EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Sustainable Growth and EU 2020
Sustainable Industrial Policy and Construction

Frequently Asked Questions on Delegated Regulation (EU) No 568/2014 of 18 February 2014 amending Annex V to Regulation (EU) No 305/2011 as regards the assessment and verification of constancy of performance of construction products

1. ***Is it necessary and legitimate to amend Annex V to the CPR pursuant to Article 60(e) of the Construction Products Regulation (EU) No 305/2011(the CPR)?***

The Commission proposes to adapt Annex V to the CPR in order to fulfil three main objectives:

a) to prescribe the particular treatment of products for which European Technical Assessments (ETA) are issued;

b) to simplify and bring clarity to the distribution and description of tasks contained in Annex V, notably by means of increased consistency with the concepts used and approaches defined in Regulation (EU) No 305/2011; and

c) to better reflect the current application practices of the systems of assessment and verification of constancy of performance (AVCP), taking into account the first practical experiences gathered and reported by notified bodies designated for Regulation (EU) No 305/2011, Member States and industry. This includes, among others, the redefinition of the essential characteristics "noise absorption" in Section 3 of Annex V by "acoustic performance".

The delegated act does not intend to alter the distribution of tasks established by Regulation (EU) No 305/2011 for the AVCP of construction products.

The aspects mentioned under (a) (ETA products) and (c) (acoustic performance) concern technical adaptations to Annex V to the CPR which are considered essential and urgent to address by stakeholders.

The reference to "technical progress" included in Article 60 of the CPR is a generic expression used in EU legislation to refer to amendments of elements included in technical annexes. For this reason, it should not be understood as precluding the amendments proposed by the Commission in Annex V which aim at simplifying, improving clarity and consistency of the Annex.

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2. Who "determines" the product-type?

Regulation (EU) No 305/2011 expects that the manufacturer is responsible for determining the product-type for any product the manufacturer wishes to place on the market (see Articles 2(9) and 36(1) of the CPR).

In the same context, notified bodies (NBs) are only responsible for assessing the performance of construction products, the constancy of which is then to be certified.

This repartition of competences between manufacturer and notified bodies is clarified in the proposal to amend Annex V, without entailing a shift in the responsibilities of these actors.

The logic of this repartition of competences can be understood if we think of a manufacturer who decides to declare a lower performance as the one identified by a NB as a precautionary position, or who needs to decide what to declare when different NBs participate in the assessment and verification of constancy of performance (AVCP) of its product.

3. May a report be issued under system 3?

The CPR does not mandate the laboratories to issue any formal reports as a result of the assessment of the performance of construction products. The CPR thus leaves to laboratories the choice of the form by which they will communicate to the manufacturers the results of their assessments. Nothing prevents laboratories to present the result of their assessments in the form of a report.

4. Are laboratories allowed to carry out AVCP tasks under systems 1+ and 1?

The notification of laboratories under systems 1+ and 1 is not allowed by the CPR and this is kept by the proposed revision of the CPR. However, laboratories can participate in the actions carried out under these systems via subcontracting and in case of horizontal notifications.

5. Are calculation bodies allowed to carry out AVCP tasks?

The delegated act adopted by the Commission for amending Annex V to the CPR recognizes the calculation bodies as NBs by replacing the term "testing laboratory" under point (3) of section 2 by the generic term "laboratory" and due to the proposed definition of such type of body.

In case this terminology evolution is supported by the co-legislators, the Commission will make the necessary adjustments in NANDO[1] concerning the entry field for laboratories.

[1] NANDO is the electronic notification tool foreseen by Article 48 of the CPR for providing information about bodies allowed to perform tasks of assessment and verification of constancy of performance (AVCP). It is freely available via the following website:

6. What is the relationship between Annexes II and V to the CPR? How and when are AVCP tasks undertaken for products for which an ETA is issued? When can NBs be notified for products for which an ETA is issued?

Articles 19 to 26 and Annex II to the CPR describe the process to be followed for issuing a ETA by a Technical Assessment Body (TAB). In essence, a ETA shall be issued by a TAB, at the request of a manufacturer, on the basis of a European Assessment Document (EAD). EADs are established by EOTA in accordance with the procedures set out in Article 21 and Annex II to the CPR.

The ETA will be the basis for the preparation of the declaration of performance (DoP) and of the CE marking by the manufacturer. However, the performance assessment contained in ETAs will frequently (for systems 1+, 1 and 2+) need to be complemented by additional AVCP tasks undertaken by NBs pursuant to Annex V to the CPR.

For this purpose, Article 22 and point 8 of Annex II to the CPR mandate the Commission to publish the references of the final EADs in the OJEU after:

a) the first ETA is issued by the responsible TAB on the basis of the adopted EAD, and

b) EOTA has adopted the final EAD mentioned under point 8 of Annex II to the CPR (i.e. the EAD adapted, if necessary, based on the experience gained with the ETA) and has sent a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union.

As soon as the Commission receives the titles of the EAD in all languages, the publication into the OJEU can be launched and completed in a few weeks (from 1 to 5 weeks depending on the size of the text to be published and the planning of the Publications Office).

