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**NOTE**

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From:	Presidency
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 - Presidency partial compromise proposal

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Delegations will find in the Annex the partial Presidency's compromise text for the above proposal, which will be discussed at the meeting of the Working Party on Technical Harmonisation (Construction Products) on 30 March 2023.

## Article 3

**Definitions**

For the purposes of this Regulation the following definitions shall apply:

[...]

- (8) ‘product requirements’ means a ~~threshold level or another~~ characteristic with which a product has to comply before it can be placed on the market or installed directly, ~~including those requirements relating to labelling and instructions for use or other information to be provided~~;
- (24a) ‘intended use’ means the purpose of a product as defined in the applicable harmonised technical specifications or European assessment documents.
- (25) ‘declared ~~intended~~ use’ means the use intended by the manufacturer, including the conditions for usage, as laid out in technical documentation, on labels, in instructions for use, in safety information, or in publicity material, whilst usages mentioned only in one of these are already part of the ‘declared ~~intended~~ use’;
- ~~(38) ‘harmonised zone’ means the sphere jointly covered by this Regulation, the harmonised technical specifications, and the Commission acts of general applicability adopted pursuant this Regulation;~~

- (46) ‘harmonised technical specifications’ means construction products performance standards established in accordance with Article 4(2) the reference of which have been published in the Official Journal in accordance with Article 34 and thereby were rendered mandatory for purposes of application of this Regulation in accordance with Article 4(2d), and delegated or implementing acts adopted in accordance with Article 4a(1), (2) and (3) and (4), or Article 5(21) or Article 6(1a) 22(4) that contain technical prescriptions;

## Article 7

### Harmonised zone and national measures

1. This Regulation, including and the harmonised technical specifications and Commission acts of general applicability adopted in accordance with it, establishes a harmonised zone. The harmonised zone covers all products subject to harmonised technical specifications. These harmonised technical specifications shall be presumed to be comprehensive, in
  - (a) laying down covering all potential existing or future essential characteristics and their assessment methods,
  - (b) specifying all inherent product requirements for products other than those covered by other Union law, and
  - (c) determining the applicable assessment and verification systems.

2. Member States shall respect the harmonised zone in their national law, other rules or administrative action and shall not ~~set additional requirements for or~~ prohibit or impede the making available of products covered by it when they are in compliance with this Regulation. Member States shall not lay down essential characteristics and their assessment methods or inherent product requirements other than those set out in the harmonised technical specifications.

The harmonised zone does not affect the right of Member States to specify national requirements for the use of products that are subject to harmonised technical specifications. Any assessment methods and systems for assessment and verification of such national requirements shall be in accordance with applicable harmonised technical specifications; unless it is specified in the respective harmonised technical specification that the respective requirements constitute only minimum requirements. Member States shall not prohibit or impede the use of products in compliance with this regulation when the declared performances correspond to the requirements for such use in that Member State.

Member States shall ensure that the making available of products within the harmonised zone which are in compliance with this Regulation shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate.

2a. ~~They~~ Member states shall in particular apply the following:

- (a) no information, ~~or~~ registration ~~or other~~ requirements other than those laid down in the harmonised zone shall be established;
- (b) no assessments other than those set out in the harmonised zone shall be made mandatory;
- (c) unless ~~otherwise~~ specified in applicable harmonised technical specifications ~~accordance with Article 5(31)~~, national law, other rules or administrative action pertaining to the making available of products shall not duplicate or go beyond product requirements specified in accordance with Article 5 or the threshold levels established in accordance with Article 4a(4);
- (d) national law, other rules or administrative action shall not require more assessments and verifications than those set out in Annex V and shall not extend the scope of the assessments and verifications of Annex V;
- (d1) no markings attesting conformity with requirements or declared performances in relation to essential characteristics covered by the harmonised zone shall be ~~introduced~~ required other than the CE marking, and any existing references to such markings in national measures shall be withdrawn;
- (e) national law, other rules or administrative action shall ~~replicate and not request more or less than what has been required by~~ respect the threshold levels established in accordance with Article 4a(4);

- (f) national law, other rules or administrative action shall not be based on classes, sub-classes or additional classes other than those established in accordance with Article 4a(4);
- (g) where assessment methods have been established in accordance with Articles 4(2), ~~or 4a~~ ~~or in Article 5(2)~~, national law, other rules or administrative action shall, ~~both for construction works and in relation to the characteristics of or requirements for when regulating the the use of~~ products within the harmonised zone, not refer to other assessment methods or modify or complement these assessment methods or select just a part thereof.

