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NOTE

from : General Secretariat of the Council
to : Permanent Representatives Committee

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Subject : Proposal for a Regulation of the European Parliament and of the Council
laying down harmonised conditions for the marketing of the construction products
- Information from the Presidency

Delegations will find below an updated document reflecting the outcome of the Working Party meetings and written comments received by delegations. Delegations' comments are reported in footnotes.

Modifications to the body of the text are suggested by the Presidency and marked as **bold**, ~~striketrough~~ or underlined.

At this stage of the negotiations, the UK and MT, PL delegations maintain parliamentary scrutiny reservations. All delegations maintain a general scrutiny reservation.

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 PRODUCTS¹

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Economic and Social Committee³,

~~Having regard to the opinion of the Committee of the Regions⁴,~~

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

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.⁶

¹ All delegations: General scrutiny reservation on the text.

² OJ C , , p. .

³ OJ C , , p. .

⁴ (not requested). OJ C , , p. .

⁵ OJ C , , p. .

⁶ SE: Use wording: "...domestic animals, property and to minimize the effects on the environment."

- (2) Those rules have a direct influence on the requirements of construction products. Those requirements are consequently reflected in national product standards, national technical approvals and other national technical specifications and provisions related to construction products. By their disparity, those requirements hinder trade within the Community.

- (3) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁹, 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.

⁷ SE: Add a new recital: This Regulation applies without prejudice to the rules laid down in Directives 92/42/EEC, 95/16/EC, 2000/9/EC, 2001/95/EC, 2004/22/EC, 2005/32/EC and 2006/42/EC. UK: Insert new recital (1a) from existing CPD: "Member States are responsible for ensuring that building and civil engineering works on their territory are designed and executed in a way that does not endanger the safety of persons, domestic animals and property, while respecting other essential requirements in the interests of general well-being. 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".

⁸ FR: Insert the following recital "(2a) This regulation shall not affect the right of Member States to specify the requirements they deem necessary to ensure that workers are protected when using products , provided it does not mean the products are modified in a way unspecified in this Regulation".

⁹ JO 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.).

- (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.~~¹⁰
- (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.
- (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 establish¹¹ 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.

¹⁰ Was duplication with recital 24.

¹¹ DE: Re-word to: "It is necessary to clearly define the scope of the Regulation and to establish ..."

- (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.¹² 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 end 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 specifications¹³ ~~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.~~
- (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.

¹² DE: Suggested wording of (11a) could mix up basic works requirements (of a legal nature) and classes of performance (used by manufacturers). The responsibility of the manufacturer should be mentioned when "classes of performance" are described. Cion: Does not see interpretation problem of the current wording in this regard, but flexible on the wording as such. FR/AT/UK/SE: Scrutiny reservation. DE: Wording should mention role of CEN with regard to the easy application of standards.

¹³ UK/MT: Sceptical, link to rec. (21a) is not clear. DE: "intended use" seems better wording than "intended end use" throughout the Regulation, at least clarify in definitions, because IMCO prefers utilization of "generic use". Cion: "intended end use" is correct here and in line with the construction products directive. MT/PL: Return to original wording "where appropriate..." FR: Wording is too exclusive, direct product requirements do not always refer to an intended end use.

- (14) Those harmonised standards should provide the appropriate tools for the harmonised assessment of the performance in relation to the essential characteristics of construction products. Harmonised standards should be established on the basis of mandates adopted by the Commission, covering the relevant families of construction products, in accordance with Article 6 of Directive 98/34/EC.¹⁴
- (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.~~¹⁵
- (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 guidelines¹⁶ as EADs should be ensured.

¹⁴ PL: Add: "The Commission should take any actions in order to extend the scope of construction products covered by harmonised standards, in particular by the products for which ENs , ETAGs, CUAPs already exist and for the products with confirmed fitness to use in construction."

¹⁵ PL: Re-insert this recital and modify the end into "in a case in which the existing harmonised standard cannot be fully applied to a specific product, e.g. in a case of innovative products."

¹⁶ PL: Also refer here to CUAPs, not only guidelines (twice).

(19) The establishment of draft EADs¹⁷ 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 Community level. Therefore it is also necessary to provide for periodical evaluations of TABs by TABs from other Member States.¹⁸

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(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.²⁰

(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.²¹

¹⁷ PL: Delete "draft" in order to avoid gaps of responsibility for EADs.

¹⁸ UK: Reword recital (19) as follows: "The establishment of draft EADs and the issuing of European Technical Assessment should be entrusted to Technical Assessment Bodies (TAB). TABs are designated by Member States. ~~In order to ensure that~~ as having the TABs have necessary competence for carrying out those tasks, in line with the requirements ~~for their designation should be~~ set out at Community level. ~~Therefore it is also necessary to provide~~ Arrangements for periodical evaluations of TABs by TABs from other Member States are also provided for in the Regulation."

¹⁹ SE: Insert new recital (19a): The TABs shall ensure that common European methods already developed for the harmonized standards are used whenever possible in the assessment and verification of a product on the basis of an ETA. Cion: Substance is covered elsewhere, f. ex. in Annex II.

²⁰ PL: Add: "Activity of this organisation should be supported from the Community's funds."

²¹ PL: Add: "In a case where the manufacturer or importer places on the market the product designed and manufactured in a non-industrial production process and in response to a specific order, and intended to be installed in a single identified works, the manufacturer may choose to make a declaration of performance."

(21a) The European or Member State authorities at different levels have established and will continue to establish demands²² in relation to the essential characteristics of construction products, either through legislation, court judgements or administrative practices.²³ In addition to these requirements of legal, judicial or administrative origin, also the minimum performance levels established in harmonised technical specifications constitute requirements of technical origin.

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(21b) Products made on the construction works site should not be considered falling under the scope of a concept “supply of a construction product on the Community market”. Manufacturers incorporating their construction products in works should be allowed, but not obliged, to declare the performance of these products in accordance with this Regulation.²⁵

(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 **or the importer** 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.²⁶

²² Some delegations: "demands" is not the best term to use here. "Elements" might be an alternative. Prdy/Cion: Wording should be broad in a recital to cover all that can be required, be that of technical or legal nature.

²³ HU: Wording on court judgments and administrative practices is too broad; they cannot at every sub-national level fix such requirements. PT/FR: "court judgments" is too broad wording, it is sufficient to refer only to technical requirements in this recitals, the legal requirements are sufficiently dealt with in the articles themselves. NL/DE/SE: Replace "either through legislation, court judgements or administrative practices" by "through notified rules". LT: Streamline the wording of this recital.

²⁴ SE: Insert new recital (21ab): The declaration of performance shall contain information about the product-type for which have been drawn up, intended use of the construction product, the essential characteristics for which the performance is declared, content of dangerous substances in the construction product, reference number and date of the harmonised standard, the European Assessment document or the Specific Technical Documentation.

²⁵ New suggestion from the Presidency. CY suggests: "Building elements made on the works should be excluded from the concept of „making available on the market". DE suggests: Products made and incorporated by the contractor on-site should be excluded from the scope of the CPR."

²⁶ PT/PL: Delete recital 23. Several delegations: Necessity of recitals 23 and 23a depends on

- (23a) **However, in order to ensure the efficiency of the harmonised technical specifications within their objective of removal of technical barriers, the declaration of performance in accordance with this Regulation should remain the only means available for the manufacturer or the importer to bring forward the performance of this product in relation to its essential characteristics.**²⁷
- (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.²⁸
- (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 system²⁹ of assessment and verification of constancy³⁰ 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 demands of safety.**³¹
- (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.

final solution found for Article 4.

²⁷ FR: Scrutiny reservation. PL: Delete (23a).

²⁸ SE/RO: Delete recitals 22-24.

²⁹ PT: Insert here "or several systems" and leave out the whole addition in the end.

³⁰ PT: Delete "and verification of constancy". This is included in "assessment".

³¹ DE/AT/MT: Scrutiny reservation on his addition. AT: Replace "demands of safety" by "basic works requirements". PL: Sceptical to the addition. Reservation.

- (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 should³² 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 should not be affixed.³³
- (30) The CE marking should be the only marking which attests conformity of the construction product with the declared performance and with applicable requirements. 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.

³² DK: "shall" instead of "should".

³³ Alternative wordings suggested: "may not be affixed"/"shall not be affixed".

- (33) ³⁴To **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.** ³⁵ **Enterprises applying these simplified procedures should additionally demonstrate that they qualify as micro-enterprises.** ³⁶ **Moreover, they should follow** ³⁷ **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.³⁸
- (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 establish** 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^o 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.

³⁴ NL/UK/PT/PL: Delete recital 33 (follows from opposition to Article 27). There could be competition and safety problems arising if Article 27 is kept as proposed. Cion: Against deletion. Provisions take into account different situations of enterprises and different possibilities of third-party testing.

³⁵ DE: Delete the words "of whatever origin".

³⁶ BG: If this demonstration is a legal obligation, it should rather be inserted into Article 27. DE: Prefers enlargement of Art. 27 possibility to SMEs and consequential changes in Art. 27 and in recital 33.

³⁷ DE: Scrutiny reservation on the word "follow". DK: Enlarge the possibility of Art. 27 to all enterprises and find a simplified wording for recital 33. Cion: Application of Art. 27 should only be for micro-enterprises - required demonstration is easy and not administratively burdensome.

³⁸ PT: Delete recital 34 (follows from opposition to Article 28.)

- (36) For the purposes of ensuring an equivalent and consistent enforcement of Community harmonisation legislation, effective market surveillance should be operated by the Member States. Regulation (EC) N°765/2008 ~~of the European Parliament and of the Council of 18.12.2008~~ 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 Community a uniform level of performance of bodies carrying out assessment and verification of constancy³⁹ 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 Community level, the Community 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.

³⁹ PT: Delete "and verification of constancy".

- (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 Commission⁴⁰.
- (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.^{41 42}

⁴⁰ OJ L184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L200, 22/7/2006, p.11).

⁴¹ **BG/CY**: More explanations are needed on the future role of the Standing Committee.

⁴² **SE**: Insert clarifying recital: "This Regulation applies without prejudice to the rules laid down in Directive...". The Directives in question are Directives 92/42/EEC, 95/16/EC, 2000/9/EC, 2001/95/EC, 2004/22/EC, 2005/32/EG, 2006/42/EC .

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS⁴³

Article 1

Subject matter⁴⁴

This Regulation lays down **conditions for the marketing of construction products by establishing harmonised** rules on how to express the performance⁴⁵ of construction products in relation to their essential characteristics and on the use⁴⁶ of CE marking on those products.⁴⁷

⁴³ Several delegations: Clarify relationship to subsidiarity, notably with regard to the aim of enhanced use of construction products in practice. Cion: Subsidiarity is important, however what needs to be said in this context would be more appropriate in a Statement than in articles or annexes. Several delegations: Useful precisions on the CE marking should not lead to a complete overhaul of the existing system.

⁴⁴ ES/AT: Reflect the title of the legal act "marketing of construction products" somehow in Art. 1. UK: Title should read "Subject matter and scope". Cion/BE: Possible in recitals, not best place in Art. 1. RO: The Regulation should clarify the relationship with the Mutual Recognition Regulation No. 764/2008 for those construction products not covered by harmonised technical specifications. PL: Title of the Regulation should be "...harmonised rules on the assessment and a declaration of the performance of construction products." Article 1 should read: "...lays down the conditions for placing construction products on the market and rules how to express the performance of construction products in relation to ...". SE: Refer to "performance" but also to "placing on the market" and "making available on the market".

⁴⁵ Acceptance of IMCO 24; FI opposed. PT: Suggests "express and to assess the performance...". The obligations for economic operators and assessment bodies could also be mentioned as forming part of the scope. Cion: Impossible to include everything in Article 1. DE/CZ: Simplify to: "This Regulation lays down rules on the placing and the making available on the market of construction products in relation to their essential characteristics (rest deleted)." AT: Use wording "harmonised rules on the assessment and declaration of the performance of construction products...".

⁴⁶ SE/FR: Add "use and meaning of...". Cion: "Rules on meaning" does not make sense in the chosen wording. HU: Add exemption for semi-finished or unprocessed products and re-used products from demolition buildings. Cion: Exemption would be too far-reaching. BE: Insert something on the aim, e.g. removing barriers to trade, use or other restrictions on the internal market AT: Use wording "essential characteristics, for the purpose of removing and avoiding related restrictions on making them available on the market and defines the specific meaning and the use of...". UK: Wording should be: "This Regulation determines the conditions for the marketing of construction products by laying down rules ...".

⁴⁷ ES: Add "in order to let their marketing throughout the Internal Market." DE: Add: "This Regulation shall apply to construction products as listed in Annex Ia (new)".

Article 2
Definitions

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

1. "*construction product*" means any product or kit ⁴⁸which 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**; ⁴⁹
 - 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**; ⁵⁰
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2. "*construction works*" means buildings and civil engineering works; ⁵²

⁴⁸ DE: Add "...kit having essential characteristics and ..." PL: Reword to read: "...any product or kit of products to be used jointly that form an integral usable unit which is produced and placed on the market for incorporation".

⁴⁹ HU: Add "not including natural products and recycled products". Cion: Against exclusion via this definition.

⁵⁰ DE/PT: Delete the end "to be installed in the works". FR suggests slightly different definition for "kit" (see MD-15). NL: Definition is too broad, needs to be adapted. MT: This regulation does not need a definition of "kit", but flexible. FI prefers own suggestion (see 5449/1/09 REV 1). Most Member States against wording of IMCO 41.

⁵¹ DE: Add new definition 1 (ab): "performance of construction work" means the performance of the construction work in terms of one, some or all of the three sustainability categories which relate to construction works".

⁵² PL: Add "and other structures in accordance with relevant national regulations of Member States;"

3. *"essential characteristics"* means those characteristics of the construction product which relate to the basic works requirements;⁵³

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3a. "requirements",⁵⁵ related with essential characteristics of a construction product means:

- a) requirements of legal, judicial or administrative origin established at European or respective national level either through legislation or court judgements or administrative provisions;⁵⁶**
- b) requirements of technical origin represented by the minimum performance levels established in harmonised technical specifications.⁵⁷**

4. *"harmonised technical specifications"* means harmonised standards and European Assessment Documents;⁵⁸

⁵³ AT: Supports substance of IMCO 26, but the notion of "where ...intends to place on the market" is not acceptable, because in general there is only one Community market for the concept of "placing on the market".

⁵⁴ PL: Add new definition "3 (a): "performance of construction products" means the performance related to the relevant essential characteristics, expressed by value, level, class, threshold values or by a description."

⁵⁵ BG: Scrutiny reservation. DE suggests: "Requirements" means requirements on the basis of laws, regulations or administrative provisions of European or National origin relating de jure or de facto to construction products.

⁵⁶ HU: Wording on court judgments and administrative practices is too broad; they cannot - at every sub-national level - fix such requirements. Delete everything after "national level". PT/FR: "of judicial origin" is too broad wording, it is sufficient to refer only to technical requirements in this definition, the legal requirements are sufficiently dealt with in the relevant articles themselves. BE: Make clear that "respective national level" includes regional and local levels and that "administrative provisions" include those of public procurement contracts. UK: Definition should not start with a wording that could be interpreted as a restriction. DE/NL: For (small a), take the wording of Dir. 98/34/EC. Cion: We inserted a definition of requirements in order to clarify concepts used in several articles, therefore we have to be as broad in the definition as possible. The split in (small a) and (small b) is not strictly necessary, we could also enumerate with an "or".

⁵⁷ MT/UK: Replace "harmonised technical specifications" by "harmonised standards". EADs cannot set minimum performance levels. Cion: Against replacement, text is correct. DE/NL: (small b) can be deleted as it is either covered through the mandates (for standards) or explicitly in the relevant articles (dealing with technical requirements through an EAD). PT: Wording is too narrow, technical requirements cannot always be represented by minimum performance levels. PL: Wording should be "legal origin" here as well.

⁵⁸ PL: Replace EADs by ETAs.

5. *"making available on the market"* means any supply of a construction product for distribution or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge;⁵⁹
6. *"placing on the market"* means the first making available of a construction product on the Community market;⁶⁰
7. *"manufacturer"* means any natural or legal person who manufactures a construction product or who has such a product manufactured, **and markets that product** under his name or trademark;⁶¹
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 Community, who places a construction product from a third country on the Community market;

⁵⁹ PT/ES: Exempt explicitly here or in definition (1) those products assembled or produced on construction sites for the own use (those products only mentioned in recital (21b)). FR suggests alternative wording: - means any supply of a construction product for distribution or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge. This excludes (a) any product which users transform on site for their own use in the context of their professional activity (b) any product manufactured on and/or off site and incorporated by the same manufacturer into a work without being placed back on the market. Cion: Sceptical. AT/DK/SE/NL prefer following addition: "this excludes: "(a) any product transformed for incorporation into construction works on site without altering its performance in the context of a professional activity", (b) "any product manufactured on and/or off site by the same natural or legal person, who incorporates this product into the work of the site, for which it was manufactured". FR/DE: Such exclusion should go to a different article. ES/PT: Wording of IMCO 32 is acceptable. Cion/BG/MT/FI/IT/BE: Against IMCO 32. Parts of the wording should at the margin be in a recital.

⁶⁰ IE: Clarify definition further.

⁶¹ Text incorporates IMCO 33. LT: In order to mirror Art. 4 include here that a manufacturer can also place a product on the market. BG suggests: *"manufacturer"* shall mean any natural or legal person who manufactures a construction product or has such a product designed or manufactured, and markets that product under his name or trademark."

10. “*economic operators*” means the manufacturer, the importer, distributor and the authorised representative;⁶²
11. “*authorised representative*” means any natural or legal person established within the Community who has received a written mandate from a the manufacturer to act on his behalf ~~for~~ in relation to specified tasks;⁶³
- 11a. “user” means any natural or legal person responsible, pursuant to the rules in force in the Member State in question, for the safe incorporation of a construction product into construction works;**⁶⁴
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;⁶⁵
- 12a. “products which are not covered or not fully covered by a harmonised standard” means any construction product whose essential characteristics and performance cannot be entirely evaluated according to an existing harmonised standard, because inter alia:**⁶⁶
- a) the product does not fall within the scope of any existing harmonised standard;**
 - b) the product does not meet one or more technical definitions of characteristics included in any such harmonised standards;**
 - c) one or more essential characteristics of the product are not adequately covered by any such harmonised standards; or**
 - d) one or more test methods necessary to assess the performance of the product are missing or not applicable.**

⁶² BG suggests: “*economic operators*” shall mean the manufacturer, the authorised representative, the importer and the distributor.”

⁶³ BG suggests: “*authorised representative*” shall mean any natural or legal person.... PL: Add: “with regard to the latter's obligations under this Regulation”.

⁶⁴ Several delegations against wording of IMCO 34; PT in favour. DE/UK/ES/NL: Definition of “user” should be deleted, as this is Member States' competency.

⁶⁵ AT/PL: Add “of that Directive, the reference of which is published in the Official Journal of the EU”.

⁶⁶ UK/NL: Reservation on this definition (which follows IMCO 25).

