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[...] (2013) **XXX** draft

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of **XXX****

**on the model to be used for drawing up a declaration of performance on construction products and amending Annex III to Regulation (EU) No 305/2011**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

In accordance with Article 60(e) of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC<sup>1</sup>, the Commission has been delegated the task of adapting Annex III to Regulation (EU) No 305/2011 in response to technical progress.

By means of using this power, the Commission therein proposes to adapt the model of declaration of performance set out in Annex III to Regulation (EU) No 305/2011 in order to fulfil three main objectives: first, to allow the flexibility required by different kinds of construction products and manufacturers, including in view of responding to technological progress; second, to simplify the declaration of performance; and third, to provide further instructions to manufacturers with the intention of helping them when drawing up the declaration of performance in line with applicable legislation. Providing such instructions would also ensure a harmonised and correct application of Annex III.

The adoption of the draft Regulation would facilitate the drawing up of declarations of performance by manufacturers, empower them to adapt these documents to their particular needs or uses, make these declarations of performance shorter, more user-friendly and understandable. All these should both reduce administrative burden and increase clarity on the information concerning construction products covered by declarations of performance.

This would benefit also other actors involved, facilitate the consolidation of the internal market for these construction products and thus also have a favourable impact on the competitiveness of the European construction sector as a whole.

The European enterprises, especially SMEs, are already encountering real daily problems when trying to cope with the implementation of the EU construction products legislative system as currently in force. Therefore, diligent action could be seen as highly desirable, so as to have this act in place as soon as possible.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The draft Regulation was submitted for public consultation by means of the meeting held for this purpose on 9 September 2013, preceded by informal contacts with representatives of different stakeholders, notably Member States and the European Parliament. For this meeting, all Member States were invited to nominate experts. In addition to these experts, also representatives of the European Parliament participated in it, alongside widespread representation of diverse other external stakeholders. The documents relevant to this meeting had been transmitted simultaneously to the European Parliament and the Council, as foreseen in the Common Understanding on delegated acts. The observations presented in this meeting have been taken into account when preparing the final draft version of this act.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 6 and Annex III to Regulation (EU) No 305/2011 prescribe respectively the content and the model of declarations of performance mandated by Article 4 of Regulation (EU) No 305/2011. While retaining the essential elements prescribed under Article 6, it is possible to

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<sup>1</sup> OJ L 88, 4.4.2011, p. 5.

adapt the model contained in Annex III, in order to respond to technical progress, specific needs of different products and to reduce unnecessary administrative burden.

Pursuant to Article 2(9) of Regulation (EU) No 305/2011, a product-type is defined in relation to a set of performance levels or classes of a construction product. This set of performance levels or classes should therefore constitute an essential part of the information contained in the respective declaration of performance.

In Article 9(2) of Regulation (EU) No 305/2011, the unique identification code determined by the manufacturer to follow the CE marking is linked to the product-type and thus to the set of performance levels or classes of a construction product, as brought forward in the declaration of performance drawn up for it. Moreover, for the recipients of construction products, in particular for their final end users, it is necessary to be able to unequivocally identify this set of performance levels or classes for any given product. Therefore, every construction product, for which a declaration of performance has been drawn up, should be linked by its manufacturer to the respective product-type and a given set of performance levels or classes by the unique identification code, acting also as the reference mentioned in Article 6(2)(a) of Regulation (EU) No 305/2011.

The manufacturers of construction products might consider appropriate to use this unique identification code also as the reference number of the related declaration of performance as foreseen in Article 9(2) and Annex III to Regulation (EU) No 305/2011. This simplification measure is compatible with the purposes and requirements of Regulation (EU) No 305/2011.

Article 11(4) of Regulation (EU) No 305/2011 mandates manufacturers to ensure that their construction products bear a type, batch or serial number allowing their identification. The same mandate is not included in Article 6 of Regulation (EU) No 305/2011, which describes the content of the declaration of performance. Since the purpose of Article 11(4) of Regulation (EU) No 305/2011 is to enable the identification and the traceability of any single construction product, this purpose should not be served in the context of drawing up the declaration of performance. Therefore, this information should not be required to be contained in the declaration of performance.

Article 2(5) of Regulation (EU) No 305/2011 demands that the performance is customarily expressed by level or class, or in a description. For this reason, the manufacturer should not be allowed to meet this obligation solely by inserting a calculation formula, to be applied by the recipients.

Article 4(3) of Regulation (EU) No 305/2011 states that, by drawing up the declaration of performance, the manufacturer assumes responsibility for the conformity of the construction product with such declared performance. Assuming this responsibility should require that the performance is declared in a clear and explicit manner, expressed by level or class, and in specific cases by description. Production documentation or structural design calculation documents are descriptions of the performance in relation to essential characteristics of structural behaviour. Manufacturers should thus not be allowed to use only references to other source documents when expressing the performance in the declaration of performance.

