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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 on the harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC

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1. INTRODUCTION

Regulation (EU) No 305/2011 of the European Parliament and of the Council on the harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC[1] lays down conditions for the marketing of construction products by establishing harmonised rules on declaring the performance of construction products in relation to their essential characteristics and on CE marking of them.

For the purposes of achieving the objectives of Regulation (EU) No 305/2011, in particular removing and avoiding restrictions on making construction products available on the market, Regulation (EU) No 305/2011 confers to the Commission the power to adopt delegated acts in a number of matters listed in its Article 60, and subject to the conditions laid down in its Articles 61, 62 and 63.

Article 61 of Regulation (EU) No 305/2011 describes the temporary scope of the delegation as well as the obligations to notify the adopted delegated acts and to report on the exercise of delegated powers to the European Parliament and to the Council.

Article 62 lays down the conditions for the revocation of the delegation and Article 63 the rules governing the objections to delegated acts by the European Parliament or the Council.

Regulation (EU) No 305/2011 is fully applicable since 1st of July 2013. The Commission has exercised since then, on several occasions, the delegation conferred on it by Article 60.

2. LEGAL BASIS

This report is required under Article 61(1) of Regulation (EU) No 305/2011. Pursuant to this provision, the power to adopt delegated acts concerning the matters listed in Article 60 is conferred on the Commission for a period of five years from 24 April 2011 and the Commission is required to prepare a report in respect of the delegated power at the latest six months before the end of the five-year period.

[1] OJ L 88, 4 April 2011, p. 5.

The delegated powers shall be automatically extended for five-year periods, unless the European Parliament or the Council revoke them in accordance with Article 62 of Regulation (EU) No 305/2011.

Article 60 of Regulation (EU) No 305/2011 empowers the Commission to adopt delegated acts concerning the following matters:

a) the determination, where appropriate, of the essential characteristics or threshold levels within specific families of construction products, in relation to which, in accordance with Articles 3 to 6, the manufacturer shall declare, in relation to their intended use, by levels or classes, or in a description, the performance of the manufacturer's product when it is placed on the market;

b) the conditions on which a declaration of performance may be electronically processed, in order to make it available on a web site in accordance with Article 7;

c) the amendment of the period for which the manufacturer shall keep the technical documentation and the declaration of performance after the construction product has been placed on the market, in accordance with Article 11, based on the expected life or the part played by the construction product in the construction works;

d) the amendment of Annex II and where necessary the adoption of supplementary procedural rules in accordance with Article 19(3) in order to ensure compliance with the principles in Article 20, or the application in practice of the procedures set out in Article 21;

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

f) the establishment and adaptation of classes of performance in response to technical progress in accordance with Article 27(1);

g) the conditions on which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing in accordance with Article 27(5), provided that the fulfilment of the basic requirements for construction works is not thereby jeopardised;

h) the adaptation, establishment and revision of the systems of assessment and verification of constancy of performance in accordance with Article 28, relating to a given product, a given product family or a given essential characteristic, and in accordance with:

    i) the importance of the part played by the product or those essential characteristics with respect to the basic requirements for construction works;

    ii) the nature of the product;

iii) the effect of the variability of the essential characteristics of the construction product during the expected life of the product;

iv) the susceptibility to defects in the product's manufacture.

As soon as the Commission adopts a delegated act, it shall notify it simultaneously to the European Parliament and to the Council (Article 61(2).

The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 62 (revocation of the delegation) and 63 (objection to delegated acts) (Article 61(3).

3. EXERCISE OF THE DELEGATION

3.1. Consultation prior to adoption

In the spirit of openness and transparency, the Commission always consulted experts nominated by Member States and relevant stakeholders, via regular dedicated meetings of experts and written consultations, during the preparation of delegated acts under Regulation (EU) No 305/2011. Before these consultations, all Member States were invited to nominate experts to participate in them. The European Parliament was also invited to participate in all these consultation activities. The documents relevant to these consultations were transmitted simultaneously to the European Parliament and to the Council, as foreseen in the Common Understanding on delegated acts. The observations presented in these consultations were taken into consideration when preparing the final versions of delegated acts.

