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Following the Permanent Representatives Committee meeting of 2/02/2024 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament IMCO Committee.



SGS 24 / 000756

Brussels, 2/02/2024

Ms Anna CAVAZZINI
Chair of the Committee on the Internal Market and Consumer Protection
European Parliament
Rue Wiertz 60
B-1047 BRUSSELS

Subject: Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 2022/0094(COD)

Dear Ms CAVAZZINI,

Following the informal negotiations on this proposal between the representatives of the three institutions, today the Permanent Representatives Committee agreed with the final compromise text.

I am therefore now in a position to inform you that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, in the exact form of the text set out in the Annex to this letter (subject to revision by the lawyer-linguists of the two institutions), the Council, in accordance with Article 294(4) TFEU, will approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the position of the European Parliament.

On behalf of the Council, I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely


Pierre CARTUYVELS
Chair of the Permanent Representatives Committee
(Part 1)

Copy: Mr Thierry BRETON - Commissioner for the Internal Market
Mr Christian DOLESCHAL - Rapporteur of the IMCO Committee of the European Parliament
Ms Sara MATTHIEU - Rapporteur of the ENVI Committee of the European Parliament
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REGULATION (EU) 2024/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

laying down harmonised *rules* for the marketing of construction products **■** and repealing
Regulation (EU) 305/2011

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 75, 28.2.2023, p. 159.

² Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) Regulation (EU) No 305/2011 of the European Parliament and of the Council³ was adopted in the context of the internal market, in order to harmonise conditions for the marketing of construction products and to remove obstacles to trade in construction products between Member States.
- (2) In order for a construction product *covered by a harmonised technical specification* to be placed on the market, the manufacturer is obliged to draw *up* a declaration of performance *and conformity* for such product. The manufacturer assumes the responsibility for the conformity of the product with such declared performance *and with applicable requirements*. Certain *products could be exempted from this obligation*.

3 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 (OJ L 88, 4.4.2011, p. 5).

- (3) Experience with the implementation of Regulation (**EU**) No 305/2011, the evaluation conducted by the Commission in 2019 as well as the report on the European Organisation for Technical Assessment have shown the underperformance of the framework in various respects, including as regards the development of standards and the market surveillance. In addition, feedback received in the course of the evaluation has pointed to the need of reducing the overlaps, contradictions and repetitive requirements, including in relation to other Union legislation, in order to provide more legal clarity and limit the administrative burden on the economic operators. It is therefore necessary to **update and align** legal obligations for economic operators **with other Union legislation**, as well as **add** new provisions including as regards market surveillance, so that legal certainty is increased and that diverging interpretations are avoided.
- (4) It is necessary to establish well-functioning information flows, including via electronic means **and in a machine-readable format**, to ensure that coherent and transparent information about construction products performances is available along the supply chain. This is expected to increase transparency and to improve efficiency in terms of information transfer. Ensuring digital access to comprehensive information about construction products would contribute to the digitalisation of the construction sector altogether, making the framework fit for the digital age. Access to reliable and durable information would also mean that economic operators and other actors do not contribute to each other's non-compliance.

- (5) The European Parliament resolution of 10 March 2021 on the implementation of Regulation (EU) No 305/2011 ■ welcomed the Commission’s objective to make the construction sector more sustainable by addressing the sustainability performance of construction products in the revision of Regulation (EU) No 305/2011, as announced in the Circular Economy Action Plan. The Council Conclusions on the Circular Economy in the Construction Sector from 28 November 2019 ■ urged the Commission to facilitate the circularity of construction products when revising the Construction Products Regulation (EU) No 305/2011. The Commission Communication ‘A New Industrial Strategy for Europe’ ■ stressed the need to address the sustainability of construction products and highlighted a more sustainable built environment as essential for Europe’s transition towards climate-neutrality. The Commission Communication ‘Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery’ ■ identified construction as one of the priority ecosystems that face the most important challenges meeting climate and sustainability goals and embracing the digital transformation, and on which the competitiveness of the construction sector depends. It is therefore appropriate to lay down rules for declaring environmental and sustainability performance of construction products, including the possibility of establishing relevant thresholds and classes. *Classes of performance for the environmental performance of products should accurately reflect the diversity of products and their state of the art and should enable the most environmentally friendly products to be accurately identified. Moreover, when referring to environmental impacts, such classes of performance should be understandable, should not be misleading, nor allow for burden shifting.*

- (6) Similarly, the 2022 EU Strategy on Standardisation⁴ identified construction as one of the most pertinent areas where harmonised standards could improve competitiveness and reduce market barriers.
- (7) Pursuing the environmental goals, including the fight against climate change *and the transition towards a circular economy*, makes it necessary to establish *without increasing disproportionately bureaucracy and costs for economic operators, especially for SMEs*, new environmental obligations and to lay the ground for the development and the application of an assessment method for the calculation of the environmental sustainability of construction products. *The calculations should cover the life-cycle of the product using the methods established through standardisation. For new products the calculated life-cycles should include all stages of a product's life, from raw material acquisition or generation from natural resources, to its final disposal, including potential benefits and loads outside the boundary limits. For used and remanufactured products, the calculated life-cycle starts with the de-installation from a construction work and includes all following stages until final disposal. The Commission should make available a software to perform the calculation, in particular the applicable characterisation factors applicable according to EN 15804 or future applicable standards. Any update of this software should be communicated and should trigger the update to the relevant calculations within one year.*

⁴ Communication from the Commission of 2 February 2022 to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, ‘An EU Strategy on Standardisation Setting global standards in support of a resilient, green and digital EU single market’ (COM(2022)0031).

- (8) To ensure safety and functionality of construction products and, by extension, of construction works *as well as workers and users, it is necessary to* ensure that **■** certain service providers such as fulfilment service providers, *online marketplaces and actors providing intermediary services do* not contribute to the non-compliances of other *actors*. It is therefore necessary to render relevant provisions applicable also to these services and their providers.
- (8a) *To create the necessary link between construction products and the construction works, including buildings, into which they might be incorporated, the notion of construction works should be defined only for the purposes of this regulation and without prejudice to Member States' competences to define and regulate construction works and buildings.*

- (9) *To avoid circumvention of the obligations under this Regulation when the production technology involve several different actors who contribute to the design and manufacture of a construction product, it is necessary to establish a clearly defined manufacturer's role where the natural or legal person who does the actual production of a construction product assumes the responsibilities under this Regulation in respect of that product in its entirety, unless there is another person who either places the product on the market under his or her own name or trademark or who assumes responsibility for the product by drawing up a declaration of performance and conformity. This is of particular importance in relation to 3D-printing, a natural or legal person that 3D-prints construction products when placing on the market products for clients should fulfil the obligations incumbent on manufacturers including the use of appropriate 3D-datasets, materials which have undergone the procedures applicable to products and that the information provided by the manufacturer of the 3D-dataset and the information provided by the manufacturer of the printing material coincide.*

(9a) *In order to avoid innovative distribution models being used to circumvent the obligations under this Regulation, it should be clarified that any supply of a product in the course of a commercial activity, including when ownership or possession of the products is transferred as part of the provision of a service, should be considered as the product being made available on the market.*

(11) Ensuring the free movement of kits of construction products on the internal market will *support industry competitiveness. This approach expands market reach, streamlines production processes for companies, and improves convenience for both users and businesses.*

(13) The compliance of construction products with Union legislation often depends on the compliance of their key parts with that legislation. However, because key parts are often integrated into various construction products, the protection of safety and of the environment, including climate, is better achieved when those key parts are assessed upstream, that is when the performance and conformity of key parts will be assessed beforehand and independently from the assessment of the final construction product into which they are integrated. Similarly, market surveillance becomes more efficient when non-compliant key parts can be identified and targeted. Hence, it is necessary to lay down **mandatory** rules applicable to key parts of construction products. *The same approach should be used to parts or materials intended to be used for construction products which should benefit from the voluntary application of the Regulation.*

(13a) Items, such as construction products, their key parts as well as other parts or materials, may be placed on the market as such or as a set of separate components intended to be used together could be subject to dedicated harmonised technical specifications. To simplify the application of this regulation, the items and components falling under its scope should be clearly defined. This should not preclude the possibility to market the components as construction products when placed on the market separately, as key parts or otherwise.

(13b) *While keeping a broad scope for the Regulation's possible application, the application in relation to certain products already harmonised by other EU legislation should be excluded to avoid regulatory overlap. In addition, in order to avoid regulatory overlap, it is also important to distinguish between those aspects of the same products which are covered by this Regulation and those aspects which are regulated by sectoral legislation. This is the case, for example, in the case of lighting products and electrical and electronic products, which are subject to Directives 2014/35/EU⁵, 2014/30/EU⁶, 2014/53/EU⁷ and 2001/95/EC⁸ of the European Parliament and of the Council. The Regulation's broad scope should however not be interpreted as an intention to harmonise all products which can be placed on the market for incorporation in construction works. Products which are not suitable for harmonisation, for instance due to their relation to cultural heritage, their usage of specific materials which can only be sourced in certain localities or to heterogeneous conditions in between Member States, should not be subject to the harmonising effect of this Regulation through the active choice of not pursuing their coverage through harmonised technical specifications.*

⁵ *Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (recast) (OJ L 96, 29.3.2014, p. 357),*

⁶ *Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast) (OJ L 96, 29.3.2014, p. 79).*

⁷ *Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).*

⁸ *Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).*

(14) *Used* products *subject to this Regulation imported from third countries*, should, *in the absence of dedicated provisions for used* products, be subject to the same rules as new construction products ■ .

■

(17) Construction products placed on the market in the outermost regions of the European Union are often imported from neighbouring countries, and are therefore not subject to requirements laid down in Union law. Subjecting those construction products to such requirements would be disproportionately costly. At the same time, construction products manufactured in the outermost regions hardly circulate in other Member States. Accordingly, Member States should have the possibility to exempt construction products placed on the market ■ in the outermost regions of the European Union from those requirements.

(17a) To ensure that a strong link between Member States' regulatory needs and standards is maintained, an expert group should give advice to the Commission on the preparation of standardisation requests and other harmonised technical specifications. The work of the expert group should follow a working plan established on the basis of inputs from Member States in addition to overall Union priorities such as EU climate and circular economy goals. In establishing the priorities of the working plan, the Commission should pay particular attention to the replacement of harmonised technical specifications adopted under Regulation (EU) No 305/2011. The Commission should inform the Member States and the European Parliament on a yearly basis about progress in implementing the working plan, including information on the standardisation requests issued, the number of standards proposed by the European standardisation organisations, the average time needed for the assessment of standards by the Commission, and the ratio between standards accepted and rejected by the Commission.

(17b) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of harmonising the internal market for construction products to address the regulatory needs of Member States by defining only the necessary essential characteristics to assess the product performance. The definition of these essential characteristics and the assessment methods applicable to them should provide the less onerous approach with sufficient reliability and avoid duplications and inconsistencies. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

- (18) In order to strive for a maximum of regulatory coherence, this Regulation should to the extent possible build on the horizontal legal framework, in this case namely on Regulation (EU) No 1025/2012 of the European Parliament and of the Council⁹. It follows the recent trend in product legislation to develop a fall-back solution where the European Standardisation Organisations do not deliver *valid* harmonised standards. *When a standardisation body delivers a harmonised standard according to the standardisation request which includes elements that do not satisfy the regulatory needs of Member States, or are not aligned with the Union safety, environmental, circularity and climate objectives, the Commission should revise the standardisation request or make the harmonised standard mandatory with restrictions. The fall-back solution should be possible to apply to harmonised standards which are not compliant with the standardisation request and address a product family or category which is either not previously covered by a harmonised standard, or already covered by a harmonised standard applicable for more than 5 years or covered by a harmonised standard applicable with restrictions.*

⁹ *Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).*

- (19) Where harmonised standards lay down the rules for the assessment of performances with regard to essential characteristics relevant for the construction codes of Member States, *they* should be rendered mandatory for purpose of application of this Regulation *as performance harmonised standards*, as only such *mandatory* standards reach the goal of permitting the free circulation of products, whilst ensuring the Member States' ability to request *product characteristics related to the basic requirements for construction works* in view of their specific national situation *such as differences in climate, geology and geography and other conditions*. When pursued together, these two goals require that products are assessed by a single assessment method, therefore the method needs to be mandatory. However, voluntary standards can be used to make product requirements, specified for the relevant product family or category by Delegated Acts, even more concrete, following the path of Decision *No 768/2008/EC* of the European Parliament and of the Council¹⁰. In line with Decision *No 768/2008/EC*, those standards should be able to provide a presumption of conformity with the requirements covered by them.
- (19a) *The assessment of performance with regard to essential characteristics may require the establishment of thresholds. Voluntary thresholds have to be fulfilled in relation to certain applications. Mandatory thresholds have to be fulfilled as a condition for placing the product on the internal market irrespective of the application.*

¹⁰ *Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).*

(20) In order to contribute to the objectives of the European Green Deal, *the Circular Economy Action Plan* and the *Zero Pollution* Action Plan, and to ensure safe construction products, safety being one of the goals to be pursued in the legislation based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), ■ product requirements related to *functionality, safety*, and protection of environment, including climate, are necessary. When setting these requirements, the Commission should *address the safety risks and* take into account *the product's* potential contribution to achieving Union climate, environmental and energy efficiency objectives *over the course of their life cycle*. These requirements do not ■ relate to the performance of construction products. Contrary to its predecessor Council Directive 89/106/EEC, Regulation (EU) No 305/2011 does not provide for the possibility to establish such ■ product requirements. However, certain harmonised standards for construction products contain such ■ product requirements ■ . These standards demonstrate that there is a practical need for such requirements on *functionality, safety, and protection of environment*. Article 114 TFEU as the legal base of this Regulation also imposes the pursuit of a high level of protection of the environment, health and human safety. Thus, this Regulation should *reintroduce* or validate ■ product requirements. ■ Hence, the power to adopt acts in accordance with Article 290 of the *TFEU* should be delegated to the Commission to specify *those* requirements for the respective construction product family or category.

- (21) Manufacturing and distribution of construction products becomes ever more complex, leading to the emergence of new specialised operators, such as fulfilment service providers. For reasons of clarity, certain generic obligations, including on cooperation with authorities, should be applicable to all those involved in the supply chain ■ .
- (22) In order to foster harmonised practices amongst Member States even where a consensus about these practices could not be found, the Commission should be empowered to adopt, with regard to a limited range of issues, implementing acts on the implementation of this Regulation. The respective empowerments concern ■ , the obligations and rights of economic operators and the obligations ■ of notified bodies.
- (23) In order to improve the legal certainty and to mitigate the fragmentation of the EU market for construction products ■ it is necessary to clearly define the area regulated at the EU level, the so-called ‘harmonised zone’, as opposed to the elements remaining within the *competence* of Member States. ***Member States remain competent to lay down provisions on construction works, including on their design and dimensioning. The establishment of the harmonised zone should not affect the right of Member States to specify national requirements on construction works and should not reduce the level of protection already existing and justified in the Member States. National environmental policies applicable to construction works should not be considered as prohibitions or barriers to the making available of products on the market while they respect the harmonised zone.***

- (23a) *Member States set the safety level for construction works on the basis of their responsibilities towards their citizens, while the Union determines the framework conditions for the internal market. The competence to adopt provisions on construction works remains with the Member States. The basic requirements for construction works set out in this Regulation should establish the links to construction products that are technically necessary, and serve as a basis for issuing standardisation requests to the European standardisation organisations for the development of harmonised standards for construction products, corresponding delegated acts as well as for the development of European Assessment Documents.*
- (23b) *The harmonised zone should also apply to public contracts, grants or other positive incentives with the exception of fiscal incentives.*

- (24) At the same time, in order to strike a balance between mitigating the fragmentation of the market and the legitimate interests of Member States to regulate construction works, it is necessary to provide for a mechanism to better integrate Member States' needs into the development of harmonised technical specifications. For the same reason, *an additional mechanism of prior authorisation should be established*, allowing Member State to set, based on imperative grounds of health, safety or environmental protection, *requirements other than those laid down in the harmonised technical specifications* for construction products *covered by the harmonised zone. This mechanism should give Member States the possibility to, while awaiting updated harmonised technical specifications addressing their regulatory needs, notify and seek authorisation for national measures affecting the performance of an essential characteristic not addressed by the harmonised technical specification. This mechanism* should be *complementary to a Member State's possibility to notify the Commission, in accordance with Article 114 TFEU, when it deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State in contradiction with harmonised technical specifications. In order to ensure that authorised national measures only remain as temporary deviations from the harmonised zone, it is important to enable swift consultations on the need to update harmonised technical specifications in light of those regulatory needs, including, where appropriate, through standardisation requests with deadlines specifically set to address the urgency at hand.*

- (25) A circular economy, the key element of the Circular Economy Action Plan, can be promoted by mandatory deposit-refund systems and the obligation to take back *new, surplus or unused non-custom made* products. Member States should therefore be allowed to take such measures *and to establish obligations regarding the collection and the treatment of products for waste. The owner of the product should be in charge of the transport back to the distributor, importer or manufacturer.*
- (26) In order to enhance legal clarity and reduce the administrative burden for the economic operators, it is necessary to avoid that construction products are subject to multiple assessments regarding the same aspect of health, safety or protection of the environment, including climate, under different Union legislation. This was confirmed by the REFIT platform recommending that the Commission gives priority to addressing the problems of overlapping and repetitive requirements. *While not reducing or encroaching on the level of protection already existing and justified in Member States at building level,* the Commission should thus be able to determine the conditions under which the fulfilment of obligations under other Union law also fulfils certain obligations of this Regulation, where otherwise the same aspect of health, safety or protection of the environment, including climate, would be assessed in parallel under this Regulation and other Union law.

- (27) Moreover, in order to avoid diverging practices of Member States and economic operators, the power to adopt *implementing* acts in accordance with Article 291 TFEU should be *granted* to the Commission to determine whether certain *items* fall within the definition of **█** product.
- (28) *As this Regulation is developed in line with the framework of the [ESPR] but with its provisions adapted to the sectorial specificities of construction products, it will be, with limited exceptions, the legal act used for harmonising all relevant aspects of construction products, including sustainability aspects even though these might also be addressed through [the ESPR]. If a policy need is identified horizontally within the framework of the [ESPR], the Commission should primarily use this Regulation for addressing this need in regard to construction products. Only in exceptional cases where requirements under this Regulation are insufficient and cannot be amended or complemented in a reasonable time, it should be possible to apply [the ESPR] in a complementary manner on construction products, provided the administrative cost entailed, including as a result of economic actors potentially becoming subject to two conformity assessment procedures, is shown to be reasonable.*

As an exception, in the case of energy-related products included in ecodesign working plans which are also construction products and for *intermediate* products *within the meaning of the [ESPR]*, with the exception of cement, priority for the setting of sustainability requirements will be given to the [ESPR]. This *will* be the case for instance for heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products, excluding building-integrated photovoltaic panels. This Regulation *would* still *apply* in a complementary manner where needed, mainly in relation to safety aspects also taking account of other Union legislation on products such as on gas appliances, low voltage, and machinery. *In the case of a conflict with [the ESPR], this Regulation should prevail*. For other products, in order to avoid unnecessary burden for economic operators, the need may arise in future to determine the conditions under which the fulfilment of obligations under other Union law also fulfils certain obligations under this Regulation. *Therefore* the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to determine such conditions.

- (29) In order to create an incentive for compliance, the manufacturer of construction products should be liable for incorrect declarations of performance and conformity.
- (30) The increased *re-use of construction* products is part of a shift towards a more circular economy and a reduction of the environmental and carbon footprint of construction. The *second-hand market for construction products* is currently not very developed and requirements for *construction products which have previously been used* vary widely amongst Member States. Therefore, *used construction products, including other used items subject to this Regulation*, should *be subject to long-term harmonisation by establishing* the possibility to *develop dedicated harmonised technical specifications under this Regulation. Such harmonised technical specifications should be applicable to used products and as long as the used product is not waste or has ceased to be waste. The adoption of dedicated harmonised technical specifications for used products should not prejudice the scope and definition of waste under Directive 2008/98/EC of the European Parliament and of the Council¹¹*. However, *products directly re-used in a construction work should not be considered as placed on the market again and therefore not be subject to any measures under this Regulation*.

¹¹ *Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).*

- (30a) *In order to provide clarity about the width of the harmonized zone, it is important that all harmonised technical specifications are explicit in whether they cover or excludes used products from its scope. The exclusion of used products from the scope of a harmonised technical specification should however not prevent economic operators from opting for the application of this Regulation as if the used product was new.*
- (30b) *According to the definition of used products, harmonised technical specifications explicitly including used products within their scope should also apply to used products which have undergone a transformative process going beyond checking, cleaning or repairing recovery operations defined by the harmonised technical specification as non-essential transformative processes to the product's performance. Remanufactured products should, regardless of the harmonised technical specification, benefit from not having to include events before the products last de-installation when calculating its environmental impact over its life-cycle. Remanufactured products should also benefit from requirements or incentives that promote a high recycled content.*

(31) To enhance access to easily available and comprehensive information on construction products, thereby contributing to their safety, functionality and sustainability, it should be ensured that the declaration of performance ***and conformity*** provides all information necessary for users and authorities. In view of its utility for users, manufacturers should be able to include into that declaration additional information, provided that the declarations of performance ***and conformity*** remain uniform and easily readable and that they are not abused as advertisement.

█

(33) In order to reduce the burden for economic operators and in particular manufacturers █ issuing declarations of performance and █ conformity should provide those declarations by electronic means, be authorised to ***make them available on websites under the conditions that they are unamendable, human and machine readable, available, accessible and unequivocally linked to the product. In order to simplify supply chain communication, declarations of performance and conformity should allow the user via an app to check conformity with the application rules of the Member State where the product is used. An important prerequisite for machine-readable declarations is a standardised IT format, which is required for each harmonised technical specification.***

- (34) In order for the manufacturers to demonstrate that the construction products benefitting from the free movement of goods fulfil relevant Union requirements, it is necessary to require a declaration of conformity complementing the declaration of performance, thus also bringing the regulatory system for construction products closer to Regulation (EC) No 765/2008 *of the European Parliament and of the Council*¹². However, in order to minimise the potential administrative burden, the declaration of conformity and the declaration of performance should be combined **■**. The administrative burden on SMEs should be further minimised through targeted simplification provisions, including *sharing test results, recognition of certificates, cascading of technical documentation and declaration without assessment*, permitting micro-enterprises to use the more lenient verification system and reducing the requirements for custom-made non-series products. *When such products are installed in an identified single construction work exemptions from the obligation to draw up a declaration of performance and conformity should be possible. In cases where a manufacturer fulfils the criteria for both the application of a simplified procedure and an exemptions from the obligation to draw up a declaration of performance and conformity, it should be given the opportunity to choose either, or to provide a declaration of performance and conformity without applying the simplified procedure, so as to better adapt its offer to the needs of potential customers.*

¹² *Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).*

- (35) In order to reach alignment with other product legislation and subject to the general principles of Regulation (EC) No 765/2008, the CE marking should be affixed to construction products for which the manufacturer has drawn up a declaration of performance **and** conformity. The manufacturer thereby takes the responsibility for the conformity of the product with the declared performance and applicable product requirements.
- (35b) *The procedural rights of all economic operators and natural or legal persons acting on their behalf in relation to measures, decisions or orders taken by market surveillance authorities and other competent national authorities should be ensured in line with Regulation (EU) 2019/1020 of the European Parliament and of the Council¹³. Member States should ensure that adequate appeal procedures against such measures, decisions or orders are in place.*
- (36) To ensure **functionality, safety** and sustainability of construction products, and by extension of construction works, all economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they place, **make available, or support making** available on the market only construction products which are in compliance with the binding Union requirements. In order to improve the legal clarity, it is necessary to set explicitly the obligations of economic operators.

¹³ *Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).*

- (37) It is necessary for manufacturers of construction products to determine the product type in a precise and unequivocal manner in order to ensure a precise basis for assessing the compliance of such product with Union requirements. At the same time, in order to avoid circumvention of the applicable requirements, manufacturers should be prohibited from creating ever new product types where the products in question are, in view of the crucial characteristics, identical.

(37a) On the internal market, the CE marking should be the only marking demonstrating compliance with assessment methods in relation to essential characteristics covered by harmonised technical specifications. In order to avoid market fragmentation and misleading claims resulting from the application of different assessment methods, the CE marking should be the only marking allowed on products covered by harmonised technical specification indicating that the product in question has been assessed in relation to the essential characteristics covered by harmonised technical specifications and is compliant with the applicable product requirements. The market for construction products faces a proliferation of markings which often create confusion and distrust among market players but also mislead consumers. The use of additional markings negatively impacts the probative value of the CE marking when based on assessment methods which are different than those defined in the relevant harmonised technical specifications. In addition, SMEs cannot always benefit from such markings, creating a distortion among market players and potentially hindering market access. These additional markings should therefore not be affixed on the products in combination with the CE marking. However, this prohibition does not prevent products which carry other markings from being placed on the single market, providing such markings do not mislead the consumer or create confusion with the CE marking. In addition, the markings should not impair the visibility, legibility or meaning of the CE marking. As such, these markings should not display any information, text or claims in relation to the product's performance.

- (38) To avoid misleading claims, any claims made by manufacturers of construction products should ▯ be based on an assessment method contained in harmonised technical specifications *when* available ▯ .
- (39) Technical documentation about construction products, drawn by the manufacturer, facilitates the verification of those products by *competent national* authorities and notified bodies against the Union requirements. To enhance access to comprehensive information, that technical documentation should include *the necessary information to validate the calculation substantiating the* assessment of the environmental sustainability of the construction product.
- (40) To create transparency for users of construction products and to avoid inappropriate use of those products, construction products and their intended use should be precisely identified by the manufacturer. For the same reason, the manufacturer should make clear whether the construction products are intended for professional use ▯ . To ensure that construction products can be traced back, manufacturers should *indicate manufacturer-specific unique identification code of the product type* on the product or, where this is not possible e.g. due to the product's size or surface, on its packaging or *on and affixed label, or* where that is not possible either, in a document accompanying it.

- (41) To ensure that requirements of this Regulation are fulfilled, manufacturers should actively search, store and evaluate information and take appropriate measures where non-conformity or under-performance has been confirmed or where there is a risk.
- (42) To *achieve* the goals of the European Green Deal and of the circular economy action plan, the *Commission* should *have the possibility to specify minimum thresholds for the environmental performance of construction products and environmental product requirements preventing and reducing the impact that construction products have on the environment. However, the “safety first” principle, applicable both for the construction product and the construction works, should in all instances be respected, and should encompass the protection of health.*
- (43) With the goals of ensuring sustainability and durability of construction products, manufacturers should ensure that products can be used for *as long as possible*. Such long use requires adequate design, use of reliable parts, reparability of products, availability of information on repair and access to *spare* parts. *In case the spare parts are not commonly available in the market, the Commission should be empowered to require from the manufacturer to ensure the availability of these spare parts at a reasonable and non-discriminatory price for a period of 10 years which may be extended if the availability for a longer period of time is expected to increase the life span of the product.*

(44) In view of enhancing the circularity of construction products, in line with the goals of the Circular Economy Action Plan *and the waste hierarchy, product requirements* should *also be able to improve resource efficiency, prevent waste generation, prioritise repair, reuse and remanufacturing, favour the use of secondary materials and address the recyclability of the product and the production of by-products*. The (preparation for) *reuse*, remanufacturing and recycling require certain design, namely by facilitating the separation of *products*, components and materials at *de-installation, deconstruction and demolition and at* the later stage of recycling and, *when possible*, avoiding mixed, blended or intricate materials *and substances of concern*. As the usual instructions for use *and safety information* will not necessarily reach the economic operators in charge of (preparation for) re-use, remanufacturing and recycling, the necessary information in this regard should be made available in product *passports accessible through data carriers and in* manufacturer's websites **█** .

(44a) The instructions for use and safety information is a vital tool to provide information suffice to make knowledgeable decisions on purchase installation, use, maintenance, dismantling, reuse and recycling of the product to a wide group in potential need of the information. Elements to be covered by instructions for use and safety information should therefore be specified in this Regulation and guidance on how to typically cover these elements in relation to a certain product should be possible to include in performance harmonised standards. Such guidance should however not expand or restrict the responsibility for the manufacturer to provide information as set out in the Regulation. The Commission should be empowered to adopt delegated acts to ensure adequate and homogeneous implementation of the obligation to provide instructions for use and safety information for specific product families or category when performance harmonised standards are not able to do it. As instructions for use and safety information will not necessarily reach the economic operators in charge of (preparation for) re-use, remanufacturing and recycling, the information in this regard should also be made available in product passports.

- (46) Some construction products become waste though they were never used. To avoid this waste of resources, *the Regulation* should *not affect the possibility for Member States to oblige manufacturers to* accept to regain, directly or via their importers and distributors, ownership of products that, after delivery onto a construction site or to the user, have not been used and are in a state equivalent to the one in which they were placed on the market.
- (47) In order to be able to make informed choices, users of construction products should be sufficiently well informed about the environmental performances of products, about their conformity with environmental requirements and of the degree of fulfilment of manufacturer's environmental obligations in this regard. Therefore, the Commission is empowered to adopt delegated acts to establish specific labelling requirements ■ .

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- (49) The authorised representatives are often the only reachable persons in case of imported products whilst manufacturers often attribute to them very limited tasks and do not provide them with all the necessary information to effectively represent the manufacturers. Hence, the role and responsibilities of authorised representatives should be *strengthened and clearly set out in this Regulation, such as the tasks to be included in the mandate of the manufacturer. The mandate of the authorised representative should not include the drawing up of technical documentation. Nevertheless, manufacturers should be allowed to establish a separate contract with its authorised representative for this purpose, outside the scope of the mandate.*

(49a) There should be always a manufacturer when the Regulation establishes obligations as regards the placing of a product on the market. When there is otherwise no manufacturer in the meaning of this Regulation, the distributor or importer should act as manufacturer and assume its responsibilities.

