

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 17 January 1994

on common procedural rules for European technical approval

(94/23/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products<sup>(1)</sup>, and in particular Annex II thereto,

Whereas Article 8 of the abovementioned Directive provides that European technical approval may be granted to certain products, particularly to products for which there is neither a harmonized standard nor a national standard and to products which differ significantly from the harmonized or recognized national standards;

Whereas provision has been made for the introduction of common procedural rules for requesting, preparing and granting such approval; whereas Annex II to the abovementioned Directive also stipulates that these common procedural rules are to be adopted by the Commission on the basis of the opinion of the committee in accordance with Article 20 of the Directive;

Whereas these common procedural rules were endorsed by the committee provided for by the Directive at its

meeting on 22 April 1993, in accordance with the procedures laid down by the Directive,

HAS DECIDED AS FOLLOWS:

*Sole Article*

Pursuant to Directive 89/106/EEC, requests for European technical approval shall be made and such approval shall be prepared and granted in accordance with the common procedural rules provided for in the Annex to this Decision.

Done at Brussels, 17 January 1994.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 12.

*ANNEX***COMMON PROCEDURAL RULES FOR REQUESTING, PREPARING AND THE GRANTING OF EUROPEAN TECHNICAL APPROVALS****0. Introduction**

- 0.1. These common rules define the procedures to be adopted for the requesting, preparing and the granting of European technical approvals as expressed in Annex II.3 of the Council Directive 89/106/EEC<sup>(1)</sup> of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, hereafter referred to as the Directive (CPD).
- 0.2. EOTA is an organization established under the provisions of the Directive bringing together the bodies nominated by the Member States of the European Community for the granting of the European technical approvals (ETA) as provided for within its scope.

**1. General rules**

- 1.1. The Secretariat of EOTA holds the updated list of the issued ETAs. A list is published at least once a year.
- 1.2. The Technical Board of EOTA is responsible for creating such committees as are required to arrange and coordinate the production of ETAs.
- 1.3. The approval bodies publish the ETAs issued by them in their respective official language(s).
- 1.4. Difficulties arising in relation to the Directive which cannot be resolved by the Executive Commission of EOTA will be sent to the Commission of the European Communities (hereinafter called 'the Commission of the EC') for resolution.

**2. Rules relating to the application for an ETA**

- 2.1. An application for a European technical approval may be made by a manufacturer, or an agent established in the Community, hereafter referred to as the applicant. The agent must be specifically nominated by the manufacturer to act on his behalf.
- 2.2. The application must be made to anyone of the EOTA bodies, which are responsible for the relevant area; however, it is not allowed to direct an application for the same construction product to more than one body.
- 2.3. By his application according to this rule the applicant authorizes the approval body to whom he has directed his application to inform the EC Commission, the other EOTA bodies and the Secretariat of EOTA of the content of the application.
- 2.4. Before submitting his application the applicant shall — on his request — receive, after supplying such information as is required by the approval body, information concerning:
  - the approval procedure,
  - the estimate of the time schedule necessary for the approval body to complete the approval procedure for the specific product,
  - an estimate of the cost for the handling of the approval procedure and the payment modalities.

In the event that the subject area has not already been approved as suitable for ETAs, or in the case of a product which differs significantly from harmonized standards or recognized national standards, the above information will only be given to the applicant after a decision on the possibility of issuing an ETA taken according to the procedure described in 3.2.

The applicant will be informed of the decision.

- 2.5. The application must be submitted in a standard format (see Appendix 1) in the language of the Member State where the approval body is located unless agreed otherwise by the approval body.
- 2.6. The application shall be accompanied by a description of the construction product, specifications, drawings and test reports, explaining in detail the subject under application and its intended use.
- 2.7. In the application from the applicant shall announce all the places of manufacture. He has to ensure that these places can be visited by the approval body or its representative during working hours, in view of the issuing of the ETA.
- 2.8. The approval body has to, within two months, acknowledge receipt of the application and confirm that it will initiate the procedures (see standard format Appendix 2).

If the application is not accepted, the approval body must give the reasons. The applicant may then apply to another approval body.

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 12.

- 2.9. The approval body has to inform the applicant which documents, test results, calculations, etc he has to deliver to enable the approval body to assess the fitness for use of the product for the intended use.

It is the duty of the applicant to supply the approval body with the necessary documents and to support the approval body in its assessment task.

