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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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to:	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	Amended proposal for a Regulation of the European Parliament and of the Council laying down harmonisation conditions for the marketing on the construction products (Text with EEA relevance) (presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

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Delegations will find attached Commission document COM(2009) 579 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.10.2009  
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2008/0098 (COD)

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down harmonisation conditions for the marketing on the construction products**

**(Text with EEA relevance)**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

Amended proposal for a

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down harmonisation conditions for the marketing on the construction products**

**(Text with EEA relevance)**

### **1. HISTORY OF THE PROPOSAL**

Commission's adoption of the proposal 23 May 2008

Transmission of the Proposal to the Council and the European

Parliament – COM(2008)311 - A6-0068/2009-2008/0098(COD) -

in accordance with Article 95 of the Treaty: 23 May 2008

Opinion of the European Parliament - first reading: 24 April 2009

Opinion of the European Economic and Social Committee: 25 February 2009

In its session of 21-24 April 2009 the European Parliament approved in first reading 390 votes in favour, 4 against and 6 abstentions the report of Ms Neris, containing 102 amendments.

### **2. OBJECTIVE OF THE COMMISSION PROPOSAL**

In October 2005, the Commission launched a three year simplification rolling programme as part of its *Better Regulation: Simplification Strategy*. The aim is to make legislation less burdensome, easier to apply and thus more effective, notably by considering whether the approach originally chosen is the most effective one for meeting the objectives of the legislation. Simplification of the Council Directive 89/106/EEC, the Construction Products Directive, referred to hereafter as the CPD, is one of the initiatives under this strategy.

The CPD is aimed at ensuring the free circulation and use of construction products in the Internal Market. Since the construction products are **intermediate products** intended to be incorporated in the construction works, the concept of safety applies to those products to the extent that they contribute to the **safety of the works**. This specificity explains that the CPD achieves its objective by defining harmonized means to express the performance of the product in an accurate and reliable way, rather than by harmonizing the safety requirements of the product, as it is the case in the New Approach directives.

The objective of the Commission proposal is to replace the CPD by a Regulation, with the aim of better defining the objectives of this Community legislation, as well as making its implementation easier and more efficient.

As part of the Better Regulation initiative, the proposal intends to bring about clarification of the basic concepts and the use of CE marking; to introduce simplified procedures, so as to reduce the costs incurred by enterprises, in particular SMEs; and to increase the credibility of the whole system by imposing new and stricter designation criteria to bodies involved in the assessment and the verification of constancy of performance of construction products.

More specifically, the objective of the proposal is to ensure accurate and reliable information on construction products in relation to their performance. This is achieved by a system composed of two main elements: on the one hand, a set of harmonised technical specifications, harmonised standards and European Assessment Documents (EAD), providing the methods for assessing the performance of the products and, on the other hand, a number of Notified and Technical Assessment Bodies designated in conformity with strictly defined technical criteria, which contribute to the correct application of such methods.

### **3. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT**

#### **3.1. General view**

- A.** The Commission has considered it appropriate to accept a large number of amendments approved by the European Parliament because they do not modify the main substance of the initial Commission proposal: they quite frequently also contribute to improving it by making it more precise. Whilst welcoming those amendments, the Commission has preferred, in a certain number of cases, a slightly different formulation.

Of the changes accepted by the Commission, Amendments 17 and 70, deleting recital 17 and modifying Article 21, have introduced the most important substantial changes to the Commission proposal. The Parliament has limited hereby the use of European Technical Assessments (ETAs) only to situations where the product in question is not covered or not fully covered by a harmonised standard. Given the specific character of harmonised standards in this context (performance-based standards), the Commission can accept these amendments, while not going against the main objective of the proposal.

- B.** On the other hand, certain amendments could not be accepted because they would have modified the substance of the Commission proposal in a manner not compatible with the objectives presented above. Within the reasons that have led to the rejection of these amendments, it is worth pointing out their evident inconsistency, in several cases, with the general principles of the Internal Market Package for Goods. Moreover, sometimes the horizontal character of the amendments has not coincided with the sectorial nature of the Commission proposal. Accepting some of the amendments would have created internal incoherence within the whole proposal, too.
- C.** Finally, a series of amendments have been rejected because of their significant direct implications on the substance of the proposal. The most important ones concern the following matters:
- a) the obligation established for the manufacturers to affix CE marking even in absence of a real declaration of performance (DoP) with any content, because

no regulatory requirement for such declaration exists; this would lead to a meaningless CE marking, which cannot be accepted, and, in addition, would impose unnecessary burden to enterprises;

- b) an obligation to declare the content on dangerous substances, going beyond REACH obligations and introduced without any justification or impact assessment;
- c) the possibility to maintain national marks together with the CE marking. In this respect, the vote in the Plenary represents a step in the right direction, as Amendment 54 to Article 7, opening this route, was rejected: however, Amendment 17 related to the corresponding recital 30 was maintained.

