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Harmonised conditions for the marketing of construction products *I**

P6_TA(2009)0320

European Parliament legislative resolution of 24 April 2009 on the proposal for a regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products (COM(2008)0311 – C6-0203/2008 – 2008/0098(COD))

(2010/C 184 E/80)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0311),
- having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0203/2008),
- having regard to Rule 51 of its Rules of Procedure,
- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Industry, Research and Energy (A6-0068/2009),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0098**Position of the European Parliament adopted at first reading on 24 April 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council laying down harmonised conditions for the marketing of || construction products**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission||,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,Having regard to the opinion of the Committee of the Regions ⁽²⁾,Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,⁽¹⁾ *Opinion of 25 February 2009 (not yet published in the OJ).*⁽²⁾ OJ C⁽³⁾ *Position of the European Parliament of 24 April 2009.*

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Whereas:

- (1) The rules of Member States require that construction works are designed and executed so as not to endanger the safety of persons, domestic animals and property ***nor damage the natural or man-made environment.***
- (2) Those rules have a direct influence on the requirements of construction products. Those requirements are consequently reflected in national product standards, national technical approvals and other national technical specifications and provisions related to construction products. By their disparity, those requirements hinder trade within the Community.
- (3) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁽¹⁾, aimed at the removal of technical barriers to trade in the field of construction products, in order to enhance their free movement in the internal market.
- (4) In order to achieve that objective, Directive 89/106/EEC provided for the establishment of harmonised standards for construction products and provided for the granting of European technical approvals.
- (5) Directive 89/106/EEC should be replaced in order to simplify and clarify the existing framework, and improve the transparency and the effectiveness of the existing measures.
- (6) It is necessary to provide for simplified procedures for drawing up declarations of performance in order to alleviate the financial burden of *small and medium-sized enterprises* (SMEs) and in particular of micro-enterprises.
- (7) 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⁽²⁾ and 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⁽³⁾ provide for a horizontal legal framework for the marketing of products in the internal market. Therefore this Regulation should take account of that legal framework.
- (8) ***Products made on the site of construction works should not be considered to fall within the scope of the concept of the supply of construction products on the Community market. Manufacturers incorporating their construction products in works should be allowed, but not obliged, to declare the performance of these products in accordance with this Regulation.***
- (9) The removal of technical barriers in the field of construction may only be achieved by the establishment of harmonised technical specifications for the purposes of assessing the performance of construction products.
- (10) ***The performance of a construction product is not only defined in terms of technical capabilities and essential characteristics, but also in terms of the health and safety aspects related to the use of the product during its entire lifecycle.***
- (11) Those harmonised technical specifications should include testing, calculation and other means, defined within harmonised standards and European Assessment Documents (EAD) for assessing performance in relation to the essential characteristics of construction products.
- (12) The methods used by the Member States in their requirements for works, as well as other national rules in relation to the essential characteristics of construction products, ***shall*** be in accordance with harmonised technical specifications.
- (13) It is necessary to establish basic works requirements in order to provide the basis for the preparation of the mandates and *harmonised* standards and for the elaboration of the EADs for construction products.

⁽¹⁾ OJ L 40, 11.2.1989, p.12. ||

⁽²⁾ OJ L 218, 13.8.2008, p. 30.

⁽³⁾ OJ L 218, 13.8.2008, p. 82.

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- (14) *For the assessment of the sustainable use of resources and of the impact of building works on the environment, Environmental Product Declarations (EPD) should be used.*
- (15) *Where appropriate, the use in harmonised standards of classes of performance in relation to the essential characteristics of construction products should be encouraged, so as to take account of different levels of basic works requirements for certain works as well as differences in climate, geology and geography and other conditions prevailing in the Member States. Where the Commission has not already established them, the European standardisation bodies should be entitled to establish such classes on the basis of a revised mandate.*
- (16) Where appropriate, performance levels in relation to the essential characteristics, to be fulfilled by construction products in Member States should be established in the *harmonised* technical specifications so as to take account of different levels of basic works requirements for certain works as well as of the differences in climate, geology and geography and other different conditions prevailing in the Member States.
- (17) The European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (Cenelec) are *recognised* as the competent organisations for the adoption of *harmonised* standards in accordance with the general guidelines ⁽¹⁾ for cooperation between the Commission and those two organisations signed on 28 March 2003.
- (18) Those harmonised standards should provide the appropriate tools for the harmonised assessment of the performance in relation to the essential characteristics of construction products. Harmonised standards should be established on the basis of mandates adopted by the Commission, covering the relevant families of construction products, in accordance with Article 6 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services ⁽²⁾. **The Commission should take steps to increase the range of products covered by harmonised standards.**
- (19) *It is necessary for the representative bodies of the principal professions involved in the design, manufacture and deployment of construction products to participate in European technical bodies to ensure they operate in a fair and transparent way and to ensure market effectiveness.*
- (20) *In order to ensure the comprehensibility of the information provided by the manufacturer, the declaration of performance should be drawn up in the official language, or one of the official languages, of the Member State in which the product is placed on the market. If a Member State has several official languages, the choice of the language used for the drawing up of the declaration of performance should be made with the recipient's agreement.*
- (21) The procedures under Directive 89/106/EEC for assessing performance in relation to the essential characteristics of construction products not covered by a harmonised standard should be simplified in order to make them more transparent and to reduce costs to manufacturers of construction products.
- (22) In order to allow manufacturers and importers of construction products to draw up a declaration of performance for construction products which are **not fully covered or** not covered by a harmonised standard it is necessary to provide for a European Technical Assessment.
- I**
- (23) Manufacturers and importers of construction products should be allowed to request European Technical Assessments to be carried out for their products on the basis of the guidelines for European technical approval established under Directive 89/106/EEC. Therefore, the continuing validity of these guidelines as EADs should be ensured.

⁽¹⁾ OJ C 91, 16.4.2003, p. 7.

⁽²⁾ OJ L 204, 21.7.1998, p. 37.

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- (24) The establishment of ▯ EADs and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (TABs) designated by Member States. In order to ensure that TABs have necessary competence for carrying out those tasks, the requirements for their designation should be set out at Community level. Therefore it is also necessary to provide for periodical evaluations of TABs by TABs from other Member States.
- (25) ▯ TABs should establish an organisation to coordinate **and ensure the transparency of** procedures for the establishment of ▯ EADs and for the issuing of ▯ European Technical Assessments. **That organisation should ensure, in particular, that manufacturers are properly informed and, if necessary, that the working groups set up by the tabs organise a hearing with an independent scientific expert and/or a professional organisation nominated by the manufacturer.**
- (26) **Among the essential characteristics, characteristics for which the minimum requirements in terms of levels or classes of performance are determined by the Commission under the appropriate committee procedure, and characteristics which apply independently of where the construction product is marketed should be distinguished.**
- (27) The placing on the market of construction products which are covered by a harmonised standard or for which a European Technical Assessment has been issued should be accompanied by a declaration of performance in relation to the essential characteristics of the product in accordance with the relevant harmonised technical specifications.
- ▯
- (28) It is necessary to provide for simplified procedures for drawing up declarations of performance in order to alleviate the financial burden of SMEs and in particular of micro-enterprises.
- (29) In order to ensure that the declaration of performance is accurate and reliable, the performance of the construction product should be assessed and the production in the factory should be controlled in accordance with an appropriate system of assessment and verification of constancy of performance of the construction product.
- (30) Given the specificity of construction products and the particular focus of the system for their assessment, the procedures for ▯ conformity assessment *provided for in Decision No 768/2008/EC*, and the modules set out in that Decision, are not appropriate for those products. Therefore, specific methods should be established for the assessment and verification of constancy of performance in relation to the essential characteristics of construction products.
- (31) Due to the difference in the meaning of the CE marking for construction products, when compared to the general principles set out in *Regulation (EC) No 765/2008*, specific provisions should be put in place to ensure the clarity of the obligation to affix the CE marking to construction products and the consequences of that affixing.
- (32) By affixing or having affixed the CE marking to a construction product, the manufacturer, **authorised representative or importer** should take responsibility for the conformity of that product with its declared performance.
- (33) The CE marking should be affixed to all construction products, for which the manufacturer has drawn up a declaration of performance in accordance with this Regulation. ▯
- (34) The CE marking should be the only marking **of** conformity of the construction product with the declared performance and with applicable requirements **relating to Community harmonisation legislation. However, other markings may be used, provided that they help to improve the protection of users of construction products and are not covered by Community harmonisation legislation.**