According to Article 21 of Regulation (EU) No 305/2011, a European Technical Assessment is only issued for products not covered or not fully covered by a harmonised standard. Since a manufacturer can draw up a declaration of performance only based on either a harmonised standard or a combination of a European Assessment Document and a European Technical Assessment, these two different situations should be treated as alternative, with only one of them to be applied in a given declaration of performance.

The identification of the notified bodies and of the Technical Assessment Bodies involved in the assessment and verification of constancy of performance of a construction product is considered useful information in the context of the declaration of performance. However, this information is only relevant as regards systems 1+, 1 and 2+ of assessment and verification of constancy of performance. The manufacturers are therefore obliged to include this information in declarations of performance drawn up by them when applicable.

When the notified bodies are identified, alongside the systems of assessment and verification of constancy of performance applied, the listing of certificates, test, calculation or assessment reports issued does not bring about real added value for the users of the products. Listing all this information may add significant complexity to the declaration of performance and administrative burden. The manufacturers should thus not be obliged to include these listings in their declarations of performance.

Where the manufacturer uses the Appropriate Technical Documentation and/or the Specific Technical Documentation in accordance with Articles 36 to 38 of Regulation (EU) 305/2011, their reference numbers should be contained in the declaration of performance, together with indication of the requirements with which the product complies which is mentioned in the current Annex III to Regulation (EU) No 305/2011.

When using the model of the declaration of performance, the manufacturers should be allowed the necessary flexibility, providing that the mandatory information is actually provided in a coherent and readable manner. For example, the manufacturers should have the right to combine the points of the model by presenting some of them together. Similarly, the manufacturers should not be obliged to follow the sequence of these points as in the model, as long as the clarity of the information brought forward in the declaration of performance can be maintained.

However, when the manufacturer includes a given point or clause in the declaration of performance quite as foreseen in the model, the texts and the headlines of the model should be repeated.

For the same reason, where the manufacturer uses one or more tables while drawing up the declaration of performance, the table/s should cover all the points listed in the model which are applicable to the given product. In particular, the tables should bring forward the links between the harmonised technical specifications and the systems of assessment and verification of constancy of performance applied respectively to each essential characteristic of the product, as well as the performance in relation to each essential characteristic.

If a manufacturer wishes to issue a single declaration of performance covering different variations of a product-type, certain elements need to be duplicated and listed separately and clearly for every product variation, in order to ensure accurate information for the end users. These elements should include at least the number of the declaration of performance, the unique identification code and the declared performances/s of the particular product variation.

Since the manufacturer should not be obliged to follow the sequence of the points presented in the model and should have the right to combine them or to omit the parts of the model not applicable, the numbering of these points should not be required to be used or followed, either.

In addition, for the sake of simplification, when some clauses or points of the model are not applicable, the manufacturers may omit them. In particular, this is the case since the declaration of performance is always based either on a harmonised standard or on a combination of a European Assessment Document and a European Technical Assessment, rendering the other alternative not applicable. These omissions could also concern the points

on the authorised representative or on the use of Appropriate Technical Documentation and the Specific Technical Documentation.

The appendixes of the model, containing instructions for the manufacturers on how to apply it, should be kept separate and not enclosed in the declarations of performance.

For reasons mentioned under chapter 1, the entry into force of this delegated act should take place as soon as possible after its adoption and publication, in order to ensure the proper drawing up of declarations of performance as well as to enhance the efficiency and competitiveness of the European construction sector.

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of XXX**

**on the model to be used for drawing up a declaration of performance on construction products and amending Annex III to Regulation (EU) No 305/2011**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC<sup>2</sup>, and in particular Article 60(e) thereof,

Whereas:

- (1) Article 4(1) of Regulation (EU) No 305/2011 obliges manufacturers of construction products to draw up a declaration of performance when a construction product that is covered by a harmonised standard or conforms to a European Technical Assessment issued for that product is placed on the market. According to Article 6(4) of Regulation (EU) No 305/2011, that declaration should be drawn up using the model set out in Annex III of that Regulation.
- (2) In accordance with Article 60(e) of Regulation (EU) No 305/2011, the Commission is delegated the task of adapting Annex III to Regulation (EU) No 305/2011 in response to technical progress.
- (3) The model set out in Annex III of Regulation (EU) No 305/2011 should be adapted, in order to respond to technological progress, to allow the flexibility required by different kinds of construction products and manufacturers as well as to simplify the declaration of performance.
- (4) Furthermore, practical experience with the implementation of Annex III shows that manufacturers would need further instructions for drawing up declarations of performance on construction products in line with applicable legislation. Providing such instructions would also ensure a harmonised and correct application of Annex III.
- (5) The manufacturers should be allowed some flexibility for drawing up declarations of performance as long as that they provide, in a clear and coherent manner, the essential information required by Article 6 of Regulation (EU) No 305/2011.
- (6) In order to unequivocally identify the product covered by a declaration of performance in relation with its performance levels or classes, manufacturers should link every single product to the respective product-type and to a given set of performance levels or classes by the unique identification code referred to in Article 6(2)(a) of Regulation (EU) No 305/2011.
- (7) The purpose of Article 11(4) of Regulation (EU) No 305/2011 is to enable the identification and the traceability of any single construction product by the indication, by the manufacturers, of a type, batch or serial number. This purpose is not served by

