

**JIS Action 5**  
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**Joint Initiative on Standardisation — Action 5: Construction Products  
Regulation — Delegated acts**

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## **Introduction**

This document is a summary of the procedures to be followed to request to the European Commission the development of a delegated act.

The explanations were discussed by the experts of the Joint Initiative on Standardisation Action 5.

# 1 Scope

This document explains the procedures for the development of delegated acts related to harmonised standards according to article 60 of the CPR including the required actions by CEN/TC for the following situations:

- the determination of threshold levels.
- the determination of classes
- the declaration of performance "without testing"

Delegated acts can be developed for other purposes, but they are out of the scope of this document.

## 2 Terms and definitions

For the purposes of this document, the following terms and definitions apply

### 2.1

#### **Construction Products Regulation (CPR)**

Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.

### 2.2

#### **Regulation for implemented powers**

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

## 3 Identification of the need for a delegated act

### 3.1 General

The following situations will require the development of a delegated act by the European Commission. In some cases, there are alternative approaches (revision of mandates or development of standardisation requests). These alternative routes are explained in the document JIS Action 5 - Procedures to introduce technical changes in hEN requiring a Standardisation Request or a Mandate Amendment.

The delegated act produce is a technical and bureaucratic process that takes a lot of time and efforts. CEN/TC should assess carefully the need and the alternative options (e.g. performance declaration using values instead of classes).

### 3.2 Determination of a threshold level

According to the CPR harmonised standards cannot contain threshold levels not included in the relevant mandate, revised mandate or standardisation request. In case CEN/TC identify the need to include a threshold for one or more essential characteristics in a harmonised standard they can do it by requesting to the European Commission the development of a delegated act.

### 3.3 Determination of classes of performance

According to the CPR harmonised standards cannot contain classes not included in the relevant mandate, revised mandate or standardisation request. In case CEN/TC identify the need to include a

classification for one or more essential characteristics in a harmonised standard they can do it by requesting to the European Commission the development of a delegated act.

In case the classification was already included in previous cited versions of the harmonised standard the European Commission will not request a delegated act to include the classification in new versions of the harmonised standard while it is not modified from the already cited standard.

### **3.4 Declaration of performance "without testing"**

Manufacturers can declare the performance of an essential characteristic without assessing it as described in the standard by using the provisions of article 36(1) of the CPR. This approach shall be properly justified and accepted, including expert assessment, before it is officially published.

Once the delegated act is published in the Official Journal of the European Union, manufacturers can declare the performance described in the delegated act for the products fulfilling the conditions described in the legal text. In addition to the declaration, manufacturers shall develop internal Appropriate Technical Documentation justifying the use of the delegated act and include a reference to the document in the Declaration of Performance.

## **4 Procedure**

The procedure is usually called "comitology" and is applicable to implemented and delegated acts but, in this document, we only address delegated acts.

The following stages are a non-exhaustive list of actions to be taken by different bodies and stakeholders to achieve the publication of the legal text in the Official Journal of the European Union.

### **4.1 Collection of background information**

The process starts when the European Commission officials, stakeholders, CEN/TC experts or any other concerned person identify the need for a delegated act according to one of the situations described in clause 3.

The first action is to collect background information and justification for the need of the legal procedure. There is a common information to be provided for any of the three types of delegated acts and some information specific for each of them.

#### **4.1.1 Common information**

For all the delegated acts in the scope of this document the following information should be provided:

- Harmonised standard(s) under preparation including their WI numbers;
- Existing harmonised standard(s) to be superseded and their WI numbers, if applicable;
- CEN/TC affected;
- Products for which the delegated act would apply;
- Intended uses for which the delegated act would apply;
- Essential characteristics for which the delegated act would apply;

#### **4.1.2 Determination of a threshold level**

In case the delegated act is developed to set a threshold level, the following information should be provided.

- Existing threshold for the essential characteristic, if any;

- New threshold proposal;
- Technical justification for the need to introduce the threshold;
- Products excluded from the market due to the introduction of the threshold;
- Other issues derived from the introduction of the threshold.

#### **4.1.3 Determination of classes of performance**

In case the delegated act is developed to set classes of performance, the following information should be provided.

- Existing classification for the essential characteristic, if any.
- New classification proposal covering the full range of performance. Classes that could be identified with NPD (No Performance Determined) are not allowed;
- Technical justification for the need to introduce the classification;
- Other issues derived from the introduction of the classification.