13. "*European Assessment Document*" means a document adopted by the organisation of Technical Assessment Bodies; **for the purposes of issuing European Technical Assessments.**⁶⁷
- 13a. "*European Technical Assessment*" means the documented assessment of the performance of a construction product⁶⁸, in relation to its essential characteristics, in accordance with the respective European Assessment Document.**⁶⁹
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;**⁷⁰
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;**⁷¹

⁶⁷ AT suggests to add: "...European Technical Assessments the reference of which is published in the Official Journal of the EU." UK suggests: "...Technical Assessment Bodies which establishes the methods and the criteria for assessing the performance of a construction product which is not or not fully covered by a harmonised standard in relation to those essential characteristics which are related to the use intended by the manufacturer". Cion: Against regulating via the definition section. Most delegations prefer this text against IMCO 36.

⁶⁸ PT suggests "performance of a construction product, carried out by a TAB on the basis of the relevant documentation." DE: Further Alignment with Art. 21 possible: "construction product, not yet or only partly covered by a harmonised standard..."

⁶⁹ PL suggests: "European Technical Assessment" means technical specification of the construction product developed on the basis of a technical assessment performed by a Technical Assessment Body (TAB) in accordance with the methods and criteria adopted by the TABs acting jointly in the European organization of TABs organization, referred to in art. 20(2)." LT: Add "...European Assessment Document which ends with a documented statement". Most delegations against wording of IMCO 30; PT could accept it.

⁷⁰ AT suggests wording from Reg. 765/2008. "accreditation shall mean an attestation by a national accreditation body that a conformity assessment body meets the requirements set by harmonised standards and, where applicable, any additional requirements including those set out in relevant sectoral schemes, to carry out a specific conformity assessment activity".

⁷¹ BG suggests "*recall*" shall mean any measure aimed at achieving the return of a construction product that has already been made available to the end user." PL: Use wording "to the end user of the product".

17. "*product-type*" means the **set of representative performance level or classes**⁷² 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 process⁷³;
- 17a. "intended end use" means one of the end uses of construction products as listed in Annex VI of this Regulation**⁷⁴ **or otherwise specified in the respective harmonised specification.**⁷⁵
18. "*factory production control*" means the **documented** permanent internal control of the production⁷⁶ 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 enterprises⁷⁷;

⁷² AT: Replace "the performance" by "a variant", add in the end "...with a given stable performance." NL: Use a different definition than set of performance levels, mentioning "variant" or else delete the whole definition as being not indispensable. LT: Reservation, current definition is not clear.

⁷³ DK: Way of defining "product-type" does not seem to fit to the content of the provision in Art. 5. UK suggests: "...means a construction product produced using a given combination of raw materials or other elements in a specific production process **and its corresponding performances**" PT suggests following definition: "...means a construction product obtained using a given combination of raw materials or other elements, according to a specific production process which is representative of a given production and for which the performance has been declared."

⁷⁴ MT/PT: List in Annex VI might be too restrictive, prefer more generic definition. DK/BG/DE: Use wording "...construction products **as mentioned in harmonised standards or ETAs**." Cion: List reflects current law and the words "or otherwise" avoid a too restrictive meaning. DE: Reference to Annex VI is too vague for a definition. SK/FR: List in Annex VI is ok. PL suggests: "...means one of the end uses of construction products as listed **in a relevant harmonised specification**."

⁷⁵ MT: Mention that manufacturer has to declare intended uses. DE: Mention a link to testing, which depends of the intended use of a product. Cion: These issues are covered in the technical specifications or harmonised standard themselves, no need to repeat these facts in the definition.

⁷⁶ DE: Use wording "**product and production in a factory**". PL: Use wording "**production of the product in a factory**." UK suggests: "the **documented** permanent internal..." Most delegations against wording of IMCO 40.

⁷⁷ OJ L 124, 20.5.2003, p. 36. PL: Delete the definition, against special provisions for micro-enterprises only.

20. “*life cycle*” means the consecutive and interlinked stages of a product life, from raw material acquisition or generation from natural resources⁷⁸ to final disposal.

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⁷⁸ AT suggests: "through the use of the product to final disposal."

⁷⁹ ES/AT: Add definitions of "Declaration of performance", "national marking", "technical documentation", "expected life", "harmonised standard". Cion: Unnecessary, description in following articles is sufficient. AT/DE/RO: Add definitions on "Performance"
AT/DE/CY/FR: Add "requirement", AT: Add "Technical documentation" and "Conformity".
PL suggests: “notified body” means testing laboratory, inspection body or certification body notified the Member State to perform tasks related to the assessment and verification of constancy of performance of construction products.” PT suggests: "notified body" means a body notified by Member States for tasks relating to the assessment of constancy of performance, according to the provisions laid down in the harmonised standards or the European technical assessments. UK suggests: "notified body" means a performance assessment body which has been notified in accordance with Art. 29". In this context also see IMCO 37 which is however rejected by most delegations. BG: Add definitions on “construction operations”, “individually manufactured products” “applicable attestation”. NL: Add definition of "conformity marking". DE/AT: Add "performance assessment body". UK suggests: "performance assessment body" means an organisation with the competence to carry out one or more of the functions described in Annex V.2. FR: Suggests definition for "component" - means a product which, when combined with one or more other products, makes up a kit. A component may be a construction product but this is not necessary for it to be considered as part of a kit. FR suggests a definition for "innovative product" - means any construction product whose performances cannot be assessed within the framework of a harmonised standard where one of the following conditions is met:(a) the product is not covered by, or does not correspond to the definitions of, a harmonised standard; (b) one or more envisaged generic uses of the product are not satisfactorily covered by a harmonised standard;(c) one or more the testing methods envisaged by a harmonised standard and necessary for assessing the performance of the product are inadequate or missing; DE: Add: "expected life", "working life", "product life", SE/DE: Add "service life". RO/UK: Add definition for "technical assessment body" and "class of performance". PT suggests: "Technical assessment body" means a body designated by Member States for issuing European technical assessments." UK suggests: "Technical assessment body" means a body designated by a Member State to participate in the development of European Assessment Documents in the product areas for which it has been designated and to carry out assessments and issue European Technical Assessments in those product areas." UK suggests "class of performance" means a range of performance values between specified limits. It may apply to individual characteristics or combinations of characteristics. RO add definitions for: "without testing", "without further testing", "family of construction products", "levels of performance", "horizontal notification", "restriction of making available on the market". LT: Add definition of STD. FI: Add definition of "basic works requirements": - "*Basic works requirements*" are given to enable determination of the essential production characteristics of construction products. MT: Keep definitions as close as possible to horizontal Regulation, notwithstanding certain necessary adaptations.

Article 3

Basic works requirements and essential product characteristics

1. The essential characteristics of construction products⁸⁰ shall be laid down in harmonised technical specifications⁸¹ in relation to the basic works requirements ~~which are set out in Annex I.~~⁸²
2. **The scope of the basic requirements covered by this regulation is set out in Annex I.**

⁸⁰ DE: Delete "of construction products" as being redundant.

⁸¹ BG/SE: Clarify in the text who is responsible for essential characteristics and harmonised technical specifications. SE/IT: Clarify the different set of documents when compared to Construction Products Directive.

⁸² ES: Use longer wording in Art. 3 or else shift the whole text to Article 4 (3). Cion: Reservation. AT: Add: "set out in Annex I and, if applicable, in relation to other requirements for making available construction products on the market". DK: Use wording: "in relation to requirements existing in the EU or Member States in the field of the basic works requirements..."

CHAPTER II
DECLARATION OF PERFORMANCE
AND CE MARKING

Article 4

Conditions for drawing up declaration of performance⁸³

1. **When placing a construction product on the market** 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:~~⁸⁴

⁸³ ES: Refer to marketing of products in the title.

⁸⁴ New suggestion by CZ Presidency (MD-17) from 6 February 2009.

Principal positions by delegations expressed in numerous written contributions and at Working Party meetings:

Delegations that can accept that the declaration of performance should be mandatory:

BE/DE/ES/FR/IT/CY/LV/LT/HU/NL/AT/PL/PT/RO/SI/SE

These delegations could consequently accept the following text discussed under FR Presidency: "(1) The manufacturer or the importer when placing a construction product on the market shall make a declaration of performance if **one of** the following conditions **is respected** ~~are met~~: (a) the construction product is covered by a harmonised standard, (b) **a European Technical Assessment has been issued for that product.** (2) (deleted). (3) (unchanged)." Of these, AT, PL and NL have also transmitted own suggestions.

Delegations that cannot accept that the declaration of performance should be mandatory and would consequently support only the current Presidency text or their own written suggestions:

BG/CZ/EE/EL/LU/MT/FI/UK.

Delegations that in spite of certain preferences and own suggestions could in the end accept both of these options:

DK/IE/SK.

~~(a) — the construction product is covered by a harmonised standard, or a European Technical Assessment⁸⁵ has been issued for that product^{86,87}; and~~

~~(b) — the requirements⁸⁸ in relation to essential characteristics of that product exist⁸⁹ 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.⁹⁰~~

⁸⁵ SI: Align with Article 5 (2) in replacing "ETA" by "EAD or STD". PL: Clarify situation when issuing of the ETA was voluntary. DE/LV: Use wording: "the construction product or the product family is covered by a Commission Decision on the system of assessment and verification of constancy of performance, and". This suggestion would ensure obligatory character of DoP when a harmonised standard or EAD exists. BE: Use wording: "construction product belongs to a family covered by...".

⁸⁶ NL: Use wording "...has been issued on his request for that product".

⁸⁷ ES: ETA gets a too central place in this article, cannot be understood as obligatory. IT: Reference should be to EAD.

⁸⁸ AT: Use wording "mandatory requirements in relation..." MT: Use wording "national requirements". Cion: Not possible. DE: Delete "the"; add: "essential characteristics of that product, or in relation to the basic works requirements which are set out in Annex I, exist..." Cion: Sceptical to such a wording.

⁸⁹ BE/PT: Legal consequences are unclear, if the requirements do not exist. AT: Use wording "...exist at least for one possible use of the construction product where the manufacturer..." UK: Add "exist for the intended use where..." IE: 4 (1) (b) should read: "Requirements of technical origin established by Member States represented by minimum performance levels for essential characteristics as established in harmonised technical specifications.

⁹⁰ SE/AT/PL: Whenever there is a harmonised standard, an EAD or STD, the DoP should be obligatory. Flexibility for manufacturers could be regulated via Art. 26-28. DE: Avoid parallel system of products without CE-marking and DoP but legally on the whole Community market and others with CE-marking and DoP. PT: Delete this subparagraph.

- 1a. By way of derogation from paragraph 1, the manufacturer may replace the declaration of performance with a notice that the construction product may only be used for purposes not subject to any requirements where its final end use⁹¹ will take place.**
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 **where the manufacturer intends to place the product on the market.**⁹²
- The declaration of performance referred to in paragraph 1 shall also contain a statement that the construction product may be used for any given purpose only if the declared performance corresponds to the requirements in place for this use of the product.**⁹³
3. Member States shall presume⁹⁴ the declaration of performance drawn up by the manufacturer ~~or the importer~~ to be accurate and reliable.⁹⁵

⁹¹ AT: Clarify difference between "final end use" and "end use". PL suggests addition: "By way of derogation from paragraph 1, the declaration of performance may be made for a product designed and manufactured in the non-industrial production process and in the response to a specific order, and intended to be installed in a single identified works". FR suggests:(similar to the substance of IMCO 32): 1a. By way of derogation from paragraph 1, the manufacturer may not make a declaration of performance for construction products covered by a harmonised standard or for which a European Technical Assessment has been issued :which users transform on site for their own use in the context of their professional activity;which are manufactured on and/or off site and incorporated by the same manufacturer into a work without being placed back on the market.

⁹² PL: Reword to "...for which requirements in a Member State in which a product is made available exist. and other essential characteristics required for obligatory declaring in accordance with harmonised technical specification used."

⁹³ PL: Shift this sub-paragraph to Annex II.

⁹⁴ ES: Presumption cannot be the correct word here, especially since market surveillance authorities are unable to check every possible intended use. It was impossible to maintain the prior testing under the notion of "fit for intended use" in Spain after Cion's intervention. Cion: Presumption does not change responsibilities here.

⁹⁵ AT: Suggests "...shall presume the values, levels or classes of the declaration of performance ...". SI: Add language provision. Cion: Unnecessary, covered by horizontal Regulation.

Article 5

Content of the declaration of performance⁹⁶

1. The declaration of performance shall express the performance of construction products⁹⁷ in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications.⁹⁸

⁹⁹.

The declaration of performance shall be the only means available for bringing forward the information about the performance of the construction product as concerns the essential characteristics covered by the respective harmonised standard or the respective European Technical Assessment.¹⁰⁰

⁹⁶ See also alternative suggestion in Presidency paper MD-11 (not preferred by BG/IT/PL/DE/PT/FR/HU/SE/ES, but preferred by CZ/MT/FI/UK.) Solution/preferences are directly linked to position to Article 4.

⁹⁷ DE: Shorten to "...shall express the essential characteristics of construction products in accordance..."

⁹⁸ DE/PT/BE: Add "or the Specific Technical Documentation" (as originally proposed in Presidency paper from 10 December). UK/PL/FI: Revert to original Cion proposal for 5 (1). SI: Specify, to which harmonised technical specifications reference is made. Cion: If a harmonised standard exists, there are no different ways on how to do a DoP. A new recital might be possible which would point out that when harmonised standards are used as reference, then a DoP should be the only means to show conformity with this harmonised standard. Prsdy: Harmonised technical specification is defined in Art.2.

⁹⁹ FR: Add: "Performance concerning other characteristics may also be included in the declaration of performance".

¹⁰⁰ PT/FR/PL: Against the addition, duplicates Art. 7 and is not at the correct place in this article. SE: Addition is unnecessary. LT: Addition is misleading, sometimes more information is necessary for a user.

2. The declaration of performance shall contain **in particular** the following information:¹⁰¹
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(a) the product-type¹⁰³ for which it has been drawn up;

(b) the list of the essential characteristics of the construction product¹⁰⁴ **covered by a harmonised standard or the EAD**¹⁰⁵ for which the performance is declared, and the levels or classes¹⁰⁶ of ~~that~~ performance,¹⁰⁷

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¹⁰¹ AT: Text does not sufficiently cover the case where one single innovative characteristic of a product is not covered by a harmonised standard and the producer does not request an ETA. Point (ba) would become unnecessary, if AT suggestion for Article 4 is integrated. BG: Against wording "all the essential characteristics. PT: Point (ba) could be shortened, if (b) is phrased in a clear manner. BE: Specify which persons are entitled to sign the DoP. SK: Mention "the proper installation of the product". RO: Simplify to "The declaration of performance shall be prepared according to and contain the information set out in Annex III (rest deleted)."

¹⁰² AT/IT/SK: Use wording: "any requirement for any intended use...", alternatively say "should cover all essential characteristics, indicating either the performance determined according to the harmonised technical specification or the fact, that no performance has been determined."
DE: All minimum requirements should at least be mentioned on the DoP, although manufacturers may of course depart from a harmonised standard in certain parameters.

¹⁰³ PT/Cion: Keep original wording "product-type". Several other delegations: "product".

¹⁰⁴ PT: Add "product or product-type..." DE: Add: "...of the construction product covered by a harmonised standard, EAD or STD and the characteristics for which..."

¹⁰⁵ FR: Use wording "laid down in the harmonised technical specification". PL: Delete "or the EAD".

¹⁰⁶ BE/IT: "declared values, levels or classes..." SE/DE: Add: "...of that performance, if relevant." Cion: Flexible to these suggestions. CY: Add also the reference number of the notified body or the TAB (where relevant). PL: Wording should be "... for which the performance is declared, and their values, levels or classes of that performance;"

¹⁰⁷ CZ/SK: Mention certificates, protocols, tests, etc. Cion: Does not add much to traceability.

ES: Delete "if defined". LT: Harmonise Art. 5 with Art. 4 regarding the conditions for a DoP.

¹⁰⁸ UK/SE: Add "Where no requirement relating to the essential characteristics exists where the manufacturer or importer intends to place the product on the market, the manufacturer shall either declare performance or mark the product 'NPD' (No Performance Determined)." FR: Supports this addition, alternatively add: "For the essential characteristics that do not refer to Article 4 (2), the manufacturer or importer shall either declare performance or mark the product 'NPD' (No Performance Determined). In any case, a list of all characteristics should be included in the DoP. Prefers wording of 12287/3/08 REV 3. (supported by DE)"

- (c) the reference number **and date of issue**¹⁰⁹ of the harmonised standard, **or** the European Assessment Document¹¹⁰ ~~or the Specific Technical Documentation~~, which has been used for the assessment of each¹¹¹ essential characteristic.¹¹²

(ca) where applicable, the reference number of the Specific Technical Documentation used and the requirements the manufacturer claims the product complies with;¹¹³

(cb) where applicable, the intended end use of the product, in accordance with the harmonised technical specification used.

¹¹⁴

¹¹⁵

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

¹⁰⁹ For Legal Linguists: "Reference number" should read "Referenznummer" or "Bezugsnummer" in German (throughout).

¹¹⁰ AT/SI/PL: Replace "EAD" by "ETA" Cion: Reservation.

¹¹¹ AT: Add: "...for the assessment and the related declaration of performance of each..." PL: Reword the whole (c) and add new (d) and (e): "(c): the reference number of the harmonized standard or the European Technical Assessment which has been used for the assessment of the essential characteristics. (d) on the STD, if such has been used; (e) the generic use of the product, in accordance with the harmonised technical specification used, when applicable." BE: Clarify in the wording that EAD/ETD can always be requested, even in the absence of a harmonised standard. Cion: Agrees with the substance, but no need to change the text.

¹¹² MT: Add new (xx): "any other information where applicable and deemed relevant."

¹¹³ BG: Leave mentioning of STD in (c), no reason to single it out. PT: Delete (ca). Cion: No, it is a useful addition, explains in which circumstances the manufacturer has made use of this simplified procedure.

¹¹⁴ SE suggests, supported by RO/DE/FR/AT/ES: Add: (d) information about the content of dangerous substances as described in Annex xxx (new). The SE suggestion is similar to an IMCO amendment. Cion/MT/UK/PT/NL/BE/HU/FI: Sceptical to this addition, this would go beyond essential characteristics or the substance would already be covered in point (b) or in REACH. PL: Reservation on this addition, depending in particular on the content of the new Annex. DK: Could accept the spirit of the suggestion, but prefers referring to "information required by other Community legislation". IT: Could accept the SE suggestion but only if indication of substances is required when surpassing certain thresholds. BG: SE suggestion is not harmful, but normally this is covered by national requirements based on the BWRs.

¹¹⁵ BE: Add new para. 3: "The level of seniority of the signatory is sufficient for engaging the manufacturer, the importer or the distributor." FI: Revert to Cion proposal for the whole of Article 5.

4. The declaration of performance shall be translated into the language of the languages required by the Member State in which market the product is placed or made available.¹¹⁶

Article 6

Form of the declaration of performance

1. A copy of the declaration of performance shall be supplied with each product¹¹⁷ which is made available on the market.

However, where a batch of the same product is delivered¹¹⁸ to a single user, it may be accompanied by one **single** copy of the declaration of performance.

