



Frequently Asked Questions on Commission Delegated Regulation (EU) No 157/2014 of 30 October 2013 on the conditions for making a declaration of performance on construction products available on a website

- 1. Why has the delegated act been restrained only to concern a derogation from Article 7(1), but not from Article 7(2) of Construction Products Regulation (305/2011/EU; the CPR)? Is this legally possible, when Article 7(3) of the CPR makes reference to both these preceding paragraphs?*

Pursuant to Articles 7(3) and 60(b) of the CPR, the Commission has been delegated the right to determine, by a delegated act, the conditions for making a declaration of performance on construction products available on a website. These provisions, quite like those concerning delegated acts in general, do not oblige the Commission to adopt such a delegated act. The Commission does not have to extend the scope of the act to the maximum allowed by the delegation, either. This ensues from the general principles of European constitutional and administrative law.

As elaborated during the consultations and in the Explanatory Memorandum, a derogation from Article 7(2) has not been considered appropriate because of the potential needs of recipients of construction products, especially the micro-enterprises amongst them. Some construction sites could also remain without Internet access.

- 2. Does the making available of a declaration of performance (the DoP) on a website entail any shift of responsibilities of various economic actors, as determined notably in the CPR? Does the delegated act concern the drawing up of the DoP or the supply of its copy? Which one is supplied under Article 7, the copy or the original DoP?*

Any shift of responsibilities has not been the intention of the whole process of this delegated act and this is not resulting from any of its provisions (see section 3 of the Explanatory Memorandum of the delegated act). The manufacturer still has the obligation of drawing up the DoP and the other economic operators that of supplying it throughout the supply chain; the object of the delegated act is only the empowering of economic operators to replace this supply by making the

performance information available on the website, subject to the conditions set up in the delegated act.

The whole Article 7 of the CPR, and thus also the delegated act, concern the question of furnishing the copy of the DoP, not the original, on a website for a given period. Any other obligations and conditions imposed by the CPR on economic operators in relation with the DoP are not affected by the delegated act.

3. *Who must translate the DoP for recipients of construction products located in a different EU Member State than the manufacturer? Are the websites to contain DoPs in all necessary language versions or only in the original language?*

As mentioned before, the original DoPs are kept by manufacturers. The obligation set out in Article 7(4) of the CPR to supply the DoP in the languages required by Member States cannot be derogated from by this or other delegated acts, and therefore remains in place also when making DoPs available on a website. Such websites are thus to contain all necessary language versions.

4. *Why haven't the technical requirements for making available the DoP on the website been determined within the delegated act? Why hasn't the use of qualified eSignatures been required in this context? How to make sure that eSignature provided by non-EU manufacturers is valid? How can we ensure the availability of this performance information in particular for the national market surveillance authorities?*

From the beginning of the legislative process of this delegated act, the Commission has made an intentional and fully transparent choice of not including in this act the technical specifications of how to meet the requirements set for economic operators. As openly explained, the reason has been the need to maintain technological neutrality and also to achieve a given durability for the act: the technological progress in the field of ICT would outdate any prescribed solution very fast.

The same technological neutrality is preserved by the CPR when referring to the supply of the copy of the DoP in paper form or by electronic means. The CPR does not prescribe neither any requirements concerning the authenticity and integrity of the copy of the DoP supplied in paper form or by electronic means, which explains why these requirements are not included in the delegated act.

Different ways are available to ensure the authenticity and integrity of the copy of the DoP provided via a website or by electronic means, and the eSignature is one of these means.

At Member State level, Directive 1999/93/EC on eSignatures has been transposed and the corresponding national provisions apply for situations within their scope of application.

The validity of eSignatures provided by foreign manufacturers may be ensured notably through the Trusted Lists management software (TL Manager) covered

under the ISA Programme action 1.9 (see http://ec.europa.eu/isa/actions/01-trusted-information-exchange/1-9action_en.htm and <https://ec.europa.eu/digital-agenda/en/eu-trusted-lists-certification-service-providers>). It is worth noting that some eSignatures providers (for example, Adobe or VeriSign) are worldwide known and legally recognised.

The market surveillance authorities have full access to all means of delivering performance information, including the websites in question, and can always inquire the economic operators concerned for further information on the arrangements taken to ensure the complete respect of the obligations set out in the delegated act (see for example Articles 11(8), 12(2), 13(8), 13(9) and 14(5) of the CPR).

5. *How do the economic operators have to act in order to ensure that the content of the declaration is subsequently not altered?*

For the reasons explained under questions 2 and 4, the Commission chose not to include in this act the technical specifications of how to meet the requirements set for economic operators. The basic condition of having to ensure that the DoP is not altered was comprised in all draft versions and was widely supported during consultations. It was also evident from the start that this condition could be fulfilled by several different technical and practical manners. It is therefore essential that economic operators using a website for providing the copy of the DoP acknowledge and respect this obligation, acting in the most appropriate and proportionate way depending on the technical path chosen by them.

