



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 May 2010

10163/10

**Interinstitutional File:
2008/0098 (COD)**

**MI 176
ENT 57
COMPET 173
CODEC 476**

NOTE

from: General Secretariat of the Council / Presidency
to: Competitiveness Council of 25 and 26 May 2010
No. Cion prop.: 10037/08 MI 167 ENT 110 COMPET 197 CODEC 676
Subject: Proposal for a Regulation of the European Parliament and of the Council
laying down harmonised conditions for the marketing of the construction products
- *Political Agreement*

Delegations will find attached the text of the political agreement noted at the Competitiveness Council of 25 May 2010 together with the declarations, submitted by the Commission and delegations, to be inscribed in the Council minutes. All changes to the text as compared to the Commission Proposal are in underline or ~~striketrough~~.

2008/0098 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

LAYING DOWN HARMONISED CONDITIONS FOR THE MARKETING OF THE
CONSTRUCTION PRODUCTS

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

~~Having regard to the opinion of the Committee of the Regions,~~

Acting in accordance with the ordinary legislative procedure ~~procedure laid down in Article 251 of the Treaty~~,

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.

¹ OJ C , , p. .

² OJ C , , p. .

- (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 Union.
- (2aa) This Regulation shall not affect the right of Member States to specify the requirements they deem necessary to ensure protection of health, the environment, and of ~~the~~ that workers ~~are protected~~ when using products.
- (2a) Member States have provisions, including requirements, relating not only to building safety but also to health, durability, energy economy, protection of the environment, aspects of economy, and other aspects important in the public interest. Laws, regulations, administrative measures or case law, established either on Union or national level, concerning construction works may have an impact on the requirements of constructions products. Since their effect on the functioning of the internal market is likely to be very similar, it is appropriate to consider such laws, regulations, administrative measures or case law, as "provisions" for the purposes of this regulation. ~~Moreover, given that provisions dealing, for example, with energy performance of construction works could constitute requirements related to relevant products such as windows, insulation products or heating systems, it is appropriate to ensure that provisions aiming at fulfilling Basic Works Requirements as described in this regulation constitute a condition for drawing up a Declaration of Performance if the product is covered by a harmonised standard or an ETA has been issued on the request of the manufacturer.~~

- (2b) When applicable, provisions for an intended use of a construction product in a Member State, aiming at fulfilling basic works requirements, determine the essential characteristics whose performance shall be declared. ~~the declaration of performance will be mandatory for the manufacturer. Within exercising its right to apply national provisions, the Member State may in this case also require one or several essential characteristics to be declared as appropriate for the intended use.~~
- (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 products³, 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 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, as well as 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 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.

³ OJ L 40, 11.2.1989, p.12. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OV L 284, 31.10.2003. p. 1.).

- (8) 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.
- (9) 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.
- (10) 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, should be in accordance with harmonised technical specifications.
- ~~(11) It is necessary to establish basic works requirements in order to provide the basis for the preparation of the mandates and harmonized standards and for the elaboration of the EADs for construction products.~~
- (11a) When appropriate, classes of performance in relation to the essential characteristics of construction products should be encouraged to be used in harmonised standards, 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. The European standardisation bodies should be entitled to establish such classes in cases, when the Commission has not already established them, on the basis of a revised mandate.

- (12) Where an intended use ~~appropriate~~, requires minimum performance levels in relation to the any essential characteristics, to be fulfilled by construction products in Member States, these levels should be established in the harmonized 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.~~
- (12a) Threshold levels determined by the Commission pursuant to this Regulation have to be generally recognized values for the construction product in question with regard the provisions in Member States.
- (12b) 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.
- (13) The European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) are recognized as the competent organisations for the adoption of harmonized standards in accordance with the general guidelines for cooperation between the Commission and those two organisations signed on 28 March 2003.
- (14) ~~The harmonised standards should provide a presumption of conformity and Manufacturers should use those harmonised standards when the reference to them has been published in the Official Journal and according to the criteria established pursuant to Directive 98/34/EC.~~ 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.
- (15) 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.

- (16) In order to allow manufacturers ~~and importers~~ of construction products to draw up a declaration of performance for construction products which are not covered or not fully covered by a harmonised standard, it is necessary to provide for a European Technical Assessment.
- (17) ~~To provide the manufacturer and the importer with additional flexibility for the assessment of the performance of the construction product he intends to place on the market, he should be entitled to request a European Technical Assessment also in a case in which the product is covered by a harmonised standard.~~
- (18) 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.
- (19) The establishment of draft EADs and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (TAB) 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 Union level. ~~Therefore it is also necessary to provide for periodical evaluations of TABs by TABs from other Member States.~~
- (20) The TABs should establish an organisation to coordinate the procedures for the establishment of draft EADs and for issuing of the European Technical Assessments, supported where applicable through Union financing.
- (21) 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 except in the cases laid down in this Regulation.

- (21a) The declaration of performance could usefully include also information about the content of hazardous substances in order to improve the possibilities for sustainable construction and to facilitate the development of green products. This Regulation is without prejudice to Member States' rights and obligations pursuant to other instruments of Union law that may affect hazardous substances, in particular Directive 2000/60 [water framework directive], Directive 98/8 [biocides], Regulation 1907/2006 [REACH], Directive 2008/98 [waste framework directive - obligation of separate treatment of hazardous waste], and Regulation 1272/2008 [classification, labelling and packaging of substances and mixtures].
- ~~(22) The manufacturer should be entitled not to make a declaration of performance for those essential characteristics of construction products for which no requirements exist where he intends to place the product on the market.~~
- ~~(23) When no requirements related to the essential characteristics of construction products exist where the manufacturer intends to place the product on the market, he should be allowed to place such a product on the market without a declaration of performance.~~
- (23a) (deleted)
- (24) 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.

- (25) 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. Several systems could be chosen to be applied for a given construction product, in order to take into account the specific relationship of some of its essential characteristics to the basic works requirements.
- (26) Given the specificity of construction products and the particular focus of the system for their assessment, the procedures for the conformity assessment foreseen in the Decision (EC) 768/2008, 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.
- (27) 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.
- (28) By affixing or having affixed the CE marking to construction product, the manufacturer should take responsibility for the conformity of that product with its declared performance.
- (29) The CE marking according to this Regulation should be affixed to all construction products, for which the manufacturer has drawn up a declaration of performance in accordance with this Regulation. If a declaration of performance has not been drawn up, CE marking according to this Regulation should not be affixed.⁺

⁺ Note to Legal/linguistic Experts: please verify tenses of shall/should.

- (30) 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. Therefore, no additional markings should be imposed to the construction products bearing it by the Member States nor 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.
- (31) 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.
- (32) 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.
- (32a) Simplified documentation may be used by manufacturers in a format at their discretion and under the conditions set out in the relevant harmonized standard. ~~Specific Technical Documentation (STD)~~ Simplified procedures, using simplified methods less onerous than the testing foreseen in the relevant harmonised standard, may be used by manufacturers, under conditions set up in the harmonized technical specifications, to demonstrate that the conditions set out for their use exist. This should be achieved by providing the necessary technical documents, called Specific Technical Documentation (STD), which the manufacturer should enclose into the technical documentation required from him.

- (33) To further decrease the cost of placing products on the market for micro-enterprises manufacturing them, 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, while complying with the applicable requirements of whatever origin. Enterprises applying these simplified procedures should additionally demonstrate that they qualify as micro-enterprises. Moreover, they should follow the applicable procedures for verification of constancy of performance foreseen in harmonised technical specifications for their products.
- (34) 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 requirements ~~regulatory provisions~~ can be demonstrated.
- (34a) All economic operators intervening in the supply and distribution chain shall take appropriate measures to ensure that they place or make available on the market only construction products which are in conformity with the requirements of this Regulation, aiming at ensuring the performance of construction products and fulfilling basic works requirements. In particular, importers and distributors of construction products should be aware of the essential characteristics for which there are provisions on Community market, and of the specific requirements in Member States in relation to the basic works requirements, and use this knowledge in their commercial transactions.
- (35) 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. Member States should therefore designate Product Contact Points for Construction for this purpose. In addition to the tasks defined in Article 10(1) of established by the Regulation (EC) N° 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 3052/95/EC, Product Contact Points for Construction should therefore provide information also on rules applicable to the incorporation, assembling or installation of a specific type of construction product.

- (35a) In order to facilitate the free movement of goods, Product Contact Points should provide, free of charge, information about provisions aiming at fulfilling basic works requirements applicable for the intended use of each construction product in the territory of each Member State.

Product Contact Points could also provide economic operators with additional information or observations. For additional information, Product Contact Points may charge fees that are proportionate to the costs of this information.

- (35b) Since the creation of Product Contact Points should not interfere with the allocation of functions among competent authorities within the regulatory systems of the Member States, it should be possible for Member States to set up Product Contact Points according to regional or local competences. Member States should be able to entrust the role of Product Contact Points to existing contact points established in accordance with other Community instruments, in order to prevent the unnecessary proliferation of contact points and to simplify administrative procedures. Member States should also be able to entrust the role of Product Contact Points not only to existing services within the public administration, but also to national SOLVIT centres, chambers of commerce, professional organisations and private bodies, in order not to increase administrative costs for enterprises and competent authorities.

- (36) For the purposes of ensuring an equivalent and consistent enforcement of Union harmonisation legislation, effective market surveillance should be operated by the Member States. Regulation (EC) N°765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products provides the basic conditions for the functioning of such market surveillance, notably for programmes, financing and penalties.

- (37) The responsibility of Member States for safety, health and other matters covered by the basic works requirements on their territory should be recognized in a safeguard clause providing for appropriate protective measures.