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- (35) To avoid unnecessary testing of construction products, for which performance has already sufficiently been demonstrated by stable previous test results or other existing data, the manufacturer should be allowed, under conditions set up in the harmonised technical specifications or in a Commission Decision, to declare a certain level or class of performance without testing or without further testing.
- (36) To avoid duplicating tests already carried out, a manufacturer of a construction product should be allowed to use the test results obtained by a third party.
- (37) To decrease the cost of placing products on the market for micro-enterprises, it is necessary to provide for simplified procedures for assessment and verification of constancy of performance, when the products in question do not imply significant safety concerns.
- (38) In order to allow effective market surveillance and to ensure a high level of consumer protection, it is important that simplified procedures for declaring a certain level or class of performance without testing or without further testing do not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected. This concerns the use of stable previous test results or other existing data and the use of results of tests obtained by third parties. It also concerns the simplified procedure applying to micro-enterprises.**
- (39) For individually designed and manufactured construction products the manufacturer should be allowed to use simplified procedures for assessment and verification of constancy of performance, where the compliance of the product placed on the market with the applicable regulatory provisions can be demonstrated.
- (40) It is important to ensure the accessibility of national technical rules, so that enterprises, and in particular SMEs, can gather reliable and precise information about the law in force in the Member State where they intend to market their products. Product Contact Points established by Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC⁽¹⁾ should therefore provide information also on rules applicable to the incorporation, assembling or installation of a specific type of construction product. **They should also be able to provide to any manufacturer all information concerning the available appeals procedures where the conditions of access for one or more of the manufacturer's products to the CE marking are contested, in particular the appropriate appeals procedures against decisions taken following the assessment.**
- (41) For the purposes of ensuring an equivalent and consistent enforcement of Community harmonisation legislation, effective market surveillance should be operated by the Member States. Regulation (EC) No 765/2008 provides the basic conditions for the functioning of such market surveillance.
- (42) The responsibility of Member States for safety, health and other matters covered by the basic works requirements on their territory should be *recognised* in a safeguard clause providing for appropriate protective measures.
- (43) Since it is necessary to ensure throughout the Community a uniform level of performance of bodies carrying out assessment and verification of constancy of performance of construction products and since all such bodies should perform their functions to the same level and under conditions of fair competition, requirements should be set for performance assessment bodies seeking to be notified for the purposes of this Regulation. Provisions should also be made for the availability of adequate information about such bodies and for their monitoring.

⁽¹⁾ OJ L 218, 13.8.2008, p. 21.

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- (44) In order to ensure a coherent level of quality in assessment and verification of constancy of performance of construction products, it is also necessary to establish requirements applicable to the authorities responsible for notifying the bodies carrying out these tasks to the Commission and the other Member States.
- (45) Since the *objective of this Regulation, namely the achievement of the proper functioning of the internal market in construction products by means of harmonised technical specifications for expressing the performance of construction products, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 that objective.*
- (46) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (47) In particular, the Commission should be empowered to establish conditions under which the declaration of performance may be available on a web site, to determine the period during which manufacturers, importers and distributors should keep the technical documentation and the declaration of performance available, to establish classes of performance in relation to the essential characteristics of construction products, to establish the system of assessment of performance and verification of constancy of the declared performance to be applied to a given construction product or family of construction products, to establish the format of the European Technical Assessment, to establish procedures for carrying out the evaluation of TABs and to amend *Annexes I to VI*. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (48) Existing mandates for the setting of harmonised European standards should be taken into account. CEN should devise standards to clarify Basic Works Requirement No 7 entitled ‘Sustainable use of natural resources’.**
- (49) Basic Works Requirement No 7 should take account of the recyclability of construction works, their materials and parts after demolition, the durability of construction works and the use of environmentally compatible raw and secondary materials in construction works.**
- (50) Since a period of time is required to ensure that the framework for the proper functioning of this Regulation is in place, its application should be deferred, with the exception of the provisions concerning the designation of TABs, notifying authorities and notified bodies, the establishment of an organisation of TABs and the establishment of the Standing Committee.
- (51) The Commission and the Member States should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users, regarding the establishment of a common technical language, the distribution of responsibilities between the individual economic operators, the affixing of the CE marking to construction products, the revision of the basic works requirements and the systems of assessment and verification of constancy of performance.**

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. ||

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(52) *The Commission should, within one year of the entry into force of this Regulation, submit to the European Parliament and the Council a proposal for the revision of the European standardisation system to increase the transparency of the system as a whole, above all to ensure balanced participation of stakeholders in the technical committees of European standardisation bodies and to prevent conflicts of interest among them. At the same time, measures should be taken to speed up the adoption of European standards, as well as their translation into all official languages of the European Union, and especially the translation of guidelines for smes,*

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General Provisions

Article 1

Subject matter

This Regulation lays down **conditions for the marketing of construction products by establishing** rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products.

Article 2

Definitions

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

1. 'construction product' means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof so that the dismantling of the product decreases the performance of the construction works and the dismantling or replacement of the product constitute construction operations;
2. '**products which are not covered or not fully covered by a harmonised standard**' means any construction product whose essential characteristics and performance cannot be entirely evaluated according to an existing harmonised standard, because *inter alia*:
 - (a) *the product does not fall within the scope of any existing harmonised standard;*
 - (b) *the product does not meet one or more definitions of characteristics included in any such harmonised standard;*
 - (c) *one or more essential characteristics of the product are not adequately covered by any such harmonised standard; or*
 - (d) *one or more test methods necessary to assess the performance of the product are missing or not applicable;*
3. 'works' means buildings and civil engineering works;
4. 'essential characteristics' means those characteristics of the construction product which relate to the basic works requirements **set out in Annex I; among those essential characteristics, laid down in the harmonised technical specifications, a distinction shall be made between:**
 - (a) *characteristics which exist where the manufacturer or importer intends to place the product on the market; and*

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(b) characteristics which must be notified irrespective of where the product is placed on the market and for which the minimum requirements in terms of levels or classes of performance are determined for each family of products laid down in Table 1 of Annex V, and by type of application, by the European Standardisation Bodies, with the agreement of the Commission and the Standing Committee on Construction referred to in Article 51(1).

When appropriate, for each family of construction products laid down in Table 1 of Annex V, the characteristics referred to in point (b) of this point shall be established by the Commission in accordance with the regulatory procedure with scrutiny referred to in Article 51(2); they shall relate inter alia to issues of general interest such as the environment, safety and evaluation of possible health hazards throughout the entire lifecycle of the construction product;

5. *'performance of a construction product' means performance with reference to essential individual characteristics expressed through value, level, class or threshold, or in a description;*
6. *'threshold level' means a minimum performance value of a product. A threshold level can be of a technical or regulatory nature, and may be applicable to a single characteristic or comprise a set of characteristics;*
7. *'class' means a range for the performance of a product delimited by a minimum and a maximum performance value. A class may be applicable to a single characteristic or comprise a set of characteristics;*
8. *'harmonised technical specifications' means harmonised standards and European Assessment Documents;*
9. *'European Technical Assessment' means an assessment based on a European Assessment Document, and reserved for construction products which are not or not fully covered by a harmonised standard;*
10. *'harmonised standard' means a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC, on the basis of a request issued by the Commission, in accordance with Article 6 of that Directive;*
11. *'European Assessment Document' means a document **which is** adopted by the organisation of Technical Assessment Bodies **for the purpose of issuing a European Technical Assessment and which concerns a product not covered or not fully covered by a harmonised standard;***
12. *'economic operators' means the manufacturer, the importer, distributor and the authorised representative;*
13. *'manufacturer' means any natural or legal person who manufactures a construction product or who has such a product manufactured, **and markets that product** under his name or trademark;*
14. *'importer' means any natural or legal person established within the Community, who places a construction product from a third country on the Community market;*
15. *'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a construction product available on the market;*
16. *'authorised representative' means any natural or legal person established within the Community who has received mandate from the manufacturer to act on his behalf for specific tasks;*

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17. 'making available on the market' means any supply of a construction product for distribution or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge; **this excludes:**
- (a) any product which users transform on site for their own use in the context of their professional activity;**
- (b) any product manufactured on and/or off site and incorporated by the manufacturer into a work without being placed on the market;**
18. 'placing on the market' means the first making available of a construction product on the Community market;
19. 'withdrawal' means any measure aimed at preventing the making available on the market of a construction product in the supply chain;
20. 'recall' means any measure aimed at achieving the return of a construction product that has already been made available on the market;
21. 'accreditation' has the meaning assigned to it by Regulation (EC) No 765/2008;
22. **'user' means any natural or legal person responsible for the safe incorporation of a construction product into construction works;**
23. **'Technical Assessment Body' means a body designated by a Member State to participate in the development of European Assessment Documents and to assess the performance of the essential characteristics of construction products not or not fully covered by a harmonised standard in the product areas listed in Annex V;**
24. 'product-type' means the performance of a construction product produced using a given combination of raw materials or other elements in a specific production process;
25. 'factory production control' means the permanent internal control of ▯ production **carried out by the manufacturer ensuring that the production of the construction product and the product produced are in conformity with the technical specifications;**
26. 'micro-enterprise' means a micro-enterprise as defined in ▯ Commission Recommendation 2003/361/ec of 6 May 2003 concerning the definition of micro, small and *medium-sized* enterprises ⁽¹⁾;
27. 'life cycle' means the consecutive and interlinked stages of a product life, from raw material acquisition or generation from natural resources to final disposal;
28. **'kit' means a set of at least two separate components that need to be put together to be installed permanently in the works in order to become an assembled system.**

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

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Article 3

Basic works requirements and essential product characteristics

|| The essential characteristics of construction products shall be laid down in harmonised technical specifications in relation to the basic works requirements which are set out in Annex I.

