COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.07.1999
COM(1999) 314 final

Proposal for a

COUNCIL DECISION

on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards flat glass, profiled glass and glass block products

(presented by the Commission)

EXPLANATORY MEMORANDUM

Summary

1. 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, seeks to abolish those obstacles to the free movement of goods which are caused by the disparity of national product standards, technical approvals or other technical specifications and provisions that reflect safety and other requirements important in the public interest that are subject to national laws, regulations or administrative provisions.

2. To this end, the Directive provides, *inter alia*, that the Commission is to prepare mandates which form the basis for CEN/CENELEC to elaborate harmonised standards. The conformity of the products with these harmonised standards gives these products the presumption of fitness for their intended use.

3. The attestation of the conformity of the products with harmonised standards (or other harmonised specifications) is established following several alternative procedures. According to Article 13(4), the choice of the procedure for the attestation of conformity for a given product or family of products is specified by the Commission after consultation of the Standing Committee referred to in Article 19(1). More specifically, the procedure for the attestation of conformity is laid down in a decision in the sense of Article 249 of the EC Treaty, whereby Article 20 of the Directive 89/106/EEC has to be followed.

4. When establishing its decision proposals, the Commission follows the specific technical criteria related to in Article 13(4) of the Directive and takes into account the principle of the least onerous possible procedure consistent with safety referred to in the same article, as well as the general principle of proportionality.

5. Due to its complexity, which causes delays in implementation, and the burden that the attestation procedures could impose on manufacturers, the Directive was part of the first SLIM initiative which concluded that both the acceleration of its implementation and the improvement/simplification of the Directive itself were needed. For the same reason the Commission, whilst strictly applying the criteria referred to above, pays special attention to all operational aspects of the procedures required for the attestation of conformity, whose cost could sometimes result in significant alterations in competition conditions on the market, generally to the prejudice of SMEs.

6. Bearing all this in mind, on 2 December 1997, the Commission presented to the Standing Committee on Construction a draft for a decision on the attestation of conformity concerning six families of glass products. In the presence of all Member States, 53 votes were delivered against the draft and 34 for the draft of the Commission. The minutes of the relevant meeting show that some representatives voted against the draft because a more stringent procedure for the attestation of conformity should have been chosen for product group 5/6 (in short: insulating glass units). As the measures envisaged by the Commission are not in

accordance with the opinion of the committee, the Commission is now submitting the proposal to the Council according to Article 20(2) of Directive 89/106/EEC.

I. Introduction

In the framework of the Construction Products Directive (CPD), the availability of harmonised standards is a more important element for the functioning of the internal market than in other new approach directives. In the case of the CPD as it is now, harmonised technical specifications (standards or European technical approvals) are de facto compulsory, as direct conformity with the essential requirements is excluded as an alternative route to CE Marking, for the simple reason that no essential requirements are defined by the directive at the level of construction products.

In this case, the second important element for the operation of a new approach directive on the market, the attestation of conformity, necessarily refers to the available technical specifications, instead of to the essential requirements themselves. For this reason and because of the great variety of products and products families, the Directive does not foresee a specific procedure for the attestation of conformity. Instead, it gives the Commission the power to decide on the procedure to be applied for a given product or family of products, after consultation of the Standing Committee set up in Article 19. This is carried out following the criteria provided for in Article 13 of the Directive.

Following the same Article 13, in each case, the least onerous possible procedure consistent with safety shall be chosen. In addition, the Commission takes account as far as possible of the principles of simplification and efficiency referred to in the SLIM initiative, as well as of the general principle of proportionality.

It appears that for the family of insulating glass units, the Standing Committee referred to above, does not share the Commission's opinion on these aspects, and thus the measures envisaged are not in accordance with the opinion that the Standing Committee delivered on 2 December 1997.