- (38) Since it is necessary to ensure throughout the Union 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~~ these 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.
- (39) 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.
- (40) Since the objectives of the proposed action, namely to achieve the proper functioning of the Internal Market for 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 scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in this Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (41) ~~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 Commission⁴.~~

⁴ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L200, 22/7/2006, p.11).

For the purposes of achieving the objectives of this regulation, the Commission should be empowered to adopt certain delegated acts in accordance with Article 290 of the Treaty. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at experts' level.

Furthermore, the measures necessary to ensure the uniform implementation of this Regulation should be adopted in accordance with Council Decision 1999/468 of 28 June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission.

- (42) ~~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 V. 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.~~
- (43) 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.

- (43a) The Commission and the Member States should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users of construction products, regarding the establishment of a common technical language, the distribution of responsibilities between the individual economic operators and the users, 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.
- (43b) The development of the basic works requirement 7 on “sustainable use of natural resources” should notably 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.
- (43c) For the assessment of the sustainable use of resources and of the impact of building works on the environment, when available, Environmental Product Declarations (EPD) should be used.

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 harmonised 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 alters ~~decreases~~ the performance of the construction works ~~and the dismantling or replacement of the product constitute construction operations with respect to the basic works requirements~~;
- 1a. *"kit"* means a construction product placed on the market by a single manufacturer as a set of at least two separate components that need to be put together to be installed in the works
2. *"construction works"* means buildings and civil engineering works;
3. *"essential characteristics"* means those characteristics of the construction product which relate to the basic works requirements;
4. *"harmonised technical specifications"* means harmonised standards and European Assessment Documents;
5. *"making available on the market"* means any supply of a construction product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

6. *"placing on the market"* means the first making available of a construction product on the Union market;
7. *"manufacturer"* means any natural or legal person who manufactures a construction product or who has such a product designed or manufactured, and markets that product under his name or trademark;
8. *"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;
9. *"importer"* means any natural or legal person established within the Union, who places a construction product from a third country on the Union market;
10. *"economic operators"* means the manufacturer, the importer, distributor and the authorised representative;
11. *"authorised representative"* means any natural or legal person established within the Union who has received a written mandate from a the manufacturer to act on his behalf ~~for~~ in relation to specified tasks;
12. *"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;
- [12a. (content moved to Art. 18)]
13. *"European Assessment Document"* means a document adopted by the organisation of Technical Assessment Bodies; for the purposes of issuing European Technical Assessments.

- 13a. "European Technical Assessment" means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document.
14. "accreditation" has the meaning assigned to it by Regulation (EC) No. 765/2008; [~~means an attestation by a national accreditation body that a body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance in accordance with this Regulation meets the requirements for this;~~]
15. "withdrawal" means any measure aimed at preventing the making available on the market of a construction product in the supply chain from being made available on the market;
16. "recall" means any measure aimed at achieving the return of a construction product that has already been made available on the market to the end user;
17. "product-type" means the set of representative performance levels or classes of a construction product, in relation to its essential characteristics, produced using a given combination of raw materials or other elements in a specific production process;
- 17a. "intended use" means the intended use of the construction product as defined in the applicable harmonised technical specification
- 17b. "performance of a construction product" means the performance related to the relevant essential characteristics, expressed by level, class, or in a description;
- 17c. "level" means the result of the assessment of the performance of a construction product in relation to its essential characteristics, expressed as a numerical value;

- 17d. “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product;
- 17e. “threshold level” means a minimum or maximum performance level of a construction product [determined in the harmonised technical specifications or by a Commission decision according to Article 3. A threshold level can be of a technical or regulatory nature.]
18. “factory production control” means the documented permanent internal control of the production in a factory, in accordance with the relevant harmonised technical specifications;
19. “micro-enterprise” means a micro-enterprise as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises⁵;
20. “life cycle” means the consecutive and interlinked stages of a product life, from raw material acquisition or generation from natural resources to final disposal.
21. “specific technical documentation(STD)” means documentation demonstrating that methods within the applicable system for assessment and verification of constancy of performance have been replaced by other methods, provided that the results obtained by those methods are equivalent with the results obtained by the test methods of the corresponding harmonised standard.

⁵ OJ L 124, 20.5.2003, p. 36.

Article 3

Basic works requirements and essential ~~product~~ characteristics on products

1. Basic works requirements set out in Annex I shall constitute the basis for the preparation of standardisation mandates and harmonised technical specifications.

~~[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. The essential characteristics of construction products shall be laid down in harmonised technical specifications in relation to the basic works requirements.

3. For specific families of construction products covered by a harmonised standard, the Commission shall, where appropriate and in relation to their intended uses as defined in harmonised standards, ~~within specific families of construction products,~~ determine by means of delegated acts ~~the pertinent~~ those essential characteristics for which the manufacturer shall declare the performance of the product when it is placed on the market.

Where appropriate, the Commission shall also determine by means of delegated acts the threshold levels for the performance in relation to the essential characteristics to be declared.

~~[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 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 the following conditions are met:~~

When a construction product is covered by a harmonised standard or for which a European Technical Assessment has been issued and system 1+, 1 or 2 as set out in Annex V applies to it or any of its characteristics, in relation to its intended use or uses, the manufacturer shall draw up a declaration of performance for it when it is placed on the market.

2. ~~When a construction product covered by a harmonised standard is placed on the market, the manufacturer shall draw up a declaration of performance for it also when system 3 or 4 as set out in Annex V applies to it, in relation to its intended use or uses, in situations when~~

~~(a) any provisions aiming at fulfilling basic works requirements are applicable for the intended use of the construction product where the manufacturer places the product on the market, or~~

~~(b) the Commission has determined in accordance with Article 3(3) at least one of its essential characteristics to be declared, as being pertinent for the respective intended use or uses of the product.~~

~~(a) the construction product is covered by a harmonised standard, or a European Technical Assessment has been issued for that product; and~~

~~(b) the requirements in relation to essential characteristics of that product exist where the manufacturer or importer intends to place the product on the market.~~

~~The manufacturer or the importer may make a declaration of performance where the requirements referred to in point (b) do not exist.~~

2. ~~The declaration of performance referred to in paragraph 1 shall cover at least the essential characteristics for which requirements referred to in point b of paragraph 1 exist.~~

~~3. When a construction product is covered by a harmonised standard, the manufacturer may draw up a declaration of performance for it even when the conditions referred to in points a and b of paragraph 2 do not exist.~~

~~4. When a construction product is placed on the market, the manufacturer shall draw up a declaration of performance for it also when a European Technical Assessment has been issued for it on his request.~~

5. When a construction product is covered by a harmonized standard or an ETA has been issued for it, information in any form about its performance in relation to the essential characteristics, as defined in the applicable harmonised technical specification, shall be provided only if included and specified in the Declaration of Performance.

6. By drawing up the declaration of performance, the manufacturer shall assume responsibility for the compliance of the product with the declared performance. In the absence of objective indications to the contrary, Member States shall presume the declaration of performance drawn up by the manufacturer or the importer to be accurate and reliable.

Article 4a (new)

Derogations from drawing up a Declaration of Performance

By way of derogation from Article 4 (1) and in the absence of European or national provisions requiring the declaration of essential characteristics where the manufacturer intends to place its product on the market, and without prejudice to article 3.3, when placing on the market a construction product covered by a harmonised standard, manufacturers may refrain from drawing up a declaration of performance when:

- (a) the construction product is individually manufactured or custom made in a non series process in response to a specific order, and installed in a single identified work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of the people responsible for the safe execution of the works designated by the applicable national rules; or
- (b) the construction product is manufactured on the construction site for its incorporation in the respective construction works in compliance with the applicable national rules and under the responsibility of the people responsible for the safe execution of the works designated by the applicable national rules; or
- (c) the construction product is manufactured in a traditional manner and in a non-industrial process for adequately renovating buildings officially protected as part of a designated environment or because of their special architectural or historic merit, in compliance with the applicable national rules.

Article 5

Content of the declaration of performance

1. The declaration of performance shall express the performance of construction products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications.
2. The declaration of performance shall contain in particular the following information:
 - (a) the reference of the product-type, for which it has been drawn up;
 - (b) the system or systems of assessment and verification of constancy of performance of the construction product as set out in Annex V.
 - (c) the reference number and date of issue of the harmonised standard or the European Technical Assessment, which has been used for the assessment of each essential characteristic;
 - (d) where applicable, the reference number of the Specific Technical Documentation used and the requirements the manufacturer claims the product complies with.

3. Additionally to paragraph 2, when the manufacturer draws up the declaration of performance of a construction product, he shall declare:

(a).-the intended use or uses for it, in accordance with the applicable harmonised technical specification;

(b).-the list of essential characteristics as determined in that harmonised technical specification for the declared intended use or uses;

(c) - the performance of at least one of its essential characteristics relevant for the declared intended use or uses;

(d) .- where applicable, its performance, by levels or classes in relation to its essential characteristics determined in accordance with Article 3 (3) ~~as being pertinent for the declared intended use or uses;~~(e)- where applicable, its performance, by levels or classes, in relation to all essential characteristics for which there are provisions related to the declared intended use or uses where the manufacturer intends to place the product on the market,

(f)-For the listed essential characteristics, for which no performance is declared, NPD (No Performance Determined) ~~shall be stated.~~

(g)- when a European Technical Assessment has been issued for that product, the performance, by levels or classes, of the construction product in relation to all essential characteristics declared in the corresponding European Technical Assessment.