- 2.10. The EOTA bodies shall take the necessary measures to ensure confidentiality of all critical information which, in the course of their activities, comes to their knowledge.
- 2.11. The applicant has to declare, in a legally binding way, that he will pay all the costs arising from the approval procedure and the establishment of the supporting documents in accordance with national rules.
- 2.12. If the applicant does not meet his obligations as defined in this document, the approval body may, after a reasonable period of time, cancel the application.

### 3. Rules relating to the granting of an ETA

- 3.0. The ETA only concerns aspects of the product which relate to the essential requirements as defined in Annex I of the CPD and in the Interpretative Documents according to Article 3.3 of the CPD. Only these aspects are related to the CE marking.

Should other aspects be taken into account, the relevant assessment shall be clearly differentiated from those related to the essential requirements, after an agreement between the members of EOTA. Such assessments would be voluntary.

The format of the ETA must correspond to the 'general format' as agreed by the Commission of the EC.

#### 3.1. *Granting of an ETA on the basis of ETA guideline (according to the Directive — Article 9.1)*

- 3.1.1. The content and format of the ETA must correspond to the relevant ETA guideline.
- 3.1.2. The approval body which issues the ETA sends it to :  
 — all other EOTA bodies,  
 — the General Secretariat who will send a copy to the Commission of the EC.
- 3.1.3. During a transitional period determined individually for each ETA guideline by EOTA, in order to ensure the comparability of the ETAs issued by the approval bodies, the draft ETA with the accompanying documents (test results) are submitted for prior consultation to the relevant EOTA bodies<sup>(1)</sup> and the General Secretariat asking for their comments within two months.
- 3.1.4. Should the Commission of the EC establish, under provisions of Article 5. 1 of the CPD and after the advice of the Standing Committee, a shortcoming in a given ETA due to a shortcoming of an ETA guideline, the approval bodies shall not issue any more ETAs on the basis of the above ETA guideline.

#### 3.2. *Granting of an ETA without an ETA guideline (according to the Directive, Article 9.2)*

- 3.2.1. The content and format of the ETA must correspond to the 'general format' agreed by the Commission of the EC.
- 3.2.2. The approval body receiving a request according to point 2.4 or an application for an ETA introduced for the first time for a product of the family concerned must have preliminary consultation with the Technical Board in order that it can agree in principle on the granting of an ETA to that product and on the principle of the proposed attestation of conformity procedure.

If consensus is achieved in the Technical Board on applications according to Article 8.2a of the CPD, then the appropriate information as asked by the EC Commission is sent with the approval of the President of EOTA to the Commission of the EC to obtain authority to issue ETAs. If consensus cannot be achieved in the Technical Board it will be passed to the Executive Commission for decision, as to whether it should be submitted to the Commission of the EC.

In the case of applications for ETAs according to Article 8.2 b of the Directive, the Commission of the EC will confirm on the basis of the EOTA assessment and of the relevant information, whether a product of a family covered by harmonized standards or recognized national standards differs significantly from them and therefore if a European technical approval can be granted.

<sup>(1)</sup> Relevant EOTA bodies : bodies nominated by the Member States to operate in the subject area.

- 3.2.3. If agreement is achieved under 3.2.2 the approval body to whom an application is directed must have a preliminary discussion with the other relevant EOTA bodies in which is explained the manner it is intended to use to progress the application including the test programme, the performance requirements and the manner of fulfillment of the attestation of conformity foreseen.

The approval body takes into account the remarks formulated by the other EOTA bodies.

- 3.2.4. When the application for an ETA is for a product of a family for which the procedure laid down in 3.2.3 has already been established the ETA must be based on that established procedure.
- 3.2.5. Before issuing the ETA, the approval body sends the ETA draft to the relevant EOTA bodies and to the General Secretariat with the justifications provided by the applicant asking for their comments within two months.

The ETA is issued by the approval body when all the relevant EOTA bodies have given consent in writing taking account of the Directive, Annex II, paragraph 2, sentence 3.

Circulation of the ETA is in accordance with 3.1.2.

If there are objections which cannot be solved then the question is put on the Agenda of the Technical Board.

If in the Technical Board consensus is achieved the ETA is issued by the approval body.

If consensus cannot be achieved the subject is put on the Agenda of the Executive Commission who decides on any subsequent action.