II. Procedural aspects in relation to the draft from the Commission to the Standing Committee in relation to the attestation of conformity for flat glass, profiled glass and glass blocks

(a) The decision within the system of the Directive 89/106/EEC

Directive 89/106/EEC foresees, *inter alia*, that the Commission prepares mandates which form the basis for CEN/CENELEC to elaborate harmonised standards. Furthermore, the Commission has to elaborate a draft for a decision which fixes in which manner a construction product is to be tested in order to allow attestation of the fact that the product is in conformity with the requirements of the harmonised norm. There are two procedures for the attestation of conformity to be chosen from: either

the manufacturer controls via its own factory production control[1], or an approved body is additionally involved in the assessment and surveillance (Article 13(3)). In each case the least onerous procedure consistent with safety shall be chosen (penultimate paragraph of Article 13(4). The criteria listed in Article 13(4) will help in the decision making process.

The procedure for the attestation of conformity is laid down in a decision in the sense of Article 249 of the EC Treaty, whereby Article 20 of Directive 89/106/EEC has to be followed. Therefore, the Commission submits a draft to the Standing Committee which has to deliver an opinion with the majority laid down in Article 205(2) of the EC Treaty. The Committee is a regulatory Committee according to procedure III of the Council decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission[2].

(b) Opinion of the Standing Committee on the draft of the Commission

On 2 December 1997 the Commission presented the said draft for a decision to the Standing Committee. In the presence of all Member States, 53 votes were delivered against the draft and 34 for the draft of the Commission[3]. The minutes of the relevant meeting shows that some representatives voted against the draft because a more stringent procedure for the attestation of conformity should have been chosen for product group 5/6 (in short: insulating glass units).

As the measures envisaged by the Commission are not in accordance with the opinion of the committee, the Commission is now submitting the proposal to the Council according to Article 20(2) of Directive 89/106/EEC.

III. Material aspects in relation to the proposal from the Commission to the Council with regard to the procedure of attestation of conformity for flat glass, profiled glass and glass blocks

(a) The proposed procedures of attestation of conformity

Annex I and II of the Directive reflect in a general way the procedures of attestation of conformity. The final choice is laid down in Annex III which fixes for each product in its end-use the procedure of attestation of conformity which is to be applied.

---

1 Directive 89/106/EEC defines in Annex III.1 the factory production control as a permanent internal control of production exercised by the manufacturer. All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic manner in the form of written policies and procedures. This production control system documentation shall ensure a common understanding of quality assurance and enable the achievement of the required product characteristics and the effective operation of the production control system to be checked.

2 OJ L 197, 18.7.1987, p. 33.

3 Belgium, Germany, Spain, France, Italy, Luxembourg, Portugal and Finland voted against the draft of the Commission. Denmark, Greece, Ireland, the Netherlands, Austria, Sweden and the United Kingdom voted for the draft of the Commission.

1. The least onerous procedure[4]

The least onerous procedure has been chosen for three end uses. Either the product falls under:

(1) fire class A according to decision 96/603/EC of the Commission[5], or under fire classes D,E,F of decision 94/611/EC of the Commission[6] (Product family 2/6). The proposal thereby follows the classifications taken in the above mentioned decisions; or

(2) the decision of the Commission which will be taken in the area of external fire performance analogous to Decision 96/603/EC (product family 3/6); or

(3) all end-uses not explicitly listed in the decision (product family 6/6).

2. The additional involvement of an approved body[7]

The additional involvement of an approved laboratory in order to execute an initial type test has been chosen for the following products:

(1) products which fall under fire classes A,B,C of decision 94/611/EC of the Commission (product family 2/6). Thereby, the Commission follows the classification used in the abovementioned Decision; or

(2) products for uses which are subject to external fire performance regulations. (product family 3/6). Thereby, the Commission follows the decision which will be taken in the area of external fire performance analogous to Decision 96/603/EC; or

(3) products which serve as safety glass (product family 4/6); or

(4) products which serve as insulating glass (product family 5/6).

3. Additional involvement of an approved body with increased testing and surveillance responsibilities[8]

For justified exceptional cases a system has been chosen which requires the involvement of an approved certification body not only for the initial type test of the product but also for an initial inspection of the factory, an initial inspection of the factory production control of the producer and continuous surveillance, assessment and approval of the factory production control. This financially and logistically intensive procedure for the producer is foreseen for products which:

---

4 This procedure corresponds to the system as described in Annex III.2(ii), Third possibility of Directive 89/106/EEC and is illustrated in the proposal by the digit 4.