(50) An economic operator who modifies a product *or stores it* in such a way that its performance or safety might be affected should be subject to the obligations of manufacturers, to ensure the verification whether performance or safety of the product are still the same. However, this obligation should not be imposed on an economic operator who repackages products **■**, as otherwise secondary trade and thus free circulation of products would be hampered and repackaging in principle should not affect *the* performance *or* safety of the construction product. Still, and with the aim to preserve the performance and safety of products, the economic operator undertaking the repackaging should be responsible for the correct execution of these operations to ensure that the product is not damaged and that the users are still correctly informed in the language set out by the Member State where the products are made available.

- (50a) *Given its environmental effects, the calculation of the environmental sustainability of a construction product should also cover the packaging used or most likely to be used. The packaging of a product can also be vital to preserve its performance through the distribution chain to the user. Even though the packaging in itself is not included in other assessments of a product's performance, all economic operators should, as part of their obligation to take necessary measures to ensure continued compliance of products with this Regulation, be responsible for using packaging suitable for preserving the performance and the compliance with the products' requirements. The packaging could in itself pose a risk for users and the obligation to provide information on risks relating to the use of the product should take this into account.*
- (51) In order to increase compliance of manufacturers with the obligations under this Regulation and to contribute to addressing the identified shortcomings and improve the market surveillance, **fulfilment** service providers, online market places and **other market actors** should actively contribute to ensuring that only compliant products reach the users.

(52) In order to avoid that *the obligations under this Regulation are circumvented in cases where the production technology, for example 3D-printing, could involve several different actors contributing to the design and manufacture of a construction product, for example 3D datasets, it is necessary to clearly define the role of the manufacturer. The natural and legal person producing, for example by 3D-printing, a construction product should take responsibility under this Regulation for the whole product, unless there is another person who places the product on the market under his name or trademark or who takes responsibility for the product by issuing a declaration of performance and conformity.*

(56) *In cases when the product is not intended to be used for construction but its appearance is likely to lead consumers to use the product in construction, the product is accompanied by instructions and safety information pursuant to Regulation (EU) 2023/988 of the European Parliament and of the Council¹⁴ on general product safety or the applicable Regulation indicating that despite its appearance it was not designed as a construction product. Market surveillance authorities are to take the appropriate measures, including the possibility to withdraw them from the market, if the product could lead to confusion for the consumer or to misuse.*

¹⁴ *Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1).*

- (57) To clarify the applicability of this Regulation to online and other distance sales, it should be defined under which conditions a certain product is deemed to be offered to clients in the Union. As online trade has a higher likelihood of non-compliance, Member States should make a special effort *to* designate a single ■ market surveillance authority for detecting distance sales offers targeting clients on their territory, so that the responsible market surveillance authorities can take appropriate measures. *Offers using the currency of the Member States, available through internet domain name registered in one of the Member States or that refers to the Union or one of the Member States, and dispatching to any Member State should be considered targeted at clients in the Union. Other elements such as using an official language of a Member State may also be considered as an indication by Market Surveillance authorities about if the offer targets clients in the Union.*
- (58) Digital technologies, which provide a significant potential for reducing administrative burden and costs for economic operators and ■ authorities, while also fostering innovative and new business opportunities and models, are evolving at rapid pace. The uptake of digital technologies will also contribute significantly towards achieving the objectives of the Renovation Wave, including energy efficiency, life-cycle assessments and monitoring and of the building stock. ■

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- (60) In order to ensure a timely *adoption of harmonised standards and European Assessment documents, the European Commission should have the possibility to make them mandatory with restrictions of their legal effects under this Regulation. It should be possible for such restrictions to cover, for example, outdated references to other standards or documents, provisions which contradict this Regulation or other Union law, provisions which contradict other harmonised standards, or provisions which are not in conformity with the demands to be met in relation to the basic principles and reference points set out in a standardisation request.*
- (61) To ensure the coherence of the system, this Regulation should build on the horizontal legal framework for standardisation. Hence, Regulation (EU) No 1025/2012 should also apply to the extent possible to standards *made* mandatory in accordance with this Regulation. Regulation (EU) No 1025/2012 is thus to provide, among others, for a procedure for objections to harmonised █ standards where those standards do not entirely *conform with applicable legal requirements or* satisfy the requirements set out in the relevant standardisation request or other requirements of this Regulation.

- (61a) The Commission should support European standardisation organisations by developing guidelines laying down a clear and stable set of rules for the whole standardisation process including roles, responsibilities, competences and the general procedural deadlines for all stakeholders involved, as well as templates to be used. The Commission should also provide support to ensure the coherence and compliance of standards with legal requirements and should participate in the informal and formal discussions of European standardisation organisations developing the requested European standardisation deliverables, in particular on matters concerning the compliance of the standardisation deliverables with this Regulation and with other Union law. These activities should benefit from the horizontal work developed in the context of the implementation of Regulation (EU) No 1025/2012.*
- (61b) When the Commission endorses proposals of standardisation bodies related to voluntary or mandatory threshold levels and classes of performance in relation to the essential characteristics and those essential characteristics which always have to be declared by manufacturers by means of delegated acts, they should be accompanied by an impact assessment where required in accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁵.*

¹⁵ OJ L 123, 12.5.2016, p. 1.

- (62) As they are not acts of general applicability but the first step of a two steps administrative procedure leading to the CE marking, European assessment documents should not qualify as harmonised technical specifications. However, basic principles of the elaboration of harmonised standards, such as transparency for competitors, can and should also apply to European assessment documents. Moreover, the European assessment documents should be referred to in performance and conformity assessment procedures in the same way as harmonised standards. ■ To create transparency for competitors, European assessment documents should be made publicly available and the references of all European assessment documents should be published in the Official Journal.
- (63) Currently, the increasing number of hardly distinguishable European assessment documents which often have little added value when compared to others or existing harmonised standards, risks to slow down their publication. In order to deal with this risk in a cost-effective way, certain principles for the development and adoption of European assessment documents should be established or be made more concrete. Moreover, the control by the Commission should be enhanced.
- (63a) *In case the organisation of TABs considers useful the development of a European assessment document even without any demand from a manufacturer, the organisation of TABs should bring the issue to the attention of the Commission who should decide on requesting the development of the European assessment document taking into consideration the justification provided by the organisation of TABs and the market needs.*

- (64) The requirements applicable to designating authorities of Technical Assessment Bodies (TABs) should not fall behind those applicable to notifying authorities given the similarities between their respective roles. For the same reason, TABs should have the same degree of independence and control of decision-making as notified bodies.
- (65) In order to respond to a noteworthy percentage of notifications which were based on incomplete or erroneous assessments, in particular where legal bodies without own in-house technical competence were notified, it is necessary to ■ make requirements for notified bodies more precise, namely with regard to their independence, delegation to other legal entities and own ability to perform; to require *sufficient* adequate qualified staffing of notified bodies and to verify the adequacy of the staffing, for which ■ a qualification matrix *can be an efficient tool*; to ensure and verify that the notified body is effectively in control of staffing, attribution of external experts, procedures, criteria and decision making, and not a subcontractor, subsidiary or another company belonging to the same family of companies; and to enlarge the documentation to be provided by bodies when applying for designation as notified body so as to provide a deeper and comparatively fairer basis for decision to notifying authorities.

- (66) *In order to ensure the correct implementation of this Regulation*, it is necessary to ensure that accreditation bodies take as a basis for accreditation this Regulation and not ■ deviating standards. It *is* also important to ensure that the accreditation bodies assess the ability of the applicant body and not of a group of companies, as it is the applicant body itself that must be in control of future certification.
- (67) To reach a level playing field and to avoid legal uncertainty, the obligations of notified bodies should be more clearly defined and rendered explicit, and this both for their assessment and verification activities and the related aspects.
- (68) In order to avoid involvement between notified bodies' staff and the manufacturers, *it should be possible for the notified bodies to allow* rotation between the personnel carrying out different conformity assessment tasks.
- (69) Authorities of Member States might have questions that only a certain notified body can answer. Notified bodies should thus respond also to the questions authorities of other Member States may have.

- (70) To enable ■ authorities an easier identification of non-compliances of notified bodies, manufacturers and products, and to ensure a level playing field, notified bodies should be empowered, and where the non-compliance can be clearly demonstrated even obliged to, proactively forward information on non-compliances to relevant *competent national* authorities or notifying authorities. Notified bodies should however not trespass the information obligation by investigating other operators than their own clients or peers.
- (71) *With a view to* creating a level playing field for notified bodies and manufacturers, the coordination amongst notified bodies should be enhanced. As only half of the current notified bodies participate on their own initiative in the activities of the already currently existing notified body coordination group, *direct* participation *or by means of designated representatives* thereto should thus become mandatory.
- (72) The attempts of establishing simplified procedures for small and medium-sized enterprises in Regulation (EU) No 305/2011 and thus reducing the burden and costs on SMEs and microenterprises have not been entirely effective and have often remained misunderstood or not used due to the lack of awareness or the lack of clarity regarding their application. By addressing the identified shortcomings while building on the previously established rules, it is necessary to clarify and facilitate their application and hence achieve the objective of supporting SMEs while ensuring performance, safety and environmental sustainability of construction products.

- (73) The recognition of test results obtained by another manufacturer, provided for in Article 36(1)(b) of Regulation (EU) No 305/2011, should be generalised, in order to generally reduce the burden of economic operators and namely manufacturers. Such recognition mechanism is particularly needed to avoid multiple assessment of environmental sustainability of raw materials, interim products and final products.
- (74) To ensure legal certainty in case of safety or performance problems, such recognition should only be permitted where *the assessed and verified* economic operators *agree to cooperate between themselves and with the notified bodies involved, including the necessary sharing of data*.
- (75) The evaluation of Regulation (EU) No 305/2011 showed that market surveillance activities carried out at national level, widely vary in quality and effectiveness. In addition to measures set out in this Regulation *and under relevant Union law* in favour of better market surveillance, the compliance of economic operators, bodies and products with this Regulation should be facilitated by also involving third parties such as by the possibility of any natural or legal person to submit information on ■ non-compliances through a complaint portal *established and maintained by the Commission. The handling of complaints adheres to the right to good administration, as outlined in Article 41 of the Charter of Fundamental Rights of the European Union. In handling the complaints the Commission should take into account the relevance and substantiation of the complaint by prioritizing those complaints raising issues having particularly far-reaching negative impacts for citizens or the internal market. For a complaint to be considered substantiated the Commission should particularly check if the complaint manages to set out a grievance or if the grievance sets out an issue where the Commission has adopted a clear, public and consistent position which has been communicated to the complainant. The Commission should reply to the complainant without undue delay and efficiently transmit the complaints to the relevant Member States who should handle these complaints promptly and effectively in accordance with their legal frameworks and obligations*.

- (76) To address the identified shortcomings with regards to the market surveillance under Regulation (EU) No 305/2011, this Regulation should contain more *justified* empowerments for *market surveillance* authorities and for the Commission that should enable authorities to act under all potential problematic circumstances.
- (77) Market surveillance practice has proved that when evaluating products, at a certain point in time, there is a risk of non-compliance but no non-compliance incidence whereas, at a later point in time, the opposite is to be stated. Moreover, there are situations where there is a non-compliance other than a formal one that does not trigger a risk. For these reasons, Member States should be empowered to act in all cases of suspected non-compliance or risk, whilst the definition of ‘product presenting a risk’ has to be extended to include risk for the environment. It is necessary to offer Member States enough procedural flexibility to distinguish between high and low priority cases of non-compliance, whilst all Member States should also be informed about less important cases.
- (78) To ensure effective enforcement of the requirements and to strengthen market surveillance in Member States *the Commission should provide guidelines for the application of this Regulation, as well as common practices and methodologies for effective market surveillance, including, for example, elements such as a recommended number and type of checks to be performed by the market surveillance authorities on specific product group or family or in relation to specific requirements. It is appropriate that such recommendations be based on good practices developed in the framework of market surveillance.*

- (79) In addition, to strengthen the on average weak capacities of market surveillance authorities in terms of market surveillance and to further align with the Ecodesign for Sustainable Products Regulation, it is necessary *to* provide more detailed administrative coordination support and to provide them with the right to retrieve costs of inspections and testing from economic operators *in relation to non-compliant products*.
- (80) To create an incentive for increasing the capacities of market surveillance authorities in terms of market surveillance and to reach alignment with the Ecodesign for Sustainable Products Regulation, Member States should report on their market surveillance activities regarding products covered by this Regulation, including regarding the penalties imposed.
- (81) To better serve economic operators, product contact points for construction should become more effective and therefore should obtain more resources. In order to facilitate the work of economic operators, the tasks of product contact points for construction should be fine-tuned and extended so as to include information on product related provisions of this Regulation and on acts adopted in accordance with it. *Member States should also raise economic operators' awareness of the product contact points for construction within their territory.*

- (82) It is necessary to establish an appropriate, efficient and cost-effective coordination mechanism to ensure a consistent application of the obligations and requirements set and to strengthen the overall system, also taking into consideration the fact that new interpretative questions may arise in relation to safety and sustainability of products and construction works. As diverging decisions create an uneven playing field, contribute to rendering the legal framework more complex, create barriers to the free movement of the internal market and additional administrative burden and costs on economic operators, such diverging decisions should be prevented by that coordination mechanism.
- (83) In particular, a European information system should therefore be established to collect interpretative questions, to find appropriate common solutions and to improve the sharing of information in this regard. To facilitate information sharing, such a system should rely on national systems. These national systems should also identify cases of uneven application of this Regulation, to ensure that diverging practices do not become a common practice and permanent. *The European information system should also deal with issues raised related to the emergence of new products or business models, unforeseen situations and to situations in which other provisions of Union law also apply.*
- (84) *Digitalisation and availability* of product information increases transparency to the benefit of safety of products and the protection of the environment and human health while also reducing administrative burden and costs for economic operators. Accordingly, the power to adopt acts in accordance with Article 291 TFEU should be delegated to the Commission to establish a ■ Construction *digital product passport* system *aligned to the extent possible to the digital product passport under [ESPR]*.

- (84a) *To improve machine readability, it is necessary to establish a common data dictionary based on European standards, a tool to govern and publish the data structure and their meaningful definitions and descriptions for all relevant construction products. For each product family or category, the data dictionary should include all the essential characteristics and other properties as set out in the harmonised technical specifications as well as other information required according to this regulation. A data dictionary harmonised at the EU level allows for the classification and use of structured definitions by both competent national authorities and in the further digitalisation of the construction sector, in particular in Building Information Modelling, building logbooks, digital passports and registries.*
- (85) To improve their level of competence, harmonise their decision making and create a level playing field for economic operators, trainings should be organised for market surveillance authorities, product contact points for **construction**, designating authorities, ■ notifying authorities, and **representatives of notified bodies and TABs**. The same goals should also be pursued by exchanges of staff between the market surveillance authorities, notifying authorities and notified bodies of two or more Member States.
- (86) Member States do not always have the technical competence to fulfil all obligations incumbent on them in accordance with Union legislation cumulatively for all product sectors. They therefore obtain informal support, from other ■ Member States. Since such support is unavoidable in some cases ■ , this Regulation should set out the basic rules for such support, namely to clarify responsibilities. ■

- (87) Business on construction products becomes slowly but steadily more and more international. Hence, situations arise where non-compliances of economic operators based outside the Union need to be countered as well. **Provisions on** international cooperation should **therefore** be provided for in this Regulation.
- (88) A certain number of third countries applies Union product legislation or at least recognises certificates issued in accordance with it, be it on the basis of international agreements or unilaterally, both being in the interest of the Union. In order to give these third countries an incentive to continue this practice and other third countries to do the same, certain additional possibilities should be provided, **on a case-by-case basis**, to third countries applying Union product legislation or recognising certificates issued in accordance with it. For this reason, it should be possible, **after consultation with Member States**, to support these particularly cooperative third countries by allowing them to participate in certain trainings and to participate in the ■ Construction **digital product passport** system, to the information system for harmonised decision-making and to the information exchange amongst authorities. Moreover, for the same reason, it should be possible to inform these particularly cooperative third countries about non-compliant or risky products.
- (89) In order to incentivise the use of sustainable construction products whilst avoiding market distortions and to remain in line with the Ecodesign for Sustainable Products Regulation, incentives for the use of sustainable construction products provided by Member States should target the most sustainable products. **The Commission should furthermore have the possibility to coordinate Member States incentives in order to boost the demand of certain environmentally sustainable products.** Member States **might also provide incentives to promote environmentally friendly and sustainable construction products that are not covered by harmonised technical specifications in line with State aid rules.**

(90) ***Public procurement amounts to 14% of Union's GDP.*** In order to enhance the use of sustainable construction products, ***which would contribute to the objective of reaching climate neutrality, improve energy and resource efficiency and in the transition to a circular economy that protects public health and biodiversity*** and to reach alignment with the [Ecodesign for Sustainable Products] Regulation, Member States' public procurement practices should ***comply with mandatory minimum performance requirements on environmental sustainability for construction products*** set out by ***delegated acts***. ***The Commission*** should ***decide the essential characteristics to be addressed and its implementation in the form of one of more of the following: technical specifications, selection criteria, contract performance clauses or contract award criteria***. ***The mandatory minimum performance requirements on environmental sustainability deal with essential characteristics only and do not pre-empt the possibility for Member States to be more ambitious in their contracts by requesting better performances for the relevant essential characteristics while respecting the harmonised zone.***

(91) *Contracting authorities and entities should, where appropriate, be required to align their procurement with specific green public procurement criteria, to be set out in the delegated acts adopted pursuant to this Regulation. The criteria for specific product families or categories, should be complied where contracts require mandatory minimum environmental sustainability performance for construction products as regards their essential characteristics covered by harmonised technical specifications. These minimum requirements should be established according to transparent, objective and non-discriminatory criteria. When developing delegated acts related to green public procurement, the Commission should take due account of the Member States different geographical, social and economic circumstances. When considering the effect on the market situation, the Commission should take into account, among others, the effects of the requirements on competition, SMEs and the best environmental products and solutions available on the market. When considering the economic feasibility for contracting authorities, the Commission should take into account that different contracting authorities in different Member States might have different budgetary capacities. In duly justified cases, contracting authorities should be able to derogate from the requirements such as when there is only one supplier, there are no suitable tenders or its application would lead to a disproportionate cost.*

(92) In order to take into account technical progress and knowledge of new scientific evidence, ensure proper functioning of the internal market, facilitate access to the information and ensure homogeneous implementation of rules, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of [...]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. ***When developing those acts, the Commission should aim at reducing the administrative burden for companies and take into account the needs of SMEs.***

- (93) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission [...]. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁶.
- (94) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to human health or safety or the protection of the environment, imperative grounds of urgency so require.
- (95) Regulation (EU) 2019/1020 lays down rules on a horizontal framework for market surveillance and control of products entering the Union market. In order to ensure that products under this Regulation, which are benefiting from the free movement of goods within the Union, fulfil requirements providing a high level of protection of public interests, such as the protection of human health and safety and the protection of the environment, that Regulation should apply also to products covered by this Regulation, in so far as there are no specific provisions with the same objective, nature or effect in this Regulation. ■

¹⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (96) To render the implementation of this Regulation more efficient and to reduce the burden for economic operators, it should be possible to make applications and decisions on paper or in a commonly used electronic format. To obtain legal certainty, applications and decisions should only be valid where the electronic signature fulfils the requirements of Regulation (EU) No 910/2014 of the European Parliament and of the Council¹⁷ and where the signing person is entrusted to represent the body or economic operator, according to the law of the Member States or Union law respectively.
- (97) To further reduce the burden on economic operators, it should be possible to provide documentation in a commonly used electronic format, and to fulfil information requirements electronically by default.
- (98) In order to ensure a high level of compliance with this Regulation, Member States should lay down rules on penalties applicable to non-compliances and ensure that those rules are enforced. The penalties provided for should be effective, proportionate and dissuasive. ■

¹⁷ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (99) In order to create legal certainty, it should be specified whether and for how long designations of product contact points for construction, TABs, or notified bodies and harmonised standards, European assessment documents, European technical assessments and notified bodies certificates or test reports adopted or issued under Regulation (EU) No 305/2011 maintain legal effects under this Regulation. The respective transition periods should be long enough to avoid bottlenecks in respect of notified bodies and TABs designation and of the adoption or issuing of European assessment documents, European technical assessments, and notified body certificates or test reports.
- (100) To create legal certainty, it should be clarified for how long products placed on the market on the basis of European *technical assessments issued in accordance with European* assessment documents adopted under Regulation (EU) No 305/2011 may *be* placed on the market. ■
- (101) Both the essential characteristics of construction products and their assessment methods can only be determined by harmonised technical specifications to be developed for the various product *families and categories, or by European assessment documents*. Accordingly, requirements and obligations incumbent on economic operators with regard to a certain product *family or category* should only apply mandatorily as *of twelve* months after the entry into force of harmonised technical specification covering the respective product *family or category unless a later application date has been specified in the publication in the Official Journal*.

- (102) To facilitate a smooth phasing-in of future harmonised technical specifications and taking into consideration the time needed for drawing up the declaration of performance *and* conformity, economic operators should be permitted to opt for the voluntary application of this Regulation as from the entry into force of these harmonised technical specifications.
- (103) It is necessary to avoid that economic operators can permanently circumvent the application of this Regulation by applying the harmonised technical specifications adopted under Regulation (EU) No 305/2011. For this reason, the Commission should withdraw from the Official Journal the references to harmonised standards and *European assessment documents* published in support of Regulation (EU) No 305/2011 and covering a certain product *family or category by* the entry into *application* of harmonised technical specification adopted under this Regulation covering that respective product *family or category*.
- (104) *While the concept of basic requirements for construction works is kept as the technically necessary link between construction works and construction products, it should be made explicit that they do not constitute obligations incumbent upon economic operators or Member States seeing as the right to regulate construction works is a competence of Member States.* In order to ■ cover the environmental assessment of construction products *as well as* product requirements which exist even in current harmonised technical specifications, a more comprehensive Annex I should be developed, including also a detailed list of *predetermined environmental* essential characteristics related to *life cycle* assessment and a ■ framework for the product requirements. On that occasion, overlaps between basic requirements for construction works should be eliminated and clarifications should be brought forward.

- (105) In order to reach a minimum control intensity of the assessment and verification of manufacturers by notified bodies and to create a level playing field both for manufacturers and notified bodies, Annex V on assessment and verification systems should more precisely and comprehensively determine the tasks of manufacturers and notified bodies under different possible assessment and verification systems. Moreover, that Annex should determine the assessments and verifications to be undertaken to verify the environmental sustainability of products, in terms of product performance and product requirements.
- When the Commission defines the applicable assessment and verification system for a product family or category, continuity with Regulation (EU) No 305/2011 and coherence across product families should be the guiding principles.*
- (106) The objectives of this Regulation, namely the free circulation of construction products on the internal market, the protection of human health and safety, and the protection of the environment, cannot be sufficiently achieved by the Member States, as Member States tend to establish very diverging requirements for construction products, with an uneven level of protection of human health and safety and of the environment. These objectives can rather be better achieved at Union level by establishing a harmonised assessment framework for the performance of construction products and certain product requirements for the protection of human health and safety and of the environment. Accordingly, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 *TFEU*. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter **and objectives**

This Regulation establishes harmonised rules for the *placing and* making available on the market **■** of construction products, regardless of whether undertaken in the framework of a service or not, by establishing:

- (a) *harmonised* rules on how to express the environmental, **■** and safety performance of construction products in relation to their essential characteristics, *including life cycle assessment*;
- (b) environmental, **■** functional and safety product requirements for construction products.

This Regulation also establishes:

- (a) *rights and* obligations *for* economic operators dealing with construction products or their components; *and*
- (b) *obligations for other actors providing services linked to the manufacturing and commercialisation of products covered by this Regulation.*

This Regulation contributes to the efficient functioning of the internal market by ensuring the free movement of safe and sustainable construction products in the Union and to the objectives of a green and digital transition by preventing and reducing the impact that construction products have on the environment and on the health and safety of people.

Article 2

Scope

1. This Regulation shall apply to construction products, *including used products*, and to the following items:

■

(d) key parts of products ■ ;

(e) parts or materials intended to be used for products covered by this Regulation, if the manufacturer of those parts or materials so requests;

■

3. This Regulation shall not apply to:

- (a) lifts subject to Directive 2014/33/EU of the European Parliament and of the Council¹⁸, escalators and their components;

■

- (f) *performance assessment and requirements subject to Directive (EU) 2020/2184 of the European Parliament and of the Council¹⁹ and covered by the delegated acts of Commission referred to in Article 11(8) of this Directive;*

■

5. Member States may exempt from the application of this Regulation ■ products ■ covered by this Regulation that are placed on the market ■ in the outermost regions of the European Union in the meaning of Article 349 of the Treaty on the Functioning of the European Union. Member States shall notify to the European Commission and to the other Member States the regulations providing such exemptions. They shall ensure that exempted ■ products ■ do not bear the CE marking in accordance with Article 16. ■ Products ■ placed on the market ■ on the basis of such exemption shall not be deemed to be placed on the market ■ in the Union in the meaning of this Regulation.

¹⁸ Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (OJ L 96, 29.3.2014, p. 251).

¹⁹ *Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) (OJ L 435, 23.12.2020, p. 1).*

Article 3
Definitions

For the purposes of this Regulation the following definitions shall apply:

- (1) ‘construction product’ means any formed or formless physical item, including **3D-printed products**, or a kit **that is placed on the market, including by means of supply to the construction site**, for incorporation in a permanent manner in construction works or parts thereof ■ with the exception of items ■ necessarily first integrated into **a kit or another** construction product prior to being incorporated in a permanent manner in construction works;
- (2) ‘permanent’ means **intended to remain in the construction work or parts thereof after the completion of the construction or renovation process**;
- (3) ‘product’ means a construction product or other item **falling within the scope of** this Regulation **as set out in** Article 2;
- (4) ‘making available on the market’ means any supply of a product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge, regardless whether in the framework of providing a service or not;

- █
- (6) ‘performance’ means the degree to which a product has certain scalable essential characteristics;
 - (7) ‘essential characteristics’ means those characteristics of the product which relate to the basic requirements for construction works as set out in Annex I.1 *and those which are listed as predetermined environmental essential characteristics* in Annex I.2;
 - (8) ‘product *requirement*’ means a █ characteristic with which a product has to comply before it can be placed on the market, *as set out in Annex I.3*;
 - (9) ‘economic operator’ means the manufacturer, the authorised representative, the importer, the distributor, the fulfilment service provider █ or any other natural or legal person █ who is subject to this Regulation in relation to the manufacturing *or remanufacturing of products, including reused* products, or making those products available on the market, in accordance with this Regulation █ ;

- █
- (12) ‘manufacturer’ means a manufacturer as defined in Article 3, point (8), of Regulation (EU) 2019/1020;
 - (13) ‘3D-datasets’ means a set of numerical data describing the shape of an object by its outer dimensions and its cavities █ ;
 - (14) ‘construction works’ means buildings and civil engineering works that may both be over or in the ground or water, including *but not limited to roads*, bridges, tunnels, pylons and other facilities for transport of electricity, communication cables, pipelines, aqueducts, dams, airports, ports, water ways, and installations which are the basis for rails of railways █ ;

- █
- (16) ‘level’ means the result of the assessment of the performance of a product in relation to its essential characteristics, expressed as a numerical value;
 - (17) ‘class’ means a range of levels, delimited by a minimum and a maximum value, of performance of a product;

- (18) ‘threshold level’ means a ■ minimum or maximum performance level of a product with regard to a certain essential characteristic;
- (19) ‘placing on the market’ means the first making available of a product on the Union market or the first making available *on the market* of a used product *after a de-installation of such a product* ;
- (20) ‘key part’ means a part which is ■ used as *a* component or spare part for a product and *which* has been specified by *a* harmonised technical *specification* as essential for the characterisation, safety or performance of a product;
- (21) ‘kit’ means a product placed on the market by a single economic operator as a set of at least two separate items, none of which needs to be a product itself, intended to be incorporated together in construction works;

■

- (23) ‘European assessment document’ means a document adopted by the organisation of technical assessment bodies for the purposes of issuing European technical assessments;
- (24) ‘used product’ means a product that is not waste *or has ceased to be waste in accordance with* Directive 2008/98/EC ■ , and which has been installed at least once into a construction work, and that:

■

(b) has not undergone a process going beyond *checking*, cleaning *or repairing recovery operations, by which the product or components of products are prepared so that they can be used for construction purposes without any other pre-processing; or*

(ba) *has been subject to a transformative process going beyond checking, cleaning and repairing recovery operations which according to the applicable harmonised technical specification is qualified as non-essential to the product's performance;*

(24a) *'intended use' means the purpose of a product as defined in the applicable harmonised technical specifications or European assessment documents;*

(25) *'declared use' means the use intended by the manufacturer, including the conditions for usage, as laid out in technical documentation, on labels, in instructions for use, in safety information, or in publicity material, whilst usages mentioned only in one of these are already part of the 'declared use';*

- (26) ‘repair’ means the process of *fixing* a faulty product *or replacing its defective components, in order to return the product* to a condition where it can fulfil its *declared* use;
- (27) ‘maintenance’ means an action carried out to retain a product in a condition where it is able to function as *specified*;
- (28) ‘remanufactured product’ means a product that is not waste *or has ceased to be waste in accordance with Directive 2008/98/EC, which* has been installed at least once into a construction work, and that has been subject to a transformative process going beyond *checking*, cleaning and *repairing recovery operations which according to the applicable harmonised technical specification are qualified as essential to the product’s performance*;
- (29) ‘risk’ means risk as defined in Article 3, point (18), of Regulation (EU) 2019/1020;
-
- (31) ‘product type’ means the abstract model of individual products, determined by the intended use and a set of characteristics which exclude any variation with regard to performance or to the fulfilment of product requirements set-out in or in accordance with this Regulation ■ whilst identical *products* of different manufacturers also belong to different product types;

- (32) ‘state of the art’ means a way to achieve a certain goal which is either the most effective and advanced or close to it ***or a way which is currently possible applying common technologies, whether or not it is the most technologically advanced solution;***
- (33) ‘recycling’ means recycling as defined in Article 3, point (17), of Directive 2008/98/EC;
- (34) ‘fulfilment service provider’ means a fulfilment service provider as defined in Article 3, point (11), of Regulation (EU) 2019/1020;
- (35) ‘product family’ means all product types belonging to ***one of the families*** listed in Annex IV ■ ;
- (36) ‘product category’ means a subset of the product types of a certain product family encompassing those product types which have in common a certain intended use as specified in harmonised technical specifications or European assessment documents;
- (37) ‘factory production control’ means the documented, ***continuous*** and internal production control in a factory with regard to certain parameters or quality aspects, reflecting the specificities of a respective product family or ***category*** and manufacturing processes, and which aim at the constancy of performance or of continuous fulfilment of product requirements, executed in accordance with Annex V;

