

COMMISSION DECISION (EU) 2017/133**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 14342:2013 'Wood flooring and parquet: Characteristics, evaluation of conformity and marking' 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 July 2013, the European Committee for Standardisation (CEN) adopted the harmonised standard EN 14342:2013 'Wood flooring and parquet: Characteristics, evaluation of conformity and marking'. 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 14342:2013. The formal objection referred to Clause 4.4 of that standard, concerning the assessment methods and criteria for certain dangerous substances, and demanded the withdrawal of the reference of the standard from the *Official Journal of the European Union* or, alternatively, a restriction excluding Clause 4.4 of 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 release of other dangerous substances. In fact, Clause 4.4 of the standard states that verification and declaration on release or content of additional other dangerous substances than those dealt with in other clauses of the standard should be done taking into account national provisions in the place of use.
- (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 wood-based products in question.
- (7) For these reasons, Germany demanded to withdraw the reference of that standard, or alternatively to restrict it by excluding Clause 4.4 from its scope, so as to permit Member States to adopt national provisions for the assessment of the performance in relation to the essential characteristic at hand, as regards the release of other dangerous substances.

⁽¹⁾ OJ L 88, 4.4.2011, p. 5.

⁽²⁾ Commission Communication in the framework of the implementation of 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 Directive 89/106/EEC (OJ C 259, 8.8.2014, 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).

- (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 14342:2013, 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, Clause 4.4 of EN 14342:2013 only presents a reference to national provisions in place. In this respect, EN 14342:2013 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 14342:2013 are thus in conflict also with these principles.
- (11) Therefore and due to the fact that Regulations are directly applicable, Clause 4.4 of EN 14342:2013 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 Clause 4.4 of EN 14342:2013 does not imply that Member States could adopt national provisions for the assessment of the performance in relation to the essential characteristic release of other dangerous substances.
- (13) On the basis of the contents of EN 14342:2013 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 Clause 4.4 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 14342:2013 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 Clause 4.4 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.
- (16) The reference of EN 14342:2013 should therefore be maintained, but it is necessary to introduce a restriction excluding Clause 4.4 of that standard from its scope,

⁽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.

HAS ADOPTED THIS DECISION:

Article 1

The reference of harmonised standard EN 14342:2013 'Wood flooring and parquet: Characteristics, evaluation of conformity and marking' 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*: 'Clause 4.4 of standard EN 14342:2013 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