5 Decision 96/603/EC of the Commission establishing the list of products belonging to Classes A "no contribution to fire", OJ L 267, 19.10.1996.

6 Decision 94/611/EC of the Commission implementing Article 20 of Directive 89/106/EEC on construction products, OJ L 241, 16.9.1994, the so-called "Euroclass decision" in relation to fire.

7 This procedure corresponds to the system as described in Annex III.2(ii), Second possibility of Directive 89/106/EEC and is illustrated in the proposal by the digit 3.

8 This procedure corresponds to the system as described in Annex III.2(i) without audit testing of samples of Directive 89/106/EEC and is illustrated in the proposal by the digit 1.

(1) serve for fire resistance and compartmentation (product family 1/6); or

(2) serve as anti-bullet, or anti-explosion glazing (product family 4/6).

(b) The procedure of attestation of conformity for insulating glass

The proposal of the Commission takes into account the SLIM initiative and is based on the legal grounds of the EC Treaty and Directive 89/106/EEC. As the Commission has to choose the least onerous procedure consistent with safety, it must follow the principle of proportionality. Therefore, the procedure must not go beyond what is necessary to achieve the objectives. The attestation of conformity by the producer himself has to be given priority. This fundamental principle has only to be left aside if it is imperative for reasons of safety.

The principle of proportionality for the procedure of attestation of conformity in the case of Directive 89/106/EEC has to be assessed against the question of whether the chosen procedure can secure those characteristics of a construction product which a construction works needs in order to fulfil the essential requirements in the sense of Directive 89/106/EEC.

Insulating glass has the task to enable the construction works to fulfil the essential requirements "Protection against noise" and "Energy economy and heat retention". Protection against noise is laid down in Annex I point 5 of Directive 89/106/EEC as follows:

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 so sleep, rest and work in satisfactory conditions.

In order to fulfil "Energy economy and heat retention" Annex I point 6 of Directive 89/106/EEC foresees that

The construction works and its 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, having regard to the climatic conditions of the locations and the occupants.

The satisfaction of the essential requirements is assured by a number of interrelated measures, in particular the planning and design of the works, the execution of the works and necessary maintenance as well as the properties, performances and use of the construction products[9]. One of these products could be insulating glass. Insulation glass units help to reduce direct airborne sound[10] and the energy needs of construction works. To these ends several characteristics will need to be tested as laid down in a harmonised standard: direct airborne sound insulation, thermal properties and radiation properties[11].

---

9 Communication of the Commission with regard to the Interpretative Documents of Council Directive 89/106/EEC, p. 140 and 153 of OJ C 62, 28.2.1994.

10 op.cit. p. 145.

11 CONSTRUCT 97/221 Rev 1, Mandate to CEN/CENELEC concerning the execution of standardisation work for harmonised standards on flat glass, profiled glass and glass blocks.

With regard to the production process of insulating glass it needs to be explained that sheets of glass units are assembled which contain either air or inert gases between them and/or have a special coating. Important aspects in the production of multi-layered glass units are the sealing and a complete surface treatment in the case of coating. Faults in the design or in the fabrication lead to a reduced technical capacity of the product which has negative repercussions on the fulfilment of the essential requirements as described above.

The importance of the product “insulating glass” as one of several possibilities to fulfil the essential requirements “noise reduction” and “energy economy and heat retention” in the construction works, is to be regarded as notable yet not essential. This also means that the effect of the variability of the products characteristics on its serviceability with regard to the fulfilment of the essential requirements is medium to low. However, the production process does bear the possibility of defects. A poor sealing will leave a simple multiple-glazing. A coating which has not been applied in full or which becomes patchy, is less effective in reducing the energy needs of the construction works. In order to contain these risks, the Commission proposes to have the design and production parameters tested with a prototype by an independent test laboratory. The producer will then have to follow the test results of the initial type test with his own production control system.

