



Brussels, 14.3.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.3.2019

supplementing Regulation (EU) No 305/2011 of the European Parliament and of the Council by establishing classes of performance in relation to resistance to wind load for external blinds and awnings

(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), this can be done by delegated acts of the Commission, whereas 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.

According to the definition comprised in 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 in 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/EEC, 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 quite in the same manner.

Furthermore, the whole classification of performance would need to be defined open-ended, entailing all possible levels of performance in relation to a given essential characteristic for the products covered by the standard in question. Otherwise, also a threshold level for such performance would be established at the same time.

The European product standard EN 13561 on external blinds and awnings and their performance requirements, including safety, was initially adopted by European Committee for Standardisation (CEN) in 2004 and amended in 2008. It contains classifications for the performance of the products covered by it, notably in relation to its essential characteristic resistance to wind load, with four classes of performance introduced.

According to the available information, the existing classes are not sufficient for all the products at hand, since new kinds of products in this field have been developed more recently, representing a higher wind resistance than before. The use of the existing classes may also in some cases lead to safety problems linked to the fixing of the products. For those reasons, the classification of the performance in question would need to be enlarged, but differentiated among the various product subfamilies covered by standard EN 13561: owing to the resistance of fixing systems, for folding arm awnings only three classes would be appropriate, and the three additional classes, compared to the four existing ones, would be applicable only for external blinds with fabric running in lateral guide rails and pergola awnings.

Those objectives are to be achieved by adding three more classes for the essential characteristic resistance to wind load to the classification included in the standard EN 13561, as published by CEN in March 2016, and by differentiating the use of classes among the product subfamilies covered by this standard, in particular for folding arm awnings, for external blinds with fabric running in lateral guide rails and for pergola awnings. For other kinds of awnings, vertical roller blinds, marquisolettes and insect screens, the new version of the standard EN 13561 does not represent any change to the existing classification.

¹ OJ L 88, 4.4.2011, p. 5.

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

It has not been considered appropriate to include other performance classifications contained in the standard EN 13561 within the scope of the 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 necessitated.

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 14 June 2016 and also submitted for a written consultation of experts between 31 May and 28 June 2016. 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 31 October 2018 to 28 November 2018 and notified to WTO from 7 November 2018 to 6 January 2019; two stakeholders provided feedback. One stakeholder commented on a technical issue to be treated in the context of the standardisation request, thus not relevant for the Delegated Act. The other one commented stating that the Class 3 should not be given an upper limit, but this is not the case when it is read in conjunction with the following Class 4, thus the comment was not relevant either.

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), this can be done by delegated acts of the Commission. 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.

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. Regulation (EU) No 305/2011 does not distinguish different kinds of classes. Classes of performance established by the Commission and such classes established by the European standardisation bodies are thus to be acknowledged and respected quite in the same manner.

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

For these reasons, the Delegated Regulation should be adopted to establish new classes of performance for external blinds and awnings, under the European standard EN 13561.

The Delegated Regulation conforms to the principle of proportionality. It results in alleviating certain difficulties caused by the impact of Regulation (EU) 305/2011 on the establishment of classification systems for the performance of construction products, and therefore 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/EEC², and in particular Article 27(1) thereof,

Whereas:

- (1) The European standard EN 13561 on external blinds and awnings was initially adopted by European Committee for Standardisation (CEN) in 2004 and amended in 2008. It contains four classes of performance for external blinds and awnings, notably in relation to resistance of those products to wind load.
- (2) The classes established in the standard EN 13561 are not sufficient for all the products currently available on the market. Most recent products represent a higher resistance to wind load than before. The use of the existing classes may in some cases lead to safety problems linked to the fixing of the products.
- (3) It is therefore necessary to add three more classes of performance for resistance to wind load to the classification included in the standard EN 13561. It is also necessary to differentiate the use of classes among the product subfamilies covered by that standard, in particular for folding arm awnings, for external blinds with fabric running in lateral guide rails and for pergola awnings.
- (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 a European standardisation body on the basis of a revised mandate issued by the Commission. Given the need to establish additional classes of performance as soon as possible, the new classes of performance 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 resistance to wind load for external blinds and awnings, as set out in the Annex, are established.

² 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, 14.3.2019

For the Commission
The President
Jean-Claude JUNCKER