4. The declaration of performance shall be drawn up using the model set out in Annex III.

Article 6

~~Form~~ Supply of the declaration of performance

1. A copy of the declaration of performance shall be supplied with each product which is made available on the market.

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

2. The copy of the declaration of performance may be supplied by electronic means only with the express agreement of the recipient.
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 by means of delegated acts.

~~[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.~~
5. The declaration of performance shall be supplied in the language or the languages required by the Member State in which market the product is ~~placed or~~ made available.

Article 7

General Principle and Use of CE marking

- 1. The CE marking shall be subjected to the general principles set out in Article 30 of Regulation (EC) N° 765/2008.
1. The CE marking shall be affixed only to those construction products, for which the manufacturer has drawn up a declaration of performance in accordance with Articles 4, 5 and 6.

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 shall take responsibility for the conformity of the construction product with the declared performance as well as for the conformity with all applicable requirements laid down in this regulation and in other relevant acts of Union harmonisation legislation providing for its affixing ~~the declared performance.~~

The rules for affixing the CE marking provided for in other relevant Union harmonisation legislation apply without prejudice to the provisions of this paragraph.

2. For any construction product covered by a harmonised technical specification, the CE marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics covered by this standard.

In this respect, Member States shall not introduce ~~national measures~~ any references or shall withdraw any references in national measures to a ~~conformity~~ marking attesting conformity with the declared performance in relation to the essential characteristics covered by a harmonised technical specification 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 declared performances correspond to 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 declared performances correspond to the requirements for this use in that Member State ~~correspond to the declared performance~~.

5. 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.

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) N° 765/2008.~~
 2. The CE marking shall be affixed visibly, legibly and indelibly to the construction product or to a label attached to it ~~its data plate~~. Where this is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging or to the accompanying documents.
 3. The CE marking shall be followed by the two last digits of the first year in which it was affixed, the name or the identifying mark and the registered address of the manufacturer ~~producer~~, the unique identification code of the construction product type, ~~and~~ the reference number of the declaration of performance and the performance declared, by levels or classes, in it, the reference to the harmonised technical specification applied, the identification number of the notified body, if applicable, and the intended use as laid down in the harmonised technical specification applied.
- ~~Additionally, the manufacturer may include any contents of the declaration of performance into the information accompanying the CE marking.~~
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 notably indicating a special risk or use.

Article 9

Product Contact Points

~~Each Member State shall ensure that the Product Contact Points established in accordance with Regulation (EC) N°764/2008 also provide the information on 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.~~

1. Member States shall designate Product Contact Points for Construction pursuant to the provisions in Article 9 of Regulation (EC) No 764/2008 on their designation and communication.
2. The provisions of Articles 10 and 11 of the said Regulation shall apply to Product Contact Points for Construction, with regard to construction products.
3. With regard to the tasks defined in Article 10(1) of the said Regulation, each Member State shall ensure that the Product Contact Points for Construction provide the information about provisions aiming at fulfilling basic works requirements applicable for the intended use of each construction product, as indicated in article 5.3.e of this Regulation in their territory.

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 the CE marking in accordance with Articles 7 and 8.

Manufacturers shall, as the basis for the declaration of performance, draw up technical documentation describing all the relevant elements related to the required assessment and verification of constancy of performance.

2. Manufacturers shall keep the technical documentation and the declaration of performance for ~~the~~ a period of 10 years after the construction product has been placed on the market. ~~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.~~

The Commission may, where appropriate, amend this period for families of construction products on the basis of the expected life or role of the construction product in the works, by means of delegated acts.

~~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.

Manufacturers shall, ~~in all cases where~~ when deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance of a construction product, carry out sample testing of marketed construction products, ~~investigating~~investigate, and, if necessary, ~~keeping~~keep a register of complaints, of non-conforming products and product recalls, and shall ~~keeping~~ distributors informed of any such monitoring.

4. Manufacturers shall ensure that their construction products bear a type, batch or serial number or any other element allowing their identification, or, where the size or nature of the product does not allow it, 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, where that is not possible, on its packaging or in a document accompanying the construction product. The address must indicate a single point at which the manufacturer can be contacted.

- 5a. Manufacturers shall, when making a construction product available on the market, ensure that the product is accompanied by instructions and safety information in a language which can be easily understood by users, as determined by the Member State concerned.

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~~ declaration of performance or with other applicable requirements in this Regulation, shall immediately take the necessary corrective measures to bring that construction product in conformity, to ~~or~~ withdraw it ~~from the market and~~ or recall it ~~from end-users~~, if appropriate. Furthermore, where the product presents a risk, manufacturers ~~They~~ shall immediately inform the competent national authorities of the Member States in which ~~where~~ they made the construction product available to that ~~this~~ effect, giving details, in particular, of the non-compliance and of ~~the~~ any corrective measures taken.
7. Manufacturers shall, further to ~~upon the basis of~~ a reasoned request from a ~~of the~~ competent national authority ~~authorities~~, provide it ~~them~~ with all the information and documentation necessary to demonstrate the conformity of the construction product with the ~~declared~~ declaration of performance and with other applicable requirements in this Regulation, in a language which can be easily understood by the authority. They shall cooperate with that authority ~~those authorities~~, at ~~the~~ its request ~~of the latter~~, on any action taken to eliminate ~~to avoid~~ the risks posed by construction products which they have placed on the market.

Article 11

Authorised representatives

1. ~~A Manufacturer~~ manufacturers may ~~appoint~~, by a written mandate, appoint an authorised representative.

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

2. ~~Where a manufacturer has appointed~~ An authorised representative, ~~the latter~~ shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do 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) further to a reasoned ~~on~~ request from ~~the~~ a competent national authority ~~authorities~~, provide ~~them~~ that authority with all the information and documentation necessary to demonstrate the conformity of the construction product with the ~~declared~~ declaration of performance and with other applicable requirements in this Regulation;
 - (c) cooperate with the competent national authorities, at their request ~~of the latter~~, on any action taken to eliminate ~~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.~~

Importers shall place on the Union market only construction products which are compliant with the applicable requirements in 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 second ~~first~~ subparagraph of Article 10(1) and the declaration of performance in accordance with Articles 4, 5 and 6 ~~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~~ complied with the requirements set out in Articles 10(4) and 10(5).

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

Furthermore, where the product presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.

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 that is not possible, on its packaging or in a document accompanying the product.

- 3a. Importers shall, when making a construction product available on the market, ensure that the product is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned.
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~~ declaration of performance.
- 4a Importers shall when deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance of a construction product, carry out sample testing of marketed construction products, investigate, and, if necessary, keep a register of complaints, of non-conforming products and product recalls, and shall keep distributors informed of any such monitoring.
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 or with other applicable requirements in this Regulation, shall immediately take the necessary corrective measures to bring that construction product in conformity, to ~~or~~ withdraw it ~~from the market and~~ or recall it ~~from end-users~~, if appropriate. Furthermore, where the product presents a risk, importers ~~They~~ shall immediately inform the competent national authorities of the Member States in which ~~where~~ they made the construction product available to ~~this~~ that effect, giving details, in particular, of the non-compliance and of any ~~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, further to ~~on the basis of~~ a reasoned request from a ~~the~~ competent national authority ~~authorities~~, provide it ~~them~~ with all the information and documentation necessary to demonstrate the conformity of the construction product with the ~~declared~~ declaration of performance and with other applicable requirements in this Regulation, in a language which can be easily understood by the authority. They shall cooperate with that authority ~~those authorities~~, at its ~~the~~ request of ~~the latter~~, on any action taken to eliminate ~~to avoid~~ the risks posed by construction products which they have placed on the market.

Article 13

Obligations of distributors

1. When making a construction 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 which can be easily understood by users, as determined by ~~in~~ the Member State concerned ~~in which 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 or with other applicable requirements in this Regulation, he shall not ~~may~~ make the product available on the market until ~~only after~~ it conforms to the accompanying declaration of performance or until the declaration of performance is corrected. Furthermore, where the product presents a risk, ~~The the~~ distributors shall inform the manufacturer or the importer to that ~~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~~ declaration of performance and with other applicable requirements in this Regulation.
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 or with other applicable requirements in this Regulation, shall ~~immediately~~ make sure that the ~~necessary~~ corrective measures necessary to bring that product in conformity, to ~~or~~ withdraw it ~~from the market and~~ or recall it ~~from end-users are taken~~, if appropriate, are taken. Furthermore, where the product presents a risk, distributors ~~They~~ shall immediately inform the competent national authorities of the Member States in which ~~where~~ they made the product available to that ~~this~~ effect, giving details, in particular, of the non-compliance and of any ~~the~~ corrective measures taken.
5. Distributors shall, further to ~~on the basis of~~ a reasoned request from a ~~the~~ competent national authority ~~authorities~~, provide it ~~them~~ with all the information and documentation necessary to demonstrate the conformity of the construction product with the ~~declared~~ declaration of performance and with other applicable requirements in this Regulation in a language which can be easily understood by the Authority. They shall cooperate with that authority ~~those authorities~~, at its ~~the~~ request ~~of the latter~~, on any action taken to eliminate ~~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 and he shall be subject to the obligations of the manufacturer under Article 10, where ~~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~~ declaration of 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, hereinafter called mandates adopted issued by the Commission in accordance with Article 6 of that Directive after having consulted the Committee referred to in Article 51 of this Regulation.-

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

When foreseen in the respective mandate, a harmonised standard shall refer to an intended end-use of products to be covered by it.

Harmonised standards shall, where appropriate and without endangering accuracy, reliability or stability of the results, provide simplified 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.

The harmonised standard shall include take into account all further technical details necessary for the implementation of the system of assessment and verification of constancy of performance.

