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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

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 18 April 2023.

Article 3

Definitions

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

- (46) ‘harmonised technical specifications’ means construction products performance standards ~~which established in accordance with Article 4(2d) the reference of which has~~ have been published in the Official Journal in accordance with Article 34 and thereby were ~~rendered mandatory for the purposes of the application of this Regulation, and as well as~~ 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;

[...]

- (47) ‘construction products performance standard’ means a harmonised standard adopted by a European standardisation organisation on the basis of a request made by the Commission for the application of this Regulation the reference of which has been published in the Official Journal in accordance with Article 34, regardless of whether the use of such standard is laying down methods and criteria for assessing the performance of a construction product in relation to its essential characteristics ~~and rendered mandatory for the purposes of the application of~~ under this Regulation through publication in the Official Journal in accordance with as set out in Article 4(2d) and Article 34(2) or whether they stay voluntary in accordance with Article 5(2), Article 22(4) and Article 34(3);

~~-(65) ‘competent authority’ means the market surveillance authority designated in accordance with Article 69(1);~~

(66) ~~‘national competent authority single liaison point’~~ means the market surveillance authority designated in accordance with Article 69(2) as focal point for contacts with the Commission and market surveillance authorities of other Member States on construction product related issues;

[...]

(67a) ‘technical assessment body’ (TAB) means a body, designated in accordance with Article 44, that issues European technical assessments and performs other activities as specified in this Regulation.

(68) ‘designating authority’ means the single public administration body, designated in accordance with Article 43, in charge of the designation and supervision of ~~T~~technical ~~A~~assessment ~~B~~bodies, ~~designated in accordance with Article 43, unless specified otherwise in the respective provision: only~~ in the a Member State ~~where the respective technical assessment body is located;~~

Article 7a

European assessment documents

1. When a construction product is not covered by Construction Product Performance Standards as referred to in Article 4 or implementing acts referred to in Article 4a(1), the methods and criteria for assessing the performance of that construction product in relation to its essential characteristics can be laid down in European assessment documents.
European assessment documents constitute the basis for European technical assessments as set out in Article 42.
2. The organisation of ~~technical assessment bodies~~ ('TABs') may, in agreement with the Commission, following a request for a European technical assessment by a manufacturer ~~or~~, a group of manufacturers or a manufacturers' association or on the initiative of the Commission, draw up and adopt a European assessment document. The basic requirements for construction works, set out in Annex I-A Point 1, and the list of predetermined environmental characteristics, set out in Annex I-A Point 2, shall constitute the basis for the preparation of European assessment documents. The development and adoption of a European assessment document shall follow the principles and procedure set out in Article 36.

3. A construction product shall not be considered as covered by harmonised technical specifications as referred to in paragraph 1 when:
- (i) the declared ~~intended~~ use of the product is different than the intended use ~~set out~~ supposed in the harmonised technical specification.
 - (ii) the materials used are not identical to the materials intended to be used under the harmonised technical specification, or
 - (iii) the assessment method of the harmonised technical specification is not appropriate for that product.

4. ~~Even in the absence of harmonised technical specifications as referred to in the first paragraph,~~ European assessment documents shall not be drawn up in relation to ~~an essential characteristic or assessment method of~~ a construction product ~~when in any of the following cases:~~
- ~~(a) a construction product performance standard covering the same construction product has been submitted to the Commission for assessment in accordance with Article 4(2e);~~
 - ~~(b) the Commission has informed the committee referred to in Article 22 of Regulation EU (No) 1025/2012 about the fulfilment of the conditions in Article 4a(1) for adopting an implementing act covering the same construction product;~~
 - ~~(e) there is another European assessment document covering the same essential characteristic or assessment method in relation to that specific construction product, the reference of which has either already been published in the Official Journal of the European Union or has been submitted to the Commission for assessment in accordance with Article 38(1).~~

The organisation of TABs and the Commission may ~~merge bundle~~ or reject requests for the development of a European assessment document ~~in accordance with the provisions of Annex III, Point 5.~~

5. The organisation of TABs shall withdraw a European assessment document ~~for a specific construction product~~ when a harmonised technical specification ~~as referred to in paragraph 1 has entered into force~~ covering the same construction product ~~has entered into force as that document.~~

Article 10

Exemptions from drawing up a declaration of performance and conformity

1. By way of derogation from Article 9(1), a manufacturer may refrain from undergoing the applicable assessment and verification system, verifying of the product's compliance with applicable product requirements and the drawing up of a declaration of performance and conformity when ~~placing a product covered by a harmonised technical specification on the market where~~ any of the following applies:
 - (a) the product is, ~~otherwise than by 3D-printing or already existing moulds,~~ individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is also responsible for the safe incorporation of the product into the construction work in compliance with the applicable national rules, and under the supervision of those responsible for the safe execution of the construction works designated under the applicable national rules; or
 - (b) ~~the product is otherwise than by 3D-printing or already existing moulds manufactured on the construction site, in a non-series process for its incorporation in the respective construction work in compliance with the applicable national rules and under the supervision of those responsible for the safe execution of the construction works designated under the applicable national rules; or~~
 - (c) the product is manufactured in a manner exclusively appropriate to heritage conservation and in a non-series process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit.

2. A Member State may exempt from Article 9(1) remanufactured products based on products which remain safe after remanufacturing provided that it ensures that the product does not to circulate outside the territory of that Member State.
3. A Member State may exempt from Article 9(1) parts of construction works other than products that are prepared for re-use or remanufactured provided that the part does not to circulate outside the territory of that Member State.
4. ~~A Member State may exempt from Article 9(1) products where all of the following applies:~~
- ~~(a) the manufacturer is a micro-enterprise without belonging to a family of companies or other commercial organisation, including networks, able to determine or organise the manufacturer's activities;~~
 - ~~(b) the manufacturer uses exclusively or in essence components or materials with commonly known stable characteristics or products which have been voluntarily subject to this Regulation and, in all instances, the characteristics of the product depend in essence on the characteristics of these components or materials;~~
 - ~~(c) the product does not to circulate outside the territory of that Member State.~~

Article 20

Procedural rights of economic operators

1. ~~Any definitive or interim measure, decision or order taken or made by authorities pursuant to this Regulation against an economic operator and the natural or legal persons acting on their behalf shall state the exact grounds on which it is based.~~
2. ~~Any such measure, decision or order shall be communicated without delay to the relevant economic operator and the natural or legal persons acting on their behalf, who shall at the same time be informed of the remedies available to them under the law of the Member State concerned and of the time limits to which those remedies are subject.~~
3. ~~Before a measure, decision or order referred to in paragraph 1 is taken or made, the economic operator concerned shall be given the opportunity to be heard within an appropriate period of not less than 10 working days, unless there is urgency of the measure, decision or order, based on health or safety requirements or other grounds relating to the public interests covered by this Regulation.~~
4. ~~If the measure, decision or order is taken or made without the economic operator being given the opportunity to be heard, the economic operator shall be given that opportunity as soon as possible thereafter and that measure, decision or order can be reviewed promptly by the market surveillance authority.~~
5. ~~Member States shall ensure that any measure covered by this Article can be appealed, with or without prior administrative appeal procedure, before a competent court. That court shall also be competent for deciding on the suspensive effect of the appeal or interim measures to be imposed by the court in view of both the public interest and the interests of the economic operator.~~

Article 27

Obligation of fulfilment service providers, brokers, online market places, online sellers, online shops and online search engines

[...]