If the Executive Commission cannot reach consensus, the matter shall be referred to the Standing Committee on Construction (the Directive, Article 9.2) via the Commission of the EC.

#### **4. Withdrawal of an ETA**

- 4.1. The approval body shall withdraw the ETA if the Commission of the EC has informed the Member States according to Article 5 paragraph 1 of the Directive.
- 4.2. The approval body has to inform the other EOTA bodies and the General Secretariat of the withdrawal. The General Secretariat will inform the Commission of the EC.

#### **5. Modification of an ETA**

- 5.1. For modification of an ETA the procedure of a new application applies accordingly. The application must be addressed to the approval body having issued the approval being subject to modification.
- 5.2. The provisions stated under 3.1 and 3.2 have to be applied accordingly: the approval procedure shall only relate to the items directly concerned by the modification.
- 5.3. A new ETA is issued replacing the previous ETA.

#### **6. Extension of validity**

- 6.1. In accordance with Article 8 (4) of the Directive, the period of validity of an ETA can be extended for a further period of (in general) five years provided that the EC Commission has not notified the concerned approval bodies and/or EOTA that conditions on which the original ETA were issued have changed. Applications shall be submitted in writing and should be received by the approval body at least six months before the expiry date.

As far as the procedure is concerned, the provisions stated under 3.1 and 3.2 apply accordingly.

- 6.2. The application for extension must be accompanied by the relevant technical documents required in the ETA guidelines for the extension of an ETA. If such ETA guidelines do not exist, the approval body after consultation with the EOTA bodies, will inform the applicant which technical documents have to be presented.
- 6.3. Such extensions become the responsibility of the body issuing them and should be as complete as the original assessment.

*Appendix 1***APPLICATION FOR A EUROPEAN TECHNICAL APPROVAL REFERRED TO IN CHAPTER III OF THE COUNCIL DIRECTIVE 89/106/EEC****1. The application is made to :**

(Name of the designated approval body according to Chapter III Article 10 of the Directive 89/106/EEC)

**2. Applicant :**

(Manufacturer or his authorized agent established in the Community; where the application is made by the agent established in the Community, it has to be accompanied by the authorization given by the manufacturer).

**3. Generic type of the construction product :****4. Trade name(s) of the product, as will be given in the approval :****5. Definition of the construction product and its intended use :**

(Additional documents are to be forwarded with the application, see item 2.6 of the common procedural rules for requesting, preparing and the granting of European technical approvals).

**6. Manufacturing plants, where the construction product is to be produced :****7. Declaration of the applicant :**

Herewith I declare

(\*) — that I have not made another application for a European technical approval for the construction product referred to in items 3 and 4 to any other EOTA body,

(\*) — that I have made an application for a European technical approval for the construction product referred to in items 3 and 4 to

.....  
(name of the other EOTA body).

That application was not accepted,

(\*) Tick appropriate box.

- that I agree to other EOTA bodies and the Commission of the EC being notified of the application,
- that I will pay the costs arising from the approval procedure in accordance with the national rules of the approval body referred to in item 1 (cf. Directive 89/106/EEC, Annex II paragraph 6),
- that I will support the approval procedure as required,
- that I will ensure that the places of manufacture can be visited at any time by the approval body or its representative during working hours in view of the issuing of the ETA.

.....  
(Place and date)

.....  
(Authorized signature)

Appendix 2

(Name and address of the designated approval body)

CONFIRMATION OF THE RECEIPT OF THE APPLICATION FOR GRANTING A EUROPEAN TECHNICAL APPROVAL REFERRED TO IN THE COUNCIL DIRECTIVE 89/106/EEC

1. The application made by,

.....  
.....  
.....

dated .....

(date of application for approval)

for a European technical approval for the construction product,

.....

according to items 3 and 4 of the above application is herewith accepted and the procedure has been initiated.

2. The approval procedure is given the following reference number :

.....

3. The approval procedure is based on :

— the following legal provisions :

.....  
(legal provisions, by means of which the Council Directive 89/106/EEC has been implemented in national law),

— the common procedural rules for requesting, preparing and the granting of European technical approvals,

— (provisions, statutes, contract texts, or the like, of the approval body concerned, where required)

4. The costs for the approval procedure are determined on the basis of :

.....  
.....  
.....  
.....

[schedule of fees, legal provisions, or any other provisions in force for the approval body (with reference)].

.....

(Place and date)

.....

(Authorized signature)