CHAPTER II

Declaration of performance and CE marking

Article 4

Conditions for drawing up declaration of performance

1. The manufacturer or the importer when placing a construction product on the market shall make a declaration of performance if **one of** the following conditions **is** met:

- (a) the construction product is covered by a harmonised standard ||;
- (b) **a European Technical Assessment has been issued for the construction product.**

||

2. Member States shall presume the declaration of performance drawn up by the manufacturer or the importer to be accurate and reliable.

Article 5

Content of the declaration of performance

1. The declaration of performance shall express the performance of construction products in relation to the **two types of** essential **characteristic set out in Article 2(4)** of those products in accordance with the relevant harmonised technical specifications.

2. The declaration of performance shall contain the following information:

- (a) the product-type for which it has been drawn up;
- (b) the **full** list of the essential characteristics **given in the harmonised technical specification for** the construction product, **and for each essential characteristic either the declared values, classes or levels of performance or 'no performance determined'**;
- (c) the reference number **and title** of the harmonised standard, the European Assessment Document or the Specific Technical Documentation, which has been used for the assessment of each essential characteristic;
- (d) **the generic intended use set out in the harmonised technical specification;**
- (e) **details of the procedure used to assess and verify the constancy of performance; if the applicable system of assessment of performance has been replaced by the simplified procedure referred to in Article 27 or 28, the manufacturer shall make the following declaration: 'STD - Simplified procedure';**
- (f) **information about hazardous substances in the construction product, as referred to in Annex IV, and details of hazardous substances to be declared pursuant to other Community harmonisation rules.**

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Article 6

Form of the declaration of performance

1. A copy of the declaration of performance **of each product which is made available on the market** shall be supplied **in paper form or sent by electronic means**.

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

2. **The producer shall send in paper form** the copy of the declaration of performance, **if** the recipient **requests it**.

3. By way of derogation from paragraphs 1 and 2, the content of the declaration of performance may be made available on a web site in accordance with conditions established by the Commission.

Those measures, designed to amend non-essential elements of this Regulation || by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

4. The declaration of performances shall be drawn up using the model set out in Annex III **in the official language, or one of the official languages, of the Member State in which the product is placed on the market**.

Article 7

Use of CE marking

1. The CE marking shall be affixed ■ to those construction products for which the manufacturer has drawn up a declaration of performance in accordance with Articles 4, 5 and 6. **In the absence of a declaration of performance, the CE marking can not be affixed.**

If a declaration of performance has not been drawn up by the manufacturer in accordance with Articles 4, 5 and 6, the CE marking may not be affixed to construction products.

By affixing or having affixed the CE marking the manufacturer, **or, where applicable, the importer**, shall take responsibility for the conformity of the construction product with the declared performance.

2. The CE marking shall be the only marking which attests conformity of the construction product with the declared performance.

Member States shall not introduce national measures or shall withdraw any references to a conformity marking other than the CE marking.

3. Member States shall not prohibit or impede, within their territory or under their responsibility, the making available on the market or the use of construction products bearing the CE marking, when the requirements for this use in that Member State correspond to the declared performance.

4. Member States shall ensure that the use of construction products bearing the CE marking 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, when the requirements for this use in that Member State correspond to the declared performance.

Article 8

Rules and conditions for the affixing of CE marking

1. The CE marking shall be subjected to the general principles set out in *Article 30 of Regulation (EC) No 765/2008*.

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2. The CE marking shall be affixed visibly, legibly and indelibly to the construction product, its data plate, the packaging or **■** the accompanying documents.
3. The CE marking shall be followed by **■** the name or the identifying mark of the producer **and** the unique identification code of the construction product **■**.
4. The CE marking shall be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark indicating a special risk or use.
5. **Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking, and shall take appropriate action in the event of improper use of the marking. Member States shall also provide for penalties for infringements, which may include criminal sanctions for serious infringements. Those penalties shall be proportional to the seriousness of the infringement.**

Article 9

Product Contact Points

Each Member State shall ensure that the Product Contact Points established in accordance with Regulation (EC) No 764/2008 also provide **■** information, **using transparent and easily understandable terms**, on:

- (a) any technical rules or regulatory provisions applicable to the incorporation, assembling or installation of a specific type of construction product in the territory of that Member State;
- (b) **if applicable, the appeals possibilities available to all manufacturers contesting the conditions of access for one or more of their products to the CE marking, in particular the appropriate appeals procedures against decisions taken following the assessment.**

The Product Contact Points shall be independent of any body or organisation involved in the procedure for obtaining the CE marking. Guidelines on the role and responsibility of contact points shall be drawn up by the Commission and adopted by the Standing Committee on Construction referred to in Article 51(1).

CHAPTER III

Obligations of Economic Operators

Article 10

Obligations of manufacturers

1. Manufacturers shall draw up the required technical documentation describing all the relevant elements related to the applicable attestation of declared performance.

Manufacturers shall draw up the declaration of performance in accordance with Articles 4, 5 and 6, and affix CE marking in accordance with Articles 7 and 8.

2. Manufacturers shall keep the technical documentation and the declaration of performance for the period determined by the Commission for each family of construction products on the basis of expected life and the role of the construction product in the works.

Those measures, designed to amend non-essential elements of this Regulation **■** by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

3. Manufacturers shall ensure that procedures are in place in order for series production to maintain the declared performance. Changes in the product-type and changes in the applicable harmonised technical specifications shall be adequately taken into account.

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4. Manufacturers shall ensure that their construction products bear a type, batch or serial number or any other element allowing their identification, or ¶ that the required information is provided on the packaging or in a document accompanying the construction product.
5. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the construction product or ¶ its packaging or in a document accompanying the construction product.
6. Manufacturers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declared performance, shall immediately take the necessary corrective measures to bring that construction product in conformity or withdraw it from the market and recall it from end users, if appropriate. They shall immediately inform the national authorities of the Member States where they made the construction product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.
7. Manufacturers shall, upon the basis of a reasoned request of the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have placed on the market.

Article 11

Authorised representatives

1. Manufacturers may appoint, by a written mandate, an authorised representative.

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

2. Where a manufacturer has appointed an authorised representative, the latter shall at least do the following:
 - (a) keep the declaration of performance and the technical documentation at the disposal of national surveillance authorities for the period referred to Article 10(2);
 - (b) on request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the product with the declared performance;
 - (c) co-operate with the competent authorities, at the request of the latter, on any action to avoid the risks posed by construction products covered by their mandate.

Article 12

Obligations of importers

1. When placing a construction product on the Community market importers shall act with due care in relation to the requirements of this Regulation.
2. Before placing a construction product on the market importers shall ensure that the assessment and the verification of constancy of the declared performance has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation referred to in the first subparagraph of Article 10(1). They shall draw up the declaration of performance in accordance with Articles 4, 5 and 6. They shall also ensure that the product bears the required CE marking, is accompanied by the required documents and that the manufacturer has respected the requirements set out in Article 10(4) and ¶ (5).

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Where an importer considers or has reason to believe that the construction product is not in conformity with the declaration of performance, he may not place the construction product on the market until it conforms to the accompanying declaration of performance or until declaration of performance is corrected.

3. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the construction product or, where not possible, on its packaging or in a document accompanying the product.

4. Importers shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declared performance.

5. Importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance, shall immediately take the necessary corrective measures to bring that construction product in conformity or withdraw it from the market and recall it from end users, if appropriate. They shall immediately inform the national authorities of the Member States where they made the construction product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.

6. Importers shall, for the period referred to in Article 10(2), keep a copy of the declaration of performance at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

7. Importers shall, on the basis of a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have placed on the market.

Article 13

Obligations of distributors

1. When making a product available on the market distributors shall act with due care in relation to the requirements of this Regulation.

2. Before making a construction product available on the market distributors shall ensure that the product bears the required CE marking and is accompanied by the documents required under this Regulation and by instructions and safety information in a language easily understood by users in the Member State where the product is made available on the market and that the manufacturer and the importer have complied with the requirements set out in Article 10(4), Article 10(5) and Article 12(3) respectively.

Where a distributor considers or has reason to believe that a construction product is not in conformity with the declaration of performance, he may make the product available on the market only after it conforms to the accompanying declaration of performance or until declaration of performance is corrected. The distributor shall inform the manufacturer or the importer to this effect as well as the market surveillance authorities, when the product presents a risk.

3. A distributor shall ensure that, while a construction product is under his responsibility, storage or transport conditions do not jeopardise its conformity with the declared performance.

4. Distributors who consider or have reason to believe that a construction product which they have made available on the market is not in conformity with the declaration of performance, shall immediately make sure that the necessary corrective measures to bring that product in conformity or withdraw it from the market and recall it from end users are taken, if appropriate. They shall immediately inform the national authorities of the Member States where they made the product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.

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5. Distributors shall, on the basis of a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have made available on the market.

Article 14

Cases in which obligations of manufacturers apply to importers and distributors

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation, when he places a product on the market under his name or trademark or modifies a construction product already placed on the market in such a way that conformity with the declared performance, may be affected and consequently he shall be subject to the obligations of the manufacturer under Article 10.

