



Brussels, **XXX**
[...](2019) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

supplementing Regulation (EU) No 305/2011 of the European Parliament and of the Council by establishing classes of performance in relation to luminance, luminance ratio and ingress protection for variable message traffic signs

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC¹ acknowledges two main alternatives to establish classes of performance in relation to the essential characteristics of construction products. According to Articles 27(1) and 60(f) of that Regulation, this can be done by delegated acts of the Commission, whereas its Article 27(2) allows for the use of harmonised standards for this purpose, on the basis of a revised mandate. In accordance with Article 27(2), first subparagraph, where the Commission has established such classes, the European standardisation bodies shall use those classes in harmonised standards.

The reference to the European product standard EN 12966-1:2005 on variable message traffic signs was first published under Directive 89/106/EEC in *the Official Journal of the European Union* in December 2005.² The version of this standard, currently cited in *the Official Journal of the European Union*, is EN 12966-1:2005+A1:2009. This harmonised standard contained already a classification for the performance of the products covered by it in relation to the essential characteristics luminance, luminance ratio and ingress protection.

Recently, the European Committee for Standardisation (CEN) submitted to the Commission a revised version of this standard, EN 12966:2014. This version comprises a new classification for the performance of the products covered by it in relation to the essential characteristics luminance, luminance ratio and ingress protection. More recently, CEN has approved an amendment to this version of the standard, consolidated in EN 12966:2014+A1:2018, which comprises the same classification for the performance of the products covered by it in relation to the essential characteristics luminance, luminance ratio and ingress protection as introduced in EN 12966:2014.

According to the amended revised version of the standard in question (EN 12966:2014+A1:2018), the assessment of performance in relation to *luminance* is to be carried out by using new limits for the respective classes, when it comes to maximum luminance levels for them, corresponding to the real use of these intensities. The new limits have now been set to three times of the minimum intensities. Moreover, a new luminance classification has been added for the new colour orange, included in the new version of the standard.

The same addition of the colour orange has been carried out also for the classifications concerning the minimum *luminance ratios*, where the previous colour white/yellow has been deleted, since it had not been used any longer.

For *ingress protection*, the amended revised version of the standard contains two new classes, for ingress protection levels IP45 and IP55, in addition to the previously existing three ones. They provide for better (more detailed) diversification of the declared performance.

Since under the application of Regulation (EU) No 305/2011 the introduction of a new classification into harmonised standards by the European standardisation bodies themselves requires the issuing of new revised mandates, which has not taken place and which would take longer, it has been considered more opportune to proceed with this draft Delegated Regulation.

¹ OJ L 88, 4.4.2011, p. 5.

² OJ C 319, 14.12.2005, p. 1.

It has not been considered appropriate to include other performance classifications contained in the standards at hand within the scope of the draft Delegated Regulation, because pursuant to Regulation (EU) No 305/2011 such classifications comprised in harmonised standards, the reference to which has been published under Directive 89/106/EEC in the Official Journal of the European Union, are to be deemed applicable under Regulation (EU) No 305/2011 without any further actions being necessary.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft Delegated Regulation was discussed in the meeting of the Advisory Group on Construction Products (the AG) on 26 June 2018 and also submitted for a written consultation of experts between 26 June and 31 July 2018. Before these steps, all Member States were presented an opportunity to nominate experts to participate in them. In addition to these experts, also other external stakeholders were consulted. The documents discussed in the AG and relevant to the written consultation were transmitted simultaneously to the European Parliament and to the Council, as foreseen in the Common Understanding on Delegated Acts. The observations presented in these contexts and the inputs received afterwards by the Commission have been taken into account when preparing the final draft version of this act for the inter-service consultation.

It was published for public feedback on the Better Regulation Portal from ... to ...; [*wording on feedback and any follow-up to be included subsequently*].

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Pursuant to Article 27 of Regulation (EU) No 305/2011, classes of performance may be established in relation to the essential characteristics of construction products. According to Articles 27(1) and 60(f) thereof, this can be done by delegated acts of the Commission. In accordance with Article 27(2), first subparagraph, of that Regulation where the Commission has established such classes, the European standardisation bodies shall use those classes in harmonised standards.

According to Article 2(7) of Regulation (EU) No 305/2011, “class” means a range of levels, delimited by a minimum and a maximum value, of performance of a construction product. Classes for the purposes of Regulation (EU) No 305/2011 are thus always expressing a given range of determined performance of the product. Moreover, Regulation (EU) No 305/2011 does not distinguish, unlike its predecessor Council Directive 89/106/EEC³, different kinds of classes, depending on their origin. Classes of performance established by the Commission and such classes established by the European standardisation bodies are thus to be acknowledged and respected in the same manner.

Since under Regulation (EU) No 305/2011 the introduction of a new classification of performance into harmonised standards by the European standardisation bodies themselves requires the issuing of new revised mandates, which has not taken place and which would take longer, it has been considered more opportune to proceed with this draft Delegated Regulation. For these reasons, this draft Delegated Regulation should be adopted to establish new classes of performance for product families mentioned above.

The draft Delegated Regulation conforms to the principle of proportionality. As the introduction of new classifications facilitates the placing on the market of the concerned

³ Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ L 40, 11.2.1989, p. 12).

construction products, the adoption of this draft Delegated Regulation can be assessed to benefit the whole European construction sector.

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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/EEC¹, and in particular Article 27(1) thereof,

Whereas:

- (1) The European standard EN 12966-1:2005+A1:2009 on road vertical signs contains a classification for the performance of the products covered by it in relation to the essential characteristics ‘luminance, luminance ratio and ingress protection’.
- (2) The European Committee for Standardisation has adopted a revised version of standard EN 12966.
- (3) In order to better serve the needs of the market and to introduce maximum luminance intensity levels corresponding to the real use of these intensities, it is necessary to include in the revised version of standard EN 12966 a new classification for the performance of the products covered by it in relation to the essential characteristics ‘luminance, luminance ratio and ingress protection’.
- (4) In accordance with Article 27 of Regulation (EU) No 305/2011, classes of performance in relation to essential characteristic of construction products may be established either by the Commission or by a European standardisation body on the basis of a revised mandate issued by the Commission. Given the need to establish the new classification of performance as soon as possible, it should be established by the Commission. In accordance with Article 27(2) of that Regulation, those classes are to be used in harmonised standards,

HAS ADOPTED THIS REGULATION:

Article 1

Classes of performance in relation to luminance, luminance ratio and ingress protection for variable message traffic signs, as set out in the Annex, are hereby established.

¹ OJ L 88, 4.4.2011, p. 5.

Article 2

This Regulation shall enter into force on the twentieth 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
Jean-Claude Juncker