4. ~~As far as powers conferred by Member States in accordance to Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by this Regulation, to order an online marketplace to remove specific illegal content referring to a non-compliant product from its online interface, to disable access to it or to display an explicit warning to end users when they access it. Such orders shall comply with [Article 8(1)] of Regulation (EU) .../... [the Digital Services Act].~~
5. ~~An online marketplace shall take the necessary measures to receive and process in accordance with [Article 8] of Regulation (EU) .../... [the Digital Services Act] the orders referred to in paragraph 4.~~

[...]

Article 31

Double use and pseudo products

1. ~~A manufacturer of double use products shall satisfy the obligations of this Regulation for all the items of the respective type, unless they are specifically marked as “not for construction”.~~
2. ~~Other economic operators dealing with double use products shall fulfil the obligations incumbent on them in accordance with this Regulation. In their commercial contracts, they shall establish an obligation of their clients to do the same and not to sell or to use items for construction which are marked as “not for construction”.~~
3. ~~For items suitable for construction for which the manufacturer has never intended such use and which, therefore, have not been CE-marked (“pseudo products”), other economic operators shall:~~
 - (a) ~~not acquire or sell them as items being intended for construction without undergoing the procedures set out in this Regulation to be undergone by manufacturers;~~
 - (b) ~~ensure by presentation that they cannot be understood as being intended for construction; and~~
 - (c) ~~establish a contractual obligation of their clients to do the same and not to use these items for construction.~~

Products marked as “not for construction”

1. Manufacturer of a product that although not designed nor intended for use as a construction product, resembles an object commonly recognized as suitable for construction or intended for use as a construction product, because of its design, packaging or characteristics, in particular when such a product is similar to a product covered by harmonised technical specification or European assessment document, shall mark the product as “not for construction”.
2. For the products marked as “not for construction” according to paragraph 1 of this Article, other economic operators shall:

 - (a) not acquire or sell it as an item being intended for construction;
 - (b) ensure by presentation that it cannot be understood as being intended for construction; and
 - (c) establish a contractual obligation of their clients to do the same and not to use this item for construction.
3. If the other economic operator wants to acquire or sell the product marked as “not for construction”, as a construction product, he shall undergo all procedures incumbent on manufacturers of construction products according to this Regulation.

Online and other distance sales

- ~~1. Products offered for sale online or through other means of distance sales shall be deemed to be made available on the market if the offer is targeted at clients in the Union. An offer for sale shall be considered to be targeted at clients in the Union if the relevant economic operator directs, by any means, its activities to a Member State. Inter alia, an offer shall be considered to be targeted at clients in the Union where:~~
- ~~(a) the economic operator uses an official language of a Member State, unless selling to the Union is explicitly excluded by effective means;~~
 - ~~(b) the economic operator uses the currency of the Member States or a crypto-currency covered by Regulation (EU) [...]† unless, in the latter case, selling to the Union is explicitly excluded by effective means;~~
 - ~~(c) the economic operator has the used internet domain name registered in one of the Member States or uses an internet domain that refers to the Union or one of the Member States; or~~
 - ~~(d) the geographical areas to which dispatch is available includes a Member State.~~
2. Member States shall designate a single centralised market surveillance authority responsible for detecting products offered from economic operators outside the Union to clients on their territory online and via other distance sales methods.

~~† — Future Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, see COM/2020/593 final.~~

Principles and procedure for the development and adoption of European assessment documents

1. ~~The procedure for~~ When developing and adopting European assessment documents, individual TABs ~~and as well as~~ the organisation of TABs shall follow the procedure set out in Annex III ~~and~~.
- 1a. When developing and adopting European assessment documents, individual TABs and the organisation of TABs shall respect the following principles:
 - (a) be transparent to Member States, the manufacturer concerned and to other manufacturers or stakeholders that request to be informed;
 - (b) disclose ~~as little as possible~~ confidential information ~~protected by intellectual property rights only when necessary to assess the compliance of a European assessment document with regulatory provisions~~, and otherwise protect commercial secrecy and confidentiality;
 - (c) specify appropriate mandatory time limits in order to avoid unjustified delay;
 - (d) allow at any stage for adequate participation by the Member States and the Commission;
 - (e) be cost-effective for the manufacturer; and
 - (f) ensure sufficient collegiality and coordination amongst TABs designated for the product in question.

The balancing of requirements ~~principles~~ laid down in points (a) and (b) shall at least allow for the disclosure of the name of the product at the stage of the approval and the communication of the work programme, as set out in Annex III, point 3., and of the detailed contents of the draft European assessment document set out in Annex III, point 7.

2. The TABs shall, together with the organisation of TABs, bear the full costs of the development and adoption of European assessment documents, unless ~~it~~ such development is ~~started on~~ initiated ~~by~~ by the Commission.
3. TABs and the organisation of TABs shall avoid any proliferation of European assessment documents where there is no technical justification for differentiating between products and shall therefore in particular give preference to the extension of a scope of an existing European assessment document.
4. ~~Even when allowed for in accordance with Article 7a, TABs and the organisation of TABs shall refrain from developing European assessment documents where there is a high likelihood of future duplication with harmonised technical specifications or pre-existing European assessment documents and shall withdraw duplicating European assessment documents.~~
5. The Commission is empowered to, after consultations with the organisation of TABs, amend Annex III by delegated act adopted in accordance with Article 87 to establish supplementary procedural rules for the development and adoption of a European assessment document, where this is necessary to ensure the good functioning of the European assessment documents system.

Obligations of the TAB receiving a request for a European technical assessment

1. ~~The TAB~~ When receiving a request for a European technical assessment from a manufacturer, ~~or~~ a group of manufacturers ~~or a~~ ~~the manufacturers' association~~, the TAB shall inform the applicant if the product is covered, fully or partially, by a harmonised technical specification or European assessment document as follows:
- (a) where the product is ~~fully~~ covered by a harmonised technical specification ~~or a~~ European assessment document cannot be drawn up in accordance with Article ~~7a(4)(a) or (b)~~, the TAB shall inform the ~~manufacturer, the group of manufacturers or the manufacturers' association~~ applicant that, ~~in accordance with Article 35(2)~~, a European technical assessment cannot be issued;
 - (b) where the product is ~~fully~~ covered by a European assessment document the reference of which has been ~~cited~~ published in the Official Journal, the TAB shall inform the ~~manufacturer, the group of manufacturers or the manufacturers' association~~ applicant that the referenced European assessment ~~such a~~ document will be used as the basis for the European technical assessment to be issued;
 - (c) where the product is eligible ~~not covered by any harmonised technical specification for a~~ European assessment document pursuant to Article 7a and ~~where no such harmonised technical specification is intended to be adopted in the next two years, or no such or European assessment document is already in the procedure of being developed pursuant to Annex III~~, the TAB shall inform the applicant that apply the procedures set out in Annex III will be initiated ~~or those established in accordance with Article 35(4)~~.

2. In the cases referred to in paragraph 1, points (b) and (c), the TAB shall inform the organisation of TABs and the Commission of the content of the request and of the reference to a relevant Commission act determining the assessment and verification system in accordance with Article 6(1a), which the TAB intends to apply for that product, or of the lack of such a Commission decision.
3. If the Commission considers that an appropriate Commission act determining the assessment and verification system does not exist for the product, it may adopt such act in accordance with Article 6(1a).