Article 15

Identification of economic operators

Economic operators shall be able, on request, to identify the following to the market surveillance authorities, for a period referred to in Article 10(2):

- (a) any economic operator who has supplied them with a product;
- (b) any economic operator to whom they have supplied a product.

CHAPTER IV

Harmonised Technical Specifications

Article 16

Harmonised standards

1. Harmonised standards shall be established by the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of **requests submitted** by the Commission in accordance with **the first indent of Article 6(3)** of that Directive **and by the Standing Committee in accordance with Article 5(1) of that Directive**.

The European standardisation bodies shall ensure that no category of actors in any one sector comprises more than 25 % of the participants in a technical committee or working group. If one or more categories of actors cannot take part in a working group, or chooses not to, this requirement may be reassessed with the agreement of all participants.

2. Harmonised standards shall provide the methods and \parallel criteria for assessing the performance **and durability** of \parallel construction products in relation to their essential characteristics.

Harmonised standards shall provide the generic intended use of the products if applicable; they shall also provide the characteristics, the minimum requirements for which in terms of levels or classes of performance shall be determined by the Commission, acting in accordance with the regulatory procedure with scrutiny referred to in Article 51(2), for each family of products laid down in Table 1 of Annex V, and by type of application.

Harmonised standards shall, where appropriate, provide methods less onerous than testing for assessing the performance of the construction products in relation to their essential characteristics.

3. The European standardisation bodies shall determine in harmonised standards the applicable factory production control, which shall take into account the specific conditions of the manufacturing process of the construction product concerned.

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4. The Commission shall assess the conformity of harmonised standards established by the European standardisation bodies with the relevant mandate.

The Commission shall publish in the *Official Journal of the European Union* the list of references of harmonised standards which are in conformity with the relevant mandates, and set the date of applicability of those standards.

The Commission shall publish any updates to that list.

Article 17

Formal objection against harmonised standards

1. When a Member State or the Commission considers that a harmonised standard does not entirely satisfy the requirements set out in the relevant mandate, the Commission or the Member State concerned shall bring the matter before the *Standing Committee established by Article 5(1) of Directive 98/34/EC*, giving its arguments. The Committee shall, after having consulted with the relevant European standardisation bodies, deliver its opinion without delay.

2. In the light of the Committee's opinion, 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 harmonised standard concerned in the *Official Journal of the European Union*.

3. The Commission shall inform the European standardisation body concerned and, if necessary, request the revision of the harmonised standards concerned.

4. When a harmonised standard has been approved by a European standardisation body, the Standing Committee on Construction referred to in Article 51(1) may take responsibility for all verifications ensuring that the standard meets the requirements laid down in the mandate given by the Commission or a Member State.

Article 18 ¶

Levels or classes of performance

1. The Commission may establish classes of performance in relation to the essential characteristics of construction products.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

2. Where classes of performance in relation to the essential characteristics of construction products are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards.

Where the Commission has established classes of performance in relation to the essential characteristics of construction products, the European standardisation bodies shall use those classes in harmonised standards, **on the basis of a revised mandate.**

3. Where provided for in the relevant mandate, the European standardisation bodies shall establish in harmonised standards minimum performance levels in relation to essential characteristics and, where appropriate, intended end uses to be fulfilled by construction products in Member States.

4. The Commission may establish conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

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Where such conditions are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards, on the basis of a revised mandate.

5. Member States may determine the levels or classes of performance **to be complied with by construction products** in relation to the essential characteristics of construction products only in accordance with the classification systems established by the European standardisation bodies in harmonised standards, or by the Commission.

Article 19 ¶

Assessment and verification of constancy of performance

1. Assessment and verification of constancy of the declared performance of construction products in relation to their essential characteristics shall be carried out in accordance with one of the systems set out in Annex VI.

2. The Commission shall establish which system is applicable to a given construction product or family of construction products according to the following criteria:

- (a) the importance of the part played by the product with respect to the basic works requirements;
- (b) the nature of the product;
- (c) the effect of the variability of the essential characteristics of construction product during the service life of the product;
- (d) the susceptibility to defects in the product manufacture.

In each case, the Commission shall choose the least onerous system consistent with **the safe incorporation of the construction product into construction works**.

Those measures, designed to amend non-essential elements of this Regulation ¶ by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

3. The system thus determined **and information concerning its envisaged generic use** shall be indicated in the mandates for harmonised standards and in the harmonised technical specifications.

Article 20 ¶

European Assessment Document

1. **For construction products not or not fully covered by a harmonised standard**, the European Assessment Document (EAD) shall be adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1) following a request for a European Technical Assessment by a manufacturer or an importer, in accordance with the procedure set out in Annex II.

2. The organisation of Technical Assessment Bodies referred to in Article 25(1) shall establish in the EAD the methods and the criteria for assessing the performance in relation to those essential characteristics of the construction product, which are related to the use intended by the manufacturer.

3. The organisation of technical assessment bodies referred to in Article 25(1) shall determine in the EAD the specific factory production control to be applied, taking into account the particular conditions of the manufacturing process of the construction product concerned.

4. **Where the Commission considers that a sufficient level of technical and scientific expertise concerning an EAD has been achieved, it shall give a mandate to the European standardisation bodies to draw up a harmonised standard on the basis of that EAD.**

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Article 21 ||

European Technical Assessment

1. **For construction products which are not or not fully covered by a harmonised standard**, the European Technical Assessment (ETA) shall be issued by a Technical Assessment Body, for any construction product, at the request of a manufacturer or importer on the basis of a EAD in accordance with the procedure set out in Annex II.

2. The Commission shall establish the format of the ETA.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

CHAPTER V

Technical Assessment Bodies

Article 22 ||

Designation of Technical Assessment Bodies

1. Member States may designate Technical Assessment Bodies (TAB) for product areas listed in Table 1 of Annex V.

Member States which have designated a TAB shall communicate to the other Member States and the Commission the name, the address of that TAB and the product areas for which that TAB is designated.

2. The Commission shall make publicly available the list of TABs indicating the product areas for which they are designated.

The Commission shall make publicly available any updates to that list.

Article 23 ||

Requirements for TABs

1. The TAB shall satisfy the requirements set out in Table 2 of Annex V.

2. Where a TAB no longer complies with the requirements referred to in paragraph 1, the Member State shall withdraw the designation of that TAB.

3. Member States shall inform the Commission and the other Member States of their national procedures for the assessment of TABs, of the monitoring of their activity, and of any changes to that information. The Commission shall make that information publicly available.

Article 24 ||

Evaluation of TABs

1. The TABs shall verify whether other TABs fulfil the respective criteria set out in Table 2 of Annex V.

The evaluation shall be organised by the organisation referred to in Article 25(1) and shall take place once every four years, within the product areas listed in Table 1 of Annex V, for which the TABs have been designated.

2. The Commission shall establish **transparent** procedures for carrying out the evaluation, including appropriate **and accessible** appeals procedures against decisions taken as a result of the evaluation.

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Those measures, designed to amend non-essential elements of this Regulation ¶ by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

The evaluation of a TAB may not be carried out by a TAB from the same Member State.

3. The organisation referred to in Article 25(1) shall communicate the results of the evaluations of TABs to all Member States and the Commission.

The Commission shall, in cooperation with Member States, monitor the respect of the rules and the proper functioning of the evaluation of TABs.

Article 25 ¶

Co-ordination of TABs

1. The TABs shall establish an organisation for technical assessment, hereinafter 'organisation of TABs'.
2. The organisation of TABs shall carry out the following tasks:
 - (a) co-ordinate the application of the rules and procedures set out in Article 19 and Annex II, as well as provide the support needed to that end;
 - (b) inform the Commission twice a year of any question related to the preparation of EADs and of any aspects related to the interpretation of the rules and procedures set out in Article 19 and Annex II;
 - (c) adopt EADs;
 - (d) organise the evaluation of the TABs;
 - (e) ensure the co-ordination of the TABs;
 - (f) ensure equal treatment of tabs within the organisation of tabs;**
 - (g) ensure that the procedures set out in Article 19 and Annex II are transparent, and that the manufacturer is consulted during those procedures.**
3. The Commission may provide assistance to the organisation of TABs in carrying out the tasks referred to in point (e) of paragraph 2. The Commission may conclude a framework partnership agreement with the organisation of TABs to that end.

4. Member States shall ensure that the TABs contribute with financial and human resources to the organisation of TABs.

CHAPTER VI

SIMPLIFIED PROCEDURES

Article 26 ¶

Use of Specific Technical Documentation

1. When the manufacturer determines the product-type he may replace type-testing or type-calculation by a Specific Technical Documentation (STD) demonstrating that:
 - (a) for one or several essential characteristics of the construction product he 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 relevant harmonised technical specification or Commission decision;

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- (b) the construction product he places on the market shares the product-type with another construction product, manufactured by another manufacturer and already tested in accordance with the relevant harmonised technical specification. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results of this another product. **The manufacturer may use the test results obtained by another manufacturer only after having obtained an authorisation of that manufacturer, who remains responsible for the accuracy, reliability and stability of those test results; or**
- (c) the construction product he places on the market is a system made of components, which he assembles duly following precise instructions 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. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results for the system or the component provided to him.