An even greater restriction of the producer of insulation glass appears disproportionate, particularly as the product characteristics to be tested (direct airborne sound insulation, thermal and radiation properties) have no safety implications. In addition, Member States could not bring forward any convincing and striking arguments which would have refuted the proportionality of the proposal.

In general it has to be noted that the principle of proportionality is not always followed by the majority of representatives of the Member States in the administrative committee. Neither the EC Treaty and the explicit provision in article 13(4) of Directive 89/106/EEC, nor the efforts of the Commission to elaborate a legislation which is the least onerous for manufacturers, convinced the majority of representatives in the administrative committee to find a legally objective and acceptable result. In the case in question, the Member States even asked for a degree of involvement of a third party that does not exist in their own national legal order. The law of the European Community is thus being misused in order to introduce more stringent rules for market participants.

With such behaviour, the objectives of Directive 89/106/EEC are constantly undermined, which is neither acceptable in a legal nor an economic sense. The tendency to foresee more stringent, and thereby more expensive procedures for the attestation of products via a systematic involvement of a third party is not covered by the text of the Directive and does not correspond to the approach of the European Community in order to fulfil the Internal Market in the EC; furthermore, it does not in any way reduce production costs and thereby improve competitiveness.

Proposal for a

COUNCIL DECISION

on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards flat glass, profiled glass and glass block products

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to 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[12], as amended by Directive 93/68/EEC[13], and in particular Article 13(4) thereof,

Having regard to the proposal from the Commission[14],

Whereas:

(1) The Commission is required to select, as between the two procedures under Article 13(3) of Directive 89/106/EEC for attesting the conformity of a product, the 'least onerous possible procedure consistent with safety'. This means that it is necessary to decide whether, for a given product or family of products, the existence of a factory production control system under the responsibility of the manufacturer is a necessary and sufficient condition for an attestation of conformity, or whether, for reasons related to compliance with the criteria mentioned in Article 13(4), the intervention of an approved certification body is therefore required.

(2) Article 13(4) requires that the procedure thus determined must be indicated in the mandates and in the technical specifications; therefore, it is desirable to define the concept of products or family of products as used in the mandates and in the technical specifications.

(3) The two procedures provided for in Article 13(3) are described in detail in Annex III to Directive 89/106/EEC: it is necessary therefore to specify clearly the methods by which the two procedures must be implemented, by reference to

---

12 OJ L 40, 11.2.1989, p. 12.
13 OJ L 220, 30.8.1993, p. 1.
14 OJ C

Annex III, for each product or family of products, since Annex III gives preference to certain systems.

(4) The procedure referred to in point (a) of Article 13(3) corresponds to the systems set out in the first possibility, without continuous surveillance, and the second and third possibilities of point (ii) of Section 2 of Annex III, and the procedure referred to in point (b) of Article 13(3) corresponds to the systems set out in point (i) of Section 2 of Annex III, and in the first possibility, with continuous surveillance, of point (ii) of Section 2 of Annex III.

(5) The measures provided for in this Regulation are not in accordance with the opinion of the Standing Committee on Construction,

HAS ADOPTED THIS REGULATION:

Article 1

The products and families of products set out in Annex I shall have their conformity attested by a procedure whereby the manufacturer has under its sole responsibility a factory production control system ensuring that the product is in conformity with the relevant technical specifications.

Article 2

The products set out in Annex II shall have their conformity attested by a procedure whereby, in addition to a factory production control system operated by the manufacturer, an approved certification body is involved in assessment and surveillance of the production control or of the product itself.

Article 3

The procedure for attesting conformity as set out in Annex III shall be indicated in mandates for harmonised standards.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX I

Flat and curved glass panels (including basic glass, processed glass, special or safety glass, coated, filmed, enamelled, surface treated or mirrored glass):

For all uses other than:

- for use in a glazed assembly intended specifically to provide fire resistance;

- for use as anti-bullet or anti-explosion glazing.

Channel-shaped glass (wired or unwired):

For all uses other than:

- for use in a glazed assembly intended specifically to provide fire resistance.