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 dates of coexistence for each standard of applicability of those standards~~

For each harmonised standard in the list the following shall be indicated:

- (a) References of superseded harmonized technical specifications, if any;
- (b) Date of the beginning of the coexistence period
- (c) Date of the end of the coexistence period.

The Commission shall publish any updates to that list.

From the date of the beginning of the coexistence period it shall be possible to use a harmonised standard to make a declaration of performance for a construction product covered by it. National Standardisation Bodies have the obligation to transpose the harmonised standards in conformity with Directive 98/34/EC.

Without prejudice to Articles 26-27, from the date of the end of the coexistence period the harmonised standard shall be the only means used for drawing up a declaration of performance of the construction products covered by it.

At the end of the coexistence period conflicting national standards shall be withdrawn and Member States shall terminate the validity of all conflicting national provisions.

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 Committee set up by Article 5 of Directive 98/34/EC, giving its arguments. The Committee shall, after having consulted with the relevant European standardisation bodies and the Committee referred to in Article 51 of this Regulation, 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.

[shifted from Article 20] *Article 18 20 [19]*

European Assessment Document

1. Following a request for an European Technical Assessment by a manufacturer, the European Assessment Document (EAD) shall be elaborated and adopted by the organisation of Technical Assessment Bodies referred to in Article 25 (1) for any construction product not covered or not fully covered by a harmonised standard, for which the performance in relation to its essential characteristics cannot be entirely assessed according to an existing harmonised standard, because inter alia:
 - (a) the product does not fall within the scope of any existing harmonised standard; or
 - (b) for at least one essential characteristic of that product, the assessment method foreseen in the harmonised standard is not appropriate; or

(c) the harmonised standard does not contain any assessment method in relation to at least one essential characteristic of that product.

- 1a. ~~The European Assessment Document (EAD) shall be developed and adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1)~~ The procedure for adopting the EAD shall following a request for a European Technical Assessment by a manufacturer, in accordance with the procedure pursuant to paragraph 1a. respect the principles set out in Article 18a and follow the rules set out in Article 18b and in Annex II.
2. The Commission may adopt delegated acts in accordance with Article 50 to amend Annex II and establish additional procedural rules for the development and adoption of EADs and issuing of ETAs.

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

Article 18a (new)

Principles for the development and the adoption of European Assessment Documents

1. The procedure for developing and adopting EADs shall:
 - (a) be transparent to the manufacturers concerned;
 - (b) define appropriate mandatory time-limits [~~in default of contractual agreements~~
in order to avoid unjustified delay;
 - (c) take appropriately into account the protection of commercial secrecy and
confidentiality;
 - (d) allow for adequate participation of the Commission in it;
 - (e) be cost-effective for the manufacturer; and
 - (f) ensure sufficient collegiality and coordination amongst TABs designated for the
product in question.

2. The Technical Assessment Bodies shall, together with the organisation of Technical
Assessment Bodies referred to in Article 25(1), bear the full costs of the development and
the adoption of EADs.

Article 18b

Obligations of the responsible Technical Assessment Body when receiving a request for a European Technical Assessment

1. The Technical Assessment Body receiving a request for a European Technical Assessment, hereinafter called the responsible Technical Assessment body for a construction product, shall inform the manufacturer if the construction product is covered, fully or partially, by a harmonised technical specification—as follows,

 - (a) If the product is fully covered by a harmonised standard, the responsible Technical Assessment Body shall inform the manufacturer that, in accordance with Article [18/20](1), a European Technical Assessment cannot be issued for it.
 - (b) If the product is fully covered by an EAD, the responsible Technical Assessment body shall inform the manufacturer that this EAD will be used as the basis for the European Technical Assessment to be issued.
 - (c) If the product is not covered or not fully covered by any harmonised technical specification, the responsible Technical Assessment Body shall apply the procedural rules set up in Annex II or established in accordance with Article 18(2).
2. The responsible Technical Assessment Body shall inform the organisation of Technical Assessment Bodies referred to in Article 25(1) and the Commission of the content of the request and of the reference to a relevant Commission decision for assessment and verification of constancy of performance, which the responsible Technical Assessment Body intends to apply for this product, or of the lack of such a Commission decision.

3. If the Commission considers that an appropriate decision for assessment and verification of constancy of performance does not exist for the construction product, Article 21a applies.

Article 18c (new)

Publication

European Assessment Documents adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1), shall be sent to the Commission, which shall publish a list of references of the adopted EADs in the series C of the Official Journal of the European Union.

The Commission shall publish any updates to that list.

Article 18d (new)

Dispute resolution in case of disagreement between TABs

If the Technical Assessment Bodies have not agreed upon the EAD within the foreseen time limits, the organisation of Technical Assessment Bodies referred to in Article 25(1) shall submit this matter to the Commission for appropriate resolution.

Article 18e (new)

Content of the European Assessment Document

- 1.2. ~~The organisation of Technical Assessment Bodies referred to in Article 25(1) shall establish in the~~ An EAD shall contain, at least, a general description of the construction product, ~~all~~ the essential characteristics and 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~~ its intended use, as foreseen by the manufacturer.
- In particular, an EAD shall contain the list of essential characteristics, relevant for the intended use of the product and agreed between the manufacturer and the organisation of TABs.
- 2.3. ~~The organisation of technical assessment bodies referred to in Article 25(1) shall determine in the EAD~~ Principles for the applicable factory production control to be applied shall be given in the EAD, taking into account the specific conditions of the manufacturing process of the construction product concerned.
3. 4. Where the performance of some of the essential characteristics of the product can appropriately be assessed with methods and criteria already established in other harmonised technical specifications or the Guidelines referred to in article 53(3), (ETAGs) or used in accordance with Article 9 of Directive 89/106/EEC before 1 July 2011 in the context of issuing European technical approvals, these existing methods and criteria shall be incorporated as parts of the EAD.

[shifted from new Article 20a] *Article 19*

Formal objections against EADs

1. When a Member State or the Commission considers that an EAD does not entirely satisfy the demands to be met in relation to the basic works requirements, set out in Annex I, the Commission or the Member State concerned shall bring the matter before the Committee referred to in Article 51, giving its arguments. The Committee shall, after having consulted with the organisation of Technical Assessment Bodies referred to in Article 25(1), deliver its opinion without delay.

2. In the light of the Committee's opinion, the Commission shall ~~adopt the appropriate measures~~, decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the EADs concerned in the *Official Journal of the European Union*.
3. The Commission shall inform the organisation of Technical Assessment Bodies referred to in Article 25(1) and, if necessary, request the revision of the EAD concerned.

[shifted from Article 21] *Article 20 ~~24~~ [20]*

European Technical Assessment

1. The European Technical Assessment (ETA) shall be issued by a Technical Assessment Body, ~~for construction products~~, at the request of a manufacturer ~~or importer~~ on the basis of an EAD established in accordance with the ~~common procedural rules set out in~~ according to provisions of Article 18b and Annex II.

Provided that there is an EAD, a European Technical Assessment may be issued even in the case where a mandate for a harmonised standard has been decided. This issuing shall be possible until the beginning of the coexistence period as determined by the Commission in accordance with Article 16 (4).

- 1a. The ETA shall include the declared performance, by level or classes, of those essential characteristics agreed by the manufacturer and the involved TAB for the declared intended use, and technical details necessary for the implementation of the system of assessment and verification of constancy of performance.
2. In order to ensure the uniform implementation of this Article, the Commission shall adopt implementing acts to establish the format of the ETA in accordance with the procedure referred to in Article 51(2).

~~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).]~~

[shifted from Article 18] ~~Article 21~~ ~~18~~ [17]

Levels or classes of performance

1. The Commission may adopt delegated acts to 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. *[shifted from par. 2 sub-par. (2)]*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. The organisation of Technical Assessment Bodies referred to in Article 25(1) shall use those classes in EADs where relevant.

*[shifted from par. 2 sub-par. (1)]*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, on the basis of a revised mandate.

3. ~~The European standardisation bodies may set in harmonised technical specifications the conditions under which a product shall be deemed to satisfy a certain level or class of performance without testing or without further testing.~~

When foreseen in the respective mandates, the European standardisation bodies shall establish in harmonised standards threshold levels in relation to essential characteristics and, when appropriate, for intended end uses, to be fulfilled by construction products in Member States.

- 3a. Where the European standardisation bodies have established classes of performance in a relevant harmonised standard, the organisation of Technical Assessment Bodies referred to in Article 25(1) shall use those classes in the EADs if they are relevant for the construction product.

When deemed appropriate, the organisation of Technical Assessment Bodies referred to in Article 25(1) may, with the agreement of the Commission and after consulting the committee referred to in Article 51, establish in the EAD classes of performance and threshold levels in relation to the essential characteristics of a construction product within its intended end-use as foreseen by the manufacturer.

- 3b. The Commission may adopt delegated acts to 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 Art. 51 (2).~~

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.

4. When the Commission has established classification systems in accordance with paragraph 1 of this article, Member States may determine the levels, or classes of performance, to be respected by construction products in relation to the essential characteristics only in accordance with those classification systems. ~~established by the European standardisation bodies in harmonised standards, or by the Commission.~~
5. European standardisation bodies and the organisation of Technical Assessment Bodies referred to in Article 25(1), shall respect the regulatory needs of Member States, when determining threshold levels or classes of performance.

