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COMMISSION DELEGATED DECISION

of XXX

on the applicable systems to assess and verify constancy of performance of construction products, regarding the essential characteristics reaction to fire and continuous glowing combustion, pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

According to Article 28 of 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, assessment and verification of constancy of performance (AVCP) of construction products in relation to their essential characteristics is to be carried out in accordance with the systems set out in Annex V to Regulation (EU) No 305/2011.

Pursuant to Articles 28(2) and 60(h) of Regulation (EU) No 305/2011, the Commission is delegated the task of establishing the AVCP systems of construction products, relating to a given product, a given product family or a given essential characteristic, taking into account the considerations laid down in these provisions.

Pursuant to Council Directive 89/106/EEC (Construction Products Directive)², the Commission adopted Decisions on the appropriate procedure for the attestation of conformity (AoC). These acts are deemed valid also under the application of Regulation (EU) No 305/2011, taking into consideration Article 65(2) of this Regulation, and thus continue to provide a legal base for the choice of AVCP systems of construction products respectively under the scope of each one of these Decisions.

Commission Decision 2001/596/EC³ established accordingly the appropriate procedure for the AoC for several product families, as listed in Annex III to this Decision.

However, Commission Decision 2001/596/EC did not explicitly cover the essential characteristic continuous glowing combustion. While this Decision has more recently been interpreted as extended also to the said essential characteristic, distinguished from the essential characteristic reaction to fire, for legal clarity and certainty it is more opportune to put in place explicit rules on this topic.

For the reaction to fire performance, the customary choice of systems 1, 3 or 4 should continue to be considered appropriate as a main rule. However, a formulation differing from

¹ OJ L 88, 4.4.2011, p. 5.

² OJ L 40, 11.2.1989, p. 12.

³ OJ L 209, 2.8.2001, p. 33.

the approach followed in Decision 2001/596/EC should be used in Table 2 of Annex to the draft Decision, since pursuant to Article 28(2) of Regulation (EU) No 305/2011, the AVCP systems to be established can be differentiated only on the basis of the families of construction products or concerning certain essential characteristics. To distinguish between situations where system 1, system 3 or system 4 is chosen to be applied for reaction to fire, the only manner to proceed is thus to make reference to different subfamilies of products. These distinctions should also be clear and unambiguous.

Continuous glowing combustion performance has its resemblances to reaction to fire, when it comes to the reasons for and thus to the probability of variations in this performance.

Therefore, it should be deemed appropriate to use the same criteria as with reaction to fire also when defining the respective subfamilies of products, resulting in systems 1, 3 or 4 also for this essential characteristic.

In addition, the amendment of Decision 2001/596/EC is an opportunity to adapt its wording to the terminology and the concepts used in Regulation (EU) No 305/2011.

Finally, for reasons of simplification and legal transparency, the amendments to Decision 2001/596/EC are presented in the draft Decision in a consolidated manner, thus replacing Decision 2001/596/EC by it.

[Here it would be highly opportune to flag those product families which would need exceptions of any kind from the main rules described above.]

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

To be added subsequently.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Pursuant to Articles 28(2) and 60(h) of Regulation (EU) No 305/2011, AVCP systems of construction products, as set out in Annex V to Regulation (EU) No 305/2011, are to be established by delegated acts of the Commission, to be applicable to a given product, a given product family or a given essential characteristic, taking into account the considerations laid down in these provisions.

When establishing the AVCP systems, pursuant to Article 28(2) of Regulation (EU) No 305/2011, the Commission shall choose the least onerous systems consistent with the fulfilment of all basic requirements for construction works. Pursuant to Article 60(h) of Regulation (EU) No 305/2011, this shall be done in accordance with the impact of the product to this fulfilment during its expected working life.

The draft Decision conforms to the principle of proportionality. For these reasons, and owing to its horizontal nature, the draft Decision is expected to serve the interests of the construction sector as a whole.

COMMISSION DELEGATED DECISION (EU) .../...

of **XXX**

on the applicable systems to assess and verify constancy of performance of construction products, regarding the essential characteristics reaction to fire and continuous glowing combustion, pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council

(Text with EEA relevance)

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 harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC⁴, and in particular Article 60(h) thereof,

Whereas:

- (1) The procedure for attesting the conformity of construction products with the applicable technical specifications, regarding the essential characteristic reaction to fire, has been established in Commission Decision 2001/596/EC⁵.
- (2) Decision 2001/596/EC does not lay down detailed criteria for the choice of systems to assess and verify constancy of performance for the essential characteristic continuous glowing combustion.
- (3) The systems set out in Annex V to Regulation (EU) No 305/2011 should be more adequately chosen to assess the performance of construction products, regarding the essential characteristics reaction to fire and continuous glowing combustion. This should enable manufacturers to access the internal market more efficiently, thus contributing to greater competitiveness of the construction industry as a whole.
- (4) Decision 2001/596/EC should therefore be repealed and replaced in the interest of clarity and transparency,

HAS ADOPTED THIS DECISION:

Article 1

Construction products shall be assessed and verified for constancy of performance in relation to their essential characteristics reaction to fire and continuous glowing combustion in accordance with the systems specified in the Annex.

Article 2

Decision 2001/596/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision.

⁴ OJ L 88, 4.4.2011, p. 5.

⁵ OJ L 209, 2.8.2001, p. 33.

Article 3

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

Done at Brussels,

For the Commission

(PE/PO)

The President

[...]

ANNEX

SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

For the products covered by this Decision, regarding their essential characteristics reaction to fire and, where applicable, continuous glowing combustion, the systems for the Assessment and Verification of Constancy of Performance (AVCP system) as set out in Annex V to Regulation (EU) No 305/2011 apply as follows:

Table

For reaction to fire and, where applicable, for continuous glowing combustion

Product	Product subfamilies	AVCP system
Construction products	Products for which a clearly identifiable stage in the production process results in an improvement of their reaction to fire performance (e.g. an addition of fire retardants or a limiting of organic material), and/or in an improvement of their continuous glowing combustion performance	1
	Products for which an applicable European legal base exists to classify their reaction of fire performance and/or their continuous glowing combustion performance without testing	4
	Products not belonging to the subfamilies indicated in rows 1 and 2	3