

EOTA proposal for some modifications to Annex III

of the EC proposal for a new Construction Products Regulation (30.3.2022, COM (2022) 144 final)

Annex III (current text in draft Regulation of 30 March 2022)	EOTA text proposal for amendment of Annex III in draft Regulation
Title: PROCEDURE FOR ADOPTING A EUROPEAN ASSESSMENT DOCUMENT	Title: PROCEDURE FOR ADOPTING A EUROPEAN ASSESSMENT DOCUMENT

1. Request for a European Technical Assessment	1. Request for a European Technical Assessment
<p style="text-align: center;">-</p> <p>(a) When a manufacturer makes a request for a European Technical Assessment to any TAB for a product, and after the manufacturer and the TAB (hereinafter referred to as the ‘responsible TAB’) have signed an agreement of commercial secrecy and confidentiality, unless the manufacturer decides otherwise, the manufacturer shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the manufacturer and details of the factory production control the manufacturer intends to apply.</p>	<p>A European Assessment Document (EAD) can be initiated in the following cases:</p> <ul style="list-style-type: none"> - Request by a manufacturer for a European Technical Assessment - Request for a European Technical Assessment by a representative of a group of manufacturers as detailed hereinafter - In the absence of a request for a European Technical Assessment, an initiative for development of an EAD by the European Commission as detailed hereinafter - In the absence of a request for a European Technical Assessment or an initiative of the European Commission according to Point 1(c), initiative for development of an EAD by the organization of TABs as detailed hereinafter. <p>(a) A manufacturer making a request for a European Technical Assessment to any TAB (hereinafter referred to as the ‘responsible TAB’) for a product shall use the conditions for appropriate documentation and description of a product defined in Article 42 of this Regulation.</p>

(b) When a group of manufacturers or a manufacturers' association (hereinafter referred to as the "Group") makes a request for a European Technical Assessment, it shall address the request to the organization of TABs that will propose to the Group a TAB to act as the responsible TAB. The Group can either accept the proposed TAB or ask the organization of TABs to propose an alternative TAB. Once a Group has accepted the responsible TAB proposed by the organization of TABs, the members of the group shall sign an agreement of commercial secrecy and confidentiality with this TAB, unless the Group decides otherwise, and the Group shall submit to the responsible TAB a technical file describing the product, its use as foreseen by the Group and details of the factory production control the members of the Group intend to apply.

(c) In the absence of a request for a European Technical Assessment, when the Commission initiates the development of a European Assessment Document, it shall deliver to the organisation of TABs a technical file describing the product, its use and details of the factory production control to become applicable. The Commission selects the TAB to act as the responsible TAB, after consulting the organisation of TABs.

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(b) A group of manufacturers or a manufacturers' association (hereinafter referred to as the "Group") may initiate the elaboration of an EAD based on at least one request for an ETA from (a) manufacturer(s) with the responsible TAB, if no EAD fully covering the product and its intended use is already available.

The Group shall submit to the TAB the technical file describing the product, its use as intended by the Group and details of the factory production control the members of the Group intend to apply. For the development of the EAD the TAB to which the request has been made shall act as the responsible TAB.

(c) In the absence of a request for a European Technical Assessment, when the Commission initiates the development of a European Assessment Document, it shall deliver to the organisation of TABs a technical file describing the product, its use and details of the factory production control to become applicable. The responsible TAB for developing the EAD shall be nominated by the organisation of TABs.

(d) In the absence of a request for a European Technical Assessment the organisation of TABs may initiate the development of a European Assessment Document. In this case, it shall deliver to the working group responsible for the development of the EAD a technical file describing the product, its use and details of the factory production control to become applicable. The responsible TAB chairing the working group for developing the EAD shall be nominated by the organisation of TABs.

Justification:

Annex III of the draft CPR deals with the development and adoption of EADs, but not the issuing of an ETA. Therefore, a clear separation should be made between the two issues.

Ad 1(a): Annex III is not the right place for establishing conditions of agreement between manufacturers who are requesting an ETA and issuing TABs as the whole annex addresses the development of EADs. The agreements between manufacturers and TABs are preconditions for the development of an EAD and should be dealt with in Article 42, which deals with ETA application.

Ad 1(b): Procedure to be discussed in detail and relevant provisions to be laid down in CPR.

Ad 1(c): The management of the working group for developing the EAD and thus the determination of the responsible TAB is the internal business of the organisation of TABs. It depends on many parameters, such as resources within the group of TABs, experience in the concerned product area, etc.

Ad 1(d): Having the organization of TABs initiate EADs ensures that their technical content is kept in line with the state of the art.