[shifted from Article 19] Article 21a 19 [18]

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 V.
2. Through the adoption of delegated acts the ~~The~~ Commission shall establish and may revise, taking into account in particular its effects in safety and health of people and environment which system or systems are is applicable to a given construction product or family of construction products or a given essential characteristic. In this the Commission shall also take into account the documented experiences forwarded by national authorities with regard to market surveillance. according to the following criteria:
- (a) ~~the importance of the part played by the product or the said essential characteristics with respect to the basic works requirements;~~
- (b) ~~the nature of the product;~~

~~(e) — 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 or systems consistent with the fulfillment of all basic works requirements ~~safety~~.

~~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 or systems thus determined shall be indicated in the mandates for harmonised standards and in the harmonised technical specifications.

CHAPTER V

TECHNICAL ASSESSMENT BODIES

Article 22 [21]

Designation, monitoring and evaluation of Technical Assessment Bodies

1. Member States may designate Technical Assessment Bodies (TAB) within their territories, notably for one or several ~~for~~ product areas listed in Table 1 of Annex IV.

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 by electronic means, the list of TABs indicating the product areas and/or construction products for which they are designated.

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

3. Member States shall monitor the activities and competence of the TABs they have designated, and evaluate them in relation to the respective criteria set out in Table 2 of Annex IV.

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

4. The Commission shall adopt guidelines for carrying out the evaluation of TABs, after consultation of the Committee referred to in Article 51.

Article 23 [22]
Requirements for TABs

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

The TAB shall satisfy the requirements set out in Table 2 of Annex IV within the scope of their designation.

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 for the relevant product and inform the Commission and the other Member States of this withdrawal.
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 [23]
Evaluation of TABs

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

~~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 IV, for which the TABs have been designated.~~

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

~~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 [24]⁺

Co-ordination of TABs

1. The TABs shall establish an organisation for technical assessment, hereinafter "organisation of TABs".
 - 1a. The organisation of TABs shall be considered a body pursuing an aim of general European interest within the meaning of Article 162 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Regulation (EC, Euratom) No 1605/2002.
 - 1b. The common cooperation objectives and the administrative and financial conditions relating to the grants awarded to the organisation of TABs may be defined in a framework partnership agreement signed by the Commission and that organisation, in accordance with the Financial Regulation and Regulation (EC, Euratom) No 2342/2002. The European Parliament and the Council shall be informed of the conclusion of any such agreement.
2. The organisation of TABs shall at least carry out the following tasks:
 - (ae) organise the coordination of the TABs and ensure cooperation with other stakeholders.
 - (ba) co-ordinate the application of the procedural rules and procedures set out in Article ~~19~~ 18b and 20 and set out in Annex II, as well as provide the support needed to that end;
 - (c) develop and adopt EADs;

⁺ Article will be renumbered. Note to Legal/Linguistic Experts: Please kindly cross-check referencing and renumbering.

(db) 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 procedural rules and procedures set out in Article 18b and set out in Annex II and suggest improvements to the Commission based on experience gained;

(eb) communicate any observations concerning a TAB not fulfilling its tasks according to the procedural rules ~~referred to set out in Article 18b and set out in Annex II~~ the results of the evaluations of TABs to all Member States and to the Commission and the Member State which designated the TAB;

(f) ensure that adopted EADs and that references to ETAs are kept publicly available.

~~(d) organise the evaluation of the TABs;~~

For these tasks, the organisation of TABs shall have a Secretariat.

3. Community financing shall be granted to the organisation of TABs for the implementation of the activities set out in this regulation.

~~The Commission may provide assistance to the organisation of TABs in carrying out the tasks referred in point (e) of this Article.~~

The common cooperation objectives and the administrative and financial conditions relating to the grants awarded to the organisation of TABs may be defined in a framework partnership agreement signed by the Commission and that organisation, in accordance with the Financial Regulation and Regulation (EC, Euratom) No 2342/2002. The European Parliament and the Council shall be informed of the conclusion of any such agreement.

~~The Commission may conclude a framework partnership agreement with the organisation of TABs to that end.~~

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

Article 25a (new)

Union financing

1. Union financing may be granted to the organisation of TABs referred to in Article 25(1) for the implementation of the activities set out in Article 25(2).
2. The appropriations allocated to the activities set out in Article 25(2) shall be determined each year by the budgetary authority within the limits of the financial framework in force.

Article 25b (new)

Financing arrangements

1. Union financing shall be provided without a call for proposals, to the organisation of TABs referred to in Article 25(1) to carry out those activities referred to in Article 25(2) for which grants can be awarded in accordance with the Financial Regulation.
2. The activities of the secretariat of the organisation of TABs, referred to in Article 25(2), may be financed on the basis of operating grants. In the event of renewal, the operating grants shall not be decreased automatically.
3. Grant agreements may authorise flat-rate cover of the beneficiary's overheads up to a maximum of 10 % of total eligible direct costs for actions, except where the beneficiary's indirect costs are covered through an operating grant financed from the Union's budget.

Article 25c (new)

Management and monitoring

1. The appropriations determined by the budgetary authority for the financing of activities set out in Article 25(2) may also cover administrative expenses relating to preparation, monitoring, inspection, auditing and evaluation which are directly necessary for the achievement of the objectives of this Regulation, and in particular studies, meetings, information and publication activities, expenses relating to informatics networks for the exchange of information and any other expenditure on administrative and technical assistance which the Commission may use for activities related to the development and adoption of EADs and the issuing of ETAs.
2. The Commission shall evaluate the relevance of the activities set out in Article 25(2) that receive Union financing in the light of the requirements of Union policies and legislation, and inform the European Parliament and the Council of the outcome of that evaluation by 1 January 2017 and every five years thereafter.

Article 25d (new)

Protection of the Union's financial interests

1. The Commission shall ensure that, when the activities financed under this Regulation are implemented, the Union's financial interests are protected by the application of preventive measures against fraud, corruption and other illegal activities, by effective checks and by the recovery of amounts unduly paid and, if irregularities are detected, by effective, proportionate and dissuasive penalties, in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

2. For the purposes of the Union activities financed under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Union law or any breach of a contractual obligation resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it by an unjustified item of expenditure.
3. Any agreements and contracts resulting from this Regulation shall provide for monitoring and financial control by the Commission or any representative which it authorises and for audits by the Court of Auditors, which may be conducted on the spot if necessary.

CHAPTER VI

SIMPLIFIED PROCEDURES

Article 26 [25]

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; or

- (b) the construction product, covered by a harmonised technical specification, he places on the market corresponds to ~~shares~~ the product-type of with another construction product, manufactured by another manufacturer and already tested in accordance with the relevant harmonised standard ~~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, covered by a harmonised technical specification, 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 standard ~~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 system provider only after having obtained an authorisation of that manufacturer or system provider, who remains responsible for the accuracy, reliability and stability of those test results.

2. 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 system 1+ or 1, as set out in Annex V, the STD shall be verified by a ~~relevant~~ notified certification body as referred to in Annex V.

Article 27 [26]

Use of ~~Specific Technical Documentation~~ Simplified procedures by micro-enterprises

1. Micro-enterprises manufacturing construction products covered by a harmonised standard may replace the determination of the product-type on the basis of type-testing for the applicable systems 3 and 4 as set out in Annex V by using methods differing from those contained in the applicable harmonised standard. These manufacturers may also treat construction products to which system 3 applies in accordance with provisions for system 4. When the manufacturer uses these simplified procedures, he shall demonstrate the compliance of the construction product with the applicable requirements by means of a STD. ~~micro-enterprises 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 belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1 or 2, as set out in Annex V, the STD shall be verified by a relevant certification body as referred to in Annex V.~~

Article 28 [27]

Further simplified procedures Use of Specific Technical Documentation for individually manufactured products

1. For construction products covered by a harmonised standard and which are individually manufactured or custom made in a non series process in response to a specific order, and installed in a single identified work, the performance assessment part of the applicable system, as set out in Annex V, may be replaced by the manufacturer by an STD, demonstrating compliance of that product with the applicable requirements.
2. If a construction product 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 V, the STD shall be verified by a ~~relevant~~ notified certification body as referred to in Annex V.

CHAPTER VII

NOTIFYING AUTHORITIES AND NOTIFIED BODIES

Article 29 [28]

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. These bodies are thereafter referred to as "notified bodies".

Article 30 [29]

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. 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, ~~that the delegated, or otherwise entrusted~~ body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in Article 31. In addition, ~~it 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 the delegated or otherwise entrusted body referred to in paragraph 3.

Article 31 [30]

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 to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance 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 [31]

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 to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance and the monitoring of notified bodies, and of any changes thereto ~~to that information~~. The Commission shall make that information publicly available.

Article 33 [32]

Requirements for notified bodies

1. For the purposes of notification, a ~~performance assessment~~ notified body shall meet the requirements set out in paragraphs 2 to 11.
2. The ~~performance assessment~~ notified body concerned shall be established under national law and have legal personality.
3. The ~~performance assessment~~ notified body concerned 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.

4. The ~~performance assessment~~ notified body concerned, 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~~ The notified body concerned, 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 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 of judgement and integrity related to the activities for which they have been notified. This shall in particular apply to consultancy services.

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 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 ~~it such a body~~ in accordance with Annex V in relation to ~~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 in relation to ~~for~~ which it ~~is~~ has been 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 it carries out ~~carried out~~ as notified body and ~~any other activities~~ activity;
- (c) procedures for the performance of ~~to perform their~~ activities which take due account of taking into consideration the size of an undertaking, the sector in which it operates, its ~~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, in relation to ~~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;
 - (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 V, 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.

Article 34

Presumption of conformity

When a ~~performance assessment notified~~ body ~~to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance~~ ~~can~~ demonstrates its conformity with the criteria laid down in the relevant harmonised standards ~~for performance assessment bodies~~ 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 [33]

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 shall inform the notifying authority accordingly.