- █
- (40) ‘importer’ means an importer as defined in Article 3, point (9), of Regulation (EU) 2019/1020;
- (41) ‘distributor’ means *any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market, which includes offering products for sale, hire or hire purchase, or displaying products to customers or installers in the course of a commercial activity, including through distance selling, whether or not in return for payment;*
- (41a) *authorised representative’ means any natural or legal person established in the Union who has received a written mandate from the manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer’s obligations under this Regulation;*
- (42) ‘individually manufactured’ means that, due to the specifications of the client, there is a *need for readjustment of the production process for manufacture* when compared with all other products produced for other clients by the economic operator in question;
- (43) ‘micro-enterprise’ means a micro-enterprise as referred to in the Annex to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises █ ;

- (44) ‘custom-made’ means that, due to the specifications of the client, there is a variation in terms of size or material when compared with all other products produced for other clients by the economic operator in question.
- (45) ‘permalink’ means an internet link to a website which is stable both for its content and the address (“URL”);
- (45a) ‘data carrier’ means a linear bar code symbol, a two-dimensional symbol or other automatic identification data capture medium that can be read by a device;**
- (46) ‘harmonised technical specifications’ means *performance harmonised standard* which **■** in accordance with Article 4(8) *have been* rendered mandatory for *the* purposes of *the* application of this Regulation, *as well as implementing* acts adopted in accordance with Article 4a(1) *and delegated acts adopted in accordance with* Article 5(1), 5b(3) and 6(2);
-
- (49) ‘European standardisation organisation’ means a European standardisation organisation as defined in Article 2(8), of Regulation (EU) No 1025/2012;
- (50) ‘European technical assessment’ (ETA) means the documented assessment of the performance of a product, in relation to its essential characteristics, in accordance with the respective European assessment document;
-

- (52) ‘non-series process’ means a process that is neither prevailingly automated or produced using assembly-line techniques, nor repeated ***very often in relation to the volume of production*** by the economic operator in question or the economic operators belonging to the same group of companies, defined by a common controlling natural or legal person, or the same organisational structure;
- (53) ‘withdrawal’ means withdrawal as defined in Article 3, point (23), of Regulation (EU) 2019/1020;
- (54) ‘recall’ means ***recall*** as defined in Article 3, point (22), of Regulation (EU) 2019/1020;
- (55) ‘online marketplace’ means a provider of an intermediary service using ***an online interface which*** allows customers to conclude distance contracts with economic operators for the sale of products;
- (56) ‘online interface’ means online interface as defined in Article 3, point (15), of Regulation (EU) 2019/1020;
- █
- (59) ‘supplier’ means any natural or legal person providing raw materials, ***interim products or used*** products to manufacturers or to other persons providing raw materials, ***interim products or used*** products to manufacturers;

- (60) ‘service provider’ means any natural or legal person providing a service to a manufacturer or to a supplier of a key part, provided that the service is relevant for the manufacturing of products, including their design *or to their deinstallation in case of reused products*;
- (61) ‘accreditation’ means ‘accreditation’ as defined in Article 2(10), of Regulation (EC) No 765/2008;
- (62) ‘market surveillance authority’ means an authority as defined in Article 3, point (4), of Regulation (EU) 2019/1020;
- (63) ‘life cycle’ means the consecutive and interlinked stages of a product’s life, from raw material acquisition or generation from natural resources, *or in the case of products which have previously been incorporated in a construction work, from the latest de-installation from the construction work*, to final disposal;

■

- (66) ‘*single liaison point*’ means the ■ authority designated in accordance with Article 69(2) *as focal point for contacts with the Commission and other Member States on construction product related issues*;
- (66a) ‘*notified body*’ means a conformity assessment body, notified in accordance with Article 47, that is authorised to carry out assessment and verification tasks under this Regulation;

(67) ‘notifying authority’ means the single public administration **body**, designated in accordance with Article 48, *in charge of the notification and supervision of notified bodies*;

(67a) ‘*technical assessment body*’ (TAB) means a body, designated in accordance with Article 44, that issues *European technical assessments on the basis of European Assessment Documents*;

(68) ‘designating authority’ means the single public administration **body**, designated in accordance with Article 43, *in charge of the designation and supervision of technical assessment bodies in a Member State*;

■

(70) ‘product presenting a risk’ means a product that, whenever during its entire life-cycle ■ , has an inherent potential to affect adversely the health and safety of persons, the environment or the fulfilment of basic requirements for construction works when incorporated in those works, to a degree which, taking account of the state-of-the-art, goes beyond what is considered reasonable and acceptable in relation to its intended use and under normal or reasonably foreseeable conditions of use;

(71) ‘product presenting a serious risk’ means a product presenting a serious risk as defined in Article 3, point (20), of Regulation (EU) 2019/1020.

(71a) ‘by-product’ means a ‘by-product’ within the meaning of Article 5 of Directive 2008/98/EC;

(71b) ‘recyclability’ means the characteristic of a material or product to be effectively and efficiently separated, collected, sorted and aggregated as defined waste streams to be recycled into secondary raw materials whilst minimising quality or functionality losses compared to the relevant primary raw material.

Article 3a

Working plan and preparatory phase for the development of harmonised technical specifications

- 1. The Commission shall be supported by an expert group (‘the CPR Acquis Expert Group’). The group shall be composed at least of experts designated by the Member States, representatives of European standardisation organisations and of relevant European stakeholder organisations receiving Union financing under Regulation (EU) No 1025/2012. The group shall support the Commission in processing Member State requests for EU harmonisation through harmonised technical specifications. In particular assist the Commission in establishing and maintaining a working plan, in preparing the technical content related to harmonised technical specifications, in deciding the need to launch the procedures in relation to harmonised technical specifications presenting deficiencies, unavailable, or not able to cover immediate regulatory needs and in determining the inclusion of used products in harmonised technical specifications.*

2. *The Commission shall, after consultations with the CPR Acquis Expert Group, establish a working plan for the development of harmonised technical specifications for product families listed in Annex IV, including product requirements and instructions for use and safety information, covering at least the following three-year period. The Commission shall set the priorities of the working plan using a transparent and balanced methodology published together with the working plan.*

The methodology used by the Commission shall at least reflect the regulatory needs of the Member States, the safety issues related to construction works and products and EU climate and circular economy goals.

The Commission shall publish the first working plan no later than ... [12 months after entry into force of the regulation].

The Commission shall renew and update the working plan at least every three years. It shall publish the working plan for the following three-year period one year before its expiration.

The Commission shall inform the European Parliament and the Member States yearly about progress in implementing the working plan.

If the Commission considers that it cannot achieve the goals set out in the working plan, it shall amend it accordingly without undue delay and inform the European Parliament and Member States about the reasons.

3. *Following the working plan established under paragraph 2, Member States shall communicate to the Commission and the CPR Acquis Expert Group the essential characteristics they require for a product family or category, and the assessment methods, threshold levels or performance classes, as well as the product requirements, that they deem necessary.*

When Member States communicate their regulatory needs to the Commission pursuant to the first subparagraph, the Commission shall integrate them or provide a statement of reasons why it is not possible.

4. *On the basis of the basic requirements for construction works set out in Annex I.1 and taking into account the regulatory needs communicated by Member States in accordance with paragraph 3, as well as the safety, environmental, circularity and climate objectives of the European Union, the Commission, with the support of the CPR Acquis Expert Group, shall identify the technical aspects needed to prepare standardisation requests, including the relevant essential characteristics. These essential characteristics and the list of predetermined environmental essential characteristics set out in Annex I.2 shall constitute the basis for the preparation of the standardisation requests referred to in Article 4(2) and the implementing acts referred to in Article 4a(1).*

5. *The Commission shall ensure that essential characteristics are covered by harmonised technical specifications to the extent that the development of such specifications is technically and economically proportionate.*
6. *The Commission with the support of the CPR Acquis Expert Group shall also identify inherent product requirements in accordance with Article 5 as well as other harmonised technical specifications and define whether used products should be covered by or excluded from a standardisation request or a harmonised technical specification. The CPR Acquis Expert Group shall, as a matter of urgency, be consulted on notifications from Member States according to Article 7(4).*
7. *The Commission is empowered to adopt delegated acts in accordance with Article 87 to amend:*
 - (a) *the list of predetermined environmental essential characteristics set out in Annex I.2 in order to adapt it to technical progress and new environmental risks and to comply with the priorities established pursuant to paragraph 3 based on Member States' regulatory needs;*
 - (b) *the product families listed in Annex IV to adapt them to technical progress and Member States' regulatory needs.*

Harmonised standards laying down essential characteristics dealing with performance

1. The *methods and the criteria for assessing the performance of a product in relation to its essential characteristics* shall be laid down in *harmonised standards* rendered mandatory *by means of implementing acts referred to in paragraph 8*. *These harmonised standards shall, where appropriate and without endangering the accuracy, reliability or stability of the results, provide methods less onerous than testing for assessing the performance of the products in relation to their essential characteristics.*
2. The Commission *shall*, in accordance with Article 10 of Regulation (EU) No 1025/2012, *request one or more European standardisation organisations to draft harmonised standards laying down essential characteristics and their assessment methods for one or more product families or for one or more product categories within a family. The standardisation request shall set out the basic principles and reference points for the establishment of these essential characteristics and their assessment methods. The standardisation request shall be explicit about whether it covers or excludes used products from the scope of the request.*

3. *As part of the standardisation requests referred to in paragraph 2, the Commission may also request that the European standardisation organisation provides the technical details necessary for the implementation of the assessment and verification system that is to be applied in accordance with the delegated acts adopted under Article 6(1).*
4. *The standardisation requests referred to in paragraph 2 may include a request to propose one or more of the following elements:*
- (i) voluntary or mandatory threshold levels in relation to the essential characteristics;*
 - (ii) classes of performance in relation to the essential characteristics;*
 - (iii) those essential characteristics which always have to be declared by manufacturers.*



In that case, the standardisation request shall set out the basic principles and reference points for the establishment of the elements requested in accordance with the first subparagraph.

5. *In cases where the Commission has supplemented the standardisation request with a request for a proposal in accordance with paragraph 4, it shall be empowered to supplement this Regulation, by means of delegated acts adopted in accordance with Article 87, by determining, for the product families or product categories and for the elements covered by that request the elements referred to in paragraph 4 points (i) to (iii).*

The Commission may, after consultations with the CPR Acquis Expert Group, deviate from the proposals of the European standardisation organisation.

Delegated acts referred to in the first subparagraph may, irrespective of any prior standardisation request but on the advice of the CPR Acquis Expert Group, also be adopted to determine the elements set out in points (i) to (iii) in relation to any of the groupings of essential characteristics of a horizontal nature listed in Annex VI.

6. *In cases where, on the basis of the nature or technical characteristics of a product, it is apparent that testing would be unnecessary or redundant, the Commission shall be empowered to supplement this Regulation, by means of delegated acts adopted in accordance with Article 87 laying down conditions under which a product shall be deemed to satisfy a certain level, threshold level or to qualify for a class of performance without testing or without further testing.*

7. The Commission shall *assess the compliance of harmonised standards with the relevant standardisation requests, with this Regulation and with other Union law, including general principles of law. The Commission may assess the compliance of harmonised standards with other harmonised standards according to this Regulation or other harmonised standards the reference of which has been published* in the Official Journal.
- The Commission shall carry out the assessment referred to in the first subparagraph and present its reasons in writing to the European standardisation organisations and to the CPR Acquis Expert Group within 6 months after the standard has been transmitted to it. Where the Commission perceives a standard or its part to be unsatisfactory, it shall specify the deficiencies in the standard or part thereof. In order for the Commission to fulfil this obligation within that timeframe, the European standardisation organisations shall regularly inform the Commission of the progress and content of the standardisation deliverable* in accordance with Article 10(5) of Regulation (EU) No 1025/2012.

8. *Where a performance harmonised standard is in conformity with applicable legal requirements and satisfies the demands to be met in relation to the basic principles and reference points set out in the standardisation request as well as to the essential characteristics to be covered in view of the basic requirements for construction works, the Commission shall without delay adopt an implementing act making that standard mandatory. One year after such adoption the respective performance harmonised standard shall become mandatory for the purposes of this Regulation unless a later application date has been specified in the implementing act. A later application date shall only be used in exceptional cases and its use shall be duly motivated. A performance harmonised standard may be voluntarily applied from the date of the adoption of the implementing act.*

This implementing act shall be adopted in accordance with Article 88(1).

Where the Commission perceives a standard or its part to be unsatisfactory, it may adopt an implementing act pursuant to the first subparagraph making that standard mandatory with restrictions. If this is not possible, the Commission may adopt an implementing act in accordance with Article 4a.

9. *When a Member State, the European Parliament or the Commission, the latter with the support of the CPR Acquis Expert Group established under Article 3a, considers that a performance harmonised standard does not entirely fulfil the applicable legal requirements or satisfy the demands to be met in relation to the essential characteristics to be covered in view of the basic requirements for construction works, the procedure for formal objections to harmonised standards as set out in Article 11 of Regulation (EU) No 1025/2012 shall apply.*
10. *The Commission is empowered to amend Annex VI by means of delegated acts adopted in accordance with Article 87 to add additional groupings of essential characteristics of a horizontal nature.*

Article 4a

Other harmonised technical specifications laying down essential characteristics

1. *While priority shall be given to the elaboration of standards, by way of derogation from Article 4(1) to (4), in order to cover the regulatory needs of Member States and to pursue the goals of Article 114 of the Treaty on the Functioning of the European Union, the Commission is empowered to adopt implementing acts in accordance with the examination procedure referred to in Article 88(2) laying down essential characteristics, their assessment methods and technical details pursuant to Article 4 for one or more product families or for one or more product categories within a family.*

Those implementing acts shall only be adopted where the following conditions are fulfilled:

- (a) the Commission has requested, pursuant to Article 4(2), one or more European standardisation organisations to draft a harmonised standard and
 - (i) the request has not been accepted; or*
 - (ii) the harmonised standard addressing that request is not delivered before the deadline set in accordance with Article 10(1) of Regulation (EU) No 1025/2012 and no later than three years after the acceptance of the standardisation request; or*
 - (iii) the harmonised standard does not comply with the request; and**
- (b) no implementing act having recourse to a harmonised standard according to Article 4(8) covering the essential characteristics, their assessment methods and technical details pursuant to Article 4 was adopted in the last 5 years or it was adopted in a shorter period of time but with restrictions.*

■

2. *Before preparing a draft implementing act according to paragraph 1, the Commission shall inform the committee referred to in Article 22 of Regulation (EU) No 1025/2012 that it considers that the conditions in paragraph 1 are fulfilled.*

When preparing the draft implementing act the Commission shall take into account the views of relevant bodies and the expert group (CPR acquis group) and shall duly consult all relevant stakeholder organisations receiving Union financing under Regulation (EU) No 1025/2012.

3. *In cases where an implementing act according to paragraph 1 covers the same essential characteristics or assessment methods in relation to a specific product family or category as a harmonised standard a reference to which has been published in the Official Journal or to which an implementing act previously adopted according to 4(8) had recourse, the Commission shall withdraw from the Official Journal references to that harmonised standard or repeal implementing acts having recourse to them. In case the implementing act only partially covers the harmonised standard, the Commission shall retain that harmonised standard with restrictions.*

4. *When a Member State or the European Parliament considers that an implementing act adopted in accordance with paragraph 1 does not entirely satisfy the demands to be met in relation to the essential characteristics to be covered in view of the basic requirements for construction works, it shall inform the Commission thereof, submitting a detailed explanation. The Commission shall assess that detailed explanation and may, if appropriate, amend the implementing act in question.*
5. *The Commission shall follow the procedure in Article 4 to request any revision or update of the essential characteristics or assessment methods in relation to the same product families or categories as those covered by the implementing act referred to in paragraph 1. In case the harmonised standard delivered by the standardisation body is suitable to be adopted according to 4(8), the Commission shall repeal the implementing act, or parts thereof which cover the same essential characteristics or assessment methods in relation to the same product families or categories as those covered by the harmonised standard.*

Article 5

Product requirements and harmonised standards providing presumption of conformity

1. *Where a product family or one or more categories of products within a product family is either covered by a harmonised standard to which an implementing act adopted in accordance with Article 4(8) or an implementing act adopted in accordance with Article 4a(1) had recourse, the Commission is empowered to supplement this Regulation, by means of delegated acts adopted in accordance with Article 87, by establishing product requirements in accordance with Annex I.3 for that product family or category, or for parts thereof.*
2. *Prior to their placing on the market, products covered by this Regulation shall satisfy the applicable product requirements.*
3. *The Commission may, in accordance with Article 10(1) of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft voluntary harmonised standards for the product requirements established in accordance with Article 5(1).*
4. *Where a harmonised standard is adopted by a European standardisation organisation and proposed to the Commission for the purpose of publishing its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012.*

5. *Where a harmonised standard is in conformity with applicable legal requirements and satisfies the demands to be met in relation to the product requirements set out in the standardisation request, the Commission shall without delay publish a reference of that standard in the Official Journal of the European Union.*
6. *Where a reference to a harmonised standard cannot be published in the Official Journal, the Commission may publish such a reference with restrictions. Where a reference to a harmonised standard cannot be published in the Official Journal and cannot be published as a reference with restrictions, the Commission shall bring the issue to the attention of the committee referred to in Article 22 of Regulation (EU) No 1025/2012 and the CPR Acquis Expert Group.*
7. *A product subject to product requirements which is in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the product requirements covered by those standards or parts thereof.*

8. *The Commission is empowered to adopt* delegated acts in accordance with Article 87 *amending Annex I.3* to adapt **■** to technical progress and to cover new risks and environmental aspects *and comply with the priorities established in Article 3a based on Member States' regulatory needs.*

Article 5a

Common specifications providing presumption of conformity

1. *The Commission may adopt implementing acts establishing common specifications that provide an alternative means to comply with the product requirements established in accordance with Article 5(1).*

Those implementing acts shall only be adopted where the following conditions are fulfilled:

- (a) *the Commission has requested, pursuant to paragraph 1, one or more European standardisation organisations to draft a harmonised standard for the product requirements and:*
- (i) *the request has not been accepted; or*
 - (ii) *the harmonised standards addressing that request are not delivered within the deadline set in accordance with Article 10(1) of Regulation (EU) No 1025/2012; or*
 - (iii) *the harmonised standards do not comply with the request; and*

- (b) *no reference to harmonised standards covering the product requirements has been published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012 and no such reference is expected to be published within a reasonable period.*

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).

2. *Before preparing the draft implementing act referred to in paragraph 1, the Commission shall inform the committee referred to in Article 22 of Regulation (EU) No 1025/2012 that it considers that the conditions in paragraph 1 have been fulfilled.*
3. *When preparing the draft implementing act referred to in paragraph 1, the Commission shall take into account the views of the relevant bodies and the CPR acquis expert group and shall duly consult all relevant stakeholder organisations receiving Union financing under Regulation (EU) No 1025/2012.*
4. *A product which is in conformity with the common specifications established by implementing acts referred to in paragraph 1, or parts thereof, shall be presumed to be in conformity with the product requirements established in accordance with Article 5(1) covered by those common specifications or parts thereof.*

5. *The Commission shall repeal the implementing acts referred to in paragraph 1, or parts thereof which cover the same product requirements as those covered by a harmonised standard the reference of which is published in the Official Journal of the European Union according to Article 5(5) or 5(6).*
6. *When a Member State or the European Parliament considers that a common specification does not entirely satisfy the product requirements established in accordance with Article 5(1), it shall inform the Commission thereof, submitting a detailed explanation. The Commission shall assess that detailed explanation and may, if appropriate, amend the implementing act establishing the common specification in question.*

Article 5b

Instructions for use and safety information

1. *Annex I.D sets out the instructions for use and safety information to be provided in relation to construction products covered by a harmonised technical specification or a European technical assessment.*
2. *As part of the standardisation request referred to in Article 4(2), the Commission may also request that the European standardisation organisation sets out guidelines, including technical details, necessary for drawing up instructions and safety information as referred to in Annex I.4.*

3. *When the Commission identifies that the guidelines provided by the European standardisation organisation pursuant to paragraph 2 for a specific product family or category do not ensure adequate and homogeneous implementation of paragraph 1, the Commission shall be empowered to supplement this Regulation, by means of delegated acts adopted in accordance with Article 87, by establishing rules on the provision of instructions for use and safety information for the respective product family or category.*
4. *The Commission is empowered to amend Annex I.4 by means of delegated acts adopted in accordance with Article 87 in order to adapt it to technical progress and new information needs.*

Article 6

Assessment and verification systems ■

1. *Assessment and verification of a product's performance in relation to its essential characteristics as set out in harmonised technical specifications adopted in accordance with Articles 4 and 4a or European assessment documents referred to in [Article 35/7a], or of its conformity with product requirements adopted in accordance with Article 5, shall be carried out in accordance with one or more of the systems set out in Annex V.*

2. ■ The Commission is empowered to supplement this Regulation by means of delegated acts in accordance with Article 87, by determining for each product family or category the applicable assessment and verification system among those set out in Annex V. It may ■ determine different assessment and verification systems *within* the same product family or category, differentiating by essential characteristic or product requirement. ***Assessment and verification systems shall be determined before the harmonised technical specifications or European assessment documents are applicable.***
3. ***Delegated acts adopted in accordance with paragraph 2 shall take into account the intended uses, the potential damage resulting from product deficiencies, the product's sensitivity to performance variations under production conditions, the susceptibility to errors during its manufacturing and the possibility of easily detecting manufacturing errors. These delegated acts shall be tailored to the respective product families or categories and shall minimise the burden on manufacturers whilst ensuring a high level of protection of health, safety and the environment.***
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4. *The Commission is empowered to adopt delegated acts in accordance with Article 87 in order to amend Annex V to:*

- (a) *introduce additional assessment and verification systems when necessary to adapt to technical progress. Additional systems may not set out more demanding obligations for economic operators than prescribed for in System 1+. Such systems may only be introduced when it is evident that guidance on the application of existing systems has proved insufficient;*
- (b) *amend the existing assessment and verification systems to counter systematic non-compliances of notified bodies or manufacturers and to harmonise the application of the requirements or obligations contained in them. Such amendments shall not add or remove any task defined in a system.*

Article 7

Harmonised zone and national measures

1. *This Regulation, and the harmonised technical specifications adopted in accordance with it, jointly establish a harmonised zone.*

The harmonised zone covers all products subject to harmonised technical specifications.

Harmonised technical specifications shall be presumed to be comprehensive, in:

- (a) *laying down all essential characteristics and their assessment methods,*
- (b) *specifying all inherent product requirements other than those covered by other Union law, and*
- (c) *determining the applicable assessment and verification systems.*

Harmonised technical specification for new products shall apply to used products from third countries unless the harmonised technical specification explicitly provides rules for used products.

2. *Member States shall respect the harmonised zone in their national laws, regulations or administrative measures and shall not prohibit or impede the making available of products covered by it when they are in compliance with this Regulation. Member States shall not lay down essential characteristics and their assessment methods or inherent product requirements other than those set out in the harmonised technical specifications.*

The harmonised zone does not affect the right of Member States to specify national requirements for the use of products that are subject to harmonised technical specifications. Any assessment methods and systems for assessment and verification of such national requirements shall be in accordance with applicable harmonised technical specifications.

Member States shall ensure that the making available on the market of products within the harmonised zone which are in compliance with this Regulation shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate.

2a. *When complying with the obligations provided for in paragraph 2, Member States shall in particular apply the following:*

- (a) *no requirements for information or registration related to the placing on the market of the product other than those laid down in the harmonised zone shall be established;*
- (b) *no assessments of the product other than those set out in the harmonised zone shall be made mandatory;*

■

- (da) *no markings attesting conformity with requirements or declared performances in relation to essential characteristics covered by the harmonised zone shall be required other than the CE marking, and any existing provisions requiring such markings in national measures shall be withdrawn;*
- (e) *national laws, regulations or administrative measures shall respect the threshold levels established in accordance with Article 4(4);*

- (f) national *laws, regulations* or administrative *measures* shall not be based on classes, sub-classes or additional classes other than those established in accordance with Article 4a;
- (g) ■ national *laws, regulations* or administrative *measures* shall *not require more assessments and verifications than those established in accordance with Article 6(1)*.

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3. Member States shall *register in the Single Digital Gateway all their national laws, regulations, and administrative measures related to construction products on their territory* covered by *the harmonized zone*.
4. Where a Member State deems it necessary ■ on imperative grounds of health, safety or protection of the environment *and in order to address immediate regulatory needs to take measures applicable to products within the harmonised zone in relation to characteristics not laid down in harmonised technical specifications*, it shall notify the Commission thereof, justifying the need for the ■ obligations established and explain the regulatory need it aims to address.

Member States shall to that end use the notification procedure under Directive (EU) 2015/1535 of the European Parliament and of the Council²⁰ while making reference to this paragraph and specifying which elements are part of the measure.

The Commission shall reply to the notification within the time limits established in the procedure set up under Directive (EU) 2015/1535. The Commission shall within six months of the notification either put forward a proposal for authorisation in accordance with paragraph 5 or communicate its grounds for rejecting the national measure.

Upon receipt of a notification in the first paragraph, the Commission shall, irrespective of whether the measure may be authorised or not, without delay submit the matter to the CPR Acquis Expert Group established in accordance with Article 3a for consultations on whether updates to existing construction product performance standards need to be requested as a priority.

5. The Commission shall, by means of implementing acts, authorise the national measure notified under paragraph 4 where:
 - (a) *the notified* measure appears duly justified in the light of imperative grounds of health, safety or protection of the environment, *including climate*;

²⁰ *Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (OJ L 241, 17.9.2015, p. 1).*

- (b) the regulatory need is not covered by ■ harmonised *technical specifications* or by other Union law;
- (c) the notified ■ measure does not discriminate against economic operators of other Member States;
- (d) the notified ■ measure is able to cover the respective regulatory need; *and*
- (e) the notified measure does not constitute a *serious* obstacle to the functioning of the Union market; ■
- (f) the *notified measure is not covered by a harmonised standard to be delivered in a period shorter than* one year as from the date of notification, *according to a standardisation request adopted pursuant to Article 4(2), or at the moment of notification there is no draft implementing act according to Article 4a(1) presented to the committee referred to in Article 88.*

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2) *and be withdrawn when the regulatory need is covered by harmonised technical specifications or by other Union law.*

On duly justified imperative grounds of urgency relating to human health and safety or the protection of the environment, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 88(3).

7. This Regulation does not *affect the possibilities for* Member States to introduce mandatory deposit-refund systems *or* to oblige manufacturers to *accept to regain*, directly or via their importers and distributors *ownership of new, surplus or unsold non-custom-made products that are in a state equivalent to the one in which they were placed on the market* provided that *the measure does not directly or indirectly discriminate economic operators in other Member States*.

8. *This Regulation does not affect the possibilities for Member States to ban the destruction of surplus and unsold products or to* make the destruction of these products dependent on their prior making available on a national brokering platform for non-commercial use of products.

Article 8

Relationship with other Union law

To avoid double assessment of *the same aspects of health, safety or protection of the environment of* products, the Commission is empowered to supplement this Regulation by delegated acts adopted in accordance with Article 87 by determining the conditions under which *obligations relating to the assessment of a product's performance or the fulfilment of certain product requirements, including the equivalence of assessment and verification systems required under this Regulation and obligations as regards product instructions for use and safety information requirements,* would be satisfied by the *fulfilment of obligations under* other Union law.

The conditions referred to in the first subparagraph shall not allow for product safety levels which are less strict than those established in accordance with this Regulation.

Where conflicts arise between this Regulation and Regulation [Ecodesign for Sustainable Products Regulation] as well as Regulation (EU) No 1025/2012 the relevant provisions of this Regulation shall prevail.

CHAPTER II
PROCEDURE, DECLARATIONS AND MARKINGS

Article 9

Declaration of performance **and conformity**

1. Where a product is covered by a harmonised technical specification adopted in accordance with *Articles 4 or 4a*, the manufacturer shall undergo the applicable assessment and verification system set out in Annex V and draw up a declaration of performance **and conformity** before such a product is placed on the market. *Where a product is covered by a harmonised technical specification adopted in accordance with Article 5, the manufacturer shall also verify the product's compliance with applicable product requirements that have been specified by delegated acts.* A manufacturer of a product which is not covered by any harmonised technical specification may issue a declaration of performance **and conformity** in accordance with the relevant European assessment document and European technical assessment.

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3. By drawing up the declaration of performance **and conformity**, the manufacturer assumes responsibility for the conformity of the product with *its* declared performance and **any applicable product requirements and** becomes liable in accordance with Union and national laws on contractual and extra-contractual liability █. In the absence of objective indications to the contrary, Member States shall presume the declaration of performance **and conformity** drawn up by the manufacturer to be accurate and reliable.

In case of non-compliance or absence of a declaration of performance and conformity when such a declaration is mandated, the product may not be made available on the market.

Article 10

Exemptions from drawing up a declaration of performance **and conformity**

1. By way of derogation from Article 9(1), a manufacturer may refrain from ***undergoing the applicable assessment and verification of the product's compliance with applicable product requirements and the drawing up of a declaration of performance and conformity when*** any of the following applies:
 - (a) the product is ***individually manufactured or custom-made and fulfils all the following conditions: (i) it is manufactured using*** a non-series process ***(ii) it is produced*** in response to a specific order ***(iii) it is*** installed in a single identified construction work **■** by a manufacturer who is also responsible for the safe incorporation of the product into the construction work ***and (iv) it is*** in compliance with the applicable national rules, and under the supervision of those responsible for the safe execution of the construction works designated under the applicable national rules;

- █
- (c) the product is manufactured in a manner exclusively appropriate to heritage conservation and in a non-series process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit, *in compliance with the applicable national rules*.
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Article 11

Content of the declaration of performance **and conformity**

1. The declaration of performance *and conformity shall be drawn up using the model set out in Annex II. The declaration of performance and conformity* shall express the performance of products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications or European assessment document.