**D.** The Council has been continuing their works, with a view of improving the technical quality of the proposal and defining the mandate for the Presidencies for further negotiations with the Parliament. The Council has also dealt with most of the Parliament amendments, indicatively taking a rejecting stand on a large number of them. On the other hand, the progress made in the Council has to some extent reflected also on the contents of the Parliament amendments, thus paving way for the establishment of a solid common base for the thrive towards a second reading compromise between the Institutions on this proposal. The Commission warmly welcomes all such efforts, facilitating the work ahead.

### **3.2. Analysis of the amendments**

#### **Amendment 1 - Recital 1**

With this amendment, the Parliament wishes to emphasise the environmental values in the context of construction. Such an objective is in principle acceptable; however, the distinction between “natural” and “man-made” environment seems inappropriate here. Because of this, the wording has been reconsidered so as not to encompass the said distinction.

*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 **nor damage the environment**.*

#### **Amendment 124 - Recital 7 a (new)**

The purpose of this new recital, to clarify the width of the concept “supply of a construction product on the Community market” included in Article 2(5), is supportable. Also the clarification that manufacturers incorporating their construction products in works should be allowed, but not obliged, to declare the performance of these products merits to be highlighted in this manner. According to the Commission view, such a recital would also make similar kinds of additions to Article 2(5) itself redundant, thus enabling to maintain the coherence with the definitions included in the Internal Market Package for Goods. Nevertheless, with a view to the internal logics of the order of recitals, it would seem preferable to insert this new text after the initial recital 21.

*Cf. Recital 21c*

***21c) Products made on the site of construction works should not be considered to fall within the scope of the concept of the supply of construction products 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.***

#### **Amendment 2 - Recital 8 a (new)**

The objective of this addition appears to be to underline the need to take into account the health and safety aspects related to the use of a construction product during its entire life cycle. As such, the Commission supports such aims and has therefore accepted this amendment in principle. Still, the wording has been reformulated so as to focus on just this aspect. Moreover, according to the Commission opinion, this added text would be placed more appropriately after the initial recital 14.

*Cf. Recital 14*

#### **Amendment 4 - Recital 11 a (new)**

Amendment 4 deals with Environmental Product Declarations (EPD), but does not correspond to any Article, since the EPDs are not mentioned anywhere in the proposal, although they have been included in the on-going standardisation work based on a mandate. Besides, they have been foreseen only for voluntary use so far. Because of this, the wording of this amendment has been readjusted as follows when incorporating it into the amended proposal of the Commission. In addition, according to the Commission view, this added text would be placed more appropriately as a new recital with the number 43c (the one added by the Parliament with this same number becoming recital 43b).

*Cf. Recital 43c*

***(43c) The use of Environmental Product Declarations (EPD), when available, should be encouraged in the context of assessing the sustainability of the use of resources and the impact of construction works on the environment.***

#### **Amendment 125 - Recital 11 b (new)**

This new recital aims at incorporating the use in harmonised standards of classes of performance in relation to the essential characteristics of construction products, in the lines initially included in recital 12. Encouraging this in the manner approved by the Parliament can be fully supported by the Commission. Since these concepts fit better here, accepting the Parliament amendment improves the quality of the proposal: obviously, the corresponding deletions are proposed for recital 12. Some very insignificant editorial adjustments have been suggested to the Parliament version, so as to streamline the text. – As the previous amendment, numbered recital 11a above, is proposed to be moved elsewhere as explained, the new recital at hand could thus become recital 11a of the amended proposal.

***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. 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.***

## Recital 12

Where ***an intended end use requires minimum*** performance levels in relation to ***any*** essential characteristics, to be fulfilled by construction products in Member States, ***these levels*** should be established in the harmonized technical specifications. ***(DELETED: 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.)***

## Amendment 5 - Recital 14

The text added to this recital concerns the increased coverage of harmonised standards, a principle fully supportable as such. The wording has been reconsidered somewhat, so as to widen the scope of such efforts to all relevant actors (as opposed to only the Commission), and to introduce here explicitly also the objective of transferring construction products, for which the use of guidelines for European technical approvals (ETAGs) or EADs would have constituted a sufficient basis of experience, under harmonised standards. Moreover, according to the Commission, such a broadening of the scope of this addition would also render unnecessary the similar amendments proposed by the Parliament to Articles 20 (cf. Amendment 120, adding a new paragraph 3a to this Article) and 53 (cf. Amendment 89, the second subparagraph to be added to this Article).

Additionally to the new text, added as explained above, which has been inserted as the fourth subparagraph of this recital, the amended proposal of the Commission comprises also two other new subparagraphs: The second one concerns the concept “*performance*”, which according to the Commission is more appropriate to be described here, rather than defining it within Article 2 (cf. Amendment 27, dealt with below). The third subparagraph corresponds, as explained above (cf. Amendment 2), to recital 8a, which the Parliament has suggested to be added to the proposal.