The declaration of performance shall be supplied into the language or languages required by the Member State in which market the product is placed or made available.^{119 120}

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2. The copy of the declaration of performance may be supplied by electronic means only with the express agreement of the recipient.¹²²

¹¹⁶ PL: Paragraph can be deleted at this place, covered elsewhere.

¹¹⁷ SE: Use wording "...each construction product placed on the market in accordance with Article 4..." PL: A central database of declarations might be convenient. Cion: Sceptical to both ideas. PL: Reword first sub-paragraph into: "A copy of the declaration of performance shall be supplied with each construction product referred to in art. 4(1). This declaration shall be made in a language understandable for the users in the Member State in which this products is to be made available".

¹¹⁸ PL: Replace "delivered" by "supplied". Cion: Flexible.

¹¹⁹ Wording taken over from horizontal decision "R 10".

¹²⁰ IT (supported in principle by PL): Modify the language provision: "A copy of the DoP, drawn up in the official languages of the Member State where the product is made available and in a form easily understandable by users, shall be supplied ..." FI/ES/LV/RO/BG/PT/SI/NL/LT: Refer to "official language(s)" instead. N.B. Language provision did not appear in MD-11.

¹²¹ MT: Add "new approach" provision: "A copy of the DoP shall be made available to the relevant competent authorities and to economic operators in the supply chain".

¹²² NL/MT/IE: Delete "only with the express agreement of the recipient." DK: Delete the whole para. PL: Reword to say: "... by electronic means of in written form. On request of the distributor or user the declaration should be supplied in written form."

3. By way of derogation from paragraphs 1 and 2, the content of¹²³ the declaration of performance may be made available on a web site¹²⁴ in accordance with conditions established by the Commission.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).¹²⁵

4. [...]

¹²³ NL/MT: Delete (2) and replace this sentence by: "The content of the declaration of performance might be made available on a website in accordance with Annex 6." DK: Delete "and (2)". Cion/IT/PT: Sceptical, the final users often need a copy. Several delegations: Delete "the content of". PL: Delete para. 3.

¹²⁴ FI: Simplify to: "...declaration of performance may be supplied in accordance...". Comitology will set the details anyway. UK: Specify more conditions for web-site provisioning. DK: "...web-site, if a precise web-address is included on the CE-mark itself in accordance..."

¹²⁵ BE: Link to the regulatory procedure with scrutiny could be phrased in a different way; "measures" is not correct, rather "conditions". N.B.: One could delete this identical paragraph in the articles and mention instead Articles 6 (3), 10 (2), 18 (2), 19 (2), 21 (2) and 24 (2) in Article 50 (1).

Article 7
Use of CE marking

1. The CE marking shall be affixed only¹²⁶ to those construction products, for which the manufacturer or the importer¹²⁷ has drawn up a declaration of performance in accordance with Articles 4, 5 and 6.¹²⁸

If a declaration of performance has not been drawn up by the manufacturer or the importer in accordance with Articles 4, 5 and 6, the CE marking may not be affixed to construction products.¹²⁹

¹²⁶ BE/IT/UK/ES/FR: Delete "only".

¹²⁷ SI/LV: Use wording "for which there are harmonised specifications."

¹²⁸ PT/IT: Replace by "products for which a declaration of performance has been drawn up in accordance..." BE/LT/IT: Clarify situation of CE marking where DoP is not mandatory. ES: Either add definition of CE marking in Art.2 or refer to New Approach regulation or define the concept here. SE: Clarify the situation with regard to other legal acts requiring marking, e.g. the revised eco-design directive, here or in Art. 4. IT: If the CE marking is indeed obligatory, the Regulation should describe conformity assessment in much greater detail. A substantial link to Art. 30 should be made in the wording. Cion: This article is procedural in nature, if something is not described here, but in other parts of Community harmonisation legislation or in national legislation, these other provisions continue to apply. However, Article 4 makes clear that if the DoP is mandatory, the CE marking is the logical consequence. LT suggests: "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 harmonized technical specifications"." FI: Revert to original Cion text.

¹²⁹ Several delegations: Delete sub-paragraph as repeating the same substance. FR: Instead of deletion see wording in MD-15.

By affixing or having affixed the CE marking the manufacturer **or the importer**¹³⁰ shall take responsibility for the conformity of the construction product with **all applicable requirements laid down in this regulation and in other relevant acts of Community harmonisation legislation providing for its affixing** ~~the declared performance.~~¹³¹

2. **For any construction product covered by a harmonised standard,** 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.**¹³²

¹³⁰ PT/IT/BE: Use wording "the manufacturer, and if applicable, the importer shall..."

¹³¹ BE: Suggests wording: "...at the minimum with the declared performance." UK/IT/Cion: Against wording "all applicable legislation" or "all applicable requirements" (as in MD-11). The other legislation for affixing the CE marking applies anyway and has to be respected as well. AT/DE/FR: Keep wording "all applicable" as it is, against wording in MD-11. FR suggests the following wording: "By affixing or having affixed the CE marking the manufacturer **or the importer** shall take responsibility for the conformity of the construction product with the declared performance. **When products are subject to other acts of Community harmonisation legislation which also provide for the affixing of the CE conformity marking, the latter shall indicate that the products are also presumed to conform to the provisions of those other acts.**"

¹³² ES: Delete "only", thus leaving "...shall be the marking with attests..." In case of Art. 4 (1)(b) local requirements could exist and a CE marking would not be obligatory. Cion: Relationship is clear, on voluntary markings mutual recognition applies. IT/DE/AT/PT: Start Art. 7 (2) and 7 (3) with the clarifying clause "When the conditions of Art. 4 (1) are met, ...". Cion: Art. 30 of horizontal Regulation is clear enough. Performance is indicated by the CE marking, not by any other marking, market-driven markings fall out of scope of this Regulation and it is not necessary to mention or regulate them here. DE suggests: The CE marking shall be the only marking of conformity indicating that the construction product is in conformity with Community harmonisation legislation and attests in particular conformity of the construction product with the declared performance in relation to Articles 4, 5 and 6. Presidency suggested in MD-11 "For any construction product covered by a harmonised standard, 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 of this product covered by the standard." (BG/DE/SE/DK/AT against; as ETA is not mentioned properly; FI: original Cion wording was better.) Art. 7 (2) would have to be adapted if Presidency proposal for Article 4 (MD-17) would be accepted.

In this respect, Member States shall not introduce ~~national measures~~ or shall withdraw any references¹³³ **in national measures** to a ~~conformity~~ marking¹³⁴ **attesting conformity with the declared performance** other than the CE marking.¹³⁵

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~~.¹³⁶

¹³³ AT: Re-introduce the words "national measures".

¹³⁴ ES: Use wording "to an obligatory marking..."

¹³⁵ AT/BE suggest: "...references to an other conformity marking other than the CE marking of construction products covered by CE marking." DE: Add "for harmonised legislation according to this Regulation" or "in accordance with Articles 4, 5 and 6" or a similar wording. (this could also be supported by AT). PL: Use the wording "...conformity marking other than the CE marking, for the products covered by harmonised European standards." NL: Add simply "for products covered by this Regulation" (but could also support PL suggestion. Cion: Flexible. BE: Add "other than the CE marking except if the possibility is explicitly foreseen in the Directives on Public Procurement 2004/17/EC and 2004/18/EC and shall withdraw their provisions." DE: The BE problem with public procurement does not occur as long as national public procurement calls for tender use "or equivalent" for the markings mentioned and the underlying quality characteristics. CZ: Wording of second sub-para. of Art. 7 (2) diverts from the horizontal framework and needs more clarification with regard to its scope and aim. UK: Delete the whole para. 2, as the horizontal Regulation stays directly applicable. BG: Wording in MD-11 is not ok.

¹³⁶ NL/BE: Clarify whether subsidiarity allows that national measures prescribe certain type of products for certain uses. Cion: Subsidiarity allows it; this has nothing to do with CE marking in this article. DE: Use wording "requirements for placing on the market and for this use..." Check whether use of requirements in MD-11 (Article 4) is consistent with Art. 7 (3) and 7 (4). BE: Add "...or to a lower level of performance. When in a Member State requirements exist, only construction products bearing CE marking with a declared performance, drawn up by the manufacturer in accordance with Articles 4, 5 and 6, higher or corresponding to that Member State requirements, may be made available on the market."

4. Member States shall ensure that the use of construction products bearing the CE marking shall not be impeded¹³⁷ 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~~.¹³⁸

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Article 8

*Rules and conditions for the affixing of CE marking*¹⁴⁰

1. The CE marking shall be subjected to the general principles set out in Article **30** of Regulation (EC) N° **765/2008**.¹⁴¹

¹³⁷ PL: Add "be impeded, if the requirements for that use in the Member State correspond to the declared performance, by rules or conditions..." CZ suggests: "...be impeded, if the characteristics laid down in the declaration correspond to the requirements for that use in the Member State, by rules...public mandate."

¹³⁸ DE: Use wording "requirements for placing on the market and for this use...". PL: Add a new paragraph as follows: "Member States shall undertake appropriate measures to make sure that regulations applied on their territory concerning the design and erection of building works related to the construction products, are expressed in compliance with the essential characteristics included in the harmonized standards and European Assessment Documents."

¹³⁹ AT: Add as a separate paragraph the wording from recital (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, shall be in accordance with harmonised technical specifications. FR: Add "The CE marking shall be affixed by the manufacturer or the importer."

¹⁴⁰ UK: Would prefer to maintain the current legal framework from CP Directive and not the provision from the new horizontal legal framework. Prdy: See alternative for Article 8 in MD-11. FI/AT/IT/LV/IE/SE/DE: Keep wording of 5449/09, especially number of notified body.

¹⁴¹ BE: Add "Importers acting as mentioned in Art. 12 (2) shall affix the CE marking.". UK: Would prefer a different design for the construction products CE marking, as this regulation cannot cover all requirements for CE markings from all applicable legislation. The same design would thus lead to confusion with CE markings which indicate different things. Furthermore only the old format would ensure that performance values will immediately follow the marking.

2. The CE marking shall be affixed visibly, legibly and indelibly to the construction product or to its data plate.¹⁴² 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.¹⁴³
3. The CE marking shall be followed by the two last digits of the **first** year in which it was affixed¹⁴⁴, the name or the identifying mark of the **manufacturer** ~~producer~~¹⁴⁵, the unique identification code¹⁴⁶ of the construction product-**type**,¹⁴⁷ ~~and~~ the number of the declaration of performance **and the number of the notified body, if applicable.**¹⁴⁸

¹⁴² PL: Replace "its data plate" by "a label."

¹⁴³ SK/PT/AT: Define which accompanying documents are meant. Cion: This depends on the product. No need to limit this to legally obligatory documents. PL: Add: "...and the manufacturer's or importer's web-site if the declaration is to be supplied in electronic form. Principles to create the unique identification code of the construction product are to be determined by the Commission in accordance with the regulatory procedure with scrutiny referred to in Article 51 (2)."

¹⁴⁴ Several delegations: concern on interpretation of "affixed", prefer "manufactured". Cion: explains concept as distinguished from marketing. UK/SE: Use wording: "year of the date on the declaration of performance, the name..." AT: Keep "affixed".

¹⁴⁵ BE: Reference to identifying mark is not practical. DE: Manufacturers should be free to add more, so wording should be "by at least the two last digits..." CY: Use wording "the manufacturer or the importer". PL: Use wording: "identifying mark of the manufacturer and its web-site, when an electronic form of declaration is made available by internet, in accordance with Article 6 (3), and the unique identification code of the construction product-type and the number of the declaration of performance. The identification code and the declaration number shall be determined in accordance with the conditions established by the Commission. (Then add the usual "comitology with scrutiny"-clause). (This suggestion in principle acceptable for FR/PT/LV) HU: Unclear, who approves the identifying mark and which legal value it would have.

¹⁴⁶ RO/DK: Specify somewhere the details (or principles) of the unique identification code, including a wording on data protection. PL: Clarify the relationship to traceability code of General Product Safety Directive. Details on the unique identification code could be set by the Commission via PRAC. BE/DE: Clarify who is responsible for checking the uniqueness of the code. PT: In view of harmonisation, add more criteria for the unique identification code, maybe in an Annex. Currently, the code differs a lot from sector to sector. Cion: Uniqueness is necessary for traceability, some details may be regulated at Member State level. The unique identification code is not identical to the code mentioned in GPSD, other details could be regulated through Annex II. Against further additions in this article.

¹⁴⁷ DE/IT: "construction product", not "product-type".

¹⁴⁸ FR: Add: "and where appropriate, the address of the web site where the declaration of performance is displayed, and indications to identify the characteristics of the product on the basis of the technical specifications." AT: Instead of these additions take whole wording from horizontal Decision, Article R12 (3). PL: Against current addition.

4. The CE marking shall be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark indicating a special risk or use.¹⁵⁰

¹⁴⁹ FR suggests new para. (3a): "If a declaration of performance which has been drawn up by the manufacturer in accordance with Articles 4, 5 and 6 contains no performance declared in relation with an essential characteristic, the CE marking shall be followed by the statement "No Performance Declared" into a language or languages required by the Member State on which market the product is placed or made available."

¹⁵⁰ PL: Delete "or use". NL: Clarify, which circumstances "risk or use" refers to. AT/PT: Clarify whether national or European pictograms/marks are meant, as an alternative delete 8 (4). Cion: Art. 8 (4) should only clarify the relationship to eco-labels and similar marks (which are not conformity markings). No need to change the text.

¹⁵¹ FR Prsdy suggested (4a): The affixing to a product of markings, signs or inscriptions which are likely to mislead third parties regarding the meaning or form of the CE marking shall be prohibited. Any other marking may be affixed to the product provided that the visibility, legibility and meaning of the CE marking is not thereby impaired. LV: Add to this suggestion: "These marks shall not impede or derogate the meaning and legal status of the CE marking. IE: Add new 8 (4b): "The CE mark shall include the name/reference number of the Notified Body (where applicable)."

Article 9
*Product Contact Points*¹⁵²

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 establish 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. In addition to the tasks defined in Article 10(1) of the said Regulation, each Member State shall ensure that the Product Contact Points for Construction also provide the information on any [technical rules or] regulatory requirements applicable to the incorporation, assembling or installation of a specific type of construction product in the territory of that Member State.**
- 4. Product Contact Points for Construction shall be independent of any body or organisation involved in the procedure for obtaining the CE marking.**

¹⁵² BG/FR/ES/FI/HU/IT/NL/SE/SI: partial and/or specific reservations. PL: In para. 3 use wording: "technical and administrative regulatory requirements" . Especially against para. 3 are: HU/BG/EL/FR/NL/PT/MT. The other delegations prefer current Council text to IMCO 58, while DE could accept IMCO 58. First part of IMCO 57 acceptable to some delegations, second part rejected by most delegations. If the text of para. 3 should basically remain unchanged, DE suggests to modify into "technical rules or requirements" in order to mirror definition of Art. 2.

CHAPTER III

OBLIGATIONS OF ECONOMIC OPERATORS

Article 10

Obligations of manufacturers¹⁵³

1. Manufacturers shall draw up the required technical documentation¹⁵⁴ describing all the relevant elements¹⁵⁵ related to the applicable attestation of declared performance.¹⁵⁶

Manufacturers shall draw up the declaration of performance in accordance with Articles 4, 5 and 6, and affix CE marking in accordance with Articles 7 and 8.¹⁵⁷

2. Manufacturers shall keep the technical documentation¹⁵⁸ and the declaration of performance for the period determined by the Commission for each family of construction products on the basis of expected life and the role of the construction product in the works.¹⁵⁹

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).

¹⁵³ NL: Clarify relationship of obligations for economic operators here and obligations in the horizontal Regulation. FI/MT: Refer frequently to the horizontal framework instead of repeating the obligations in Art. 10-15. IE: Specify sanctions for non-compliance by the manufacturer.

¹⁵⁴ ES: Define the concept of "technical documentation" either in this article or in Art. 2. AT: Define minimum content of the technical documentation and language requirements.

¹⁵⁵ PL: Replace "all the relevant elements" by "all the elements".

¹⁵⁶ PL: Use wording "applicable system of the assessment and verification of constancy of the performance". AT: Clarify the difference between "declaration" and "attestation". BG: Use wording: "...related to the design, manufacturing, assessment and verification of constancy of declared performance".

¹⁵⁷ LT: In order to be coherent with Art. 13 (2), add a provision that it is up to the manufacturer or the authorised representative to draw up instructions and safety information.

¹⁵⁸ AT: Clarify who will keep the technical documentation if the manufacturer is no longer available e.g. in case of bankruptcy. NL: Add a wording on cases like bankruptcy or the ceasing to exist of firms.

¹⁵⁹ ES: Specify the period better, "expected life" is not a well-defined criterion. UK: Scrutiny reservation on the way to define the period, also relevant for Article 15.

3. Manufacturers shall ensure that procedures are in place¹⁶⁰ in order for series production to maintain the declared performance.¹⁶¹ 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 appropriate, carry out sample testing of marketed construction products, investigating, and, if necessary,¹⁶² keeping 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 element¹⁶³ 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 contacted¹⁶⁴ 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.

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 performance¹⁶⁵, 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. 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.

¹⁶⁰ BE: Replace "procedures" by a longer reference to a system of Factory Production Control (FPC)."

¹⁶¹ DE/PL: Add "...declared performance and the conformity with the applicable Community harmonisation legislation."

¹⁶² NL: Delete "if necessary." FI: Delete the whole second subparagraph.

¹⁶³ ES: Clarify what is meant by "any other element". Is it the number of the DoP or another internal number which allows traceability ?

¹⁶⁴ RO: Add: "... be contacted and the unique identification code of the construction product on the..."

¹⁶⁵ DE/PL: Use wording "not in conformity with the applicable Community harmonisation legislation and the declared performance..."

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 with¹⁶⁶ the declared performance, **in a language which can be easily understood by the authority**¹⁶⁷. 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.

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Article 11

Authorised representatives

1. ~~A Manufacturer~~ may appoint, by a written mandate, an authorised representative.¹⁶⁹

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

¹⁶⁶ DE/PL: Use wording "of the construction product with the applicable Community harmonisation legislation and the declared performance...".

¹⁶⁷ LV: Reservation. CY/DE/MT/SK prefer: "language as determined by each Member State". PT/HU/FR: Scrutiny reservation. Same reservations apply to Art. 12 (7). BG: The obligations of distributors in Art. 13 (2) are too burdensome compared to those of manufacturers; the manufacturers should be obliged here to deliver all the necessary information to distributors, so that they can fulfil their obligations.

¹⁶⁸ BE: Add a new para. 8: "Manufacturers shall co-operate with notified bodies in their duties and more particularly when a certificate of conformity has to be issued".

¹⁶⁹ AT/SK: Clarify whether this possibility also applies to manufacturers established within the Community and whether more than one authorised representative may be appointed. CY: The written mandate given by the manufacturer to the authorized representative should include specific obligations. LT: Make clear that manufacturers can appoint more than one authorised representative and that this means possible more than one DoP for a product.

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~~ 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:¹⁷⁰
- (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 product with the declared performance;¹⁷¹
 - (c) co-operate 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.

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¹⁷⁰ AT: Clarify whether the drawing up of a DoP can be a task mandated to the authorised representative.

¹⁷¹ DE/PL: Use wording "...with the applicable Community harmonisation legislation and the declared performance".