Publication of references

1. The Commission shall assess the ~~conformity~~ compliance of European assessment documents with harmonised technical specifications, with this Regulation and with other Union law. Where a European assessment document is in conformity with applicable legal requirements, the Commission shall without delay publish a reference of that document or publish with restriction in the Official Journal of the European Union, the list of ~~Where a references of accepted conforming to a European assessment documents cannot be published in the Official Journal, the Commission may shall publish such a reference with restrictions any updates to that list.~~
2. ~~Only European assessment documents referred to in that list and published in at least one language of the Union by either the Commission or by the organisation of TABs shall authorise the issuing of European technical assessments in accordance with Article 42 and trigger legal effects in accordance with Article 42(5), including with regard to the manufacturer who requested the development of the European assessment document. This legal effect of European assessment documents shall expire ten years after their first citation in the Official Journal of the European Union unless they have been renewed in the last year prior to expiry and the Commission decides to maintain the listing.~~

Following publication in accordance with paragraph 1, a European assessment document may in accordance with Article 42 be used as a basis for a European technical assessment for a period of 10 years, unless withdrawn for other reasons. The organisation of TABs may in the last year prior to the expiration of a European assessment document decide to submit it for renewed validity. The Commission shall in that case reassess it in accordance with paragraph 1.

Dispute resolution in cases of disagreement between TABs

If the TABs do not agree upon the European assessment document within the time limits provided for, the organisation of TABs shall submit this matter to the Commission for appropriate resolution, including instructions to this organisation how to complete its work. *[Moved to annex III point 5]*

Content of the European assessment document

1. A European assessment document shall contain the following elements:
 - (a) a description of the product covered and its intended use; and
 - (b) the list of essential characteristics, including predetermined environmental characteristics as set out in Annex I-A Point 2, relevant for the intended use of the product as ~~set out by the manufacturer and~~ agreed between the manufacturer and the organisation of TABs, and the methods and criteria for assessing the performance of the product in relation to those essential characteristics.
2. Principles for the ~~applicable~~ factory production control to be applied shall be set out in the European assessment document, taking into account the conditions of the manufacturing process of the product concerned.
3. Where the performance of ~~some of certain~~ essential characteristics of the product can appropriately be assessed with methods and criteria already established in harmonised technical specifications or other European assessment documents, those existing methods and criteria shall be incorporated as parts of the European assessment document, unless there is a technical necessity ~~are good reasons not~~ to deviate from this rule ~~deviate from this rule~~. Where applicable, these principles shall also apply for thresholds levels and classes of performance adopted in accordance with Article 4a(2).

Formal objections against European assessment documents

1. A Member State shall inform the Commission of all of the following:
 - (a) where it considers that a European assessment document does not entirely satisfy conform with applicable legal requirements or satisfy the demands to be met in relation to the essential characteristics to be covered in view of the basic requirements for construction works ~~or product requirements~~ set out in Annex I;
 - (b) where it considers that a European assessment document raises a major concern for human health and safety, the protection of the environment or consumer protection;
 - (c) ~~where it considers that a European assessment document does not fulfil the requirements set out in Article 35(2);~~

The Member State concerned shall substantiate its viewpoints. The Commission shall consult the other Member States on the issues raised by the Member State concerned.

2. In the light of the views of all the Member States, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the European assessment documents concerned in or from the Official Journal of the European Union.
3. The Commission shall inform the Member States and the organisation of TABs of its decision referred to in paragraph 2 and, where necessary, request the revision of the European assessment document concerned.

European technical assessment

1. ~~The~~ A European technical assessment shall be issued by a TAB, at the request of a manufacturer on the basis of a European assessment document ~~established in accordance with the procedures set out in Article 37 and Annex III~~ the reference of which has been ~~cited~~ published in the Official Journal of the European Union in accordance with Article 38.

Provided that there is a European assessment document, a European technical assessment may be issued even in the case where a standardisation request has been issued. Such issuing shall be possible until the European assessment document has to be withdrawn in accordance with Article 7a(5) citation publication of a reference to the construction products performance standard in the Official Journal of the Union.

2. The European technical assessment shall include the performance to be declared, by levels or classes, or in a description, of those essential characteristics agreed by the manufacturer and the TAB receiving the request for the European technical assessment for the declared ~~intended~~ use, and technical details necessary for the implementation of the assessment and verification system.
3. The Commission may adopt implementing acts to establish the format of the European technical assessment.

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

4. European technical assessments issued on the basis of a European assessment document remain valid for five years either after the expiry date of the European assessment document in accordance with Article 38(2) or after the date of its withdrawal for other reasons.
5. Products covered by a European assessment document for which a European technical assessment has been issued may be CE marked and thereby obtain the same status as products CE marked on the basis of harmonised technical specifications, where the manufacturer satisfies the obligations set out in this Regulation. Where these obligations refer to harmonised technical specifications, the manufacturer shall refer to the European assessment document instead or, where the harmonised technical specifications are also relevant, in addition.

CHAPTER V
TECHNICAL ASSESSMENT BODIES

Article 43

Designating authorities

1. Member States wishing to designate technical assessment bodies (TABs) shall designate a single designating authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and designation in charge of TABs technical assessment bodies (hereafter: the “designating authority”). Designating authorities shall satisfy the requirements for notifying authorities set out in Articles 48(1) and Article 49~~(4)~~ to art. 49(6a). Member States may designate the notifying authority, as referred to in Article 48, as designating authority. The designating authority shall not be eligible for designation in accordance with Article 44(1).
2. Unless otherwise specified in this Chapter, the provisions applicable to notifying authorities and to notification procedures apply also to designating authorities and to the designation procedures. ~~However, Member States may not use accreditation.~~

Article 44

Designation, monitoring and evaluation of TABs

1. Member States may through their designating authorities, designate ~~Technical Assessment Bodies~~ (TABs) within their territories for one or several product families areas listed in of Annex IV, ~~Table 1~~. The Commission is empowered to amend this table by delegated acts adopted in accordance with Article 87 to adapt it to technical progress Member States may also designate Technical Assessment Bodies (TABs) within their territories as competent for emerging or innovative products that do not fall into already existing product families listed in Annex IV

Member States shall communicate the name of the ~~TAB~~technical assessment body, its address and the product family or families areas it is competent for referred to in the first sentence to the Commission.

2. The Commission shall assign an identification number to each TAB.

The Commission shall make publicly available ~~publish~~ the list of ~~those~~ TABs designated under this Regulation that satisfy applicable legal requirements referred to Article 45(1) and (2) by electronic means and indicate their identifications numbers, the product families areas for which they are designated and any limitations in the most precise possible way.

The Commission shall ~~publish any updates to~~ ensure that this list is kept up-to-date.

3. The designating authority ~~designated in accordance with Article 43~~ shall monitor the activities and competence of the TABs designated in their respective Member State, and where necessary their subsidiaries and subcontractors, and evaluate them in relation to the respective requirements set out in this Chapter. The designating authority shall impose corrective measures on ~~instruct the~~ TABs wherever there is an infringement of ~~law this Regulation or common practice agreed between the Member States and the Commission.~~ In case of refusal of correction, or new or repeated infringement of the law this Regulation, ~~it may revoke the designation of the TAB.~~

~~The designating authority shall instruct the TABs to follow a guidance developed by the coordination group of notifying and designating authorities referred to in Article 49a.~~

Member States shall inform the Commission of their national procedures for the designation of TABs, of the monitoring of their activity and competence, and of any changes to that information.