*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.*

***In this context, the performance of a construction product should be understood as its performance in relation to its essential characteristics, expressed by levels or classes, or in a description.***

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

***The range of construction products covered by harmonised standards should be widened, notably, when appropriate, by mandating them to be developed on the basis of existing EADs or ETAGs.***

## Amendment 8 – Recital 16

Amendment 8 has the purpose to delete the parallel use of ETAs and harmonised standards, i.e. to restrict the issuing of ETAs to cases where the construction products in question are not covered or not fully covered by any harmonised standards. The Commission has come to

support it, with only a minor editorial change of the wording. – In addition, to be consistent with the rest of the proposal, the reference to “importers” should be deleted and the wording should be revised because only manufacturers should be entitled or obliged to make a declaration of performance and to affix the CE marking on their products. Similar changes have been carried out also for recitals 18 and 22, as well as Articles 4 and 12, and Annex II.

*In order to allow manufacturers **(DELETED: 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.*

#### **Amendment 9 – Recital 17**

This amendment, being fully in line with recital 16 as resulting from the Parliament amendment 8, is accepted as well.

#### **DELETED**

#### **Amendment 11 – Recital 20, 1<sup>st</sup> part (“The TABs ... European Technical Assessments”)**

The text added by the 1<sup>st</sup> part of this amendment to recital 20 emphasises the principle of transparency in the context of establishing EADs and issuing ETAs. This idea is quite supportable, especially with a view to the manufacturer’s part in the procedure. Still, according to the Commission, the wording has benefited from some readjustments, on one hand to take into account the more general importance of transparency in this context, but on the other hand to exercise some caution particularly due to confidentiality issues involved. These seemingly conflicting goals are thus proposed to be coincided with the text added in the end of the recital.

*The TABs should establish an organisation to coordinate the procedures for the establishment of **(DELETED: draft)** EADs and for issuing of European Technical Assessments, **ensuring the transparency and the necessary confidentiality of these procedures.***

#### **Amendment 18 – Recital 33 a (new)**

This new recital aims at excluding the importers from the scope of Articles 26 – 28. The idea is in principle acceptable but, according to the Commission, the wording approved by the Parliament should be readjusted somewhat. This matter links also to the Parliament amendments 77 & 83, below, adding new paragraphs to Articles 26 & 27 for this purpose: it would seem more appropriate to refrain from repeating these same principles in these contexts, but instead to clarify this issue once and for all in the new recital at hand. Moreover, according to the Commission opinion, this added text would be placed more appropriately as a new recital after the initial recital 34, i.e. with the number 34a.

*Cf. Recital 34a*

*In order to enhance the impact of market surveillance measures, all simplified procedures foreseen for assessing the performance of construction products should apply only to natural or legal persons which manufacture the products they place on the market.*

#### **Amendment 21 – Recital 43 a (new)**



Amendment 21 wishes to strongly emphasise the inevitable need for comprehensive information campaigns after the adoption of the proposal. As such, it is fully supportable: this matter has already been included in the Commission work programme. This could also be seen as supportive to the obvious needs for additional human and financial resources for such new activities of the Commission. Very insignificant editorial changes to the wording approved by the Parliament have been included in the amended proposal.

***The Commission and the Member States should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users of construction products, regarding the establishment of a common technical language, the distribution of responsibilities between the individual economic operators and the users, the affixing of the CE marking to construction products, the revision of the basic works requirements and the systems of assessment and verification of constancy of performance.***

#### **Amendment 23 – Recital 43 c (new)**

This new recital brings forward the contents of the basic work requirement 7. In principle, it can be supported, although raising some questions (other basic works requirements have not been suggested to be treated similarly in the recitals). Besides, the respective and supportable addition to Annex I itself by the Parliament amendment 93 has not been taken into account here. Therefore, some wording adjustments have been included in the amended proposal of the Commission. – As the previous Parliament amendment, numbered recital 43b, is not proposed to be included, the new recital at hand could thus become recital 43b of the amended proposal, leaving room for another new recital of the Parliament, suggested as recital 11a, to be placed as recital 43c.

***The development of the basic works requirement 7 on “sustainable use of natural resources” should notably take account of the recyclability of construction works, their materials and parts after demolition, the durability of construction works and the use of environmentally compatible raw and secondary materials in construction works.***

#### **Amendment 24 – Article 1**

Amendment 24 wishes to further clarify the subject matter of the proposal in a manner fully acceptable to the Commission. Still, according to the Commission the wording merits to be slightly adjusted, adding the word “*harmonised*” in it in the context of establishing rules.

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

#### **Amendment 115 - Article 2, point 1 a (new)**

This new definition concerns the reduced use of ETAs and assists in distinguishing the situations in question. Since such clarifications improve the quality of the proposal, after being amended quite substantially by the deletion of parallel use of ETAs and hENs, the Commission can fully support them. However, the more appropriate place for this new recital appears to be found as point 12a (following the numbering of the initial proposal); in addition, some wording suggestions have been included in the amended proposal, so as to make the outcome even clearer and more concise.