¹⁷² SK: Add a new (d): shall draw up the declaration of performance in accordance with Articles 4-6. He shall also ensure that the product bears the required CE marking, is accompanied by the required documents and that the manufacturer has respected the requirements set out in Articles 10 (4) and 10 (5).LT: In order to be coherent with Art. 13 (2), add a provision that it is up to the manufacturer or the authorised representative to draw up instructions and safety information.

Article 12
*Obligations of importers*¹⁷³

1. When placing a construction product on the Community market importers shall act with due care in relation to the requirements of this Regulation.¹⁷⁴

2. Before placing a construction product on the market importers shall ensure that the assessment and the verification of constancy of the declared performance has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation referred to in the first subparagraph of Article 10(1). ~~They shall draw up¹⁷⁵ the declaration of performance in accordance with Articles 4, 5 and 6.¹⁷⁶ 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).¹⁷⁷

¹⁷³ **BG:** Mirror the text from horizontal Decision.

¹⁷⁴ **NL:** Add in the end: "...and make a thorough inquiry on the prevailing building regulations, related to the CE marking, in the Member States of destination. They inform their manufacturers accordingly."

¹⁷⁵ **PL:** Rephrase to: "Before placing a construction product on the market importers shall obtain from the manufacturer a copy of the technical documentation referred to in art. 10 (1), first paragraph, and they shall ensure its upgrading. On the basis of the technical documentation received, the importers shall draw up the ..."

¹⁷⁶ **NL:** Add "...articles 4, 5 and 6 in case the manufacturer did not draw up this declaration". **FI:** Align Art. 12 (2) to Art. 7 (1) in order to impose only feasible obligations on importers. **BG:** Impossible for the importer to draw up a d.o.p., modify this requirement.

¹⁷⁷ **LT:** Add a language requirement, that the importer has to convey the information drawn up by the manufacturer or authorised representative, also to be coherent with Art. 10,11 and 13.

Where an importer considers or has reason to believe that the construction product is not in conformity with the declaration of performance, he ~~shall~~ ~~may~~ not place the construction product on the market until it conforms to the accompanying declaration of performance or until declaration of performance is corrected.¹⁷⁸ Furthermore, where the product presents a direct risk,¹⁷⁹ 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.
4. Importers shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declared performance.
5. Importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with¹⁸⁰ the declaration of performance, 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 direct 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.¹⁸¹

¹⁷⁸ DE/PL: Art. 12 (2), second sub-para. should read: "Where an importer considers or has reason to believe that the construction product is not in conformity with the applicable Community harmonisation legislation or the declaration of performance, he may not place the construction product on the market until it has been brought into conformity with ~~conforms to the applicable Community harmonisation legislation and~~ the accompanying declaration of performance or until the declared performance ~~declaration of performance~~ is corrected."

¹⁷⁹ DE: Define "direct risk" for the purposes of this Regulation in Article 2. Cion: Meaning of "direct risk" in the context of this Regulation could be clarified in a recital.

¹⁸⁰ DE/PL: Use wording "...conformity with applicable Community harmonisation legislation or the declared performance..."

¹⁸¹ NL: Add a new subparagraph: "Importers share and keep - in cooperation with their manufacturers- a register of complaints. They inform each other about complaints from their customers."

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 performance, **in a language which can be easily understood by the authority**.¹⁸² 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.

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Article 13

*Obligations of distributors*¹⁸⁴

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

¹⁸² DE/PL: Use wording: "...the construction product with the applicable Community harmonisation legislation and the declared performance."

¹⁸³ BE: Add a new para. 8.: "Importers shall co-operate with notified bodies, particularly when audit-testings before placing a product on the market are foreseen in the systems of assessment and verification of constancy of performance, in annex V."

¹⁸⁴ BG: Obligations for distributors (and to some extent also for importers) might be too burdensome and not practical. UK: Supports this provision and the principle, but shares concerns of BG.

2. Before making a construction product available on the market distributors shall ensure that the product bears the required CE marking¹⁸⁵ 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 in the Member State¹⁸⁶ in which ~~where~~ the product is made available on the market¹⁸⁷ and that the manufacturer and the importer have complied with the requirements set out in Article 10(4), Article 10(5) and Article 12(3) respectively.

Where a distributor considers or has reason to believe that a construction product is not in conformity with the declaration of performance, he shall not ~~may~~ make the product available on the market until ~~only after~~ it conforms to the accompanying declaration of performance or until declaration of performance is corrected.. Furthermore, where the product presents a direct risk, ~~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.~~¹⁸⁸

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

¹⁸⁵ PL: Given that not all construction products will bear the CE marking, the wording should be adjusted. "...market distributors shall make sure whether the product bearing the CE marking is accompanied by the documents...".

¹⁸⁶ RO/ES/CZ/FI/IT/LT/LV: Replace "in a language easily understood by users in the Member State" by "in the official languages of the Member State". For this reason, IMCO 59 is in principle acceptable to those delegations. NL: Replace by "in the official language or languages of the Member State in which the product is to be used. LT: The task of ensuring that instructions and safety information are available in the relevant language should fall on importers or distributors. PL: Delete "and by instructions and safety information in a language easily understood by users in the Member State". RO: Clarify which "accompanying documents" reference is being made to. PT: Reservation on para. 2. NB: Horizontal decision ("R 5") uses wording: "...easily understood by consumers and other end-users in the Member State in which the product is to be made available on the market".

¹⁸⁷ IT: Add "and in a linguistic form easily understandable by users."

¹⁸⁸ DE/PL: Re-word the second sub-para as follows: "Where a distributor considers or has reason to believe that a construction product is not in conformity with the applicable Community harmonisation legislation or the declaration of performance, he may make the product available on the market only after it has been brought into conformity with the applicable Community harmonisation legislation and conforms to the accompanying declaration of performance or until the declared ~~declaration of~~ performance is corrected. The distributor shall inform the manufacturer or the importer to this effect as well as the market surveillance authorities, when the product presents a risk.

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 the¹⁸⁹ declaration of performance, shall ~~immediately~~ make sure that the ~~necessary~~ necessary corrective measures 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 direct 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 performance¹⁹⁰. 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.

¹⁸⁹ DE/PL: Use wording: "...conformity with the applicable Community harmonisation legislation or the..."

¹⁹⁰ DE/PL: Use wording "...with the applicable Community harmonisation legislation and the declared performance."

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 performance¹⁹¹, may be affected and consequently he shall be subject to the obligations of the manufacturer under Article 10.¹⁹²

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Article 15

Identification of economic operators

Economic operators¹⁹⁴ 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.

¹⁹¹ DE/PL: Use wording "...that conformity with the applicable Community harmonisation legislation and the declared performance...".

¹⁹² NL: Add "...in case harmonized technical specifications provide possible modifications of the product and the distributor wants to market the modified product again under the CE-marking."

¹⁹³ DE: Add the following Article 14a: *Cases in which obligations of distributors apply to manufacturers* - "A manufacturer shall be considered a distributor for the purposes of this Regulation, when he places a product on the market."

¹⁹⁴ NL: Restrict this obligation to "manufacturers, authorised representatives, importers and major wholesalers", thereby excluding smaller distributors.

CHAPTER IV

HARMONISED TECHNICAL SPECIFICATIONS

Article 16

Harmonised standards

1. Harmonised standards¹⁹⁵ shall be established by the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of mandates adopted by the Commission in accordance with Article 6 of that Directive.¹⁹⁶
2. Harmonised standards shall provide the methods and the criteria for assessing the performance of the construction products in relation to their essential characteristics.¹⁹⁷

When foreseen in the respective mandate or otherwise technically justified, a harmonised standard shall refer to an intended end use of products to be covered by it.¹⁹⁸

¹⁹⁵ RO: Add a clear definition of harmonised technical specifications/standards. Prsd: highlights benefits of case by case approach. ES: Make clear in the wording that only Annex Z of the harmonised standard will be compulsory.

¹⁹⁶ AT/BE/SE/CY/LT: Mention Consultation of Standing Committee according to Article 51. PT: Mention Committee of Directive 2006/123. Cion: Would interfere with valid comitology rules. ES: Specify that a harmonised standard is only obligatory with regard to the relevant provision in the annexes. Cion: Correct in substance, but no need to change Article 16. DE: Add in the end: "...and shall support the relevant requirements of other applicable Community harmonisation legislation."

¹⁹⁷ AT/NL suggest different wording: "...shall establish the essential characteristics and provide the methods and the criteria for assessing the performance of the construction products in relation to them. Cion: Reservation, it is in the mandate, not in the standard. NL: Clarify the scope of the harmonised standard. DE: Clarify by saying: "...essential characteristics and their performance over time and shall indicate the intended use of the construction product in the construction works". Performance over time could also be expressed by "durability" as in IMCO 61 (first part). NL/PT/Cion: Against such additions. Second part of IMCO 61 is rejected by most delegations, some could accept it with several adaptations of the wording.

¹⁹⁸ DE: Addition is unnecessary, "intended use" is always referred to in a harmonised standard.

Harmonised standards shall, where appropriate, provide methods less onerous than testing for assessing the performance of the construction products in relation to their essential characteristics.¹⁹⁹

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.²⁰⁰
4. ²⁰¹The Commission shall assess the conformity of harmonised standards established by the European standardisation bodies with the relevant mandate.²⁰²

The Commission shall publish in the *Official Journal of the European Union* the list of references of harmonised standards²⁰³ which are in conformity with the relevant mandates, and ~~set the date of applicability of those standards~~ **determine from which date on the application of those standards will be optional and from which date on it will be mandatory.**²⁰⁴

The Commission shall publish any updates to that list.

¹⁹⁹ ES/DE: Sometimes both national standards and harmonised standards apply; clarify precedence in case of any conflict. Cion: Reservation; the principal roles of EU level and Member State level cannot be modified or regulated through this article. PL: Replace "testing for assessing the performance by "those for determination of the performance" in order to exclude inappropriate methods such as tabular calculation. ES: Replace the whole second sub-paragraph by: "Provided that assessing the performance of the construction products in relation to their essential characteristics is drawn up with identical guarantee, the harmonised standards could provide methods less onerous than testing."

²⁰⁰ DE: Add in the end: "...and all further technical details necessary for the proper implementation of the system of assessment and verification of constancy of performance."

²⁰¹ PL: Add a new first sub-paragraph: "When preparing the mandates for harmonised standards, the Commission shall – firstly – take into consideration the construction products placed on the market on the basis of other harmonised specifications".

²⁰² DE: Specify in greater detail the content of the mandate (quality assurance, conformity assessment, third-party control etc.)

²⁰³ FI: Add language provision on harmonised standards themselves. Cion: Would require a principal horizontal provision or a change in the CEN system, cannot be regulated by Constructions Products Regulation alone.

²⁰⁴ BE: Add reference to national standards transposing harmonised standards. Cion: Not usual anymore in legal drafting, but can be checked, if necessary. BE: Add provision on how to amend standards. Cion: This is done in the CEN system, not through Articles 16 and 17. DE: Clarify what happens if the periods of double application elapse, whether products may still be placed on the market. PL: Reservation on Art. 16 (4). Prsdy: Exact wording to be checked.

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.²⁰⁵ The Committee shall, after having consulted with the relevant European standardisation bodies, deliver its opinion without delay.²⁰⁶
2. In the light of the Committee's opinion, the Commission shall decide²⁰⁷ 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.²⁰⁸

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²⁰⁵ AT: Reference should rather be to the Standing Committee acc. to Article 51.
DE/SE/BE/ES/IT/LT: Consult first Standing Committee, then Dir. 98/34 Committee. IT: Clarify the modalities of consultation of Member States. For similar reasons, DE/AT/LT/IT/SE could accept the principle of IMCO 63 (verification whether a mandate has been followed correctly), however without using wording such as "responsibility" and "ensuring" etc. Cion: Sceptical, the role of the Committees in case of formal objections has to follow the horizontal Regulation. IMCO 63 as currently drafted runs against Art. 16.

²⁰⁶ AT: Add the following sentence: "In case of alteration of the status of a harmonised standard the Committee set up by Article 5 of the Directive 98/34/EG shall be informed." FI: Answers of Member States should be made available together with the opinion.

²⁰⁷ DE: Add a deadline, at least "without delay". Cion: Against.

²⁰⁸ DE: A similar provision to Art.17 is needed in case of a formal objection against an EAD.
Cion: Will check whether a parallel article is needed. ES: Provide for the possibility of smaller modifications, not always a total revision of the standard.

²⁰⁹ DE: Add a new article 17a: "*Formal objection against European Assessment Documents*: 1. When a Member State or the Commission considers that a European Assessment Document does not entirely comply with the provisions set out in Article 20(1) to (2) or Annex II or in other provisions of EC harmonisation legislation, the Commission or the Member State concerned shall bring the matter before the Committee set up by Article 51(3), giving its arguments. The Committee shall, after having consulted with the organisation referred to in Article 20(3), 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 European Assessment Document concerned in the Official Journal of the European Union. 3. The Commission shall inform the

Article 18 [17]

Levels or classes of performance

1. The Commission may establish²¹⁰ classes of performance in relation to the essential characteristics of construction products.²¹¹

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).²¹²

2. Where classes of performance in relation to the essential characteristics of construction products are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards, **on the basis of a revised mandate.**²¹³

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.²¹⁴

organisation referred to in Article 20(3), and, if necessary, request the revision of the European Assessment Document.

²¹⁰ RO: Clarify difference between "establish" here and "determine" in para. 4.

²¹¹ LT: Include a provision stating that it needs to be ensured that the range of the classification systems (highest and lowest value) established by the European standardisation bodies in harmonised standards, or by Commission meets the requirements of the Member States. FI: Include consultation of Standing Committee.

²¹² RO: Adapt this standard clause to the requirements of this article.

²¹³ AT/LT/PL: Include a role for the TABs by adding: "...in harmonised standards and by the organisation of Technical Assessment Bodies referred to in Article 25(1) in European Assessment Documents." BE: Either involve TABs or replace "in harmonised standards" by "in harmonised standards or EADs" (throughout). FI/IT/SE/NL/DE/AT/MT/PT/AT: Enlarge role of Member States, here and in para. 4. FI: Commission should fix classes, Member States should always be allowed to determine the level. Clarify procedure in case of disagreement. SE: Use wording "new or revised mandate". BG: Use wording "the initial or a revised mandate." IT: Clarify legal situation in the case of wrong or inappropriate standards. IMCO 64 rejected by most delegations, while FR/RO could accept the second part of it. See also recital 11a in this respect.

²¹⁴ PT/PL: Revert the order of the two sub-para. of para. 2. Furthermore, the substance of Art.18 and 19 should go logically after Art. 21. ES: Add: "For their approval, the Committee established by Article 51 of this regulation must be consulted." PL suggests end of paragraph as follows: "...standardisation bodies and the TABs organisation shall use respectively those classes in harmonised standards and in EADs." Cion: Art. 18 (2) is for technical classes/requirements, not regulatory requirements, that is why information and not full comitology procedure is sufficient. Suggestion to add: "and if appropriate, the mandate is

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.~~^{215 216}

When foreseen in the respective mandates, the European standardisation bodies²¹⁷ shall establish in harmonised standards minimum performance levels in relation to essential characteristics and, when appropriate, for intended end uses,²¹⁸ to be fulfilled by construction products in Member States.

- 3a. The Commission may establish conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing.**

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

modified." FR/DE: As an analogy to para. 3, include a wording on "minimum technical levels" in para.2.

- ²¹⁵ ES/DE: Insert consultation of the Standing Committee in the procedures acc. to paragraphs 2 and 3. Cion: Sceptical to this idea. SE: Align procedures of Art. 18 to those of Art. 17, in order to give Member States and Commission a better defined role. SE/PL: Clarify status of existing and future guidance documents and mention something on how they are adopted.
- ²¹⁶ SE: Suggests following para. 3.: "The Commission may also set conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2). Where such conditions are not set by the Commission, they may be established by European harmonisation bodies in harmonised standards." RO: Include definitions of "without testing", "without further testing", "levels/classes of performance" in Article 2. PL: Add following sub-paragraph: "In relation to the performance classes laid down by the Commission, European standardisation bodies shall establish the conditions under which a product shall be without testing or without further testing deemed to satisfy the defined level of the performance on the basis of the relevant Commission decisions taken in accordance with art. 51 (2)." IT: Add the following: "These conditions shall be verified at regulatory level and shall be defined by a Commission Decision after consultation of committee of Art.51."

- ²¹⁷ AT: Add "...bodies and the organisation of Technical Assessment Bodies referred to in Article 25(1) may...". FR/AT/UK/SE: Scrutiny reservation. MT: Revert to original wording of para.3. PT: Mandate should always include minimum performance levels, thus start this paragraph by "As laid down in the respective mandates, the European standardisation bodies..." Cion: Against.

- ²¹⁸ DE: Against wording "intended end use"; see also footnotes to definition Art. 2 (17a).

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.²¹⁹

4. Member States may determine the levels, or classes of performance, **to be respected by construction products**²²⁰ in relation to the essential characteristics of construction products only in accordance with the classification systems established by the European standardisation bodies in harmonised standards, or by the Commission.^{221 222}

²¹⁹ See footnotes to para. 2. PL: Replace "on the basis of a revised mandate" by "after informing the Commission and Member States about this".

²²⁰ RO: Use wording: "Member States may establish the levels of performance or, where classes of performance in relation to the essential characteristics of construction products are not established by the Commission or in harmonised standards, the classes of..." Cion: Sceptical. PL: Use "apply the levels" instead of "determine the levels". DE: Mention "upper and lower limits" that Member States are allowed to set. Prsdy: Suggests finding a broader wording clarifying that there are various ways on how to fix classes, values and levels.

²²¹ FI: Shorten the text to read: "established by the Commission." NL: Role of European standardisation bodies is too strong here. AT: Use wording: "...harmonised standards or by the organisation of Technical Assessment Bodies referred to in Article 25(1) in European Assessment Documents, or by the Commission." PT: Add a provision on determining levels or classes also for EADs. Cion: Open to this suggestion. ES: Regulation should clarify the status of current "Guidance Papers" .

²²² DE: Add a new second sub-para. of (4) and a new (4a): "The range of the classification system, classes or levels according No. (1) and (2) shall be compatible with the applicable requirements. (4a): The establishment of levels and classes concerning health, safety, environmental protection and consumer protection, will take into account to allow Member States to regulate a high level of protection."

Article 19 [18]

Assessment and verification of constancy of performance²²³

1. Assessment and verification of constancy of the declared performance of construction products²²⁴ in relation to their essential characteristics shall be carried out in accordance with one of the systems set out in Annex V.²²⁵
2. The Commission shall establish which system **or systems are**²²⁶ is applicable to a given construction product or family of construction products **or a given essential characteristic** according to the following criteria:²²⁷
 - (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;

²²³ BE: In the whole article the obligations of manufacturers are insufficiently described. UK: Reservation, as it is doubtful whether assessment and verification provisions really lead to simplification.

²²⁴ Cion explained that the system to assess and verify the constancy of a declared performance of a construction product is needed in order to mirror the relevant provision of the horizontal Regulation. For construction products however, "assessment of constancy of performance" and not just "assessment of conformity" is the correct concept, thus the provision has to be more detailed. AT: Unclear, whether this means that for each characteristic of a product a separate system according to Annex V will be established along the criteria of Art. 19.2 .