2. Contract	---
<p>For products referred to in Article 37(1)(c), within 1 month from the reception of the technical file, in cases foreseen in points 1(a) and 1(b), a contract shall be concluded respectively between the manufacturer or the Group and the responsible TAB for the production of the European Technical Assessment, specifying the work programme for drawing up the European Assessment Document, including:</p> <ul style="list-style-type: none"> (a) the organisation of work within the organisation of TABs, (b) the composition of the workgroup to be established within the organisation of TABs, designated for the product area in question,— (c) the coordination of TABs. <p>In the case foreseen in point 1(c), the responsible TAB shall submit to the Commission the work programme for drawing up the European Assessment Document with the same content and within the same deadline. After that, the Commission shall have 30 working days to communicate to the responsible TAB its observations on it, and the responsible TAB shall amend the work programme accordingly.</p>	---

Justification:

Including the details of the formal contract between the manufacturer who has applied for an ETA, or the Group, and the responsible TAB for the development of an EAD, which is itself subject to adoption by the organisation of TABs and the Commission, seems to be problematic from a legal point of view as the TAB does not have the control over the citation of the EAD.

3. Work programme	2. Work programme
<p>After the conclusion of the contract with the manufacturer or the Group, the organisation of TABs shall inform the Commission of the work programme for drawing up the European Assessment Document, the schedule for its execution and indicating the assessment programme. This communication shall take place within 3 months of receipt of the request for a European Technical Assessment.</p>	<p>In cases as covered in Points 1(a) and 1(b), after agreement with the manufacturer and the Group respectively, the organisation of TABs shall inform the Commission of the work programme for drawing up the European Assessment Document, the schedule for its execution and indicating the assessment programme. This communication shall take place within 3 months of receipt of the request for a European Technical Assessment by a TAB, which shall initiate the procedure as laid down in Points 1(a) and 1(b) in this annex.</p> <p>In the cases covered in Point 1(c), the organisation of TABs shall submit to the Commission the work programme for drawing up the European Assessment Document with the same content and within the same deadline as indicated above for cases in Points 1(a) and 1(b). After that, the Commission shall communicate to the organisation of TABs within 30 working days its observations on the work programme to proceed with the process. The responsible TAB or the organization of TABs, respectively, after having been given the opportunity to comment, shall amend the work programme accordingly.</p> <p>In cases as covered in Point 1(d), the organisation of TABs shall inform the Commission of the work programme for drawing up the European Assessment Document, the schedule for its execution and indicating the assessment programme.</p>

Justification:

Ad 1(c): It is essential to have explicit confirmation from the Commission on the work programme before starting the development of the EAD.

4. The draft European Assessment Document	3. Development of the draft European Assessment Document
The organisation of TABs shall finalise a draft European Assessment Document by means of the working group coordinated by the responsible TAB and shall communicate such draft to the parties concerned within 6 months of the date the Commission was informed of the work programme in cases foreseen in points 1(a) and 1(b) or the date of the Commission communicated to the responsible TAB its observations on the work programme in the case foreseen in point 1(c).	The organisation of TABs shall finalise a draft European Assessment Document by means of the working group, established within the organisation of TABs and comprising the TABs designated for the product area in question coordinated by the responsible TAB, and shall communicate such draft to the parties concerned within 6 months of the date the Commission was informed of the work programme in the cases covered in Points 1(a), 1(b) and 1(d), or the date the Commission communicated to the organisation of TABs its observations on the work programme in the cases covered in Point 1(c).

Justification:

In the case of the development of an EAD on the initiative of the Commission or of the organisation of TABs, confidentiality and commercial secrecy do not apply. In such cases relevant stakeholders may participate in the development process in the capacity of observer according to the rules of the organisation of TABs. Nevertheless, the adoption of the European Assessment Document is a matter handled by the organisation of TABs.

5. Commission Participation	4. European Commission Participation
A Commission representative may participate, as observer, to all the parts of the execution of the work programme. The Commission may request the organisation of TABs at any stage to abandon or modify the development of a certain European Assessment Document, including merging or splitting thereof.	A Commission representative may participate, as observer, in all the parts of the execution of the work programme. The Commission may request the organisation of TABs at any stage to modify the development of a certain European Assessment Document, including the merging or splitting thereof.

Justification:

An EAD development already initiated may be amended, modify, merged, ... but not abandoned as there was a reason to start the procedure.

6. Member State consultation	5. Member State consultation
<p>In the case foreseen in point 1(c), the Commission shall inform Member States on the development of the European Assessment Document after the finalization of the work programme for it. When requested, Member States may participate where appropriate in its execution.</p>	<p>In the case referred to in Point 1(c), the Commission shall inform Member States of the development of the European Assessment Document after the finalisation of the work programme for it. When requested, Member States may participate where appropriate in its execution.</p> <p>Observations from the Member States are to be communicated to and dealt with by the Commission. The organisation of TABs shall be informed by the Commission of any change in the work programme, required and agreed by the Commission, within the time frame given to the Commission for commenting on the work programme before starting the development of the EAD.</p>

Justification:

As the evaluation of the outcome of the consultation of Member States is in the hands of the Commission, the organisation of TABs needs to be informed accordingly in case changes are agreed between the Commission and the Member States for the development of the EAD.