Subsequent to the publication of the EAD reference in the OJEU, the Commission will also insert the reference of the EAD in NANDO, which is normally used by Member States to start notifying the appropriate NBs. The list of NBs will be available in NANDO pursuant to the notification process described in Articles 48 and 49 of the CPR.

Where appropriate, the manufacturer will then turn to one of the NBs available in NANDO for conducting the necessary AVCP tasks before he can place the product on the market.

Only after all necessary AVCP tasks are undertaken, the manufacturer will be able to draw up the DoP and place the product on the market with the CE mark.

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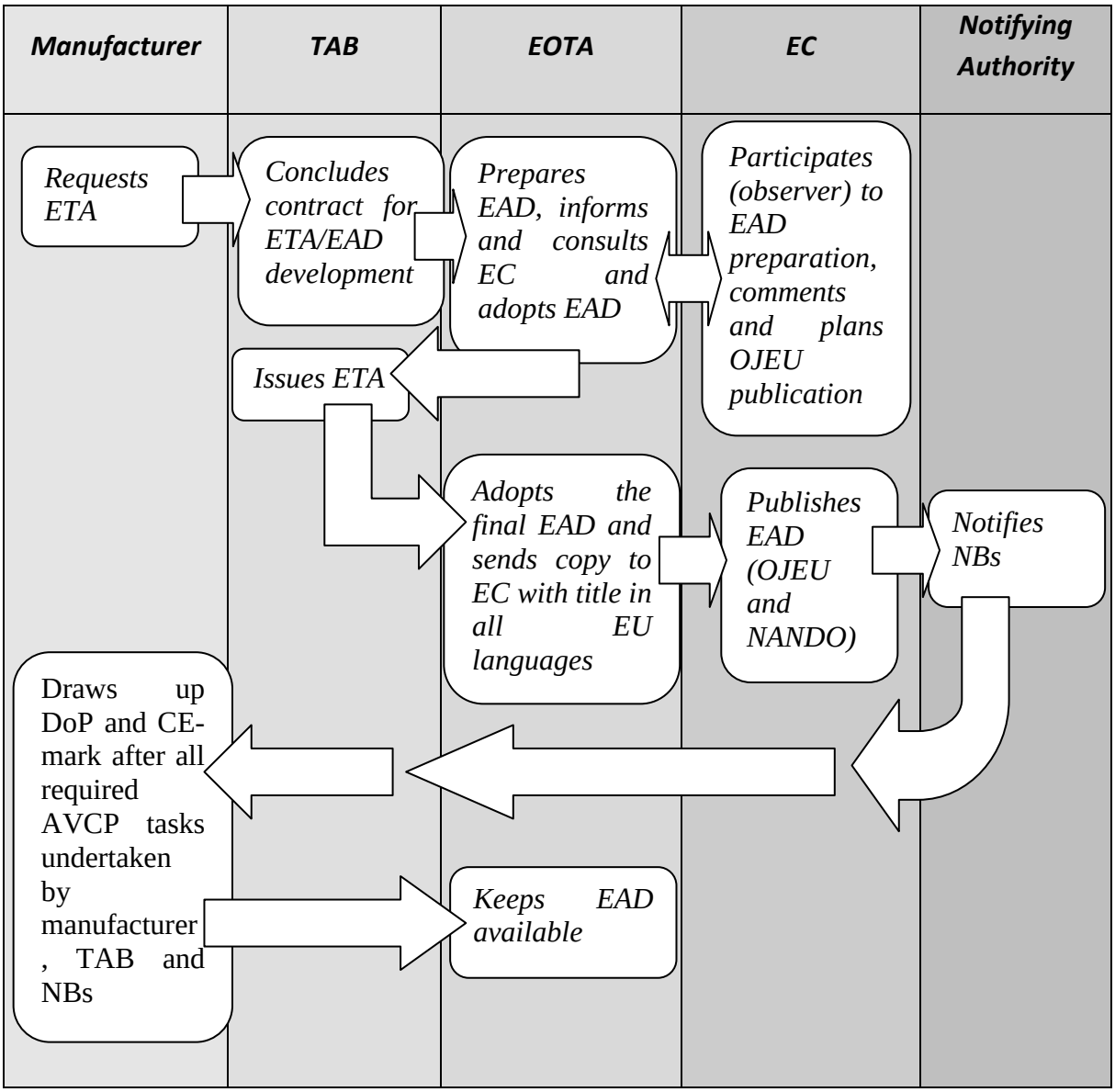
http://ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=directive.notifiedbody&dir_id=33

Besides the publication of references of EADs by the Commission (in the OJEU and NANDO), the last sentence of Annex II to the CPR mandates EOTA to "*keep the EAD available by electronic means as soon as the product has been CE marked*". This latter availability will be ensured by EOTA after the necessary AVCP tasks mentioned above are undertaken and the manufacturer affixes the CE mark in accordance with the CPR.

This process is illustrated in the table below.



7. Is it necessary to re-notify NBs via NANDO after the delegated act has entered into force?

The modifications to Annex V to the CPR included in the delegated act are of limited scope and do not require a re-notification of NBs by Member States via NANDO.

However, Member States are free to make new notifications or amend the existing ones if they so consider necessary for certain bodies. For example, this could be the case in relation to calculation bodies, now to be acknowledged as laboratories.