²²⁵ BE: Annex V should specify the validity/duration of certificates issued. SK: Use wording "with the systems set out..." Cion: Not necessary. SE : Clarification needed whether Art. 19 and the use of notified bodies as referred to in Art. 19 (1), is intended to be applied only for conformity assessment based on harmonized standards or also for the European Technical Assessment procedure.

²²⁶ Following a question by BE, the Cion explained that these systems also apply in cases where the manufacturers has voluntarily chosen to declare some types of performance (Art. 4 (1)(b), because as soon as a DoP has been issued, one of the systems applies. DE: Start paragraph as follows: " By a decision amending Annex Ia (new) according to article 50 the Commission shall establish..."

²²⁷ MT: Align provisions further to horizontal Regulation, although it is understood that modules and systems are not the same thing. Clarify link to eco-design directive. Cion: Link is automatic, either Member States legislation or European legislation can always set out essential requirements that certain products have to fulfil.

- (c) the effect of the variability of the essential characteristics of construction product during the service life²²⁸ of the product;
- (d) the susceptibility to defects in the product manufacture.²²⁹

In each case, the Commission shall choose the least onerous system **or systems** consistent with **the fulfillment of all basic works requirements** safety.^{230 231}

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it,²³² shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).²³³

3. The system thus determined shall be indicated in the mandates for harmonised standards and in the harmonised technical specifications.²³⁴

²²⁸ SE: Definition of service life needed, maybe in Art. 2.

²²⁹ FI: Add the following wording: "The Commission may establish the applicable system based on horizontal criteria to achieve reliable CE-marking information." Cion: Generic wording is ok, but details should be left to Comitology.

²³⁰ Acceptance of the principle of IMCO 66, but with a modified wording.

²³¹ SE: Insert a new subparagraph: "In cases where a construction product is subject to several essential characteristics, the Commission may decide on different assessment systems that may apply for the characteristics concerned. In these cases a manufacturer may use the most onerous assessment system applied for all essential characteristics. The Commission may also decide that one certain assessment system should be used for a specific essential characteristic for all construction products."

²³² LT: Delete parts between commas "designed...it" throughout the Regulation as redundant.

²³³ NL: Reservation on normal comitology provision here, Standing Committee should be involved.

²³⁴ DE: Replace "technical specifications" by "standards". Rejection of IMCO 67 by delegations; DE could accept it without the word "generic".

Article 20 [19]
*European Assessment Document*²³⁵

1. ²³⁶The European Assessment Document (EAD) shall be adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1)²³⁷ following a request for a European Technical Assessment by a manufacturer or an importer²³⁸, in accordance with the procedure set out in Annex II.²³⁹

2. The organisation of Technical Assessment Bodies referred to in Article 25(1) shall establish in the EAD the methods and the criteria for assessing the performance²⁴⁰ 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.^{241 242}

²³⁵ CZ: It will be very difficult in practice to create EADs of a quality similar to a harmonised standard via the currently proposed provisions of Art. 20 - 25.

²³⁶ Most delegation can accept IMCO 68, if IMCO 70 is not taken on board, that is "not or not fully covered by a harmonised standard" should only appear once.

²³⁷ ES: Clarify that we normally refer to an already existing organisation here. CZ: Either the organisation of TABs should work "on the basis of a mandate by the Commission", or else the organisation of TABs should get an exact parallel provision for EADs to that suggested for European standardisation bodies for harmonised standards in Art.18. BE/AT: Clarify here or in Art. 21 that an EAD - if a harmonised standard already exists - can only be complementary. ES/NL: Restrict EADs to cases, where a harmonised standard does not exist. Cion: There are cases where harmonised standards and EADs might co-exist.

²³⁸ PL suggests: "...for a ETA for a product not covered by a harmonised standard submitted by a manufacturer or an importer in accordance with the procedure set out by the Commission. Those measures...(standard comitology wording)" See also adaptations to recital 17.

ES/PT/DE: To follow any request by any manufacturer is too burdensome for the organisation of TABs. Delete this. Cion: Not every request will require a complete new EAD. The organisation of TABs can take adequate internal measures. PT/BG: Delete "or importer" here and in Art. 21 (1). BG: Deletion of importer also requires changes in Annex II. Cion: Against deletion, importer is responsible in case of third-country manufacturers.

²³⁹ IT/CZ/DE: Time-frame for the procedure of Annex II is too rigid. More flexibility needed. AT: Procedure of Annex II is too burdensome and too detailed regarding innovative or small series production. A general wording on TABs and how to grant EADs would be sufficient. Cion: Open to improvements of Annex II. AT: Add: "...manufacturer and which are consistent with applicable methods and criteria provided in harmonised standards." Different methods should be avoided, if those are already covered by a harmonised standard. LT: Insert a requirement for TABs to use available standardised European test methods in the EAD. PL: Replace Annex II by a general provision that details can be fixed through comitology.

²⁴⁰ PL: Add "and when applicable, minimum levels of this performance in relation...". Consequently, delete (2a).

²⁴¹ DE: Re-phrase as follows: "...to those essential characteristics of the construction product, which are covered by the EAD related to the placing on the market and the use of the product in construction works."

- 2a. When appropriate, the organisation of Technical Assessment Bodies referred to in Article 25 (1) shall establish in the EAD minimum performance levels²⁴³ in relation to essential characteristics of the construction product within its intended end use as foreseen by the manufacturer.**
3. The organisation of technical assessment bodies referred to in Article 25(1) shall determine in the EAD the specific factory production control to be applied, taking into account the particular conditions of the manufacturing process of the construction product concerned.^{244 245}

Article 20a

Formal objections against EADs

- 1. When a Member State or the Commission considers that 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(1), 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.**
- 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.**

²⁴² SE: Clarify that the organisation of TABs does not always need new tests etc., but can rely on standard methods, also contained in harmonised standards; add 20 (3a): "Common European test methods should be used if they are available and suitable for the construction product."
²⁴³ UK: Opposes this role of TABs. Reservation. BG: Role of TABs to set minimum performance levels is not consistent with definition of "requirements" (Art.2) and the role of standardisation bodies set out in Art. 18.
²⁴⁴ ES: Clarify the link between EAD and the system of assessment and verification of constancy of performance and make clear who will set up or decide the application system.
²⁴⁵ DE: Delete the whole para. 3 as covered by para.2 and Annex II in substance. NL: Delete the word "specific". IT: Add the following sentence: "Consolidated European test and classification methods, if already defined, are considered in EAD".

1. The European Technical Assessment (ETA) shall be issued by a Technical Assessment Body, for ~~any~~ construction **products not covered or not fully covered by a harmonised standard**,²⁴⁶ at the request of a manufacturer or importer²⁴⁷ **on the basis of a EAD** in accordance with the procedure set out in Annex II.²⁴⁸

²⁴⁶ PL suggests: for innovative construction products that are not covered by harmonised standard, or when the existing harmonised standard may not be applied, at the request of a manufacturer or..." Cion: Concept "innovative" is difficult to define and apply. IT: Use wording: "...any construction product if the manufacturer shows the product's deviation from the concerning harmonized standard or the impossibility to use a harmonized standard to evaluate the performances related to essential characteristics of the product, at the request...". The AT delegation took the view, that if some requirements are not covered by a harmonised standard it would also be possible to have a "complementary national procedure" instead of an "ETA". Other delegations were sceptical as this should not lead to a CE marking but would already enter the area of voluntary markings and mutual recognition. AT/IT: Clarify exactly what a ETA can replace, maybe in a recital. Cion: Annex II is clear enough, against additional recital. Most delegations: IMCO 70 would not be necessary, if IMCO 68 for Art. 20 is accepted (see footnote there).

²⁴⁷ BE: Add "distributor". Cion: Unnecessary, if distributors take over manufacturer's role, provision will apply automatically. Keep "at the request" in any case. LT: Delete "at the request...importer" to avoid any overlaps with existing harmonised standards and too burdensome procedures.

²⁴⁸ ES: Add wording on the appropriateness of the product for different uses. DE: Wording should permit that the ETA contains instructions for intended use. Cion: Sceptical, ETA concentrates on essential characteristics and does not include a whole evaluation of the product. DE: Clarify whether an ETA can be issued, if an EAD has not yet been elaborated, in order to avoid that manufacturers have to wait too long. Cion: Difficult to impose time-frames, harmonised standards and EADs need some time to be set up. AT: Procedure of Annex II is too detailed and rigid, definition of rights and obligations would be a better solution. NL: Modify the wording "...shall be issued in case there is no harmonised standard applicable or the concerned harmonised standard is not fully applicable by..." BE suggests completely new para. 1 as follows: European Technical Assessment may be granted to:
(a) products for which there is neither a harmonized standard, nor a recognized national standard, nor a mandate for a harmonized standard, and for which the Commission, after consulting under procedure of article 4 of Decision 1999/468/EC the Committee referred to in Article 51, considers that a standard could not, or not yet, be elaborated; and
(b) products which differ significantly from harmonized or recognized national standards. Even in the case where a mandate for a harmonized standard has been issued, the provisions referred to in (a) do not exclude the granting of European technical Assessment for products for which European Assessment Document for such approval exist. This shall apply until the entry into force of the harmonized standard in the Member States.

2. The Commission shall establish the format of the ETA.²⁴⁹

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).²⁵⁰

²⁴⁹ BE: It should be clear that "format" includes duration/validity. Cion: No need to change the text here. IE: Should read: "The Commission in consultation with the Organisation of TABs shall establish..."

²⁵⁰ DK: In order to avoid a lower quality in case of ETAs than in case of harmonised standards, the para. 2 should be split and reorganised as follows: "(2). The Commission shall establish the format of the ETA. (3). The Commission can decide, as a measure, designed to amend non-essential elements of this Regulation, that future ETAs only can be issued if the respective product is not covered by a harmonised standard. 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). If an ETA is issued for a product already covered by a harmonised standard, the level of security and safety of the harmonised standard shall apply for the ETA."

CHAPTER V

TECHNICAL ASSESSMENT BODIES

Article 22 [21]

Designation of Technical Assessment Bodies²⁵¹

1. Member States may designate Technical Assessment Bodies (TAB)²⁵² for product areas listed in Table 1 of Annex IV.²⁵³

Member States which have designated a TAB shall communicate to the other Member States and the Commission²⁵⁴ the name, the address of that TAB and the product areas for which that TAB is designated.

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

The Commission shall make publicly available any updates to that list.²⁵⁵

²⁵¹ FI: Wording of Articles 22-25 is too far-reaching, provisions from the horizontal Regulation are sufficient. MT: Articles 22-25 provide for special procedures for designation and evaluation of TABs. It would be preferable instead to maintain the same requirements as for notified bodies in general and not to create new procedures. SE: Ok. with the principle of this Chapter, but the EAD/ETA procedure should be changed as follows: -- appropriate parts of the well established system for assessment of notified bodies should be used to evaluate the technical assessment bodies, (TABs) in order to secure their competence, through the use of accreditation and European standards --- the standing committee of construction shall be informed about requests for EADs and about the evaluation of the bodies applying EADs; -- using established European methods in EAD/ETA should be mandatory if such methods exist.

²⁵² ES: Add "within their territory." Cion: Unnecessary. IT: Clarify whether TABs can be public or semi-public bodies. Give more flexibility to Member States concerning the designation method. Cion: TABs can be public, however general competition rules apply to them.

²⁵³ AT/IT: Too restrictive, either delete "for product areas listed in Table 1 of Annex IV" or add "or for other construction products" here or in Annex IV. IT: Designation method does not necessarily have to refer to "product areas". UK: Annex IV is too restrictive, use product families and sub-families. Cion: The concept of TABs organised along product area lines is not new. SI: Use wording "one or more product areas", as the same TAB can cover several areas. PT: Use wording "for all or some of the product areas..." PL: Use wording: "Member States may designate TABs and determinate a scope of construction products covered by their assessment."

²⁵⁴ IT: Mention the existing system. Cion: Current wording is better to cover all eventualities.

²⁵⁵ PT: Refer to Official Journal here. Cion: Against, not required by horizontal regulation.

Article 23 [22]

Requirements for TABs

1. The TAB shall satisfy the requirements set out in Table 2 of Annex IV.²⁵⁶
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 **and inform the Commission and the other Member States of this withdrawal.**²⁵⁷
3. Member States shall inform the Commission and the other Member States of their national procedures for the assessment of TABs²⁵⁸, of the monitoring of their activity, and of any changes to that information.²⁵⁹ The Commission shall make that information publicly available.²⁶⁰

²⁵⁶ SE: Clarify that a TAB can be a notified body, e.g. by a new 23 (1a): "After notification referred to in Chapter VII, a TAB can also act as a Performance Assessment Body (notified body)." Cion: Difficult to put this explicitly to a legal text. IT: Add a provision similar to that for notified bodies (Art. 33 (8)): "The remuneration of its personnel shall not depend on the number of assessments carried out or on the results of such assessments." PL suggests as an alternative wording: "The TAB shall satisfy the requirements within the scope of its essential competence covering the products assessment and a way for provision of the consistency of their characteristics during the current production process, impartiality and the management set out by the Commission in accordance with art. 51 (2)."

²⁵⁷ Addition following a RO suggestion, supported by the Cion. SI: Make clear that the withdrawal can be linked to only certain product areas (no total withdrawal). BE: Clarify what happens to ETAs that are in the process of being issued - in case of such a withdrawal.

²⁵⁸ AT/NL: The doubled procedures "assessment by Member States" in Art. 23 and "peer evaluation" in Art. 24 seem very burdensome. Clarify that Art. 24 is a permanent updating of the initial assessment of Art. 23 or else merge the procedures or delimit them more exactly and describe responsibilities of TABs, national authorities and the Commission. Cion: Open to give more explanations in Article 23.

²⁵⁹ RO: Clarify whether a consultation procedure is provided here.

²⁶⁰ IT: Shift Art. 23 (3) to Art. 22 where it fits better.

Article 24 [23]
Evaluation of TABs^{261 262}

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) and²⁶³ 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.

²⁶¹ NL/LT: General reservation on the usefulness of this peer evaluation article. ES: Delete the article or replace by arbitration procedure. LT: Requirements for peer evaluation can lead to competition problems or high costs for individual TABs.

²⁶² PL: Replace the whole article by the following wording closer to the horizontal Regulation: 1. TABs are subject to the peer evaluation to be organized by the organization referred to in art. 25(1); 2. The parties concerned have the right to participate in the system created for the surveillance over the peer evaluation, but not in the individual procedures of the peer evaluation; 3. Member States guarantee the systematical submission to the peer evaluation by their TAB, in accordance with the requirements referred to in para 1; 4. The peer evaluation is to be performed on the basis of fair and transparent criteria and evaluation procedures, particularly in relation to the requirements concerning the structure, human resources and procedures, confidentiality, and complaints; 5. The peer evaluation confirms whether the TABs comply with the requirements referred to in art. 23; 6. The results of the peer evaluation are to be published and communicate to all the MS and the Commission by the organization referred to in 25 (1); 7. The Commission cooperating with the MS performs the supervision over the rules and appropriate functioning of the peer evaluation.

²⁶³ RO: Reword to: "...in Article 25 (1). In this respect, for every TAB to be evaluated, the organisation should designate an evaluation group consisting of representatives of at least three TABs appointed by the organisation. The evaluation shall take place..." or find a similar method for the designation of evaluators. Cion: Procedures can be installed to avoid competition problems or conflicts of interest. IT/BG: Against evaluation by other TABs. BG/SK: Evaluation of TABs should rather be done as for notified bodies, not as for national accreditation bodies (horizontal regulation).

2. The Commission shall establish procedures for carrying out the evaluation, including appropriate appeals procedures against decisions²⁶⁴ 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".
2. The organisation of TABs shall carry out the following tasks:
 - (a) co-ordinate the application of the rules and procedures set out in Article 19 and Annex II,²⁶⁵ as well as provide the support needed to that end;
 - (b) inform the Commission twice a year²⁶⁶ of any question related to the preparation of EADs and of any aspects related to the interpretation of the rules and procedures set out in Article 19 and Annex II,²⁶⁷

²⁶⁴ UK: Clarify which decisions are taken by whom in case that a TAB fails a peer evaluation. It should be for Member States to decide whether to grant or withdraw notification. Cion: Wording could indeed be improved.

²⁶⁵ PL: Replace these procedures by "procedures set out in Articles 20, 21 and 24, as well...".

²⁶⁶ PL: Delete "twice a year".

²⁶⁷ PL: Replace these procedures by "procedures set out in Articles 20, 21 and 24."

- (c) adopt EADs;
 - (d) organise the evaluation of the TABs;²⁶⁸
 - (e) ensure the co-ordination of the TABs.
3. The Commission may provide assistance to the organisation of TABs in carrying out the tasks referred to in point (e) of paragraph 2.²⁶⁹ The Commission may conclude a framework partnership agreement with the organisation of TABs to that end.²⁷⁰
4. Member States shall ensure that the TABs contribute with financial and human resources to the organisation of TABs.²⁷¹

²⁶⁸ PL: Use wording "peer evaluation".

²⁶⁹ PL: Delete "point (e) of".

²⁷⁰ BG: Mention eligibility for Community financing (Art. 32 of Reg. 765/2008).

²⁷¹ DE: Add in the end: "...but shall not subsidize bodies designated according to Article 22 when acting as TABs." CY: Provision could be misunderstood as limiting the establishment of public TABs which should not be the case. SK: Delete this paragraph.

CHAPTER VI

SIMPLIFIED PROCEDURES²⁷²

Article 26 [25]

Use of Specific Technical Documentation

1. When the manufacturer²⁷³ determines the product-type he may replace type-testing or type-calculation by a Specific Technical Documentation (STD) demonstrating that:²⁷⁴
 - (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 decision²⁷⁵; **or**

²⁷² HU/AT: Scrutiny reservation on scope and details of simplified procedures. CY: It should be clarified that Art. 26-28 only deal with the assessment of declared performance and that the STD cannot demonstrate compliance with all applicable requirements. LT: Clarify role of notified bodies in the whole procedure and whether the STD will lead to issuing another certificate. STD procedure should only be possible for micro-enterprises and individually manufactures products, in this regard Art. 26 could be merged with Art. 27 and 28. Detailed requirements on the form of STDs should be set out in an Annex.

²⁷³ AT: Wording is not consistent with Annex V, replace "manufacturer" by "notified body" or at least add "or the notified body". Suggests as an alternative: "For the determination of the performances of the product type testing or type calculation may be replaced by..." SK/BE: Use wording "manufacturer or importer". Cion: If an importer takes over the manufacturer's role, the rights and obligations automatically fall on him.

²⁷⁴ PL/RO: Make clear that reference to harmonised technical specification is always necessary. Cion: Wording is sufficient. RO/DE: Simplified procedures should only be possible if they do not compromise on safety and similar requirements. Cion: Open to add some more words in this respect. SE: Simplified procedures should not be possible without factory production control. Cion: Against.

²⁷⁵ UK: Add: "Commission decision, which should also be set out in the technical specification, or". ES: Add "The Committee established by Article 51 of this Regulation must be consulted."