Where product requirements specified in accordance with Article 5 are applicable, the declaration of performance and conformity shall state that the fulfilment of those requirements has been demonstrated.

2. The declaration of performance *and conformity* shall *include the product's environmental sustainability performance over its life-cycle in the meaning of Article 3(63) in respect of the predetermined environmental characteristics listed in Annex I.2 for those characteristics that are declared. The performance shall include the packaging used or most likely to be used and be calculated using the latest version of the software made freely available on the website of the European Commission.*

One year after the publication of any update of the software, it shall become mandatory for the purposes of this Regulation. The updated version may be voluntarily applied from the date of publication of the update.

2a. *The declaration of performance and conformity shall at least cover a product's performance over its life-cycle in the meaning of Article 3(63) in regard to the following essential characteristics:*

(a) *essential characteristics listed in Annex I.2 point (2a) to (2ac) as from the date of application of this Regulation;*

(b) *essential characteristics listed in Annex I.2 point (2b) to (2j) as from [4 years after date of application of this Regulation];*

(c) *essential characteristics listed in Annex I.2 points (2k) to (2p) as from [6 years after date of application of this Regulation].*

The declaration of performance and conformity shall also cover those essential characteristics rendered mandatory by virtue of delegated acts adopted in accordance with Article 4(5).

- 2b. *No other marking than the CE marking may be placed on the declaration of performance and conformity.*
3. The Commission is empowered to amend the model set out in Annex II by delegated acts adopted in accordance with Article 87 to *adapt it to technical progress as regards new information needs, fulfilment of product passport requirements pursuant to Articles 81b and 81c, and to ensure interoperability and correct integration with the construction product digital passport system according to Article 81a.*
4. The information referred to in Article 31 or, as the case may be, in Article 33 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁹ shall be provided together with the declaration of performance *and conformity.*

⁹ 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, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1.).

Article 15

Supply of the declaration of performance and conformity

1. The manufacturer shall supply by electronic means a copy of the declaration of performance and conformity of each product which is made available on the market *unless it is included in a product passport fulfilling the conditions pursuant to Article 81b and available through the construction digital product passport system established according to Article 81a.*

However, where a batch of the same product is supplied to a single user, it may be accompanied by a single copy of the *declaration*.

2. *A manufacturer may make available the declaration of performance and conformity referred to in Article 9(1) on a website by virtue of derogation from paragraph 1 provided that they comply with all of the following conditions:*
 - (a) *it shall ensure that the content of a declaration of performance and conformity is made available in an unamendable electronic format on the website;*
 - (b) *it shall provide the declaration of performance and conformity in a human and machine-readable format and offer the possibility to download a copy in a commonly readable format;*

- (c) *it shall ensure that the website where the declaration of performance and conformity has been made available is monitored and maintained so that the website and the declarations of performance and conformity are continuously available to recipients of the construction product;*
- (d) *it shall ensure that the declaration of performance and conformity may be accessed by the recipients of construction products free of charge;*
- (e) *it shall provide instructions to the recipients of construction products on how to access the website and the declarations of performance and conformity drawn up for such products available on that website;*
- (f) *it shall provide a link between the product and the declaration of performance and conformity related to it through the unique identification code of the product type. Manufacturers may use a data carrier, including permalink, for that purpose provided that point (a) is fulfilled.*

2a. As part of the standardisation request referred to in Article 4(2) the Commission may also request that the European standardisation organisation sets out guidelines to ensure interoperability of the human and machine readable formats according to paragraph 2 point (b).

4. The manufacturer shall supply *or make available in a product passport according to paragraph 1 or make available on websites according to paragraph 2* the declaration of *performance and* conformity in the language or the languages required by the Member States where the manufacturer intends to make the product available. Another economic operator who makes a product available in another Member State shall make available a translation of the declaration of performance and conformity in the languages required by that Member State together with the original .

Article 16

General principles and use of CE marking

1. The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.
2. The CE marking shall *only* be affixed to those products for which the manufacturer has drawn up a declaration of performance *and* conformity in accordance with Articles 9 and 11 . The CE marking shall be affixed to key parts.

4. By affixing or having affixed the CE marking, the economic operator indicates that it **has assumed** responsibility for the conformity of the product with the declared performance and applicable product requirements laid down in accordance with this Regulation. By affixing the CE marking, the economic operator becomes liable for the declared performance and the fulfilment of these requirements in accordance with national law on contractual and extra-contractual liability.
5. The CE marking shall be the only marking which attests the performance of the product with regard to assessed essential characteristics **in accordance with this Regulation as well as** the conformity of the product with this Regulation.

Article 17

Rules and conditions for the affixing of CE marking

1. The CE marking shall be affixed visibly, legibly and indelibly to the product. Where this is not possible or not warranted on account of the nature of the product, **the CE marking** shall be affixed to **a label attached to the product or to** the packaging or, **where that is also not possible**, to the accompanying documents.
2. The CE marking shall be followed by:

- (a) the two last digits of the year in which *the CE-marking* was first affixed; *or, in case of used products, the two last digits of the year when the product was de-installed followed by the last two digits of the year in which the CE marking was affixed on the used product;*
- (b) the name and the registered address ■, or the identifying mark allowing *easy and unambiguous* identification of the name and address, of the manufacturer ■ ;
- (c) the name and the registered address of the authorised representative, or the identifying mark allowing identification of the name and address of the authorised representative easily and without any ambiguity where the manufacturer does not have a place of business in the Union or where the manufacturer chooses to have an authorised representative;
- (d) the unique identification code of the product-type ■ ;

- █
- (f) the reference *code* of the declaration of performance █ and *conformity*;
 - (g) the identification number of the notified body *or bodies verifying the product type and assessing the factory production control*, if applicable; and
 - (h) *a data carrier connected to the product passport according to Article 81b when a product passport is made available through the construction digital product passport system established according to Article 81a.*

The *information* listed in points d) to f) may be replaced by a *data carrier or* permalink *connected* to the █ declaration of performance and *conformity pursuant to Article 17(2)(f) if the declaration of performance and conformity is available on a website. The information listed in points d) to f) may be removed if a data carrier according to point (h) is provided.*

3. The CE marking shall be affixed before the product is placed on the market █. It may be subsequently followed by a pictogram or any other mark indicating a special risk or use.

Article 18

Other markings **and performance claims**

Markings other than the CE marking, including private ones, may be affixed on a product only if they do not *indicate that the product's performance in relation to essential characteristics covered by applicable* harmonised technical specifications *had to be assessed in a different way than what has been laid down by this Regulation*.
Officially recognised type I-ecolabels (ISO 14024) may be affixed on a product if they fulfil the requirements in subparagraph 1.

Markings allowed in accordance with paragraph 1 and other markings set out by Union legislation may be affixed on a product *provided that they do not impair the visibility, legibility and meaning of CE marking* ■ .

3. *Where a product is covered by a harmonised technical specification, a claim made by an economic operator about product performance, which concerns an essential characteristic covered by the specification, shall be in compliance with the assessment method for that particular essential characteristic as laid down in the harmonised technical specification.*
4. *Where a product is covered by harmonised technical specifications, claims about its performance in relation to the essential characteristics laid down in those harmonised technical specification may be provided elsewhere than in the declaration of performance and conformity only if in parallel provided in the declaration of performance and conformity. This obligation shall not apply to situations where, in accordance with Article 10, no declaration of performance and conformity has been drawn up.*

CHAPTER III

OBLIGATIONS AND RIGHTS OF ECONOMIC OPERATORS

Article 19

Obligations of all economic operators

- 1. *The obligations of economic operators under this Chapter are only applicable in relation to products covered by a harmonised technical specification or to products CE-marked based on a European technical assessment.*

1. An economic operator shall take all necessary measures to ensure continued compliance with this Regulation. Where non-compliance of the economic operator or of a product has been stated and corrective action has been requested by a market surveillance authority in accordance with Article 70(1), the economic operator shall submit progress reports to that authority until that authority decides that the corrective action can be closed.

3. An economic operator shall, on request of *a competent national* authority, *identify* any economic operator or other actor to that authority:

- (a) who has supplied it with a product, including components or *spare* parts of products, *and the quantity of that supply, or who has supplied it with a service covered by this Regulation;*
- (b) to *whom* it has supplied a product, including components or *spare* parts of products, *and the quantity of that supply, or to whom it has supplied a service covered by this Regulation;*

When identifying the operators referred to in first subparagraph, an economic operator shall inform the authority *of, at least, the following:*

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(ii) contact details, *including addresses and email addresses* of these operators;

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(iv) tax and company registration numbers of these operators;

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4. An economic operator shall *keep all documents and all* information referred to in this Chapter *at the disposal of competent national* authorities for a period of ten years after *the economic operator supplied or was supplied* with the product *or service* in question, unless *the documents or the information have been made available through the product passport according to* Article 81b.

An economic operator shall present the documentation and information within 10 days of receipt of a request by the respective authority.

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An economic operator *may* register into its respective national system established in accordance with Article 77(5).

An economic operator shall make available to consumers and users communication channels, including telephone numbers, e-mail or dedicated sections of its website **■**, allowing it to communicate any accident, other incident or safety issue it has experienced with the product.

6. **■** Where *an* economic operator considers that non-conforming products present a risk to human safety or to the environment, it shall immediately inform the competent *national* authorities of the Member States in which it made the product available thereof, giving details, in particular, of the non-compliance and of any corrective measures taken. *An economic operator may inform competent national authorities of any other likely infringement of this Regulation it becomes aware of the non-compliance and of any corrective measures taken.*

6a. *An economic operator shall be liable for infringement of this Article and of the articles in this Chapter related to its activities in accordance with national law on contractual and extra-contractual liability.*

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Article 20a

Rights of manufacturers

1. *A manufacturer shall have the right to request from its supplier and service provider the delivery of the necessary information in relation to the product to fulfil its obligations under this Regulation.*
2. *If the manufacturer is subject to third party tasks by a notified body, the manufacturer shall have the right to request from its supplier or service provider to permit its notified body to have access to the documentation and to the premises of the provider to the extent that it is needed for the activities of the notified body.*
3. *The rights defined in paragraph 1 also apply to a manufacturer placing a used or remanufactured product in the market in relation to the supplier of the used product, including de-installer where applicable. Information may include but it is not limited to information about the previous use of the product and the process to deinstall it.*
4. *A manufacturer shall have the right to request from its supplier or service provider the data and calculations required according to Article 11(2) in relation to the supplies or services provided including the necessary validation reports issued by a notified body.*

Article 21
Obligations of manufacturers

1. *When placing a product on the market, the manufacturer shall determine the product type, respecting the boundaries set up therefore by the definition provided in Article 3 point (31). The manufacturer shall ensure that the product's performance is assessed in relation to both mandatory essential characteristics and those essential characteristics intended to be declared. If the product is covered by product requirements adopted in accordance with Article 5(1), the manufacturer shall ensure that the product has also been designed and constructed in accordance with those requirements.*
A natural or legal person that manufactures a product using 3D printing shall satisfy the obligations incumbent on manufacturers when placing it on the market. The obligations shall include but are not limited to the use of appropriate 3D datasets, the use of materials compliant with the applicable procedures under this regulation and to verify the compatibility of 3D datasets, printing material and the printing technology used.
- 1a. *Where a product's compliance with applicable requirements and its performance in relation to essential characteristics referred to in paragraph 1 have been demonstrated in accordance with the applicable assessment and verification system or systems set out in Annex V, the manufacturer shall draw up a declaration of performance and conformity in accordance with Articles 9 to 11, affix the CE marking in accordance with Articles 16 and 17 and, when applicable, ensure availability of spare parts not commonly available in the market according to Article 21(7a) and affix the labelling pursuant to Article 21(7b).*

3. The manufacturer shall, as the basis for the *declaration of performance and conformity* draw up a technical documentation describing:
- (a) *the declared use which shall fall within the scope of the applicable intended use;*
 - (b) all the *relevant* elements necessary to demonstrate performance and conformity;
 - (c) *information on procedures in place according to paragraph 4;*
 - (d) *information on the application of the system or systems applicable in Annex V;*
 - (e) *information on the application of simplified procedures applied in accordance with Article 64 to 66;*
 - (f) *calculation of environmental essential characteristics as referred to in Article 11(2).*

4. The manufacturer shall ensure that procedures are in place *for products to fulfil their* declared performance and *remain in* conformity *with this Regulation. Product design, including 3D datasets, production process and material used shall be appropriate. In case the product is manufactured in a series production, the manufacturer shall ensure that procedures are in place to maintain their declared* performance and *remain in* conformity *with this Regulation. Changes in the product design, including 3D datasets, production process and material used shall be appropriate and changes in the applicable harmonised technical specifications* shall be adequately taken into account and, in case the product's performance or conformity is affected, shall trigger a re-assessment in accordance with the relevant assessment procedure.

The manufacturer shall, where deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance and of the conformity of a product, carry out sample testing of products placed or made available on the market, *investigate*, and, if necessary, keep a register of complaints, of non-conforming products and product recalls, and shall keep importers and distributors informed of any such monitoring.

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5. The manufacturer shall ensure that its product *bears* a manufacturer-specific *unique identification code of the product type and, where available*, a batch or serial number *which is easily visible and legible for users*. *Where this is not possible on account of the nature of the product*, the required information shall be provided on the packaging, on an affixed *label or, where that is also not possible*, in a document accompanying the product.

The manufacturer shall in the same way as set out in the first subparagraph label a product as “Only for professional use” if *expertise is needed in order to use it and shall display the label to customers before it is bound by a sales contract, including in case of distance selling*. Products not labelled “Only for professional use” shall be deemed to be also intended for non-professional users and consumers in the meaning of this Regulation and the Regulation (EU) ... [Regulation on General Product Safety].

The manufacturer shall, in a visible manner, display to customers before it is bound by a sales contract, including in case of distance selling, the information which shall be labelled pursuant to this Regulation ■ .

6. When making a product available on the market ■ , the manufacturer shall ensure that the product is accompanied by *general information, instructions for use and safety information as set out* in Annex I.4 in a language determined by the Member State concerned or, in absence of such determination, in a language which can be easily understood by users.

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7. *By the entry into force of the obligation established according to Article 81f(1), the manufacturer shall make available a digital product passport according to Article 81b through the construction digital product passport system pursuant to Article 81a connected to a data carrier according to Article 17(2)(h).*

7a. *In order to ensure availability of spare parts not commonly available in the market, the Commission may supplement this Regulation, by means of delegated acts in accordance with Article 87, to specify for certain product families and categories an obligation applicable to manufacturers to make available on the market specific spare parts not commonly available for the products they place on the market.*

The obligation established by delegated acts according to subparagraph 1 shall apply for a period of 10 years after the last product of the respective type has been placed on the market, unless the delegated act defines a different time.

Manufacturers subject to this obligation shall offer the spare parts with reasonably short delivery time, at a reasonable and non-discriminatory price and inform about this availability.

7b. *In order to ensure transparency for the users and to promote sustainable products, the Commission may supplement this Regulation, by means of delegated acts adopted in accordance with Article 87, to establish specific environmental sustainability labelling requirements for particular product families and categories when the following conditions are fulfilled:*

- (a) the product is typically chosen or purchased by consumers;*
- (b) the product does not have a significantly different overall environmental performance over its life cycle depending on its installation. Labelling shall be based on the performance of the product assessed according to Article 4(1) or Article 4a(1) and shall provide consumer friendly information understandable by non-experts.*

7c. *Delegated acts according to paragraph 7b shall specify:*

- (a) the content of the label;*
- (b) the layout of the label taking account visibility and legibility;*
- (c) the manner in which the label shall be displayed to customers including in case of distance selling;*
- (d) where appropriate, electronic means for generating labels.*

The manufacturer shall affix the label in the way set out according to this paragraph.

8. The manufacturer who *considers or* has reason to believe that a product which it has placed on the market is not in conformity with *its declared performance or in compliance* with this Regulation shall immediately take the necessary corrective measures to bring that product into conformity, or, if appropriate, to withdraw or recall it. If the issue is linked to a supplied component or an externally provided service, the manufacturer shall inform the supplier or service provider and the manufacturer's competent national authority .
9. Where the product presents a risk, *the manufacturer shall without undue delay and at the latest* within 3 working days inform *all* the authorised *representatives*, importers, distributors, fulfilment service providers, and online market places involved in the distribution, as well as the competent national authorities of the Member States in which the manufacturer or – to its knowledge – other economic operators made the product available. The manufacturer shall, to that effect, provide all useful details and, in particular, specify the type of the non-compliance, the frequency of accidents or incidents and the corrective measures taken or recommended. In case of risks caused by products which have already reached a final user or consumer *who cannot be identified or contacted directly*, the manufacturer shall, *through media and other appropriate channels, ensuring the widest possible reach, disseminate information* about appropriate measures to eliminate or, if not possible, to reduce the risks. In case of a “serious risk” in the meaning of Article 3, point (71) the manufacturer shall withdraw and recall the product at their own cost.

Article 23

Obligations of authorised representatives

1. A manufacturer *established in the Union* may appoint, by a written mandate, any natural or legal person established within the Union as a single authorised representative. A manufacturer not established in the Union shall appoint a single authorised representative.

The drawing up of technical documentation shall not form part of the authorised representative's mandate.

3. The authorised representative shall perform the tasks specified in the mandate *received from the manufacturer*. The mandate shall allow the authorised representative to *do* at least the following **■** :

- (a) keep the declaration of performance and the technical documentation at the disposal of *competent national* authorities;

- (b) *further to a reasoned request from a competent national authority, provide that authority* with all the information and documentation necessary to demonstrate the conformity of *a* product with *its declared* performance and compliance with other applicable requirements in this Regulation ■ ;
- (c) terminate the contract *if* the manufacturer *has acted contrary to its obligations under* this Regulation and inform thereof the *manufacturer and the* competent national authorities of the Member States where the product is placed on the market and the *competent national* authority of his own place of business;
- (d) when having reason to believe that a product in question is non-compliant or presents a risk, inform the *manufacturer and the* competent *national* authorities of the Member States where the product is placed on the market and the *competent national* authority of his own place of business thereof; and
- (e) cooperate with the *competent national* authorities, at their request, on any action taken *to eliminate risks posed by and to remedy non-conformities in products covered by the mandate of the authorised representative.*

■

4. The authorised representative shall verify *at documentary level that the product bears the CE marking and the labelling in accordance with Article 21(7b), that the product is accompanied by the declaration of performance and conformity or it is available according to Article 15(1) or 15(2) and that the manufacturer has complied with the requirements set out in Article 21(5) to 21(7).*
5. Where an authorised representative *identifies* a non-compliance mentioned in **■** paragraph 4, the authorised representative shall ask the manufacturer to *act according to Article 21(8) and (9).*

Article 24

Obligations of importers

1. The importer shall place on the Union market only products which are compliant with this Regulation. **■**
- 1a. Before placing a product on the market, the importer shall ensure that the product's compliance with applicable requirements and its performance in relation to relevant essential characteristics have been demonstrated by the manufacturer in accordance with Article 21(1) and (1a). It shall ensure that the manufacturer has drawn up the technical documentation referred to in Article 21(3), that the product bears the CE marking and the labelling in accordance with Article 21(7b), that the product is accompanied by the declaration of performance and conformity or it is available according to Article 15(1) or 15(2) and that the manufacturer has complied with the requirements set out in Article 21(5) and 21(7).*

2. The importer shall verify that the use of the product has **declared** by the manufacturer and shall ensure that the product is accompanied by **general** information, **instructions for use and safety information in accordance with Article 21(6)** in a language determined by the Member State concerned which can be easily understood by users. The importer shall, in a visible manner, display to customers before they are bound by a sales contract, including in case of distance selling, the information which shall be labelled pursuant to this Regulation or harmonised technical specifications.
 3. The importer shall ensure that, while a product is under its responsibility, storage or transport conditions do not jeopardise its conformity with the declaration of performance and **conformity or its** compliance with other applicable requirements in this Regulation.
-
5. Where an importer considers or has reason to believe that the product is not in conformity with the declaration of performance **and conformity** or not in compliance with other applicable requirements in this Regulation, the importer shall not place the product on the market until it conforms to the accompanying declaration of performance and **conformity and** it complies with the other applicable requirements in this Regulation or until the declaration of performance **and conformity** is corrected. Furthermore, where the product presents a risk, the importer shall inform the manufacturer and the responsible **competent national** ■ authority thereof.

6. The importer shall indicate its name, registered trade name or registered trade mark, its place of business, its contact address and, where available, electronic means of communication on the product or, where that is not possible, on its packaging or in a document accompanying the product.
7. The importer shall investigate complaints, and, if necessary, keep a register of complaints, of non-conforming products and of product withdrawals or recalls, and shall keep manufacturers and distributors informed of any such monitoring.
- 7a. *Importers who consider or have reason to believe that a product, which they have placed on the market, is not in conformity with its declared performance or not in compliance with other applicable requirements in this Regulation shall immediately take the necessary corrective measures to bring that product into conformity, or, if appropriate, to withdraw or recall it. Furthermore, where the product poses a risk, importers shall immediately inform the competent national authorities of the Member States in which they made the product available on the market to that effect, giving details, in particular, of the non-conformity and of any corrective measures taken.*

8. The importer selling to final users shall also fulfil the obligations incumbent on distributors.

Article 25

Obligations of distributors

1. When making a product available on the market, the distributor shall act with due care in relation to the obligations of this Regulation. ■
2. **Before** making a product available on the market, the distributor shall **verify that**:
 - (a) *the product bears the CE marking and the labelling in accordance with Article 21(7b) where required;*
 - (a1) *the product is accompanied by the declaration of performance and conformity or it is available according to Article 15(2), where required.*
 - (b) *the product is accompanied by the general information, instructions for use and safety information in accordance with Article 21(6) in a language which can be easily understood by end-users in the Member State in which the product is to be made available on the market;*
 - (c) *the manufacturer and the importer have complied with the requirements set out in Article 21(5), 21(7) and Article 24(6) respectively.*

2a. *The distributor shall, in a visible manner, display to customers before they are bound by a sales contract, including in case of distance selling, the information which shall be labelled pursuant to this Regulation.*

■

4. *Where an distributor considers or has reason to believe that the product is not in conformity with its declared performance or not in compliance with other applicable requirements in this Regulation, the distributor shall not make the product available on the market until it conforms to its accompanying declaration of performance and conformity and it complies with the other applicable requirements in this Regulation. Furthermore, where the product presents a risk, the distributor shall inform the manufacturer and the responsible competent national authorities thereof.*

5. *The distributor shall ensure that, while a product is under its responsibility, storage or transport conditions do not jeopardise the product's conformity with its declared performance or its compliance with other applicable requirements in this Regulation.*

6. *The distributor who considers or has reason to believe that a product, which it has made available on the market, is not in conformity with its declared performance or not in compliance with other applicable requirements in this Regulation shall make sure that the necessary corrective measures to bring that product into conformity, to withdraw or to recall it, if appropriate, are taken. Furthermore, where the product poses a risk, the distributor shall immediately inform the competent national authorities of the Member States in which it has made the product available on the market to that effect, giving details, in particular, of the non-conformity and of any corrective measures taken.*

Article 26

Cases in which obligations of manufacturers apply to importers and distributors

1. An importer or distributor shall be considered a manufacturer for the purposes of this Regulation and shall be subject to the obligations of a manufacturer pursuant to Article 21 █ , where:
- █
- (b) it places a product on the market █ under its name or trademark;
 - (c) it modifies a product *intentionally or the product is unintentionally modified* in such a way that compliance with the declaration of performance and █ conformity or with the requirements set out in and in accordance with this Regulation may be affected █ ;
- █

- (e) it makes a product available on the market with **a declared** use that is different from the **declared** use attributed by the manufacturer in the performance and conformity assessment procedure; or
 - (f) it claims for its characteristics deviating from the characteristics **declared** by the manufacturer;
- (fb) it opts to assume the role of the manufacturer.**

1a. Paragraph 1 shall also apply to an economic operator who places on the market:

- (a) a used product covered by a harmonised technical specification with provisions for used products;**
- (b) a used product not covered by a harmonised technical specification with provision for used products and not placed on the Union market before;**
- (c) a remanufactured product as defined in Article 3(28).**

3. Paragraph 1 shall not apply where the economic operator only:

- (a) adds translations of the information supplied by the manufacturer;**

(b) replaces the outer packaging of a product already placed on the market, including when changing the pack size, if the repackaging is carried out in such a way that the original condition of the product cannot be affected by it and that the information to be provided in accordance with this Regulation is still correctly provided.

4. An economic operator providing the activities listed in paragraph 3 shall inform thereof the manufacturer or its authorised representative, regardless of whether they own the products or whether they provide services. It shall carry out the repackaging in such a way that the original condition of the product *or its compliance with this Regulation is not* affected by the repackaging and that the information to be provided in accordance with this Regulation is still correctly provided. The economic operator shall act with due care in relation to the obligations of this Regulation. ■

Article 27

Obligation of fulfilment service providers ■

1. When contributing to the making available on the market ■ of a product, *a* fulfilment service provider ■ shall act with due care in relation to the obligations of this Regulation. ■

2. A fulfilment service provider *shall make sure that the labelling and documents provided by the manufacturer or importer are available or accompanying the product, in particular:*

(a) *the CE marking and the labelling referred to in Article 21(7b);*

(b) *the declaration of performance and conformity;*

(c) *the general information and the instructions for use and safety information referred to in Article 21(6).*

■

3. *A fulfilment service provider shall ensure that the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the products' conformity with its declared performance or its compliance with other applicable requirements in this Regulation. The manufacturer or importer of construction products shall provide the fulfilment service providers with the detailed information necessary for ensuring the safe storage, packaging, addressing or dispatch and further functioning of the product.*

4. *A fulfilment service provider shall support product withdrawals or recalls, regardless of whether initiated by market surveillance authorities, the manufacturer, the authorised representative or the importer.*
5. *Where a fulfilment service provider considers or has reason to believe that the product is not in conformity with the declaration of performance and conformity or not in compliance with other applicable requirements in this Regulation, the fulfilment service provider shall not support the making available of the product on the market until it conforms to the accompanying declaration of performance and conformity and it complies with the other applicable requirements in this Regulation or until the declaration of performance and conformity is corrected. Furthermore, where the product presents a risk, the fulfilment service provider shall inform the manufacturer and the geographically responsible competent national authority thereof.*

Article 27a

Obligation of online marketplaces

3. An online marketplace shall:
 - (a) *for the purpose of the requirements of Article 31(1) of Regulation (EU) 2022/2065 of the European Parliament and of the Council²¹, design and organise its online interface in such a way that it allows economic operators to fulfil their obligations under Article 32(1a) of this Regulation;*

²¹ *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).*

- (b) establish a single contact point for direct communication with Member States' **competent national** authorities in relation to **compliance with this Regulation**. This contact point may be the same as the one referred to in [Article 20(1)] of Regulation (EU) 2023/988 or Article 11(1) of Regulation (EU) 2022/2065;
- (c) give an appropriate answer to notices related to notification of accidents and other incidents with products received in accordance with [Article 14] of Regulation (EU) [.../...] on a Single Market for Digital Services (Digital Service Act) and amending Directive 2000/31/EC;
- (d) cooperate to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures;
- (e) inform **competent national** authorities of any action taken **with regard to non-compliance or suspected non-compliance concerning products covered by this Regulation**;
- (f) establish a regular and structured exchange of information on **content that has** been removed **by online marketplaces** on the **request of competent national authorities**;

■

4. As far as powers conferred by Member States in accordance to Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by this Regulation, to order an online marketplace to remove specific illegal content referring to a non-compliant product from its online interface, to disable access to it or to display an explicit warning to end users when they access it. Such orders shall comply with [Article 9] of Regulation (EU) .../... [the Digital Services Act].
5. An online marketplace shall take the necessary measures to receive and process in accordance with Article 9 of Regulation (EU) .../...[the Digital Services Act] the orders referred to in paragraph 4.
6. *This article* shall also apply to manufacturers, importers, *or distributors* offering products online without involvement of an online marketplace .
8. A fulfilment service provider shall ensure that the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the products' *conformity with its declared performance or its* compliance with *other applicable* requirements in this Regulation. *The manufacturer or importer of construction products shall provide the fulfilment service providers with the detailed information necessary for ensuring the safe storage, packaging, addressing or dispatch and further functioning of the product.*

Article 32

Online and other distance sales

1. Products offered for sale online or through other means of distance sales shall be deemed to be made available on the market if the offer is targeted at clients in the Union. An offer for sale shall be considered to be targeted at clients in the Union if the relevant economic operator directs, by any means, its activities to a Member State. Inter alia, an offer shall be considered to be targeted at clients in the Union where:

- (b) the economic operator uses the currency of *a Member State*;
- (c) the economic operator has the used internet domain name registered in one of the Member States or uses an internet domain that refers to the Union or one of the Member States; or
- (d) the geographical areas to which dispatch is available includes a Member State.

The previous conditions shall not apply if the economic operator explicitly excludes the Union market by effective means.

- 1a. Where an economic operator makes a product available on the market online or through other means of distance sales, the offer of this product shall clearly and visibly indicate the CE-marking and the label pursuant to Article 21(7b), where required, the information following it according to Article 17(2) or a data carrier connected to a product passport according to Article 21(7).*
- 1b. Any natural or legal person providing an intermediation service for the placing on the market of products shall fulfil the obligations pursuant to paragraph 1a in relation to the services provided.*

Article 33

Implementing acts on economic operators' obligations and rights

Where this is necessary to ensure a harmonised application of this Regulation and only to the extent necessary to prevent diverging practices *fragmenting the internal market* for economic operators, the Commission may adopt implementing acts providing details on how to execute the obligations and rights of economic operators contained in this Chapter.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).