The manufacturer may use the test results obtained by another manufacturer **or the system provider** only after having obtained the authorisation of that manufacturer **or system provider**, who remains responsible for the accuracy, reliability and stability of those test results. **The manufacturer shall remain responsible for the product being in compliance with all declared performance in accordance with the relevant harmonised technical specification. The manufacturer shall ensure that the performance of the product is not adversely affected at a later stage of the manufacturing and assembly process.**

2. **The STD shall be verified by a relevant certification body as referred to in Annex VI** if the construction product, referred to in paragraph 1, belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is **■**, as set out in Annex VI,

- **system 1+ or 1 for products corresponding to Article 26(1)(a) (WT/WFT);**
- **system 1+, 1 or 3 for products corresponding to Article 26(1)(b) (shared IT);**
- **system 1+ or 1 for products corresponding to Article 26(1)(c) (cascading).**

3. **This Article shall not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected, within the meaning of Article 14.**

Article 27 **||**

Use of Specific Technical Documentation by micro-enterprises *which manufacture construction products*

1. Micro-enterprises **which manufacture construction products** may replace the applicable system for assessment of the declared performance of construction product by a STD. The STD shall demonstrate the compliance of the construction product with the applicable requirements.
2. If a construction product, *referred to in paragraph 1*, belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is *system 1+ or 1*, as set out in *Annex VI*, the STD shall be verified by a relevant certification body as referred to in *Annex VI*.
3. **The Specific Technical Documentation shall ensure an equivalent level of health and safety for persons and for other issues of public interest. The manufacturer shall remain responsible for the compliance of the product with the characteristics stated in the declaration of performance. The manufacturer shall provide information on the intended end use of the product.**

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4. By ... ⁽¹⁾, the Commission shall draw up a report on the implementation of this Article considering *inter alia* whether its application could be extended to other undertakings, whether to adapt it to small series production, or whether to repeal it. The Commission shall submit this report to the European Parliament and the Council, together with legislative proposals as appropriate.

5. This Article shall not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected, within the meaning of Article 14.

Article 28 ||

Use of Specific Technical Documentation for individually manufactured products

1. For a construction product designed and manufactured in a non-industrialised production process in response to a specific order, and installed in a single identified work, the manufacturer may replace the applicable system for assessment of performance by **an** STD, demonstrating compliance of that product with the applicable requirements. **The STD shall provide for an equivalent level of confidence and reliability of performance regarding the essential work requirements.**

2. If a construction product, referred to in paragraph 1, belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is *system 1+ or 1*, as set out in Annex VI, the STD shall be verified by a relevant certification body as referred to in Annex VI.

CHAPTER VII

Notifying Authorities and Notified Bodies

Article 29 ||

Notification

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance under this Regulation.

Article 30 ||

Notifying authorities

1. Member States shall designate a notifying authority that shall be 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 process of assessment and verification of constancy of the declared performance for the purposes of this Regulation, and for the monitoring of notified bodies, including compliance with the provisions of Article 33.

2. Where notification is based on an accreditation certificate, Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by their national accreditation bodies within the meaning of and in accordance with Regulation (EC) No 765/2008.

3. Where the notifying authority delegates, subcontracts or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, the delegated, or otherwise entrusted body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article 33. In addition, such body shall have arrangements to cover liabilities arising from its activities.

4. The notifying authority shall take full responsibility for the tasks performed by delegated or otherwise entrusted body.

⁽¹⁾ 5 years from the date of entry into force of this Regulation.

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5. The notifying authority shall verify that the conformity assessments are carried out appropriately, without imposing unnecessary burdens on undertakings and taking due account of the size of the undertakings, the specific nature of the construction sector and its structure, the degree of technological complexity of the product in question and the nature, volume and frequency of the manufacturing process.

Article 31 ||

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 performance assessment body is taken by competent persons different from those who carried out the assessment.
4. The notifying authority shall not offer or provide any activities that notified bodies perform, or consultancy services on a commercial or competitive basis.
5. The notifying authority shall safeguard the confidentiality of the information obtained.
6. The notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

Article 32 ||

Information obligation for the notifying authorities

Member States shall inform the Commission and the other Member States of their national procedures for the assessment and notification of performance assessment bodies and the monitoring of notified bodies, and of any changes to that information.

The Commission shall make that information publicly available.

Article 33 ||

Requirements for notified bodies

1. For the purposes of notification, a performance assessment body shall meet the requirements set out in paragraphs 2 to 11.
2. The performance assessment body shall be established under national law and have legal personality.
3. The performance assessment body shall be a third-party body independent from the organisation or the construction product it assesses.

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

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4. The performance assessment body, its top level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of the declared performance shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the construction products which they assess, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the notified body or the use of the products for personal purposes.

They shall not become directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those construction products, nor represent the parties engaged in those activities. They shall not engage any activity that may conflict with their independence or judgement and integrity related to the activities for which they have been notified.

The notified body shall ensure that activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity and impartiality of its assessment and/or verification activities.

5. The notified body and its personnel shall carry out, **with complete transparency as regards the manufacturer**, the third party tasks in the process of assessment and verification of constancy of performance, with the highest degree of professional integrity and requisite technical competence in the specific field and must 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. The notified body shall be capable of carrying out all the third party tasks in the process of assessment and verification of constancy of performance assigned to such a body in accordance with *Annex VI* and for which it has been notified, whether those tasks are carried out by the notified body itself or on its behalf and under its responsibility.

At all times and for each system of assessment and verification of constancy of performance and for each kind or category of construction products, characteristics and tasks for which it is notified, the notified body shall have at its disposal the necessary:

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the third party tasks in the process of assessment and verification of constancy of performance;
- (b) description of procedures according to which the assessing of performance is carried out, ensuring the transparency and the ability of reproduction of these procedures. It shall have appropriate policy and procedures in place that distinguish between tasks carried out as notified body and any other activity;
- (c) procedures to perform their activities taking into consideration the size, the sector, the structure of the undertakings, 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 is notified in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out the activities, for which the body has been notified, shall have the following:

- (a) sound technical and vocational training covering all the third party tasks in the process of assessment and verification of constancy of the declared performance of the relevant scope for which the body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments and verifications they carry out and adequate authority to carry out such operations;

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- (c) appropriate knowledge and understanding of the applicable harmonised standards 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.

8. The impartiality of the notified body, its top level management and assessment personnel shall be guaranteed.

The remuneration of the notified body's top level management and assessment personnel shall not depend on the number of assessments carried out or on the results of such assessments.

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

10. The personnel of the notified body shall be bound to observe professional secrecy with regard to all information gained in carrying out its tasks under *Annex VI*, except in relation to the competent administrative authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

11. The notified body shall participate in, or ensure that its assessment personnel is informed of, the relevant standardisation activities and the activities of the notified body co-ordination group established under this Regulation and apply as general guidance the administrative decisions and documents produced as a work result of that group.

12. *Notified bodies shall inform their clients and advise them in their best interests.*

Article 34

Presumption of conformity

When a performance assessment body can demonstrate its conformity with the criteria laid down in the relevant harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall be presumed to comply with the requirements set out in Article 33 insofar as the applicable harmonised standards cover these requirements.

Article 35

Subsidiaries and subcontracting of notified bodies

1. Where the notified body subcontracts specific tasks connected with the third party tasks in the process of assessment and verification of constancy of performance or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 33, and inform the notifying authority.

2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.

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 national authorities the relevant documents concerning the assessment of the subcontractor's or subsidiary's qualifications and the work carried out by the subcontractor or the subsidiary under *Annex VI*.

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Article 36 ||

Witness tests

1. Where justified by technical, economical or logistic reasons, notified bodies may decide to carry out the tests referred to in *Annex VI*, or have such tests carried out under their supervision, either in the manufacturing plants using the test equipments of the internal laboratory of the manufacturer or, with the prior consent of the manufacturer, in a private or public laboratory, using the test equipments of that laboratory.
2. Before carrying out those tests, the notified body shall check whether the test equipment has an appropriate calibration system and whether that system is operational.

Article 37 ||

Application for notification

1. A body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance 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/or verification procedures for which the body claims to be competent, as well as by an accreditation certificate, where it exists, delivered by the national accreditation body within the meaning of Regulation (EC) No 765/2008, attesting that the body meets the requirements laid down in Article 33.
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 33.

Article 38 ||

Notification procedure

1. Notifying authorities may notify only bodies which have satisfied the requirements laid down in Article 33.
2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.

Exceptionally, for horizontal notifications referred to in the second subparagraph of paragraph 3, for which the appropriate electronic tool is not available, hard copy of the notification 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 point 1.4 of *Annex VI*, the essential characteristics for which the body is competent.

However, reference to the relevant harmonised technical specification is not required in the following cases of essential characteristics:

- (a) reaction to fire;
- (b) resistance to fire;
- (c) external fire performance;
- (d) noise absorption.