- (b) the construction product 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 technical specification²⁷⁶. 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.²⁷⁷

or

- (c) the construction product he places on the market is a system made of components, which he assembles duly following precise instructions given by the provider of such a system or of a component thereof, who has already tested that system or that component for one or several of its essential characteristics in accordance with the relevant harmonised technical specification.²⁷⁸ 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.²⁷⁹

The manufacturer may use the test results obtained by another manufacturer **or system provider** only after having obtained an authorisation of that manufacturer, who remains responsible for the accuracy, reliability and stability of those test results.

²⁷⁶ First part of IMCO 74 (editorial) is accepted, second part acceptable with a different wording to UK/SE/RO/DE/IT; not acceptable to FI/FR. UK: Add: "specification and the criteria for sharing set out therein."

²⁷⁷ PL: Addition is unnecessary; paragraph after (c) applies anyway. BG: Sceptical to addition, could blur manufacturer's responsibilities.

²⁷⁸ DK: Insert at this place: "In cases where it has been proved that the use of STD will lead to misleading documentation of one or several characteristics, a restriction from using STD for these characteristics should be stated in the harmonised technical specification." Principle of IMCO 75 acceptable to UK/SE/RO/DE, not acceptable to FI/FR. IT: Scrutiny reservation.

²⁷⁹ UK: No need to change the text of (c), but Cion should review Guidance Paper C "kits and systems".

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 performance²⁸⁰ is system 1 or 2,²⁸¹ as set out in Annex V, the STD shall be verified by a relevant certification body²⁸² as referred to in Annex V.²⁸³

²⁸⁰ CY: The verification of constancy of performance should be indicated on the Certificate issued by the relevant certification body (also applies to Art. 27 (2) and 28 (2)).

²⁸¹ PT/CY: "system 1, 2 or 3". AT/DE: "system 1, 2 or 4." LT: STD should not be permitted at all in cases of systems 1 or 2. Cion: To be checked whether this paragraph can be restructured similar to the beginning of Art. 27 (1): FR/UK/DK/PT: Against; IT. Scrutiny reservation.

²⁸² AT: Replace "relevant certification body" by "notified certification body". Cion: Too obvious, redundant. AT: Add: "and for system 4 by a notified testing laboratory, as...".

²⁸³ RO: Add new paragraphs 2a to Articles 26, 27 and 28: "Where the fulfilment of the basic works requirement "mechanical resistance and stability" is influenced by major perturbing geological conditions such as earthquakes, Member States may decide that for specified families of construction products for which the applicable system for assessment and verification of constancy of performance is 1 or 2, as set out in Annex V the use of a simplified procedure is not allowed." Cion: Will check whether this is necessary. SE: Add a new para 2a: "The manufacturer using STD is responsible that the performance of his product complies with test results obtained from another manufacturer." Cion: Sceptical, general responsibility of manufacturer has nothing to do with simplified procedure here.

1. **Determination of the product-type on the basis of type-testing for the applicable systems 4 and 5 as set out in Annex V may be replaced by** micro-enterprises ~~may~~ replace the applicable system for assessment of the declared performance of **manufacturing a** construction product by a STD.²⁸⁴ The STD shall demonstrate the compliance of the construction product with the applicable requirements.²⁸⁵

²⁸⁴ (IMCO 79 incorporated). CY: Art. 27 has good intentions, but might lead to imbalances with regard to competition. PT/PL: Delete articles 27 and 28. ES/BE/SE/NL/HU/SK/LT: Delete Article 27. IT: Art.27 and 28 procedures should not be possible with regard to safety requirements. In general, specific procedures should not depend on the size of enterprises or number of products and can be better provided for through details in harmonised standards or ETAs. BE: Scrutiny reservation, it has to be clarified that any simplified procedure is still robust with regard to safety requirements etc., more information needed on what a STD will in the end contain. Cion: The simplified procedure is only to assess declared performance and does not soften other manufacturer's obligations. AT: Should read: "...the applicable system according to Annex V by a STD. The STD shall demonstrate the constancy of performance of the construction product (rest deleted)" Cion: Could be misleading and wrongly interpreted. AT: Unclear from the wording what the simplified procedure would imply regarding the requirement of a DoP, the affixing of the CE marking and the factory production control within system 1 or 2. DK: Clarify which parts can be replaced by a STD; use a more explicit wording. PT: Use wording "type testing", "type calculation" etc. Cion: Wording is clear enough. BG: Restrict this possibility to cases where the old system 2 of the CPD is applied. FI: Art. 26-28 can stay as they are. IE: Use of STD (Art. 27 and 28) should include very small series of production and should apply to all SMEs, including micro-enterprises. CEN Technical Committees could elaborate with industry to initiate a revision of the corresponding standard.

²⁸⁵ BE/ES: It becomes difficult for importers to check this and thus to fulfil their obligations. AT: Add: "The STD should include the results of the verification and the involved notified body."

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.~~²⁸⁶

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²⁸⁶ AT: Suggests: "...verified by a notified certification body as referred to in Annex V and in the case of system 4 by a notified testing laboratory." Add new (2a): "The result of the verification and the involved notified body shall be indicated in the STD".

²⁸⁷ DE suggests a complete re-draft in order to enlarge to SMEs as follows: Article 27 *Use of Specific Technical Documentation by Small and Medium-Sized Enterprises* ~~micro-enterprises~~ 1. Small and Medium-Sized Enterprises ~~Micro-enterprises~~ may replace the applicable harmonised technical specification relevant ~~system~~ for the assessment and declaration of performance of the essential characteristics of the declared performance of construction product by a STD. A STD may be used as well where harmonised technical specifications are not yet available but the product family is covered by a Commission Decision on the assessment and verification of constancy of performance. The STD shall demonstrate the compliance of the construction product with the applicable requirements for placing on the market and the intended use of the product provided for by the manufacturer where the manufacturer intends to place the construction product on the market. 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, or -- system 3 is required by a Commission Decision on the assessment and verification of constancy of performance for safety reasons, the STD shall be verified by a relevant TAB certification body as referred to in Article 22. The provisions of Annex II shall not apply." ~~Annex V~~. In general, Article 27 would be useful, if harmonised standards do not fit well or other forms of performance assessment are considered as too expensive. Art. 27 and 28 would by definition not apply in cases where safety requirements are concerned, thus it would not entail risks. DK/MT/UK: Article 27 should not only apply to SMEs or micro-enterprises, but enlarged to all enterprises. RO/SE/FR: Keep target group "micro-enterprises".

²⁸⁸ PT/PL/ES/BE/DE/DK/SE/NL/HU/SK/UK partial or specific reservations.

²⁸⁹ IMCO 81 ("equivalent level of health and safety") is supported in principle, but not in exact wording by SE/DE/ES/AT/FR. PT/SE/RO: The substance of this amendment could also be dealt with via the definition in Art. 2. NL/FI/MT/UK/Cion: Sceptical to IMCO 81.

Use of Specific Technical Documentation for individually manufactured products

1. **The performance assessment part²⁹⁰ of the applicable system, as set out in Annex V, may be replaced by the manufacturer f**For a construction product designed and manufactured in a non-industrialised production process²⁹¹ in response to a specific order, and installed in a single identified work, ~~the manufacturer may replace²⁹² the applicable system for assessment of performance~~ by a 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 2²⁹³, as set out in Annex V, the STD shall be verified by a relevant certification body as referred to in Annex V.²⁹⁴

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²⁹⁰ DK/AT: Clarify which parts can be replaced by a STD; use a more explicit wording. PT: Use wording "type testing", "type calculation" etc. Cion: Wording is clear enough.

²⁹¹ SE/ES/NL: Replace "designed and manufactured in a non-industrialised production process" by "individually manufactured" and define "individually manufactured product" in Art.2. AT: Define better to which products Art. 28 can apply. Cion: Better find a useful wording here, suggestions for a definition in Art. 2 always seemed controversial. SE/CY: As an alternative, just delete "non-industrialised". BE: Clarify whether the STD would be "individual" as well in these cases. AT/LT/ES/DK: Define "individually manufactured product" and "non-industrialised production process". PT: Refer to "individual order" and "specific project". UK: Delete Art. 28. FR: Use Art. 28 also for products constructed at the building site and for small series production. Cion: Sceptical to FR suggestion.

²⁹² AT: Clarify what "replacing" means, e.g. no DoP, no type testing etc. Use wording: "the applicable system according to Annex V by a STD demonstrating the ordered performance of that product."

²⁹³ Cion/DK/PT: This provision could probably be restructured according to the new wording of Art. 27 (1).

²⁹⁴ CY/DK: Give also attention to system 3. AT: Suggests: "...verified by a notified certification body as referred to in Annex V and in the case of system 4 by a notified testing laboratory." Add new (2a): "The result of the verification and the involved notified body shall be indicated in the STD." RO: Article 28 should be excluded for structural construction products.

²⁹⁵ DE suggests complete re-drafting as follows: 1. For a construction product designed and manufactured ~~in a non-industrialised production process~~ in response to a specific order, and installed in a single identified construction work, the manufacturer may replace the applicable harmonized technical specification relevant system for the assessment of the performance and for declaring essential characteristics by a STD. The STD shall demonstrate ~~demonstrating~~ compliance of the that ~~that~~ construction product with the applicable requirements relevant for the

CHAPTER VII

NOTIFYING AUTHORITIES AND NOTIFIED BODIES²⁹⁶

Article 29 [28]

Notification

Member States shall notify the Commission and the other Member States of bodies²⁹⁷ authorised to carry out third-party tasks in the process of assessment and verification²⁹⁸ of constancy of performance under this Regulation.²⁹⁹

identified construction work. 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, or -- the Commission Decision on the assessment and verification of constancy of performance requires for safety reasons system 3, the STD shall be verified by a relevant Technical Assessment Body ~~certification body~~ as referred to in Article 22. The provisions of Annex II shall not apply. Cion: Sceptical to this suggestion. DE: Change wording, as system 4 cannot apply here.

²⁹⁶ UK: The reference provision from horizontal Regulation on "Accredited in-house bodies" should also be included here. FI/MT: In Chapter VII, insert a general reference to the horizontal Regulation and include here only those provisions where specific rules for construction products should apply. AT: Apply consistent terminology throughout, preferable always "notified body" where possible and not "performance assessment body", "certification body", "inspection body", etc, etc. Cion: There is a logical structure implied; at a certain stage a performance assessment body becomes a notified body.

²⁹⁷ SE: Use wording here "performance assessment bodies".

²⁹⁸ PT: "and verification" is not necessary to mention. Cion: Wording should stay as it is.

²⁹⁹ SE: Add "These bodies are thereafter called "notified bodies". In following articles "performance assessment bodies" should be replaced by "notified bodies". DE: Define "performance assessment body". The rest of Article 30 should stay as close as possible to the horizontal framework.

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 assessment³⁰⁰ and notification³⁰¹ 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, including³⁰² compliance with the provisions of Article 33.
2. Where notification is based on an accreditation certificate, Member States may decide that the assessment³⁰³ 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,³⁰⁴ notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, ~~that the delegated,~~³⁰⁵ ~~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 liabilities³⁰⁶ arising from its activities.
4. The notifying authority shall take full responsibility³⁰⁷ for the tasks performed by ~~the delegated~~³⁰⁸ ~~or otherwise entrusted~~ body referred to in paragraph 3.

³⁰⁰ IT: Use wording "for the assessment based on criteria of Art. 33, and notification..."

³⁰¹ DE/NL: Simplify into: "responsible for [...] notification of the bodies..." ES: Clarify that notification has to be carried out within the territory of the relevant Member State.

³⁰² IT: Replace "including" by "finalised to ascertain the maintenance of..."

³⁰³ DE: Make it obligatory to avoid parallel procedures: "Notification shall be based on an accreditation certificate. Member States will decide that the assessment and..." PL: Use wording: "The notification should be carried out on the basis of the accreditation certificate of a national accreditation body in the understanding and according to the regulation (EC) Nr.... Member States may decide that the assessment and monitoring referred to in para 1 is carried out by that body." Cion: Sceptical to obligatory accreditation.

³⁰⁴ DE: Delete "assessment".

³⁰⁵ RO: Add "subcontracted or..."

³⁰⁶ AT: Details on how liability could be covered should be set out in an Annex. Cion: Against.

³⁰⁷ PT: This responsibility should only come into effect for non-public bodies. Cion: Against.

³⁰⁸ RO: Add "subcontracted or..."

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.³⁰⁹
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.³¹⁰

³⁰⁹ LT: Add "The notifying authority shall approve and publish rules for notification."

³¹⁰ PT: Add a provision stating that "the procedure and rules with regard to the functioning of notifying authorities should be made public."

Article 32 [31]

Information obligation for the notifying authorities

Member States shall inform the Commission and the other Member States³¹¹ 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 bodies³¹², 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~~ body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance³¹³ shall meet the requirements set out in paragraphs 2 to 11.
2. The ~~performance assessment~~ body concerned shall be established under national law and have legal personality.

³¹¹ UK/ES: Unclear which new information requirement, if any, is implied here. Delete "and the other Member States". RO: Information to other Member States goes beyond horizontal Decision. To be clarified whether a consultation procedure is implied. Cion: No, just information. The provision is however necessary, because this information is not covered by NANDO. LT: Information on NANDO is sufficient; this provision should not be interpreted as going beyond.

³¹² PT: Simplify to "assessment, notification and monitoring of notified bodies". Cion: Against, some information goes prior to the notification, other parts of information later.

³¹³ UK: See comment on definitions Art. 2. "performance assessment body"/"notified body". DE: Replace "performance assessment body" by "body according to Annex II, para. 2."

3. The ~~performance assessment~~ body concerned shall be a third-party body independent from the organisation or the construction product it assesses.³¹⁴

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.³¹⁵

4. The ~~performance assessment~~ body concerned³¹⁶, 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 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 or 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.

³¹⁴ PL suggests wording: "...third-party body impartial in relation to all the circles, groups and persons who are directly and indirectly linked with construction products".

³¹⁵ DE: Delete second sub-para. of (3), as the substance is already covered by para. 2 and by the first sub-paragraph. Cion: Though legally not indispensable it might be useful for clarification.

³¹⁶ SE: "performance assessment body" should be replaced by "notified body".

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 insurance³¹⁷ 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.

³¹⁷ AT/NL/LT: Define criteria for liability insurance for notified bodies in a separate Annex.
Cion: Would be deviation from horizontal framework. CY: Add provision stating that liability should take into account the risks related to the notification.

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.

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Article 34

*Presumption of conformity*³¹⁹

When 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 performance³²⁰ ~~can~~ demonstrates its conformity with the criteria laid down in the relevant harmonised standards³²¹ or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall be presumed³²² to comply with the requirements set out in Article 33 insofar as the applicable harmonised standards³²³ cover these requirements.

³¹⁸ PT/IT: Add a provision concerning a list of declarations of performance issued by notified bodies. CY: At least web-site availability of such a list should be required.

³¹⁹ SI: Clarify scope and purpose of this article. PT/AT/IT/UK: Add more wording clarifying that the standards mentioned here relate to the harmonised standards for notified bodies. Cion: Indeed, the standards meant here are one way for the bodies to show compliance with some (but not necessarily all) requirements of Article 33. The wording can be adapted, if necessary. DE/PL/LT: Even after clarification by the Cion, delete Article 34 as being in contradiction to Article 30.

³²⁰ SE: "performance assessment body" should be replaced by "notified body". AT: It should be clarified whether harmonised standards for conformity assessment bodies are also completely applicable for performance assessment bodies.

³²¹ CZ: Reword to "performance assessment body demonstrates its ability to cover the requirements of the third party according to the relevant harmonised standards..." UK: Use wording "laid down in the relevant standards for performance assessment bodies...the references..."

³²² AT: Prefers active grammar: "the notifying authorities shall presume that the performance assessment body complies..." Cion: Usual wording is passive. CY: Final decision for the notification of a body lies with the notifying authority of the Member State.

³²³ ES/CY: Add "standards of the series EN 17000 and EN 45000..."

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.³²⁴
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.³²⁵
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 subcontractor²s or the subsidiary²s qualifications and the work carried out by them ~~the subcontractor or the subsidiary~~ under Annex V.

³²⁴ IT: Modify as follows: "...meets the requirements set out in Article 33. The notifying authority, on the basis of the criteria of Art. 33, verifies the suitability of the subcontractor and authorizes the sub-contract." NL/SK: Specify the tasks of the subcontractor in greater detail. It should not be possible to subcontract all tasks. Clarify which requirements of Article 33 will also fall on subcontractors. Cion prefers to stick to wording of the horizontal framework concerning subcontracting possibilities.

³²⁵ ES: Delete (3); reference to client does not fit here. Cion: Against deletion.

Article 36 [34]

Witness tests³²⁶

1. Where justified by technical, economical or logistic reasons, notified bodies³²⁷ may decide to carry out the tests referred to in Annex V, or have such tests carried out under their supervision, either in the manufacturing plants using the test equipments of the internal laboratory of the manufacturer³²⁸ or, with the prior consent of the manufacturer, in a private or public laboratory, using the test equipments of that laboratory.
2. Before carrying out those tests, the notified body shall check whether the test equipment has an appropriate calibration system and whether that system is operational.³²⁹

Article 37 [35]

Application for notification³³⁰

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 application³³¹ for notification to the notifying authority of the Member State in which it is established.

³²⁶ DK: Article should be called "Use of facilities outside the testing laboratory".

³²⁷ DK: Replace "notified bodies" by "notified testing laboratories".

³²⁸ ES: Add "of the manufacturer of the products in question" or a similar wording such as "In the manufacturing plants, only the owner of the plant will be able to carry out the test on the products and not by any other manufacturer. Under no circumstances, the laboratory of the manufacturer shall be granted the status of notified body, although it may perform these activities."

³²⁹ UK: Add the following: "Notified bodies carrying out such tests should be specifically assessed for competence to work away from their own accredited test facilities". PL: Use wording: "...whether the test equipment is under a metrology supervision and whether this supervision ensures the measurement coherence." PT: Use wording "...is fit for intended use and operational." MT: Replace (2) by the following two paragraphs: 2. Article 35 shall apply to the manufacturer, private laboratory or public laboratory in as far as the tests being conducted apply. 2a. The tests conducted shall fall within the scope of the notified body's designation.

³³⁰ MT: Stick to wording of horizontal framework for Art. 37-45.

³³¹ Following a remark by the NL delegation, the Cion made clear that even accredited bodies having received their notification according to the current system will have to comply with some new criteria after 2011. In this regard, they cannot simply be extended from the requirement to apply (again) for notification. LT: Reservation on the whole article.

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 ..., 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.³³²

3. The notification shall include full details of the functions to be performed, reference to the relevant harmonised technical specification³³³ and, for the purposes of the system set out in point 1.4 of Annex V³³⁴, the essential characteristics³³⁵ for which the body is competent.

³³² UK: Scrutiny reservation on the technical possibilities and practical implications concerning horizontal notifications. If possible, these horizontal notifications should be carried out through NANDO. RO: NANDO system would be sufficient, thus revise this sub-paragraph. Furthermore, define "horizontal notification" in Article 2. AT: Delete second sub-paragraph as hard copies for horizontal notifications are not practical and details can be defined elsewhere. ES: Define "horizontal notifications".

³³³ CZ: Use wording "technical specification/specifications".

