



Brussels, 14.3.2019  
C(2019) 2029 final

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

**of 14.3.2019**

**supplementing Regulation (EU) No 305/2011 of the European Parliament and of the Council with regard to the applicable systems to assess and verify constancy of performance of balustrade kits and railing kits intended to be used in construction works solely to prevent falls and not submitted to vertical loads from the structure**

(Text with EEA relevance)

## **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/EEC<sup>1</sup>, 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.

For balustrade kits and railing kits intended to be used in construction works solely to prevent falls and not submitted to vertical loads from the structure, an appropriate decision for establishing the AVCP systems does not yet exist.

Pursuant to Article 28(2), the choice of the AVCP systems should aim at the least onerous system for the manufacturers, when account is taken of all the relevant considerations. Under the existing circumstances, experience on the behaviour of the products in question during their working life, as depicted in the survey carried out on the reasons for failures of these products, has demonstrated that the assessment of their performance regarding all essential characteristics, except reaction to fire, should be carried out by the manufacturer before placing the product on the market. More onerous systems are not necessary. These aspects have led the Commission to choose system 4 as foreseen in Annex V to Regulation (EU) No 305/2011 in the draft Decision to be applicable for the products in question, for all essential characteristics other than reaction to fire.

Furthermore, for the reaction to fire performance, the customary choice of systems 1, 3 or 4 should be considered appropriate also for these products regarding this essential characteristic only. 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, and they should not exclude any subfamilies of the whole product family covered by the Decision, as defined in the Annex.

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

The draft Decision was discussed in the meeting of the Advisory Group on Construction Products (the AG) on 14 June 2016, followed by a written consultation of the experts, and again in the meeting of the AG on 9 December 2016, with a written consultation of the experts between 25 November 2016 and 16 January 2017. After that, the draft Decision was discussed in the meeting of the AG on 3 October 2017, preceded by a preparatory meeting of experts nominated by Member States and other stakeholders on 2 October. Finally, this draft act was submitted for written consultation of the experts between 3 and 17 October 2017, with a survey carried out simultaneously (until 30 November 2017) on the reasons for failures of

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

these products. Before these steps, all Member States were presented an opportunity to nominate experts to participate. 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 were 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 14 December 2018 to 11 January 2019 and notified to WTO from 18 December 2018 to 16 February 2019; six stakeholders provided feedback. Comments were referring to the lack of precise definition of the scope of the Act regarding the products covered, the disagreement on the AVCP system proposed, the possibility of a pass/fail assessment in declaring the performance of the product, the lack of comprehensiveness of the wording in table 1 unless it is meant to differentiate this Act from the products covered by EN 1090 and the lack of comprehensiveness of reaction to fire. All the comments were considered not relevant, as the scope is sufficiently clearly defined, the choice of AVCP system is based on evidences gathered, the possibility of pass/fail assessment is part of the standardisation work (thus not relevant for the Delegated Act), table 1 is indeed distinguishing the treatment of balustrades without structural impact from those covered by EN 1090 and the treatment of reaction to fire is reflecting what is already required in some Member States. Consequently, the Commission decided not to modify the draft Act.

### **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 Decision conforms to the principle of proportionality. For these reasons, the Decision is expected to serve the interests of the construction sector as a whole.

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(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 harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC<sup>1</sup>, and in particular Article 28(2) thereof,

Whereas:

- (1) An appropriate decision for assessment and verification of constancy of performance does not exist for balustrade kits and railing kits intended to be used in construction works solely to prevent falls and not submitted to vertical loads from the structure. It is therefore necessary to establish which systems of assessment and verification of constancy of performance are applicable to those balustrade kits and railing kits.
- (2) Taking into account the experience on the behaviour of the products in question during their working life, as depicted in the survey carried out on the reasons for failures of these products, the assessment of their performance regarding all essential characteristics, except reaction to fire, should be carried out by the manufacturer before placing the product on the market. More onerous systems are not necessary. For the reaction to fire performance, the choice of systems 1, 3 or 4 should be considered appropriate by making reference to different subfamilies of products,

HAS ADOPTED THIS DECISION:

*Article 1*

This Decision applies to balustrade kits and railing kits intended to be used in construction works solely to prevent falls and not submitted to vertical loads from the structure.

*Article 2*

The balustrade kits and railing kits referred to in Article 1 shall be assessed and verified for constancy of performance in relation to their essential characteristics in accordance with the systems specified in the Annex.

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

*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, 14.3.2019

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*