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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2019) 2031 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.3.2019 supplementing Regulation (EU) No 305/2011 of the European Parliament and of the Council by establishing classes of performance in relation to air permeability for rooflights of plastics and glass and roof hatches

Delegations will find attached document C(2019) 2031 final.

Encl.: C(2019) 2031 final



Brussels, 14.3.2019
C(2019) 2031 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 14.3.2019

supplementing Regulation (EU) No 305/2011 of the European Parliament and of the Council by establishing classes of performance in relation to air permeability for rooflights of plastics and glass and roof hatches

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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 acknowledges two main alternatives to establish classes of performance in relation to the essential characteristics of construction products. According to Articles 27(1) and 60(f), this can be done by delegated acts of the European Commission, whereas Article 27(2) allows for the use of harmonised standards for this purpose, on the basis of a revised mandate. In accordance with Article 27(2), first subparagraph, where the Commission has established such classes, the European standardisation bodies shall use those classes in harmonised standards.

According to the definition comprised in Article 2(7) of Regulation (EU) No 305/2011, “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product. Classes in Regulation (EU) No 305/2011 are thus always expressing a given range of determined performance of the product.

Moreover, Regulation (EU) No 305/2011 does not distinguish, unlike its predecessor Council Directive 89/106/EEC, different kinds of classes, depending on their origin. Classes of performance established by the European Commission and such classes established by the European standardisation bodies are thus to be acknowledged and respected quite in the same manner.

The reference to the European product standard EN 1873:2005 on individual rooflights of plastics was first published under Directive 89/106/EEC in the *Official Journal of the European Union* in June 2006². This harmonised standard did not contain a classification for the performance of the products covered by it in relation to the essential characteristic air permeability.

Recently, the European Committee for Standardisation (CEN) submitted to the European Commission a new version of this standard, EN 1873:2014+A1:2016. This version comprises a classification for the performance of the products covered by it in relation to the essential characteristic air permeability, with three classes of performance introduced. This standard is currently under revision in CEN, so as to cover rooflights of plastics and glass and roof hatches. It is foreseen to have three parts in its next version, i.e. EN 1873-1, EN 1873-2 and EN 1873-3. All three parts are to contain the said classification.

The reference to the European product standard EN 14963:2006 on continuous rooflights of plastics was first published under Directive 89/106/EEC in the *Official Journal of the European Union* in July 2009³. This harmonised standard did not contain a classification for the performance of the products covered by it in relation to the essential characteristic air permeability.

¹ OJ L 88, 4.4.2011, p. 5.

² OJ C 134, 8.6.2006, p. 1.

³ OJ C 152, 4.7.2009, p. 9.

Recently, CEN informed the European Commission that the next revised version of this standard will comprise the same classification for the performance of the products covered by it in relation to the essential characteristic air permeability as introduced in EN 1873.

According to the above standards, the assessment of performance in relation to air permeability is to be carried out by using different levels of internal pressure, increasing stepwise from the level of 4 Pa to the level of 100 Pa. The classification of the results can be expressed in a diagram, which depicts the three classes as rectangles distinguished by straight lines between the levels indicating the differentiating outcomes at the internal pressure levels 4 Pa and 100 Pa.

Since under the application of Regulation (EU) No 305/2011 the introduction of such new classifications into harmonised standards by the European standardisation bodies themselves would require the issuing of new revised mandates, which has not taken place and which would take longer, it has been considered more opportune to proceed with this Delegated Regulation.

It has not been considered appropriate to include other performance classifications contained in the standards at hand within the scope of the Delegated Regulation, because pursuant to Regulation (EU) No 305/2011 such classifications comprised in harmonised standards, the reference to which has been published under Directive 89/106/EEC in the Official Journal of the European Union, are to be deemed applicable under Regulation (EU) No 305/2011 without any further actions being necessary.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft Delegated Regulation was discussed in the meeting of the Advisory Group on Construction Products⁴ (the AG) on 15 March 2017. It was also submitted for a written consultation of experts between 1 and 31 March 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 8 November 2018 to 6 December 2018 and notified to WTO from 15 November 2018 to 14 January 2019; three stakeholders provided feedback. All three comments were technical comments referring to the improvement of definitions in the annex, which were all valid and lead to the improvement of the annex accordingly.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Pursuant to Article 27 of Regulation (EU) No 305/2011, classes of performance may be established in relation to the essential characteristics of construction products. According to Articles 27(1) and 60(f), this can be done by delegated acts of the Commission. In accordance with Article 27(2), first subparagraph, where the Commission has established such classes, the European standardisation bodies shall use those classes in harmonised standards.

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

According to Article 2(7) of Regulation (EU) No 305/2011, “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product. Regulation (EU) No 305/2011 does not distinguish different kinds of classes. Classes of performance established by the Commission and such classes established by the European standardisation bodies are thus to be acknowledged and respected quite in the same manner.

Since under the application of Regulation (EU) No 305/2011 the introduction of new classifications of performance into harmonised standards by the European standardisation bodies themselves would require the issuing of new revised mandates, which has not taken place, it has been considered more opportune to proceed with this draft Delegated Regulation. For these reasons, the Delegated Regulation should be adopted to establish new classes of performance for product families mentioned above.

The Delegated Regulation conforms to the principle of proportionality. It results in alleviating certain difficulties caused by the impact of Regulation (EU) 305/2011 on the establishment of classification systems for the performance of construction products, and therefore can be assessed to benefit the whole European construction sector.

COMMISSION DELEGATED REGULATION (EU) .../...

of 14.3.2019

supplementing Regulation (EU) No 305/2011 of the European Parliament and of the Council by establishing classes of performance in relation to air permeability for rooflights of plastics and glass and roof hatches

(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/EEC⁵, and in particular Article 27(1) thereof,

Whereas:

- (1) The European standard EN 1873 on individual rooflights of plastics was initially adopted by European Committee for Standardisation (CEN) in 2005 and the European standard EN 14963 on continuous rooflights of plastics in 2006. Those harmonised standards did not contain a classification for the performance of the products covered by it in relation to the essential characteristic air permeability.
- (2) In order to better serve the needs of the market, the new versions of those standards, EN 1873-1, EN 1873-2 and EN 1873-3, covering rooflights of plastics and glass and roof hatches, as well as EN 14963 should include a classification for the performance of the products covered by them in relation to the essential characteristic air permeability. The classification should provide for three classes of performance.
- (3) In accordance with Article 27 of Regulation (EU) No 305/2011 classes of performance in relation to essential characteristic of construction products may be established either by the Commission or a European standardisation body on the basis of a revised mandate issued by the Commission. Given the need to establish additional classes of performance as soon as possible, the new classes of performance should be established by the Commission. In accordance with Article 27(2) of that Regulation, those classes are to be used in harmonised standards,

⁵ OJ L 88, 4.4.2011, p. 5.

HAS ADOPTED THIS REGULATION:

Article 1

Classes of performance in relation to air permeability for rooflights of plastics and glass and roof hatches, as set out in the Annex, are established.

Article 2

This Regulation shall enter into force on the twentieth 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, 14.3.2019

For the Commission
The President
Jean-Claude JUNCKER