*Cf. Article 2, point 12a*

**12a. "product not covered or not fully covered by a harmonised standard" means any construction product, the performance of which cannot be entirely assessed, in relation to the essential characteristics of this product, according to an existing harmonised standard, because *inter alia*:**

- (a) the product does not fall within the scope of any existing harmonised standard; or**
- (b) for at least one essential characteristic of that product, the assessment method foreseen in the harmonised standard is not appropriate; or**
- (c) the harmonised standard does not contain any assessment method in relation to at least one essential characteristic of that product;**

#### **Amendment 27 - Article 2, point 3 a (new)**

Amendment 27 consists of adding a new definition on "*performance of a construction product*". In order for this to be inserted, however, the wording should be improved so as to accommodate the real needs for such a definition. In this context, quite like the following ones, coherence should be found between the use of concepts "value", "level", "class" and "threshold"; and "individual" would not appear to have any added value here. All in all, it has therefore been considered most opportune to deal with this issue within the amended proposal of the Commission in recitals (cf. recital 14, where it has been added).

*Cf. Recital 14*

#### **Amendment 116 - Article 2, point 3 b (new)**

This new definition relates to "*threshold level*". In order for this to be inserted, however, the wording should be improved so as to accommodate the real needs for such a definition. The word "characteristic" is used here in the meaning of the concept "parameter". Therefore, as well as to avoid misunderstandings about the legal consequences of such threshold levels owing to the differentiation between "technical" and "regulatory" ones, the wording should be readjusted accordingly. In this context, quite like the adjacent ones, coherence should be found between the use of concepts "value", "level", "class" and "threshold": this links also to other Articles (cf. Articles 18 and 20). In fact, the amended proposal of the Commission is suggesting this to be solved by inserting the contents of the Parliament amendment 27 on "performance" into the recitals (cf. recital 14), as well as introducing yet another new definition, that of "*level*", as point 3a.

**3a. "level" means the result of the assessment of the performance of a construction product in relation to its essential characteristics, expressed as a numerical value;**

**3b. "threshold level" means a minimum or a maximum performance level of a construction product, determined in the harmonised technical specifications**

#### **Amendment 117 - Article 2, point 3 c (new)**

This new definition concerns the concept "*class*". In order for this to be inserted, however, the wording should be improved so as to accommodate the real needs for such a definition. The word "characteristic" is used here in the meaning of the concept "parameter". Therefore,

the wording should be readjusted accordingly. In this context, quite like the previous ones, coherence should be found between the use of concepts “value”, “level”, “class” and “threshold”.

**3c. “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product;**

#### **Amendment 30 - Article 2, point 4 a (new)**

Amendment 30 inserts a definition of “*European Technical Assessment*” to the proposal. The idea as such is welcomed by the Commission. However, since the last part of this Parliament amendment appears redundant, because the same matter has been included in the corresponding enacting Articles, some wording changes are necessary to come to the amended proposal of the Commission; in addition, the more appropriate place (in the structure of the initial proposal) for this definition would seem to be as point 13a.

*Cf. Article 2, point 13a*

**13a. “European Technical Assessment” means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document;**

#### **Amendment 39 - Article 2, order of points 4 b to 4m (partially new)**

Amendment 39 reflects the wish of the Parliament to place these definitions in a changed order. The Commission considers the idea of readjusting this order quite acceptable, but would refrain from this until it has been clarified and determined, which definitions are finally to be included in the text. Besides, also points 1a to 4a (within the Parliament amendments, as partially already suggested above) as well as points 16a to 20 should be considered to be included in this eventual reshuffle. Therefore, the amended proposal of the Commission does not contain any reactions to Amendment 39 at this stage.

#### **Amendment 36 - Article 2, point 4 c**

This amendment aims at adding some new, clarifying elements into the definition in point 13 of the initial Commission proposal on EADs: as such, its first part can be accepted. On the other hand, the final part repeating the restriction to the scope of issuing EADs appears here superfluous and repetitive.

**13. “European Assessment Document” means a document adopted by the organisation of Technical Assessment Bodies, for the purpose of issuing European Technical Assessments;**

#### **Amendment 33 - Article 2, point 4 e**

In the sequence of the Parliament amendments, this one corresponds to point 7 of the initial Commission proposal, dealing with the concept “*manufacturer*”. This amendment being the first alignment required in the final text to the final wording of Decision 768/2008/EC, the Commission welcomes it as such.

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;*

#### **Amendment 32 - Article 2, point 4 i**

In the sequence of the Parliament amendments, this one corresponds to point 5 of the initial Commission proposal, concerning *"making available on the market"*. The initial Commission proposal is similar to the wording used consistently in the Internal Market Package for Goods. Also for this reason, while accepting in principle the clarifications the Parliament wishes to bring forward here, the Commission considers this matter be treated more adequately within the recitals only (cf. above, amendment 124, and recital 21c of the amended proposal).

