

COMMISSION DECISION (EU) 2017/1996**of 6 November 2017****to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 12285-2:2005 on Workshop fabricated steel tanks in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ⁽¹⁾, and in particular Article 18(2) thereof,

Whereas:

- (1) Pursuant to Regulation (EU) No 305/2011, harmonised standards provided for in Article 17 are to fulfil the requirements of the harmonised system set out in or by means of this Regulation.
- (2) In February 2005, the European Committee for Standardisation (CEN) adopted the harmonised standard 12285-2:2005 'Workshop fabricated steel tanks — Part 2: Horizontal cylindrical single skin and double skin tanks for the aboveground storage of flammable and non-flammable water polluting liquids'. The reference of the standard was subsequently published in the *Official Journal of the European Union* ⁽²⁾. The reference of the standard was republished several times with the latest publication in 2017 ⁽³⁾
- (3) On 21 August 2015 Germany launched a formal objection procedure in respect of the harmonised standard EN 12285-2:2005. The formal objection was based on the lack of harmonised methods in that standard for ensuring the mechanical resistance, load-bearing capacity, tightness, stability and resistance to fragmentation or crushing of the products in question when installed in earthquake or flood areas. Consequently, Germany demanded the restriction of the reference of the standard published in the *Official Journal of the European Union* by excluding earthquake or flood areas from its scope, or alternatively the withdrawal of that reference of the standard altogether.
- (4) According to Germany, that standard does not contain any stipulations for ascertaining the performance of the construction products in question when they are installed in areas where a risk of earthquakes or flooding exists. The necessary assessment methods for those purposes are completely missing, when it comes to design, support construction or anchoring the tanks. Moreover, the extent to which impacts resulting from loads from earthquakes or floods can be absorbed by them, cannot be assessed either.
- (5) Germany considered these shortcomings to constitute a violation of Article 17(3) of Regulation (EU) No 305/2011, as the standard at hand did not entirely satisfy the requirements set out in the relevant mandate as provided in Article 18 of that Regulation.
- (6) When assessing the admissibility of the claims brought forward, it should be noted that the additional alleged needs brought forward by Germany relate to the installation and the subsequent use of the products in question in areas where a risk of earthquakes or flooding exists.
- (7) However, according to Article 17(3) of Regulation (EU) No 305/2011, harmonised standards are to provide the methods and the criteria for assessing the performance of the products covered by them. The purpose of the harmonised system set out in or by means of that Regulation is to lay down harmonised conditions for the marketing of construction products, not to provide rules for their installation or their use.

⁽¹⁾ OJ L 88, 4.4.2011, p. 5.⁽²⁾ Commission Communication in the framework of the implementation of 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 (OJ C 319, 14.12.2005, p. 1).⁽³⁾ Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ C 267, 11.8.2017, p. 16).

- (8) The rights to bring forward formal objections in accordance with Article 18 of Regulation (EU) No 305/2011 cannot, however, be extended to claims focusing on other matters than the content of the standards in question. Such claims are therefore to be considered inadmissible in the context of formal objections.
- (9) Therefore, and since the first demand of Germany to restrict the reference of the standard by excluding earthquake or flood areas from its scope of application, focuses on other matters than the content of the standard in question, it should be considered inadmissible.
- (10) The general alternative demand of Germany, to withdraw the reference of the standard altogether, is mainly based on the inadequacy of the standard as it stands, especially when it comes to the installation and the subsequent use of the products in question in earthquake or flood areas.
- (11) However, Member States remain fully entitled to regulate the specific conditions for the installation or the use of construction products, provided that such specific conditions do not entail requirements for the assessment of the performance of the products in breach of the harmonised system. Member States are thus able to prohibit or limit the installation or use of the products in question in earthquake or flood areas, as currently is the case in Germany.
- (12) On the basis of the contents of EN 12285-2:2005 as well as the information submitted by Germany, by CEN and by industry, and after consulting the committees established by Article 64 of Regulation (EU) No 305/2011 and by Article 22 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council ⁽¹⁾ it is widely agreed that the reference of that standard should be maintained in the *Official Journal of the European Union*.
- (13) The alleged incompleteness of that standard should thus not be considered a sufficient reason for complete withdrawal of the reference of the standard EN 12285-2:2005 from the *Official Journal of the European Union*.
- (14) The reference of EN 12285-2:2005 should therefore be maintained in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The reference of harmonised standard EN 12285-2:2005 'Workshop fabricated steel tanks — Part 2: Horizontal cylindrical single skin and double skin tanks for the aboveground storage of flammable and non-flammable water polluting liquids' shall be maintained in the *Official Journal of the European Union*.

Article 2

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

Done at Brussels, 6 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).