#### **4.1.4 Declaration of performance "without testing"**

In case the delegated act is developed to set a performance that could be declared "without testing", the following information should be provided.

- Level or class the product deems to achieve.
- Technical justification for the proposal. The development of a technical dossier could be required, in this case, representativity of the results and statistical criteria applied should be reported.
- Benefits for the industry;
- Other issues derived from the publication of the delegated act.

### **4.2 Drafting official requests**

All the relevant information collected in the previous stage should be summarised in an official request. CEN developed a template for threshold levels and classes but for the moment there is no template to request a "without testing" delegated act. Technical information should be provided (technical dossier or a relevant extract of it) in attachment to the official request in case the information cannot be presented in a single document due to its extend or complexity.

#### **4.3 Validation of the official request**

The official request should be sent to the program manager of the CEN CENELEC Management Centre for internal validation. This process may require some modifications so it will be an iterative process.

In some occasions experts from the industry or CEN/TC skipped this step and sent their request to the European Commission. This approach is not recommended and could delay the full process.

#### **4.4 Official communication to the European Commission**

European Commission receives the official request from the CEN CENELEC Management Centre and assess the need for the delegated act by considering the technical information provided.

Before taking the next steps, European Commission officials may require additional inputs or explanations from CEN/TC experts or the CEN program manager. This process can be iterative and require meetings between the interested parties.

#### **4.5 Draft delegated act**

The delegated act is drafted by the European Commission officials. It is based on the technical information provided and the additional discussions. If necessary, the draft can be discussed with the CEN/TC experts and CEN program manager before being officially communicated to the Advisory Group for the SCC.

#### **4.6 Advisory Group for the construction comments**

The draft delegated act is sent to the Advisory Group for construction (Delegated act expert group for construction products) to be discussed and to collect comments from its members (including experts nominated by Member States, stakeholders, etc.). If necessary, the comments will be discussed again with the experts of the CEN/TC.

#### **4.7 Internal consultation within the European Commission**

The draft (after considering the collected comments) is communicated internally within the European Commission for additional comments.

#### **4.8 Public consultation**

The final draft is sent to different public consultations including:

- Interinstitutional register for delegated acts<sup>1</sup>
- Agreement on Technical Barriers to Trade<sup>2</sup>
- Better regulation portal<sup>3</sup>
- World Trade Organization (WTO) - Committee on Technical Barriers to Trade (TBT) documents G/TBT/N/EU

The public consultation is open for a limited period (40 days).

#### **4.9 Scrutiny by the European Parliament and Council**

The text, revised according to the comments received in the previous consultation or not, is sent to the European Parliament and Council.

##### **4.9.1 European Parliament and Council**

The relevant committee of the European Parliament (usually IMCO) and the relevant group in the Council discuss the document independently. There are three possible outcomes of the discussion:

##### **4.9.2 Institutions do not express objection.**

In this case the delegated act is adopted and entry into force as described in the legal text published in the Official Journal of the European Union

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<sup>1</sup> <https://webgate.ec.europa.eu/regdel/#/delegatedActs>

<sup>2</sup> <http://ec.europa.eu/growth/tools-databases/tbt/en/search/>

<sup>3</sup> [https://ec.europa.eu/commission/priorities/democratic-change/better-regulation\\_en](https://ec.europa.eu/commission/priorities/democratic-change/better-regulation_en)

### **4.9.3 Objections**

European Parliament and Council have a limited time, that can be extended, to discuss potential objections. If it the case the procedure is different:

- European Parliament votes a resolution objecting to the delegated act by simple majority (number of "yes" higher than number of "no").
- Council votes a resolution objecting to the delegated act by qualified majority (55% of Member States representing at least 65% of the EU population)

In this case the delegated act is not adopted, and the European Commission have the option to present a new proposal (back in the process) or cancel the initiative.

### **4.9.4 Revocation of powers**

In some cases, the right of the European Commission to draft delegated acts on a specific topic is challenged. If this situation occurs the legislative framework may change but it is not a common situation.

## **4.10 Publication in the OJEU**

When adopted, the final text of the delegated act is published in the Official Journal of the European Union. The provisions of the legal text are applicable from the date for entry into force of the delegated act and supersede any contradictory statement in the harmonised standard.