*Cf. Recital 21c*

#### **Amendment 34 - Article 2, point 16 a (new)**

Amendment 34 consists of a new definition on *"user"*. The idea of adding such a definition to the proposal can be accepted, but adequate account needs to be taken of the concerns on the legal sources for the responsibilities involved. Therefore, some adjustments to the wording suggested by the Parliament appear necessary, resulting in the formulation of the amended proposal of the Commission. In addition, the more appropriate place for this new text would seem to be as point 11a in the initial sequence of the proposal.

**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;***

#### **Amendment 35 - Article 2, point 16 b (new)**

This amendment brings along a new definition of *"Technical Assessment Body"* (TAB). The Commission is inclined to accept it in principle, provided that the wording is sufficiently adjusted: the final part of the Parliament text, repeating the restriction to the scope of issuing EADs, seems superfluous here. Besides, the more appropriate place for this new text would appear to be as point 12b in the initial sequence of the proposal.

**12b. *"Technical Assessment Body" means a body designated by a Member State to participate in the development of European Assessment Documents and to carry out the tasks related to the issuing of European Technical Assessments;***

#### **Amendment 40 - Article 2, point 18**

Amendment 40 wishes to further clarify the definition of *"factory production control"*, by adding some new elements to it. The Commission accepts in principle the need for certain clarifications here; however, all of these added elements would not appear fully justified, some of them bringing along excessive restrictions. Besides, the use of some concepts is not in line with the mainstream of the proposal and would thus seem to require some readjustments.

**18. *"factory production control" means the **documented** permanent internal control of the production in a factory, **in accordance with the relevant harmonised technical specifications**;***

#### **Amendment 41 - Article 2, point 20 a (new)**

Amendment 41 consists of a new definition on “*kit*”. The idea of adding such a definition to the proposal can be accepted, but the wording could benefit from further reconsiderations, with a view to the practical needs and experiences from the construction sector during the application of the CPD. In addition, the more appropriate place for this new text would appear to be as point 1a in the initial sequence of the proposal.

*Cf. Article 2, point 1a*

***1a. “kit” means a set of at least two separate components that need to be put together to be installed in the works;***

#### **Amendment 47 - Article 5, paragraph 2, point c a (new)**

Amendment 47 consists of the notion of “generic” intended use. The Commission accepts this idea but, in order to be consistent with the current practice, this expression should be replaced by the one of “intended end use”.

#### **Amendment 50 - Article 6, paragraph 1, subparagraph 1**

Amendment 50 consists of the reformulation of Art 6(1), which now appears to seek to make it somewhat easier to supply the DoP copies also electronically: the clear change to Art 6(2) seems to indicate the wish of the EP to give preference to eSupply. If such a reorientation were to be widely accepted amongst the MS, as well, the Commission does not see any reasons for opposing it.

#### **Amendment 51 - Article 6, paragraph 2**

Amendment 51 is consistent with amdt 50: this amendment seems to indicate the wish of the EP to give preference to eSupply. If such a reorientation were to be widely accepted amongst the MS, as well, the Commission does not see any reasons for opposing it. Nevertheless, wording should be improved e.g. the word “producer” does not seem to be a correct concept here.

#### **Amendment 53 - Article 7, paragraph 1, subpara 1 (“The CE ... not be affixed”)**

The first part of this Amendment 53 does not modify the meaning of the proposal, but it is considered not to be necessary.

#### **Amendment 56 - Article 8, paragraph 4 a (new)**

Amendment 56 poses no problem in the substance. However, it is not necessary because similar clauses are already included in the Regulation 765/2008. If, nevertheless, it were to be included, the wording should be developed further.

#### **Amendment 58 - Article 9, paragraph 1 a (new)**

Amendment 58 reflects the wishes of the Parliament firstly to emphasise the independency of the future Product Contact Points (as in the amended proposal of the Commission, “PCPs for Construction”), and secondly to oblige the Commission to draw up guidelines for their responsibilities. The Commission agrees in principle with both these ideas; however, some

wording changes would appear inevitable, when account is taken notably of the current and foreseen role of the Standing Committee for Construction. Any clauses “authorising” the discretionary actions of the Commission could also be read as restricting such competences elsewhere, with no such provisions. Moreover, the independency aspects might be better covered by a separate paragraph: in order to integrate them most appropriately to the text and to take into account the other emerging needs, the amended proposal of the Commission consists of a thorough reformulation of this issue, divided in several paragraphs.

1. Each Member State shall establish Product Contact Points for Construction pursuant to the provisions in Article 9 of Regulation (EC) N° 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 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.

**Amendment 61 – Article 16, para 2, subpara 1, part 2 (“Harmonised standards shall provide the generic intended use of the products ... referred to in Article 51(2)”)**

The Commission accepts in principle the idea to include these concepts in the standards but, for consistency with the current practice, the expression “generic intended use” should be replaced by “intended end use”. In addition, it appears to be necessary to add in Article 2 the definition of this concept. This definition is proposed thus as Article 2, point 17a. For the rest of the amendment, the links to the distinction between different types of essential characteristics or the reference to Annex IV, Table 1, do not appear useful here for the purpose described above.