Furthermore, the Commission informed Member States and industry representatives of the progress made with the draft delegated acts at different phases of their preparation, in order to ensure the inclusion of the whole construction constituency in these processes and to secure the commitment of all pertinent stakeholders to their outcome, thus paving the way for comprehensive support for the upcoming delegated acts.

3.2. Delegated acts in force

Six Delegated Regulations are currently in force, after having been adopted by the Commission, based on the delegation conferred on it by Article 60 of Regulation (EU) No 305/2011, and passed sucessfully the period of objection of the co-legislators.

1. The first delegated act adopted was Commission Delegated Regulation (EU) No 157/2014[2] of 30 October 2013 on the conditions for making a declaration of performance on construction products available on a website. This Regulation, which was adopted under Articles 7(3) and 60(b) of Regulation (EU) No 305/2011, was essential to permit the use of new information technologies in the context of declaring

[2] OJ L 52, 21 February 2014, p.1.

the performance of construction products, and thus reduced costs incurred by their manufacturers and the construction sector as a whole.

2. Secondly, the Commission adopted two delegated acts under Article 60(e) of Regulation (EU) No 305/2011, aimed at amending Annexes III and V to the Regulation:

    - Commission Delegated Regulation (EU) No 574/2014[3] of 21 February 2014 amending Annex III to Regulation (EU) No 305/2011 of the European Parliament and of the Council on the model to be used for drawing up a declaration of performance on construction products. This Regulation was adopted in order to respond to technological progress, to allow the flexibility required by different kinds of construction products and manufacturers as well as to simplify the declaration of performance.

    - Commission Delegated Regulation (EU) No 568/2014[4] of 18 February 2014 amending Annex V to Regulation (EU) No 305/2011 of the European Parliament and of the Council as regards the assessment and verification of constancy of performance of construction products. This Regulation was adopted in order to respond to technical progress, legal certainty and consistency of descriptions and terms used in Annex V to Regulation (EU) No 305/2011.

3. Finally, the Commission adopted three delegated acts under Articles 27(5) and 60(g) of Regulation (EU) No 305/2011, requested by industry, in order to allow the use of simplified procedures, more precisely the classification without testing (CWT) of certain products, as follows:

    - Commission Delegated Regulation (EU) No 1291/2014[5] of 16 July 2014 on the conditions for classification, without testing, of wood-based panels under EN 13986 and solid wood panelling and cladding under EN 14915 with regard to their fire protection ability, when used for wall and ceiling covering.

    - Commission Delegated Regulation (EU) No 1292/2014[6] of 17 July 2014 on the conditions for classification, without testing, of certain uncoated wood floorings under EN 14342 with regard to their reaction to fire.

[3] OJ L 159, 28 May 2014, p.41.

[4] OJ L 157, 27 May 2014, p.76.

[5] OJ L 349, 5 December 2014, p.25.

[6] OJ L 349, 5 December 2014, p.27.

- Commission Delegated Regulation (EU) No 1293/2014[7] of 17 July 2014 on the conditions for classification, without testing, of metal lath and beads for internal plastering covered by the harmonised standard EN 13658-1, metal lath and beads for external rendering covered by the harmonised standard EN 13658-2 and metal beads and feature profiles covered by the harmonised standard EN 14353, with regard to their reaction to fire.

3.3. Delegated acts under progress

The daily implementation of the CPR clearly demonstrates the need to adopt different kinds of delegated acts, which respond to stakeholder requests to address technical and regulatory developments concerning certain construction products, often in relation to some of their essential characteristics. These delegated acts are necessary to achieve the objectives of Regulation (EU) No 305/2011, in particular removing and avoiding restrictions on making construction products available on the market, as well as alleviating the administrative and economic burdens of the construction sector as a whole.