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<sup>2</sup> OJ L 88, 4.4.2011, p. 5.

a declaration of performance, which should be subsequently used for all products corresponding to the product-type defined in it. Therefore, the information required by Article 11(4) should not be required to be contained in the declaration of performance.

- (8) The identification of the Technical Assessment Bodies and of the notified bodies involved in systems 1+, 1 and 2+ of assessment and verification of constancy of performance of a construction product is useful information for the purposes of the declaration of performance. The manufacturers should therefore be obliged to include this information in the declarations of performance drawn up by them.
- (9) When the notified bodies are properly identified, the listing of all certificates, test, calculation or assessment reports issued might become extensive and burdensome but does not bring about added value for the users of the products covered by a declaration of performance. The manufacturers should thus not be obliged to include these listings in their declarations of performance.
- (10) In order to enhance the efficiency and competitiveness of the European construction sector as a whole, manufacturers providing declarations of performance wishing to benefit from the simplification and instructions for the purposes of facilitating the provision of such declarations should be able to do so as soon as possible,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex III to Regulation (EU) No 305/2011 shall be replaced by the Annex.

*Article 2*

Declarations of performance issued before the entry into force of this Regulation, which comply with Article 6 of Regulation (EU) No 305/2011 and the initial Annex III thereto, shall be deemed to comply with this Regulation.

*Article 3*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

**ANNEX**

**ANNEX III**

**DECLARATION OF PERFORMANCE**

No. ....

1. Unique identification code of the product-type: .....

2. Intended use/es: .....  
.....

3. Manufacturer: .....  
.....

4. Authorised representative: .....  
.....

5. System/s of AVCP: .....

6a. Harmonised standard: .....  
.....

Notified body/ies: .....  
.....

6b. European Assessment Document: .....  
.....

European Technical Assessment: .....  
.....

Technical Assessment Body: .....

Notified body/ies: .....

7. Declared performance/s: .....  
.....

8. Appropriate Technical Documentation and/or Specific Technical Documentation: .....  
.....

The performance of the product identified above is in conformity with the set of declared performance/s. This declaration of performance is issued, in accordance with Regulation (EU) No 305/2011, under the sole responsibility of the manufacturer identified above.

Signed for and on behalf of the manufacturer by:

[*name*] .....

At [*place*] ..... on [*date of issue*] .....

[*signature*] .....



## Instructions for drawing up the declaration of performance

### 1. GENERAL

These instructions aim at guiding the manufacturers when drawing a declaration of performance compliant with Regulation (EU) No 305/2011, following the model of this Annex (hereinafter referred to as "the model").

These instructions are not part of the declarations of performance to be issued by manufacturers and should not be enclosed to these declarations of performance.

When drawing up a declaration of performance, the manufacturer shall:

- (1) reproduce the texts and the headlines of the model which are not indicated between square brackets;
- (2) replace the blank spaces and square brackets by inserting the necessary information.

Manufacturers may also include in the declaration of performance the reference to the website where the declaration of performance is made available in accordance with Article 7(3) of Regulation (EU) No 305/2011. This may be included under point 9 or in another place where it does not affect the readability and clarity of the mandatory information.

### 2. FLEXIBILITY

Providing that the mandatory information required by Article 6 of Regulation (EU) No 305/2011 is provided in a clear, complete and coherent manner, when drawing a declaration of performance, it is possible to:

- (1) use a different layout as in the model;
- (2) combine the points of the model by presenting some of them together;
- (3) present the points of the model in a different order or using one or more tables;
- (4) omit some points of the model which are not relevant for the product for which a declaration of performance is drawn up. For example, this is the case since the declaration of performance may be based either on a harmonised standard or on a combination of a European Assessment Document and a European Technical Assessment, rendering the other alternative not applicable. These omissions could also concern the points on the authorised representative or on the use of Appropriate Technical Documentation and the Specific Technical Documentation;
- (5) present the points without numbering them.

If a manufacturer wishes to issue a single declaration of performance covering different variations of a product-type, at least the following elements need to be listed separately and clearly for every product variation: the number of the declaration of performance, the identification code under point 1 and the declared performances/s under point 7.