CHAPTER IV
EUROPEAN ASSESSMENT DOCUMENTS

Article 35

European assessment documents

1. *The methods and criteria for assessing the performance of a product, including used products, in relation to its essential characteristics can be laid down in European assessment documents if that product is not covered by:*
- (a) *a harmonised standard to which an implementing act adopted in accordance with Article 4(8) had recourse;*
 - (b) *an implementing act adopted in accordance with Article 4a(1); or*
 - (c) *a harmonised standard to be delivered in a period shorter than one year, according to a standardisation request according to Article 4(2).*

2. A product shall not be considered as covered by **■** harmonised *standards or implementing acts referred to in paragraph 1* when:
- (i) the *declared* use of the product *falls outside of the scope of* the intended use *set out* in the *harmonised standard or implementing act*;
 - (ii) the materials used are not identical to the materials intended to be used under the *harmonised standard or implementing act*; or
 - (iii) the assessment method of the *harmonised standard or implementing act* is not appropriate for that product.
3. *Following a request for a European technical assessment by a manufacturer, a group of manufacturers or a manufacturers' association or on the initiative of the Commission, the organisation of TABs may draw up and adopt a European assessment document in agreement with the Commission.*

The basic requirements for construction works, set out in Annex I.1, and the list of predetermined environmental essential characteristics, set out in Annex I.2, shall constitute the basis for the preparation of European assessment documents. The development and adoption of a European assessment document shall follow the principles and procedure set out in Article 36.

4. *European assessment documents shall not be drawn up in relation to an essential characteristic or assessment method of a product when there is another European assessment document covering the same essential characteristic or assessment method in relation to that specific product, the reference of which has either already been published in the Official Journal of the European Union or has been submitted to the Commission for assessment in accordance with Article 38(1).*
5. The organisation of TABs and the Commission may *merge* or reject requests for the development of a European assessment document *in accordance with the provisions of Annex III, point 5.*
6. *Upon entry into application of a harmonised technical specification adopted in accordance with Article 4(8) or Article 4a(1), which covers the same product and the same intended use as a European assessment document, the European assessment document shall no longer be used for the purposes of this Regulation. In this case the Commission shall withdraw the reference from the Official Journal of the European Union.*
7. *European assessment documents constitute the basis for European technical assessments as set out in Article 42.*

█

Article 36

Principles **and procedure** for the development and adoption of European assessment documents

1. ***When*** developing and adopting European assessment documents, ***individual TABs and the organisation of TABs*** shall ***follow the procedure set out in Annex III.***

2. ***When developing and adopting European assessment documents, individual TABs and the organisation of TABs shall:***
 - (a) be transparent to Member States, the manufacturer concerned and to other manufacturers or stakeholders that request to be informed;

 - (b) disclose ***confidential information to the Commission only when necessary to assess the compliance of a European assessment document with regulatory provisions*** and protect commercial secrecy and confidentiality;

 - (c) specify appropriate mandatory time limits in order to avoid unjustified delay;

 - (d) allow ■ for adequate participation by the Member States and the Commission;

 - (e) be cost-effective for the manufacturer; and

 - (f) ensure sufficient collegiality and coordination amongst TABs designated for the product in question.

The balancing of *requirements* laid down in points (a) and (b) shall at least allow for the disclosure of the name of the product at the stage of the approval and the communication of the work programme, as set out in Annex III, point 3 ■ , and *of* the detailed contents of the draft European assessment document set out in Annex III, point 7.

3. The TABs shall, together with the organisation of TABs, bear the full costs of the development and adoption of European assessment documents, unless *such development is initiated by* the Commission.
4. TABs and the organisation of TABs shall avoid any proliferation of European assessment documents where there is no technical justification for differentiating between products and *shall* therefore in particular give preference to the extension of a scope of an existing European assessment document.

■

5. *The Commission is empowered to, after consultations with the organisation of TABs, amend Annex III by delegated act adopted in accordance with Article 87 to establish supplementary procedural rules for the development and adoption of a European assessment document, where this is necessary to ensure the good functioning of the European assessment documents system.*

Article 37

Obligations of the TAB receiving a request for a European technical assessment

1. **When** receiving a request for a European technical assessment from a manufacturer, a group of manufacturers or **a** manufacturers' association, **the TAB** shall inform the applicant ■ as follows:
 - (a) where the product is ■ covered by a harmonised technical specification **or a European assessment document cannot be drawn up in accordance with Article 35, the TAB shall inform the applicant that**, a European technical assessment cannot be issued;
 - (b) where the product is fully covered by a European assessment document the reference of which has been **published** in the Official Journal, the TAB shall inform the **applicant that the referenced European assessment** document will be used as the basis for the European technical assessment to be issued;
 - (c) where the product is **eligible for a** European assessment document **pursuant to Article 35 and** no such ■ document is ■ in the procedure of **being developed**, the TAB shall **inform the applicant that** the procedures set out in Annex III **will be initiated**.

In cases referred to in point (c) but where a harmonised standard covering the same product is expected to be delivered in a period longer than one year as established in a standardisation request according to Article 4(2), the TAB shall inform the applicant about the possibility of a European assessment document to become invalid pursuant to Article 35(3b).

2. In the cases referred to in paragraph 1, points (b) and (c), the TAB shall inform the organisation of TABs and the Commission of the content of the request and of the reference to a relevant Commission act determining the assessment and verification system *in accordance with Article 6(2)*, which the TAB intends to apply for that product, or of the lack of such a Commission decision.
3. If the Commission considers that an appropriate Commission act determining the assessment and verification system does not exist for the product, it may adopt such act in accordance with Article 6(1).

Article 38

Publication of references

1. The Commission shall, *in accordance with Annex III, point 8a*, assess the *compliance* of European assessment documents with harmonised technical specifications, with this Regulation and with other Union law. *Where a European assessment document is in conformity with applicable legal requirements*, the Commission shall *without delay* publish *a reference of that document* in the *Official Journal of the European Union*. *Where a reference to a European assessment documents cannot be published in the Official Journal*, the Commission *may* publish *such a reference with restrictions*.
2. *Following publication in accordance with paragraph 1, a European assessment document may in accordance with Article 42 be used as a basis for a European technical assessment for a period of 10 years, unless the reference has been withdrawn from the Official Journal of the European Union or become invalid pursuant to Article 35(3a). The organisation of TABs may in the last year prior to the expiration of a European assessment document decide to submit it for renewed validity. The Commission shall in that case reassess it in accordance with paragraph 1.*



Article 40

Content of the European assessment document

1. A European assessment document shall contain the following elements:
 - (a) a description of the product *or product category* covered *and its intended use*; and
 - (b) the list of essential characteristics, relevant for the intended use of the product *or product category as* agreed between the manufacturer and the organisation of TABs *as well as predetermined environmental characteristics as set out in Annex I.2*, and the methods and criteria for assessing the performance of the product in relation to *the essential characteristics listed*.

2. *The European assessment document shall set out:*
 - (a) *the technical details necessary for the implementation of the assessment and verification systems that are* to be applied *in accordance with the delegated acts adopted under Article 6(2)*;
 - (b) *the guidelines, including technical details necessary for drawing up instructions and safety information as referred to in Annex I.4*;

(c) *the guidelines to ensure interoperability of the human and machine readable formats for the declaration of performance and conformity according to paragraph 15(2) point (b).*

3. Where the performance of **■** the product can appropriately be assessed *according to essential characteristics, including their assessment* methods and criteria, *already* established in harmonised technical specifications or *other* European assessment documents, those existing *essential characteristics and their* methods and criteria shall be incorporated as parts of the European assessment document, unless there *is a technical necessity* to deviate from this rule.

Where applicable, these principles shall also apply for thresholds levels and classes of performance adopted in accordance with Article 4(5).

Article 41

Formal objections against European assessment documents

1. A Member State shall inform the Commission of all of the following:
- (a) where it considers that a European assessment document does not entirely *conform with* applicable legal requirements or *satisfy* the demands to be met in relation to *the essential characteristics to be covered in view of* the basic requirements for construction works *set out in Annex I.1 and the predetermined environmental essential characteristics* set out in Annex I.2;

- (b) where it considers that a European assessment document raises a major concern for human health and safety, the protection of the environment or consumer protection;
- (c) where it considers that a European assessment document does not fulfil the requirements set out in Article **35(1)**.

The Member State concerned shall substantiate its viewpoints. The Commission shall consult the other Member States on the issues raised by the Member State concerned.

2. In the light of the views of all the Member States, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the European assessment documents concerned in *or from* the *Official Journal of the European Union*.
3. The Commission shall inform the **Member States and the** organisation of TABs of its decision referred to in paragraph 2 and, where necessary, request the revision of the European assessment document concerned.

Article 42

European technical assessment

1. A European technical assessment shall be issued by a TAB, at the request of a manufacturer on the basis of a European assessment document **■** the reference of which has been *published* in the *Official Journal of the European Union* in accordance with Article 38.

Provided that there is a European assessment document, a European technical assessment may be issued even in the case where a standardisation request has been issued. Such issuing shall be possible until the *European assessment document becomes invalid pursuant to Article 35(3a)*.

2. *When a request for a European technical assessment is made, the procedure laid down in Annex III shall apply.*
3. The European technical assessment shall include the performance to be declared, by levels or classes, or in a description, of those essential characteristics agreed by the manufacturer and the TAB receiving the request for the European technical assessment for the declared **■** use, and technical details necessary for the implementation of the assessment and verification system.

The European technical assessment shall also include the assessment of the performance for the predetermined environmental essential characteristics according to Article 11(2a).

4. The Commission may adopt implementing acts to establish the format of the European technical assessment.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).

5. European technical assessments issued on the basis of a European assessment document remain valid for five years *either* after the expiry date of the European assessment document in accordance with Article 38(2) *or after the reference to the European assessment document is withdrawn from the Official Journal of the European Union in the course of its validity.*

Products may no longer be placed on the market on the basis of a European technical assessment when the relevant European assessment document becomes invalid pursuant to Article 35(3a).

6. Products covered by a European assessment document for which a European technical assessment has been issued may be CE marked and thereby obtain the same status as products CE marked on the basis of harmonised technical specifications, where the manufacturer satisfies the obligations set out in this Regulation. Where these obligations refer to harmonised technical specifications, the manufacturer shall refer to the European assessment document instead or, where the harmonised technical specifications are also relevant, in addition.

CHAPTER V TECHNICAL ASSESSMENT BODIES

Article 43

Designating authorities

1. Member States wishing to designate technical assessment bodies (*TABs*) shall designate a single *designating* authority *that shall be responsible for setting up and carrying out the necessary procedures for the assessment and designation of TABs* . Designating authorities shall satisfy the requirements for notifying authorities set out in Articles 48(1) and Article 49. *Member States may designate the notifying authority, as referred to in Article 48, as designating authority*. The designating authority shall not be eligible for designation in accordance with Article 44(1).
2. Unless otherwise specified in this Chapter, the provisions applicable to notifying authorities and to notification procedures apply also to designating authorities and to the designation procedures. ■

Article 44

Designation, monitoring and evaluation of TABs

1. Member States may, *through their designating authorities, designate TABs* within their territories for one or several product *families* listed in Annex IV. *Member States may also designate TABs within their territories as competent for emerging or innovative products that do not fall into already existing product families listed in Annex IV.*

Member States shall communicate the name of the **TAB** , its address and the product *family or families it is competent for* to the Commission.

2. The Commission shall *assign an identification number to each TAB.*

The Commission shall make publicly available the list of TABs designated under this Regulation by electronic means and indicate *their identifications numbers*, the product *families* for which they are designated and any limitations in the most precise possible way.

The Commission shall *ensure that this list is kept up-to-date.*

3. The designating authority ■ shall monitor the activities and competence of the TABs designated in their respective Member State, and where necessary their subsidiaries and subcontractors, and evaluate them in relation to the respective requirements set out in this Chapter. The designating authority shall *impose corrective measures on* TABs wherever there is an infringement of *this Regulation.*

Member States shall inform the Commission of their national procedures for the designation of TABs, of the monitoring of their activity and competence, and of any changes to that information.

4. TABs shall, without delay, and at the latest within 15 days, inform the *the designating* authority of any changes which may affect their compliance with the requirements set out in this chapter or their ability to satisfy their obligations under this Regulation.

■

6. TABs shall, upon request by the relevant designating authority, supply all relevant information and documents, required to enable the authority, the Commission and the Member States to verify *their* compliance *with requirements under this Regulation*.
7. Where a TAB no longer complies with the requirements of this Regulation, the *designating authority shall restrict, suspend or* withdraw the designation of that TAB for the relevant product *family as appropriate, depending on the seriousness of the failure to meet those requirements. Where a TAB has repeatedly not complied with corrective measures imposed in accordance with paragraph 3, the designating authority may restrict, suspend or withdraw the designation of that TAB. The designating authority shall* inform the Commission and the other Member States *of any restriction, suspension or withdrawal of a designation*. Articles 58(2) and 59 *shall* apply.

Article 45

Requirements for TABs

1. A TAB shall be competent and equipped to carry out the assessment in *relation to* the product *families* for which it has been designated. The decision making staff and at least half of the technical competent staff *shall be employed by* the TAB *under the national law of* the designating Member State.
2. The TAB shall satisfy the requirements set out in Annex *IVa* within the scope of its designation. Article *50(2)* to (5), Article 50(6) points (a) and (b), Article 50(7), (8) and (10) and Article 51 shall apply.
3. A TAB shall have made publicly available its organigram and the names of the members of its internal decision-making bodies.
4. A TAB *shall participate in the activities of the organisation of TABs or ensure that their assessment personnel is informed about those activities.*

Article 46

Coordination of TABs

1. The TABs shall establish an organisation for technical assessment (“organisation of TABs”) under this Regulation.

2. The organisation of TABs shall at least carry out the following tasks:
- (a) *supply the Commission with relevant technical content relating to European assessment documents when the development of harmonised technical specifications based on the same product families is set to take place according to the work plan referred to in Article 3a(2). This information shall be based on close collaboration with the relevant standardisation bodies;*
 - (b) organise the coordination of the TABs and, if necessary, ensure cooperation and consultation with other stakeholders;
 - (c) ensure that examples of best practice are shared between TABs to promote greater efficiency and provide a better service to industry;
 - (d) develop and adopt European assessment documents;
 - (e) coordinate the application of the procedures set out in Article 65(2) and in Article **66(2)**, as well as provide the support needed to that end;
 - (f) inform the Commission of any question related to the preparation of European assessment documents and of any aspects related to the interpretation of the procedures set out in Article 65(2) and in Article **66(2)** and suggest improvements to the Commission based on experience gained;

- (g) communicate any observations concerning a TAB not satisfying its tasks in accordance with the procedures set out in Article 65(2) and in Article 66(2) to the Commission and the Member State which designated the TAB;
- (h) report annually to the Commission on **■**
 - (i) *the fulfilment of the tasks referred to above,*
 - (ii) *the allocation of European assessment document development tasks to the TABs,*
 - (iii) *the even geographic distribution of tasks between TABs,*
 - (iv) *the European technical assessments issued for each European assessment document including the geographical distribution of TABs involved and of the manufacturers receiving the documents, and*
 - (v) *the performance and the independence of TABs; and*
- (i) ensure that adopted European assessment documents and references to European technical assessments are kept publicly available **■ . ■**

The organisation of TABs shall asset up a secretariat in order to carry out these tasks.

3. Member States shall ensure that the TABs contribute *adequately* with financial and human resources to the organisation of TABs. *Organisation of TABs shall establish* the contribution of each TAB *which shall be proportionate taking into account the* annual budget *or turnover of each TAB related to its activities as TAB*.
4. The weight in the decision making process of the organisation of TABs shall not depend on the TABs' financial contribution, the number of European assessment documents developed or the number of European technical assessments issued by them.
5. The Commission shall be invited to participate in all meetings of the organisation of TABs.
6. *Union financing may be granted to the organisation of TABs for the implementation of the tasks referred to in paragraph 2*. The Commission may make the financing of the organisation of TABs, regardless of via grants or public tenders, subject to the fulfilment of certain organisational and performance requirements *set out in these tasks*.

CHAPTER VI NOTIFYING AUTHORITIES AND NOTIFIED BODIES

Article 47

Notification

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party tasks in the assessment and verification of performance, assessment of conformity and of the verification of environmental sustainability calculations for the purposes of this Regulation **■** .

Member States shall inform the Commission of their procedures for the assessment and notification of bodies to be authorised to carry out these tasks *and the monitoring of notified bodies, and of any changes thereto*. The Commission shall make that information publicly available.

Article 48

Notifying authorities

1. Member States shall designate a notifying authority responsible for setting up and carrying out the necessary procedures for the assessment and notification of the bodies to be authorised to carry out third-party tasks in the assessment and verification process for the purposes of this Regulation, and the monitoring of notified bodies, including their compliance with requirements laid out in Article 50 *and 53*.
2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by their national accreditation *body within the meaning of and in accordance with* Regulation (EC) No 765/2008.
3. Where the notifying authority delegates *or otherwise entrusts* the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity that body shall be a legal person and shall comply *mutatis mutandis* with the requirements laid down in Article 49. In addition, it shall have arrangements to cover liabilities arising from its activities.

4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraphs 2 and 3.

Article 49

Requirements relating to notifying authorities

1. The notifying authority shall be established in such a way that no conflicts of interest with notified bodies occur.
2. The notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.
3. The notifying authority shall be organised in such a way that each decision relating to notification of a body to be authorised to carry out third party tasks in the assessment and verification process is taken by competent persons different from those who carried out the assessment.
4. The notifying authority shall not offer or provide activities performed by notified bodies, or consultancy services on a commercial or competitive basis.
5. The notifying authority shall safeguard the confidentiality of the information obtained. However, it shall, upon request, exchange information on notified bodies with the Commission, with notifying authorities of other Member States and with other *competent* national authorities *which shall safeguard confidentiality of the information received*.

- 5a. *The notifying authority, including the cases in which the notifying authority is the national accreditation body, shall take as a basis for notification only the specific body applying for notification and not take account of the capacities or personnel of parent or sister companies. The authority shall assess that body against all relevant requirements and third-party assessment tasks.*
6. The notifying authority shall have a sufficient number of competent personnel and sufficient funding at its disposal for the proper performance of its tasks. █

Article 49a

Coordination of notifying and designating authorities

1. *The Commission shall ensure that appropriate coordination and cooperation between the Member States' national authorities responsible for notification policy and the notifying and designating authorities is put in place and operated in the form of a coordination group of notifying and designating authorities in the field of construction products. This group shall meet on a regular basis and at least annually.*

Member States' national authorities responsible for notification policy and the notifying and designating authorities under this Regulation shall participate in the activities of this group.

2. *The Commission may establish the specific arrangements for the functioning of the coordination group of the notifying and designating authorities.*

3. *The Commission shall provide for the organisation of regular exchanges of experience between the Member States' national authorities responsible for notification policy and the notifying and designating authorities.*

Article 50

Requirements **relating to** notified bodies

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in paragraphs 2 to 11.
2. A conformity assessment body shall be established under *the* national law *of a Member State* and have legal personality.
3. A conformity assessment body shall be *a third-party body* independent of the organisation or the product it assesses.

It shall *not have any* business ties with organisations *that have* an interest in the products it assesses, *in particular* manufacturers, their trade partners *and* their shareholding investors **█** .

However, a body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such *a body*.

This shall not preclude the body from carrying out assessment and verification activities for competing manufacturers.

4. A *conformity assessment* body, its top-level management and the personnel responsible for carrying out the third party tasks in the assessment and verification process shall not be the designer, manufacturer, supplier, importer, distributor, installer, purchaser, owner, user or maintainer of the products which it assesses, nor the representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the *conformity assessment* body or the use of products for personal purposes.

A *conformity assessment* body, its top-level management and the personnel responsible for carrying out the third party tasks in the assessment and verification process shall not *be* directly involved in the design, manufacture or construction, marketing, installation, use or maintenance of those products, nor represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement and integrity related to the activities for which they have been notified. ***This shall apply in particular to consultancy services in relation to product families for which they have been notified.***

A *conformity assessment* body shall ensure that activities of its parent or sister companies, its subsidiaries or subcontractors do not affect the confidentiality, objectivity and impartiality of its assessment and/or verification activities.

*A conformity assessment body shall not delegate to a subcontractor or a subsidiary the establishment and the supervision of internal procedures, general policies, codes of conduct or other internal rules, the assignment of *its* personnel to specific tasks and the conformity assessment decisions* ■ .

5. *A conformity assessment body and its personnel shall carry out the third party tasks in the assessment and verification process with the highest degree of professional integrity and requisite technical competence in the specific field. They shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their assessment and/or verification activities, especially from persons or groups of persons with an interest in the results of those activities.*
6. *A conformity assessment body shall be capable of carrying out all the third party tasks in the assessment and verification process assigned to it in accordance with Annex V in relation to which it has been notified, whether those tasks are carried out by the *conformity assessment* body itself or on its behalf and under its responsibility.*

At all times and for each assessment and verification system and for each kind or category of products, essential characteristics and tasks in relation to which it has been notified, the *conformity assessment* body shall have the following at its disposal:

- (a) the necessary *competent* personnel with technical knowledge and sufficient and appropriate experience to perform the third party tasks in the assessment and verification process ■ ;

- (b) the necessary description of procedures *in accordance* to which the assessment process is carried out, ensuring the transparency and the ability of reproduction of *those* procedures, *including a description of how* relevant personnel, their status and tasks *correspond to* the conformity assessment tasks in relation to which the body intends to be notified;
- (c) appropriate policies and procedures *to* distinguish the tasks it carries out as a *conformity assessment body from* other activities;
- (d) ■ procedures *for the performance of* activities, which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process. ■

It shall have the means necessary to perform the technical and administrative tasks connected with the activities for which it intends to be notified in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out the activities in relation to which the body intends to be notified, shall have the following:
- (a) sound technical and vocational training covering all the third party tasks in the assessment and verification process within the relevant scope for which the body has been notified;

- (b) satisfactory knowledge of the requirements of the assessments and verifications it carries out and adequate authority to carry out such operations, **including** appropriate knowledge and understanding of the applicable harmonised technical specifications, **European assessment documents** and of the relevant provisions of the Regulation;
- (d) the ability required to draw up the certificates, records and reports to demonstrate that the assessments and the verifications have been carried out.

- 7a. **Personnel responsible for taking assessment decisions shall be employed by the conformity assessment body under the national law of the notifying Member State, shall not have any potential conflict of interest, shall be competent to verify the assessments made by other staff, external experts or subcontractors. The number of such personnel shall be sufficient to ensure business continuity and a consistent approach to conformity assessments.**
8. The impartiality of the body **and** its top-level management and **of the** assessment personnel shall be guaranteed.

The remuneration of the top-level management and assessment personnel **of a body** shall not depend on the number of assessments carried out or **their** results ■ .

9. A **conformity assessment** body shall take out liability insurance unless liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible for the assessment **or** the verification performed.

10. The personnel of the *conformity assessment* body shall observe professional secrecy *regarding* all information *obtained* in carrying out its tasks under Annex V, except in relation to the *notifying authorities and other* competent *national* authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.
11. A *conformity assessment* body shall *participate in, or* ensure that its assessment personnel is informed *about* the relevant standardisation activities and *the* activities of the notified body coordination group established under this Regulation and shall apply as general guidance the administrative decisions and documents produced as a work result of that group.

Article 51

Presumption of conformity of notified bodies

Where a conformity assessment body to be authorised to carry out third party tasks in the assessment and verification process which demonstrates its conformity with the criteria laid down in the relevant harmonised *technical specifications, European assessment documents, harmonised standards referred to in Article 5(3) or common specifications referred to in Article 5a(1) or parts thereof, it* shall be presumed to comply with the requirements set out in Article 50 in so far as the applicable *documents*, cover those requirements.



Article 53

Subsidiaries and subcontractors of notified bodies

1. Where a notified body subcontracts specific tasks connected with the third party tasks in the assessment and verification process or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 50, and shall inform the notifying authority accordingly.
2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established **and monitor their** competence **in relation to its own as described in** Article 50(6) point (b).
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
4. The notified body shall keep at the disposal of the notifying authority the relevant documents concerning the assessment and monitoring of the qualifications of **the** subcontractor or the subsidiary and the **work** carried out by **them** under Annex V.

Article 54

Use of facilities outside the testing laboratory of the notified body

1. On request of the manufacturer and where justified by technical, economic or logistic reasons *related to the nature of the product or the testing equipment*, notified bodies may decide to carry out the tests referred to in Annex V, for the assessment and verification systems 1+, 1 and 3 or have such tests carried out under their supervision, either in the manufacturing plants using the test equipment of the internal laboratory of the manufacturer or, with the prior consent of the manufacturer, in an external laboratory, using the test equipment of that laboratory.

Notified bodies carrying out such tests shall be specifically designated as competent to work away from their own test facilities and shall *also* in that regard comply with the requirements laid down in Article 50.

2. Before carrying out the tests referred to in paragraph 1, notified bodies shall verify whether the requirements of the test method are satisfied and shall evaluate whether:
 - (a) test equipment has an appropriate calibration system and the traceability of the measurements is guaranteed; and
 - (b) the quality of the test results is ensured.

Notified bodies shall assume full responsibility for the tests in their entirety, including the accuracy and traceability of calibration and measurements, and for the reliability of the test results.


Article 55

Application for notification

1. A body to be authorised to carry out third party tasks in the assessment and verification *systems* shall submit an application for notification to the notifying authority of the Member State in which it is established.
2. The application shall be accompanied by a description of the activities to be performed, the assessment *and* verification processes for which the body claims to be competent, the *description of competence* referred to in Article 50(6), point (b), *as well as* an accreditation certificate, where one exists, issued by the national accreditation body **■** , attesting that the body *fulfils* the requirements laid down in Article 50. The accreditation certificate shall relate only to the *precise legal* body applying for notification and shall be based, in addition to relevant harmonised standards, on the specific requirements and *tasks provided for in this Regulation*.
3. Where the body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 50.

Article 56

Notification procedure

1. Notifying authorities may notify only bodies which have satisfied the requirements laid down in Article 50.
2. They shall notify the Commission and the other Member States  using the electronic notification tool developed and managed by the Commission.

Exceptionally, for cases *regarding groupings of essential characteristics* set out in Annex VI, for which the appropriate electronic tool is not available, a *notification in other electronic form* shall be accepted.

3. The notification shall include full details of the functions to be performed, reference to the relevant harmonised technical specification and, for the purposes of the system set out in Annex V, the essential characteristics for which the body is competent *and the relevant attestation of that competence*.

However, reference to the relevant harmonised technical specification is not required in the cases *regarding groupings of essential characteristics* set out in Annex VI.

4. Where a notification is not based on an accreditation certificate as referred to in Article 55(2), the notifying authority shall provide the Commission and the other Member States with all documentary evidence which attests to the body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 50.

5. *The body concerned may perform the activities of a notified body if the Commission or the other Member States **do not raise any objections** within 2 weeks of a notification, where an accreditation certificate is used, or within 2 months of notification, where an accreditation certificate is not used.*

Only such a body shall be considered as a notified body for the purpose of this Regulation.

- 5a. *Valid notifications shall be included in the list of notified bodies referred to in Article 57(2) by the Commission.* █

█

7. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

Article 57

Identification numbers and lists of notified bodies

1. The Commission shall assign an identification number to each notified body.

It shall assign a single such number even where the body is notified under several Union acts.

2. The Commission shall make publicly available the list of bodies notified under this Regulation, including the identification numbers that have been allocated to them and the activities for which they have been notified █ .

The Commission shall ensure that this list is kept up-to-date.

Article 58

Changes to the notification

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 50, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw the notification as appropriate, depending on the seriousness of the failure to meet those requirements or to fulfil those obligations. ***It shall immediately inform the Commission and the other Member States accordingly.***
2. In the event of ***restriction, suspension or withdrawal*** of notification, or where the notified body has ceased its activity, the notifying Member State █ shall take appropriate steps to ensure that ***this body's files*** are either processed by another notified body or kept available for the responsible notifying and ***competent national*** authorities at their request.

Article 59

Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
2. The notifying Member State shall provide the Commission, on request, with all information related to the basis for notification or the maintenance of the competence of the body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
- 3a. *Where the Commission finds that a notified body does not meet, or no longer meets, the requirements for its notification, it shall inform the notifying Member State accordingly and request it to take the necessary corrective measures, including withdrawal of notification, if necessary.***

Article 60

Operational obligations of notified bodies

1. Notified bodies shall, in accordance with Annex V:
 - (a) assess the performance and the conformity of products;

(b) verify the conformity of products ■ ;

■

(c) verify the constancy of performance of products;

(d) verify the calculation of environmental sustainability calculations undertaken by the manufacturer;

(e) *verify the compliance of the manufacturer with the obligations of this Regulation.*

These tasks are hereafter referred to as “assessments and verifications”.

2. Assessments and verifications shall be carried out with transparency as regards the manufacturer, and in a proportionate manner, avoiding an unnecessary burden for economic operators. The notified bodies shall perform their activities taking due account of the size of the undertaking, the sector in which the undertaking operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing, the notified bodies shall nevertheless respect the degree of rigour required for the product by this Regulation and the part played by the product for the fulfilment of all basic requirements for construction works.

3. Where, in the course of the initial inspection of the manufacturing plant and of factory production control, a notified body finds that the manufacturer has not ensured the constancy of performance and conformity of the manufactured product, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate *or a validation report*.
4. Where, in the course of the monitoring activity aiming at the verification of conformity and of the constancy of performance of the manufactured product, a notified body finds that a product no longer has the same performance to that of the product-type, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw *the certificate or the validation report* if necessary.
5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates *or validation reports*, as appropriate.
6. When taking assessment decisions, including when deciding on the need to suspend or withdraw a certificate or approval decisions in light of possible non-compliances, notified bodies shall apply clear and pre-determined criteria.

■

7a. Notified bodies shall cooperate and share all relevant information with the notified bodies recognising its assessments and verifications in accordance with Article 67 when requested by a manufacturer or provider. Notified bodies shall establish an agreement for this purpose.