4. TABs shall, without delay, and at the latest within 15 days, inform the ~~relevant Member State and notified authority~~ the designating authority of any changes which may affect their compliance with the requirements set out in this chapter or their ability to satisfy their obligations under this Regulation.

5. ~~The Commission may investigate the compliance of TABs with the requirements set out in this chapter, as well as the fulfilment by the responsible designating authorities of their monitoring obligations. The Commission shall not have the right to withdraw the designation of the respective TAB.~~
6. TABs shall, upon request by the relevant designating authority, supply all relevant information and documents, required to enable the authority, the Commission and the Member States to verify their compliance with requirements under this Regulation.
7. Where a TAB no longer complies with the requirements of this Regulation, the designating authority ~~Member State~~ shall restrict, suspend or withdraw the designation of that TAB for the relevant product family area as appropriate, depending on the seriousness of the failure to meet those requirements. Where a TAB does not comply with corrective measures imposed in accordance with paragraph 3, the designating authority may restrict, suspend or withdraw the designation of that TAB for all product families. and The designating authority shall inform the Commission and the other Member States thereof. Articles 58 and 59 shall apply.

Requirements for TABs

1. A TAB shall be competent and equipped to carry out the assessment in relation to the product families area for which it has been designated. The decision making staff and at least half of the technical competent staff ~~of the TAB shall be located in the designating Member State.~~ shall be employed by the TAB under the national law of the designating Member State.
2. The TAB shall satisfy the requirements set out in Annex IV ~~a, Table 2~~ within the scope of its designation. Article 50(~~24~~) to (5), Article 50(6) points (a) and (b), Article 50(7), (8) and (10) and Article 51 shall apply.
3. A TAB shall have made publicly available its organigram and the names of the members of its internal decision-making bodies.

~~Where a TAB no longer complies with the requirements referred to in paragraphs 1 and 2, the Member State shall withdraw the designation of that TAB for the relevant product family area and inform the Commission and the other Member States thereof.~~

Coordination of TABs

1. The TABs shall establish an organisation for technical assessment (“organisation of TABs”) under this Regulation.
2. The organisation of TABs shall at least carry out the following tasks:
 - (a) ~~investigate whether some products covered by European assessment documents are widely produced by multiple manufacturers and for a long time to the extent that they are not considered innovative anymore, and therefore, there is a potential for to draw up a new harmonised technical specifications for those products, using the technical content of European assessment document as a basis for development, and inform the Commission of such potential about this;~~
 - (b) organise the coordination of the TABs and, if necessary, ensure cooperation and consultation with other stakeholders;
 - (c) ensure that examples of best practice are shared between TABs to promote greater efficiency and provide a better service to industry;
 - (d) develop and adopt European assessment documents;
 - (e) coordinate the application of the procedures set out ~~in Article 65(2) and~~ in Article 66(~~21~~), as well as provide the support needed to that end;

- (f) inform the Commission of any question related to the preparation of European assessment documents and of any aspects related to the interpretation of the procedures set out ~~in Article 65(2) and~~ in Article 66(~~21~~) and suggest improvements to the Commission based on experience gained;
- (f1) supply the Commission with relevant technical content relating to European assessment documents when the development of harmonised technical specifications based on the same product families is set to take place according to the working plan referred to in Article 3a(2);
- (g) communicate any observations concerning a TAB not satisfying its tasks in accordance with the procedures set out ~~in Article 65(2) and~~ in Article 66(~~12~~) to the Commission and the Member State which designated the TAB;
- (h) report annually to the Commission on
- (i) the fulfilment of the tasks referred to above, ~~and in particular on the geographical distribution of the TABs,~~
 - (ii) the allocation of European assessment document development tasks to the TABs,
 - (iii) the even geographic distribution of tasks between TABs,
 - (iv) the European technical assessments issued for each European assessment document including the geographical distribution of TABs involved and of the manufacturers receiving the documents, and
 - (v) the performance and the independence of TABs; and
- (i) ensure that adopted European assessment documents and references to European technical assessments are kept publicly available ~~in all EU languages.~~

The organisation of TABs shall ~~asset~~ up a secretariat in order to carry out these tasks.

3. Member States shall ensure that the TABs contribute adequately with financial and human resources to the organisation of TABs. ~~The value of the contribution of each TAB shall not be less than 2% of its annual budget or turn-over, taking into account only the finances related to the tasks of TABs.~~
4. The weight in the decision making process of the organisation of TABs shall not depend on the TABs' financial contribution, the number of European assessment documents developed or the number of European technical assessments issued by them.
5. The Commission shall be invited to participate in all meetings of the organisation of TABs.
6. The Commission may make the financing of the organisation of TABs, regardless of via grants or public tenders, subject to the fulfilment of certain organisational and performance requirements, including with regard to a fair geographic distribution of TABs.
7. TABs shall participate in relevant activities of the organisation of TABs or ensure that their assessment personnel is informed about those activities.

CHAPTER VII

SIMPLIFIED PROCEDURES

Article 64

Use of appropriate technical documentation

1. A manufacturer may replace type testing by appropriate technical documentation demonstrating that:
 - (a) for one or several essential characteristics of the product, which the manufacturer 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 ~~to that end~~ in the ~~relevant harmonised technical specification or a Commission delegated~~ acts adopted pursuant to Articles 4a(3) [and 8(1)]; or
 - (b) the product, covered by a harmonised technical specification or a European assesment document, which the manufacturer places on the market is a system made of ~~items~~ components, which the manufacturer assembles duly following precise instructions, including compatibility criteria in case of individual ~~items~~ components, given by the provider of such a system or of a component thereof, who has already tested that system or that ~~item~~ component for one or several of its essential characteristics in accordance with the relevant harmonised technical specification. When these conditions are satisfied and when the manufacturer has notably verified that the precise compatibility criteria of the provider are met, the manufacturer is entitled to declare performance corresponding to all or part of the test results for the system or the ~~item~~ component provided to him.

2. If the product referred to in paragraph 1 belongs to a family or category of products for which the applicable assessment and verification system is system 1 + or 1, as set out in Annex V, a notified body or TAB shall, in addition to the tasks set out in Annex V, assess and certify the correct fulfilment of the obligations referred to in paragraph 1.

Article 65

Use of simplified procedures by micro-enterprises

- ~~1. Micro-enterprises manufacturing products covered by a harmonised technical specification or a European assessment document may treat products to which system 3 applies in accordance with provisions for system 4. When a manufacturer uses this simplified procedure, the manufacturer shall demonstrate compliance of the product with the applicable requirements by means of a Specific Technical Documentation.~~
- ~~2. The fulfilment of the requirements of this Article shall may be assessed and confirmed by a TAB or a notified body.~~

Custom-made non-series products

1. ~~In relation to~~ For a products covered by a harmonised technical specification and which ~~is~~~~are~~ individually manufactured or custom-made in a non-series process in response to a specific order, ~~and which are installed in a single identified construction work by a~~ manufacturers who ~~are~~ is also responsible for the safe incorporation of ~~these~~ products into ~~the a~~ construction works, the performance assessment part of the applicable system, as set out in Annex V, may be replaced by the manufacturer by a ~~S~~specific section in the Technical Documentation referred to in Article 21(3) where the manufacturer demonstrates the compliance of that product with the applicable requirements and provides data equivalent to those required by this Regulation and the applicable harmonised technical specifications. Equivalence is given where all the data needed and requirements applicable to the particular construction work and its future dismantling, including reuse, remanufacturing and recycling of its installed products, are provided or fulfilled on the basis of state-of-the-art methods.
2. If the product referred to in paragraph 1 belongs to a family or category of products for which the applicable assessment and verification system is system 1 + or 1, as set out in Annex V, Aa notified body or TAB shall, in addition to the tasks set out in Annex V, assess and certify the correct fulfilment of the obligations referred to in paragraph 1.