### 3. INSTRUCTION FOR THE COMPLETION OF THE FORM

<i>Point of the model</i>	<i>Instruction</i>
Number of the	This is the reference number of the declaration of performance foreseen in

declaration of performance	<p>Article 9(2) of Regulation (EU) No 305/2011.</p> <p>The choice of the number is left to the manufacturer.</p> <p>This number may be the same as the unique identification code of the product-type indicated under point 1 of the model.</p>
Point 1	<p>Indicate the unique identification code of the product-type referred to in Article 6(2)(a) of Regulation (EU) No 305/2011.</p> <p>In Article 9(2) of Regulation (EU) No 305/2011, the unique identification code determined by the manufacturer to follow the CE marking is linked to the product-type and thus to the set of performance levels or classes of a construction product, as brought forward in the declaration of performance drawn up for it. Moreover, for the recipients of construction products, in particular for their final end users, it is necessary to be able to unequivocally identify this set of performance levels or classes for any given product. Therefore, every construction product, for which a declaration of performance has been drawn up, should be linked by its manufacturer to the respective product-type and a given set of performance levels or classes by the unique identification code, which acts also as the reference mentioned in Article 6(2)(a) of Regulation (EU) No 305/2011.</p>
Point 2	<p>Indicate the intended use, or list the intended uses, as appropriate, of the construction product as foreseen by the manufacturer, in accordance with the applicable harmonised technical specification.</p>
Point 3	<p>Indicate the name, the registered trade name or registered trade mark and the contact address of the manufacturer, as required pursuant to Article 11(5) of Regulation (EU) No 305/2011.</p>
Point 4	<p>This point shall be included and filled in only in case an authorised representative has been designed. In such case, indicate the name and the contact address of the authorised representative whose mandate covers the tasks specified in Article 12(2) of Regulation (EU) No 305/2011.</p>
Point 5	<p>Indicate the number of the applicable system or systems of assessment and verification of constancy of performance (AVCP) of the construction product as set out in Annex V of Regulation (EU) No 305/2011. If there are multiple systems, each of them shall be declared.</p>
Points 6a and 6b	<p>Since a manufacturer can draw up a declaration of performance based on either a harmonised standard or a combination of a European Assessment Document and a European Technical Assessment, these two different situations presented under points 6a and 6b should be treated as alternative, with only one of them to be applied and filled in in a declaration of performance.</p> <p>In case of point 6a, i.e. when a declaration of performance is based on a harmonised standard, indicate all the following:</p> <p>(a) the reference number of the harmonised standard and its date of issue (dated reference); and</p>

	<p>(b) in case of systems 1+, 1 and 2+ of assessment and verification of constancy of performance, the identification number of the notified body/ies.</p> <p>When providing the name of the notified body/ies, it is essential that the name is provided in its original language, without translation to other languages.</p> <p>In case of point 6b, i.e. when a declaration of performance is based on a combination of a European Assessment Document and a European Technical Assessment, indicate all the following:</p> <p>(a) the number of the European Assessment Document and its date of issue;</p> <p>(b) the number of the European Technical Assessment and its date of issue;</p> <p>(c) the name of the Technical Assessment Body; and</p> <p>(d) in case of systems 1+, 1 and 2+ of assessment and verification of constancy of performance, the identification number of the notified body/ies.</p>
Point 7	<p>Under this point, the declaration of performance shall indicate:</p> <p>(a) the list of essential characteristics, as determined in the harmonised technical specifications for the intended use or uses indicated under point 2; and</p> <p>(b) for each essential characteristic, the declared performance, by level or class, or in a description, in relation to this characteristic or, for characteristics for which no performance is declared, the letters "NPD" (No Performance Determined).</p> <p>This point may be filled up with the use of a table which brings forward the links between the harmonised technical specifications and the systems of assessment and verification of constancy of performance applied respectively to each essential characteristic of the product, as well as the performance in relation to each essential characteristic.</p> <p>The performance shall be declared in a clear and explicit manner. For this reason, the performance cannot be described in the declaration of performance by:</p> <p>(a) simple references to separate production documentation or structural design calculation documents; or</p> <p>(b) inserting a calculation formula to be applied by the recipients.</p>
Point 8	<p>This point shall only be included and filled in in a declaration of performance if Specific Technical Documentation and/or Specific Technical Documentation has been used, in accordance with Articles 36 to 38 of Regulation (EU) No 305/2011, in order to indicate the requirements with which the product complies.</p> <p>In such a case, under this point the declaration of performance shall indicate:</p>

	(a) the reference number of the Specific and/or Appropriate Technical Documentation used, and (b) the requirements with which the product complies.
Signature	Replace the spaces indicated between square brackets by the information indicated and the signature.