

## **Decision on the delay by the European Commission in publishing several European Assessment Documents for steel products used in the construction sector (case 1597/2021/VB)**

Decision

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

The complainant, a steel products manufacturer, was concerned about the delay incurred by the Commission in publishing 'European Assessment Documents' (EADs) relating to four of its products, which hampered its ability to market these products within the European Economic Area.

The Ombudsman found that there have been significant delays in the procedures for adopting and publishing EADs, which is regrettable. However, the Commission has since taken steps to address the delays, and has provided the complainant with a clear timeline for the publication of the four EADs in question.

In light of this, the Ombudsman closed the inquiry with the conclusion that no further inquiries into the matter are justified at this stage. However, she asked the Commission to update her on the effectiveness of the steps it has taken to address the backlog in the publication of EADs.

## **Background to the complaint**

1. The Construction Products Regulation [1] sets out a procedure, which allows manufacturers seeking to market construction products not fully covered by an existing harmonised standard to use the CE marking [2] on the basis of a 'declaration of performance' [3] .

2. According to the procedure, a manufacturer seeking to use the CE marking for one of its products first asks a technical assessment body [4] to prepare a 'European technical assessment' [5] of the product. The technical assessment body can issue a technical assessment if there is already a 'European Assessment Document' (EAD) setting out the technical requirements for the product in question. EADs are harmonised technical specifications for construction products developed by the European Organisation for Technical Approvals (EOTA).



3. If a product is not yet covered by an existing EAD, EOTA must develop a new one before the procedure can move forward. The Commission is involved in this procedure, as it publishes a list of references of the EADs in the EU Official Journal.

4. The complainant is a German manufacturer of steel products, which asked a national technical assessment body to prepare technical assessments of four of its products in 2015 and 2016. Each procedure involved developing new EADs.

5. In February 2020, EOTA informed the complainant that it had sent the EADs to the Commission in 2019 for publication in the Official Journal. However, it informed the complainant that there was a long backlog in publication.

6. In January 2021, the complainant contacted the Commission raising concerns about the delays and noting that this was causing it economic damage.

7. In February 2021, the Commission replied stating that, as the result of an EU Court ruling [6] , the Commission had taken a greater role in ensuring that EADs comply with the criteria in the Construction Products Regulation. As a result of this, many EADs were returned to EOTA for amendment, which had led to significant delays. The Commission informed the complainant that it aimed to process the four EADs “ *over the year* ”.

8. Concerned by the delays and dissatisfied by the lack of publication of the four EADs, the complainant turned to the Ombudsman on 8 September 2021.

9. Between January and May 2022, the complainant had several exchanges with the Commission and EOTA regarding the status of the four EADs. While EOTA said that it was waiting for the Commission’s comments, the Commission said that it was waiting for EOTA to apply to the EADs adjustments that it had requested.

## The inquiry

10. The Ombudsman opened an inquiry into the delays in the procedure and the actions taken by the Commission to address this. The Ombudsman inquiry team also asked the Commission to clarify the status of the four EADs.

11. In the course of the inquiry, the Ombudsman received the reply of the Commission on the Ombudsman’s request for reply and, subsequently, the comments of the complainant on the Commission’s reply.

12. The Ombudsman inquiry team also met with representatives of the Commission and EOTA to obtain further information on the matter. [7]



## Arguments presented to the Ombudsman

**13.** The complainant said that, before the Construction Products Regulation replaced the Construction Products Directive [8] in 2018, its products had all relevant authorisations. It noted that the goal of the Regulation was to improve the free movement of construction products in the internal market. However, the delays on the part of the Commission are undermining this goal.

**14.** The complainant said that the delays in publishing its four EADs in the Official Journal caused it economic damage, as its products cannot benefit from the simplified access to the internal market by having the CE marking.

**15.** The Commission noted that, with the entry into force of the Construction Products Regulation, it is no longer the product's compliance with pre-established requirements that is assessed, but its performance in relation to essential characteristics.

**16.** It restated its more comprehensive role in scrutinising EADs since the Court ruling referred to above. The length of the procedure varies according to the quality of each EAD.

**17.** The Commission noted that many EADs it has received from EOTA do not meet the requirements set out in the Construction Products Regulation [9]. Either they were not prepared in line with its provisions [10], they did not respect the performance-based approach of the Regulation, or the technical assessment was not explicit and robust enough to ensure replicable and comparable assessment results. This has led to delays. After publication in the Official Journal, the EADs become harmonised technical specifications, and may be used by other manufacturers of similar products as a basis for obtaining the CE marking. Consequently, the Commission can only publish EADs in the Official Journal if they comply with the relevant legal framework and are explicit enough to get replicable results.

**18.** In practice, the Commission had to return most EADs to EOTA for amendments. This led, in 2018 and 2019, to a backlog of more than 100 EADs that could not be published in the Official Journal.

**19.** Regarding the four EADs relating to the complainant's products, the Commission said that the complainant's products were already assessed and marketed under the Construction Products Directive. However, with the entry into force of the Construction Products Regulation, the requirements for EADs substantially changed. In the complainant's case, it appeared that the relevant technical assessment body reused parts of the former assessments without checking whether that assessment would be in line with the new requirements of the Regulation. Consequently, the Commission could not publish the EADs when they were first submitted in 2019, and had to return them to EOTA for review and amendment.