~~This paragraph shall also apply to public tenders or direct attributions of contracts where those public tenders or direct attributions are executed under direct or indirect control of public entities or are executed with reference to public provisions on public tenders or direct attribution of contracts. This paragraph shall also apply to grants or other positive incentives with the exception of fiscal incentives. However, harmonised technical specifications may permit or recommend Member States to link the decisions on the attribution of public tenders, of contracts or of grants or other positive incentives to sub-classes or additional classes other than those established in accordance with Article 4(4) where these still relate to environmental performances assessed in accordance with these harmonised technical specifications.~~

3. In line with Regulation (EU) 1025/2012, Commission shall inform the Member States about its intention to draw up a new standardisation request. Member States shall communicate to the other Member States and to the Commission the essential characteristics they require for each product family or category, the respective product requirements and the assessment methods they apply. They shall refer to these essential characteristics, requirements and assessment methods proactively in all fora and on all occasions relevant for the elaboration of harmonised technical specifications. Fora elaborating harmonised technical specifications shall take note of these essential characteristics, requirements and assessment methods. The essential characteristics shall be covered by harmonised technical specifications to the extent that their development is technically and economically proportionate possible. [Substance moved to article 3a]
4. Where a Member State deems it necessary, ~~on imperative grounds of health, safety or protection of the environment, including climate, to establish requirements by regulation or~~ to take ~~administrative~~ measures against products within the harmonised zone in relation to characteristics not laid down in harmonised technical specifications of paragraphs 2 and 2a, it shall notify the Commission thereof, justifying the need for the ~~procedural~~ obligations established and explain the regulatory need it aims to address ~~and provide evidence both for the existence of the regulatory need and the lack of coverage by the harmonised zone and other Union law~~. Member States shall to that end use the notification procedure under Directive (EU) 2015/1535, ~~where applicable~~.

5. The Commission shall, by means of implementing acts, authorise the national measure notified under paragraph 4 where:

- (a) it ascertains that the ~~regulation or administrative~~ measure appears duly justified in the light of imperative grounds of health, safety or protection of the environment, including climate referred to in paragraph 4;
- (b) the regulatory need is not covered by the harmonised zone or by other Union law;
- (c) the notified ~~regulation or administrative~~ measure does not discriminate against economic operators of other Member States;
- (d) the notified ~~regulation or administrative~~ measure is able to cover the respective regulatory need; and
- (e) the notified ~~regulation or administrative~~ measure does not constitute a disproportionately large obstacle to the functioning of the Union market; ~~and~~
- ~~(f) the Commission does not indicate by a letter of intent addressed to the Member States its intention to publish or cite, within one year as from the date of notification in accordance with paragraph 4, in the Official Journal the harmonised technical specification or to adopt an act of general applicability covering the respective need.~~

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).

On duly justified imperative grounds of urgency relating to human health and safety or the protection of the environment, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 88(3).



6. ~~Member States shall register all their national regulation, and administrative measures directly or indirectly influencing the usability of products on their territory, into the Single Digital Gateway.~~
7. This Regulation does not hinder Member States to introduce mandatory deposit-refund systems, to oblige manufacturers to take back used or not used products directly or via their importers and distributors and to establish obligations regarding the collection and the treatment of products for waste, provided that all of the following is complied with:
- (a) the owner of the product, whilst having a choice amongst the manufacturer, the importer or the distributor as addressee, is in charge of the transport back to the distributor, importer or manufacturer;
  - (b) economic operators in other Member States are not otherwise directly or indirectly discriminated.

8. Member States may ban the destruction of products taken back in accordance with Article 22(2), point (j) and Article 26 or make the destruction of these products dependent on their prior making available on a national brokering platform for non-commercial use of products.

*Proposal for an amended recital (24): At the same time, in order to strike a balance between mitigating the fragmentation of the market and the legitimate interests of Member States to regulate construction works, it is necessary to provide for a mechanism to better integrate Member States' needs into the development of harmonised technical specifications. For the same reason, a mechanism of prior authorisation should be established, allowing Member State to set, based on imperative grounds of health, safety or environmental protection, ~~additional~~ requirements other than those laid down in the harmonised technical specifications for construction products covered by the harmonised zone ~~should be established~~. This mechanism should give Member States the possibility to notify and seek authorisation for national legislation when it is affecting the performance of an essential characteristic not addressed by the harmonised technical specification. This mechanism should be complementary to a Member State's possibility to notify the Commission, in accordance with Article 114 of the Treaty on the Functioning of the European Union, when it deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State in contradiction with harmonised technical specifications.*

## Article 9

### ***Declaration of performance and conformity***

1. Where a product is covered by a harmonised technical specification adopted in accordance with Articles 4(2) or 4a(3), the manufacturer shall undergo the applicable assessment and verification system set out in Annex V and draw up a declaration of performance and conformity before such a product is placed on the market. Where a product is covered by a harmonised technical specification adopted in accordance with Article 5, the manufacturer shall also verify the product's compliance with applicable product requirements that have been specified by delegated acts.

A manufacturer of a product which is not covered by any harmonised technical specification may issue a declaration of performance and conformity in accordance with the relevant European assessment document and European technical assessment.

