

Construction products: harmonised conditions for the marketing

2008/0098(COD) - 13/09/2010 - Council position

Council's position in first reading, adopted by qualified majority, maintains the objectives of the Commission's proposal. In the end, the Council accepted the majority of the EP's amendments (54) at least in part, some of them in substance, some also in exact wording. 48 amendments by the EP were finally rejected by the Council.

Council agreed with the principle of the amendments introduced by Parliament on the **declaration of performance (DoP)**, with this being the '**standard case**' when the construction product in question is covered by a harmonised standard or when it is the subject of a European Technical Assessment (ETA). In the same context, Council supported an important innovation called for by Parliament in order to strengthen the degree of harmonisation in the Union. **When the Commission has fixed an essential characteristic** as mandatory to be declared, the manufacturer has to draw up a DoP and declare performance on this essential characteristic, even if at the level of the national market there are no particular provisions on this.

It should be noted that the Council did not integrate an obligation to report on **hazardous substances** contained in construction products in the Declaration of Performance. However, according to a new recital, the manufacturer can voluntarily provide information on hazardous substances to users of construction products.

Likewise, the Council preferred not to integrate the requirement proposed by Parliament as regards the **independence of Product Contact Points**.

The **main changes** brought to the text in the course of negotiations are as follows:

Declaration of performance: as mentioned above, the principle of the drawing up of a declaration of performance by the manufacturer has become the standard case. This will be mandatory when the derogations of Article 4a (which basically concern well-specified restricted cases) do not apply. Furthermore, the essential characteristics to be declared are either fixed via a Commission decision or by national provisions in force where the manufacturer intends to place the product on the market.

If for a specific intended use neither of the previous applies, the manufacturer may choose by himself which essential characteristics (at least one) he wishes to declare. For those essential characteristics where there are no European or national provisions and where the manufacturer chooses not to declare them, he shall state "no performance determined" (NPD).

Product Contact Points: the Council made clear that Product Contact Points can be established according to the pertinent provisions of the New Legal Framework. However the fact that the Product Contact Points have to inform about the provisions concerning Basic Works Requirement is made especially clear.

Two recitals set out that Product Contact Points may charge fees for additional information and that they may be integrated into the specific organisational structures that already exist in the relevant Member State (s).

European Technical Assessment Bodies: Council decided to completely re-work the provisions on the development of the European Assessment Document and the role of the national Technical Assessment Bodies in this context.

Levels or classes of performance: Council clarified the responsibilities of the Commission and the European standardisation bodies when establishing classes of performance minimum performance levels and the assumption of satisfying levels or classes of performance without testing or without further testing. The function of the mandate or revised mandate to the European standardisation bodies and the role of Member States in the process are now phrased in clearer terms.

Delegated acts: a new element introduced by the Council is the set of provisions transferring the Regulatory Procedure with Scrutiny (PRAC) into the new procedure for "delegated acts" according to the Lisbon Treaty (TFEU).

Annex III- Model of the Declaration of performance: Council decided to mirror exactly the manufacturers' obligations from the articles and thus introduced major changes to the format of the Declaration of performance. To this end, the model of Annex III has been clarified in a number of ways (e. g. obligation to set out the intended use of the product).