



Council of the
European Union

011867/EU XXVI. GP
Eingelangt am 20/02/18

Brussels, 20 February 2018
(OR. en)

6312/18

MI 96
ENT 29
COMPET 76
DELECT 33

COVER NOTE

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

date of receipt: 19 February 2018

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

No. Cion doc.: C(2018) 884 final

Subject: COMMISSION DELEGATED DECISION (EU) .../... of 19.2.2018 on the
applicable systems to assess and verify constancy of performance of metal
faced sandwich panels for structural use pursuant to Regulation (EU) No
305/2011 of the European Parliament and of the Council

Delegations will find attached document C(2018) 884 final.

Encl.: C(2018) 884 final



Brussels, 19.2.2018
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COMMISSION DELEGATED DECISION (EU) .../...

of 19.2.2018

on the applicable systems to assess and verify constancy of performance of metal faced sandwich panels for structural use 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 harmonised 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 those provisions.

For metal faced sandwich panels not intended for structural use, the applicable AVCP systems are defined in Commission Decision 98/436/EC² and Commission Decision 98/437/EC³. For metal faced sandwich panels intended for structural use, an appropriate decision for establishing the AVCP systems does not yet exist.

Pursuant to Article 28(2), the choice of the AVCP systems 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 regarding the essential characteristics related to the mechanical resistance and stability, the assessment of their performance should be left to the manufacturer, but a third party should carry out the certification of the factory production control before these products are placed on the market. A more onerous system is not considered necessary regarding the essential characteristics related to the mechanical resistance and stability.

Furthermore, for the reaction to fire performance, the customary choice of systems 1, 3 or 4 should be considered appropriate also for these products regarding this essential characteristic only. 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 the Annex.

Regarding all other essential characteristics, the product performance is similar to that of metal faced sandwich panels not intended for structural use. For this reason the systems for metal faced sandwich panels for structural use should also follow the choices made in Commission Decision 98/436/EC and Commission Decision 98/437/EC for metal faced sandwich panels not intended for structural use.

¹ OJ L 88, 4.4.2011, p. 5.

² Commission Decision 98/436/EC of 22 June 1998 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards roof coverings, rooflights, roof windows and ancillary products (OJ L 194, 10.7.1998, p. 30).

³ Commission Decision 98/437/EC of 30 June 1998 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards internal and external wall and ceiling finishes (OJ L 194, 10.7.1998, p. 39).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft Decision was discussed in the meeting of the Advisory Group on Construction Products⁴ (the AG) on 9 December 2016 and also submitted for written consultation of the experts between 25 November 2016 and 16 January 2017. Before these steps, all Member States were presented an opportunity to nominate experts to participate. 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 were 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 24 August to 21 September 2017; two stakeholders provided feedback. One stakeholder commented that system 2+ as proposed for all essential characteristics related to mechanical resistance and stability is not convenient and recommended system 1 instead. Another stakeholder took the view that system 1+ is to be preferred for sandwich panels for structural use (stabilisation of load-bearing building components), referring to the complexity of sandwich panels and their load-bearing behaviour which imply that they should not be treated like building components made up entirely of metals. The Advisory Group was asked to express its views on the stakeholders' feedback in written consultation between 19 October 2017 and 16 November 2017; one Member State supported the proposal for system 1, none expressed support for the proposal for system 1+. Accordingly, and considering that an adequate level of safety can be ensured with system 2+ for mechanical resistance and stability, the Decision was not modified following the feedback.

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 those provisions.

When establishing the AVCP systems, pursuant to Article 28(2) of Regulation (EU) No 305/2011, the Commission shall take into account the effect on the health and safety of people and 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 2+ as the least onerous one for metal faced sandwich panels for structural use, for all essential characteristics related to the mechanical resistance and stability. System 2+ is the system applicable for metallic products with structural use as defined in Commission Decision 98/214/EC⁵. For all other essential characteristics, the AVCP systems should be established following the choices made in Commission Decision 98/436/EC and Commission Decision 98/437/EC concerning sandwich panels not intended for structural use.

⁴ Code E01329 in the Register of Commission Expert Groups and other Similar Entities.

⁵ Commission Decision 98/214/EC of 9 March 1998 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards structural metallic products and ancillaries (OJ L 80, 18.3.1998, p. 46).

The draft Decision therefore conforms to the principle of proportionality. For those reasons, the draft Decision is expected to serve the interests of the construction sector as a whole.

COMMISSION DELEGATED DECISION (EU) .../...

of 19.2.2018

on the applicable systems to assess and verify constancy of performance of metal faced sandwich panels for structural use 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 28 and Article 60(h) thereof,

Whereas:

- (1) An appropriate decision for assessment and verification of constancy of performance does not exist for metal faced sandwich panels for structural use ('sandwich panels'). It is therefore necessary to establish which systems of assessment and verification of constancy of performance are applicable to the sandwich panels.
- (2) This Decision should only apply to products not within the scope of other corresponding acts of Union law. Thus, it should not apply to metal faced sandwich panels not intended for structural use since they are already covered by Commission Decision 98/436/EC⁷ and Commission Decision 98/437/EC⁸,

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies to metal faced sandwich panels for structural use.

Article 2

The sandwich panels 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 the Annex.

⁶ OJ L 88, 4.4.2011, p. 5.

⁷ Commission Decision 98/437/EC of 30 June 1998 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards internal and external wall and ceiling finishes (OJ L 194, 10.7.1998, p. 39).

⁸ Commission Decision 98/437/EC of 30 June 1998 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards internal and external wall and ceiling finishes (OJ L 194, 10.7.1998, p. 39).

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, 19.2.2018

For the Commission
The President
Jean-Claude JUNCKER