cope with the system established by Regulation (EU) No 305/2011 as currently in force. Therefore diligent action could be seen as highly desirable, so as to have this act in place as soon as possible.

Adoption of the draft Regulation has been included in Commission Work Programme for 2013 as one of its simplification items.

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

The draft Regulation was submitted for public consultation by means of the meeting held for this purpose on 8 July 2013, preceded by informal contacts with representatives of different stakeholders, notably Member States and the European Parliament. For this meeting, all Member States had been presented an opportunity to nominate experts to be invited. In addition to these experts, also representatives of the European Parliament participated in it, alongside widespread representation of diverse other external stakeholders. The documents relevant to this meeting had been transmitted simultaneously to the European Parliament and the Council, as foreseen in the Common Understanding on delegated acts. The observations presented in this meeting have been taken into account when preparing the final draft version of this act for the interservice consultation.

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

According to Article 7(1) of Regulation (EU) No 305/2011, a copy of the declaration of performance of each construction product which is made available on the market can be supplied inter alia by electronic means. The use of this option does thus not necessitate this delegated act. Taking into account also the potential specific needs of the recipients of construction products, especially the micro-enterprises amongst them, and in particular those operating in construction sites without Internet access, this delegated act should not be

extended to comprise any derogation from Article 7(2). In case the experience obtained from the application of this delegated act would justify changes to the scope of the derogation, this delegated act could be reviewed. The same of course goes for the conditions set out in this delegated act.

This delegated act does not change in any way the basic responsibilities of the actors in the supply chain of construction products. In general, in these contractual contexts the contracting parties should continue to agree on the procedures to be followed when supplying product information. In particular, the drawing up of the declaration of performance and thus the determination of its contents for a construction product are to remain the responsibility of the manufacturer.

Manufacturers also remain obliged to link every single product or batch of the same product they are placing on the market to a given declaration of performance by means of the unique identification code of the product-type, which according to Annex III to Regulation (EU) No 305/2011 shall be mentioned in the declaration of performance. While this unique identification code shall, pursuant to Article 9(2) of Regulation (EU) No 305/2011, follow the CE marking affixed to the construction product, its delivery to recipients of construction products is ensured also when making the declaration of performance available on a website.

In order for the system to function appropriately, the economic operators using websites for the purpose at hand are to be subjected to certain responsibilities. The recipients of construction products are to be given instructions how to access the website – or the Internet address – where the declarations of performance are made available. This website is to be kept continuously available and accessible for them. When a declaration of performance is made available on the Internet, it should be ensured that the content of this declaration remains unchanged and available free of charge for the recipients under all circumstances at least for the period referred to in Article 11(2) of Regulation (EU) No 305/2011.

When declarations of performance are made available on an Internet site, due care is to be exercised when ensuring its appropriate upkeep and maintenance, so as to avoid as far as possible its unavailability owing to malfunctioning of the information technology systems in place. The information is to be displayed preferably using semantic web technologies making sure that that it is displayed in a human readable format, like HTML, and a machine readable format, like XML. The schema for the machine readable format should preferably use standard or widely used data schemas, so that the information is interoperable with most architectural tools.

Since the power delegated in Articles 7(3) and 60(b) of Regulation (EU) No 305/2011 to the Commission extends only to derogating from paragraphs 1 and 2 of Article 7, this delegated act cannot change the provisions of Article 7(4) about the languages to be used when supplying the declaration of performance. The provisions of Article 6(5) of Regulation (EU) No 305/2011 about the treatment of the information referred to in Articles 31 or 33 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, together with the declaration of performance shall also continue to apply as such when making the declaration of performance available on a website. Moreover, this delegated act cannot change any of the obligations of economic operators set out in Chapter III of Regulation (EU) No 305/2011, in particular those defined in Articles 11(4) and 16 for ensuring the traceability of construction

products, as well as those established in Article 11(6) for having instructions and safety information accompanying all these products.