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4. Where a notification is not based on an accreditation certificate, the notifying authority shall provide the Commission and the other Member States with all documentary evidence which attests the notified body's competence and the arrangements in place to ensure that the body will be regularly monitored and will continue to satisfy the requirements laid down in Article 33.

5. The body concerned may perform the activities of a notified body only where no objections have been raised by the Commission and the other Member States within two weeks following a notification in case of an accreditation certificate is used and within two months following a notification in case accreditation is not used.

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

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

Article 39 ||

Identification numbers and lists of notified bodies

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

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

2. The Commission shall make publicly available the list of the 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 40 ||

Changes to the notification

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements set out in Article 33, 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 fulfil those obligations. It shall immediately inform the Commission and the other Member States thereof.

2. In the case of withdrawal, restriction or suspension of notification or where the notified body has ceased activity, the notifying Member State concerned shall take the appropriate steps to ensure that the files are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities on request.

Article 41 ||

Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts or doubt is brought to its attention as to the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities placed on it.

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 information obtained in the course of its investigations is treated confidentially.

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4. Where the Commission ascertains that a notified body does not meet, or no longer meets, the requirements for its notification, it shall inform the notifying Member State thereof and request it to take the necessary corrective measures, including de-notification, if necessary.

Article 42 ||

Operational obligations for notified bodies

1. Notified bodies shall carry out third party tasks in accordance with the systems of assessment and verification of constancy of performance provided for in *Annex VI*.

2. Assessments and verifications of constancy of performance shall be carried out in a proportionate manner, avoiding unnecessary burden for economic operators. The notified bodies shall perform their activities taking into consideration the size, the sector, the structure of the undertakings involved, the relative complexity of the technology used by the construction products and the serial character of the production.

In so doing it shall nevertheless respect the degree of rigour required for the product by this Regulation and the role of the product in the safety of the works.

3. Where, in the course of the monitoring activity aiming at the verification of the constancy of the manufactured product performances, a notified body finds that a construction product no longer has the same performance compared to that of the product-type, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw its certificate if necessary.

4. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

Article 43 ||

Information obligation for 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 and/or verification of constancy of performance activities carried out which they have received from market surveillance authorities;
- (d) on request, third party tasks in accordance with the systems of assessment and verification of constancy of performance carried out within the scope of their notification and, any other activity performed, including, cross-border activities and subcontracting.

2. Notified bodies shall provide the other bodies notified under this Regulation carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and covering the same construction products with relevant information on issues relating to negative and, on request, positive results from these assessments and/or verifications.

Article 44 ||

Exchange of experience

The Commission shall provide for the organisation of exchange of experience between the Member States' national authorities responsible for policy on notification.

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Article 45 ||

Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under Article 29 is put into place and properly operated in the form of groups of notified bodies both at the sectoral and cross sectoral level.

Member States shall ensure that the bodies notified by them participate to the work of those groups, directly or by designated representatives.

CHAPTER VIII

Market surveillance and safeguard procedures

Article 46 ||

Procedure to deal with construction products presenting a risk at national level

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 18 of Regulation (EC) No 765/2008 or where they have sufficient reason to believe that a construction product does not achieve the declared performances and/or presents a risk for the health or safety of persons or for other issues of public interest protection covered by this Regulation, they shall perform an evaluation in relation to the product concerned covering all the requirements laid down by this Regulation. The concerned economic operators shall cooperate in any necessary way with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the construction product does not comply with the requirements laid down by this Regulation, they shall without delay require the relevant economic operator to take all appropriate corrective actions to bring the product into compliance with those requirements or to withdraw the product from the market or recall it within such reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body.

Article 19 of Regulation (EC) No 765/2008 shall apply to the measures referred to above.

2. Where the market surveillance authorities consider that the non-compliance is not limited to the national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.

3. The economic operator shall ensure that any corrective actions are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.

4. Where the relevant economic operator, within the period referred to in the second subparagraph of paragraph 1, does not take adequate corrective actions, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the construction product on the national market or to withdraw the construction product from that market or to recall it.

They shall inform the Commission and the other Member States, without delay, of such measures.

5. The information referred to in paragraph 4 shall provide all available details, in particular as regards the necessary data for the identification of the non-compliant construction product, the origin of the construction product, the nature of the risk involved, the nature and duration of national measures taken as well as the view points put forward by the economic operator concerned. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:

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- (a) failure of the product to meet the requirements related to the health or safety of persons or to other issues of public interest protection laid down by this Regulation;
- (b) shortcomings in the harmonised technical specifications or in the STD.

6. Member States other than the Member State which initiated the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information relating to the non-compliance of the construction product concerned at their disposal, and, in the event of disagreement with the notified national measure, of their objections.

7. Where, within fifteen working days 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 construction product concerned, the measure shall be deemed justified.

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

Article 47 ||

Community safeguard procedure

1. Where, on completion of the procedure set out in Article 46(3) and (4), objections are raised against a national measure of a Member State or where the Commission considers the national measure to be contrary to Community legislation the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall proceed to the evaluation of the national measure. On the basis of the results of that evaluation, the Commission shall take a decision, indicating whether the measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator(s).

2. If the national measure is considered justified, all Member States shall take the necessary measures to ensure that the non compliant construction product is withdrawn from their markets. Member States shall inform the Commission thereof. If the national measure is considered 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 construction product is attributed to shortcomings in the harmonised standards as referred to in Article 46(5)(b), the Commission must inform the relevant European standardisation body or bodies and bring the matter before the *Standing Committee established by Article 5(1) of Directive 98/34/EC*. That committee must consult with the relevant European standardisation body and deliver its opinion without delay.

Where the national measure is considered to be justified and the non-compliance of the construction product is attributed to shortcomings in the EAD or in the STD as referred to in Article 46(5)(b), the Commission shall adopt the appropriate measures.

Article 48 ||

Complying construction products which nevertheless present a risk to health and safety

1. Where a Member State after having performed an evaluation under Article 46(1) finds that although a construction product is in compliance with this Regulation, it presents a risk for the health or safety of persons or for other issues of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk or to withdraw the construction product from the market or recall it within such reasonable period, commensurate with the nature of the risk, as it may prescribe.

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2. The economic operator shall ensure that any corrective actions are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.
3. The Member State shall immediately inform the Commission and the other Member States. The information shall provide all available details, in particular as regards the necessary data for the identification of the construction product concerned, the origin and the supply chain of the product, the nature of the risk involved, the nature and duration of national measures taken.
4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall proceed to the evaluation of the national measure. On the basis of the results of that evaluation, the Commission shall take a decision, indicating whether the measure is justified or not, and where necessary, propose appropriate measures.
5. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator(s).

Article 49 ||

Formal non-compliance

1. Without prejudice to Article 46, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:
 - (a) the CE marking has been affixed in violation of Article 7 or || 8;
 - (b) the CE marking has not been affixed, when required according to Article 7(1);
 - (c) the declaration of performance has not been drawn up, when required according to Article 4;
 - (d) the declaration of performance has not been drawn up in accordance with Articles 4, 5 and 6;
 - (e) the technical documentation is either not available or not complete.
2. Where the non-compliance referred to in paragraph 1 continues, the Member State shall take all appropriate measures to restrict or prohibit the making available on the market of the construction product or ensure that it is recalled or withdrawn from the market.

CHAPTER IX

Final provisions

Article 50 ||

Amendment of Annexes

1. The Commission may amend *Annexes I to VI*.
2. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

Article 51 ||

Committee

1. The Commission shall be assisted by a committee, called *the Standing Committee on Construction*.
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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3. Member States shall ensure that the members of the committee referred to in paragraph 1 are independent of the parties involved in assessing the conformity of construction products.

Article 52 ||

Repeal

1. Directive 89/106/EEC is repealed.
2. References to the repealed Directive shall be construed as references to this Regulation.

Article 53 ||

Transitional provisions

1. Construction products which have been placed on the market in accordance with Directive 89/106/EEC before 1 July 2011 shall be deemed to comply with this Regulation.
2. Manufacturers and importers may make a declaration of performance on the basis of a certificate of conformity or a declaration of conformity, which has been issued before 1 July 2011 in accordance with Directive 89/106/EEC.
3. Guidelines for European technical approval which were published before 1 July 2011 in accordance with Article 11 of Directive 89/106/EEC **and joint interpretations of procedures for the evaluation of construction products adopted by EOTA before 1 July 2011, on the basis of Article 9(2) of Directive 89/106/EEC**, may be used as EADs. **Where the Commission considers that a sufficient level of technical and scientific expertise concerning European technical approval guidelines has been achieved, it shall give a mandate to the European standardisation bodies to draw up a harmonised standard on the basis of those guidelines in accordance with Article 20(4).**
4. Manufacturers and importers may use European technical approvals issued in accordance with Article 9 of Directive 89/106/EEC before 1 July 2011 as European Technical Assessments throughout the period of validity of those approvals.

