

DECISIONS

COMMISSION DECISION (EU) 2017/145

of 25 January 2017

on the maintenance with a restriction in the *Official Journal of the European Union* of the reference of harmonised standard EN 14904:2006 ‘Surfaces for sport areas — Indoor surfaces for multi-sports use: Specification’ in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council

(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/EEC ⁽¹⁾, and in particular Article 18(2) thereof,

Whereas:

- (1) Pursuant to Regulation (EU) No 305/2011, harmonised standards foreseen in Article 17 are to fulfil the requirements of the harmonised system set out in or by means of this Regulation.
- (2) In March 2006, the European Committee for Standardisation (CEN) adopted the harmonised standard EN 14904:2006 ‘Surfaces for sport areas — Indoor surfaces for multi-sports use: Specification’. The reference of the standard was subsequently published in the *Official Journal of the European Union* ⁽²⁾.
- (3) On 21 August 2015 Germany launched a formal objection in respect of the harmonised standard EN 14904:2006. The formal objection referred to Note 1 of Annex ZA.1 to that standard, concerning the assessment methods and criteria for other dangerous substances than formaldehyde or pentachlorophenol (PCP), and demanded the withdrawal of the reference of the standard from the *Official Journal of the European Union* or, alternatively, a restriction excluding Note 1 of Annex ZA.1 to that standard from the scope of that reference.
- (4) According to Germany, that standard does not contain any harmonised methods for assessing the performance of the construction products in question in relation to the essential characteristic of dangerous substances, when it comes to other dangerous substances than formaldehyde or pentachlorophenol (PCP). In fact, Note 1 of Annex ZA.1 to the standard states that additional requirements relating to dangerous substances, including national laws, may apply to the products falling within the scope of the standard, and that all those must be complied with where applicable. Germany highlighted that the only specific clauses relating to dangerous substances in that standard (Clauses 5.5 and 5.6) concern formaldehyde and pentachlorophenol (PCP).
- (5) Germany considered this shortcoming to constitute a violation of Article 17(3) of Regulation (EU) No 305/2011, as the standard at hand did not entirely satisfy the requirements set out in the relevant mandate as foreseen in Article 18.
- (6) Moreover, Germany emphasised the importance of an appropriate treatment of releases of such other dangerous substances, in particular volatile organic compounds (VOCs), within the harmonised standards notably for the products in question.

⁽¹⁾ OJ L 88, 4.4.2011, p. 5.

⁽²⁾ Commission Communication in the framework of the implementation of Council Directive 89/106/EEC (OJ C 304, 13.12.2006, p. 1). Most recent publication: Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ C 398, 28.10.2016, p. 7).

- (7) For these reasons, Germany demanded to withdraw the reference of this standard, or alternatively to restrict it by excluding Note 1 of Annex ZA.1 from its scope, so as to permit Member States to put in place national provisions for the assessment of the performance in relation to the essential characteristic at hand, as regards the release of other dangerous substances than formaldehyde or pentachlorophenol (PCP).
- (8) When assessing the admissibility of the claims brought forward, it should be stated that if the alternative demand of Germany were to be understood as constituting a separate demand aiming to allow Member States to put in place national provisions setting additional requirements, such a claim would not focus on the contents of EN 14904:2006, and should therefore be considered inadmissible. However, as the wording of the demand clearly is directed to the restriction of the scope of reference to that standard, the linked statements of Germany about the consequences of such a restriction should be regarded only as parts of the argumentation offered within the formal objection and thus not considered separately.
- (9) According to Article 17(3) of Regulation (EU) No 305/2011, harmonised standards are to provide the methods and the criteria for assessing the performance of the products covered by them in relation to their essential characteristics. Quite as Germany has asserted, Note 1 of Annex ZA.1 to EN 14904:2006 only presents a reference to national requirements in place. In this respect, EN 14904:2006 does not comply with the requirements set out in Article 17(3) of Regulation (EU) No 305/2011.
- (10) Furthermore, the jurisprudence of the Court of Justice ⁽¹⁾ indicates that Member States are not entitled to put in place national provisions for the assessment of the performance in relation to any essential characteristics above and beyond what has been contained in the harmonised standards, when it comes to the marketing or the use of the construction products covered by them. The contents of EN 14904:2006 are thus also in conflict with those principles.
- (11) Therefore and in view of the fact that Regulations are directly applicable, Note 1 of Annex ZA.1 to EN 14904:2006 should not be applied, independently of the outcome of this formal objection procedure.
- (12) Nevertheless, since the jurisprudence of the Court of Justice ⁽²⁾ confirms the exhaustive nature of the harmonised system established in or by means of Regulation (EU) No 305/2011, the invalidity of Note 1 of Annex ZA.1 to EN 14904:2006 does not imply that Member States could adopt national provisions for the assessment of the performance in relation to the essential characteristic of dangerous substances, as regards the release of other dangerous substances than formaldehyde or pentachlorophenol (PCP).
- (13) On the basis of the contents of EN 14904:2006 as well as the information submitted by Germany, by the other Member States, by CEN and by industry, and after consulting the committees established by Article 64 of Regulation (EU) No 305/2011 and by Article 22 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council ⁽³⁾, it should be noted that no substantial objections were expressed against the continued publication of the reference of that standard in the *Official Journal of the European Union*. The exclusion of Note 1 of Annex ZA.1 from the scope of the reference published in the *Official Journal of the European Union* has been met with concerns based on an interpretation of the jurisprudence of the Court of Justice as allowing the Member States, if they take the view that the safety of a product is insufficiently ensured, to lay down requirements restricting the free circulation of those products. However, the Court of Justice itself has already stated that such an interpretation would put into question the effectiveness [(‘effet utile’)] of the harmonisation in this field ⁽⁴⁾.
- (14) The alleged incompleteness of that standard should thus not be considered a sufficient reason for accepting the first demand of Germany, the complete withdrawal of the reference to the standard EN 14904:2006 from the *Official Journal of the European Union*. That demand should therefore be rejected.
- (15) For the alternative demand of restricting the reference by excluding Note 1 of Annex ZA.1 from its scope, it should firstly be reminded that, as already demonstrated, that clause is not to be applied, independently of the outcome of this formal objection procedure. However, for reasons of clarity, it is necessary to explicitly exclude that invalid clause from the reference.

⁽¹⁾ Cf. in particular the ECJ judgement on case C-100/13 (*Commission v Germany*), para 55 ff.

⁽²⁾ Cf. the ECJ judgement on case C-100/13 (*Commission v Germany*), para 62.

⁽³⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

⁽⁴⁾ Cf. the ECJ judgement on case C-100/13 (*Commission v Germany*), para 60.

- (16) The reference of EN 14904:2006 should therefore be maintained, but it is necessary to introduce a restriction excluding Note 1 of Annex ZA.1 to that standard from its scope,

HAS ADOPTED THIS DECISION:

Article 1

The reference of harmonised standard EN 14904:2006 'Surfaces for sport areas — Indoor surfaces for multi-sports use: Specification' shall be maintained with a restriction.

The Commission shall add the following restriction in the list of references of harmonised standards published in the *Official Journal of the European Union*: 'Note 1 of Annex ZA.1 to standard EN 14904:2006 is excluded from the scope of the reference published'.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 25 January 2017.

For the Commission
The President
Jean-Claude JUNCKER