Recognition of assessment and verification by another notified body

1. A notified body (~~hereafter: recognising notified body~~) may refrain from the assessment and verification of a certain product item to be assessed or verified in accordance with this Regulation and recognise the assessment and verification undertaken by another notified body for the same or another economic operator where all of the following applies:
- (a) the product item has been correctly assessed and verified by the other notified body ~~which is — whilst being rebuttable — to be assumed where the respective report does not contain any information suggesting an error;~~
 - (b) there is an agreement in place between the ~~two~~ notified bodies obliging them to share all information regarding the assessment and verification ~~and their respective certificates and reports;~~
 - (c) the assessed or verified economic operator agrees to share all relevant data and documents with the recognising notified body;
 - (d) the validity of the certificate is limited to the validity of the certificate issued by the other notified body.

This paragraph shall also apply to test reports that are not followed by a certification and to assessments of calculation of the environmental sustainability undertaken under Regulation (EU) ... [Regulation on ecodesign for sustainable products].

2. Where the notified body wishes to recognise an assessment or verification undertaken by another notified body in relation to an economic operator for which only the other notified body is in charge (~~“other economic operator”~~), the recognition shall only be possible and provided that if there is additionally an agreement in place between the two economic operators that ensures the free flow of all information between them and the notified bodies in view of ensuring compliance with this Regulation, ~~the recognition shall only be possible with regard to the following:~~
- (a) ~~with regard to the verification of the environmental sustainability calculation of the other economic operator, namely supplier or service provider, and their respective supplied goods or services, or~~
 - (b) ~~with regard to components where these components do not constitute the entire product.~~

This paragraph shall also apply to assessments of calculation of the environmental sustainability undertaken under Regulation (EU) ... [Regulation on ecodesign for sustainable products].

CHAPTER VIII

MARKET SURVEILLANCE AND SAFEGUARD PROCEDURES

Article 68

Complaint Portal

1. The Commission shall set up a system allowing any natural or legal person to share complaints or reports related to possible non-compliances with this Regulation.
2. Where the Commission considers a complaint or report relevant and substantiated, it shall ~~transmit assign~~ it to the single liaison point of the Member State concerned ~~a market surveillance authority~~ for it to follow-up with the relevant natural or legal person in accordance with Article 11(7), point (a) of Regulation (EU) 2019/1020.

Article 69

~~Competent authorities~~ Single liaison point

- ~~1. Member States shall designate, amongst their market surveillance authorities, one or more 'competent authorities' that dispose of the particular knowledge needed to assess products both technically and legally.~~
2. Member States shall designate, a single liaison point amongst their ~~competent market surveillance~~ authorities, ~~the 'national competent authority'~~ which shall act as is the focal point for contacts with the Commission and market surveillance authorities of other Member States which are competent under this Regulation, including for requests pursuant to Articles 23 and 24 of Regulation (EU) 2019/1020.

Procedure to deal with non-compliant ~~tees~~ products

1. Where a market surveillance authority of one Member State has sufficient reason to believe that certain products covered by a ~~construction products standard~~ harmonised technical specification or for which a European technical assessment has been issued, ~~or its manufacturer,~~ is non-compliant, it shall carry out an evaluation in relation to the products ~~and the manufacturer~~ concerned covering the respective requirements laid down by this Regulation. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authority finds that the products ~~or its manufacturer~~ does not comply with the requirements ~~and obligations~~ laid down in this Regulation, it shall without delay require the relevant economic operators to take all appropriate and proportionate corrective actions to bring the products ~~or himself~~ into compliance with those requirements ~~and obligations~~ or to withdraw the products from the market, or to recall them, all within a reasonable period and commensurate with the nature and degree of the non-compliance. The corrective action required to be taken by the economic operators may include the actions listed in Article 16(3) of Regulation (EU) 2019/1020.

The market surveillance authority shall inform the notified bodies accordingly, if notified bodies are involved.

2. Where the market surveillance authority considers that the non-compliance is not limited to its national territory, it shall, via the single liaison point ~~national competent authority,~~ inform the Commission and the other Member States of the results of the evaluation and of the actions which it has required the economic operators to take.

3. The economic operators shall ensure that ~~take~~ all appropriate corrective action is taken in respect of all the products concerned that ~~it that economic operators~~ has made available on the market throughout the Union.

4. Where the relevant economic operators, within the period referred to in the second subparagraph of paragraph 1, do~~es~~ not take adequate corrective action or where the non-compliance persists, the market surveillance authority shall take all appropriate provisional ~~or definitive~~ measures to prohibit or restrict the making available on the market of the products, to withdraw these product from the market or to recall them.

The market surveillance authority shall inform the public, and via the single liaison point ~~national competent authority~~ the Commission and the other Member States, without delay, of those measures.

5. The information referred to in the last sentence of paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant products, the origin of the products, the nature of the non-compliance alleged and the risk involved, the nature and duration of national measures taken as well as the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:

(a) failure of the products to achieve the declared performance ~~and/or~~ to meet the requirements established in accordance with Article 5(1) ~~related to the fulfilment of basic requirements for construction works laid down in this Regulation~~;

~~(b) — failure of the manufacturer to meet obligations;~~

(c) shortcomings in the harmonised technical specifications referred to in Article 4 or 4a(1), ~~or in~~ a European assessment document or in the harmonised standards referred to in Article 5(2b).

6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the products concerned, and, in the event of disagreement with the notified national measure, of their objections.
7. Where, within two months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State in relation to the product concerned, that measure shall be deemed justified.
8. ~~The other~~ Member States shall ensure that appropriate restrictive measures are taken without delay in respect of the product ~~or manufacturer~~ concerned, such as withdrawal of the products from their market.

Union safeguard procedure

1. Where, on completion of the procedure set out in Article 70(4), ~~(6) and (7)~~, objections are raised against a measure taken by a Member State or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide by means of implementing act adopted whether the measure is justified or not.

Those implementing acts shall be adopted in accordance with advisory procedure referred in Article 88(1).

The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator or operators.

2. If the national measure is considered to be justified, all Member States shall ensure that ~~take the necessary measures to~~ ensure that appropriate restrictive measures, such as withdrawal, are taken in respect of the non-compliant product ~~is withdrawn from their markets~~ and shall inform the Commission accordingly. If the national measure is considered to be unjustified, the Member State concerned shall withdraw the measure.
3. Where the national measure is considered to be justified and the non-compliance of the product or its manufacturer is attributed to shortcomings in the harmonised technical specifications, European assessment documents or construction products harmonised standards as referred to in Article 70(5), point (c), the Commission shall apply the procedure provided for in Article 4(2f), in Article 4a(1) third subparagraph or in Article 41 of this Regulation or in Article 11 of Regulation (EU) No 1025/2012 respectively.

