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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	18 July 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2024) 3480 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 30.5.2024 supplementing Regulation (EU) No 305/2011 by laying down the applicable systems to assess and verify constancy of performance of construction products in relation to the essential characteristics on environmental sustainability and amending that Regulation as regards the assessment and verification of constancy of performance of construction products based on a modelling approach

Delegations will find attached document C(2024) 3480 final.

Encl.: C(2024) 3480 final



EUROPEAN
COMMISSION

Brussels, 30.5.2024
C(2024) 3480 final

COMMISSION DELEGATED REGULATION (EU) .../...
of 30.5.2024

supplementing Regulation (EU) No 305/2011 by laying down the applicable systems to assess and verify constancy of performance of construction products in relation to the essential characteristics on environmental sustainability and amending that Regulation as regards the assessment and verification of constancy of performance of construction products based on a modelling approach

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Pursuant to Articles 28(2) and 60(h) of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC¹, the Commission is delegated the task of establishing the AVCP systems of construction products, relating to a given product, a given product family or a given essential characteristic, taking into account the considerations laid down in these provisions.

Essential characteristics addressing environmental sustainability are assessed through data collection for input values, assumptions and modelling with or without software support. Therefore, it should be deemed appropriate to define a new AVCP system as the applicable AVCP system for essential characteristics addressing environmental sustainability.

Pursuant to Article 60(e) of Regulation (EU) No 305/2011, the Commission has been delegated the task of adapting Annex V to Regulation (EU) No 305/2011.

By means of using this power, the Commission therein proposes to adapt Annex V of Regulation (EU) No 305/2011 as amended by Commission Delegated Regulation (EU) No 568/2014² by adding the new AVCP system 3+ to define the tasks to be carried out in relation to essential characteristics assessed using data collection for input values, assumptions and modelling with or without software support. The new AVCP system 3+ establishes the tasks allocated to the manufacturer and to the notified body in relation to the relevant essential characteristics.

The adoption of the Regulation is required to ensure a high level of certainty in relation to essential characteristics for which assessment and verification according to the existing systems are not suitable.

The adoption of the Regulation would facilitate the actions of manufacturers and the functioning of notified bodies authorized to carry out third-party tasks in the process of AVCP of construction products.

The European Green Deal Communication,³ the Circular Economy Action Plan⁴ and the Renovation Wave Communication⁵ highlighted the role of the CPR as part of efforts towards energy- and resource-efficient buildings and renovations, and in addressing the sustainability of construction products. The proposal for a revised Energy Performance of buildings Directive⁶ highlighted the importance of the life cycle GHG emissions of buildings and building materials to calculate the Global Warming Potential of new buildings as of 2030.

¹ OJ L 40, 11.2.1989, p. 12.

² OJ L157, 27.5.2014, p.76.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, the European Green Deal, COM(2019) 640 final.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan, COM(2020) 98 final.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives, COM(2020) 662 final.

⁶ Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast), COM(2021) 802 final

Also, both the European Parliament and the Council⁷ have called for actions to promote circularity of construction products, to address barriers in the single market for construction products and contribute to the objectives of the European Green Deal and the Circular Economy action plan.

For these reasons, this amendment of Annex V of Regulation (EU) No 305/2011 and the definition of the applicable AVCP system to environmental sustainability should also enhance the consolidation of the internal market for construction products and thus have a favourable impact on the competitiveness of the European construction sector as a whole.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Regulation was discussed in the meeting of the Advisory Group on Construction Products⁸ (the AG) on 21 November 2022, 15 February 2023, 8 June 2023 and 21 November 2023 and also submitted for written consultation of the experts between 15 February 2023 and 31 March 2023 and between 8 June 2023 and 15 July 2023. Before those steps, all Member States were presented an opportunity to nominate experts to participate. In addition to these experts, also other external stakeholders were consulted. The documents discussed in the AG and relevant to the written consultation were transmitted simultaneously to the European Parliament and to the Council, as foreseen in the Common Understanding on delegated acts. The observations presented in these contexts were taken into account when preparing the final version of this act for the inter-service consultation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Pursuant to Articles 28(2) and 60(h) of Regulation (EU) No 305/2011, AVCP systems of construction products, as set out in Annex V to Regulation (EU) No 305/2011, are to be established by delegated acts of the Commission, to be applicable to a given product, a given product family or a given essential characteristic, taking into account the considerations laid down in these provisions.

When establishing the AVCP systems, pursuant to Article 28(2) of Regulation (EU) No 305/2011, the Commission shall choose the least onerous systems consistent with the fulfilment of all basic requirements for construction works. Pursuant to Article 60(h) of Regulation (EU) No 305/2011, this shall be done in accordance with the impact of the product to this fulfilment during its expected working life.