- ~~2. Where a product is covered by a harmonised technical specification, information about its performance in relation to the essential characteristics laid down in the applicable harmonised technical specification may be provided elsewhere than in the declaration of performance and conformity only if in parallel provided in the declaration of performance and conformity. This obligation shall not apply to situations where, in accordance with Article 10, no declaration of performance and conformity has been drawn up. [Moved to Article 18(4)]~~

3. By drawing up the declaration of performance and conformity, the manufacturer assumes responsibility for the conformity of the product with ~~such~~ its declared performance and any applicable product requirements ~~and becomes liable in accordance with Union and national laws on contractual and extra-contractual liability, and this even where it did not act negligently~~. In the absence of objective indications to the contrary, Member States shall presume the declaration of performance and conformity drawn up by the manufacturer to be accurate and reliable.

In case of non-compliance or absence of a declaration of performance and conformity when such a declaration is mandated, the product may not be made available on the market.

#### *Article 11*

##### ***Content of the declaration of performance and conformity***

1. The declaration of performance and conformity shall express the performance of products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications or European assessment document.

Where product requirements specified in accordance with Article 5 are applicable, the declaration of performance and conformity shall state that the fulfilment of those requirements has been demonstrated.

2. The declaration of performance and conformity shall be drawn up using the model set out in Annex II ~~without the section relating to conformity~~. The declaration of performance and conformity shall at least cover the performance with regard to the ~~mandatory~~ essential characteristics of climate change effects listed as mandatory in Annex I-A ~~Part A~~ Point 2, as well as those essential characteristics rendered mandatory by virtue of harmonised technical specifications or delegated acts adopted in accordance with Article 4a(23), and the assessment of environmental sustainability referred to in Article 22(1).
- 2a. The declaration of performance and conformity shall include an assessment of the product's environmental sustainability in respect of the predetermined environmental characteristics listed in Annex I-A Point 2, when those characteristics are either mandatory or rendered applicable in accordance with relevant harmonised technical specifications. The data from this assessment shall be produced using, once available, the latest version of the software made freely available on the website of the European Commission.
- 2b. No other marking than the CE marking may be placed on the declaration of performance and conformity.

3. The Commission is empowered to amend the model set out in Annex II by delegated acts adopted in accordance with Article 87 to ~~permit the inclusion of further information in order to allow economic operators to cover~~ adapt it to technical progress as regards new information needs, ~~use of harmonised~~ data structures and ~~open~~ exchange formats, and to ensure interoperability with the database or system according to Article 78 ~~and, if relevant, with other databases or systems.~~
4. The information referred to in Articles 31 or, ~~as the case may be, in Article 33~~ of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>1</sup> shall be provided together with the declaration of performance and conformity.

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<sup>1</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1.).

## Article 16

### *General principles and use of CE marking*

1. The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.
2. The CE marking shall only be affixed to those products for which the manufacturer has drawn up a declaration of performance ~~or~~ and conformity in accordance with Articles 9 and 11 to 14. ~~The CE marking shall be affixed to key parts. The CE marking may not be affixed to parts or materials intended to be used for products covered by this Regulation for which the manufacturer has opted for the application of this Regulation in accordance with article 2(1)(e) which are not key parts.~~
3. ~~If neither a declaration of performance nor a declaration of conformity has been drawn up by the manufacturer, the CE marking shall not be affixed.~~
4. By affixing or having affixed the CE marking, the economic operator indicates that it ~~takes~~ has assumed responsibility for the conformity of the product with the declared performance and applicable product requirements ~~of this Regulation or~~ laid down in accordance with this Regulation. ~~By affixing the CE marking, the economic operator becomes liable for the declared performance and the fulfilment of these requirements in accordance with national law on contractual and extra-contractual liability.~~
5. The CE marking shall be the only marking which attests the performance of the product with regard to assessed essential characteristics in accordance with this Regulation and as well as the conformity of the product with this Regulation.

~~Member States shall not introduce any references or shall withdraw any references in national measures to a marking attesting conformity with requirements or the declared performance in relation to the essential characteristics covered by the harmonised zone.~~

[Moved to Article 7(2a)(d1)]

~~5a. No other marking than marking set out by Union legislation may be affixed on a product in a distance smaller than the double length of the marking “CE” measured from any point of the CE and the other marking set out by Union law.~~

~~6. A Member State shall not prohibit or impede, within its territory or under its responsibility, the making available on the market or the use of products bearing the CE marking, when the declared performances correspond to the requirements for such use in that Member State.~~

~~A Member State shall not prohibit or impede, within its territory or under its responsibility, the making available on the market or the use of products bearing the CE marking, when the product conforms with product requirements set up in or by means of this Regulation, unless it is specified in the respective harmonised technical specification that the respective requirements constitute only minimum requirements. [Moved to Article 7(2)]~~

~~7. A Member State shall ensure that the use of products bearing the CE marking shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate. [Moved to Article 7(2)]~~

## *Article 17*

### ***Rules and conditions for the affixing of CE marking***

1. The CE marking shall be affixed visibly, legibly and indelibly to the product ~~or to a label attached to it~~. Where this is not possible or not warranted on account of the nature of the product, ~~it~~ the CE marking shall be affixed to a label attached to the product, to the packaging or, as last resort, to the accompanying documents.