Accordingly, on the date of adoption of this Report, the Commission had also initiated the process for preparation, adoption, or publication into the Official Journal of the EU for the following delegated acts:

1. Regulation on the classification of reaction to fire performance[8]

2. Decision on the assessment and verification of constancy of performance (AVCP) systems for ventilation ducts and pipes[9]

3. Decision on the AVCP systems for geosynthetic products[10]

4. Decision on the AVCP systems for wastewater engineering products[11]

6. Regulation on the conditions for CWT for glued laminated timber and structural finger jointed solid timber products[12]

[7] OJ L 349, 5 December 2014, p.29.

[8] Adopted on 1 July 2015. The right of objecton of the European Parliamentg and of the Council is running until 1st Octiber 2015.

[9] Adopted on 8 July 2015. The right of objecton of the European Parliamentg and of the Council is running until 8 Octiber 2015.

[10] Adopted on 1 July 2015. The right of objecton of the European Parliamentg and of the Council is running until 1st Octiber 2015.

[11] Adopted on 1 July 2015. The right of objecton of the European Parliamentg and of the Council is running until 1st Octiber 2015.

[12] Currently under internal consultation at the Commisison.

7. Regulation on the conditions for CWT for external renders, internal plasters and rendering and plastering mortars[13]

In the future, other delegated acts of similat nature will continue to be requested, due to the rapid technical progress and evolving needs of the construction industry. Additional delegated acts could also be identified as needed in the upcoming Report on the implementation of Regulation (EU) No 305/2011, requested under its Article 67(2).

3.4. Objection to delegated acts

According to Article 63 of Regulation (EU) No 305/2011, the European Parliament or the Council may object to a delegated act within a period of three months from the date of notification, extendable by another three months. If either the European Parliament or the Council objects to a delegated act within this period, it shall not enter into force.

Neither the the European Parliament nor the Council objected to any of the delegated acts mentioned under sections 3.2.[14] above.

Following the notification of the adopted delegated acts[15] listed under section 3.2. above, the Commission was requested by the European Parliament or the Council to answer questions concerning the appropriate understanding of the contents of these delegated acts. The Commission answered timely to these questions and decided to publish this material on its website together with the corresponding delegated acts[16], for the perusal of all stakeholders.

Some Member States questioned the scope allowed to the Commission on Articles 60(e) and 60(f) of Regulation (EU) No 305/2011 for adopting delegated acts. In particular, these provisions limit the delegation only *"in response to technical progress"*. However, this concept was considered wide enough to cover proposed technical adaptations to Annexes III and V to Regulation (EU) No 305/2011, and therefore was not an obtacle for the entry info force of the delegated acts amending these Annexes.

The Council used the possibility to extend the objection period concerning the first delegated act adopted under Regulation (EU) No 305/2011, in order to discuss in detail the answers provided by the Commission to the questions raised concerning this Delegated Regulation on the conditions for making a declaration of performance on construction products available on a website. This extension showed that Member States desired to be informed further of draft delegated acts, their rationale and interpretation, before their adoption. This desire was

[13] Currently under internal consultation at the Commisison.

[14] The period of objection for the delegated acts mentioned under section 3.3. above has not been initiated or expired yet.

[15] as prescribed under Article 61(2) of Regulation (EU) No 305/2011.

[16] See Frequently Asked Questions (FAQs) for some delegated acts available at http://ec.europa.eu/growth/sectors/construction/product-regulation/index_en.htm

addressed by the Commission via increased consultation and information provided at different phases of their preparation.

4. CONCLUSION

The Commission considers that it has exercised its delegated powers within the remit conferred to it by Regulation (EU) No 305/2011.

The delegation of power conferred by Article 60 of Regulation (EU) No 305/2011 should be extended in accordance with Article 61(3) of Regulation (EU) No 305/2011, due to the rapid technical progress and evolving needs of the construction industry, which require the adoption of EU-wide acts concerning the variety of matters listed under Article 60 of Regulation (EU) No 305/2011.

The Commission invites the European Parliament and the Council to take note of this Report.