

## **Report on the meeting of the European Ombudsman inquiry team with representatives of the European Commission and the European organisation for technical assessment (eota)**

Correspondence - 20/10/2022

**Case 1597/2021/VB - Opened on 24/03/2022 - Decision on 14/12/2022 - Institution concerned** European Commission ( No further inquiries justified ) |

**Case title :** The European Commission's delay in publishing several European Assessment Documents for steel products used in the construction sector

**Date :** Wednesday, 28 September 2022

### **Present**

European Commission:

- Head of unit - GROW.H.1
- Legal officer - GROW.H.1
- Policy officer - GROW.H.1
- Policy officer - GROW.H.1
- Policy assistant - GROW.D.4
- Senior expert - SG.C.2

EOTA:

- President
- Secretary General

European Ombudsman:



- Mr Fergal Ó Regan - Chief legal expert
- Ms Tanja Ehnert - Inquiries coordinator
- Mr Vieri Biondi - Inquiries officer
- Mr Elia Saso - Inquiries trainee

## **Purpose of the meeting**

The purpose of the meeting was for the Ombudsman inquiry team to receive further information on the current status of the complainant's four European Assessment Documents (EADs) and on what action the Commission is taking to address the issue of delays in publishing EADs in the Official Journal (OJ). The inquiry team also asked for additional details regarding the procedure for publication of EADs.

As the procedure for the publication of EADs involves both the Commission and the European Organisation for Technical Assessment (EOTA), the Ombudsman noted in her meeting request that the Commission may wish to invite representatives from EOTA to the meeting.

## **Introduction and procedural information**

The Ombudsman inquiry team met with representatives of the European Commission and of the European Organisation for Technical Assessment (EOTA) by videoconference.

The inquiry team set out the purpose of the meeting and outlined the applicable legal framework. They explained that the Ombudsman would not disclose any information identified by the Commission as confidential, neither to the complainant nor to any other person outside the Ombudsman's Office, without the Commission's prior consent.

## **Information exchanged**

### **Status of the complainant's EADs**

Regarding the current status of the complainant's EADs, the Commission and EOTA clarified that the four EADs are still under revision and assessment. They were returned by the Commission to EOTA and are currently with the responsible technical assessment body (TAB). Two of the EADs should be returned to EOTA for internal review by the end of October 2022 and the other two by the end of November 2022. EOTA may then make further changes to the draft EADs before submitting them to the Commission for assessment and publication in the OJ.



The Commission will then assess the draft EADs and, if they comply with the requirements under Regulation 305/2011 [1] (CPR), will publish them in the OJ as fast as possible (estimated timeframe: by the end of February 2023 (two of the EADs) and the end of March 2023 (two of the EADs)).

The Commission representatives suggested that the complainant could already at this stage liaise with the responsible TAB to ensure that the EADs will be in line with the legal requirements once submitted to EOTA. EOTA is also willing to support the TAB in case of questions.

## Issues that caused the delays in the handling of the complainant's EADs

Before the entry into force of the CPR, the matter was regulated by Directive 89/106/EEC on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products [2] (CPD). With the entry into force of the new regulation, it is no longer the product's compliance with pre-established requirements (as it was the case with the CPD) that is assessed, but its performance in relation to essential characteristics. The requirements for EADs have thus substantially changed.

The complainant's products had already been assessed and marketed under the CPD. With the entry into force of the CPR, the relevant TAB reused part of the assessment of the four products that had been made under the CPD without checking whether that assessment would be in line with the new requirements of the CPR. Those EADs started to be developed in 2015 and 2016 so there was not much experience under the CPR regime.

When the complainant's EADs were first submitted to the Commission (in 2019), it was clear, also in light of the judgment of the Court of Justice in the *Elliot Construction* case (C-613/14) [\[Link\]](#), that they could not be published in the OJ. As a result, the EADs were sent back to EOTA for additional review and amendment. The guidelines that the Commission issued to guide the TABs in the drafting of EADs (mentioned below) could not be used in the initial preparation of the complainant's EADs, as they were not yet available at that time.