Pursuant to Article 28 of Regulation (EU) No 305/2011, the rules on AVCP of construction products in relation to their essential characteristics have been contained in Annex V to Regulation (EU) No 305/2011. Following these rules, the AVCP tasks shall be carried out in accordance with the systems set out in this Annex.

As mentioned in Article 39 of Regulation (EU) No 305/2011, Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party tasks in the process of AVCP under Regulation (EU) No 305/2011 (hereinafter referred to as ‘notified bodies’). Articles 40 to 43 prescribe the requirements and procedures for such notifications.

⁷ Council Conclusions on Circular Economy in the Construction sector
<https://data.consilium.europa.eu/doc/document/ST-13814-2019-INIT/en/pdf>

⁸ Code E01329 in the Register of Commission Expert Groups and other Similar Entities.

The Delegated Regulation therefore conforms to the principle of proportionality. It results in harmonising the implementation of Regulation (EU) 305/2011 on the establishment of a balanced AVCP system for the essential characteristics related to environmental sustainability, and therefore can be assessed to benefit the whole European construction sector.

Commission Delegated Regulation (EU) .../... of 30.5.2024 supplementing Regulation (EU) No 305/2011 by laying down the applicable systems to assess and verify constancy of performance of construction products in relation to the essential characteristics on environmental sustainability and amending that Regulation as regards the assessment and verification of constancy of performance of construction products based on a modelling approach

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC¹, and in particular Article 28(2) in conjunction with Article 60, point (e), and Article 28(2) in conjunction with Article 60, point (h), thereof,

Whereas:

- (1) Technological developments allow for a modelling approach to the assessment of the constancy of performance of construction products. Such technological progress allows for the establishment of an assessment and verification system when data collection for input values, assumptions and modelling with or without software support is applied.
- (2) The European Parliament resolution of 10 March 2021 on the implementation of Regulation (EU) No 305/2011² welcomed the Commission's objective to make the construction sector more sustainable by addressing the sustainability performance of construction products, as announced in the Circular Economy Action Plan³. The Council Conclusions on the Circular Economy in the Construction Sector of 28 November 2019⁴ urged the Commission to facilitate the circularity of construction products. The 2020 Commission Communication 'A New Industrial Strategy for Europe'⁵ 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 2021 Commission Communication 'Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's

¹ OJ L 88, 4.4.2011, p. 5, ELI: <http://data.europa.eu/eli/reg/2011/305/oj>.

² European Parliament resolution of 10 March 2021 on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation) (2020/2028(INI)).

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe COM/2020/98 (final).

⁴ Circular Economy in the Construction Sector – Council Conclusions, adopted 8 November 2019, 13814/19.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A New Industrial Strategy for Europe COM(2020)102 final of 10 March 2020.

recovery'⁶ 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. Due to technological developments in life cycle assessment, certain essential characteristics related to basic requirement for construction works 3 (hygiene, health and the environment) and 7 (sustainable use of natural resources) are available to be implemented in the regulatory framework for construction products. It is therefore appropriate to lay down rules for declaring environmental sustainability performance of construction products.

- (3) In order to respond to the technological progress, Annex V to Regulation (EU) No 305/2011 should be adapted by adding a new assessment and verification of constancy of performance AVCP system 3+ defining the tasks to be carried out in the process of assessment and verification of constancy of performance of construction products when data collection for input values, assumptions and modelling with or without software support is applied. Such amendment is necessary to ensure that manufacturers are capable to assess essential characteristics related to the environmental sustainability of their products.
- (4) In order to enable manufacturers to access the internal market more efficiently and thus contributing to the greater competitiveness of the construction industry as a whole, a new AVCP system 3+ should be applicable to essential characteristics addressing environmental sustainability. The addition of a new AVCP system should not entail additional administrative burden to manufacturers already enjoying the presumption that their products achieve a certain level or class of performance without testing or calculation. Therefore, it should be clarified that the new AVCP system 3+ does not apply to those products that currently do not require testing or calculation.
- (5) The provisions in this Regulation are closely linked, since they deal with the clarification of the applicable AVCP system to essential characteristics addressing environmental sustainability, together with the need to take into account technological changes providing for a modelling assessment of such characteristics and the introduction of a new system for the assessment and verification of the constancy of performance (AVCP 3+). To ensure coherence between those provisions, it is necessary to include the clarification of the applicable system for the assessment of essential characteristics in relation to the environmental sustainability of construction products and the consequential amendment of Annex V to Regulation (EU) No 305/2011 in a single Regulation.
- (6) Regulation (EU) No 305/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Construction products shall be assessed and verified for constancy of performance in relation to their essential characteristics on environmental sustainability in accordance with the systems specified in Annex I.

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery COM(2021)350 final of 5 May 2021.

Article 2

Annex V to Regulation (EU) No 305/2011 is amended as set out in Annex II to this Regulation.

Article 3

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

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

Done at Brussels, 30.5.2024

For the Commission

The President

Ursula VON DER LEYEN