Article 54 ||

Entry into force

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

|| Articles 3 to 21, 26, 27, || 28, || 46 to 50, 52 and 53 *and* Annexes I, II, III and VI shall apply from 1 July 2011.

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

Friday 24 April 2009

ANNEX I

Basic works requirements

Construction works as a whole and in their separate parts must be fit for their intended use, **taking into account the health and safety of persons involved throughout the lifecycle of the works.**

Subject to normal maintenance, basic works requirements must be satisfied for an economically reasonable working life.

1. MECHANICAL RESISTANCE AND STABILITY

The construction works must be designed and built in such a way that the loadings that are liable to act on them during their constructions and use will not lead to any of the following:

- (a) collapse of the whole or part of the work;
- (b) major deformations to an inadmissible degree;
- (c) damage to other parts of the works or to fittings or installed equipment as a result of major deformation of the load-bearing construction;
- (d) damage by an event to an extent disproportionate to the original cause.

2. SAFETY IN CASE OF FIRE

The construction works must be designed and built in such a way that in the event of an outbreak of fire:

- (a) the load-bearing capacity of the construction can be assumed for a specific period of time,
- (b) the generation and spread of fire and smoke within the works are limited,
- (c) the spread of the fire to neighbouring construction works is limited,
- (d) the safety of rescue teams is taken into consideration.

3. HYGIENE, HEALTH AND THE ENVIRONMENT

The construction works must be designed and built in such a way that they will neither be a threat || to the hygiene or health **and safety** of **workers**, occupants and neighbours **throughout their lifecycle**, nor exert an exceedingly high impact over their entire life cycle to the environmental quality nor to the climate, during their construction, use and demolition, in particular as a result of any of the following:

- (a) the giving-off of toxic gas;
- (b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or out door air;
- (c) the emission of dangerous radiation;
- (d) the release of dangerous substances into drinking water, ground water, marine waters or soil;
- (e) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid wastes;
- (f) the presence of dampness in parts of the works or on surfaces within the works.

4. SAFETY IN USE

The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, and injury from explosion.

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5. PROTECTION AGAINST NOISE

The construction works must be designed and built in such a way that noise perceived by the occupants or people nearby is kept down to a level that will not threaten their health and will allow them to sleep, rest and work in satisfactory conditions.

6. ENERGY ECONOMY AND HEAT RETENTION

The construction works and their heating, cooling, **lighting** and ventilation installations must be designed and built in such a way that the amount of energy required in use shall be low, when account is taken of the climatic conditions of the location and the occupants. **Construction products must also be energy-efficient; they must use as little energy as possible during their life cycle.**

7. SUSTAINABLE USE OF NATURAL RESOURCES

The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and ensure, **at least**, the following:

- (a) recyclability of the construction works, their materials and parts after demolition;
 - (b) durability of the construction works;
 - (c) use of environmentally compatible raw and secondary materials in the construction works.
-

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ANNEX II

Procedure for adopting a European Assessment Document and for issuing a European Technical Assessment **for construction products not or not fully covered by a harmonised standard**

1. Technical Assessment Body (TAB) shall carry out assessment and issue the European Technical Assessment (ETA) in the product area for which it has been designated.

The provisions of this Annex on manufacturers apply also to importers.

2. The elaboration and the adoption of a European Assessment Document shall be carried out in accordance with points 2.1 to 2.11.

2.1. In agreement with the Technical Assessment Bodies of the selected destination market, the relevant Technical Assessment Body shall carry out the assessment in accordance with the provisions of the second contract and the draft work programme, shall issue the relevant European Technical Assessment and shall forward it to the Commission and all other TABs appointed for the same product areas pursuant to Table 1 of Annex V.

- 2.2. The TAB receiving a ETA request || for a construction product (the 'responsible TAB') shall inform the organisation of TABs referred to in Article 25(1) and the Commission of the content of the request and of the reference to the Commission decision for assessment and verification of constancy of performance, which the TAB intends to apply for this product, or of the lack of such a Commission decision.

2.3. In agreement with the other TABs, the relevant TAB shall carry out the assessment in accordance with the provisions of the second contract and the draft work programme, shall issue the relevant ETA and shall forward it to the Commission and the other TABs designated for the same product areas in accordance with Table 1 of Annex V.

- 2.4. The responsible TAB shall, in cooperation with the manufacturer, obtain the relevant information on the product and on its intended use. The responsible TAB shall inform the manufacturer if the product is covered, fully or partially, by another harmonised technical specification. The responsible TAB shall then draft a first contract to be concluded with the manufacturer, defining the terms for the elaboration of the work programme.

- 2.5. Within one month from the conclusion of the first contract, the manufacturer shall submit to the responsible TAB a technical file describing the product, its intended use and details of the factory production control he applies.

- 2.6. Within one month from the reception of the technical file, the responsible TAB shall prepare and send to the manufacturer the draft second contract and the draft work programme, containing all detailed aspects and actions it will undertake to assess the performance for the essential characteristics of the product in relation to the intended use. The draft work programme shall include at least the following parts:

- (a) part 1: the assessment programme indicating test methods, calculation methods, descriptive methods, parameters and all other means, including the assessment criteria considered suitable for identifying the product, for assessing the performance for its essential characteristics in relation to the intended use, and the durability aspects for the relevant essential characteristics;

- (b) part 2: the activities related to the initial inspection of the plant in which the product covered by the request is manufactured;

- (c) part 3: the places where the tests will be carried out;

- (d) part 4: expected time and costs.

- 2.7. After the conclusion of the second contract, comprising the agreed work programme, between the responsible TAB and the manufacturer, the responsible TAB shall send Part 1 of the work programme, together with the part of the technical file related to the description of the product and its intended use, to all the other TABs designated for the same construction products area, referred to in Table 1 of Annex V. Those TABs shall constitute a working group, which shall be co-ordinated by the responsible TAB.

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The manufacturer may ask for the above-mentioned working group to hear an independent scientific expert of its choice in order to supplement the information made available to the TABs. The working group shall be required to hold such a hearing.

Within two weeks from the reception by all the TABs concerned of those documents from the responsible TAB, the working group shall establish the draft EAD, containing the assessment methods and criteria of the performance for the relevant essential characteristics, based on Part 1 of the work programme and on the pertinent and justified technical contributions provided by its members.

- 2.8. The draft EAD shall then be communicated by the responsible TAB, together with the relevant part of the technical file, containing the description of the product and its intended use, to all the other TABs.

Within two weeks, these other TABs shall communicate to the responsible TAB the relevant information related to their national building regulations and other legal or administrative provisions applicable to the product and to its intended use, as appropriate. The responsible TAB shall inform the members of the working group and the manufacturer about the contents of these contributions.

- 2.9. The responsible TAB shall include these contributions, after consulting the working group, in the draft EAD, which it shall send to the organisation of TABs referred to in Article 25(1). After communicating the final draft EAD to the manufacturer, who shall have one week for his reactions, ***and after having consulted at least one professional organisation designated by the manufacturer should he so wish***, the organisation of TABs shall adopt the EAD as a provisional document. The organisation of TABs shall send a copy of the adopted provisional EAD to the manufacturer and the Commission. If the Commission communicates, within fifteen working days from reception, to the organisation of TABs its observations on the provisional EAD, it shall be amended accordingly by the organisation of TABs. After this period, the responsible TAB shall start the preparations for carrying out the assessment.
- 2.10. The responsible TAB shall carry out the assessment according to the provisions of the adopted provisional EAD and shall subsequently issue the corresponding ETA.
- 2.11. As soon as the first ETA has been issued on the basis of a given provisional EAD by the responsible TAB, this EAD shall be adjusted, if appropriate, by the organisation of TABs on the basis of a proposal from the responsible TAB. The final EAD shall then be adopted by the organisation of TABs and sent to the Commission. The Commission shall publish the reference to the final EAD in the Series C of the *Official Journal of the European Union*.
3. When the reference to the final EAD has been published in the *Official Journal of the European Union*, the preparations for ETAs on the basis of any subsequent requests, concerning construction products with similar essential characteristics in relation to their intended use to the first request, shall be carried out according to this final EAD.
4. A Commission representative may attend, as observer, to all the meetings of the working group referred to in point 2.7.
5. If all the TABs and the manufacturer have not agreed upon the EAD, the organisation of TABs shall submit this matter to the Commission for appropriate resolution.
-

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ANNEX III

I

1. No (unique identification code of the product)
2. Name or identification mark and address of (authorised representative of the) manufacturer:

3. This declaration of performance is issued under the sole responsibility of the manufacturer:

4. Identification of product (allowing traceability) **and reference to the envisaged generic use:**

5. The performance of the product identified above is in conformity with the declared performances under point 7.
6. The (name, number of the notified body, if relevant)
 performed (description of intervention)
in accordance with system [No] for assessing and verifying the constancy of performance
 and issued (the certificate of conformity of the product, the certificate of conformity of the factory production control, the test reports - if relevant):

7. Declaration of performance (list, levels or classes and reference to the corresponding harmonised technical specification/Specific Technical Documentation used for the assessment of the performance for the declared essential characteristics)

Name of the declared essential characteristic	Level or class of performance for the declared essential characteristic	Reference of the harmonised technical specification / Specific Technical Documentation

Signed for and on behalf of:

.....
 (place and date of issue)

.....
 (name, function)(signature)

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ANNEX IV

*Hazardous substances to be declared in the performance declaration***1. Substances of very high concern:**

- (a) *substances on the candidate list of REACH (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 ⁽¹⁾;*
- (b) *substances that are persistent, bio accumulative or toxic (PBT) according to REACH (Regulation (EC) No 1907/2006);*
- (c) *substances that are very persistent or very bio accumulative (vPvB) according to REACH (Regulation (EC) No 1907/2006);*
- (d) *substances that are carcinogenic, mutagenic and toxic to reproduction in category 1 or 2 according to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽²⁾.*

2. Substances with certain classifications

Substances that fulfil the criteria for classification set out in Directive 67/548/EEC for the following categories:

- (a) *carcinogenic, mutagenic and toxic to reproduction in category 3;*
- (b) *substances with chronic toxicity (R48);*
- (c) *environmentally hazardous substances with possible long term effect (R50-53);*
- (d) *ozone depleting substances (R59);*
- (e) *substances which may cause sensitisation by inhalation (R42);*
- (f) *substances which may cause sensitisation by skin contact (R43).*

3. Priority Hazardous Substances

Priority hazardous substances as listed in Annex X to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽³⁾ (Water Framework Directive).