## Measures already taken to address delays and further actions

Following the adoption of the CPR in 2011 and the *Elliot Construction* judgment in 2016, there was a backlog of more than 100 EADs that could not be published in the OJ in 2018/2019.

The Commission representatives explained that EADs are drafted by the chosen TAB following the technical information provided by the manufacturer. The quality of EADs can change significantly from case to case. While some EADs submitted to the Commission complied with the requirements of the CPR and could thus be published in the OJ, many of them did not. For instance, they did not meet the requirements set out in Article 24 of the CPR, were not prepared



in line with Annex II to the CPR, did not respect the performance orientation of the CPR, or their technical content was not explicit and robust enough to ensure replicable and comparable assessment results.

To address this problem, the Commission issued guidelines on how to draft EADs to meet the legal and technical requirements of the CPR (Guidelines for the Application of the EAD Format). The first version of the guidelines was made available to EOTA and the TABs in 2018, following the *Elliot Construction* judgment. These guidelines were improved and updated in 2019; the last version was issued in August 2021. Given that EADs need to be explicit enough to get replicable results, the assessment methods need to be precise. With their publication in the OJ, the EADs become harmonised technical specifications and may be used by other manufacturers of similar products as a basis for the CE marking. The guidelines are therefore very detailed and cover more than 20 pages. The Commission always presented the guidelines to the Member States and EOTA at the Advisory Group on Construction Products, while EOTA presented them to the TABs during meetings of the Technical Board.

In 2019, the Commission also launched a project to train certain TABs on how to recognise issues related to the drafting of EADs. These TABs then shared the experience with other TABs. Also, the Checklist for adopted draft EAD was developed to further support EOTA and TABs in meeting the CPR requirements.

In the beginning of 2021, the Commission furthermore introduced the “group of four” approach, according to which draft EADs should undergo an additional review by EOTA (internal quality management project team) prior to being submitted to the Commission for final assessment and citation, four at a time. This approach significantly improved the quality of the EADs received by the Commission. However, it did not speed-up the revision process and thus did not solve the issue of the backlog in the publication of EADs, as new EADs are constantly being drafted.

The above initiatives already allowed the Commission to increase the publication rate of EADs by 50% in comparison to last year. However, the Commission considers that further action is imperatively needed to address the backlog, while at the same time the legal and technical quality of EADs cannot be compromised. In this context, the Commission and EOTA are now finalising a Joint Action Plan to speed up the publication of EADs, which foresees additional financial and human resources, and is to be implemented from October 2022. The Commission’s objective is to review and assess all pending EADs by July 2023. To do this, the action plan clearly indicates how much time will be dedicated to each of the steps necessary for the assessment, amendment and eventual publication of each of the pending EADs.

The Commission recently adopted a proposal for a new Construction Product Regulation [3] whose main objective regarding the development and citation of EADs is to integrate environmental goals and to make the process more effective and efficient. The proposal does not significantly change the procedure for adopting and publishing EADs, but addresses some of the current issues. Among others, the proposal introduces the possibility for the Commission or a group of manufacturers to initiate the procedure for the drafting of EADs and allows the Commission to bundle or reject requests for the development of EADs or to publish them in the



OJ with restrictions.

Regarding communication with manufacturers, the Commission noted that it is the responsible TABs that are in direct contact with the manufacturers, as is EOTA. The Commission, being aware of the importance of the EOTA route for manufacturers, nevertheless comprehensively replies to questions it receives from manufacturers (including the complainant), but it is not in a position to provide them with specific dates on which their EADs will be published in the OJ.

## Conclusion of the meeting

The inquiry team thanked the Commission and EOTA for their time and the explanations provided. The meeting then ended.

Brussels, 20 October 2022

Fergal Ó Regan Vieri Biondi

Chief Legal Expert Inquiries Officer

[1] Regulation 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Directive 89/106 EEC,  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0305> [Link].

[2] Directive 89/106/EEC on the approximation of laws, regulation and administrative provisions of the Member States relating to construction products,  
<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31989L0106> [Link].

[3] Proposal for a Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011, <https://ec.europa.eu/docsroom/documents/49315> [Link].