Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (Text with EEA relevance)

REGULATION (EU) No 305/2011 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 March 2011

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The rules of Member States require that construction works be designed and executed so as not to endanger the safety of persons, domestic animals or property nor damage 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. Due to their disparity, those requirements hinder trade within the Union.

(3) This Regulation should not affect the right of Member States to specify the requirements they deem necessary to ensure the protection of health, the environment and workers when using construction products.

(4) Member States have introduced provisions, including requirements, relating not only to safety of buildings and other construction works but also to health, durability, energy economy, protection of the environment, economic aspects, and other important aspects in the public interest. Laws, regulations, administrative measures or case-law, established either at Union or Member State level, concerning construction works may have an impact on the requirements of construction products. Since their effect on the functioning of the internal market is likely to be very similar, it is appropriate to consider such laws, regulations, administrative measures or case-law as ‘provisions’ for the purposes of this Regulation.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 305/2011 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) Where applicable, provisions for an intended use or uses of a construction product in a Member State, aimed at fulfilling basic requirements for construction works, determine the essential characteristics the performance of which should be declared. In order to avoid an empty declaration of performance, at least one of the essential characteristics of a construction product which are relevant for the declared use or uses should be declared.

(6) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products[(3)] aimed to remove technical barriers to trade in the field of construction products in order to enhance their free movement in the internal market.

(7) 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.

(8) 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.

(9) This Regulation should take account of the horizontal legal framework for the marketing of products in the internal market, established by 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[(4)] as well as by 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[(5)].

(10) 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.

(11) Those harmonised technical specifications should include testing, calculation and other means, defined within harmonised standards and European Assessment Documents for assessing performance in relation to the essential characteristics of construction products.

(12) The methods used by the Member States in their requirements for construction works, as well as other national rules relating to the essential characteristics of construction products, should be in accordance with harmonised technical specifications.

(13) Where 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 requirements for construction works for certain construction works as well as of the differences in climate, geology and geography and other different conditions prevailing in the Member States. On the basis of a revised mandate, the European standardisation bodies should be entitled to establish such classes in cases where the Commission has not already established them.

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(14) Where an intended use requires threshold levels in relation to any essential characteristic to be fulfilled by construction products in Member States, those levels should be established in the harmonised technical specifications.

(15) When assessing the performance of a construction product, account should also be taken of the health and safety aspects related to its use during its entire life cycle.

(16) Threshold levels determined by the Commission pursuant to this Regulation should be generally recognised values for the essential characteristics of the construction product in question with regard to the provisions in Member States and should ensure a high level of protection within the meaning of Article 114 of the Treaty on the Functioning of the European Union (TFEU).

(17) Threshold levels can be of a technical or regulatory nature, and may be applicable to a single characteristic or to a set of characteristics.

(18) The European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) are recognised as the competent organisations for the adoption of harmonised standards in accordance with the general guidelines for cooperation between the Commission and those two organisations signed on 28 March 2003. Manufacturers should use those harmonised standards when the references to them have been published in the *Official Journal of the European Union* and in accordance with the criteria established under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services[(6)]. Once a sufficient level of technical and scientific expertise on all the relevant aspects is attained, recourse to harmonised standards with regard to construction products should be increased, including, where appropriate, and after consultation of the Standing Committee on Construction, by requiring, by means of mandates, that those standards be developed on the basis of existing European Assessment Documents.

(19) 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.

(20) In order to allow a manufacturer of a construction product to draw up a declaration of performance for a construction product which is not covered or not fully covered by a harmonised standard, it is necessary to provide for a European Technical Assessment.

(21) Manufacturers of construction products should be allowed to request European Technical Assessments to be issued for their products on the basis of the guidelines for European technical approval established under Directive 89/106/EEC. The right to use those guidelines as European Assessment Documents should therefore be ensured.

(22) The establishment of draft European Assessment Documents and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (hereinafter referred to as ‘TABs’) designated by Member States. In order to ensure that

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TABs have the necessary competence for carrying out those tasks, the requirements for their designation should be set out at Union level.

(23) TABs should establish an organisation (hereinafter referred to as an 'organisation of TABs'), supported, where applicable, through Union financing, to coordinate procedures for the establishment of draft European Assessment Documents and for the issuing of the European Technical Assessments, ensuring the transparency and the necessary confidentiality of those procedures.

(24) Except in the cases laid down in this Regulation, the placing on the market of a construction product which is 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 construction product in accordance with the relevant harmonised technical specifications.

(25) Where applicable, the declaration of performance should be accompanied by information on the content of hazardous substances in the construction product in order to improve the possibilities for sustainable construction and to facilitate the development of environment-friendly products. Such information should be provided without prejudice to the obligations, particularly with regard to labelling, laid down in other instruments of Union law applicable to hazardous substances and should be made available at the same time and in the same form as the declaration of performance so as to reach all potential users of construction products. Information on the content of hazardous substances should initially be limited to substances referred to in Articles 31 and 33 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency[(7)]. However, the specific need for information on the content of hazardous substances in construction products should be further investigated with a view to completing the range of substances covered so as to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials. This Regulation is without prejudice to Member States' rights and obligations pursuant to other instruments of Union law that may apply to hazardous substances, in particular, Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market[(8)], Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy[(9)], Regulation (EC) No 1907/2006, Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste[(10)] and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures[(11)].

(26) It should be possible for the declaration of performance to be numbered in accordance with the product-type reference number.

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(27) It is necessary to provide for simplified procedures for the drawing up of declarations of performance in order to alleviate the financial burden of enterprises, in particular small and medium-sized enterprises (SMEs).

(28) In order to ensure that the declaration of performance is accurate and reliable, the performance of the construction product should be assessed and the production in the factory should be controlled in accordance with an appropriate system of assessment and verification of constancy of performance of the construction product. Several systems could be chosen to be applied for a given construction product, in order to take into account the specific relationship of some of its essential characteristics to the basic requirements for construction works.

(29) Given the specificity of construction products and the particular focus of the system for their assessment, the procedures for the conformity assessment provided for in Decision No 768/2008/EC, and the modules set out therein, are not appropriate. Specific methods should therefore be established for the assessment and verification of constancy of performance in relation to the essential characteristics of construction products.

(30) 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 thereof.

(31) By affixing the CE marking or having such marking affixed to a construction product, manufacturers should indicate that they take responsibility for the conformity of that product with its declared performance.

(32) The CE marking should be affixed to all construction products for which the manufacturer has drawn up a declaration of performance in accordance with this Regulation. If a declaration of performance has not been drawn up, the CE marking should not be affixed.

(33) The CE marking should be the only marking of conformity of the construction product with the declared performance and compliance with applicable requirements relating to Union harmonisation legislation. However, other markings may be used, provided that they help to improve the protection of users of construction products and are not covered by existing Union harmonisation legislation.

(34) To avoid the unnecessary testing of construction products for which performance has already been sufficiently demonstrated by stable 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.

(35) 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.

(36) Conditions should be defined for the use of simplified procedures for the assessment of the performance of construction products, in order to reduce as far as possible the cost of placing them on the market, without reducing the level of safety. The manufacturers