6. *How does the recipient know that the DoP has been made available on a website?*

According to Article 9(2) of the CPR, the reference number of the DoP shall always accompany the CE marking, which pursuant to Article 9(1) shall be affixed to the construction product, to a label attached to it, to its packaging or to the accompanying documents. Following the same logics, the information on the availability of a DoP on a website, as well as the necessary instructions, should be provided together with the product, when the economic operator in question has opted for this alternative.

7. *What is meant by the reference to “economic operator” contained in Article 1 of the delegated act?*

The use of this concept in the said provision follows strictly the definition presented in Article 2(18) of the CPR, i.e. “economic operator” means the manufacturer, importer, distributor or authorised representative.

8. *According to Article 1(c) of the delegated act, the access to the DoP has to be ensured for a certain period of time. Could the economic operator cease providing digital access to the DoP via Internet (and instead provide it on paper form) if it stops offering the construction product in question for sale?*

Article 1(c) states that the recipients of construction products shall have access to the DoP for the period foreseen in Article 11(2) of the CPR (i.e. 10 years after the construction product has been placed on the market or other period determined by the Commission by means of delegated acts). This is due to the explicit condition laid down in Article 7(3) in fine of the CPR. A simple switch into paper supply of the DoP copy before the end of the period mentioned in Article 11(2) of the CPR would not fulfil this demand of Article 7(3) in fine. Such a derogation from the obligations set out in the delegated act cannot thus be allowed.

Obviously, the Internet catalogue of the economic operator on the products currently on sale does not have to contain also earlier products, but other digital systems have to be maintained for the products previously sold.

9. *What is meant in Article 1(d) of the delegated act by “instructions”? Does this imply that the recipient would have to choose between several DoPs for the relevant information?*

The purpose of the concept “instructions” in this context is simply to make it completely clear that it remains the responsibility of the economic operator providing the DoP on a website also to deliver sufficient information, to the recipients of the construction products, about how to use the website.

When this provision is read together with Article 1(2) of the delegated act, the obligation for the manufacturer to unequivocally identify one given DoP, which always is linked to any given construction product, becomes clear. The route leading to the correct DoP is thus to be ascertained by these “instructions”, if need be owing to the technical solutions applied.

10. *Would the said Article 1(d) allow registrations as a pre-condition for access to DoPs?*

Article 1(d) aims at reaching the objective of Article 7 of the CPR, which is that DoPs of construction products are supplied to the recipients of the products.

Although the recipients could be a wide or a small number, they are a known category of persons accessing the DoPs posted in the websites and no registration could be considered necessary in some cases.

A registration condition which in practice prevents the access to the copy of the DoP by the recipients of the given products would not fulfil the objective of Article 7. At the same time, the delegated act does not concern public access for everybody to all DoPs made available on websites (see below). A proportionate system should therefore be implemented by economic operators wishing to make DoPs available on a website.

11. *Why does Article 1(1) make several references to recipients of construction products? Isn't the intention of this delegated act to provide free public access for everybody to all DoPs made available on websites? Should the DoPs allow potential customers to compare different products before buying them?*

Articles 7(3) and 60(b) of the CPR delegate to the Commission the right to derogate from Articles 7(1) and (2). Therefore, it is pertinent to examine the scope of Articles 7(1) and (2), which coincides with the scope of this whole Article. Already Article 7(1) makes reference to the supply of construction products as triggering the supply of the copy of the DoP. Article 7(2) makes this link to recipients of construction products totally explicit.

The subject of Article 7 is the transmission of performance information alongside the supply chain. For this reason, the purpose of the delegated act can only be to regulate the conditions for allowing this information to be obtained by the recipients of construction products through a website. The Commission has not been authorised to regulate on free public access to copies of DoPs for everybody.

However, this delegated act definitely does not forbid any economic operator to provide free public access, whether by Internet or by other means, to commercial information on their products, including performance information, which could be useful for their potential customers.

12. *How shall the economic operators treat the information related to the REACH regulation they are to provide in accordance with Article 6(5) of the CPR, if the DoP is made available on the website?*

According to Article 6(5), the said REACH –related information is to be provided “together” with the DoP. This indicates that it does not become part of the DoP, but would be supplied separately alongside it. When the DoP is made available on the website, this would obviously then imply the use of digital means also for the REACH –related information. However, as Articles 7(3) and 60(b) of the CPR do not allow for any derogations either from Article 6(5) of the CPR, or from the REACH rules, any additional obligation for the economic operators concerning this information and its dissemination, based on these provisions, is to be respected.

13. *Is it foreseen that the delegated act could be amended swiftly afterwards, so as to allow for the eventual adjustments to it?*

As mentioned before, the Commission has been entitled, but not obliged, to adopt delegated acts based on the CPR. Of course, the Commission is ready to consider amending legal acts which are proven to cause major difficulties with their implementation. The right of initiative, however, remains with the Commission; its use has to be supported by objective reasons and data.