Insulating glass units:

For all uses other than**:**

- for use in a glazed assembly intended specifically to provide fire resistance;

- for use as anti-bullet or anti-explosion glazing.

Glass blocks

For use in non-load bearing applications other than:

- for anti-bullet and anti-explosion uses.

Glass block wall panels:

For all non-load bearing uses other than:

- for fire compartmentation uses;

- for anti-bullet and anti-explosion uses.

ANNEX II

Flat and curved glass panels (including basic glass, processed glass, special or safety glass, coated, filmed, enamelled, surface treated or mirrored glass):

For anti-bullet and anti-explosion uses;

For use in a glazed assembly intended specifically to provide fire resistance.

Channel-shaped glass (wired or unwired):

For use in a glazed assembly intended specifically to provide fire resistance.

Insulating glass units:

For anti-bullet and anti-explosion uses;

For use in a glazed assembly intended specifically to provide fire resistance.

Glass blocks

For anti-bullet and anti-explosion uses.

Glass block wall panels:

For fire compartmentation uses;

For anti-bullet and anti-explosion uses.

ANNEX III

Note: For products having more than one of the intended uses specified in the following families, the tasks for the approved body, derived from the relevant systems of attestation of conformity, are cumulative.

Product family: **flat glass, profiled glass and glass block products (1/6)**

Systems of attestation of conformity

For the product(s) and intended use(s) listed below, CEN/CENELEC are requested to specify the following system(s) of attestation of conformity in the relevant harmonised standard(s):

Product(s)	Intended use(s)	Level(s) or class(es) *(fire resistance)*	Attestation of conformity system(s)
Flat or curved glass panels **Channel-shaped glass** **Insulating glass units**	For use in a glazed assembly intended specifically to provide fire resistance	any	1
Glass block wall panels	For fire compartmentation	any	1
System 1: See Directive 89/106/EEC, Annex III.2.(i), without audit-testing of samples.			

The specification for the system should be such that it can be implemented even where performance does not need to be determined for a certain characteristic, because at least one Member State has no legal requirement at all for such characteristic [see Article 2(1) of Directive 89/106/EEC and, where applicable, clause 1.2.3 of the Interpretative Documents]. In those cases the verification of such a characteristic must not be imposed on the manufacturer if he does not wish to declare the performance of the product in that respect.

Product family: **flat glass, profiled glass and glass block products (2/6)**

Systems of attestation of conformity

For the product(s) and intended use(s) listed below, CEN/CENELEC are requested to specify the following system(s) of attestation of conformity in the relevant harmonised standard(s):

Product(s)	Intended use(s)	Level(s) or class(es) *reaction to fire*	Attestation of conformity system(s)
Flat or curved glass panels	for uses subject to reaction to fire regulations	A, B, C	3
Channel-shaped glass		-----	------
Insulating glass units		A*, D, E, F	4
Glass blocks			
Glass block wall panels			
System 3: See Directive 89/106/EEC, Annex III.2.(ii), Second possibility. System 4: See Directive 89/106/EEC, Annex III.2.(ii), Third possibility.			

* Materials of class A that according to the Decision 96/603/EC do not require to be tested for reaction to fire.

The specification for the system should be such that it can be implemented even where performance does not need to be determined for a certain characteristic, because at least one Member State has no legal requirement at all for such characteristic [see Article 2(1) of Directive 89/106/EEC and, where applicable, clause 1.2.3 of the Interpretative Documents]. In those cases the verification of such a characteristic must not be imposed on the manufacturer if he does not wish to declare the performance of the product in that respect.

Product family: **flat glass, profiled glass and glass block products (3/6)**

Systems of attestation of conformity

For the product(s) and intended use(s) listed below, CEN/CENELEC are requested to specify the following system(s) of attestation of conformity in the relevant harmonised standard(s):

Product(s)	Intended use(s)	Level(s) or class(es)	Attestation of conformity system(s)
Flat or curved glass panels **Channel-shaped glass** **Insulating glass units**	For uses subject to external fire performance regulations	products requiring testing --------- products "deemed to satisfy" without testing *	3 -------- 4
System 3: See Directive 89/106/EEC, Annex III.2.(ii), Second possibility. System 4: See Directive 89/106/EEC, Annex III.2.(ii), Third possibility.			