2. Harmonised standards shall provide the methods and the criteria for assessing the performance of the construction products in relation to their essential characteristics.

*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.*

**Article 2(17a)**

***17a. “intended end use” means one of the end uses of construction products as listed in Annex VI of this Regulation or otherwise defined in the respective harmonised technical specification;***

**Amendment 119 - Article 18, paragraphs 2, 3 & 4**

Amendment 119 combines several previous amendments suggested in the Parliament for this Article. Its general objectives are fully acceptable to the Commission, but the wording resulting from the Parliament elaborations would seem to merit some readjustments, primarily

of editorial nature. In paragraph 2, the reference added to revised mandates would appear to serve its purpose more adequately, if it were placed in the end of the 1<sup>st</sup> subparagraph, instead of the 2<sup>nd</sup> one.

*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.***

*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.*

Paragraph 3 deals with the establishment of “*minimum performance levels*”, removing the initial clauses on “*classified without testing or without further testing*”, which therefore should be reincorporated into the proposal as the following paragraph 3a, as appropriately readjusted. Besides, the former concept has been replaced in the amended proposal of the Commission by “*threshold levels*”, as discussed also above in the context of this new definition added in Article 2 as its point 3b. Also the reference here to “*generic intended use*” would need to be replaced by “*intended end use*”, as explained above under Article 16(2) (cf. Amendment 61).

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

*3a. The Commission may establish conditions under which a 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 established by the Commission, they may be established by the European standardisation bodies in harmonised standards, on the basis of a revised mandate.*

The changes adopted by the Parliament for paragraph 4, related to the obligation for Member States to follow the classification systems established at Community level in their respective regulatory activities, can be accepted as such by the Commission.

*4. Member States may determine the levels or classes of performance, **to be complied with by construction products, in relation to their essential characteristics (DELETED: of construction products)** only in accordance with the classification systems established by the European standardisation bodies in harmonised standards, or by the Commission.*

#### **Amendment 67 - Article 19, paragraph 3**

This amendment reflects the wishes of the Parliament to include, both into mandates and harmonised technical specifications, information on the “*envisaged generic use*” (which obviously is the same concept as “*generic intended use*” previously utilised by the Parliament and would therefore need to be replaced by “*intended end use*”, as explained above under

Article 16(2) (cf. Amendment 61)). While this idea is fully supported, where appropriate, by the Commission, it would seem preferable to deal with it solely within Article 16, more specifically aimed for the matter of the contents of both standards and mandates, and respectively within Article 20 (as a new paragraph 2a), when it comes to EADs. Such provisions have already been inserted in the amended proposal of the Commission in both these Articles, which according to the Commission pre-empts the need to amend Article 19 for this purpose at all.

#### Article 20(2a)

***2a. When appropriate, the organisation of Technical Assessment Bodies referred to in Article 25(1) shall establish in the EAD threshold levels in relation to essential characteristics of the construction product within its intended end use as foreseen by the manufacturer.***

#### **Amendment 68 - Article 20, paragraph 1**

Amendment 68 is part of the changes adopted by the Parliament in order to delete the parallel use of ETAs and harmonised standards, i.e. to restrict the issuing of ETAs to cases where the construction products in question are not covered or not fully covered by any harmonised standards (cf. above under Amendment 8 on recital 16). As already mentioned, the Commission has come to support this general choice; however, according to the Commission view it would appear sufficient to insert this respective amendment within Article 21(1) only, instead of repeating it in every context. Therefore, the amended proposal of the Commission does not contain changes to Article 20(1).

#### *Cf. Article 21.1*

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

#### **Amendment 120 - Article 20 paragraph 3 a (new)**

This amendment consists of a new paragraph, with which the Parliament wishes to enhance the move from EADs to harmonised standards: this fully supportable principle has already been discussed above under amendment 5 on recital 14. On the whole, according to the Commission view, it would in fact appear more appropriate to deal with this issue only with these reinforced references in the said recital, without including any such amendments into the main text of the proposal. The amended version thus follows this line.

#### *Cf. Recital 14*

#### **Amendment 71 - Article 24, paragraph 2, subparagraph 1**

With this amendment, the Parliament wishes to emphasise the need for transparency of peer evaluations and for the accessibility of the subsequent appeal procedures. According to the Commission, these objectives would of course be worth aiming at, but (regarding transparency) also the confidentiality issues should be taken into account here. Moreover, all appeal procedures would obviously have to be designed as accessible, otherwise the question would no longer be about appeals. The most opportune manner of accommodating these



partially conflicting goals could be to move the qualifier “*appropriate*” to signify not only appeal procedures, but instead all these contexts.