7. Extension and delay	6. Extension and delay
<p>Any delay in relation to the time limits set in points 1 to 4 in this Annex shall be reported by the working group to the organisation of TABs and to the Commission.</p> <p>If an extension of the time limits for developing the European Assessment Document can be justified, notably by the absence of a Commission decision on the applicable assessment and verification system for the product or by the need to develop a new test method, an extended time limit shall be set by the Commission.</p>	<p>Any delay in relation to the time limits set in Points 1 to 3 in this Annex shall be reported by the working group to the organisation of TABs and to the Commission.</p> <p>If an extension of the time limits for developing the European Assessment Document can be justified, notably by</p> <ul style="list-style-type: none"> - the absence of a Commission decision on the applicable assessment and verification system for the product; - the need to develop a new test method; or - the need to establish a threshold level(s) and/or class(es) of performance(s), <p>an extended time limit shall be set by the Commission.</p>

8. Amendments and adoption of a European Assessment Document	7. Adoption of a European Assessment Document
<p>8.1 In cases foreseen in points 1(a) and 1(b), the responsible TAB shall communicate the draft European Assessment Document to the manufacturer or the Group, respectively, who shall have 15 working days to react thereto. Thereafter, the organisation of TABs shall:</p> <ul style="list-style-type: none"> (a) if applicable, inform the manufacturer or the Group as to how their reactions have been taken into account; (b) adopt the draft European Assessment Document; (c) send a copy of it to the Commission. <p>8.2 in case foreseen in point 1(c), the responsible TAB shall:</p> <ul style="list-style-type: none"> (a) adopt the draft European Assessment Document; (b) send a copy of it to the Commission. 	<p>7.1 In the cases referred to in Points 1(a) and 1(b), the responsible TAB shall communicate the draft European Assessment Document to the manufacturer or to the Group if the EAD has been initiated by the Group, who shall have 15 working days to react thereto. Thereafter, the organisation of TABs shall:</p> <ul style="list-style-type: none"> (a) if applicable, inform the manufacturer or, in case of Point 1(b), the Group as to how, his/their reactions have been taken into account; (b) adopt the draft European Assessment Document; (c) send a copy of it to the Commission. <p>7.2 In cases referred to in Points 1(c) and 1(d), the organisation of TABs shall:</p> <ul style="list-style-type: none"> (a) adopt the draft European Assessment Document. (b) send a copy of it to the Commission.

<p>If, within 30 working days of receipt, the Commission communicates to the organisation of TABs its observations on the draft European Assessment Document, the organisation of TABs, after having been given the opportunity to comment, shall amend the draft accordingly and shall send a copy of the adopted European Assessment Document in cases foreseen in points 1(a) and 1(b) to the manufacturer or the Group, respectively, and in all cases to the Commission.</p>	<p>If, within 30 working days of receipt according to the procedures laid down in Clauses 7.1 and 7.2 respectively, the Commission communicates to the organisation of TABs its observations on the draft European Assessment Document, the organization of TABs, after having been given the opportunity to comment, shall amend the draft accordingly and shall send a copy of the adopted European Assessment Document in cases referred to in Points 1(a) and 1(b) to the manufacturer and to the Group, in case of Point 1(b), and in all cases to the Commission.</p> <p>If no comments are received from the Commission within 30 days, the European Assessment Document shall be deemed to be accepted by the European Commission.</p>
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Justification:

With the detailed procedure given in Clause 7 fast citation of the EAD, which is to the support of the industry, will be ensured.

<p>9. Final European Assessment Document to be published</p> <p>The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union, for the publication of its reference in the <i>Official Journal of the European Union</i>. The organisation of TABs shall publish the European Assessment Document.</p>	<p>8. Final European Assessment Document to be published</p> <p>The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the European Union.</p> <p>After that the European Assessment Document is ready for the publication of its reference in the <i>Official Journal of the European Union and shall be published there within 90 days in accordance with Article 38(1)</i>. The organisation of TABs shall publish the European Assessment Document.</p> <p>For publishing the reference of an amendment of a European Assessment Document in the <i>Official Journal of the European Union</i> that supersedes the previously cited version of the European Assessment Document, the organisation of TABs shall propose a coexistence period to the European Commission.</p>
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	Notifications of notified bodies based on the EAD being referred to as superseded in the <i>Official Journal of the European Union</i> do not expire but remain valid under the conditions of Articles 58 and 59.
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Justification:

The revised section contributes to streamlining the EAD citation procedure.

When a previous version of an EAD is superseded by a newer one, the organisation of TABs should ascertain which coexistence period applies. This is in order to provide, especially to manufacturers and notified bodies, the opportunity to adapt to the new situation (e.g. adapting their manufacturing process, where relevant, applying for re-issuing of an ETA, applying for a relevant notification). Possible repercussions for newly issued ETAs superseding a former version of the cited EAD need to be taken into account.