Article 61

Information obligations of notified bodies

1. Notified bodies shall inform the notifying authority of the following:
 - (a) any refusal, restriction, suspension or withdrawal of certificates;
 - (b) any circumstances affecting the scope of, and conditions for, notification;
 - (c) any request for information on assessment or verification activities carried out which they have received from **competent national** authorities; and
 - (d) on request, third party tasks in accordance with the systems of assessment and verification carried out within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

2. A notified **body** shall provide the other bodies notified under this Regulation carrying out similar third party tasks in accordance with the assessment and verification systems and for products covered by the same harmonised technical specification with relevant information on issues relating to negative **■** results from these assessments **and** verifications, **■** in particular, any refusal, restriction, suspension, or withdrawal of certificates, **validation reports** or test reports **and, upon** request, **positive results from these assessments**.

A notified body shall, upon request from another notified body, a competent national authority or the Commission inform the requesting party whether certificates, validation reports or test reports issued by it are valid, restricted, suspended or withdrawn.

3. Where the Commission or *a competent national* authority of a Member State submits a request to a notified body established on the territory of another Member State relating to an assessment carried out by that notified body, it shall send a copy of that request to the notifying *authority* of that other Member State. The notified body concerned shall respond without delay and within 15 days at the latest to the request. The notifying authority shall ensure that such requests are resolved by the notified body unless there is a legitimate reason for not doing so.
4. *Where* notified bodies *have or receive* evidence *that*:
 - (a) another notified body does not comply with the requirements laid down in Article 50 or its obligations;
 - (b) a product placed on the market does not comply with this Regulation;
 - (c) a product placed on the market, due to its physical condition, is likely to cause a serious risk,

they shall alert and share such evidence with the relevant market surveillance or notifying authority, as appropriate.

Article 62

Implementing acts on notified bodies' obligations

Where this is necessary to ensure a harmonised application of this Regulation and ***no resolution of the dispute of the diverging practices was achieved in the group of notifying and designating authorities, in accordance with Article 49a, and only to the extent necessary to prevent diverging practices fragmenting the internal market*** for economic operators, the Commission may adopt implementing acts providing details on how to execute the obligations of notified bodies contained in Articles 60 and 61.

Those implementing acts shall be adopted in accordance with examination procedure referred to in Article 88(2).

Article 63

Coordination of notified bodies

1. The Commission shall ensure that appropriate coordination and cooperation between bodies notified ***under this Regulation*** are put into place and properly operated in the form of a group of notified bodies.

Notified bodies shall participate in the work of that group, directly or by means of designated representatives. ***Notifying authorities shall ensure this participation.***

2. Notified bodies shall apply as a general guidance ***any relevant*** documents produced ***as a result of the work of the group referred to in paragraph 1.***
3. ***Coordination and cooperation in the group referred to in paragraph 1 shall aim at ensuring the harmonised application of this Regulation.***

CHAPTER VII
SIMPLIFIED PROCEDURES

Article 64

Replacement of type testing and type calculation

1. A manufacturer may replace type testing *or type calculation with a specific section in the technical documentation referred to in Article 21(3)* demonstrating that:
 - (a) for one or several essential characteristics of the product, which the manufacturer places on the market, that product is deemed to achieve a certain level or class of performance without testing or calculation, or without further testing or calculation, in accordance with the conditions set out **■** in the *delegated acts adopted pursuant to Article 4(6)*; or
 - (b) the product, covered by a harmonised technical specification *or a European assessment document*, which the manufacturer places on the market is a system made of *components*, which the manufacturer assembles duly following precise instructions, including compatibility criteria in case of individual *components*, given by the provider of such a system or of a component thereof, who has already tested that system or that *component* for one or several of its essential characteristics in accordance with the relevant harmonised technical specification *or European assessment document*. When these conditions are satisfied and when the manufacturer has notably verified that the precise compatibility criteria of the provider are met, the manufacturer is entitled to declare performance corresponding to all or part of the test results for the system or the *component* provided to *it*;

(ba) the product, covered by a harmonised technical specification or by a European technical assessment, which the manufacturer places on the market, corresponds to a product-type of a product manufactured by another manufacturer and is already subject to type testing or type calculation. When those conditions are satisfied, the manufacturer may declare the performance corresponding to all or part of the results of this other product. The manufacturer shall only apply this simplification after having obtained an authorisation of the other manufacturer, who remains responsible for the accuracy, reliability and stability of those test results.

2. If the *assessment and verification system applicable includes a performance assessment by a notified body* as set out in Annex V, a notified body or TAB shall, in *place of the assessment of the performance of the product* set out in Annex V, assess and certify the correct fulfilment of the obligations referred to in paragraph 1.

Article 65

Use of simplified procedures by micro-enterprises

1. *A micro-enterprise may replace type testing or type calculation for an essential characteristic under assessment and verification system 3 with a specific section in the technical documentation referred to in Article 21(3) providing data equivalent to the assessment required for this essential characteristic according to the applicable harmonised technical specifications or European assessment document.*

2. ***A notified body or TAB shall, in place of the assessment of the performance of the product set out in Annex V, assess and certify the correct fulfilment of the obligations referred to in paragraph 1.***

Article 66

Custom-made non-series products

1. ***As an alternative to the exemption in Article 10(1)(a), a manufacturer of a product fulfilling the conditions in Article 10(1)(a) may replace the performance assessment of the product with a specific section in the technical documentation referred to in Article 21(3) demonstrating the compliance of that product with the applicable requirements and providing data equivalent to the data required by this Regulation and the applicable harmonised technical specifications or European assessment document.***
2. ***If the assessment and verification system applicable includes a performance assessment by a notified body as set out in Annex V, a notified body or TAB shall, in place of the assessment of the performance of the product set out in Annex V, assess and certify the correct fulfilment of the obligations referred to in paragraph 1.***

Article 67

Recognition of assessment and verification by another notified body

1. **When** a notified body *shall assess and verify* a certain *product according to Annex V, it may refrain from the assessment and verification* and recognise the assessment and verification undertaken by another notified body for the same economic operator where *all of the following applies*:
 - (a) the *product* has been correctly assessed and verified by the other notified body ■ ;
■
 - (c) the assessed or verified economic operator agrees to share all relevant data and documents with the recognising notified body;
 - (d) the validity of the certificate is limited to the validity of the certificate issued by the other notified body.

This paragraph shall also apply to *validation* reports ■ and to assessments of calculation of the environmental sustainability undertaken under Regulation (EU) .../... [Regulation on ecodesign for sustainable products].

2. *When a notified body shall assess and verify a certain product according to Annex V, it may refrain from the assessment and verification of its parts or materials and recognise the results of the assessment and verification by another notified body, if the provider of those parts or materials applied the required assessment and verification system to them and there is an agreement between the manufacturer of the product and the provider that ensures the free flow of all information between them and the notified bodies in view of ensuring compliance with this Regulation.*

This paragraph shall also apply to assessments of calculation of the environmental sustainability undertaken under Regulation (EU) .../... [Regulation on ecodesign for sustainable products].

CHAPTER VIII MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES

Article 68 Complaint Portal

1. *Without prejudice to the obligations of economic operators under this Regulation and the activities of market surveillance authorities under Regulation 2019/1020, the Commission shall, in addition, set up a system allowing any natural or legal person to share complaints or reports related to possible non-compliances with this Regulation.*

2. Where the Commission *considers* a complaint or report relevant and substantiated *based on clearly defined criteria*, it shall *without undue delay transmit* it to *the single liaison point of the Member State concerned* for it to follow-up with the relevant natural or legal person in accordance with Article 11(7), point (a) of Regulation (EU) 2019/1020.

Article 69

Market surveillance authorities and single liaison point

1. Member States shall designate, amongst their market surveillance authorities, one or more **■** authorities that dispose of the particular knowledge needed to assess products both technically and legally.
2. Member States shall designate *a single liaison point which shall act as* the focal point for contacts with *the Commission and single liaison points of* other Member States *which are competent under this Regulation, including for requests pursuant to Articles 22, 23 and 24 of Regulation (EU) 2019/1020*.
- 2a. *Market surveillance authorities designated in accordance with paragraph 1 shall have all the powers listed in Article 14 of Regulation (EU) 2019/1020. These powers shall be, for the purposes of this Regulation, extended to all economic operators covered by this Regulation.*

- 2b. For the purpose of market surveillance, investigation and enforcement, market surveillance authorities shall have the power to request from other authorities or bodies relevant information in their possession.**

Article 70

Procedure to deal with **non-compliance**

1. Where a market surveillance authority of one Member State has sufficient reason to believe that certain products covered by a **harmonised technical specification** or for which a European technical assessment has been issued, or its manufacturer, is non-compliant, it shall carry out an evaluation in relation to the products and the manufacturer concerned covering the respective requirements laid down by this Regulation. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authority finds that the products or **their** manufacturer **do** not comply with the requirements and obligations laid down in this Regulation, it shall without delay require the relevant economic **operator** to take appropriate and proportionate corrective actions, **as provided for in Article 16(3) of Regulation (EU) 2019/1020, to bring the non-compliance to an end or, if that is not possible**, to withdraw the products from the market, or to recall them, all within a reasonable period **which is** commensurate with the nature of the non-compliance.

The market surveillance authority shall inform the notified bodies accordingly, if notified bodies are involved.

2. Where the market surveillance authority considers that the non-compliance is not limited to its national territory, it shall, via the *single liaison point*, inform the Commission and the other Member States of the results of the evaluation and of the actions which it has required the economic *operator* to take.
3. The economic *operator* shall *ensure that* all appropriate corrective action *is taken* in respect of all the products *concerned that it* has made available on the market throughout the Union.
4. Where the relevant economic *operator*, within the period referred to in the second subparagraph of paragraph 1, *does not take the* corrective action *referred to in paragraph 1, second subparagraph*, or where the non-compliance persists, the market surveillance authority shall *ensure that the product concerned is withdrawn or recalled, or that making it* available on the market *is prohibited or restricted*.

The market surveillance authority shall inform the public, and via the *single liaison point* the Commission and the other Member States, without delay, of those measures.

5. The information referred to in the last sentence of paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant products, the origin of *those* products, the nature of the non-compliance alleged and the risk involved, the nature and duration of national measures taken as well as the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:

- (a) failure of the products to achieve the declared performance **■** ;
 - (aa) *failure of the products to meet product requirements established in accordance with Article 5(1);*
 - (b) failure of the manufacturer to meet obligations;
 - (c) shortcomings in the harmonised technical specifications, *in* a European assessment document, *in the harmonised standards referred to in Article 5(3) or in the common specifications referred to in Article 5a(1).*
6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the products concerned, and, in the event of disagreement with the notified national measure, of their objections.
7. Where, within two months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State in relation to the product concerned, that measure shall be deemed justified.

8. ■ Member States shall ensure that appropriate restrictive measures are taken without delay in respect of the product or manufacturer concerned, such as withdrawal of the products from their market.

Article 71

Union safeguard procedure

1. Where, on completion of the procedure set out in Article 70(4), **(6) and (7)**, objections are raised against a measure taken by a Member State or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic *operator or operators* and shall evaluate the national measure. ***The consultation period shall not exceed two months.*** On the basis of the results of that evaluation, the Commission shall ***endeavour to adopt implementing acts, within two additional months, after the end of consultation period, setting out its decision*** whether the measure is justified or not.

Those implementing acts shall be adopted in accordance with advisory procedure referred in Article 88(1).

The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic *operator or operators*.

2. If the national measure is considered *to be* justified, all Member States shall, *without delay, ensure that appropriate restrictive measures, such as withdrawal, are taken in respect of the non-compliant product* and shall inform the Commission accordingly. If the national measure is considered *to be* unjustified, the Member State concerned shall withdraw the measure.
3. Where the national measure is considered to be justified and the non-compliance of the product or its manufacturer is attributed to shortcomings in the *harmonised technical specifications, European assessment documents, harmonised standards or implementing acts* as referred to in Article 70(5), point (c), the Commission shall apply the procedure provided for in Article 4(9), *in Article 4a(4), Article 5(6) or in Article 41 of this Regulation or in Article 11 of Regulation (EU) No 1025/2012, respectively.*

Article 72

Complying products which nevertheless present a risk

1. Where, having performed an evaluation pursuant to Article 70(1), a market surveillance authority ■ finds that, although *a* products *is* in compliance with this Regulation, *it presents* a risk ■ to the health or safety of persons *or, where applicable*, to the environment or to other aspects of public interest protection, it shall require the relevant economic *operator* to take all appropriate measures to ensure that the products concerned, when placed on the market, no longer present that risk, to withdraw the products from the market or to recall them within a reasonable period, commensurate with the nature of the risk, which it may prescribe.

2. The economic operator shall ensure that any corrective action is taken in respect of all the products concerned which that economic operator has made available on the market throughout the Union.
3. The market surveillance authority shall, via the *single liaison point*, immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the product concerned, the origin and the supply chain of the product, the nature of the risk involved and the nature and duration of the national measures taken.
4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide by implementing act whether the measure is justified or not and, where necessary, *order* appropriate measures.
5. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88(1).
6. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic *operator or* operators.

Article 74

Market surveillance coordination and support

1. For the purposes of this Regulation, the administrative cooperation group ('ADCO') set up pursuant to Article 30(2) of Regulation (EU) 2019/1020 shall meet at regular intervals and, where necessary, at the reasoned request of the Commission or of two or more participating market surveillance authorities.

In the context of performing its tasks set out in Article 32 of Regulation (EU) 2019/1020, the ADCO shall support the implementation of this Regulation, namely by identifying common priorities for market surveillance.

2. Based on priorities identified in consultation with the ADCO, the Commission shall:
 - (a) organise joint market surveillance and testing projects in areas of common interest;
 - (b) organise joint investment in market surveillance capacities, including equipment and IT tools;
 - (c) organise common trainings for the staff of market surveillance authorities, notifying authorities and notified bodies, including on the correct interpretation and application of this Regulation and on methods and techniques relevant for applying or verifying compliance with it;

- (d) elaborate guidelines for the application and enforcement of *this Regulation*, *including* requirements and obligations set out in *harmonised technical specifications adopted pursuant to this Regulation*, as well as common practices and methodologies for effective market surveillance. ■

The Union shall, where appropriate, finance the actions referred to in points (a), (b) and (c).

3. The Commission shall provide technical and logistic support to ensure the ADCO fulfils its tasks set out in Article 32 of Regulation (EU) 2019/1020 and this Article.

Article 75

Retrieval of costs

Where a product has been found to be non-compliant, market surveillance authorities shall have the right to recover from economic operators *who placed or made available the product on the market* the costs of document inspection and physical product testing, *with a justification of those costs*.

Article 76

Reporting and benchmarking

1. Market surveillance authorities shall enter into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 information on the nature and severity of any penalty imposed in relation to non-compliance with this Regulation.

2. The Commission shall, every **four** years, draw up a report by 30 June based on the information entered by market surveillance authorities into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. The first of these reports shall be published by ... [*OP: Please add date: four years after date of application of this Regulation*].

The report shall include:

- (a) information on the nature and number of checks performed by market surveillance authorities during the **four** previous calendar years pursuant to Article 34(4) and (5) of Regulation (EU) 2019/1020;
 - (b) information on the levels of non-compliance identified and on the nature and severity of penalties imposed for the **four** previous calendar years in relation to products covered by *harmonised technical specifications or CE-marked based on a European technical assessment*;
 - (c) indicative benchmarks for market surveillance authorities in relation to the frequency of checks and the nature and severity of penalties imposed.
3. The Commission shall publish the report referred to in paragraph 2 of this Article in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall make public a summary of the report.

CHAPTER IX
INFORMATION AND ADMINISTRATIVE COOPERATION

Article 77

Information systems for harmonised decision-making

1. The Commission shall establish and maintain an information and communication system for the collection, processing and storage of information, in a structured form, on issues relating to the interpretation or application of the rules laid down in or pursuant to this Regulation, with the aim of ensuring the harmonised application of those rules.

In addition to the Commission and Member States, market surveillance authorities, the single liaison offices appointed under Article 10(3) of Regulation (EU) 2019/1020, the authorities designated under Article 25(1) of Regulation (EU) 2019/1020, notifying authorities, ***representatives of the group of*** notified bodies ***and the organisation of TABs***, and product contact points for Construction shall be able to access the information and communication system. █

█

2. The bodies listed in paragraph 1 may use the information and communication system to raise any question or issue related to the interpretation or application of the rules laid down in or pursuant to this Regulation, including their relationship to other provisions of Union law. █

3. For purposes of paragraph 2, *bodies may raise questions or issues related to the following topics*:
- (a) are aware or made aware of the application or interpretation of the rules laid down in or pursuant to this Regulation by any other body in a way that diverges from their own practise;
 - (b) are aware or made aware of questions or issues raised through the information and communication system related to the situation they are confronted with or to their own practice;
 - (c) are confronted with a situation not foreseen by the rules laid down in or pursuant to this Regulation when first published or referred to in the *Official Journal of the European Union*, especially but not limited to situations brought about by the emergence of new products or business models;
 - (d) have to apply the rules laid down in or pursuant to this Regulation to a situation to which other provisions of Union law also apply and the resulting question.
4. When raising a question or issue, the relevant body shall enter into the information and communication system information concerning:
- (a) any decision taken in relation to the question or issue raised;
 - (b) the presumable reasoning/rationale behind the approach taken;
 - (c) any alternative approach it has identified and its respective reasoning/rationale.

5. Member States shall establish a national information system or email list service to inform their *competent national* authorities, the economic operators active on their territory, TABs and notified bodies with place of business on their territory and, on request, also other TABs and notified bodies, on all matters relevant for the correct interpretation or application of the rules laid down in or pursuant to this Regulation. In doing so, they shall take into account the information available in the information and communications system referred to in paragraph 1 .
6. *Competent national authorities*, TABs and notified bodies with *a* place of business in the respective Member State shall register into *the* system or email list service and take account of all information transmitted via them. *Economic operators may register into the system or email list service. Member States shall take appropriate measures to bring the system or email list service to the attention of economic operators.*
7. The national information system or email list service shall be able to receive complaints from any natural or legal person, including TABs and notified bodies, on the uneven application of the rules laid down in or pursuant to this Regulation. If deemed appropriate, the *single liaison point* shall forward such complaints to their peers in other Member States and to the Commission.

Article 79

Product contact points for construction

1. Member States shall support economic operators by product contact points for construction. Member States shall designate and maintain at least one product contact point for construction on their territory and shall ensure that their product contact points for construction have sufficient powers and adequate resources for the proper performance of their tasks **■** . They shall ensure that product contact points for construction deliver their services in accordance with Regulation (EU) 2018/1724 *of the European Parliament and of the Council* ²² and that they coordinate with the contact points for mutual recognition established by Article 9(1) of Regulation (EU) No 2019/515 *of the European Parliament and of the Council* ²³.
2. Product contact points for construction shall provide, at the request of an economic operator or a *competent national* authority of another Member State, any useful product related information, such as:
 - (a) electronic copies of, or online access to, the national technical rules and national administrative procedures applicable to products in the territory in which the product contact points for construction is established;

²² Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

²³ Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008 (OJ L 91, 29.3.2019, p. 1).

- (b) information on whether those products are subject to prior authorisation under national law;
- (c) rules applicable to the incorporation, assembling or installation of products.

Product contact points for construction shall also provide information on product related provisions of this Regulation and of acts adopted in accordance with it.

3. Product contact points for construction shall *provide information free of charge* within 15 working days of receiving any request under paragraph 2.

■

5. Product contact points for construction shall be able to carry out their functions in a manner that avoids conflicts of interest, particularly in respect of the procedures for obtaining the CE marking.
6. Paragraphs 1 to 5 apply also to products which have not yet been covered by harmonised technical specifications.
7. The Commission shall publish update a list of the national product contact points for construction.

Article 80

Trainings and exchange of staff

1. Market surveillance authorities, product contact points for construction, designating authorities TABs, notifying authorities, and notified bodies shall ensure that their staff:
 - (a) keep up-to-date in their area of competence and receive periodic additional training to that end; and
 - (b) receive periodically training on the harmonised interpretation and application of the rules laid down in or pursuant to this Regulation.

2. The Commission shall, periodically and at least once a year, organise training events jointly for the staff of market surveillance authorities, ***product contact points for construction, designating authorities***, notifying authorities, and notified bodies. The Commission shall organise these training events in cooperation with the Member States.

The training events shall be open to the participation of the staff of the authorities designated under Article 25(1) of Regulation (EU) 2019/1020, the single liaison offices appointed under Article 10(3) of Regulation (EU) 2019/1020 and, where appropriate, of other authorities of the Member States involved in the implementation or enforcement of this Regulation. █

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3. The Commission may organise, in cooperation with the Member States, programmes for the exchange of staff between the market surveillance authorities, notifying authorities, and notified bodies of two or more Member States.

Article 81

Shared roles and joint decision-making

1. In order to fulfil their obligations under this Regulation with regard to market surveillance, designation and supervision of TABs, notified bodies, and product contact points for construction, Member States may designate:
 - (a) a body or authority set up in cooperation with another Member State or other Member States for the purpose of joint designation;
 - (b) a body or authority already designated by another Member State for the same purpose, in cooperation with that Member State.

The Member States concerned shall jointly ensure that the shared bodies or authorities meet all relevant requirements. They shall be jointly responsible for them, whilst decisions taken towards natural or legal persons on a certain Member State shall be legally attributable only to that Member State.

2. The authorities of different Member States may, without prejudice to their individual obligations under this Regulation or other legislative acts, share resources and responsibilities in order to ensure the harmonised application or effective enforcement of this Regulation.

To that end, they may also:

- (a) take joint decisions, especially in relation to joint cross-border activities or in relation to economic operators active on the territory of the relevant Member States;
- (b) establish common projects, such as joint market surveillance or testing projects;
- (c) pool resources for specific purposes, such as building up testing capacity or for internet surveillance;
- (d) delegate the execution of tasks to a peer authority of another Member State, whilst staying formally responsible for the decisions taken by that authority;
- (e) transfer a task from one Member State to the other, provided that such transfer is clearly communicated to all concerned.

The relevant Member States shall be jointly responsible for the actions taken in accordance with this paragraph.

Chapter IXa
DIGITAL PRODUCT PASSPORT

Article 81a
Construction digital product passport system

1. *The Commission shall adopt delegated acts in accordance with Article 87 to supplement this Regulation by setting up a construction digital product passport system in accordance with the conditions set out in this Chapter.*

2. *The construction digital product passport system shall:*
 - (a) *be compatible, interoperable and built on the digital product passport established by the regulation (EU) .../... [Regulation on eco design for sustainable products], without compromising interoperability with Building Information Modelling (BIM) while taking into account the specific characteristics and requirements related to construction products;*

 - (b) *provide the required functionalities to implement and manage product passports according to Article 81b;*

 - (c) *establish the actors, which shall include economic operators, clients, deinstallers, users and competent national authorities that are to have access to information in the product passport and to what information they are to have access, taking into account the need to protect intellectual property rights, sensitive commercial information and to ensure the safety of construction works;*

- (d) *establish the actors, which shall include manufacturers, authorised representatives, importers, distributors and digital product passport service providers, that are allowed to introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update;*
- (e) *define the modalities to introduce updated information in the product passport of an existing product;*
- (f) *establish procedures to ensure availability of product passports after an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created the product passport or if necessary after the obligations of manufacturers to ensure its availability expired, including the establishment of a back-up system by digital product passport service providers;*
- (g) *establish requirements for digital product passport service providers, including, if required, a certification scheme to verify such requirements. The requirements shall be built on the developments established by the regulation (EU).../... [Regulation on eco design for sustainable products] for the same purpose to the extent possible;*
- (h) *when required, define more detailed or alternative rules and procedures related to the lifecycle of identifiers, data carriers, digital credentials and the product passport registry to those established by the regulation (EU) .../... [Regulation on eco design for sustainable products] for the same purpose;*

- (i) *establish that the system is accessible for period of 25 years after the last product corresponding to its product type has been placed on the market and that economic operator shall make available the digital product passport for at least 10 years. If longer period is established, it shall not create disproportionate cost and burden for the economic operators;*
- (j) *take into account the need to ensure the availability of information for the reuse and remanufacturing of products.*

Article 81b

Product passport

1. *The information in the product passport shall be accurate, complete, and up to date.*

2. *A product passports for a product under this Regulation shall:*

(a) *include the following information:*

- (i) *the declaration of performance and conformity referred to in Article 11, including the information referred to in Article 11(4) which can be included through a connection to other EU databases where it is available and the documentation provided together according to Annex II;*
- (ii) *the general information, instructions for use and safety information referred to in Article 21(6); and*
- (iii) *the technical documentation referred to in Article 21(3) including the specific sections required pursuant to Articles 64 to 66;*

- (iv) the label pursuant to Article 21(7b);*
- (v) unique identifiers established in accordance with Article 81d(1);*
- (vi) documentation required under other Union law applicable to the product;*
- (vii) data carriers of key parts for which a product passport is available;*
- (b) be connected to one or more data carriers;*
- (c) be accessible via electronic means through the data carrier displayed according to Article 17(2)(d);*
- (d) correspond to the product type according to Article 3(31) and related to a unique identification code of the product type according to Article 21(5);*
- (e) be accessible free of charge to all economic operators, clients, users and authorities through the data carrier;*
- (f) provide different levels of access as defined in the construction digital product passport system;*

- (g) allow actors defined in the construction digital product passport system introduce or update the information in the product passport;*
 - (h) be accessible for an established period after the last product corresponding to its product type has been placed on the market.*
- 3. The requirements referred to in paragraph 2 shall:**
- (a) ensure that actors along the value chain can easily access and understand product information relevant to them;*
 - (b) facilitate the verification of product compliance by competent national authorities;*
and (c) improve traceability of products along the value chain.
- 4. Products for which the exemption established in Article 10 is applied are also exempted of the obligation to provide a product passport.**

Article 81c

General requirements for the product passport

- 1. A product passport shall meet the following conditions:**
- (a) it shall be connected through one or more than one data carrier to a persistent unique identification code of the product-type;*
 - (b) the data carrier shall be affixed in accordance with Article 17(2)(d);*
 - (c) the data carrier shall comply with Article 81e(1);*

- (d) *all information included in the product passport shall be based on open standards, developed with an interoperable format and shall be, as appropriate, machine-readable, structured, searchable and transferable through an open interoperable data exchange network without vendor lock-in, in accordance with the essential requirements set out in Article 81d. In addition:*
- (i) *declaration of performance and conformity referred to in Article 81b(2)(a)(i) shall follow the guidelines defined in accordance with Article 15(2a);*
 - (ii) *documents provided together with the declaration of performance and conformity referred to in Article 81b(2)(a)(i) and technical documentation referred to in Article 81a(2)(a)(iii) shall be exempted from this obligation when justified for technical reasons;*
- (e) *personal data related to the end-user of the product shall not be stored in the product passport without the explicit consent of the end-user in compliance with article 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council²⁴;*
- (f) *the information included in the product passport shall refer to the product type according to 81b(2)(d);*

²⁴ *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

- (g) *the access to information included in the product passport shall be regulated in accordance with the essential requirements set out in Article 81d and the specific access rights shall be identified according to the construction digital product passport system levels of access.*
2. *Where other Union legislation requires or allows the inclusion of specific information in the product passport, that information may be included in the product passport as defined in the delegated act pursuant to Article 81a.*
3. *The manufacturer placing the product on the market shall provide actors making the products available on the market online or through other means of distance sales with a digital copy of the data carrier and the product identifier to allow them to make it accessible to customers where they cannot physically access the product. The economic operator shall provide that digital copy or a webpage link free of charge and within 5 working days of receiving the request.*

Article 81d

Technical design and operation of the product passport

The technical design and operation of the product passport shall comply with the following essential requirements:

- (a) *product passports shall be fully interoperable with other product passports in relation to the technical, semantic and organisational aspects of end-to-end communication and data transfer;*

- (b) a recipient of the product passport shall have easy access free of charge to the product passport based on its respective access right set out in the construction digital product passport system;*
- (c) the data included in the product passport shall be stored as defined in the construction digital product passport system according to Article 81a;*
- (d) if the data included in the product passport is stored or otherwise processed by authorised operators or digital product passport providers, they shall not be allowed to sell, reuse or process such data, in whole or in part, beyond what is necessary for the provision of the relevant storing or processing services, unless specifically agreed with the economic actor placing the product on the market or putting it into service;*
- (e) the product passport shall remain available for the period specified in Article 81b(2)(h), including after an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created the product passport and fulfil the conditions established in accordance with Article 81a(2)(f) as regards the obligation to provide a back-up copy;*
- (f) the right to access and to introduce, modify or update information in the product passport shall be restricted based on the access rights specified in construction digital product passport system;*

- (g) *protection of information that constitutes trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943 of the European Parliament and of the Council²⁵ or intellectual property rights shall be ensured;*
- (h) *data authentication, reliability and integrity shall be ensured;*
- (i) *product passports shall be designed and operated so that a high level of security and privacy is ensured and fraud is avoided.*

Article 81e

Unique identifiers and product passport registry

1. *Article 11 of regulation (EU) .../... [Regulation on eco design for sustainable products] applies for the purposes of implementation of this Regulations as regards unique identifiers and data carriers unless the delegated act according to Article 81a define more detailed or alternative rules related to them pursuant to Article 81a(h).*
2. *Article 12 of regulation (EU) .../... [Regulation on eco design for sustainable products] applies for the purposes of implementation of this Regulation as regards the product passport registry unless the delegated act according to Article 81a define more detailed or alternative rules related to it pursuant to Article 81a(h).*

²⁵ *Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).*

3. *Article 12a of regulation (EU) .../... [Regulation on eco design for sustainable products] applies for the purposes of implementation of this Regulations as regards the web portal for information in the digital product passport.*

Article 81f

Mandatory use and technical adaptation

1. *Six months after the entry into force of the delegated act according to Article 81a(1) the system shall be fully operational and fulfil its intended objective, including the functionalities provided in Article 81b. 18 months after entry into force of the delegated act according to Article 81a(1) the obligations established in accordance with Article 21(7) shall apply. The system may be voluntarily used by manufacturers in the interim period.*
2. *The Commission is empowered to adopt delegated acts in accordance with Article 87 to amend this Regulation to:*
- (a) further specify, add and remove functionalities under Article 81a(2) in order to adapt to technical progress or adapt it to the once-only principle in relation to information requirements in other EU law;*
 - (b) revise Articles 81c(1) and 81d to ensure compatibility and interoperability with regulation (EU) .../... [Regulation on eco design for sustainable products].*

CHAPTER X
INTERNATIONAL COOPERATION

Article 82

International cooperation

1. The Commission may, *for the purpose of the protection of health, safety or the environment, cooperate with authorities of* third countries or international organisations in the field of application of this Regulation, such as:
 - (a) *exchange of information on* enforcement activities and measures related to safety and protection of the environment, including market surveillance;
 - (b) exchange of data of economic operators;
 - (c) *exchange of information on* assessment methods and product testing;
 - (d) *exchange of information on* product recalls, requests for corrective actions and other similar actions;
 - (e) scientific, technical, and regulatory matters, aiming to improve product safety or the protection of the environment *and consumers*;
 - (f) *exchange of information on* emerging issues of significant environmental, health and safety relevance;

- (g) *exchange of information on* standardisation-related activities;
- (h) exchange of officials.