2. *The Commission shall establish **appropriate** procedures for carrying out the evaluation, including **(DELETED: appropriate)** appeals procedures against decisions taken as a result of the evaluation.*

**Amendments 122, 111 & 77 - Article 26, paragraph 1 points b and c & subparagraph 1a (new), paragraph 2 a (new)**

The amendments at hand all concern parts of Article 26, dealing with the main bulk of simplified procedures. More specifically, the emphasis of the Parliament is now directed mainly on sharing and cascading (points b and c) as well as on the exclusion of importers from these procedures.

Firstly, the Parliament wishes to clarify the conditions for sharing (point b), more particularly the need for consent from the manufacturer who initially has obtained the test results in question. The Commission accepts and fully supports this clarification, which has thus been inserted as such in the amended proposal of the Commission (actually, without the last word “*or*”, since its use could cause the erroneous impression that the manufacturer could choose to utilise only one at a time of the different alternative procedures contained in Article 26).

The Parliament amendment on cascading (point c) starts by adding references to “*system providers*”. Also here, the Commission accepts this amendment, which improves the quality and the precision of the proposal. On the other hand, the following two added sentences seem somewhat superfluous or, when it comes to the latter of these, possibly unnecessarily demanding for the manufacturer. Therefore, they have not been contained in the amended proposal of the Commission.

Finally, the Parliament wishes to insert a new paragraph concerning the exclusion of the importers from the scope of this Article. The idea is in principle acceptable but, according to the Commission, as mentioned above under the Parliament amendment 18 (new recital 33a, which in the amended proposal of the Commission has been inserted as recital 34a), it would seem more appropriate to refrain from repeating these same principles in the context at hand: the Commission prefers to clarify this issue once and for all in the said new recital. It should additionally be noted that Article 14 does not create any rights to “manufacturers” under its scope, but instead only poses new obligations for them. This matter links also to the Parliament amendment 83, below, adding a similar kind of new paragraph to Article 27 for the same purpose. For these reasons, such a new paragraph has not been included in the amended proposal of the Commission.

- (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 decision. **(DELETED: ; )**
- (b) the construction product he places on the market **corresponds to** the product-type of another construction product, manufactured by another manufacturer and already tested in accordance with the relevant harmonised technical specification. 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.***

- (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. 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.

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

#### **Amendment 78 - Article 27 – title**

Through amendment 78, the Parliament wishes to add the qualifying words “*which manufacture construction products*” also to the title of this Article. The same idea is proposed in Amendment 79 to the first paragraph of the Article. While accepting this idea, the Commission considers that it is not appropriate to repeat this both in the title and in the text of the Article.

#### **Amendment 79 - Article 27, paragraph 1**

This amendment consists solely of adding the same wording as the Parliament has suggested to the title of this Article (cf. the previous amendment, dealt with above). While the Commission accepts the principle behind this, the solution at hand would not seem to meet appropriately the needs to clarify the initial proposal in this respect. With a view to reaching a widely acceptable compromise on the treatment of micro-enterprises, the results from the on-going discussion thus better merit to be supported. The text of the amended proposal of the Commission reflects this line of thought

***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, manufacturing a construction product, by a STD.*** The STD shall demonstrate the compliance of the construction product with the applicable requirements.

#### **Amendment 83 - Article 27, paragraph 2 c (new)**

Also here, the Parliament wishes to insert a new paragraph concerning the exclusion of the importers from the scope of this Article. The idea is in principle acceptable but, according to the Commission, as mentioned above under the Parliament amendment 18 (new recital 33a, which in the amended proposal of the Commission has been inserted as recital 34a), it would seem more appropriate to refrain from repeating these same principles in the context at hand.

#### **Amendment 84 - Article 28, paragraph 1**

With this amendment, the Parliament wishes to underline the need for enhancing confidence of the market as regards the use of Specific Technical Documentation (STD) in the simplified procedure at hand. In principle, the Commission accepts this goal. However, the exact purpose of the STD (in this or in other contexts) is not to “guarantee safety”, but to demonstrate and justify that the pre-defined conditions for the use of a given simplified procedure exist. The wording “provide for an equivalent level of confidence and reliability” appears somewhat diffuse and should thus be readjusted better to suit the real objectives of this added clause. Moreover, in the whole proposal, the requirements posed on construction works have consistently been called “*basic works requirements*”, as opposed to “*essential ...*”. For these reasons, the Commission prefers to streamline the text of this paragraph pursuant to the results from the on-going discussion. The amended proposal of the Commission thus reflects this line of thought.

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 work, the manufacturer may replace the **performance assessment part of the applicable system, as set out in Annex V**, by a STD, demonstrating compliance of that product with the applicable requirements.

#### **Amendment 86 - Article 33, paragraph 5**

Amendment 86 consists of a reference added about “*complete transparency v-a-v the manufacturer*”. The Commission fully supports this principle, as mentioned already above (cf. Amendment 11 on recital 20), obviously tempered with the necessary restraints brought about by confidentiality aspects.