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ OJ 196, 16.8.1967, p. 1.

⁽³⁾ OJ L 327, 22.12.2000, p. 1.

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ANNEX V

Product areas and requirements for Technical Assessment Bodies

Table 1 - Product areas

Area Code	Product Area	Families of construction products
A	CIVIL ENGINEERING	Geotextiles and related products - Circulation fixtures - Floorings, paving and road finishes - Aggregates - Road construction products - Pipes, thanks and ancillaries not in contact with water intended for human consumption - Floor beds including suspended ground floors, roads and other trafficked areas - Ultra thin layer asphalt concrete - Waste water engineering products - Falling rock protection kits - Liquid applied bridge-deck waterproofing kits - Expansion joints for road bridges
B	PREFABRICATED TOTAL/PARTIAL BUILDING UNITS	Timber frame and log prefabricated building kits - Cold storage building kits and cold storage building envelope kits - Prefabricated building units - Concrete frame building kits - Metal frame building kits
C	LOAD BEARING MATERIALS AND COMPONENTS	Structural timber products and ancillaries - Cement, building limes and other hydraulic binders - Reinforcing and pre-stressing steel for concrete - Structural metallic products and ancillaries - Products related to concrete, mortar and grout - Structural bearings - Precast concrete products - Prefabricated stairs kits - Light composite wood-based beams and columns - Post tensioning kits for the pre-stressing of structures - Anchor bolts
D	ROOFING AND BUILDING ENVELOPE	Curtain walling kits - Roof coverings, Roof lights, roof windows and ancillary products - Flat glass, profiled glass and glass block products - External and internal doors and windows, roof openings and roof lights - Liquid applied roof waterproofing kits - Kits for exterior wall claddings - Structural sealant glazing systems - Kits of mechanically fastened flexible roof waterproofing membranes - Self supporting translucent roof kits - Prefabricated wood-based load-bearing stressed skin panels and self-supporting composite lightweight panels
E	INTERNAL/EXTERNAL BUILDING COMPONENTS/KITS	Sanitary appliances - Wood-based panels - Masonry and related products - Internal and external wall and ceiling finishes - Gypsum products - Internal partition kits - Watertight covering kits for wet room floors and walls - Non-load bearing permanent shuttering kits based on hollow blocks or panels of insulating materials and/or concrete
F	HEATING/VENTILATION/INSULATION	Chimneys, Flues and specific products - Space heating appliances - Thermal insulating products - External thermal insulation composite kits - Inverted roof insulation kits - Vetures
G	FIXATIONS SEALINGS/ADHESIVES	Construction adhesives - Pins for structural joints / Connectors - Three dimensional nailing plates - Anchors bolts / Screws - Wall plates made of stainless steel. - Cavity trays - Fastener for external wall claddings and flat or pitched roofs - Connector for sandwich elements of concrete - Gas and watertight seals for pipes in wall and floor penetrations - Sealing kits, profiles and strips - Joints sealing compounds - Elastic suspended fixings - Tension Rods - Point fastener - Surface repellents and coating treatments - Levelling fasteners for roofs, walls and interior applications - Waterproofing products / treatments

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Area Code	Product Area	Families of construction products
H	FIRE PROTECTION AND RELATED PRODUCTS	Fire alarm, fire detection, fixed fire fighting, fire and smoke control and explosion suppression products - Fire stopping, fire sealing and fire protective products.
I	ELECTRIC INSTALLATION	Any construction product related to electric installation.
J	GAS INSTALLATION	Any construction product related to gas installation.
K	WATER SUPPLY AND SEWAGE	Kit consisting of a trap with partially mechanical closure, mounted in a non-trapped gully - Kit for manhole top consisting of Cover and additional rings made of plastic for different purposes - Piping kits for cold and hot water, including those intended for human consumption - Piping systems for drainage and sewerage with or without pressure - Flexible coupling for gravity and pressure sewerage and drainage pipe - Composition toilet

Table 2 - Requirements for technical assessment bodies

Competence	Description of competence	Requirement
1. Analysing risks	Identify the possible risks and benefits for the use of innovative construction products in the absence of established/consolidated technical information regarding their performance when installed in construction works.	A TAB shall be independent from the stakeholders and from any particular interests. In addition, a TAB shall have staff with: (a) objectivity and sound technical judgement; (b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States, concerning product areas for which it is to be designated;
2. Setting technical criteria	Transform the outcome of the risk analysis into technical criteria for evaluating behaviour and performance of the construction products regarding the fulfilment of applicable national requirements; the technical information needed by those participating in the building process as potential users of the construction products (manufacturers, designers, contractors, installers).	(c) general understanding of construction practice and detailed technical knowledge, concerning product areas for which it is to be designated; (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 the product areas for which it is to be designated; (f) appropriate linguistic skills.
3. Setting assessment methods	Design and validate appropriate methods (tests or calculations) to assess performance for essential characteristics of construction products, taking into account the current state of the art.	
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 through the given manufacturing process.	A TAB shall have staff with appropriate knowledge of the relationship between the manufacturing processes and product characteristics related to factory production control.

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Competence	Description of competence	Requirement
5. Assessing the product	Assess the performance for essential characteristics of construction 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 construction products within the product areas for which it is to be designated.
6. General management	Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.	A TAB shall have: (a) a proven record of respect of good administrative behaviour; (b) a policy and the supporting procedures to ensure confidentiality of sensitive information within the TAB and all its partners; (c) a document control system to ensure registration, traceability, maintenance 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 deal objectively with appeals and complaints.

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ANNEX VI

Assessment and verification of constancy of performance

1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

1.1. **System 1+**: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) factory production control (FPC);

(ii) further testing of samples taken at the factory according to the prescribed test plan;

(b) the notified body shall issue the certificate of conformity of the product on the basis of:

(i) determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;

(ii) initial inspection of the manufacturing plant and of *factory production control*;

(iii) continuous surveillance, assessment and evaluation of *factory production control*;

(iv) audit-testing of samples taken at the factory.

1.2. **System 1**: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) factory production control;

(ii) further testing of samples taken at the factory by the manufacturer according to the prescribed test plan;

(b) the notified body shall issue the certificate of conformity of the product on the basis of:

(i) determination of the product type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;

(ii) initial inspection of the manufacturing plant and of *factory production control*;

(iii) continuous surveillance, assessment and evaluation of *factory production control*.

1.3. **System 2+**: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;

(ii) factory production control;

(iii) testing of samples taken at the factory according to the prescribed test plan;

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(b) the notified body shall issue the certificate of conformity of *factory production control* on the basis of:

- (i) initial inspection of the manufacturing plant and of *factory production control*;
- (ii) continuous surveillance, assessment and evaluation of *factory production control*.

1.4. **System 3:** Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

- (a) the manufacturer shall carry out factory production control;
- (b) the notified body shall carry out determination of the product-type on the basis of type testing (based on the sampling carried out by the manufacturer), type calculation, tabulated values or descriptive documentation of the product;

1.5. **System 4:** Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

- (a) the manufacturer shall carry out:
 - (i) determination of the product-type on the basis of type testing, type calculation, tabulated values or descriptive documentation of the product;
 - (ii) factory production control;
- (b) no tasks for the notified body.

2. BODIES INVOLVED IN THE ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

With respect to the function of the notified bodies involved in the assessment and verification of constancy of performance of construction product, distinction shall be made between:

- (1) certification body: a notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a certification according to given rules of procedure and management;
 - (2) inspection body: a notified body having the *organisation*, staffing, competence and integrity to perform according to specified criteria the following functions: assessing, recommending for acceptance and subsequent audit of quality control operations of manufacturers, and selection and evaluation of construction products in the plant, according to specific criteria;
 - (3) testing laboratory: a notified laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of materials or construction products.
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