2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
4. The notified body shall keep at the disposal of the notifying authority ~~national authorities~~ the relevant documents concerning the assessment of the qualifications of the subcontractor's or the subsidiary's ~~qualifications~~ and the work carried out by them ~~the subcontractor or the subsidiary~~ under Annex V.

Article 36 [34]

Use of facilities outside the testing laboratory ~~*Witness tests*~~

1. On request of the manufacturer and w ~~Where~~ justified by technical, economical or logistic reasons, notified bodies may decide to carry out the tests referred to in Annex V, for the systems of assessment and verification of constancy of performance 1+, 1 and 3 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 an external ~~private or public~~ laboratory, using the test equipments of that laboratory.

Notified bodies carrying out such tests should have been specifically designated as competent to work away from their own accredited test facilities.

2. Before carrying out those tests, the notified body shall verify ~~check~~ whether the requirements of the test method are satisfied and shall evaluate whether:
- test equipment has an appropriate calibration system and the traceability of the measurements is guaranteed ~~whether that system is operational.~~
 - the quality of the test results is ensured.

Article 37 [35]

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 one ~~it~~ exists, ~~delivered~~ issued 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 [36]

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 V, the essential characteristics for which the body is competent.

However, reference to the relevant harmonised technical specification is not required in the cases set out in Annex V.3. ~~in the following cases of when test methods support the following essential characteristics:~~

~~(a) — reaction to fire;~~

~~(b) — resistance to fire;~~

~~(c) — external fire performance;~~

~~(d) — noise absorption.~~

4. Where a notification is not based on an accreditation certificate as referred to in Article 37 (2), the notifying authority shall provide the Commission and the other Member States with all documentary evidence which attests to the notified body's competence and the arrangements in place to ensure that ~~that the~~ body will be ~~regularly~~ monitored regularly 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 ~~are have been~~ raised by the Commission ~~and or~~ the other Member States within two weeks of following a notification ~~where in case of~~ an accreditation certificate is used ~~or and~~ within two months of following a notification ~~in case where~~ 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 [37]

Identification numbers and lists of notified bodies

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

It shall assign a single such number even where the body is notified under several Union acts.
2. The Commission shall make publicly available the list of 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. using the electronic notification tool developed and managed by the Commission.

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

Article 40 [38]

Changes to the notification

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down ~~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~~ accordingly, using the electronic notification tool developed and managed by the Commission.
2. In the event ~~case~~ of withdrawal, restriction or suspension of notification or where the notified body has ceased its activity, the notifying Member State concerned shall take the appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their ~~on~~ request.

Article 41 [39]

Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts or doubt is brought to its attention regarding ~~as to~~ the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject ~~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 sensitive information obtained in the course of its investigations is treated confidentially.

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 accordingly ~~thereof~~ and request it to take the necessary corrective measures, including de-notification, if necessary.

Article 42 [40]

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 V.
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 due account ~~into consideration~~ of the size of an undertaking, the sector in which it operates, its ~~the~~ structure of the undertakings involved, the relative degree of complexity of the product technology in question ~~used by the construction products~~ and the mass or serial nature ~~character~~ of the production process.

In so doing ~~they~~ 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~~ for the fulfillment of all basic works requirements.

- 2a) Where, in the course of the initial inspection of the manufacturing plant and of Factory Production Control, a Notified Body finds that the manufacturer has not ensured the constancy of the manufactured product performances, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate.
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 [41]

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 [42]

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.

Article 45 [43]

Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under Article 29 ~~are~~ is put into place and properly operated in the form of a group of notified bodies ~~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 means of designated representatives, or they ensure that their representatives are going to be informed.

CHAPTER VIII

MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES

Article 46 [44]

Procedure to deal at national level 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 20 of Regulation (EC) No 765/2008 or where they have sufficient reason to believe that a construction product covered by a harmonised standard or for which an ETA has been issued does not achieve the declared performances and presents a risk for the fulfilment of the basic works requirements ~~for the health or safety of persons or for other issues of public interest protection~~ covered by this Regulation, they shall ~~perform~~ carry out an evaluation in relation to the product concerned covering ~~all~~ the respective requirements laid down by this Regulation. The relevant ~~concerned~~ economic operators shall cooperate as in any necessary way with the market surveillance authorities.

⁺ Note for Legal Linguistic Experts: consider splitting Article in two; one on unexpected risk and actions of market surveillance against it and the other on infringement of this Regulation (incorrect or fraudulent DoPs) and consequent action.

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 , notably the declared performance or to withdraw the product from the market, or to recall it within such a reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the ~~relevant~~ notified body accordingly, if one is involved.

Article 21 of Regulation (EC) N°765/2008 shall ~~apply~~ applies to the measures referred to in the second subparagraph above.

2. Where the market surveillance authorities consider that the non-compliance is not limited to their 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~~ all appropriate corrective action ~~actions~~ is are taken in respect of all the construction products concerned which he has made available on the market throughout the Union.
4. Where the relevant economic operator, within the period referred to in the second subparagraph of paragraph 1, does not take 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 ~~include~~ provide all available details, in particular ~~as regards the necessary data necessary~~ for the identification of the non-compliant construction product, the origin of the construction product, the nature of the non-compliance alleged and the risk involved, the nature and duration of national measures taken as well as the ~~view points~~ arguments put forward by the relevant economic operator ~~concerned~~. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:
- (a) failure of the product to achieve the declared performance and or to meet the requirements related to the fulfilment of basic works requirements~~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, that is harmonised standard and EAD, or in the STD.
6. Member States other than the Member State ~~which initiated~~ initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the 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~~ that measure shall be deemed justified.
8. Member States shall ensure that ~~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 [45]

Union safeguard procedure

1. Where, on completion of the procedure set out in Article 46(3) and (4), objections are raised against a ~~national~~ measure taken by ~~of~~ a Member State or where the Commission considers ~~the~~ a national measure to be contrary to Union legislation the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall evaluate ~~proceed to the evaluation of~~ the national measure. On the basis of the results of that evaluation, the Commission shall decide ~~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~~ and shall inform the Commission accordingly ~~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 shall bring the matter before the Committee set up by ~~under~~ Article 5 of Directive 98/34/EC. The Committee shall ~~must~~ consult with the relevant European standardisation body or bodies 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 bring the matter before the Committee set up under Article 51 of this Regulation and consequently adopt the appropriate measures.

Article 48 [46]

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), a Member State finds that although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic works requirements, the health or safety of persons or for to other aspects 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 to recall it within such a reasonable period, commensurate with the nature of the risk, as it may prescribe.
2. The economic operator shall ensure that any corrective actions ~~is~~ are taken in respect of all the construction products concerned which he has made available on the market throughout the Union.
3. The Member State shall immediately inform the Commission and the other Member States. ~~The That~~ information shall include ~~provide~~ all available details, in particular ~~as regards the necessary data necessary~~ for the identification of the construction product concerned, the origin and the supply chain of the product, the nature of the risk involved and the nature and duration of the national measures taken.
4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall evaluate ~~proceed to the evaluation of the national measures taken~~. On the basis of the results of that evaluation, the Commission shall decide ~~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 [47]

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 Article 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 [48]

Delegated acts ~~Amendment of Annexes~~

1. ~~Commission may amend Annexes I to V.~~
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).~~

For the purposes of achieving the objectives of this regulation, in particular removing and avoiding restrictions on making construction products available on the market, the following matters shall be delegated to the Commission in accordance with Article 50a, and subject to the conditions in Articles 50b and 50c:

- (a) the determination, where appropriate, of the essential characteristics or threshold values within specific families of construction products, in relation to which in accordance with Articles 3 to 5 the manufacturer shall declare, in relation to their intended use, by levels or classes, the performance of his product when it is placed on the market;
- (b) the conditions on which a declaration of performance may electronically processed, in order to make it available on a web site in accordance with Article 6;
- (c) the amendment of the period for which the manufacturer shall keep the technical documentation and the declaration of performance after the construction product has been placed on the market, in accordance with Article 10, based on the expected life or the role of the construction product in the works;

(d) the amendment of Annex II and where necessary the adoption of supplementary procedural rules in accordance with Article 18 (2) in order to ensure compliance with the principles in Article 18a, or the application in practice of the procedural rules set out in Articles 18b;

(e) the adaptation of Annexes III, IV table 1 and V in response to technical progress;

(f) the establishment and adaptation of classes of performance in response to technical progress in accordance with Article 21(1);

(g) the conditions on which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing in accordance with Article 21(3b), provided that the achievement of the basic works requirements is not thereby jeopardised;

(h) the adaptation, establishment and revision of the systems of assessment and verification of constancy of performance in accordance with Article 21a, relating to a given product, a given product family or a given essential characteristic, and:

(i) the importance of the part played by the product or the said essential characteristics with respect to the basic works requirements;

(ii) the nature of the product;

(iii) the effect of the variability of the essential characteristics of construction product during the service life of the product, and

(iv) the susceptibility to defects in the product manufacture.

Article 50a

Exercise of the delegation

1. The powers to adopt delegated acts referred to in Article 50a shall be conferred on the Commission for a period of 5 years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest 6 months before the end of the 5 year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 50b.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 50b and 50c.

Article 50b

Revocation of the delegation

1. The delegation of powers referred to in Articles 50 and 50a may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 50c

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.