#### **Amendment 88 - Article 51, paragraph 2 a (new)**

With this amendment, adding a new paragraph to the Article at hand, the Parliament wishes to emphasise the independence of the members of the Standing Committee. This principle can be accepted by the Commission, since this could help to increase transparency and objectivity. However, the wording would require some streamlining, since in this context the assessments do not focus on the “*conformity*” (cf. Article 19 & Annex V).

2a. Member States shall ensure that the members of the committee referred to in paragraph 1 are independent of the parties involved in the assessment and verification of constancy of the essential characteristics of construction products.

#### **Amendment 89 - Article 53, paragraph 3**

Amendment 89 consists of two parts added to the paragraph at hand. Firstly, the initial reference of the proposal to ETAGs has been enlarged to encompass also the so-called CUAPs. However, a distinction should be made between the full formal acceptance of CUAPs, which did not enjoy this status under the CPD (never mentioning them even once), and the most extensive use, where appropriate, of their contents (the assessment methods envisaged and developed in them) in this context. By the subsequent adjustments inserted in Annex II, the latter objective has been secured. Therefore, while the Commission accepts the idea behind this part of the amendment, as described above, any changes in this Article for these purposes do not appear necessary or even opportune.

Secondly, a new subparagraph has been added for the same purposes as in Article 20(3a) above, i.e. so as to facilitate the move from ETAGs towards hENs. As already mentioned in this previous context, this is probably not the most opportune place for such a reference, which is more appropriately (already) dealt with in recitals (cf. recital 14 as adjusted). For these reasons, the Commission has not amended its proposal as regards the paragraph at hand.

*Cf. Recital 14 and Annex II*

#### **Amendment 90 - Annex I, paragraph 1**

With this amendment, the Parliament wishes to emphasise the need for considering the health and safety of everybody involved during the whole life cycle of construction works, i.e. from the construction phase to the demolition stage. In principle, its contents are acceptable, but according to the Commission opinion the wording merits some adjustments. This matter links also to Amendment 2 and the text added by the Parliament as recital 8a (in the amended proposal of the Commission into recital 14), which applies the same approach to construction products.

*Construction works as a whole and in their separate parts must be fit for their intended use, taking notably into account the health and safety of persons involved throughout the life cycle of the works.*

#### **Amendment 91 - Annex I, Part 3. Introductory wording**

Amendment 91 concerns certain additions to the introductory wording of BWR 3, again highlighting the life cycle approach as regards construction works. The principle of including "safety of workers" in this context, in order to take into account the construction and demolition stages, is acceptable as such. However, Directive 89/391/EEC deals already with this issue. In any case, some adjustments to the wording would appear necessary: for instance, the reference to "their lifecycle", as accepted by the Parliament, is somewhat ambiguous.

*The construction works must be designed and built in such a way that they will, **throughout their life cycle, (DELETED: not)** be a threat neither to the hygiene nor health **and safety** of workers, **(DELETED: the)** occupants and neighbours, nor exert an exceedingly high impact 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:*

#### **Amendment 92 - Annex I, Part 6, part 1 ("The construction works ... the occupants")**

This amendment deals with BWR 6. Its first part, adding "lighting" into the initial proposal, could be agreed upon. The other part of the Parliament amendment cannot be supported because it implies confusion between construction works, the topic of this Annex I, and demands set on construction products, which shouldn't be posed in this context.

*The construction works and their heating, cooling, **lighting** 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.*

#### **Amendment 93 - Annex I, Part 7. Introductory wording**

Amendment 93 consists of adding the words "at least" into the introduction for BWR 7. This addition of "at least" can be accepted. In this context, however, particular attention should

also be paid to the fact that the BWRs are not obliging the Member States to anything, but instead just outlining the “areas” considered important for the (broadly understood) safety of construction works.

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

#### **Amendment 94 - Annex II, Title**

This amendment concerns the title of Annex II, adding there the reference to the scope of EADs and ETAs. This issue has been clarified in the previous parts of the text. In these circumstances, while accepting it as such, the Commission has not considered it necessary to have this reference inserted also here.

#### **Amendment 99 - Annex III, point 4**

This amendment relates to the added reference into Annex III to the “generic use” of the product at hand. In order to maintain the coherent use of concepts within the whole proposal, this addition should be readjusted as the reference to “intended end use”, which is the concept utilised elsewhere.

4. Identification of product (allowing traceability) **and reference to the intended end use:**

#### **Amendments 102-106 - Annex V. Part 1, point 1.1., 1.2., 1.3., 1.4., 1.5, introductory wording**

These amendments consist of maintaining the same numbering of the systems which is already used under the CPD. The Commission accepts fully the idea of this matter being revisited and reconsidered: however, in this context sufficient attention has to be taken also of the other possibilities brought forward in the on-going discussion in the Council. In these circumstances, the amended proposal of the Commission does not contain any reactions to Amendments 102 to 106 at this stage.

### **3.3. Amended proposal**

Having regard to Article 250(2) of the EC Treaty, the Commission amends its proposal as indicated above.