The exchange of information pursuant to this paragraph shall respect confidentiality rules and be in accordance with applicable Union law.

3. The information exchange referred to in paragraph *I* may take the form of **I** :

- (a) a non-systematic exchange, in duly justified and specific cases; *or*
- (b) a systematic exchange, based on an administrative arrangement specifying the type of information to be exchanged and the modalities for the exchange.

The Commission shall regularly inform Member States about the cooperation activities with third countries or international organisations it undertakes pursuant to the first subparagraph.

4. *The Commission may, by implementing acts, give authorities of selected* third countries *that voluntarily apply* this Regulation or that *have regulatory systems for construction products similar to* this Regulation *access to or the right to fully participate in one or more of the following:*

- (a) *the information and communication system established in accordance with Article 77(1);*

- (b) *the construction digital product passport system set up in accordance with Article 81a;*
- (c) *the training events organized in accordance with Article 80(2).*

Access to the systems and events referred to in the first subparagraph shall be granted on the condition that the third country concerned commits to engage against economic operators infringing this Regulation from their territory and to ensure confidentiality.

Full participation in the system referred to in Article 81a and in the system referred to in Article 77 may only be granted where agreements between the European Union and third countries so provide. Such participation may be offered to third countries provided that the third country's legislation is aligned with this Regulation and that third country competent national authorities recognise certificates issued by notified bodies or European technical assessments in accordance with this Regulation. Such participation shall be subject to the fulfilment of the same obligations as for EU Member States according to this Regulation, including notification and follow-up obligations.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 88(1).

6. Any information exchange under this article, to the extent it involves personal data, shall be carried out in accordance with EU data protection rules. If no adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 has been adopted by the Commission in respect of the third country or international organisation concerned, the information exchange shall exclude personal data. If an adequacy decision for the third country or international organisation has been adopted, the information exchange with that third country or international organisation may contain personal data falling within the scope of the adequacy decision and only to the extent that such exchange is necessary for the sole purpose of the protection of health, safety or the environment.

CHAPTER XI INCENTIVES AND PUBLIC PROCUREMENT

Article 83

Member State incentives *for construction products*

1. Where Member States provide incentives for a product category *for which the performance is expressed as a performance class according to Article 4(5) or as a class included in environmental sustainability labelling according to Article 21(7b)*, those incentives shall *be targeted* at the highest two **█** classes *of performance*.

Where ■ classes of performance *are defined* in relation to more than one sustainability parameter, it shall be indicated ■ in relation to which parameter this Article should be implemented.

■
When doing so, the Commission shall take into account the following criteria:

- (a) the *number of* products *in each class* of performance;
- (b) the need to ensure *affordability of the products meeting those requirements, to avoid significant negative impacts on consumers.*

■
Article 84

Green public procurement

- 1. *The Commission shall adopt delegated acts specifying mandatory minimum environmental sustainability requirements for construction products.*

1. *For procurement procedures falling within the scope of Directives 2014/24/EU²⁶ or 2014/25/EU²⁷ of the European Parliament and of the Council where contracts require minimum environmental sustainability performance for construction products as regards their essential characteristics covered by harmonised technical specifications, contracting authorities and contracting entities shall apply mandatory minimum environmental sustainability requirements laid down in the delegated acts referred to in paragraph -1.*

This shall not preclude contracting authorities and contracting entities from establishing:

- (a) more ambitious environmental sustainability requirements related to essential characteristics referred in subparagraph 1; or*
- (b) additional environmental sustainability requirements related to other essential characteristics from those referred in subparagraph 1.*

- 1a. *The first impact assessment shall be launched by the Commission by 31 December 2026.*

Member States and the Commission shall provide technical assistance and advise to national contracting authorities in charge of public procurement on how to comply with mandatory minimum environmental sustainability requirements established in accordance with paragraph 1.

²⁶ *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).*

²⁷ *Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).*

2. **Mandatory minimum environmental sustainability** requirements **laid down** pursuant to paragraph -1 for public contracts awarded by contracting authorities **■** or contracting entities **may, as appropriate to the product family or category concerned,** take the form of **■** :

- (i) **technical specifications within the meaning of Article 42 of Directive 2014/24/EU and of Article 60 of Directive 2014/25/EU;**
- (ii) **selection criteria within the meaning of Article 58 of Directive 2014/24/EU and of Article 80 of Directive 2014/25/EU;**
- (iii) **contract performance clauses within the meaning of Article 70 of Directive 2014/24/EU and of Article 87 of Directive 2014/25/EU;**
- (iv) **contract award criteria within the meaning of Article 67 of Directive 2014/24/EU and of Article 82 of Directive 2014/25/EU.**

3. When establishing **mandatory minimum environmental sustainability** requirements pursuant to paragraph -1 for public contracts, the Commission shall, **in line with paragraphs 13 and 28 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, consult experts designated by each Member State and relevant stakeholders, carry out an impact assessment and** take into account **at least** the following criteria:

- (a) the value and volume of public contracts awarded for *the relevant* product family or category;
- (aa) *environmental benefits entailed by the uptake of products in the highest two performance classes;*
- (b) the need to ensure sufficient demand for more environmentally sustainable products;
- (c) the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable products, without entailing disproportionate costs *and taking into account the availability of those products on the market;*
- (ca) *the market situation at Union level of the relevant product family or category;*
- (cb) *the effects of the requirements on competition;*
- (cc) *the impact on, and needs of, SMEs;*
- (cd) *the Members States' regulatory needs and different climate conditions.*

3a. *Contracting authorities and contracting entities may on an exceptional basis decide not to apply paragraph 1 where after preliminary market consultation in line with Article 40 of Directive 2014/24/EU and Article 58 Directive 2014/25/EU it was found:*

- (a) *the required construction product can only be supplied by a specific economic operator and no reasonable alternative or substitute exists;*
- (b) *no suitable tenders or no suitable requests to participate have been submitted in response to a previous public procurement procedure;*
- (c) *its application or incorporation in construction works would oblige that contracting authority or contracting entity to have disproportionate costs, or would result in incompatibility or technical difficulties.*

Estimated contract value differences above 10%, based on objective and transparent data, may be presumed by contracting authorities and contracting entities to be disproportionate.

When contracting authorities and contracting entities use the derogation according to this paragraph, the procurement procedure cannot be considered environmentally sustainable in relation to the construction products to which the exceptions have been applied.

Member States shall report every three years to the Commission about the use of this provision, according to Article 82 of Directive 2014/24/EU.

This provision shall be without prejudice to the possibility of excluding abnormally low tenders under Article 69 of Directive 2014/24/EU and Article 84 of Directive 2014/25/EU.

- 3b.** *The EU Ecolabel and other national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010 of the European Parliament and of the Council²⁸ may be used to demonstrate compliance with the minimum environmental sustainability requirements where such label comply with the requirements set out in article 18 of this Regulation.*

CHAPTER XII

REGULATORY STATUS OF PRODUCTS

Article 85

Regulatory status of products

Upon a duly substantiated request of a Member State or on its own initiative, the Commission may, by means of implementing acts, determine whether or not a specific item, or category of items, falls within the definition of ‘**■** product’ as referred to in Article 3(3).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2) of this Regulation.

²⁸ *Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).*



CHAPTER XIV
FINAL PROVISIONS

Article 87
Delegated acts

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4(3), (4) and (5), Article 5(2) and (3), Article 6(1) to (3), Article 8, Article 11(3), Article 22(4) and (5), Article 35(4), Article 44(1), Article 73(1) and (2), Article 78(1), Article 84(1) and Article 90(4) shall be conferred on the Commission for a period of five years from ... [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²⁹.
4. The delegation of powers referred to in Article 4(3), (4) and (5), Article 5(2) and (3), Article 6(1) to (3), Article 8, Article 11(3), Article 22(4) and (5), Article 35(4), Article 44(1), Article 73(1) and (2), Article 78(1), Article 84(1) and Article 90(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

²⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

6. A delegated act adopted pursuant to Article 4(3), (4) and (5), Article 5(2) and (3), Article 6(1) to (3), Article 8, Article 11(3), Article 22(4) and (5), Article 35(4), Article 44(1), Article 73(1) and (2), Article 78(1), Article 84(1) and Article 90(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 88

Committee

1. The Commission shall be assisted by the Committee on Construction Products. This committee shall be a committee within the meaning of Regulation (EU) No 182/2011. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply (advisory procedure).
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply (examination procedure).
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply (urgent examination procedure).

Article 89

Electronic applications, decisions, documentation and information

1. All applications from or to notified bodies or TABs and decisions made by these bodies made in accordance with this Regulation can be provided on paper or in a commonly used electronic format provided that the signature is compliant with Regulation (EU) No 910/2014 and the signing person is entrusted to represent the body or economic operator, according to the law of the Member States or Union law respectively.

All information obligations *under this Regulation can, unless otherwise stated, be satisfied by electronic means. Where the information is provided by electronic means, the information shall be issued in a commonly readable electronic format that makes it possible for the recipient to download and print the information.*

When the obligation is established in accordance with Article 21(7) economic operators shall fulfil information obligations related to documents referred to in Article 81b(2) by providing the product passport.

Declaration of performance and conformity as well as general information, instructions for use and safety information shall be provided *in paper format free of charge if requested by the end-user at the time of purchase.*

Article 90

Penalties

1. Member States shall lay down the rules on penalties applicable to non-compliances with this Regulation and shall take all measures necessary to ensure that these rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by ... [insert date - **1 month before** the date of **application** of this **Article**], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

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Article 91
Evaluation

No ***later than 7*** years after the date of application of this Regulation ***and at least every six years thereafter***, the Commission shall carry out an evaluation of this Regulation and of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products and construction works and built environment. The ***evaluation shall inter alia assess the correlation of the revised Construction Products Regulation with Regulation (EU) .../... (Ecodesign for Sustainable Products Regulation) and the potential environmental and economic benefits and impacts of extended producer responsibility of manufacturers of certain construction products and of the regain of ownership of surplus and unsold products at EU level.*** The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Member States shall provide the Commission with the information necessary for the preparation of that report. ***The reports shall also evaluate the effect of the application of this Regulation on the state of the market for different categories of used products. The Commission shall evaluate if the penalties applied by the Member States are effective and do not create fragmentation in the internal market and, if needed, shall suggest how to harmonise them.***

Where appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.

Article 92

Repeal

Regulation (EU) 305/2011 *of the European Parliament and of the Council*³⁰ is repealed with effect from ... *[date of application of this Regulation], with the exception of Article 2, Articles 4 to 9, Articles 11 to 18, Articles 27 and 28, Articles 36 to 40, Articles 47 to 49, Articles 52 and 53, Article 55 and Articles 60 to 64 as well as annexes III and V which are repealed with effect from ... [15 years after the date of entry into force].*

References to *the repealed* Regulation (EU) 305/2011 shall be construed as references to this Regulation *and shall be read* in accordance with the correlation table in Annex VII.

Article 93

Derogations and transitional provisions

1. Product contact points for construction designated under Regulation (EU) 305/2011 shall be deemed to be designated under this Regulation as well.
2. TABs and notified bodies *that are* designated *or notified* under Regulation (EU) 305/2011 shall be deemed to be designated *or notified* under this Regulation as well. However, they shall be assessed and designated anew by the designating Member States in accordance with their periodic re-assessment cycle and at the latest ... [5 years after entry into force]. The objection procedure set-out in Article 56(5) *of this Regulation* shall apply.

³⁰ *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 (OJ L 88, 4.4.2011, p. 5).*

3. ***Harmonised standards referenced in the list published in accordance with Article 17(5) of Regulation (EU) 305/2011 that are in force on ... [date of application of this Regulation] shall remain valid under Regulation (EU) 305/2011 until they are withdrawn by the Commission or otherwise repealed.***

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4. European assessment documents, ***the references of which are included in the list published in accordance with Article 22 of Regulation (EU) 305/2011 by ... [date of application], shall remain valid until ... [5 years after date of application], unless they have expired for other reasons. Products shall not be placed on the market on the basis of European technical assessments issued in accordance with these European assessment documents after ... [10 years after date of application].***

4a. ***When a harmonised technical specification adopted in accordance with Article 4(8) or Article 4a(1) covers the same product and the same intended use than a European assessment document, the reference of which is included in the list published in accordance with Article 22 of Regulation (EU) 305/2011 by entry into application] the European assessment document shall not longer be used for the purposes of this Regulation and products shall not be placed on the market on the basis of European technical assessments issued in accordance with this European assessment document.***

- 4b. *European technical assessments issued according to European assessment documents the reference of which are not included in the list published in accordance with Article 22 of Regulation (EU) 305/2011 by [date entry into application] shall be treated as a European technical assessments request under this Regulation. The administrative transfer shall be done at no cost for the manufacturer.*
5. **█** *Certificates, test reports and European Technical Assessments issued under Regulation (EU) 305/2011 may be used as technical basis to demonstrate a product's compliance with this Regulation in cases where the product type is corresponding and the requirements and assessment methods are valid according to the applicable harmonised technical specification. The recognition of such documents shall be possible under the conditions set out in Article 67.*
- 5a. *Articles 2, Articles 4 to 9, Articles 11 to 18, Articles 27 and 28, Articles 36 to 40, Articles 47 to 49, Articles 52 and 53, Article 55 and Articles 60 to 64 of Regulation (EU) 305/2011 shall only apply to products covered by standards referred to in paragraph 3 or to products covered by European assessment documents referred to in paragraph 4.*
- For the purposes of Articles 4(7), 4a(1), and 35(2), harmonised standards referenced in the list published in accordance with Article 17(5) of Regulation (EU) 305/2011 which have not been withdrawn shall be treated as construction product performance standards.*

6. The requirements *and obligations of economic operators* set out in Chapters I, II and III *shall only be applicable* to a certain product *family or a category of products within such a family* from one year after the *date of adoption of an implementing act in accordance with Article 4(8) having recourse to a harmonised standard or an implementing act adopted in accordance with Article 4a(1)* covering that product *family or category, unless a later application date has been specified in the implementing act*. However, economic operators may *choose to* apply those harmonised technical specifications as from their entry into force by undergoing the procedure leading to a declaration of performance *and* conformity.
7. Within *one year* following the *date of application of requirements and obligations in relation to* a certain product *family or category as set out in paragraph 6*, the Commission shall withdraw from the Official Journal references of harmonised standards and *European assessment documents or parts thereof published there in accordance with Articles 17(5) and 22 of Regulation (EU) 305/2011* when they are covering the *same* respective product *family or category*.

Article 94

Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

It shall apply as from ... [*12 months after the date of entry into force*], with the exception of *Articles 1, 2, 3, 3a, 4(1) to 4(7), 5(1), 5b(1 to 4), 6, 8(1), 15(2a), 42(3), 68, 87 and 88 and Annexes I, IV (table 1), V and VI, which shall apply as from ... [date of entry into force], and of Article 90, which shall apply from ... [insert date - 24 month after the date of entry into force of this Regulation]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

The President

For the Council

The President

ANNEX I.1

BASIC REQUIREMENTS FOR CONSTRUCTION WORKS

The following list of basic requirements for construction works shall be taken as the basis for the identification of essential characteristics of products and for the preparation of *standardisation* requests, *harmonised technical specifications and European assessment documents*.

These basic requirements for construction works do not constitute obligations incumbent upon economic operators or Member States.

The intended life span related to basic requirements for construction works shall take into account the likely impacts of the changing climate.

1.1. Structural integrity of construction works

The construction works and *the relevant parts* of them shall be designed, constructed, used, maintained and *deconstructed or* demolished in such a way that all relevant loads and any combinations of them are sustained and transmitted into the ground safely and without causing deflections or deformations of any part of the construction works, or movement of the ground as to impair the durability, structural resistance, serviceability and robustness of the construction works.

The structure and structural elements of construction works shall be designed, manufactured, constructed, maintained and *deconstructed or* demolished in such a way that they meet the following requirements:

- (a) be durable for their intended life span (durability requirement);
- (b) be able to sustain all actions and influences likely to occur during construction, use and *deconstruction or* demolition with an appropriate degree of reliability and in *a* cost-effective way (structural resistance requirement). They shall not:
 - (i) collapse;
 - (ii) deform to an inadmissible degree;
 - (iii) damage other parts of the construction works, fittings or installed equipment as a result of major deformation of the load-bearing construction;
- (c) remain within their specified service requirements during the intended life span with appropriate degrees of reliability and in an economic way (serviceability requirement);
- (d) maintain appropriately their integrity in adverse events, including earthquake, explosion, fire, impact or consequences of human errors, to an extent disproportionate to the original cause (robustness requirement).

1.2. Fire safety of construction works

The construction works and *the relevant parts* of them shall be designed, constructed, used, maintained and *deconstructed or* demolished in such a way that an event of fire is appropriately prevented, *including through adequate usage of detectors and alarms*. The fire and smoke shall be contained and controlled, and the occupants of the construction works shall be protected against fire and smoke. There shall be appropriate arrangements to ensure safe escape and evacuation of the construction works for all its occupants.

The construction works and any part of them shall be designed, constructed, used and maintained in such a way that they meet the following requirements in the case of a fire:

- (a) the load-bearing capacity of the construction works is maintained for a specific period of time *to give occupants time to leave the building*;
- (b) the rescue and emergency services' access is ensured and there are appropriate means to facilitate their work;
- (c) the generation and spread of fire and smoke is controlled and limited;
- (d) the spread of the fire and smoke to the adjacent construction works is limited;
- (e) the safety of rescue and emergency services is taken into consideration.

1.3. ■ Protection against adverse hygiene and health impacts related to construction works

The construction works and any part of them shall be designed, constructed, used, maintained and *deconstructed or* demolished in such a way that they, throughout their life cycle, do not *adversely affect the hygiene or* health and safety of *construction* workers, occupants, *visitors* or neighbors as a result of any of the following:

- (a) the emissions of hazardous substances, volatile organic compounds or hazardous particles, *including microplastics*, into indoor air;
- (b) the emission of hazardous radiation into the indoor environment;
- (c) the release of hazardous substances into drinking water or substances which have an otherwise negative impact on drinking water;
- (d) the passage of moisture to the interior of the building;
- (e) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid waste to the indoor environment.

1.4. Safety and accessibility of construction works

The construction works and any part of them shall be designed, constructed, used, maintained and **deconstructed or** demolished in such a way that, throughout their life cycle, they do not present unacceptable risks of accidents or damage in service or in operation, including slipping, falling, collision, burns, electrocution and injury from falling or braking parts caused by external factors like extreme weather conditions or **explosions**.

In particular, construction works shall be designed and built taking into consideration accessibility and use for disabled persons and persons with limited mobility or orientation.

1.5. Resistance to the passage of sound and acoustic properties of construction works

The construction works and any part of them shall be designed, constructed, used, maintained and **deconstructed or** demolished in such a way that they provide, throughout their life cycle, reasonable protection against adverse sound load through air or materials from other parts of the same construction work or sources outside its structure. That protection shall ensure that it:

- (a) does not create immediate or chronic risks for the human health;
- (b) allows occupants and people nearby to sleep, rest and engage in their normal activities in satisfactory conditions.

The construction works and any part of them shall be designed, constructed, used and maintained in such a way that they provide sufficient sound absorption and reflection where these acoustic properties are required.

1.6. Energy efficiency and thermal performance of construction works

The construction works, *including automated processes within them*, and their heating, cooling, lighting and ventilation installations shall be designed, built, and maintained in such a way that ■ the amount of energy they require *during their use phase* shall be low, when account is taken of:

- (a) the target for nearly zero energy buildings and zero-emissions buildings in the Union;
- (b) the outdoor climatic conditions;
- (c) the indoor climate conditions.

1.7. ■ Emissions into the outdoor environment of construction works

The construction works and any part of them shall be designed, constructed, used, maintained and demolished in such a way that, throughout their life cycle, they are not a *risk* to the outdoor environment, as a result of any of the following:

- (a) the release of hazardous substances, *microplastics*, or radiation into *air*, ground water, marine or surface waters or soil;
- (b) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid waste to the outdoor environment;
- (c) damage to the building, including damage through the transport of water-borne contaminants to the foundations of the building;
- (d) the release of █ greenhouse gas emissions into the atmosphere.

1.8. Sustainable use of natural resources of construction works

The construction works and any part of them shall be designed, constructed, used, maintained and *deconstructed or* demolished in such a way that, throughout their life cycle, the use of natural resources is sustainable and ensures the following:

- (a) *maximising the resource efficient* use of raw and secondary materials of high environmental sustainability █ ;

- (b) minimizing the overall amount of raw materials used;
- (c) minimizing the overall amount of embodied energy;
- (ca) *minimising the waste generated;*
- (d) minimizing the overall use of drinking and brown water;
- (e) *maximising the* reuse or recyclability of the construction works, *in part or in whole, and of* their materials after *deconstruction or* demolition;
- (ea) *ease of deconstruction.*

ANNEX I.2

PREDETERMINED ENVIRONMENTAL ESSENTIAL CHARACTERISTICS

Harmonised technical specifications *and European assessment documents shall* cover the following *list of predetermined environmental* essential characteristics related to *the* life cycle assessment *of a product*:

- (a) climate change effects – *total*;
- (aa) *climate change effects – fossil fuels*;
- (ab) *climate change effects – biogenic*;
- (ac) *climate change effects – land use and land use change*;
- (b) ozone depletion;
- (c) acidification potential;
- (d) eutrophication aquatic freshwater;
- (e) eutrophication aquatic marine;
- (f) eutrophication terrestrial;
- (g) photochemical ozone;
- (h) abiotic depletion – minerals, metals;

- (i) abiotic depletion – fossil fuels;
- (j) water use;
- (k) particulate matter;
- (l) ionizing radiation, human health;
- (m) eco-toxicity, freshwater;
- (n) human toxicity, cancer;
- (o) human toxicity, non-cancer;
- (p) land use related impacts.

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Harmonised technical specifications shall also cover to the extent possible the *predetermined environmental* essential characteristic of capability to temporarily bind carbon and of other carbon removals.

ANNEX I.3

PRODUCT REQUIREMENTS



Annex I.3.1 Product requirements ensuring appropriate functioning and performance

1.1. Harmonised technical specifications adopted in accordance with Article 5(1) may, as appropriate for the products it covers, specify that products shall be designed, manufactured, and packaged in such a way that one or more of the following functional and performance requirements are over the product's life cycle, addressed in accordance with the state of the art and to the extent not covered by other EU legislation:

- (a) *the intended purpose is effectively and reliably fulfilled;*
- (b) the fulfilment of the declared performance is not impaired;
- (c) the fulfilment of the *safety and environmental* requirements set out in *accordance with points 2.1 and 3.1* is not impaired;
- (d) *the functionality of the products is maintained.*

1.2. Voluntary harmonised standards, requested in accordance with Article 5(3), shall set out how any requirements in accordance with Point 1.1 can be fulfilled, by for instance:

- (a) the use of specific materials which can be specified also in terms of their chemical composition;
- (b) specific dimensions and shapes of products or their components;
- (c) the use of certain components which can be specified also in terms of materials, dimensions and shapes;
- (d) the use of certain accessories and requirements for them;
- (e) *ease of installation and deinstallation;*
- (f) *ease of maintenance or no maintenance required for the expected life span;*
- (g) *characteristics of the product, including cleanability, scratch resistance and break resistance, under usual operation conditions.*

1.3. When specifying the functionality and performance product requirements, harmonised technical specifications may differentiate these in accordance with performance classes.

ANNEX I.3.2

INHERENT PRODUCT SAFETY REQUIREMENTS

Safety relates to professionals (workers) and laypersons (consumers, occupants), while they transport, install, maintain, use or dismantle the product, as well as while they treat the product for its end of life phase or its reuse or recycling.

- 1.1. *Harmonised technical specifications adopted in accordance with Article 5(1) may, as appropriate for the products it covers, specify that products shall be designed, manufactured, and packaged in such a way that **one or more of** the following inherent product safety risks are, **over the product's life cycle**, addressed in accordance with the state of the art **and to the extent not covered by other EU legislation**:*
- (a) chemical risks due to leaking or leaching;
 - (b) risk of unbalanced composition in terms of substances resulting in flawed, safety-relevant functioning of products;
 - (c) mechanical risks;
 - (d) mechanical failure;
 - (e) physical failure;

- (f) risks of electric failure;
- (g) risks linked to electricity supply breakdown;
- (h) risks linked to unintended charge or discharge of electricity;
- (i) risks linked to software failure;
- (j) risks of software manipulation;
- (k) risks of incompatibility of substances or materials;
- (l) risks linked to the incompatibility of different items, at least one of them being a product;
- (m) risk of not performing as intended, whilst the performance is safety relevant;
- (n) risk of misunderstanding instructions for use in a field affecting health and safety;
- (o) risk of unintended inappropriate installation or use;
- (p) risk of intended inappropriate use.

1.2. Harmonised *standards and common specifications providing presumption of conformity shall set out how any requirements in accordance with Point 1.1 can be fulfilled, by for instance:*

■

- (a) *defining* the state of the art of possible risk reduction with regard to the respective product category, including the risk of incompatibility of different items, at least one of them being a product;
- (b) *providing* technical solutions that avoid safety-related risks; *or*
- (c) where risk avoidance is not possible, *reduce and mitigate risks by addressing them through* warnings on the product, its packaging and in instructions for use.

1.3. When specifying the inherent product safety requirements, harmonised technical specifications may differentiate these in accordance with performance classes.

ANNEX I.3.3

INHERENT PRODUCT ENVIRONMENTAL REQUIREMENTS

Environment relates to the extraction and manufacturing of the materials, the manufacturing of the product, *the transport of materials and products*, its maintenance, its potential to remain as long as possible within a circular economy and its end of life phase.

- 2.1. ***Harmonised technical specifications adopted in accordance with Article 5(1) may, as appropriate for the products it covers, specify that products shall be designed, manufactured, and packaged in such a way that one or more of the following inherent product environmental aspects are, over the product's life cycle, addressed wherever possible without safety loss or outweighing negative environmental impact and to the extent not covered by other EU legislation:***
- (a) maximising durability ***and reliability of the product or its components as expressed through a product's technical lifetime indication of real use information on the product, resistance to stress or ageing mechanisms and*** in terms of the expected average life span, the ■ minimum life span under worst but still realistic conditions, and in terms of the minimum life span requirements ***and prevention of premature obsolescence;***
 - (b) minimising ***life-cycle*** greenhouse gas emissions;
 - (c) maximising ***reused, recycled and by-product content;***

- (d) selection of safe, *sustainable-by-design, and* environmentally benign substances;
- (e) energy use and energy efficiency;
- (f) resource efficiency;
- (fa) modularity;**
- (g) identification which product or parts thereof and in what quantity can be reused after de-installation (reusability);
- (h) upgradability;
- (i) *ease of* reparability during the expected life span, *including compatibility with commonly available spare parts*;
- (j) *ease* of maintenance and refurbishment during the expected life span;
- (k) recyclability and the capability to be remanufactured;
- (l) capability of different materials or substances to be separated and recovered during dismantling or recycling procedures;

- (la) *sustainable sourcing*;
- (lb) *minimising product-to-packaging ratio*;
- (le) *amounts of waste generated, notably hazardous waste*.

3.2. **Harmonised standards and common specifications providing presumption of conformity shall set out how any requirements in accordance with Point 3.1 can be fulfilled, by for instance:**

- (a) **defining** the state of the art of addressing the environmental aspects with regard to the respective product category, including the minimum recycled content, *whole life cycle greenhouse gas emissions, resource efficiency, and reusability*;
- (b) **providing** technical solutions which avoid negative environmental effects and risks, including the generation of waste materials, *or*

where avoidance is not possible, **reduce and mitigate** negative effects and risks **by addressing them through** warnings on the product, its packaging and in instructions for use.

3.3. When specifying the inherent product environmental requirements, harmonised technical specifications may differentiate these in accordance with performance classes.

GENERAL INFORMATION, INSTRUCTIONS FOR USE AND SAFETY INFORMATION ■

1. **General** information ■

1.1. Product identification: **unique identification code** of the ■ product type ■ .

1.2. Product description:

(a) **declared** uses;

(b) intended users;

(c) conditions of uses;

(d) estimated average and minimum service life span for **declared** use (durability);

■

(f) main materials used.

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1.3. Contact details of the manufacturer or the authorised representative:

- (a) name;**
- (b) postal address;**
- (c) telephone;**
- (d) email address;**
- (e) website, where available.**

1.4. Where different from Point 1.3, contact details of the manufacturer or the authorised representative dealing with:

- (i) information on installation, maintenance, use, deconstruction and demolition;**
- (ii) information on risks;**
- (iii) information in case of failure.**

1.5. Contact details of the product contact point for construction in the Member State in which the product is made available.

2. Instructions for use and safety information

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2.1. Safety during transport, installation, *deinstallation*, maintenance, deconstruction and demolition:

- (i) potential risks of the product and any reasonably foreseeable misuse thereof;
- (ii) instructions for the assembly, installation and connection, including drawings, diagrams and, where relevant, the means of attachment to other products and parts of construction works;
- (iii) instructions for operation and maintenance to be carried out safely, including the protective measures that should be taken during these operations;
- (iv) if necessary, instructions for the training of the installers or operators;
- (v) information on what to do in case of failure or accidents.

2.2. Compatibility and integration into systems or kits:

- (i) compatibility with other materials or products, regardless of whether they are covered by this Regulation or not;
- (ii) electric and electro-magnetic compatibility;
- (iii) software compatibility;
- (iv) integration into systems or kits.