2. The CE marking shall be followed by:

- (a) ~~the two last digits of the year in which it was first affixed;~~
- (b) the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity;
- (c) the name and the registered address of the authorised representative, or the identifying mark allowing identification of the name and address of the authorised representative easily and without any ambiguity ~~where the manufacturer does not have a place of business in the Union or~~ where the manufacturer chooses to have an authorised representative;
- (d) the unique identification code of the product-type, ~~the permalink to the manufacturer's products registration(s) in Union databases and the precise location therein where the product can be found;~~
- (e) ~~the permalink to the manufacturer's own product presentation website, if any there is any;~~
- (f) the reference ~~number~~ code of the declaration of performance and conformity; and
- (g) the identification number of the notified body verifying the product type, if applicable.

The items listed in points d) to f) may be replaced by a permalink to the ~~combined~~ declaration of performance and ~~of~~ conformity (electronic CE marking).

3. The CE marking shall be affixed before the product is placed on the market ~~or directly installed into a construction work~~. It may be subsequently followed by a pictogram or any other mark indicating a special risk or use.

**Other markings and performance claims**

1. ~~Affixing~~ Markings other than the CE marking, including private ones ~~that may not be~~ affixed on a product ~~only if they do not indicate that the product's performance in relation to essential characteristics covered by applicable or refer to harmonised technical specifications had to be assessed in a different way than what has been laid down by this Regulation.~~ Such markings may however be permitted in accordance with Annex I-D point 4. ~~or to product requirements or essential characteristics or assessment methods included in the harmonised zone, is forbidden. This interdiction shall apply to the physical label marking as well as any other reference to such marking in advertising or other public materials.~~
2. ~~No o~~ Other markings ~~than marking set out by Union legislation~~ allowed in accordance with paragraph 1 ~~may be affixed on a product in a distance smaller than the double length~~ shall not impair the visibility, legibility and meaning of the CE marking ~~measured from any point of the marking "CE" and the other marking set out by Union law.~~

~~No other marking than the CE marking may be placed on the declaration of performance or the declaration of conformity.~~

3. Where a product is covered by harmonised technical specifications, economic operators shall refrain from any claims about its performance in relation to the essential characteristics laid down in those harmonised technical specification when such a claim is not based on the assessment methods contained in those harmonised technical specifications. [Moved from art. 21(2)]
4. Where a product is covered by harmonised technical specifications, claims about its performance in relation to the essential characteristics laid down in those harmonised technical specification may be provided elsewhere than in the declaration of performance and conformity only if in parallel provided in the declaration of performance and conformity. This obligation shall not apply to situations where, in accordance with Article 10, no declaration of performance and conformity has been drawn up. [Moved from art. 9(2)]
5. Even though otherwise not allowed for under this Article, the Commission shall, by means of implementing acts, have the possibility to permit the usage of certain markings which indicate conformity with legislation of third countries laying down different ways for the assessment of a product's performance in relation to essential characteristics covered by an applicable harmonised technical specification under this Regulation;
- Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).

***Obligations of manufacturers***

1. When placing a product covered by a construction product performance standard rendered mandatory to apply in accordance with Article 4(2d) or an implementing act adopted in accordance with Article 4a(1) on the market, ~~T~~the manufacturer shall determine the product type, respecting the boundaries set up therefore by the definition provided in Article 3 point (31). The manufacturer shall ensure that the product's performance in relation to its essential characteristics is assessed. If the product is covered by product requirements adopted in accordance with Article 5(1), the manufacturer shall ensure that the product has also been designed and constructed in accordance with those requirements.
- 1a. Where a product's performance in relation to its essential characteristics and its compliance with applicable requirements have been demonstrated ~~type shall be processed~~ in accordance with the applicable assessment and verification system or systems set out in Annex V, ~~T~~the manufacturer shall draw up a declaration of performance and ~~a declaration of conformity~~ in accordance with Articles 9 and ~~Articles 11 to 15~~ and affix the CE marking in accordance with Articles 16 and 17.
2. The manufacturer shall, ~~unless permitted for in accordance with Annex I-D point 4,~~ refrain from any claim about ~~the a product's performance in relation to essential characteristics covered by harmonised technical specifications applicable to that of a product that when such a claim is not based on:~~
  - (a) ~~the assessment methods contained in a those harmonised technical specifications~~ where the relevant characteristic is covered by such; or
  - (b) ~~where no such assessment method exists, an assessment method which represents the most effective and advanced method to achieve an accurate assessment. [moved to article 18(3)]~~

3. The manufacturer shall, as the basis for the declarations of performance and conformity referred to in paragraph 1, draw up a technical documentation describing the declared intended use including the precise conditions for use and all the relevant elements necessary to demonstrate performance and conformity, including information on procedures in place according to paragraph 4 and on the application of the system or systems applicable in Annex V.