Complying products which nevertheless present a risk

1. Where, having performed an evaluation pursuant to Article 70(1), a market surveillance authority ~~Member State~~ finds that, although ~~certain a~~ products ~~are~~ is in compliance with this Regulation, ~~they it~~ presents a risk ~~for the fulfilment of the basic requirements for construction works,~~ to the health or safety of persons; or, where applicable, to the environment ~~or to other aspects of public interest protection,~~ it shall require the relevant economic operators to take all appropriate measures to ensure that the products concerned, when placed on the market, no longer present that risk, to withdraw the products from the market or to recall them within a reasonable period, commensurate with the nature of the risk, which it may prescribe.
2. The economic operator shall ensure that any corrective action is taken in respect of all the products concerned which that economic operator has made available on the market throughout the Union.
3. The market surveillance authority shall, via the single liaison point ~~national competent authority,~~ immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the product concerned, the origin and the supply chain of the product, the nature of the risk involved and the nature and duration of the national measures taken.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide by implementing act whether the measure is justified or not and, where necessary, ~~propose~~ order appropriate measures.
5. Those implementing acts shall be adopted in accordance with the ~~advisory~~ examination procedure referred to in Article 88(1).
6. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic ~~operator~~ or operators.

Article 73

Minimum checks and minimum human resources

1. ~~The Commission is empowered to adopt delegated acts in accordance with Article 87 supplementing this Regulation by laying down the minimum number of checks to be performed by the market surveillance authorities of each Member State on specific products covered by harmonised technical specifications or in relation to specific requirements set out in such measures in order to ensure checks are performed on a scale adequate to safeguard the effective enforcement of this Regulation. The delegated acts may, where relevant, specify the nature of the checks required and methods to be used.~~
2. ~~The Commission is also empowered to adopt delegated acts in accordance with Article 87 supplementing this Regulation by laying down the minimum human resources to be deployed by Member States for purposes of market surveillance with regard to products covered by this Regulation.~~

Article 74

Market surveillance coordination and support

1. For the purposes of this Regulation, the administrative cooperation group ('ADCO') set up pursuant to Article 30(2) of Regulation (EU) 2019/1020 shall meet at regular intervals and, where necessary, at the reasoned request of the Commission or of two or more participating market surveillance authorities.

In the context of performing its tasks set out in Article 32 of Regulation (EU) 2019/1020, the ADCO shall support the implementation of this Regulation, namely by identifying common priorities for market surveillance.

2. Based on priorities identified in consultation with the ADCO, the Commission shall:
- (a) organise joint market surveillance and testing projects in areas of common interest;
 - (b) organise joint investment in market surveillance capacities, including equipment and IT tools;
 - (c) organise common trainings for the staff of market surveillance authorities, notifying authorities and notified bodies, including on the correct interpretation and application of this Regulation and on methods and techniques relevant for applying or verifying compliance with it;
 - (d) elaborate guidelines for the application and enforcement of this Regulation ~~requirements and obligations set out in delegated acts referred to in Article 4(3) and (4) and Article 5(2) and (3) and the delegated acts referred to in Article 22(4), including common practices and methodologies for effective market surveillance.~~

The Union shall, where appropriate, finance the actions referred to in points (a), (b) and (c).

- ~~3. The Commission shall provide technical and logistic support to ensure the ADCO fulfils its tasks set out in Article 32 of Regulation (EU) 2019/1020 and this Article.~~

Article 75

Retrieval of costs

~~Market surveillance authorities shall have the right to recover from economic operators in possession of a non-compliant product or from the manufacturer the costs of document inspection and physical product testing.~~

Article 76

Reporting and benchmarking

- ~~1. Market surveillance authorities shall enter into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 information on the nature and severity of any penalty imposed in relation to non-compliance with this Regulation.~~

2. The Commission shall, every 2 years, draw up a report by 30 June based on the information entered by market surveillance authorities into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. The first of these reports shall be published by [*OP: Please add date: two years after date of application of this Regulation*].

The report shall include:

- (a) information on the nature and number of checks performed by market surveillance authorities during the two previous calendar years pursuant to Article 34(4) and (5) of Regulation (EU) 2019/1020;
 - (b) information on the levels of non-compliance identified ~~and on the nature and severity of penalties imposed~~ for the two previous calendar years in relation to products covered by harmonised technical specifications ~~delegated acts adopted pursuant to Articles 4, 5, 6 and 22 of this Regulation~~;
 - (c) indicative benchmarks for market surveillance authorities in relation to the frequency of checks ~~and the nature and severity of penalties imposed~~.
3. The Commission shall publish the report referred to in paragraph 2 of this Article in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall make public a summary of the report.

CHAPTER IX

INFORMATION AND ADMINISTRATIVE COOPERATION

Article 77

Information systems for harmonised decision-making

1. The Commission shall establish and maintain an information and communication system for the collection, processing and storage of information, in a structured form, on issues relating to the interpretation or application of the rules laid down in or pursuant to this Regulation, with the aim of ensuring the harmonised application of those rules.

In addition to the Commission and Member States, market surveillance authorities, the single liaison offices appointed under Article 10(3) of Regulation (EU) 2019/1020, the authorities designated under Article 25(1) of Regulation (EU) 2019/1020, notifying authorities, notified bodies, and product contact points for Construction shall be able to access the information and communication system. The Commission may, by implementing decision give access to authorities of third countries that apply voluntarily this Regulation or that have regulatory systems for construction products similar to this Regulation.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88(1).

2. The bodies listed in paragraph 1 may use the information and communication system to raise any question or issue related to the interpretation or application of the rules laid down in or pursuant to this Regulation, including their relationship to other provisions of Union law. ~~They shall raise such questions or issues where reasonable doubt exists about how to apply or interpret those rules in a given situation.~~
3. ~~For purposes of paragraph 2, reasonable doubt shall be assumed to exist where the bodies listed in paragraph 1:~~
- ~~(a) are aware or made aware of the application or interpretation of the rules laid down in or pursuant to this Regulation by any other body in a way that diverges from their own practice;~~
 - ~~(b) are aware or made aware of questions or issues raised through the information and communication system related to the situation they are confronted with or to their own practice;~~
 - ~~(c) are confronted with a situation not foreseen by the rules laid down in or pursuant to this Regulation when first published or referred to in the Official Journal of the European Union, especially but not limited to situations brought about by the emergence of new products or business models;;~~
 - ~~(d) have to apply the rules laid down in or pursuant to this Regulation to a situation to which other provisions of Union law also apply and the resulting question.~~
4. When raising a question or issue, the relevant body shall enter into the information and communication system information concerning:
- (a) any decision taken in relation to the question or issue raised;
 - (b) the presumable reasoning/rationale behind the approach taken;
 - (c) any alternative approach it has identified and its respective reasoning/rationale;

5. Member States shall establish a national information system or email list service to inform their authorities, the economic operators active on their territory, TABs and notified bodies with place of business on their territory and, on request, also other TABs and notified bodies, on all matters relevant for the correct interpretation or application of the rules laid down in or pursuant to this Regulation. In doing so, they shall take into account the information available in the information and communications system referred to in paragraph 1,.
6. Authorities, ~~economic operators~~, TABs and notified bodies with place of business in the respective Member State shall register into the ~~eat~~ system or email list service and take account of all information transmitted via them. Economic operators may register into the system or email list service.
7. The national information system or email list service shall be able to receive complaints on behalf of the national competent authority from any natural or legal person, including TABs and notified bodies, on the uneven application of the rules laid down in or pursuant to this Regulation. If deemed appropriate, the national competent authority shall forward such complaints to their peers in other Member States and to the Commission.
- ~~8. Member States and the Commission may use artificial intelligence to detect diverging decision-making practices.~~

Article 79

Product contact points for construction

1. Member States shall support economic operators by product contact points for construction. Member States shall designate and maintain at least one product contact point for construction on their territory and shall ensure that their product contact points for construction have sufficient powers and adequate resources for the proper performance of their tasks ~~and at any rate at least one full-time equivalence per Member State and one additional full-time equivalence per each ten millions of inhabitants~~. They shall ensure that product contact points for construction deliver their services in accordance with Regulation (EU) 2018/1724² and that they coordinate with the contact points for mutual recognition established by Article 9(1) of Regulation (EU) No 2019/515³.

² Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012; *OJ L 295, 21.11.2018, p. 1–38*.

³ Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008; *OJ L 91, 29.3.2019, p. 1–18*.

2. Product contact points for construction shall provide, at the request of an economic operator or a market surveillance authority of another Member State, any useful product related information, such as:
- (a) electronic copies of, or online access to, the national technical rules and national administrative procedures applicable to products in the territory in which the product contact points for construction is established,
 - (b) information on whether those products are subject to prior authorisation under national law,
 - (c) rules applicable to the incorporation, assembling or installation of products.

Product contact points for construction shall also provide information on product related provisions of this Regulation and of acts adopted in accordance with it.

3. Product contact points for construction shall respond within 15 working days of receiving any request under paragraph 3.

4. Product contact points for construction shall not charge any fee for the provision of the information under paragraph 3.
5. Product contact points for construction shall be able to carry out their functions in a manner that avoids conflicts of interest, particularly in respect of the procedures for obtaining the CE marking.
6. Paragraphs 1 to 6 apply also to products which have not yet been covered by harmonised technical specifications.
7. The Commission shall publish update a list of the national product contact points for construction.

Article 80

Trainings and exchange of staff

1. Market surveillance authorities, product contact points for construction, designating authorities TABs, notifying authorities, and notified bodies shall ensure that their staff:
 - (a) keep up-to-date in their area of competence and receive periodic additional training to that end; and
 - (b) receive periodically training on the harmonised interpretation and application of the rules laid down in or pursuant to this Regulation.

2. The Commission shall, periodically and at least once a year, organise training events jointly for the staff of market surveillance authorities, notifying authorities, and notified bodies. The Commission shall organise these training events in cooperation with the Member States.

The training events shall be open to the participation of the staff of the authorities designated under Article 25(1) of Regulation (EU) 2019/1020, the single liaison offices appointed under Article 10(3) of Regulation (EU) 2019/1020 and, where appropriate, of other authorities of the Member States involved in the implementation or enforcement of this Regulation. The Commission may, by implementing decision adopted in accordance give access to third countries that apply voluntarily this Regulation or that have regulatory systems for construction products similar to this Regulation.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88(1).

3. The Commission may organise, in cooperation with the Member States, programmes for the exchange of staff between the market surveillance authorities, notifying authorities, and notified bodies of two or more Member States.

Shared roles and joint decision-making

1. In order to fulfil their obligations under this Regulation with regard to market surveillance, designation and supervision of TABs, notified bodies, and product contact points for construction, Member States may designate:
 - (a) a body or authority set up in cooperation with another Member State or other Member States for the purpose of joint designation;
 - (b) a body or authority already designated by another Member State for the same purpose, in cooperation with that Member State;

The Member States concerned shall jointly ensure that the shared bodies or authorities meet all relevant requirements. They shall be jointly responsible for them, whilst decisions taken towards natural or legal persons on a certain Member State shall be legally attributable only to that Member State.

2. The authorities of different Member States may, without prejudice to their individual obligations under this Regulation or other legislative acts, share resources and responsibilities in order to ensure the harmonised application or effective enforcement of this Regulation.

To that end, they may also:

- (a) take joint decisions, especially in relation to joint cross-border activities or in relation to economic operators active on the territory of the relevant Member States;
- (b) establish common projects, such as joint market surveillance or testing projects;
- (c) pool resources for specific purposes, such as building up testing capacity or for internet surveillance;
- (d) delegate the execution of tasks to a peer authority of another Member State, whilst staying formally responsible for the decisions taken by that authority;
- (e) transfer a task from one Member State to the other, provided that such transfer is clearly communicated to all concerned.

The relevant Member States shall be jointly responsible for the actions taken in accordance with this paragraph.

Article 90

Penalties

1. Member States shall lay down the rules on penalties applicable to non-compliances with this Regulation and shall take all measures necessary to ensure that these rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by [insert date - 3 months after to the date of entry into force of this Regulation], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

2. ~~Member States shall especially lay down rules on penalties for the following non-compliances of economic operators:~~

- ~~(a) placing on the market or making available on the market of a product which is not CE marked whilst an CE marking is mandatory;~~
- ~~(b) affixing the CE marking in violation of Article 17(1) or without the correct information to be provided together with the CE marking in accordance with Article 17(2);~~
- ~~(c) affixing of the CE marking without prior issuing of a declaration of performance;~~
- ~~(d) issuing of a declaration of performance or declaration of conformity where the conditions therefore have not been met;~~
- ~~(e) the declaration of performance or the declaration of conformity is incomplete or incorrect;~~
- ~~(f) the technical documentation is missing, incomplete or incorrect;~~
- ~~(g) information to be provided in accordance with Annex I Part D and harmonised technical specifications is missing, incomplete or incorrect;~~
- ~~(h) the information referred to in paragraph Article 21(4), Article 22(2), points (f) and (i) or Article 21(7) and Article 24 is missing, incomplete or incorrect;~~
- ~~(i) any other administrative requirement provided for in Articles 21, 22 or 24 is not fulfilled;~~

- ~~(j) information due to notified bodies, TABs or authorities is not provided or is incorrect;~~
- ~~(k) measures requested in case of non-compliance or risk, mandatory according to Article 21(8) and (9), Article 23(3), points (d) and (e), Article 24(5), Article 25(2) in conjunction with Article 24(5), Article 27(2), point (e) in conjunction with Article 24(5) and Article 27(2), points (d), (e) and (g) are not taken;~~
- ~~(l) the product and documentation verification obligations incumbent on economic operators according to Articles 23 to 27 are not fulfilled; and~~
- ~~(m) 3D-printing services are provided under infringement of Article 28.~~

~~3. Member States shall also lay down rules on penalties for the following non-compliances of TABs and notified bodies:~~

- ~~(a) issuing of certificates, test reports, or European technical assessments whilst the conditions therefore are not fulfilled;~~
- ~~(b) non-withdrawal of certificates, test reports, or European technical assessments where the withdrawal is mandatory;~~
- ~~(c) information to be provided to notified bodies, TABs or authorities is not provided, incomplete or is incorrect; and~~
- ~~(d) instructions of authorities are not followed.~~

~~4. The Commission is empowered to supplement this Regulation by delegated act adopted in accordance with Article 87 in order to establish proportionate minimum penalties, targeting all economic operators, TABs and notified bodies directly or indirectly involved in the infringement of obligations of this Regulation.~~

ANNEX III

Procedure for adopting a European Assessment Document

1. Request for a European Technical Assessment
 - (a) When a manufacturer makes a request for a European Technical Assessment to any TAB for a product, and after the manufacturer and the TAB (hereinafter referred to as the 'responsible TAB') have signed an agreement of commercial secrecy and confidentiality, unless the manufacturer decides otherwise, the manufacturer shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the manufacturer and details of the factory production control the manufacturer intends to apply.
 - (b) When a group of manufacturers **or a manufacturers' association** (hereinafter referred to as the 'Group') makes a request for a European Technical Assessment, it shall address the request to the organisation of TABs that will propose to the Group a TAB to act as the responsible TAB. The Group can either accept the proposed TAB or ask the organisation of TABs to propose an alternative TAB. Once the Group has accepted the responsible TAB proposed by the organisation of TABs, the members of the Group shall sign an agreement of commercial secrecy and confidentiality with this TAB, unless the Group decides otherwise, and the Group shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the Group and details of the factory production control the members of the Group intend to apply.
 - (c) In the absence of a request for a European Technical Assessment, when the Commission initiates the development of a European Assessment Document, it shall deliver to the organisation of TABs a technical file describing the product, its use and details of the factory production control to become applicable. The organisation of TABs shall together with the Commission selects the agree on a TAB to act as the responsible TAB, after consulting the organisation of TABs.