* to be confirmed in discussions with the Fire Regulators Group.

The specification for the system should be such that it can be implemented even where performance does not need to be determined for a certain characteristic, because at least one Member State has no legal requirement at all for such characteristic [see Article 2(1) of Directive 89/106/EEC and, where applicable, clause 1.2.3 of the Interpretative Documents]. In those cases the verification of such a characteristic must not be imposed on the manufacturer if he does not wish to declare the performance of the product in that respect.

Product family: **flat glass, profiled glass and glass block products (4/6)**

Systems of attestation of conformity

For the product(s) and intended use(s) listed below, CEN/CENELEC are requested to specify the following system(s) of attestation of conformity in the relevant harmonised standard(s):

Product(s)	Intended use(s)	Level(s) or class(es)	Attestation of conformity system(s)
Flat or curved glass panels **Insulating glass units** **Glass blocks** **Glass block wall panels**	for use as anti-bullet, or anti-explosion glazing ---------- for other uses liable to present "safety-in-use" risks and subject to such regulations	- ---------- -	1 ---------- 3
Channel-shaped glass	for uses liable to present "safety-in-use" risks and subject to such regulations	-	3
System 1: See Directive 89/106/EEC, Annex III.2.(i), without audit-testing of samples. System 3: See Directive 89/106/EEC, Annex III.2.(ii), Second possibility.			

The specification for the system should be such that it can be implemented even where performance does not need to be determined for a certain characteristic, because at least one Member State has no legal requirement at all for such characteristic [see Article 2(1) of Directive 89/106/EEC and, where applicable, clause 1.2.3 of the Interpretative Documents]. In those cases the verification of such a characteristic must not be imposed on the manufacturer if he does not wish to declare the performance of the product in that respect.

Product family: **flat glass, profiled glass and glass block products (5/6)**

Systems of attestation of conformity

For the product(s) and intended use(s) listed below, CEN/CENELEC are requested to specify the following system(s) of attestation of conformity in the relevant harmonised standard(s):

Product(s)	Intended use(s)	Level(s) or class(es)	Attestation of conformity system(s)
Flat or curved glass panels (specially treated) **Channel-shaped glass** **Insulating glass units** **Glass blocks** **Glass block wall panels**	for uses relating to energy conservation and / or noise reduction	-	3
System 3: See Directive 89/106/EEC, Annex III.2.(ii), Second possibility.			

The specification for the system should be such that it can be implemented even where performance does not need to be determined for a certain characteristic, because at least one Member State has no legal requirement at all for such characteristic [see Article 2(1) of Directive 89/106/EEC and, where applicable, clause 1.2.3 of the Interpretative Documents]. In those cases the verification of such a characteristic must not be imposed on the manufacturer if he does not wish to declare the performance of the product in that respect.

Product family: **flat glass, profiled glass and glass block products (6/6)**

Systems of attestation of conformity

For the product(s) and intended use(s) listed below, CEN/CENELEC are requested to specify the following system(s) of attestation of conformity in the relevant harmonised standard(s):

Product(s)	Intended use(s)	Level(s) or class(es)	Attestation of conformity system(s)
Flat or curved glass panels **Channel-shaped glass** **Insulating glass units** **Glass blocks** **Glass block wall panels**	for uses other than those specified in families (1/6) to (5/6)	-	4
System 4: See Directive 89/106/EEC, Annex III.2.(ii), Third possibility.			

The specification for the system should be such that it can be implemented even where performance does not need to be determined for a certain characteristic, because at least one Member State has no legal requirement at all for such characteristic [see Article 2(1) of Directive 89/106/EEC and, where applicable, clause 1.2.3 of the Interpretative Documents]. In those cases the verification of such a characteristic must not be imposed on the manufacturer if he does not wish to declare the performance of the product in that respect.