At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Advisory tasks

Article 51 [49]

Committee

1. The Commission shall ~~establish~~ be assisted by a committee, called Standing Committee of Construction.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply. ~~Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

Article 52 [50]

Repeal

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

Article 53 [51]

Transitional provisions

1. Construction products which have been placed on the market in accordance with Directive 89/106/EEC before 1 July 2013 shall be deemed to comply with this Regulation.
2. ~~Manufacturers and importers~~ Manufacturers 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 2013 in accordance with Directive 89/106/EEC.
3. Guidelines for European technical approval which were published before 1 July 2013 in accordance with Article 11 of Directive 89/106/EEC may be used as EADs.

4. Manufacturers and importers may use European technical approvals issued in accordance with Article 9 of Directive 89/106/EEC before 1 July 2013 as European Technical Assessments throughout the period of validity of those approvals.

Article 53a

Five years after the entry into force of this Regulation, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Regulation, including on Articles 18, 18a, 18b, 18d and 18e on the basis of reports provided by Member States, as well as by other relevant stakeholders, accompanied where relevant by appropriate proposals.

Article 54 [52]

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.

However, Articles 3 to 21, 26, 27 and 28, Articles 46 to 50, 52 and 53 as well as Annexes I, II, III and V shall apply from 1 July 2013.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX I

Basic works requirements

~~Construction works as a whole and in their separate parts must be fit for their intended use.~~

~~Subject to normal maintenance, construction works shall satisfy these basic works requirements must be satisfied for an economically reasonable working life.~~

Construction works as a whole and in their separate parts must be fit for their intended use. Subject to normal maintenance, construction works must satisfy these basic works requirements 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,
- (ca) occupants can leave the works or be rescued by other means,
- (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 not be a threat neither to the hygiene nor health of the occupants and neighbours, nor exert a 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;
- (da) the release of dangerous substances or substances which have an otherwise negative impact on drinking water;
- (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 AND ACCESIBILITY IN USE ~~AND ACCESIBILITY~~

The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents or damage in service or in operation such as slipping, falling, collision, burns, electrocution, ~~and~~ injury from explosion and burglaries. In particular, construction works must be designed and built taking into consideration accessibility and use for disabled persons.

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.

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 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.

ANNEX II

Procedure for adopting European Assessment Document and for issuing European Technical Assessment

1. *Technical file Request for an ETA*

When a manufacturer makes a request for an ETA to any TAB for a construction product and the construction product is not covered or not fully covered by a harmonised technical specification, and after signing the manufacturer and the TAB have signed an agreement of commercial secrecy and confidentiality, the manufacturer he shall submit to this TAB (hereinafter called the responsible TAB) a technical file describing the product, its intended use and details of the factory production control he applies intends to apply.

2. Contract

For construction products referred to in Article 18b (1) (c), ~~W~~within one month from the reception of the technical file, a contract shall be concluded between the manufacturer and the responsible TAB for the production of the ETA, ~~if necessary~~ defining the work programme for elaborating the EAD, including

- the organisation of work within the organisation of TABs;
- the composition of the workgroup to be established within the organisation of TABs, designated for the product area in question. ;
- the co-ordination of TABs.

3. Work programme

After the conclusion of the contract with the manufacturer, the organisation of TABs shall inform the Commission of the work programme for elaborating the EAD, the schedule for its execution and indicating the assessment programme. ~~It shall also include the proposal to follow for a relevant existing Commission Decision for assessment and verification of performance decision for the product or and, if necessary, the need to establish a new dDecision.~~ This communication shall take place within three months from the reception of the request for an ETA.

4. The draft EAD

The organisation of TABs shall finalise a draft EAD by means of the working group coordinated by the responsible TAB and communicate that to the parties concerned within six months from the date the Commission was informed about the work programme.

4a. Commission participation

A Commission representative may participate, as observer, to all the parts of the execution of the work programme.

5. Prolongation and delay

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

If a prolongation of the time limits for developing the EAD can be justified, notably by the absence of a Commission Decision on the assessment and verification of constancy of performance applicable or by the need to develop a new test method, a prolonged time limit shall be set by the Commission.

6. Amendments and adoption of an EAD

The responsible TAB shall communicate the draft EAD to the manufacturer, who shall have fifteen working days for his reactions, and after that, the organisations of TABs referred to in Article 25(1) shall

- a) if applicable, inform the manufacturer, how his reactions have been taken into account;
- b) adopt the draft EAD; and

c) send a copy to the Commission

If the Commission communicates, within fifteen working days from reception, to the organisation of TABs its observations on the draft EAD, it shall be amended accordingly by the organisation of TABs, which shall then send a copy of the adopted EAD to the manufacturer and the Commission, from the reception of the draft EAD for reactions to it. After that and if appropriate, the organisation of TABs shall amend the draft within one month and communicate it to the manufacturer and the Commission. If there are no reactions, the organisation of TABs shall then adopt the EAD. The adopted EAD shall be sent to the manufacturer and the Commission without delay.

7. *Information to the Commission*

All amendments of EADs and draft EADs shall be sent to the Commission for reactions before adoption. The Commission shall have fifteen working days for reactions.

8. *Issuing of the ETA*

The responsible TAB shall issue an ETA on the basis of the adopted EAD, or on the basis of an existing EAD.

7. Final EAD to be published

As soon as the first ETA has been issued by the responsible TAB on the basis of the adopted EAD, this EAD shall be adjusted, if appropriate, based on experiences gained. The final EAD shall be adopted by the organisation of TABs and a copy be sent to the Commission, together with a translation of the title of the EAD in all Member State languages, for publication of its reference. The organisation of TABs shall keep the EAD available by electronic means as soon as the product has been CE-marked.

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 2.9.~~

- 2.1. ~~The TAB receiving a ETA request (hereinafter "responsible TAB") for a construction product 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.~~

- 2.2. ~~The responsible TAB shall, in cooperation with the manufacturer, obtain the relevant information on the product and on its intended end use. The responsible TAB shall inform the manufacturer if the product is covered, fully or partially, by another harmonised technical specification.~~
- ~~If the product is fully covered by a harmonised standard, the responsible TAB shall also inform the manufacturer that, in accordance with Article 21(1), a ETA cannot be issued for it. If the product is fully covered by a EAD, the responsible TAB shall inform the manufacturer that this EAD will be used as the basis for the ETA to be issued.~~
- ~~If the product is not covered or not fully covered by any harmonised technical specification, the~~ 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.
- 2.3. ~~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 end use and details of the factory production control he applies.~~
- 2.4. ~~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 of the product for in relation to its the essential characteristics and of the product in relation to its the intended end 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 its the performance in relation to for its essential characteristics in relation to the and its intended end 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.~~

~~2.5. — 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 end use, to all the other TABs designated for the same construction products area, referred to in Table 1 of Annex IV. Those TABs shall constitute a working group, which shall be co-ordinated by the responsible TAB.~~

~~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 for of the performance of the product in relation to for its the relevant essential characteristics and its intended end use, as well as, when appropriate, minimum performance levels to be fulfilled. This draft EAD shall be based on Part 1 of the work programme and on the pertinent and justified technical contributions provided by its members. Where the performance of the product can appropriately be assessed in relation to some of its relevant essential characteristics in accordance with methods and criteria already established in other harmonised technical specifications or used in accordance with Article 9 of Directive 89/106/EEC before 1 July 2011 in the context of issuing European technical approvals, these existing methods and criteria shall be incorporated as parts of the draft EAD.~~

~~2.6. 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 end 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 end use, as appropriate. The responsible TAB shall inform the members of the working group and the manufacturer about the contents of these contributions.~~

- ~~2.7. — 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, 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.~~
- ~~2.8. — The responsible TAB shall carry out the assessment according to the provisions of the adopted provisional EAD and shall subsequently issue the corresponding ETA.~~
- ~~2.9. — 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 2.5.~~
- ~~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.~~

ANNEX III

Declaration of performance

No.

1. Unique identification code of the product-type:
2. Type, batch or serial number or any other element allowing identification of the construction products as required under Article 10(4):
.....
3. Intended use or uses of the construction product, in accordance with the applicable harmonised technical specification, as foreseen by the manufacturer:
.....
.....
4. Name, registered trade name or registered trade mark and address of the manufacturer as required under Article 10(5):
.....
.....
5. Where applicable, name and address of the authorised representative whose mandate covers the tasks specified in Article 11(2):
.....
.....
6. System or systems of assessment and verification of constancy of performance of the construction product as set out in Annex V:
.....
.....
7.

(name and identification number of the notified body, if relevant)

performed under system

(description of the third party tasks as set out in Annex V)

and issued

(certificate of constancy of performance, certificate of conformity of the factory production control, test/calculation reports - as relevant)

8.

(name and identification number of the technical assessment body, if relevant)

issued

(reference number of the European Technical Assessment)

on the basis of

(reference number of the European Assessment Document)

performed under system

(description of the third party tasks as set out in Annex V)

and issued

(certificate of constancy of performance, certificate of conformity of the factory production control, test/calculation reports - as relevant)

9. Declared performance

Notes to the table:

1. Column 1 shall contain the list of essential characteristics as determined in the harmonised technical specifications for the intended use or uses indicated in point 3 above;

2. For each essential characteristic listed in column 1 and in compliance with the requirements of Article 5, column 2 shall contain the declared performance, expressed by level, class or description, related to the corresponding essential characteristics or NPD (No Performance Determined) shall be indicated where no performance is declared;

3. For each essential characteristic listed in column 1, column 3 shall contain:

(a) dated reference of the corresponding harmonised standard and, where relevant, the reference number of the Specific Technical Documentation used;

or

(b) dated reference of the corresponding European Assessment Document and reference number of the European Technical Assessment used.

<u>Essential characteristics</u> <u>(see Note 1)</u>	<u>Performance</u> <u>(see Note 2)</u>	<u>Harmonised technical specifications</u> <u>(see Note 3)</u>

The requirements met allowing for the use of the Specific Technical Documentation the reference number of which is indicated in the table:

.....