³³⁴ AT: Use wording "points 1.1., 1.2 and 1.4."

³³⁵ UK: Replace "essential characteristics" by "test methods". IT: Replace "essential characteristics" by "specific test methods supporting essential characteristics".

However, reference to the relevant harmonised technical specification is not required in the following cases of essential characteristics:³³⁶

- (a) reaction to fire;
- (b) resistance to fire;
- (c) external fire performance;
- (d) noise absorption.³³⁷

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 weeks³³⁸ ~~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.³³⁹

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.

³³⁶ UK: Modify wording to "...is not required for test methods supporting the following essential characteristics:" FI: Shift this list to an annex in order to make future modifications easier.

³³⁷ UK/RO/SE: Add a point "(e) dangerous substances".

³³⁸ CZ: Prefers "thirty days". LT: "one month".

³³⁹ UK: Wording should be: "in a the case ~~of~~ where an accreditation certificate is used and within two months following a notification in a case where accreditation is not used."

Article 39 [37]

Identification numbers and lists of notified bodies

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

It shall assign a single such number even where the body is notified under several Community acts.
2. The Commission shall make publicly available the list of the bodies notified under this Regulation, including the identification numbers that have been allocated to them and the activities for which they have been notified.³⁴⁰

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.³⁴¹
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 processed³⁴² by another notified body or kept available for the responsible notifying and market surveillance authorities at their ~~on~~ request.

³⁴⁰ UK: Unclear whether this implies new technical requirements. NANDO should be sufficient for this requirement as well.

³⁴¹ RO: Add "thereof, using the electronic notification tool developed and managed by the Commission."

³⁴² CZ: Add clarification "processed with the consent of the applicant ..."

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.³⁴³

³⁴³ DE: Leave only the first sentence of para. 2 and delete the whole rest (originates from horizontal Decision but does not fit here). UK: Would prefer exact wording from horizontal Decision in the first sub-para.

In so doing ~~they~~ 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.³⁴⁴

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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.³⁴⁶
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;³⁴⁷

³⁴⁴ UK: Replace "and the role of the product in the safety of the works" by "in particular as decided from the criteria set out in Article 19." BG: Add the wording from the horizontal framework: "Where, in the course of the initial inspection of the manufacturing plant and of FPC, a NB 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." AT: Use wording: "...and the role of the product in relation to the basic works requirements."

³⁴⁵ AT: Insert new (2a) similar to CP Directive: "Where a notified body finds that requirements laid down in this regulation or corresponding harmonised standards or technical specifications have not been met by a manufacturer, it shall require that manufacturer to take appropriate corrective measures and shall not issue a conformity certificate."

³⁴⁶ ES: Wording could be understood as giving market surveillance tasks to notified bodies.

³⁴⁷ CY: It must be ensured that the notified bodies are obliged to give to the Member State authorities any information concerning the certificate, the assessment and/or verification of constancy of performance activities.

(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.³⁴⁸

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 groups of notified bodies both at the sectoral and cross sectoral level.³⁴⁹

Member States shall ensure that the bodies notified by them participate to the work of those groups, directly or by means of designated representatives.³⁵⁰

³⁴⁸ UK: Meaning of "negative" and "positive" is not straightforward in this context. Confidentiality issues which could be evoked here need to be addressed.

³⁴⁹ UK: For a sector-specific Regulation it should read: "notified under Article 29 is put into place and properly operated in the form of a group of notified bodies".

³⁵⁰ FI: Obligation to Member States seems excessive. ES: Add "...or they ensure that their representatives are going to be informed."

CHAPTER VIII

MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES

Article 46 [44]³⁵¹

Procedure to deal at national level with construction products presenting a risk at national level³⁵²

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 reason³⁵³ to believe that a construction product does not achieve the declared performances and/or presents a risk for the health or safety of persons or for other issues of public interest protection³⁵⁴ covered by this Regulation, they shall ~~perform~~ carry out an evaluation in relation to the product concerned covering all the requirements³⁵⁵ laid down by this Regulation.³⁵⁶ The relevant concerned economic operators shall cooperate as in any necessary way³⁵⁷ with the market surveillance authorities.

³⁵¹ PL: Insert a new Article 45a at the beginning of this Chapter as follows: "Market surveillance authorities shall perform appropriate checks on the characteristics of construction products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory checks on the basis of adequate samples. When doing so they shall take account of established principles of risk assessment, complaints and other information. The article of Regulation No 765/2008 applies to the measures referred to the above."

³⁵² FR: Some fine-tuning is necessary concerning the procedures in cases where products present a risk and should be immediately withdrawn from the market. BG: In Chapter VIII, insert a general reference to the horizontal Regulation and include here only those provisions where specific rules for construction products should apply.

³⁵³ HU: Reservation on wording "sufficient reason". Cion: Wording can stay as it is.

³⁵⁴ AT: Clarify if the procedure can also be applied for non-harmonised construction products and non-CE-marked construction products. Cion: Yes in principle, although less relevant in practice. The case of risk requires rapid action and the authorities should not be obliged to check whether a certain product falls in part or total outside this Regulation. UK: Against the inclusion of products outside this regulation into this procedure against risky products- Action under this regulation can only be taken if there are legal requirements under this Regulation.

³⁵⁵ AT/NL/LT: Delete "all"; "the requirements" is sufficient. SI: Clarify scope of "performing an evaluation". Prsdy: "all the requirements as relevant..." could be a compromise.

³⁵⁶ AT: Add "The activities of market surveillance authorities can also extend to construction products stored on the construction site.", in order to meet practical requirements for products not stored at distributor's premises.

³⁵⁷ HU: Suggests wording: "economic operators must duly cooperate in all necessary ways with..."

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 requirements³⁵⁸ or to withdraw the product from the market,³⁵⁹ 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.³⁶⁰

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 consider³⁶¹ 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 evaluation³⁶² 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 actions³⁶³ ~~is~~ are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.³⁶⁴

³⁵⁸ AT: Add "requirements and declared performances or to..."

³⁵⁹ IT/SK: For construction products a "withdrawal" from the market is not always realistic, it would rather come to a ban on use at the construction site.

³⁶⁰ UK: Add "...inform the relevant notified body if one is involved." RO: Add "...notified body and the national notifying authority." SI: To be explained why the notified body and no other actor has to be informed. CY: Information flows should be from both sides. Make reference to ADCO-CPD Group in order to establish the exchange of information and the cooperation between the authorities. Cion: Hesitant to change wording from the horizontal framework here.

³⁶¹ SI: Replace "consider" by "establish by evidence".

³⁶² SI: Add more details on content and method of this information. PL: Delete "and the other Member States".

³⁶³ RO: Use wording "all corrective actions".

³⁶⁴ Following a remark by the AT delegation, the Cion clarified that a decision by one market surveillance authority might indeed imply consequent action by other market surveillance authorities. However, withdrawal from the market is only one possibility among several corrective actions.

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 available³⁶⁵ 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 meet the requirements³⁶⁶ related to the health or safety of persons or to other issues of public interest protection laid down by this Regulation;³⁶⁷
- (b) shortcomings in the harmonised technical specifications or in the STD.³⁶⁸

³⁶⁵ RO: "Restriction of making available on the market" is a concept to be defined in Article 2.

³⁶⁶ AT: Use wording: "product to achieve the declared performance and/or to meet the requirements...". Cion: This idea merits further reflection.

³⁶⁷ UK: Replace the text of (a) with: "failure of the product to conform with the information provided in the declaration of performance or CE marking".

³⁶⁸ UK: Delete "or in the STD". AT: Use wording "...harmonised technical specifications, ETAs, third-party tasks carried out according to Annex V or in the STD." Cion: The AT suggestion merits further reflection.

6. Member States other than the Member State ~~which initiated~~ initiating the procedure shall without delay inform the Commission and the other Member States³⁶⁹ 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 days³⁷⁰ of receipt of the information referred to in paragraph 4, no objection has been raised³⁷¹ 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.³⁷²

Article 47 [45]

Community safeguard procedure

1. Where, on completion of the procedure set out in Article 46(3) and (4), objections are raised against a ~~national~~ measure taken by ~~of~~ a Member State or where the Commission considers ~~the~~ a national measure to be contrary to Community legislation the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall 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).³⁷³

³⁶⁹ DK/CY: Provisions of Articles 46-49 should be complemented by a more formalised co-operation and exchange between market surveillance authorities. Cion: No need for it in this regulation, is covered in horizontal framework.

³⁷⁰ CZ suggests thirty working days. Cion: Against. FI: Wording of the whole article 46 might lead to too tight working schedules for market surveillance authorities.

³⁷¹ SI: Method of information needs to be defined.

³⁷² RO: Database for information on performance assessment and verification should be set up, also because it would facilitate information requirements for market surveillance authorities.

³⁷³ SI: Add "and where necessary, propose appropriate measures."

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 matter³⁷⁴ 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 STD³⁷⁵ as referred to in Article 46(5)(b), the Commission shall adopt the appropriate measures.³⁷⁶

³⁷⁴ AT: Mention first an involvement of Standing Committee under Article 51.

³⁷⁵ UK: Use wording "shortcomings in the harmonised technical specification as referred to..."

³⁷⁶ UK/PL: Clarify the "appropriate measures", as the shortcomings of EADs or STDs are within the responsibilities of different actors. Cion: This does not prevent the Cion from taking appropriate action. Shortcomings of a STD can lead to a situation where an action of one efficient market surveillance authority will have an effect - via the Commission - on an other Member State where the STD (with inherent shortcomings) had been issued. AT: Use wording "...shall bring the matter before the Committee set up under Article 51 of this Regulation and subsequently 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 ~~to~~ for the health or safety of persons or ~~for~~ to other aspects ~~issues~~ of public interest protection,³⁷⁷ 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 period³⁷⁸, 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 Community.
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).

³⁷⁷ AT: Add as a specificity of construction products: "...public interest protection, or its incorporation in a permanent manner in construction works or parts thereof presents a risk for the satisfaction of the basic works requirements, it shall..." NL: Article 48 seems more relevant for consumer products, for construction products the dangerous ones would normally be detected through Art. 46 procedure anyway. Cion: Even if the practical relevance is limited, there is no need to depart from the horizontal framework.

³⁷⁸ HU: Prefers "immediately" instead of "within such reasonable period".

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 continues³⁷⁹, 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.³⁸⁰

³⁷⁹ SI: Use wording "continues after the national measures are taken, the Member State..."

³⁸⁰ Cion: Clarifies that products legally already present on the market are not concerned - see also Art. 53 (1)- only new products have to comply with new or updated standards; in the case of a missing CE-marking, the economic operator can be required to affix it or to withdraw the product. DE: Add a new Article 49a "*Administrative procedure*": (1) Member States shall bring into force the laws, regulations and administrative provisions for the administrative procedures required to execute this regulation complementary to the provisions foreseen in this regulation on the basis of the principles of the rule of law. (2) The competent national authorities may have access to all construction products and to the business rooms or other sites, where construction products are manufactured or otherwise kept, insofar this is necessary to fulfil their legal duties. They may do this beyond the usual business hours only in the case of danger in delay. IT: Add a new Article 49a with the following content: "(1) Member States shall designate a surveillance authority that is responsible for setting up and carrying out the necessary administrative procedures and the practical actions for Market surveillance for the purposes of this Regulation"(2) Member States shall bring into force the laws, regulations and administrative provisions for the administrative procedures required to execute this regulation complementary to the provisions foreseen in this regulation on the basis of the principles of the rule of law. (3) The competent national authorities may have access to all construction products and to the business rooms or other sites, where construction products are manufactured or otherwise kept, insofar this is necessary to fulfil their legal duties. They may do this beyond the usual business hours only in the case of danger in delay."

CHAPTER IX
FINAL PROVISIONS

Article 50 [48]

Amendment of Annexes

1. Commission may amend Annexes I to V.³⁸¹
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).³⁸²

Article 51 [49]

*Committee*³⁸³

1. The Commission shall be assisted by a committee, called Standing Committee of Construction.³⁸⁴

³⁸¹ FI: Replace with "II to V." BE: Clarify that Member States can add other requirements than those mentioned in Annex I. Cion: Should be done in a recital, if necessary, not in this article.

³⁸² AT: Add (2a): Before adoption of amendments of an Annex, the Committee referred to in Article 51 shall be consulted.

³⁸³ Several delegations take the view that the Standing Committee should have a larger role in the detailed provisions. Cion: Not possible according to the horizontal legal acts and Comitology rules.

³⁸⁴ IT: Add the following sentence: "Member States shall be represented at adequate level of administrative and technical competences".

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.^{385 386}

Article 52 [50]

Repeal

1. Directive 89/106/EEC is repealed.³⁸⁷
2. References to the repealed Directive³⁸⁸ shall be construed as references to this Regulation.³⁸⁹

³⁸⁵ BE/AT: Reference should also be to Article 3. (consultative role of the Committee). DE: Add new para 2a: "Where reference is made to this paragraph, Article 3 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."

³⁸⁶ BE: Add new para 2a on guidance papers: "Guidance papers may be elaborated by the Commission, in conformity to article 5a(1) to (4) of decision 1999/468/EC. " IT: Add new para (2a): The Committee may, at the request of its chairman or of a Member State, examine any question posed by practical application of this Regulation. The Committee must be consulted by the Commission: a) before any mandates of harmonized standards (see Article 16) b) before any decision about the definition of conditions referring to levels or classes of performances (see art. 18.3). The Committee must be consulted by the Commission or the Member States in case of formal objection against harmonized standards (see article 17.1)."

³⁸⁷ UK/MT/LT: Use wording "is repealed with effect from the date referred to in the first paragraph of Article 54 except in respect of [add relevant provisions] of that Directive when the date shall be 1 July 2011." Cion: Already covered through Article 54 which includes reference to Article 52.

³⁸⁸ DE: Use wording "...repealed Directive and the interpretative document and technical specifications pursuant to Article 3 and Article 4 of the repealed Directive shall be construed ..." This is necessary to cover Article 10 of the Drinking Water Directive (98/83/EC). Cion: Problem is covered by Art. 52 (2).

³⁸⁹ UK/LT: Add: "this Regulation and shall be read in accordance with the correlation table set out in Annex [xy]."

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 2011 shall be deemed to comply with this Regulation.
2. Manufacturers and importers³⁹⁰ may make a declaration of performance on the basis of a certificate of conformity or a declaration of conformity, which has been issued before 1 July 2011 in accordance with Directive 89/106/EEC.
3. Guidelines for European technical approval³⁹¹ which were published before 1 July 2011 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 2011 as European Technical Assessments throughout the period of validity of those approvals.³⁹²

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³⁹⁰ BG: Delete importer as a consequence to deletion from Art. 4 and Art.7.

³⁹¹ PL: Give CUAPs the same status as Guidelines here by adding "The Commission after consulting the organisation of TABs shall publish a list of Common Understanding of Attestation Procedures (CUAPs) which were published before 1 July 2011 in accordance with Article 11 of Directive 89/106/EEC and may be used as EDAs." ES/BE: Quote guidance papers also in other articles of this Regulation. Cion: Does not concern Article 53. Status of guidance papers is unchanged, but it would be unusual for legislation to quote them in several articles.

³⁹² AT: Add a clause stating that the decisions on attestations of conformity remain valid for the purposes of Article 19. LT: Notified bodies and TABs need transitional provisions as well.

³⁹³ AT/RO suggest a new article on penalties: "The Member States shall lay down rules on penalties, which may include criminal sanctions for serious infringements, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive and may be increased if a similar infringement of the provisions of this Regulation has previously been committed. The Member States shall notify the Commission of those provisions by 1 July 2011 and shall notify it without delay of any subsequent amendment affecting them." Cion: Flexible to this suggestion.

Article 54 [52]

Entry into force

This Regulation shall enter into force on the twentieth day³⁹⁴ 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 2011.³⁹⁵

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

³⁹⁴ LT: Replace by "three months after the publication..."

³⁹⁵ FI: To be clarified why different dates are indispensable.

ANNEX I

Basic works requirements³⁹⁶

Construction works as a whole and in their separate parts must be fit for their intended use.³⁹⁷

Subject to normal maintenance,³⁹⁸ basic works requirements must be satisfied for an economically reasonable working life.^{399 400}

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.⁴⁰¹

³⁹⁶ Following a remark by NL, the Cion clarified that it is possible to add other basic works requirements after adoption of the Regulation.

³⁹⁷ DE: Add "...intended use and must take also into account the health and safety of persons and the protection of the environment during the construction phase and the life cycle of the works. SE: Add "...intended use as well as take into account the health and safety of persons and minimise the effects on the environment during the whole lifecycle of the constructions works". ES: Concept of fitness for use continues to exist here, although "intended use" is rejected by Cion in Article 4.

³⁹⁸ PT: Suggests modification to read: "Provided that construction works are subjected to normal maintenance, basic works..."

³⁹⁹ SE: Replace "an economically reasonable working life" by "the whole life cycle of the works". BE: Add: "Member States are not obliged to develop regulations on each Basic works requirement mentioned below. On the other hand, Member States may impose additional Basic works requirements in their regulation submitted to the procedure of the Directive 98/34." DE: Add: "EUROCODEs should be the basis for the assessment of the performance of construction works where appropriate."

⁴⁰⁰ SE: Cion should develop interpretative documents and guidance papers to (modified) BWRs. UK: Re-insert introductory sentence from CPD: "The products must be suitable for construction works which (as a whole and in their separate parts) are fit for their intended use, account being taken of economy, and in this connection satisfy the following essential requirements where the works are subject to regulations containing such requirements."

⁴⁰¹ CZ: Add point (e): "occupants and animals can leave the works or be rescued by other means."

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,⁴⁰²
- (d) the safety of rescue teams is taken into consideration.

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⁴⁰² WP agreed to introduce this point which had been overlooked in the Cion proposal. BE: Add "without any damage".

⁴⁰³ LT: Add (e): "the possibility of safe evacuation of persons is taken into consideration." FI: Add "evacuation and rescue of humans and animals in buildings in case of fire."

3. HYGIENE, HEALTH AND THE ENVIRONMENT⁴⁰⁴

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 impact⁴⁰⁵ 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 substances⁴⁰⁶, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or out door air;
- (c) the emission of dangerous radiation;^{407 408}

⁴⁰⁴ DE: Add "safety and the environment". SE: Clarify in the structure that No. 3 and 7 concern primarily the construction products while the other requirements concern the works. Clarify the "Life cycle"-concept of the product in No.3. AT: Concept of works related requirements (especially no.3 and no.7) needs some reflection, as the Regulation as such is on products and not on works. It should be clarified, that BWR 3 and BWR 7 also concern construction products (implicitly deriving from the life cycle concept) while the other BWRs only concern works. IE: For BWR 3 and BWR 7 clarification is needed with regard to the assessment procedures to identify the characteristics of products.

⁴⁰⁵ DE: Reword to: "...nor health or safety of construction workers, occupants and neighbours, nor have an unacceptable impact..." AT: "unacceptable impact" is better wording than "exceedingly high".

⁴⁰⁶ AT: The term „substance“ should be defined. The definitions according to Article 3 of REACH and/or Article 2 Directive 67/548/EEC should be taken on board. FI: Modify into substances into indoor air or dangerous particles or greenhouse gases to outdoor air.