**20.** The Commission and EOTA clarified that the complainant's EADs are currently under revision and assessment. The technical assessment body was expected to return two EADs to EOTA for internal review by the end of October 2022 and the remaining two by the end of



November 2022. Once EOTA returns the EADs to the Commission, the Commission will assess them and, if they comply with the requirements of the Regulation, publish them in the Official Journal. The Commission estimated that it might publish two EADs by the end of February 2023 and the remaining two by the end of March 2023.

**21.** The Commission further said that it had taken action - internally and with EOTA - to address the delays and the existing backlog. Most notably, in 2018, the Commission issued guidelines to EOTA and the technical assessment bodies on how to draft EADs to meet the legal and technical requirements of the Construction Products Regulation. These guidelines were updated and improved in 2019 and 2021. It also launched a project to train certain technical assessment bodies on how to recognise potential issues related to the drafting of EADs, which, in turn, shared their experience with other technical assessment bodies. Furthermore, the Commission developed a checklist for draft EADs to further support EOTA and the technical assessment bodies in complying with the requirements under the Regulation.

**22.** In addition, the Commission introduced the so-called 'group of four' approach in the beginning of 2021. According to this approach, EOTA carries out an additional review of four draft EADs at a time before submitting them to the Commission for publication.

**23.** The Commission said that the above initiatives have enhanced the quality of the EADs, which has meant that EADs are now being published more quickly. However, these actions did not have an impact on the backlog, as new EADs are constantly being drafted. As further action is needed to address the backlog, the Commission said that it was finalising with EOTA a 'joint action plan', providing for additional human and financial resources to speed up the publication of EADs. The objective is to review, assess and publish all pending EADs by July 2023.

**24.** Finally, the Commission adopted a proposal for a new Construction Products Regulation [11]. If adopted by the legislator, the Commission hopes this will address some of the current issues. For instance, the proposal includes 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 Official Journal with restrictions.

**25.** In the course of the inquiry, the complainant stated that it is satisfied that the procedure is now moving and that the Commission has provided an indicative timeline for the publication of the four EADs in question.

## The Ombudsman's assessment

**26.** The Ombudsman notes that there are significant delays in the publication of EADs. Such delays can have a negative impact on businesses, which are not able to benefit from the advantages linked to the CE marking.

**27.** The Ombudsman acknowledges that the Commission has tried to address the delays by



issuing guidelines and launching different projects to improve the quality of EADs. However, the Commission's efforts did not have a concrete impact on the backlog.

**28.** The Ombudsman notes that the Construction Products Regulation was adopted in March 2011 and the relevant provisions concerning the procedure for the publication of EADs became applicable as of July 2013. The Court ruling, which requires the Commission to ensure EADs' compliance with the relevant rules before publishing them in the Official Journal dates back to October 2016. As such, it is regrettable that the Commission did not find a solution to the issue earlier.

**29.** That said, the Commission is now adopting, together with EOTA, a joint action plan to address the matter and clear the backlog by July 2023. The Commission and EOTA also clarified the current status of the complainant's EADs and provided an indicative timeline for their publication. Against this background, no further inquiries are thus justified into the matter at this stage.

**30.** The Ombudsman will nonetheless continue to monitor the situation and ask the Commission to provide an update on the concrete results of the new joint action plan on the existing backlog within nine months of this decision.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusions [12] :

**No further inquiries are justified at this stage.**

**The Commission should update the Ombudsman on the concrete results of the new joint action plan on the existing backlog within nine months of this decision.**

The complainant and the Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 14/12/2022

[1] Regulation 305/2011 laying down harmonised conditions for the marketing of construction products,  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R0305&qid=1633421744511>  
[Link].



[2] The CE marking indicates that a construction product is in conformity with its declared performance and that it has been assessed according to a harmonised European standard or a European Technical Assessment has been issued for it. The marking indicates that the product can be traded without restriction and has the same level of safety, health, and environmental protection requirements throughout the European Economic Area (EEA). More information on the CE marking is available at

[https://single-market-economy.ec.europa.eu/single-market/ce-marking\\_en](https://single-market-economy.ec.europa.eu/single-market/ce-marking_en) [Link].

[3] The declaration of performance **provides information on the performance of a product.**

[4] Technical assessment bodies assess construction products on the base of European assessment documents. They are designed by EU countries.

[5] The European technical assessment is a document providing information on the performance assessment of construction products not covered by a harmonised standard.

[6] Judgement of the Court of 27 October 2016, *James Elliot Construction Limited v Irish Asphalt Limited*, C-613/14,

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=602C46989BDC4827DDF3944936979273?text=&docid=111111> [Link].

[7] <https://www.ombudsman.europa.eu/en/doc/inspection-report/en/163984> [Link].

[8] 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].

[9] Article 24 of the CPR describes the content of EADs.

[10] Annex II to the CPR sets out the procedure to be followed for the adoption of EADs.

[11] 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].

[12] This complaint has been dealt with under delegated case handling, in accordance with [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]