2. Contract

For products referred to in Article 37(1)(c), within 1 month from the reception of the technical file, in cases foreseen in points 1(a) and 1(b), a contract shall be concluded respectively between the manufacturer or the Group and the responsible TAB for the production of the European Technical Assessment, specifying the work programme for drawing up the European Assessment Document, including:

- (a) the organisation of work within the organisation of TABs,
- (b) the composition of the workgroup to be established within the organisation of TABs, designated for the product family ~~area~~ in question, and
- (c) the coordination of TABs.

In the case foreseen in point 1(c), the responsible TAB shall submit to the Commission the work programme for drawing up the European Assessment Document with the same content and within the same deadline. After that, the Commission shall have 30 working days to communicate to the responsible TAB its observations on it, and the responsible TAB shall amend the work programme accordingly.

3. Communication of ~~W~~work programme

After the conclusion of the contract with the manufacturer or the Group, the organisation of TABs shall inform the Commission of the work programme for drawing up the European Assessment Document, the schedule for its execution and indicating the assessment programme. This communication shall take place within 3 months of the receipt of the request for a European Technical Assessment.

4. The draft European Assessment Document

The organisation of TABs shall finalise a draft European Assessment Document by means of the working group coordinated by the responsible TAB and shall communicate such draft to the parties concerned within 6 months of the date the Commission was informed of the work programme in cases foreseen in points 1(a) and 1(b) or the date the Commission communicated to the responsible TAB its observations on the work programme in the case foreseen in point 1(c).

5. Commission Participation

A Commission representative may participate, as observer, to all the parts of the execution of the work programme. The Commission may request the organisation of TABs at any stage to abandon or modify the development of a certain European Assessment Document, ~~including merging or splitting thereof~~, when the development is not in line with this Regulation or in case the approach is not efficient or effective in terms of resources and final applicability. The Commission may request the organisation of TABs at any stage to merge parallel processes for the development of European assessment documents, or to split a single process in two, to increase clarity or ensure efficiency in the development process or in the future application of the assessment document under consideration.

In case the TABs involved do not agree on a European assessment document within the time limits provided for, the organisation of TABs shall submit the matter to the Commission for appropriate resolution, including through instructions to the organisation of TABs on how to complete its work.

6. Member States consultation

In the case foreseen in point 1(c), the Commission shall inform Member States on the development of the European Assessment Document after the finalisation of the work programme for it. When requested, Member States may participate where appropriate in its execution.

7. Extension and delay

Any delay in relation to the time limits set in points 1 to 4 in this Annex shall be reported by the working group to the organisation of TABs and to the Commission.

If an extension of the time limits for developing the European Assessment Document can be justified, notably by the absence of a Commission decision on the applicable assessment and verification system for the product or by the need to develop a new test method, an extended time limit shall be set by the Commission.

8. Amendments and adoption of a draft European Assessment Document

8.1. In cases foreseen in points 1.(a) and 1.(b), the responsible TAB shall communicate the draft European Assessment Document to the manufacturer or the Group, respectively, who shall have 20 ~~15~~ working days to react thereto. Thereafter, the organization of TABs shall:

- (a) if applicable, inform the manufacturer or the Group as to how their reactions have been taken into account;
- (b) adopt the draft European Assessment Document;
- (c) send a copy of it to the Commission.

8.2. In the case foreseen in point 1.(c), the responsible TAB shall:

- (a) adopt the draft European Assessment Document;
- (b) send a copy of it to the Commission.

8a. Commission assessment of draft European Assessment Documents

The Commission shall assess the submitted draft European Assessment Document and ~~if~~, within 30 working days of receipt, ~~the Commission communicates its observations to the organisation of TABs its observations on the draft European Assessment Document.~~ The organisation of TABs, after having been given the opportunity to comment, shall amend the draft accordingly and shall resend a copyies of the adopted amended draft European Assessment Document in cases foreseen in accordance with points 8.1.(b) and (ca) and 8.21.(b) to the manufacturer or the Group, respectively, and in all cases to the Commission.

9. Adoption of Ffinal European Assessment Document to be and publicationshed

The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union, for the publication of its reference in the *Official Journal of the European Union*.

The organisation of TABs shall publish the European Assessment Document in one or more languages of the Union and, as a minimum, keep it accessible until no European technical assessments based on it remain valid.

ANNEX IVa

Table 2– Requirements for TABs

TABs shall be able to fulfil the following tasks and requirements:

Competence	Description of tasks	Requirement
1. Analysing risks	Identify the possible risks and benefits for the use of innovative products in the absence of established/consolidated technical information regarding their performance when installed in construction works.	A TAB shall be established under national law and have legal personality. It shall be independent from the stakeholders and from any particular interests. A TAB shall have staff with:
2 Setting technical criteria	Transform the outcome of the risk analysis into technical criteria for evaluating behaviour and performance of the products regarding the fulfilment of applicable national requirements; provide the technical information needed by those participating in the building process as potential users of the products (manufacturers, designers, contractors, installers).	(a) objectivity and sound technical judgement; (b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States where it is designated, concerning product <u>families</u> areas for which it is to be designated; (c) general understanding of construction practice and detailed technical knowledge, concerning product <u>families</u> areas for which it is to be designated;
3. Setting assessment methods	Design and validate appropriate methods (tests or calculations) to assess performance for essential characteristics of products, taking into account the current state of the article.	(d) detailed knowledge of specific risks involved and the technical aspects of the construction process; (e) detailed knowledge of the existing harmonised standards and test methods within the product <u>families</u> areas for which it is to be designated; (f) detailed knowledge of this Regulation; (g) appropriate linguistic skills. The remuneration of the TAB personnel shall not depend on the number of the assessments carried out or on the results of such assessments.

4. Determining the specific factory production control	Understand and evaluate the manufacturing process of the specific product in order to identify appropriate measures ensuring product constancy through the given manufacturing process.	A TAB shall have staff with appropriate knowledge of the relationship between the manufacturing processes and product characteristics related to factory production control.
5. Assessing the product	Assess the performance for essential characteristics of products on the basis of harmonised methods against harmonised criteria.	In addition to the requirements listed in points 1, 2 and 3, a TAB shall have access to the necessary means and equipment for the assessment of the performance for essential characteristics of products within the product <u>families</u> areas for which it is to be designated.
6. General management	Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.	<p>A TAB shall have:</p> <ul style="list-style-type: none"> (a) a proven record of respect of good administrative behaviour; (b) a policy and the supporting procedures to ensure confidentiality and protection of sensitive information within the TAB and all its partners; (c) a document control system to ensure registration, traceability, maintenance, protection and archiving of all relevant documents; (d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods; (e) a procedure to manage objectively appeals and complaints.