That technical documentation shall, where applicable, contain the ~~mandatory or facultative~~ calculation substantiating the assessment of a product's environmental, ~~including climate~~ sustainability ~~assessed~~ established in accordance with Article 11(2a) and applicable harmonised technical specifications ~~adopted under this Regulation or with Commission acts adopted under this Regulation~~.

The second subparagraph shall not apply in case of used, remanufactured or surplus products, unless the economic operator, subject to the obligations of this Article by virtue of Article 26, opts for the application of this Regulation for new products.

4. The manufacturer shall ensure that procedures are in place ~~for products to ensure~~ that are part of series production to maintains their declared performance and remain in conformity with this Regulation. Changes in the production process, in product design or in characteristics, and changes in the applicable harmonised technical specifications or harmonised standards by reference to which performance or conformity of a product is declared or by application of which its performance or conformity is verified, shall be adequately taken into account and, in case the product's performance or conformity is affected, shall trigger a re-assessment in accordance with the relevant assessment procedure.

The manufacturer shall, where deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance and of the conformity of a product, carry out sample testing of products placed or made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming products and product recalls, and shall keep importers and distributors informed of any such monitoring.

~~The procedures referred to in the first subparagraph, the sample tests referred to in the second subparagraph and the application of the applicable system of Annex V shall be described in the technical documentation referred to in paragraph 3.~~

5. The manufacturer shall ensure that its product bears a manufacturer-specific unique identification code of the product type ~~number~~ and a batch or serial number. If this is impossible, the required information shall be provided on the packaging, on an affixed tag or, as last resort, in a document accompanying the product.

~~The manufacturer shall in the same way as set out in the first subparagraph label a product as “Only for professional use” if it is not intended for consumers or other non-professional users. Products not labelled “Only for professional use” shall be deemed to be also intended for non-professional users and consumers in the meaning of this Regulation and the Regulation (EU) ... [Regulation on General Product Safety].~~

The manufacturer shall, in a visible manner, display to customers before it is bound by a sales contract, including in case of distance selling, the information which shall be labelled pursuant to this Regulation or harmonised technical specifications.

6. When making a product available on the market in a certain Member State, the manufacturer shall ensure that the product is accompanied by general information, instructions for use and safety information as set out in Annex I-D ~~the information set out in harmonised technical specifications and in Annex I Part D~~ in a language determined by the Member State concerned or, in absence of such determination, in a language which can be easily understood by users.

~~The Commission may, by means of implementing acts determine the format and the way of transmission of information to be provided by the manufacturer in accordance with the first subparagraph.~~

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).~~

7. The manufacturer shall upload the data of the declaration of performance, ~~of the declaration of~~ and conformity, the information referred to in paragraph 6 and the technical documentation in the EU product database or system established in accordance with Article 78.
8. The manufacturer who considers or has reason to believe that a product which it has placed on the market is not in conformity with ~~requirements of~~ this Regulation or harmonised technical specifications adopted in accordance with this Regulation, shall immediately take the necessary corrective measures to bring that product into conformity, or, if appropriate, to withdraw or recall it. If the issue is linked to a supplied component or an externally provided service, the manufacturer shall inform the supplier or service provider and the manufacturer's national competent authority thereof; the latter shall transmit the respective information to the national competent authority responsible for the supplier or service provider and suggest appropriate measures.
9. Where the product presents a risk or is likely to present a risk, the manufacturer shall within two working days thereof inform the authorised representative, importers, distributors, fulfilment service providers, and online market places involved in the distribution, as well as the competent national authorities of the Member States in which the manufacturer or – to its knowledge – other economic operators made the product available. The manufacturer shall, to that effect, provide all useful details and, in particular, specify the type of the non-compliance, the frequency of accidents or incidents and the corrective measures taken or recommended. In case of risks caused by products which have already reached the final user or consumer, the manufacturer shall also alert the media and inform them about appropriate measures to eliminate or, if not possible, to reduce the risks. In case ~~of a~~ product presents a “serious risk” ~~in the meaning of Article 3, point (71)~~ the manufacturer shall withdraw and recall the product at their own cost.
- ~~10. The manufacturer shall be liable for infringement of this Article and of Article 19 in accordance with national law on contractual and extra-contractual liability.~~



## Article 92

### *Repeal*

1. Regulation (EU) 305/2011 is repealed ~~with effect [the date of entry into force of this Regulation],~~ with the exception of Article 2, Articles 4 to 9, Articles 11 to 18, Articles 27 and 28, Articles 36 to 40, Articles 47 to 49, Articles 52 and 53, Article 55 and Articles 60 to 64 as well as annexes III and V which are repealed with effect from 1 January 2045.
- ~~2. Articles listed in paragraph 1 will only be applicable to harmonised technical specifications cited according to Regulation (EU) 305/2011 and not withdrawn afterwards.~~  
[Moved to art. 93(5a)]
3. References to the repealed Regulation (EU) 305/2011 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VII.