2.3. Maintenance needs with a view to maintaining the performance of the product during its service life span:

- (i) description of the adjustment and maintenance operations that should be carried out by the users and the preventive maintenance measures that should be observed;
- (ii) the type and frequency of inspections and maintenance required for safety *and durability* reasons and, where appropriate, the parts subject to wear and the criteria for replacement;
- (iii) information on what to do in case of failure or accident.

2.4. Safety during use:

- (i) instructions on the protective measures to be taken by the user, including, where appropriate, the personal protective equipment to be provided;
- (ii) instructions designed for the safe use of the product, including the protective measures that should be taken during its use;
- (iii) information on what to do in case of failure or accident during use.

2.5. Training and other requirements necessarily to be fulfilled for safe use.

2.6. Risk mitigation possibilities going beyond points *2.1 to 2.5*.

1.4. █

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2.7. █ Recommendations for *a product's*:

(a) *repair*;

(b) *de-installation*;

(c) *reuse*;

(d) *remanufacturing*;

(e) *recycling*;

(f) *safe deposit*.

2.8. *Where applicable, information on the performance of the product as measured in terms of its climate change effects - total, as referred to in point (a) of Annex I.2, and human toxicity, cancer, as referred to in point (n) of Annex I.2.*

3. *The information provided on the elements listed in point 2.* shall, both in terms of quantity and quality, suffice to make knowledgeable decisions on purchase, including the respective needed quantity, installation, use, maintenance, dismantling, reuse and recycling of the product. It *may* include all the drawings, diagrams, descriptions and explanations necessary to understand it.

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■ *The information* shall, as appropriate, *strive to* take into account the needs of designers, building authorities, construction professionals, building control authorities, consumers and other users, occupants, use managers, and of maintenance professionals.

4. *Guidelines and technical details developed in accordance with Article 5b(2) shall also recommend where the respective information is to be provided, aiming, by choice of the location, at the utmost likelihood for information not be overlooked.*

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DECLARATION OF PERFORMANCE AND *CONFORMITY AS REFERRED TO IN*
*ARTICLE 11*³¹

MODEL FOR THE DECLARATION OF PERFORMANCE AND CONFORMITY

Name of the Manufacturer

Declaration *Code* ...³²

Version No ...³³

Date of that version ...

1. Product description

- (a) unique identification code of the product type ■ and, *where available, the batch or serial number*;
- (b) product category as defined by harmonised technical specifications or European Assessment Documents;

³¹ *Where a Declaration of Performance and Conformity is issued in relation to a product not subject to product requirements specified in accordance with Article 5(1), points 12. and 13.(c) are omitted.*

³² Only one unique, unequivocal declaration *code* per product type shall be used, even where there are variants, variants being variations of the product type that do not influence performance or conformity of the product.

³³ Different versions may be issued, e.g. to correct mistakes or add complementary information.

- (c) **declared** uses of the product, **within the scope of** the applicable harmonised technical specification or European Assessment Document ■ ;
- (d) **nominal** dimensions **or grading** of the product;
■
- (g) key parts of the product, **where applicable**;
- (h) estimated average and minimum service life time for the **declared use** (durability);
- (i) variants, if any, and their descriptions;
- (ia) **in cases where the product has been previously installed in a construction work, the date and place of the latest de-installation.**

2. Permalinks **or data carriers** as regards the following, **unless the information is available in the product passport pursuant to Article 81b**:

- (a) the manufacturer's products registration(s) in EU databases, **if any**;
- (b) **information to be provided in accordance with Regulation (EC) 1907/2006**, ■
where **applicable**;
- (c) **general information**, instructions for use **and safety information** in accordance with Annex I.4.

3. Manufacturer:

- (a) name;
- (b) *registered* trade name;
- (c) *registered* place of business;
- (d) postal address;
- (e) telephone;
- (f) email address;
- (g) website.



4. Authorised representative, *where applicable*:

- (a) name;
- (b) *registered* trade name;
- (c) *registered* place of business;
- (d) postal address;
- (e) telephone;
- (f) email address;
- (g) website.



5. Notified *body or* bodies, *where applicable*:

- (a) name;
- (aa) *identification number*;
- (b) *registered* trade name, *where available*;
- (c) *registered* place of business;
- (d) postal address;
- (e) telephone;
- (f) email address;
- (g) website.



6. Technical Assessment Body, *where applicable*:

- (a) name;
- (aa) *identification number*;
- (b) *registered* trade name, *where available*;
- (c) place of business;
- (d) postal address;
- (e) telephone;
- (f) email address;
- (g) website.

■

7. ***Reference to certificate(s) or validation report(s) issued by notified bodies and TABs.***

8. ***Technical reference documents:***

(a) harmonised technical specifications ***laying down essential characteristics*** applied
■ (reference number and date of issue); ***or***

(b) European Assessment Document applied (***reference number and date of issue***) and
***European Technical Assessment issued (technical assessment body, reference
number and date of issue).***

■

11. Declared performances and sustainability characteristics:

(a) the ***complete*** list of essential characteristics, as determined in the harmonised
technical specification or European Assessment Document for the respective product
category for which a performance is declared ***and the applicable assessment and
verification system applicable to them;***

- (b) the performance of the product, by calculated values, levels or classes, or in a description. Respective values, levels or classes shall be reproduced in the declaration of performance itself and thus cannot be expressed solely by inserting references to other documents. ***For essential characteristics where no performance is declared, in the place for the declaration of the value NULL shall be inserted. The performance of structural behavior of a product may be expressed by referring to attached production documentation or structural design calculations;***
- (c) the environmental sustainability ***expressed for the applicable*** essential characteristics ***for the applicable life cycle modules in accordance with Article 11(2);***
- (d) ***reference to the version of the software used as provided by the European Commission.***

12. ***Applicable product requirements as specified by harmonised technical specifications, the applicable assessment and verification system applicable to them and the reference to the harmonised standard or common specifications or parts thereof applied including the date.***

Where applicable, information on the performance of the product as measured in terms of its product requirements.

13. Declarations:

- (a) the performance of the product identified above is in conformity with the set of declared performances under point 11;
- (b) the sustainability data of the product identified above have been correctly calculated on the basis of the product category rules applicable to it;
- (c) the product identified above is in conformity with the requirements listed under point 12.

Signed for and on behalf of the manufacturer by:

[name, function³⁴]

At [place]

on [date of issue]

[signature]

³⁴ The person signing shall be empowered by virtue of national law to represent the manufacturer, be it on the basis of a mandate, be it due to her/his role as legal representative.

PROCEDURE FOR *REQUESTING OF EUROPEAN TECHNICAL ASSESSMENTS AND FOR*
ADOPTING A EUROPEAN ASSESSMENT DOCUMENT

1. Request for a European Technical Assessment
 - (a) When a manufacturer makes a request for a European Technical Assessment to any TAB for a product, and after the manufacturer and the TAB (hereinafter referred to as the ‘responsible TAB’) have signed an agreement of commercial secrecy and confidentiality, unless the manufacturer decides otherwise, the manufacturer shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the manufacturer and details of the factory production control the manufacturer intends to apply;
 - (b) When a group of manufacturers or a manufacturers’ association (hereinafter referred to as the ‘Group’) makes a request for a European Technical Assessment, it shall address the request to the organisation of TABs that will propose to the Group a TAB to act as the responsible TAB. The Group can either accept the proposed TAB or ask the organisation of TABs to propose an alternative TAB. Once the Group has accepted the responsible TAB proposed by the organisation of TABs, the members of the Group shall sign an agreement of commercial secrecy and confidentiality with this TAB, unless the Group decides otherwise, and the Group shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the Group and details of the factory production control the members of the Group intend to apply;

- (c) In the absence of a request for a European Technical Assessment, when the Commission initiates the development of a European Assessment Document, it shall deliver to the organisation of TABs a technical file describing the product, its use and details *to become applicable. The organisation of TABs shall together with* the Commission *agree on a* TAB to act as the responsible TAB ■ .

2. Contract

For products referred to in Article 37(1)(c), within 1 month from the reception of the technical file, in cases foreseen in points 1(a) and 1(b), a contract shall be concluded respectively between the manufacturer or the Group and the responsible TAB for the production of the European Technical Assessment, specifying the work programme for drawing up the European Assessment Document, including:

- (a) the organisation of work within the organisation of TABs;
- (b) the composition of the workgroup to be established within the organisation of TABs, designated for the product *family* in question; and
- (c) the coordination of TABs.

In the case foreseen in point 1(c), the responsible TAB shall submit to the Commission the work programme for drawing up the European Assessment Document with the same content and within the same deadline. After that, the Commission shall have 30 working days to communicate to the responsible TAB its observations on it, and the responsible TAB shall amend the work programme accordingly.

3. ***Communication of work programme***

In the cases foreseen by points 1(a) and 1(b), after agreement with the manufacturer and the Group respectively, the organisation of TABs shall inform the Commission of the work programme for drawing up the European Assessment Document and the schedule for its execution, indicating the assessment programme. This communication shall take place within three months of receipt of the request for a European Technical Assessment by a TAB, which shall initiate the procedure as laid down in points 1(a) and 1(b).

In the case provided for by point 1(c), the organisation of TABs shall submit to the Commission the work programme for drawing up the European Assessment Document with the same content and within the same deadline as indicated in the previous subparagraph. The Commission shall then communicate to the organisation of TABs within 30 working days its observations on the work programme. The responsible TAB or the organisation of TABs, respectively, after having been given the opportunity to comment, shall amend the work programme accordingly.

4. The draft European Assessment Document

The organisation of TABs shall finalise a draft European Assessment Document by means of the working group coordinated by the responsible TAB and shall communicate such draft to the parties concerned within 6 months of the date the Commission was informed of the work programme in cases foreseen in points 1(a) and 1(b) or the date the Commission communicated to the responsible TAB its observations on the work programme in the case foreseen in point 1(c).

5. Commission Participation

A Commission representative may participate, as observer, to all the parts of the execution of the work programme. The Commission may request the organisation of TABs at any stage to abandon or modify the development of a certain European Assessment Document *when the development is not in line with this Regulation or in case the approach is not efficient or effective in terms of resources and final applicability. The Commission may request the organisation of TABs at any stage to merge parallel processes for the development of European assessment documents, or to split a single process in two, to increase clarity or ensure efficiency in the development process or in the future application of the assessment document under consideration.*

In case the TABs involved do not agree on a European assessment document within the time limits provided for, the organisation of TABs shall submit the matter to the Commission for appropriate resolution, including through instructions to the organisation of TABs on how to complete its work.

6. Member States consultation

In the case *provided for* in point 1(c), the Commission shall inform Member States on the development of the European Assessment Document after the finalisation of the work programme for it. When requested, Member States may participate where appropriate in its execution. *Observations from the Member States shall be communicated to, and dealt with by, the Commission. The organisation of TABs shall be informed by the Commission of any change in the work programme, required and agreed by the Commission, within the time frame given to the Commission for commenting on the work programme before starting the development of the European Assessment Document.*

7. Extension and delay

Any delay in relation to the time limits set in points 1 to 4 in this Annex shall be reported by the working group to the organisation of TABs and to the Commission.

If an extension of the time limits for developing the European Assessment Document can be justified, notably by the absence of a Commission decision on the applicable assessment and verification system for the product or by the need to develop a new test method, an extended time limit shall be set by the Commission.

8. Amendments and adoption of a *draft* European Assessment Document
- 8.1. In cases foreseen in points 1.(a) and 1.(b), the responsible TAB shall communicate the draft European Assessment Document to the manufacturer or the Group, respectively, who shall have **20** working days to react thereto. Thereafter, the organization of TABs shall:
- (a) if applicable, inform the manufacturer or the Group as to how their reactions have been taken into account;
 - (b) adopt the draft European Assessment Document;
 - (c) send a copy of it to the Commission.
- 8.2. In the case foreseen in point 1.(c), the responsible TAB shall:
- (a) adopt the draft European Assessment Document;
 - (b) send a copy of it to the Commission.

8a. *Commission assessment of draft European Assessment Documents*

The Commission shall assess the submitted draft European Assessment Document and, within 30 working days of receipt, communicate its observations to the organisation of TABs. The organisation of TABs, after having been given the opportunity to comment, shall amend the draft accordingly and resend copies of the amended draft European Assessment Document in accordance with points 8.1.(b) and (c) and 8.2.(b).

9. *Adoption of final European Assessment Document and publication*

The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union, for publication of its reference in the *Official Journal of the European Union without delay.*

The organisation of TABs shall publish the European Assessment Document *within 90 days from the date of adoption, in one or more languages of the Union and, as a minimum, keep it accessible until no European technical assessments based on it remain valid.*

LIST OF PRODUCT FAMILIES

CODE	PRODUCT <i>FAMILY</i>
1	PRECAST NORMAL/LIGHTWEIGHT/AUT OCCLAVED AERATED CONCRETE PRODUCTS.
2	DOORS, WINDOWS, SHUTTERS, GATES AND RELATED BUILDING HARDWARE.
3	MEMBRANES, INCLUDING LIQUID APPLIED AND KITS (FOR WATER AND/OR WATER VAPOUR CONTROL).
4	THERMAL INSULATION PRODUCTS. COMPOSITE INSULATING KITS/SYSTEMS.
5	STRUCTURAL BEARINGS. PINS FOR STRUCTURAL JOINTS.
6	CHIMNEYS, FLUES AND SPECIFIC PRODUCTS.

7	GYPSUM PRODUCTS.
8	GEOTEXTILES, GEOMEMBRANES, AND RELATED PRODUCTS.
9	CURTAIN WALLING/CLADDING/STRUCT URAL SEALANT GLAZING.
10 11 12	FIXED FIRE FIGHTING EQUIPMENT (FIRE ALARM/DETECTION, FIXED FIREFIGHTING, FIRE AND SMOKE CONTROL AND EXPLOSION SUPPRESSION PRODUCT). <i>SANITARY APPLIANCES.</i> <i>CIRCULAITON FIXTURES:</i> <i>ROAD EQUIPMENT</i>
13	STRUCTURAL TIMBER PRODUCTS/ELEMENTS AND ANCILLARIES.
14	WOOD BASED PANELS AND ELEMENTS.

<i>15</i>	CEMENT, BUILDING LIMES AND OTHER HYDRAULIC BINDERS.
<i>16</i>	REINFORCING AND PRESTRESSING STEEL FOR CONCRETE (AND ANCILLARIES). POST TENSIONING KITS.
<i>17</i>	MASONRY AND RELATED PRODUCTS. MASONRY UNITS, MORTARS, AND ANCILLARIES.
<i>18</i>	WASTE WATER ENGINEERING PRODUCTS.
<i>19</i>	FLOORINGS.
<i>20</i>	STRUCTURAL METALLIC PRODUCTS AND ANCILLARIES.
<i>21</i>	INTERNAL & EXTERNAL WALL AND CEILING FINISHES. INTERNAL PARTITION KITS.
<i>22</i>	ROOF COVERINGS, ROOF LIGHTS, ROOF WINDOWS, AND ANCILLARY PRODUCTS. ROOF KITS.

23	ROAD CONSTRUCTION PRODUCTS.
24	AGGREGATES.
25	CONSTRUCTION ADHESIVES.
26	PRODUCTS RELATED TO CONCRETE, MORTAR AND GROUT.
27	SPACE HEATING APPLIANCES.
28	PIPES-TANKS AND ANCILLARIES NOT IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.
29	<i>CONSTRUCTION PRODUCTS IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.</i>
30	FLAT GLASS, PROFILED GLASS AND GLASS BLOCK PRODUCTS.
31	POWER, CONTROL AND COMMUNICATION CABLES.

32	SEALANTS FOR JOINTS.
33	FIXINGS.
34	BUILDING KITS, UNITS, AND PREFABRICATED ELEMENTS.
35	█ FIRE STOPPING, FIRE SEALING AND FIRE PROTECTIVE PRODUCTS. FIRE RETARDANT PRODUCTS.
35a	<i>ATTACHED LADDERS</i>
█	█

ANNEX IVa

REQUIREMENTS FOR TABS

TABs shall be able to fulfil the following tasks and requirements:

Competence	Description of tasks	Requirement
1. Analysing risks	Identify the possible risks and benefits for the use of innovative products in the absence of established/consolidated technical information regarding their performance when installed in construction works.	A TAB shall be established under national law and have legal personality. It shall be independent from the stakeholders and from any particular interests. A TAB shall have staff with:
2 Setting technical criteria	Transform the outcome of the risk analysis into technical criteria for evaluating behaviour and performance of the products regarding the fulfilment of applicable national requirements; provide the technical information needed by those participating in the building process as potential users of the products (manufacturers, designers, contractors, installers).	(a) objectivity and sound technical judgement; (b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States where it is designated, concerning product <i>families</i> for which it is to be designated; (c) general understanding of construction practice and detailed technical knowledge, concerning product <i>families</i> for which it is to be designated;
3. Setting assessment methods	Design and validate appropriate methods (tests or calculations) to assess performance for essential characteristics of products, taking into account the current state of the article.	(d) detailed knowledge of specific risks involved and the technical aspects of the construction process; (e) detailed knowledge of the existing harmonised standards and test methods within ■ product <i>families</i> for which it is to be designated; (f) detailed knowledge of this Regulation; (g) appropriate linguistic skills. The remuneration of the TAB personnel shall not depend on the number of the assessments carried out or on the results of such assessments.
4. Determining the specific factory production control	Understand and evaluate the manufacturing process of the specific product in order to identify appropriate measures ensuring product constancy	A TAB shall have staff with appropriate knowledge of the relationship between the manufacturing processes and product characteristics related to factory

	through the given manufacturing process.	production control.
5. Assessing the product	Assess the performance for essential characteristics of products on the basis of harmonised methods against harmonised criteria.	In addition to the requirements listed in points 1, 2 and 3, a TAB shall have access to the necessary means and equipment for the assessment of the performance for essential characteristics of products within the product <i>families</i> for which it is to be designated.
6. General management	Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.	<p>A TAB shall have:</p> <ul style="list-style-type: none"> (a) a proven record of respect of good administrative behaviour; (b) a policy and the supporting procedures to ensure confidentiality and protection of sensitive information within the TAB and all its partners; (c) a document control system to ensure registration, traceability, maintenance, protection and archiving of all relevant documents; (d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods; (e) a procedure to manage objectively appeals and complaints.

ASSESSMENT AND VERIFICATION SYSTEMS (AVS)

The manufacturer shall, *in accordance with Article 21(1)*, correctly determine the product type pursuant to Article 3, point 31, and the corresponding product category on the basis of the applicable harmonised technical specification *or European Assessment Document*. Where a notified body is involved in assessment and verification, the notified body shall, *in accordance with Article 60(1)*, *verify these determinations*.

1. System 1+ – Full notified body control including audit sample testing
 - (a) The manufacturer shall carry out:
 - (i) factory production control;
 - (ii) further testing of samples taken at the manufacturing plant in accordance with the prescribed test plan;
 - (iii) *the drawing up of* technical documentation *containing* proof of the correct application of this Regulation with regard to the assessment of performance;
 - (iv) *the drawing up of* technical documentation *containing* proof of conformity with *the applicable* product requirements under this Regulation.

- (b) The notified body shall *decide on the issuing, restriction, suspension, or withdrawal of* the certificate of *constancy of* performance and of conformity *of the product* on the basis of:
- (i) confirmation of the correct determination of the product type and of the product category;
 - (ii) an assessment of the performance of the product on the basis of type testing (including sampling of the item(s) to be taken as representative of the type), type calculation or tabulated values *or* documentation *describing* the product;
 - (iii) initial inspection of the manufacturing plant and of factory production control;
 - (iiia) continuing surveillance, assessment and evaluation of factory production control including periodic inspections to the manufacturing plant;*
 - (iv) audit-testing of samples taken before placing the product on the market;
 - (v) ■ verification of the tasks under paragraphs (a) (iii) and (iv).

■

2. System 1 – Full notified body control without audit sample testing
- (a) The manufacturer shall carry out:
- (i) factory production control;
 - (ii) further testing of samples taken at the manufacturing plant by the manufacturer in accordance with the prescribed test plan;
 - (iii) *the drawing up of* technical documentation *containing* proof of the correct application of this Regulation with regard to the assessment of performance;
 - (iv) *the drawing up of* technical documentation *containing* proof of conformity with *the applicable* product requirements *under* this Regulation.
- (b) The notified body shall *decide on the issuing, restriction, suspension, or withdrawal of* the certificate of *constancy of* performance and of conformity *of the product* on the basis of:

- (i) confirmation of the correct determination of the product type and of the product category;
- (ii) an assessment of the performance of the product on the basis of type testing (including sampling of the item(s) to be taken as representative of the type), type calculation or tabulated values *or* documentation *describing* the product;
- (iii) initial inspection of the manufacturing plant and of factory production control;
- (iiia) continuing surveillance, assessment and evaluation of factory production control including periodic inspections to the manufacturing plant;*
- (iv) ■ verification of the tasks under paragraphs (a) (iii) and (iv).

■

3. System 2+ – Notified body focusing on the factory production control

- (a) The manufacturer shall carry out:
 - (i) an assessment of the performance of the product on the basis of testing (including sampling of the item(s) to be taken as representative of the type), type calculation, tabulated values or descriptive documentation of that product;
 - (ii) factory production control;

- (iii) testing of samples taken at the factory in accordance with the prescribed test plan;
 - (iv) *the drawing up of* technical documentation *containing* proof of the correct application of this Regulation with regard to the assessment of performance;
 - (v) *the drawing up of* technical documentation *containing* proof of conformity with *the applicable* product requirements *under* this Regulation.
- (b) The notified body shall *decide on the issuing, restriction, suspension or withdrawal of* the certificate of conformity of the factory production control on the basis of:
- (i) confirmation of the correct determination of the product type and of the product category and confirmation of the correct assessment of the performance of the product on the basis of the review of the documentation of the product;
 - (ii) initial inspection of the manufacturing plant and of factory production control;

(iia) continuing surveillance, assessment and evaluation of factory production control including periodic inspections to the manufacturing plant;

(iii) ■ verification of the tasks under paragraphs (a) (iv) and (v).

■

4. System 3+ – Notified body’s control of environmental sustainability assessment

(a) The manufacturer shall carry out:

(i) the assessment of the performance of the product on the basis of data collection for input values, assumptions and modelling;

(ii) factory production control.

(b) The notified body shall *decide on the issuing, restriction, suspension or withdrawal of the validation report on the basis of:*

(-i) validation of the input values, assumptions made and compliance with applicable generic or product category specific rules;

(i) *validation of* the manufacturer’s assessment;

(ii) *validation of* the process applied to generate that assessment;

(iia) validation of the correct usage of software appropriate for the assessment;

(iib) initial inspection of the manufacturing plant to validate any company-specific data.

5. System 3 – Notified body focusing on the product type determination

- (a) The manufacturer shall carry out:
- (i) **further** assessment of the performance of the product on the basis of testing (including sampling of the item(s) to be taken as representative of the type), type calculation, tabulated values or descriptive documentation of that product;
 - (ii) factory production control;
 - (iii) **the drawing up of** technical documentation **containing** proof of the correct application of this Regulation with regard to the assessment of performance;
 - (iv) **the drawing up of** technical documentation **containing** proof of conformity with **the applicable** product requirements **under** this Regulation.
- (b) The notified body shall **decide on the issuing, restriction, suspension or withdrawal of** the certificate of **constancy of** performance and of conformity **of the product** on the basis of:
- (i) **an assessment** of the **performance on the basis of testing performed by a notified testing laboratory** (based on sampling carried out by the manufacturer), **■** calculation, tabulated values **or descriptive** documentation of the product;

- (ii) *confirmation of the correct determination of the product type and of the product category.*

6. System 4 – Manufacturer’s self-verification and self-certification

(a) The manufacturer shall carry out:

- (i) an assessment of the performance of the product on the basis of testing (including sampling of the item(s) to be taken as representative of the type), type calculation, tabulated values or descriptive documentation of that product;
- (ii) *determine* the product type and **■** the product category on the basis of type testing, type calculation or tabulated values **■** ;
- (iii) factory production control;
- (iv) *the drawing up of* technical documentation *containing* proof of the correct application of this Regulation with regard to the assessment of performance;
- (v) *the drawing up of* technical documentation *containing* proof of conformity with *the applicable* product requirements *under* this Regulation.

(b) There is no task for the notified body.

7. *The following horizontal rules pertaining to some or all of the systems above ■ shall apply:*

(a) *When a system includes an inspection of the manufacturing plant by a notified body, those inspections shall cover all locations at which significant manufacturing processes take place and, at least, verify the following elements:*

(i) *the factory production control specifying the measures and frequencies foreseen to ensure constancy of performance, including the critical to performance parameters;*

■
(iv) *outline of the intended factory production control.*

(b) *When a system includes factory production control, those controls shall cover the production process from receipt of the raw materials and components to the dispatch of the product ■ ('gate to gate' approach) once that production has started, and at least include the following elements:*

(i) *ensuring that the products conform with the product type and therefore reach the performances declared in the declaration of performance and conformity and are compliant with the requirements set out in or under this Regulation;*

(ii) *application of the technical details necessary for the implementation of the assessment and verification system or systems as defined in harmonised technical specifications, European assessment documents and harmonised standards, including as a minimum the critical to performance parameters.*

- (c) *When a system includes further testing of samples, the following applies:*
- (i) *tests shall include testing of an adequate number of products, as defined in harmonised technical specifications, European assessment documents and harmonised standards, with regard to conformity with the product type;*
 - (ii) *in case tests are not suitable for the product, the product type may be defined using the applicable extended application rules referred in harmonised technical specifications, European assessment documents and harmonised standards, where available. Notified bodies confirming the correct determination of the product type shall also confirm the correct application of the relevant extended application rules;*
 - (iii) *results from tests undertaken by another manufacturer or notified body may be used in accordance with Articles 64 and 67.*

(d) *In the case of systems dealing with environmental sustainability, the validation shall consist of the verification of calculations and input data. In that context, the notified body shall verify whether the applicable modelling and input data according to the harmonised technical specification or European Assessment Document reflect the performance of the product. Verification shall include the use of the IT tool provided by the Commission and any data used. Where company-specific data is used, the reliability of that data shall be verified.*

■

(g) Notified bodies *and* manufacturers ■ shall consider the European Technical Assessment issued for the product ■ as the assessment of the performance of that product. *Manufacturers finding evidence or informed by the notified body that the performance of the product is not in conformity with the European Technical Assessment shall bring that product into conformity including, when relevant, the fulfilment of obligations set out in Article 21(8).*

ESSENTIAL CHARACTERISTICS *OF A HORIZONTAL NATURE*

The following are groupings of essential characteristics of a horizontal nature, which have been developed on the basis of Annex I.1 and I.2, for the application of this Regulation.

1. Reaction to fire.
2. Resistance to fire.
3. External fire performance.
4. Noise absorption.
5. ***Release and content*** of dangerous substances.
6. Environmental sustainability.

CORRELATION TABLES

Table 1: Regulation (EU) 305/2011 > this Regulation

Regulation (EU) 305/2011	This Regulation
Article 1	Article 1
Article 2	Article 3
Article 3	Article 4
Article 4	Article 9
Article 5	Article 10
Article 6	Article 11
Article 7	Article 15
Article 8	Article 16
Article 9	Article 17
Article 10	Article 79
Article 11	Article 22
Article 12	Article 23
Article 13	Article 24
Article 14	Article 25
Article 15	Article 26
Article 16	Article 30

Article 17	Article 34
Article 18	Article 34
Article 19	Article 35
Article 20	Article 36
Article 21	Article 37
Article 22	Article 38
Article 23	Article 39
Article 24	Article 40
Article 25	Article 41
Article 26	Article 42
Article 27	-
Article 28	Article 6
Article 29	Article 44
Article 30	Article 45
Article 31	Article 46
Article 32	-
Article 33	-
Article 34	-
Article 35	-

Article 36	Article 64
Article 37	Article 65 and 67
Article 38	Article 66
Article 39	Article 47
Article 40	Article 48
Article 41	Article 49
Article 42	Article 47
Article 43	Article 50
Article 44	Article 51
Article 45	Article 53
Article 46	Article 54
Article 47	Article 55
Article 48	Article 56
Article 49	Article 57
Article 50	Article 58
Article 51	Article 59
Article 52	Article 60
Article 53	Article 61

Article 54	Article 48
Article 55	Article 63
Article 56	Article 70
Article 57	Article 71
Article 58	Article 72
Article 59	Article 70
Article 60	Article 86
Article 61	Article 86
Article 62	Article 86
Article 63	Article 86
Article 64	Article 88
Article 65	Article 92
Article 66	Article 93
Article 67	-
Article 68	Article 94

Table 2: this Regulation > Regulation (EU) 305/2011

This Regulation	Regulation (EU) 305/2011
Article 1	Article 1
Article 2	-
Article 3	Article 2
Article 4	Article 3
Article 5	-
Article 6	Article 28
Article 7	-
Article 8	-
Article 9	Article 4
Article 10	Article 5
Article 11	Article 6
Article 12	-
Article 13	-
Article 14	-
Article 15	Article 7
Article 16	Article 8
Article 17	Article 9

Article 18	-
Article 19	-
Article 20	-
Article 21	-
Article 22	Article 11
Article 23	Article 12
Article 24	Article 13
Article 25	Article 14
Article 26	Article 15
Article 27	-
Article 28	-
Article 29	-
Article 30	Article 16
Article 31	-
Article 32	-
Article 33	-
Article 34	Article 17 and 18
Article 35	Article 19
Article 36	Article 20

Article 37	Article 21
Article 38	Article 22
Article 39	Article 23
Article 40	Article 24
Article 41	Article 25
Article 42	Article 26
Article 43	-
Article 44	Article 29
Article 45	Article 30
Article 46	Article 31
Article 47	Article 39 and 42
Article 48	Article 40 and 54
Article 49	Article 41
Article 50	Article 43
Article 51	Article 44
Article 52	-
Article 53	Article 45
Article 54	Article 46

Article 55	Article 47
Article 56	Article 48
Article 57	Article 49
Article 58	Article 50
Article 59	Article 51
Article 60	Article 52
Article 61	Article 53
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