⁴⁰⁷ LT: Replace "dangerous" by "ionising".

⁴⁰⁸ DE/CZ/AT: Add a new point (ca): "the release of substances into water for human consumption in concentrations higher than is necessary for the purpose of the products use or in concentrations that, either directly or indirectly, reduce the protection of human health or change the organoleptic properties of the drinking water in a way that it becomes unacceptable to consumers" and delete "drinking water" in (d) consequently.

- (d) the release of dangerous substances into drinking water⁴⁰⁹, ground water, marine waters or soil;
- (e) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid wastes;
- (f) the presence of dampness in parts of the works or on surfaces within the works.

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4. SAFETY IN USE⁴¹¹

The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, and injury from explosion.⁴¹²

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.⁴¹³

6. ENERGY ECONOMY AND HEAT RETENTION⁴¹⁴

The construction works and their heating, cooling 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.

⁴⁰⁹ AT: Against restriction on "dangerous" substances here.

⁴¹⁰ LT: Add "(g): the microbial pollution on surfaces within the works."

⁴¹¹ BE/SE/PT: Scrutiny reservation of the wording of No.4.

⁴¹² NL: Add "of accidents or damage in service..." and "from explosion and burglaries". Furthermore add the aspect of "strength of the product". SE: Add "crushing". CZ: Add "or from fire."

⁴¹³ DE: End the sentence as follows: "...health and by that the conditions to sleep, rest and work are assured."

⁴¹⁴ AT: The interface with the extended scope of future Ecodesign-directive (COM (2008)399; 16.7.2008) should be checked.

7. SUSTAINABLE USE OF NATURAL RESOURCES⁴¹⁵

The construction works must be designed, built and demolished in such a way that the use of natural resources⁴¹⁶ is sustainable and ensure the following:

- (a) recyclability⁴¹⁷ of the construction works, their materials⁴¹⁸ and parts after demolition;
- (b) durability of the construction works;⁴¹⁹
- (c) use of environmentally compatible raw and secondary materials in⁴²⁰ the construction works.^{421 422}

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⁴¹⁵ SE/FR: Basic works requirements concerning the environment could be spelled out in greater detail, including dangerous substances to be mentioned in the DoP and the life cycle criterion. Cion: This is more a task of national authorities than of European legal framework. AT: Basic works requirement No. 7 might give rise to a special transition period. Cion: No, transitional provisions of Art. 53-54 are sufficient. UK: Requirement No. 7 must stay workable in practice.

⁴¹⁶ SE: Add "natural resources, including the use of water,..."

⁴¹⁷ SE suggests: "recyclability and recovery..."

⁴¹⁸ AT: Add "materials or construction products..."

⁴¹⁹ SE: Add "...for the anticipated service life." NL: Replace "durability" by "sustainability".

⁴²⁰ AT: Add "in construction products and in the construction works."

⁴²¹ SE: Use wording: "...raw, secondary materials and renewable materials if appropriate, in the construction works." NL: There is overlap with BWR for example with regard to "pollution or poisoning of water and soil". Clarify which product performances will fall under BWR 3 and which under BWR 7.

⁴²² BE/SE: Add BWR 8 "Accessibility" BE: Add BWR 9 "Security". DE: Add in the end: "Environmental Product Declarations should provide for the necessary data as to access the sustainable use of natural resources and the impact of the building to the environment".

⁴²³ DE: Suggests a new Annex Ia "List of all Products or Product Family as published in Commission Decisions" - fixed fire-fighting systems - sanitary appliances - circulation fixtures - curtain walling..." etc.

ANNEX II

Procedure for adopting European Assessment Document and for issuing European Technical Assessment⁴²⁴

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.⁴²⁵
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.

⁴²⁴ ES/PT: Procedure of Annex II takes insufficiently into account the problem of confidentiality. ES: Furthermore, it takes insufficiently into account that new tests will have to be developed for new types of products. The elaboration of EADs is also cost-intensive and has strong personnel requirements which are not easy to meet. SE: Role of Member States in this procedure is far too limited. NL: Annex II procedure is too burdensome, especially for niche products. Clarify why EADs are no longer based on mandates. Enlarge role of Standing Committee on Construction. Establish a working group whose members determine together for every EAD which regulations and product characteristics have to be assessed. PL: Delete Annex II, procedure can be set by comitology.

⁴²⁵ BG: Replace "importers" by "authorised representatives" throughout this annex. Otherwise separate importers might duplicate EADs for the same product. Cion: Practical implications are of minor importance as the manufacturer has to co-operate for the draft EAD, we probably have to mention "importers" for formal reasons (WTO background).

2.2. The responsible TAB shall, in cooperation with the manufacturer, obtain the relevant information on the product and on its intended **end** use.⁴²⁶ 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;

⁴²⁶ DE: Keep original wording "intended use" instead of "intended end use" throughout. End use is unknown to manufacturer.

- (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.⁴²⁷

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, these existing methods and criteria shall be incorporated as parts of the draft EAD.**⁴²⁸

⁴²⁷ **PT:** Procedure would be easier without a working group and with electronic diffusion only. **DE/IT:** The working group should comprise only those TABs which have to contribute to the elaboration of an ETA. The ETA might be requested for some requirements only, which apply where the product is made available. With original wording of this paragraph, confidentiality problems might arise. (supported by **PT**).

⁴²⁸ **IT/PT/SE/UK/FR/DE/AT:** Modalities for establishing the draft EAD are not realistic; especially the two weeks period seems to be too short. **DK:** Time-frame of Annex II is unrealistic; the TABs will in the interest of competitive services avoid unnecessarily long processes anyway. **IT:** Clarify whether the draft EAD will be similar to the current CUAP. If so, the proposal might be acceptable. **Cion:** It is a new procedure with a formally joint document; the practical drafting will have the responsible TAB as a leading party anyway.

- 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. No (unique identification code of the product)⁴²⁹

2. Name or identification mark and address of (*authorised representative of the*)
manufacturer:⁴³⁰

.....

.....⁴³¹

3. This declaration of performance is issued under the sole responsibility of the
manufacturer⁴³²:

.....

.....

4. Identification of product (*allowing traceability*):

.....

.....⁴³³

5. The performance of the product identified above is in conformity with the declared
performances under point 7.

⁴²⁹ ES: Establish a common system of attribution of code numbers. PT: Delete "No." because a code is not necessarily numerical only. UK: Specify details on how the manufacturer may generate the unique identification code.

⁴³⁰ SK/LT: Add "importer" in accordance with Article 12.

⁴³¹ RO: Add new 2a. "Name or identification mark and address of importer (in case of imports from tertiary countries)".

⁴³² RO/LT: Add: "...manufacturer/importer (in case of imports from tertiary countries)"

⁴³³ PT: Clarify what kind of information for traceability purposes is implied here. RO: Add new 4a: "Intended use of the product"; and new 4b.: "System of assessment and verification of constancy of performance carried out". UK: Include "product-type", thus aligning to Art. 5.

6. The (name,⁴³⁴ number of the notified body, if relevant)
 performed (description of intervention⁴³⁵)
 and issued (the certificate of conformity of the product, the
 certificate of conformity of the factory production control, the test reports⁴³⁶ - if relevant):

.....

7. Declaration of performance (list, ⁴³⁷ levels or classes and reference to the corresponding
 harmonised technical specification/Specific Technical Documentation used for the
 assessment of the performance for the declared essential characteristics)⁴³⁸

Name of the declared essential characteristic ⁴³⁹	⁴⁴⁰ Level or class of performance for the declared essential characteristic	Reference of the harmonised technical specification / Specific Technical Documentation ⁴⁴¹

Signed for and on behalf of:

.....
 (place and date of issue) (name, function)(signature)
⁴⁴²

⁴³⁴ AT/RO: Add "name, function according to Annex V.2 and number..."

⁴³⁵ AT: Add: "intervention and applied system according to Annex V.1)"

⁴³⁶ AT: Use wording: "test/calculation reports..."

⁴³⁷ AT/NL: Use wording: "values, levels or classes".

⁴³⁸ DE/NL/PL/DK: Add "and intended use".

⁴³⁹ RO: Add "in accordance with hEN/EAD."

⁴⁴⁰ AT/NL/IT: Use wording: "Value, level or class".

⁴⁴¹ AT/DE: Use wording: "Reference No. and date of issue of the harmonised standard / European technical assessment/Specific Technical Documentation" in order to be consistent with Article 21.

⁴⁴² SE: Add in the form everything which is also suggested for Article 5.

ANNEX IV

Product areas and requirements for Technical Assessment Bodies

Table 1 - Product areas⁴⁴³⁴⁴⁴

Area Code	Product Area	Families of construction products
A	CIVIL ENGINEERING	Geotextiles and related products - Circulation fixtures - Floorings, paving and road finishes - Aggregates - Road construction products - Pipes, tanks and ancillaries not in contact with water intended for human consumption - Floor beds including suspended ground floors, roads and other trafficked areas - Ultra thin layer asphalt concrete - Waste water engineering products - Falling rock protection kits - Liquid applied bridge-deck waterproofing kits - Expansion joints for road bridges
B	PREFABRICATED TOTAL/PARTIAL BUILDING UNITS	Timber frame and log prefabricated building kits - Cold storage building kits and cold storage building envelope kits - Prefabricated building units - Concrete frame building kits - Metal frame building kits

⁴⁴³ NL: In order to make the whole enumeration more flexible, call the table 1 "Examples of product areas". BG: Make a unified list, families and sub-families in the EC mandates should be complete and all construction products should be bound by them. PL: Columns 2 and 3 are incoherent, families of construction products are incomplete, also in comparison to mandates given to standardisation bodies.

⁴⁴⁴ UK: Annex IV is too restrictive - use product mandate families and sub-families. PL: Delete Table 1, product areas can be set by Member States.

C	LOAD BEARING MATERIALS AND COMPONENTS	Structural timber products and ancillaries - Cement, building limes and other hydraulic binders - Reinforcing and pre-stressing steel for concrete - Structural metallic products and ancillaries - Products related to concrete, mortar and grout - Structural bearings - Precast concrete products - Prefabricated stairs kits - Light composite wood-based beams and columns - Post tensioning kits for the pre-stressing of structures - Anchor bolts
D	ROOFING AND BUILDING ENVELOPE	Curtain walling kits - Roof coverings, Roof lights, roof windows and ancillary products - Flat glass, profiled glass and glass block products - External and internal doors and windows, roof openings and roof lights - Liquid applied roof waterproofing kits - Kits for exterior wall claddings - Structural sealant glazing systems - Kits of mechanically fastened flexible roof waterproofing membranes - Self supporting translucent roof kits - Prefabricated wood-based load-bearing stressed skin panels and self-supporting composite lightweight panels
E	INTERNAL/EXTERNAL BUILDING COMPONENTS/KITS	Sanitary appliances - Wood-based panels - Masonry and related products - Internal and external wall and ceiling finishes ⁴⁴⁵ - Gypsum products - Internal partition kits - Watertight covering kits for wet room floors and walls - Non-load bearing permanent shuttering kits based on hollow blocks or panels of insulating materials and/or concrete
F	HEATING/VENTILATION/INSULATION	Chimneys, Flues and specific products - Space heating appliances - Thermal insulating products - External thermal insulation composite kits - Inverted roof insulation kits – Vestures

⁴⁴⁵ LT: Add here "flooring finishes".

G	FIXATIONS SEALINGS/ADHESIVES	Construction adhesives - Pins for structural joints / Connectors - Three dimensional nailing plates - Anchors bolts / Screws - Wall plates made of stainless steel. - Cavity trays - Fastener for external wall claddings and flat or pitched roofs - Connector for sandwich elements of concrete - Gas and watertight seals for pipes in wall and floor penetrations - Sealing kits, profiles and strips - Joints sealing compounds - Elastic suspended fixings - Tension Rods - Point fastener - Surface repellents and coating treatments - Levelling fasteners for roofs, walls and interior applications - Waterproofing products / treatments
H	FIRE PROTECTION AND RELATED PRODUCTS	Fire alarm, fire detection, fixed fire fighting, fire and smoke control and explosion suppression products - Fire stopping, fire sealing and fire protective products.
I	ELECTRIC INSTALLATION	Any construction product related to electric installation.
J	GAS INSTALLATION⁴⁴⁶	Any construction product related to gas installation.
K	WATER SUPPLY AND SEWAGE	Kit consisting of a trap with partially mechanical closure, mounted in a non-trapped gully - Kit for manhole top consisting of Cover and additional rings made of plastic for different purposes - Piping kits for cold and hot water, including those intended for human consumption - Piping systems for drainage and sewerage with or without pressure - Flexible coupling for gravity and pressure sewerage and drainage pipe - Composition toilet

⁴⁴⁶ PT: Add more details for Areas I and J, similar to the other areas.

Table 2 - Requirements for technical assessment bodies

Competence	Description of competence	Requirement ⁴⁴⁷
<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 be independent from the stakeholders and from any particular interests. In addition, a TAB shall have staff with:
<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).	(a) objectivity and sound technical judgement; (b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States, concerning product areas for which it is to be designated; (c) general understanding of construction practice ⁴⁴⁸ 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.

⁴⁴⁷ NL: These requirements should not be the subject of peer reviews, at the margins they could be checked by an independent expert group being not an OTAB member.

⁴⁴⁸ NL: "General understanding" is not quantifiable.

3 Setting assessment methods	Design and validate appropriate methods (tests or calculations) to assess performance for essential characteristics of construction products, taking into account the current state of the art.	
4 Determining the specific factory production control	Understand and evaluate the manufacturing process of the specific product in order to identify appropriate measures ensuring product constancy through the given manufacturing process.	A TAB shall have staff with appropriate knowledge of the relationship between the manufacturing processes and product characteristics related to factory production control.
5 Assessing the product	Assess the performance for essential characteristics of construction products on the basis of harmonised methods against harmonised criteria.	In addition to the requirements listed in points 1, 2 and 3, a TAB shall have access to the necessary means and equipment for the assessment of the performance for essential characteristics of construction products within the product areas for which it is to be designated.
6 General management	Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.	A TAB shall have: (a) a proven record of respect of good administrative behaviour; (b) a policy and the supporting procedures to ensure confidentiality of sensitive information within the TAB and all its partners; (c) a document control system to ensure registration, traceability, maintenance and archiving of all relevant documents; (d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods; (e) a procedure to deal objectively with appeals and complaints. ⁴⁴⁹

⁴⁴⁹ IT: Add similar requirement as for notified bodies in Art. 33 (8): "The remuneration of the TAB personnel shall not depend on the number of the assessments carried out or on the results of such assessments."

ANNEX V

Assessment and verification of constancy of performance

1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE⁴⁵⁰

1.1. System 1⁴⁵¹ - 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 body⁴⁵² shall issue the certificate of conformity⁴⁵³ of the product on the basis of:
 - (i) determination of the product-type⁴⁵⁴ 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.⁴⁵⁵

⁴⁵⁰ PT: Clarify the precedence order if two or more systems of assessment and verification could apply.

⁴⁵¹ AT/LT: Renumber the systems in order not to confuse it with existing systems under the Directive. ES/UK/NL: Maintain the existing numbering system.

⁴⁵² AT: Use wording "notified certification body".

⁴⁵³ AT/UK/Cion: At several places in Annex V "conformity" should be replaced by "performance" or "constancy of performance" in order to align to the pertinent provision of Article 19.

⁴⁵⁴ PT: Should read "product type performance" here and in corresponding provisions of 1.2, 1.3.,1.4, 1.5.

⁴⁵⁵ BE: Replace "taken at the factory" by "taken before placing the product on the Community market". PL: Combine and merge system 1 and 2 as being nearly identical now and leave "audit testing of samples" only as an option.

1.2. 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) factory production control;
 - (ii) further testing of samples taken at the factory by the manufacturer according to the prescribed test plan;
- (b) the notified body⁴⁵⁶ shall issue the certificate of conformity of the product on the basis of:
 - (i) determination of the product type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;
 - (ii) initial inspection of the manufacturing plant and of FPC;
 - (iii) continuous surveillance, assessment and evaluation of FPC.

1.3. 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:
 - (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;

⁴⁵⁶ AT: Use wording "notified certification body".

(b) the notified body⁴⁵⁷ 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 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 factory production control;
- (b) the notified body shall carry out determination of the product-type on the basis of type testing (based on the sampling carried out by the manufacturer),⁴⁵⁸ type calculation, tabulated values or descriptive documentation of the product;

1.5. System 5 - 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.

⁴⁵⁷ AT: Use wording "notified certification body".

⁴⁵⁸ AT: Use following wording: "The notified testing laboratory shall carry out determination of the product-type on the basis of type testing (including sampling), type calculation..."

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

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

- (1) *certification body*: a notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a certification according to given rules of procedure and management;
- (2) *inspection body*: a notified body having the 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) *testing laboratory*: a notified laboratory which measures, examines, tests, calibrates or otherwise determines⁴⁵⁹ the characteristics or performance of materials or construction products.

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⁴⁵⁹ PT: Delete the word "calibrates". ES: Use wording "calibrates, calculates..."

⁴⁶⁰ RO: Add new point (4) calculation body. AT: Add the following provision: "If the notified certification body is not notified for the function of an inspection body,
- the initial inspection of the manufacturing plant and of FPC or
- the continuous surveillance, assessment and evaluation of FPC
has to be performed (on behalf of the notified certification body) by a notified inspection body
If the notified certification body is not notified for the function of a testing laboratory,
- the determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product or
-the audit-testing of samples taken at the factory
has to be performed (on behalf of the notified certification body) by a notified testing laboratory."

ANNEX VI (new)⁴⁶¹

1. Floor beds (including suspended ground floors), roads and other trafficked areas
2. Foundations and retaining walls
3. Pile foundations
4. External walls (including cladding), internal walls and partitions
05. Floors, galleries and ceilings
06. Prefabricated systems for floors and galleries, stairs, ramps, raised access floors, balustrades and hand rails (including external works)
07. Roofs
08. Frame (including chimneys and shafts)
09. External and internal doors and windows, roof openings and roof lights (including fire doors and shutters)
10. Suspended ceilings
11. External finishes of walls
12. Internal finishes of walls and partitions
13. Floor and stair finishes
14. Ceiling finishes
15. Roof finishes
16. Waterheaters
17. Disposal of solid waste

⁴⁶¹ See footnotes on Definition (17a) "intended end use". IT: Structure of this Annex is not ok. DE: Delete Annex VI (new): Distinction between "intended use" and "intended end use" is misleading.

- 18. Drainage (including highways) and disposal of other liquids and gaseous waste**
- 19. Supply of hot and cold water**
- 20. Supply of fuels, oil and other liquids**
- 21. Fire suppression and extinguishing systems**
- 22. Supply of gases, pressure and vacuum systems**
- 23. Space heating, cooling and air-conditioning**
- 24. Supply of electricity**
- 25. Lightning**
- 26. Communications**
- 27. Transport-lifts, hoists, escalators, conveyors**
- 28. Fire detection and alarm**
- 29. Circulation fixtures**
- 30. Sanitary and cleaning fixtures**
- 31. Storage fixtures**

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⁴⁶² FR/SE: Suggest a new annex xxx (see wording Article 5) concerning dangerous substances. See also suggestion in MD-15.