***Derogations and transitional provisions***

1. Product contact points for construction designated under Regulation (EU) 305/2011 shall be deemed to be designated under this Regulation as well.
2. TABs and notified bodies designated under Regulation (EU) 305/2011 shall be deemed to be designated under this Regulation as well. However, they shall be assessed and designated anew by the designating Member States in accordance with their periodic re-assessment cycle and at the latest [5 years after entry into force]. The objection procedure set-out in Article 56(5) of this Regulation, ~~also applicable to TABs in accordance with Article 43(2)~~, shall apply.
3. ~~The following standards remain valid under this Regulation, as standards referred to in the first subparagraph of Article 4(2):~~
  - ~~(a) —~~
  - ~~(b) —~~
  - ~~(c) — [to be inserted during the negotiations of the legislators].~~

4. European assessment documents, the references of which are included in the list published in accordance with Article 22 of Regulation (EU) 305/2011 issued before by [1 year after date of entry into force], shall remain valid until [~~53~~ years after entry into force], unless they have expired for other reasons. Products shall not be placed on the market on the basis of European technical assessment issued in accordance with these European assessment documents after [10 years after entry into force] ~~may be further made available on the market for another five years.~~
5. Notified bodies' certificates or test reports and European technical assessments issued under Regulation (EU) 305/2011 shall, unless they have expired for other reasons, remain valid for ~~five~~ four years after the ~~entry into force~~ withdrawal of references to the harmonised standards or European assessment documents technical specifications for the respective product family or category adopted which they were based on in accordance with paragraph 7 Article 4(2), unless these documents have expired for other reasons. ~~Products placed on the market on the basis of these documents may be further made available on the market for another five years.~~

- 5a. Articles 2, Articles 4 to 9, Articles 11 to 18, Articles 27 and 28, Articles 36 to 40, Articles 47 to 49, Articles 52 and 53, Article 55 and Articles 60 to 64 of Regulation (EU) 305/2011 shall only apply to products covered by harmonised standards referenced in the list published in accordance with Article 17(5) of Regulation (EU) 305/2011 which have not been withdrawn or to European assessment documents referred to in paragraph 4. [Moved from art. 92(2)]
6. The requirements and obligations of economic operators set out in ~~Chapters I, II and III~~ Articles 4 to 7, Articles 9 to 19, Articles 21 to 28, Articles 30 and 31, Articles 47 and 48, Articles 55 to 57 and Articles 60 to 67 shall only be applicable to economic operators with regard to a certain product family listed in annex IV group or a category of construction products within such a family shall apply as from one year after the publication of a reference to a construction product performance standard in the Official Journal in accordance with Article 4(2d) or the entry into force of an implementing act in accordance with Article 4a(1) the harmonised technical specification covering that product group or family or category , unless a later application date has been specified as part of the publication of the reference in the Official Journal or set out in the implementing act. However, economic operators may choose to apply those harmonised technical specifications as from their entry into force by undergoing the procedure leading to a declaration of performance and or of conformity.
7. Within ~~two one~~ years following the date of application of requirements and obligations entry into force of a harmonised technical specification covering in relation to a certain product ~~group or family or a category of construction products within such a family as set out in paragraph 6~~, the Commission shall withdraw from the Official Journal references of harmonised standards and ~~EADs~~ European assessment documents published there in accordance with Articles 17(5) and 22 of Regulation (EU) 305/2011 when they are covering the same respective product ~~group or family or category~~.

## ANNEX I-PART D: Product information ~~requirements~~

### 1. General information

~~Harmonised technical specifications [adopted in accordance with Article 4] may, as appropriate for the products it covers, specify that Pproducts shall be accompanied by the following information covering one or more of the following elements:~~

1.1. Product identification: ~~unequivocal~~ unique identification code of the product type-number on the basis of the determination of product type pursuant to as indicated in accordance with Article 21(5)3, point 31.

1.2. Product description:

- (a) ~~declared~~ intended uses;
- (b) intended users;
- (c) conditions of uses;
- (d) estimated average and minimum service life span for ~~declared~~ intended use (durability);
- ~~(e) nominal dimensions (drawings);~~
- (f) main materials used;
- ~~(g) key parts.~~

1.4. Contact details of the manufacturer or the authorised representative:

- (a) name;
- (b) postal address;

(c) telephone;

(d) email address;

(e) website, where available;

1.5. Contact details of the product contact point for construction in the Member State in which the product is made available.

