

Brussels, XXX
[...] (2023) XXX draft

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

**on the conditions for classification, without testing, of solid wood panelling and cladding
with regard to their reaction to fire and amending Decision 2006/213/EC**

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

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 contains an empowerment of the Commission to adopt delegated acts to establish classes of performance in relation to the essential characteristics of construction products. The Regulation also provides that the manufacturers of construction products should not be subjected to unnecessary administrative burdens or costs. Notably, as foreseen in Article 28 of Regulation (EU) No 305/2011, the Commission should choose the least onerous system for assessment and verification of constancy of performance, which still could serve appropriately the needs of health, safety and environment.

When the performance of certain construction products has already been sufficiently demonstrated by stable test results or other existing data, their manufacturers should be permitted, under conditions to be specified, to declare a certain class of performance without testing or further testing these products as foreseen in Article 27(5) and Article 36(1)(a) of Regulation (EU) No 305/2011. This simplified procedure further reduces administrative burdens and costs for manufacturers. Commission Decision 2006/213/EC² already established classes of the reaction to fire performance for solid wood panelling and cladding. Table 2 of Annex to that Decision presented the necessary conditions for classification without need for further testing for these products. In that table, the product detail referred to is “Wood pieces with or without tongue and groove and with or without profiled surface” and “Wood pieces mounted on a support frame”. Thereby, the current table does not explicitly specify that the proven stable and predictable performance concerning the reaction to fire of those products is, under the set conditions, only guaranteed for untreated wood pieces.

However, it has been clarified, as also supported by the relevant Technical Committee of CEN³ and the Guidance of the Group of Notified Bodies⁴, that Table 2 of Annex to Commission Decision 2006/213/EC is to be applied only to untreated⁵ solid wood panelling and cladding. The experience and expertise, as well as expert group consultations carried out, have confirmed that, under the set conditions, solid wood panelling and cladding has a stable and predictable performance concerning reaction to fire only when the solid wood pieces are untreated.

For the sake of legal certainty and uniform application of law, that condition should be explicitly specified in the classification act. Table 2 of Annex to Decision 2006/213/EC should thus be deleted and Annex to this Regulation applied instead.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft Regulation was discussed firstly in the meeting of the Advisory Group on Construction Products⁶ on 21 November 2022 and submitted for a written consultation of

¹ OJ L 88, 4.4.2011, p. 5.

² OJ L 79, 16.3.2006, p. 27.

³ CEN/TC175 “Round and sawn timber” WG 38.

⁴ Group of Notified Bodies – CPR Guidance Base Item 0272.

⁵ Kiln dried wood shall be considered untreated.

⁶ Code E01329 in the Register of Commission Expert Groups and Other Similar Entities.

experts between 22 November and 28 November 2022. It was also discussed in the meeting of the Advisory Group on Construction Products 15 February 2023. 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 Advisory Group on Construction products, 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 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 ## April to ## May 2023; [*wording on feedback and any follow-up to be included subsequently*].

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 Article 27(1), this can be done by delegated acts of the Commission, whereas Article 27(2) allows for the use of harmonised standards for this purpose.

Moreover, in accordance with Article 27(5), the Commission may establish conditions under which a construction product shall be deemed to achieve a certain class of performance without testing or without further testing, in order to avoid the unnecessary testing of construction products for which performance has already been sufficiently demonstrated by stable test results or other existing data.

These conditions are then to be fulfilled when a manufacturer wishes to replace type-testing of his product by these levels or classes of performance, as set out in Article 36(1)(a) of Regulation (EU) No 305/2011.

The European classification system established by Commission Delegated Regulation (EU) 2016/364⁷, regarding the reaction to fire of construction products, in particular Table 1 of its Annex, is applicable to solid wood panelling and cladding.

According to the expertise and expert group consultations carried out, the reaction to fire performance of solid wood panelling and cladding, within the classification provided for Delegated Regulation (EU) 2016/364, is well established when the solid wood is untreated⁸. For this reason, the reaction to fire performance of these products can be deemed, without the need for any further testing, to achieve a certain class of performance, as defined in the European classification system mentioned above.

The draft Regulation conforms to the principle of proportionality, since adopting a delegated act is the most efficient way to achieve the desired outcome, the alleviation of administrative burdens, while continuing to guarantee legal certainty. It results in alleviating administrative obligations for market actors otherwise to be complied with under Regulation (EU) 305/2011, concerning the testing of products under its scope.

⁷ OJ L 68, 15.3.2016, p. 4.

⁸ Kiln dried wood shall be considered untreated.

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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 harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC¹, and in particular Article 27(5), first subparagraph, thereof,

Whereas:

- (1) A system for classifying the performance of construction products with regard to their reaction to fire was adopted in Commission Delegated Regulation (EU) 2016/364². Solid wood panelling and cladding are among the construction products to which that Delegated Regulation applies.
- (2) Table 2 to the Annex to Commission Decision 2006/213/EC³ established classes of the reaction to fire performance for solid wood panelling and cladding. The conditions set out in that Decision for those products need to be clarified so as to explicitly limit its application only to untreated wood.
- (3) Tests have shown solid wood panelling and cladding to have a stable and predictable performance in terms of reaction to fire provided that they meet certain conditions regarding the minimum mean density of the wood, the minimum thickness of the profile and the end-use of the product, and that wood is not subject to any kind of treatment other than kiln drying.
- (4) Solid wood panelling and cladding should therefore be deemed to satisfy a certain class of performance for reaction to fire established in Delegated Regulation (EU) 2016/364 under all those conditions without further testing being required.
- (5) For the sake of legal certainty, Table 2 of Annex to Decision 2006/213/EC should be deleted and replaced by the Annex to this Regulation for solid wood panelling and cladding,

¹ OJ L 88, 4.4.2011, p. 5.

² Commission Delegated Regulation (EU) 2016/364 of 1 July 2015 on the classification of the reaction to fire performance of construction products pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council (OJ L 68, 15.3.2016, p. 4).

³ Commission Decision 2006/213/EC of 6 March 2006 establishing the classes of reaction-to-fire performance for certain construction products as regards wood flooring and solid wood panelling and cladding (OJ L 79, 16.3.2006, p. 27).

HAS ADOPTED THIS REGULATION:

Article 1

Solid wood panelling and cladding which fulfil the conditions set out in the Annex shall be deemed to satisfy the classes of performance indicated in the Annex without testing.

Article 2

Table 2, including figures (a) and (b), of the Annex to Decision 2006/213/EC is deleted and replaced by the table, and figures (a) and (b), set out in the Annex.

References to Table 2, and figures (a) and (b), of the Annex to Decision 2006/213/EC shall be construed as references to the table and figures set out in the Annex.

Article 3

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,

For the Commission
The President
Ursula VON DER LEYEN