10. The performance of the product identified in point 1 and 2 is in conformity with the declared performance in point 9.

This declaration of performance is issued under the sole responsibility of the manufacturer identified in point 4.

Signed for and on behalf of the manufacturer by:

.....
(name and function)

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

ANNEX IV

Product areas and requirements for Technical Assessment Bodies

Table 1 - Product areas

AREA CODE	PRODUCT AREA
1	PRECAST NORMAL/LIGHTWEIGHT/AUTOCLAVED AERATED CONCRETE PRODUCTS.
2	DOORS, WINDOWS, SHUTTERS, GATES AND RELATED BUILDING HARDWARE.
3	MEMBRANES, INCLUDING LIQUID APPLIED AND KITS (FOR WATER AND/OR WATER VAPOUR CONTROL).
4	THERMAL INSULATION PRODUCTS. COMPOSITE INSULATING KITS/SYSTEMS.
5	STRUCTURAL BEARINGS. PINS FOR STRUCTURAL JOINTS.
6	CHIMNEYS, FLUES AND SPECIFIC PRODUCTS.
7	GYPSUM PRODUCTS.
8	GEOTEXTILES, GEOMEMBRANES, AND RELATED PRODUCTS.

9	CURTAIN WALLING/CLADDING/STRUCTURAL SEALANT GLAZING.
10	FIXED FIRE FIGHTING EQUIPMENT (FIRE ALARM/DETECTION, FIXED FIREFIGHTING, FIRE AND SMOKE CONTROL AND EXPLOSION SUPPRESSION PRODUCT.)
11	SANITARY APPLIANCES.
12	CIRCULATION FIXTURES: ROAD EQUIPMENT.
13	STRUCTURAL TIMBER PRODUCTS/ELEMENTS AND ANCILLARIES.
14	WOOD BASED PANELS AND ELEMENTS.
15	CEMENT, BUILDING LIMES AND OTHER HYDRAULIC BINDERS.
16	REINFORCING AND PRESTRESSING STEEL FOR CONCRETE (AND ANCILLARIES), POST TENSIONING KITS.
17	MASONRY AND RELATED PRODUCTS. Masonry units, mortars, ancillaries.
18	WASTE WATER ENGINEERING PRODUCTS
19	FLOORINGS.
20	STRUCTURAL METALLIC PRODUCTS AND ANCILLARIES
21	INTERNAL & EXTERNAL WALL AND CEILING FINISHES. INTERNAL PARTITION KITS.
22	ROOF COVERINGS, ROOF LIGHTS, ROOF WINDOWS, AND ANCILLARY PRODUCTS, ROOF KITS.

23	ROAD CONSTRUCTION PRODUCTS.
24	AGGREGATES.
25	CONSTRUCTION ADHESIVES.
26	PRODUCTS RELATED TO CONCRETE, MORTAR AND GROUT.
27	SPACE HEATING APPLIANCES.
28	PIPES-TANKS AND ANCILLARIES NOT IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.
29	CONSTRUCTION PRODUCTS IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.
30	FLAT GLASS, PROFILED GLASS AND GLASS BLOCK PRODUCTS.
31	POWER, CONTROL AND COMMUNICATION CABLES.
32	SEALANTS FOR JOINTS.
33	FIXINGS.
34	BUILDING KITS, UNITS, PREFABRICATED ELEMENTS.
35	FIRE STOPPING, FIRE SEALING AND FIRE PROTECTIVE PRODUCTS, FIRE RETARDANT PRODUCTS.
36	Others

Table 2 - Requirements for technical assessment bodies

Competence	Description of competence	Requirement
<i>1 Analysing risks</i>	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 <u>be established under national law and have legal personality</u> . It 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 <u>where it is designated</u> , concerning product areas for which it is to be designated; (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. <u>The remuneration of the TAB personnel shall not depend on the number of the assessments carried out or on the results of such assessments.</u>
<i>2 Setting technical criteria</i>	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).	

<i>3 Setting assessment methods</i>	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.	
<i>4 Determining the specific factory production control</i>	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.
<i>5 Assessing the product</i>	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.
<i>6 General management</i>	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.

ANNEX V

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 product certification body shall issue the certificate of constancy of performance ~~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 FPC;
 - (iii) continuous surveillance, assessment and evaluation of FPC;
 - (iv) audit-testing of samples taken ~~at the factory~~ before placing the product on the Union market.

- 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 product certification body shall issue the certificate of constancy of performance ~~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 FPC;
 - (iii) continuous surveillance, assessment and evaluation of FPC.

- 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;
 - (b) the notified production control certification body shall issue the certificate of conformity of the FPC on the basis of:
 - (i) initial inspection of the manufacturing plant and of FPC;
 - (ii) continuous surveillance, assessment and evaluation of FPC.
- 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 testing laboratory 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) product certification body: a notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a product certification according to given rules of procedure and management;

(1a new) factory production control certification body: a notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a FPC certification according to given rules of procedure and management;

~~(2) — inspection body: a notified body having the organization, 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) *notified testing laboratory*: a notified laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of materials or construction products.

3. CASES OF ESSENTIAL CHARACTERISTICS WHERE REFERENCE TO A RELEVANT HARMONISED TECHNICAL SPECIFICATION IS NOT REQUIRED BY ARTICLE 38(3)

(1) Reaction to fire.

(2) Resistance to fire.

(3) External fire performance.

(4) Noise absorption.

new (5) Emissions of dangerous substances.

ADDENDUM A

Declaration by the European Commission on better regulation

The Commission supports, in a spirit of compromise, the Political agreement of the Council on the Commission proposal for a Regulation of the European Parliament and the Council laying down harmonised conditions for the marketing of construction products.

Nevertheless, the Commission recalls that this proposal is part of its simplification strategy and therefore regrets that the text finally agreed by the Council, in particular Articles 3 to 6, could impose unnecessary administrative and testing burdens on enterprises as assessed in the impact assessment accompanying the original proposal. Therefore it would not be in line with the principles of Better Regulation and the broad objective to reduce administrative burden arising from EU legislation, endorsed by the Spring European Council of March 2007.

The Commission intends to monitor in particular this aspect of the Regulation and will include its conclusions in the report it will present to European Parliament and the Council five years after the entry into force of this Regulation.

Declaration by the European Commission on market surveillance

The Commission considers that in the light of the Recital 34a and in line with the spirit of Art. 5(3) and of Art.7(3), the authorities of a Member State may, if necessary, take appropriate measures for a product which is placed, or made available, in their market, if the declaration of performance does not contain the performance related to the essential characteristics for which there are requirements for that product and its declared intended use or uses, or if the declared performances do not correspond with those requirements, in the same Member State, or parts of its territory.

The measures need to be proportionate to the risks involved and should not lead to the fragmentation of the internal market.

Joint Declaration by France, Germany, Austria and Portugal

France, Germany, Austria and Portugal associate to the Political agreement obtained at the Competitiveness Council after two years of discussions within the Council.

Nevertheless, they underline that the current lists of delegated and implementing acts, and in particular delegated acts referred to in Article 50(a), (b), (f), (g) and (h), merit a re-examination in the second reading together with the European Parliament.

Joint Declaration by Sweden and Austria on hazardous substances

In line with recital 21a it is important to further improve the information to users about possible content of hazardous substances in construction products. This is of particular importance since most construction products are considered as "articles" for the purposes of Regulation 1907/2006 (REACH), and are therefore subject to very limited information requirements under that Regulation.

Therefore, in order to improve the possibilities for sustainable construction, to facilitate the development of green products and to achieve the Unions' target for recycling of construction products, information on the content of hazardous substances should be included in the declaration of performance.

Statement of the Polish delegation

Poland does not support the *Political Agreement* and the Presidency's compromise version of a Proposal for a Regulation of the European Parliament and of the Council laying down harmonized conditions for the marketing of the construction products.

From the very beginning, Poland has consequently supported its objections concerning the wording of the Art. 4(1) of this Proposal.

The reason for such a position of Poland is the fact that Art. 4(1) *de facto* introduces, in the absence of a definition for 'a product covered by harmonized standard,' a mandatory use of a European harmonized standard. This is inconsistent *inter alia* with the Directive 98/34/EC. Furthermore, voluntary drawing up of a declaration of performance (DoP) by the manufacturer, according to Art. 4a, refers only to a small group of specific construction products.

Poland, during the whole period of consultations carried out within the framework of the Working Party has been in favour of a voluntary drawing up of a declaration of performance, and a recent compromise proposal of Poland on Art. 4(1a) provided for a mandatory drawing up of a declaration only in cases when national provisions of the Member States require to do so. Unfortunately, this proposal has been rejected by the Presidency.

Poland stresses the fact that the Art. 4(1) proposed by the Presidency may have an influence on the segmentation process of construction products market in the European Union and it may cause rising prices for construction products at the European market.

At the same time, Poland wishes to express its appreciation for the Presidency's immense effort made on this Proposal.

Declaration of Finland

During the negotiations on Construction Products Regulation, Finland has been concerned about the consequences for microenterprises and the unnecessary financial and administrative burden accrued to them. It is problematic to have a mandatory CE marking in the circumstances where there are no national parameters relating to the basic works requirements where the product is placed on the market and therefore there are no barriers of trade. That situation is likely to create unnecessary administrative costs and especially costs for the microenterprises. Because of these reasons, Finland considers the Compromise Proposal not to be completely in line with the principles of better regulation. Guideline "think small first" could have been better followed within the Compromise Proposal.