2. Instructions for use and safety information

1.32.1. Instructions for use and safety information referred to in article 21(6) cover the following elements where deemed relevant for the product type in question—Transport, installation, maintenance, deconstruction and demolition rules:

(a) Safety during transport, installation, maintenance, deconstruction and demolition:

- (i) potential risks of the product and any reasonably foreseeable misuse thereof;
- (ii) instructions for the assembly, installation and connection, including drawings, diagrams and, where relevant, the means of attachment to other products and parts of construction works;
- (iii) instructions for operation and maintenance to be carried out safely, including the protective measures that should be taken during these operations;
- (iv) if necessary, instructions for the training of the installers or operators;
- (v) information on what to do in case of failure or accidents;

- (b) Compatibility and integration into systems or kits:
- (i) compatibility with other materials or products, regardless of whether they are covered by this Regulation or not;
  - (ii) electric and electro-magnetic compatibility;
  - (iii) software compatibility;
  - (iv) integration into systems or kits;
- (c) Maintenance needs with a view to maintaining the performance of the product during its service life span:
- (i) description of the adjustment and maintenance operations that should be carried out by the users and the preventive maintenance measures that should be observed;
  - (ii) the type and frequency of inspections and maintenance required for safety reasons and, where appropriate, the parts subject to wear and the criteria for replacement;
  - (iii) information on what to do in case of failure or accident;
- (d) Safety during use:
- (i) instructions on the protective measures to be taken by the user, including, where appropriate, the personal protective equipment to be provided;
  - (ii) instructions designed for the safe use of the product, including the protective measures that should be taken during its use;
  - (iii) information on what to do in case of failure or accident during use;

(e) Training and other requirements necessarily to be fulfilled for safe use;

(f) ~~Risk mitigation possibilities going beyond points 1.2 to 1.3.~~

~~1.4. Contact details of the manufacturer or the representative:~~

(a) ~~address/website/telephone number/email address;~~

(b) ~~if possible where relevant, specific contact details should be given for:~~

(i) ~~information on installation, maintenance, use, deconstruction and demolition;~~

(ii) ~~information on risks;~~

(iii) ~~information in case of failure;~~

~~1.5. Contact details of relevant authorities in case of risky or faulty products.~~

~~1.6.2.2. Instructions for use referred to in article 21(6) provide, where deemed relevant for the product type in question, rRules or recommendations for a product's:~~

(a) repair,

(b) deconstruction,

(c) reuse,

(d) remanufacturing,

(e) recycling,

(f) ~~or~~ safe deposit.



- ~~23.~~ ~~Product~~ The information provided required through a harmonised technical specification on these ~~elements listed in points 2.1 and 2.2~~ items shall, both in terms of quantity and quality, suffice to make knowledgeable decisions on purchase, including the respective needed quantity, installation, use, maintenance, dismantling, reuse and recycling of the product. ~~It shall include all the drawings, diagrams, descriptions and explanations necessary to understand it.~~
- ~~2.~~ ~~Harmonised technical specifications may specify that a certain product information requirement is not relevant for a certain product category.~~
- ~~3.~~ ~~Harmonised technical specifications~~ The information shall, as appropriate, strive to specify the product information requirements set out in point 1 that may relate both to the product itself and to its installation into construction works. Thereby, they shall take into account the needs of designers, building authorities, construction professionals, building control authorities, consumers and other users, occupants, use managers, and of maintenance professionals.

3a. The Commission may, in accordance with Article 4(2b), request that a European standardisation organisation propose non-binding elements amongst those set out in points 2.1 and 2.2 that might need to be addressed for a certain product family, product group or product type, in order to fulfil the obligations in Article 21(6).

~~When specifying the product information requirements, harmonised technical specifications shall at least cover the following elements:~~

- ~~(a) address safety and environmental aspects relevant for the respective product category;~~
- ~~(b) specify where the respective information is to be provided, aiming, by choice of the location, at the utmost likelihood for information not be overlooked. If possible, several of the following places shall be selected: on the product, on its label, on its packaging, on its outer (sales) packaging, in paper instructions for use, in electronic instructions for use, on the website of the manufacturer or in the product database established in accordance with Article 78;~~
- ~~(c) in cases where information may or shall be provided on the website of the manufacturer or in the product database, the harmonised technical specifications shall require a link to be placed on the product, on its packaging, and on its outer (sales) packaging;~~

~~4. Harmonised technical specifications may permit manufacturers to, even though otherwise not allowed for under this Regulation, provide certain information items or state certain claims relevant for Member States, users or occupants, under the condition that:~~

- ~~(a) the respective Member States' regulation is compatible with Union law;~~
- ~~(b) it is made clear that the respective information items permitted by the harmonised technical specifications do not relate to Union law and are not mandatory.~~

## ANNEX II

### Declaration of Performance and of Conformity as referred to in Article 11<sup>2</sup>

#### Model for the declaration of performance and conformity

Name of the Manufacturer

Declaration ~~No~~Code ...<sup>3</sup>

Version No ...<sup>4</sup>

Date of that version ...

1. Product description

- (a) unique identification code of the product type as indicated in accordance with Article 21(5), and the ranges of batch numbers and serial numbers covered if already determined for the respective product type;
- (b) product category as defined by harmonised technical specifications or European Assessment Documents;
- (c) declared intended uses of the product, within the scope of necessarily falling under those intended uses for which the applicable harmonised technical specification or European Assessment Document has been developed, with facultative additional information on the intended users, or the conditions for safe and good use;
- (d) dimensions or grading of the product, where applicable;

<sup>2</sup> ~~Where~~ a Declaration of Performance and Conformity is issued in relation to a product not subject to product requirements specified in accordance with Article 5(1) ~~without parallel issuing of a Declaration of Conformity~~, the points 12., 12a. and 13c. ~~shall~~ may be omitted.