The national market surveillance authorities for construction products are to exercise their competences also for monitoring the compliance with the conditions set out in this delegated act.

For reasons mentioned above, the entry into force of this delegated act should take place as soon as possible after its adoption and publication.

# COMMISSION DELEGATED REGULATION (EU) No .../..

of 30.10.2013

## on the conditions for making a declaration of performance on construction products available on a website

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 harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC<sup>1</sup>, and in particular Article 7(3) in conjunction with Article 60(b) thereof,

Whereas:

- (1) Article 4(1) of Regulation (EU) No 305/2011 obliges manufacturers of construction products to draw up a declaration of performance when a construction product that is covered by a harmonised standard or conforms to a European Technical Assessment issued for that product is placed on the market. A copy of that declaration should be supplied either in paper form or by electronic means.
- (2) In accordance with Article 7(3) and Article 60(b) of Regulation (EU) No 305/2011, the Commission is delegated the task of setting out the conditions governing the electronic processing of the declarations of performance in order that they may be made available on a website. Those conditions for making the declarations of performance available online permit the use of new information technologies and reduce costs to manufacturers of construction products and the construction sector as a whole.
- (3) Taking into account the potential specific needs of the recipients of construction products, especially the micro-enterprises amongst them, and in particular those operating in construction sites without Internet access, this delegated act should not be extended to comprise any derogation from Article 7(2) of Regulation (EU) No 305/2011.
- (4) In order to ensure that the electronic form of a declaration of performance corresponding to a particular product is readily identifiable, manufacturers should link every single product, or batch of the same product, they are placing on the market to a given declaration of performance by means of the unique identification code of the product-type, which should be mentioned in the declaration of performance in accordance with Annex III to Regulation (EU) No 305/2011.

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

- (5) For the purpose of alleviating the administrative burden involved in the provision of declarations of performance, while also ensuring the continued reliability of the information provided in such declarations, the electronic form of a declaration of performance should not be altered after it has been made available online and should remain accessible for at least a period of ten years after the construction product has been placed on the market or such other period that may apply by virtue of the second subparagraph of Article 11(2) of Regulation (EU) No 305/2011.
- (6) The website on which the declaration of performance is made available should be subject to monitoring and maintenance to ensure, insofar as possible, that it is kept continuously accessible and does not become unavailable as a result of technical malfunction.
- (7) The website on which the declaration of performance is made available should be accessible free of charge to the recipients of construction products. Those recipients should be instructed on how to access the website and the electronic form of the declaration of performance.
- (8) In order to enhance the efficiency and competitiveness of the European construction sector as a whole, economic operators providing declarations of performance wishing to benefit from new information technologies for the purposes of facilitating the provision of such declarations should be able to do so as soon as possible,

HAS ADOPTED THIS REGULATION:

*Article 1*

- (1) Economic operators may make available a declaration of performance referred to in Article 4(1) of Regulation (EU) No 305/2011 on a website, by virtue of derogation from Article 7(1) of Regulation (EU) No 305/2011, provided that they comply with all of the following conditions:
  - (a) they shall ensure that the content of a declaration of performance is not altered after it has been made available on the website;
  - (b) they shall ensure that the website where the declarations of performance drawn up for construction products have been made available is monitored and maintained so that the website and the declarations of performance are continuously available to recipients of construction products;
  - (c) they shall ensure that the declaration of performance may be accessed by the recipients of construction products free of charge for a period of ten years after the construction product has been placed on the market, or for such other period that may be applicable in accordance with the second subparagraph of Article 11(2) of Regulation (EU) No 305/2011;
  - (d) they shall provide instructions to the recipients of construction products on how to access the website and the declarations of performance drawn up for such products available on that website.

- (2) Manufacturers shall ensure that every single product, or batch of the same product, they are placing on the market is linked to a given declaration of performance by means of the unique identification code of the product-type.

*Article 2*

This Regulation shall enter into force on the third 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, 30.10.2013

*For the Commission*  
*The President*  
*José Manuel BARROSO*