<sup>3</sup> Only one unique, unequivocal declaration number per product type shall be used, even where there are variants, variants being variations of the product type that do not influence performance or conformity of the product.

<sup>4</sup> Different versions may be issued, e.g. to correct mistakes or add complementary information.

- ~~(e) main materials or substances used, where applicable;~~
- ~~(f) information to be provided in accordance with Regulation (EC) 1907/2006;~~
- (g) key parts of the product, including traceability information on the key part if it has previously been placed separately on the market, where applicable;
- (h) estimated average and minimum service life span time for the declared intended use ~~foreseen for the product~~ (durability);
- (i) variants, if any, and their descriptions;
- ~~(j) information required by harmonised technical specifications adopted in accordance with Article 5 and falling under Annex I-D Part D, where applicable.~~

2. Permalinks as regards the following:

- (a) the manufacturer's products registration(s) in EU databases, and the precise location therein where the product can be found, where applicable ~~and to his own product presentation website;~~
- ~~(b) any voluntarily or mandatorily used products registration database or website, and the precise location therein where the product can be found;~~
- ~~(c) instructions for use, if specified in accordance with Annex I-D Part D point 1.3.~~

3. Manufacturer:

- (a) name;
- (b) registered trade name or registered trade mark;
- (c) registered place of business;
- (d) postal address;
- ~~(e) telephone;~~
- ~~(f) email address;~~
- ~~(g) website, where available;~~
- ~~(h) social media contact details;~~
- (i) ~~where available, specific contact details for providing information on installation, maintenance, use, de-construction, and on the handling of risks or product failure.~~

4. Authorised representative, where available:

- (a) name;
- (b) registered trade name or registered trade mark;



- (c) registered place of business;
- (d) postal address;
- (e) telephone;
- (f) email address;
- (g) website, where available;
- ~~(h) social media contact details;~~
- ~~(i) where available, specific contact details for information on installation, maintenance, use, de-construction, on the handling of risks and on actions in case of product failure.~~

5. Notified body or bodies, where applicable:

- (a) name;
- (a1) identification number;
- (b) registered trade name, where available;
- ~~(c) registered place of business;~~
- ~~(d) postal address;~~
- ~~(e) telephone;~~
- ~~(f) email address;~~
- ~~(g) website, where available;~~
- ~~(h) social media contact details.~~



6. Technical Assessment Body, where applicable:

(a) name;

(a1) identification number;

(b) registered trade name, where available;

(c) registered place of business;

(d) postal address;

(e) telephone;

(f) email address;

(g) website, where available;

~~(h) social media contact details.~~

7. Assessment and verification system(s) applied and reference to certificate(s) or report(s) issued

8. Technical reference documents:

(a) Harmonised technical specifications laying down essential characteristics applied (reference number and date of issue), or:

~~9. (b)~~ European Assessment Document applied (reference number and date of issue): and 10. European Technical Assessment issued: (technical assessment body, reference number and date of issue)

11. Declared performances and sustainability characteristics:
- (a) the complete list of essential characteristics, as determined in the harmonised technical specification or European Assessment Document ~~for the respective product category for which a performance is declared.~~
  - (b) the performance of the product, by calculated values, levels or classes, or in a description. Respective values, levels or classes shall be reproduced in the declaration of performance itself and thus cannot be expressed solely by inserting references to other documents. However, the performance of structural behaviour of a product may be expressed by referring to attached production documentation or structural design calculations. For essential characteristics where no performance is declared, the place for the declaration of the value shall be left empty.
  - (c) the environmental sustainability data calculated in accordance with Article ~~11(2a) 22(1), in particular where they fit under the essential characteristics listed in Annex I Part A, point 2, in case the respective rules covering the product category have become applicable at the time of placing on the market or direct installation.~~
12. ~~The product identified above is in conformity with the following~~ Applicable product requirements of Annex I Part B and C as specified by the following harmonised technical specifications adopted in accordance with Article 5 <sup>5</sup>:

(reference number and date of issue)

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<sup>5</sup> ~~Cite the respective harmonised technical specifications.~~



12a. References to the harmonised standards referred to in Article 5(2b) that have been applied, including the date of the standard, or references to the other technical specifications, including their date, in relation to which conformity is declared. In the event of partial application of harmonised standards, the declaration shall specify the parts which have been applied.

13. Declarations:

- (a) the performance of the product identified above is in conformity with the set of declared performances under point 11;
- (b) the sustainability data of the product identified above have been correctly calculated on the basis of the product category rules applicable to it;
- (c) the product identified above is in conformity with the requirements listed under point 12.

Signed for and on behalf of the manufacturer by:

[name, function<sup>6</sup>]

At [place]

on [date of issue]

[signature]

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<sup>6</sup> The person signing shall be empowered by virtue of national law to represent the manufacturer, be it on the basis of a mandate, be it due to her/his role as legal representative.