



Construction
Fixings
Europe

European producers of
construction fixings with
European Technical
Assessment (ETA)



CFE is part of

CEO
Comité Européen de l'Outillage
European Tool Association

Recommendations for the trilogue negotiations in the review process of the Construction Products Regulation (CPR)

Focus: EAD/ETA route to CE marking

CFE represents manufacturers of anchors, wood screws and similar construction fixings. Most of our member companies hold several European Technical Assessments (ETAs). The following positions are focussed on issues related to EADs and ETAs.

The EAD/ETA route is a success story for the assessment of products and applications, which cannot be covered by harmonized standards under the CPR. ETAs enable a short time-to-market for new products or applications. They have a high reputation in the EU and world-wide and stimulate innovation in the industry. ETAs are recognized for safety and quality in the construction industry. The total number of issued ETAs in product area 33 "Fixings" alone is above 2.100 (September 2023, source: eota.eu).

1. Current situation

Under the current CPR, before a new or revised EAD can be cited in the OJEU, a first ETA has to be issued after the EAD has been finally adopted by EOTA with involvement of the European Commission and sent to the European Commission for citation.

From this moment, the manufacturer who initiated the EAD development, is able to market his product in the whole EU with reference to this ETA. Before this ETA is publicly available and the respective EAD is cited in the OJEU, a high level of confidentiality is guaranteed, which is important to protect the intellectual property of the manufacturer.

The possibility to market new products with reference to an ETA even before the citation of the EAD in the OJEU is an important factor for the planning of innovation processes and a predictable time-to-market for new products or applications especially for innovative SMEs.

Additionally, the issue of a first ETA serves as correction loop before the final citation of the EAD. In some cases, the experience gained with the issue of the first ETA led to significant improvements or corrections of EAD drafts.

2. Intended change of the publication sequence of ETA and EAD

According to the initial proposal of the European Commission and the amendments of the European Parliament and the Council WG, the issue of an ETA will be possible only after the citation of the respective EAD in the OJEU.

Although the CPR draft and amendments foresee some improvements of the EAD process, we expect that the unpredictability and long duration between the adoption and the citation of EADs will not change significantly. This estimation is based on experiences under the current CPR over more than 10 years and takes into account the resource capacities at European Commission level for these tasks.

CFE is also concerned that in the phase between adoption and citation of EADs, which can take several years based on current experience, the confidentiality of the EAD content can no longer be guaranteed and that competitors of the initial manufacturer will use this period to develop similar innovative products. As a result, such competitors may get their ETAs at the same time as the initial manufacturer and the competition advantage is irrelevant.

As consequence, the EAD/ETA route will become less attractive especially for innovative SMEs, which can lead to a new shift towards national approvals and a de-harmonisation of whole product families.

Such a shift could even be strengthened by the fact that EADs will no longer be considered as harmonised technical specifications and will not be part of the harmonised zone.

3. CFE recommendations for the trilogue negotiations

a. CFE is in favour to maintain the current process and sequence of the publication of the first ETA and the EAD.

In general, CFE supports Amendment 579a of the European Parliament. Nevertheless, a “draft” ETA would not have a transparent legal status and may not be accepted by specifiers and end users. It may also create legal problems with products already marketed and installed, if the draft ETA is changed compared to a final ETA.

Those problems could be solved if Amendment 579a would be changed as follows: “2a. In order to ensure the high quality of European assessment documents and to accommodate the confidentiality needs of the applicant for the related European technical assessment, before the reference to a new European assessment document is cited in the Official Journal of the European Union, a ~~draft of the~~ first European technical assessment based on that European assessment document shall be issued...”

b. In addition, the terms for the citation of adopted EADs shall be clarified to avoid unacceptable delays in future.

This could be achieved by a combination of amendment 578 of the Council WG (“1. The Commission shall, **in accordance with Annex III, Point 8a**, assess the ~~conformity~~ **compliance** of European assessment documents with harmonised technical specifications, with this Regulation and with other Union law. **Where a European assessment document is in conformity with applicable legal requirements**, the Commission shall ~~publish or~~ **without delay** ~~publish with restriction~~ **a reference of that document** in the Official Journal of the European Union”) with amendment 1310a on Annex IIIa of the EP (6.1 ... “If no comments are received from the Commission within two months, the European Assessment Document shall be deemed to be accepted by it”).

c. Recommendation: To shorten the process of EAD elaboration, adoption and citation, the European Commission should proactively participate in the whole process and bring in its views as early as possible. This could avoid delays in the final adoption and citation of the EAD by the Commission.

4. Additional Recommendations

Additional recommendations from the view of ETA holders regarding the future validity of EADs and ETAs and other ETA related aspects: see attachment.

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No.	Commission proposal	European Parliament	Council	CFE recommendation
EADs / ETAs				
Recital 60				
69	<p>(60) In order to ensure a timely citation of references of construction products standards in the Official Journal of the European Union, the European Commission should be empowered to limit in scope or overrule deficient standards for purposes of legal effects under this Regulation by delegating acts instead of refusing to cite their references in the Official Journal.</p>	<i>deleted</i>	<p>(60) In order to ensure a timely citation publication of references of construction products product performance standards and European assessment documents in the Official Journal of the European Union, the European Commission should, where references to standards or European assessment documents otherwise cannot be published, have the possibility to publish these references with restrictions of their be empowered to limit in scope or overrule deficient standards for purposes of legal effects under this Regulation by delegating acts instead of refusing to cite their. It should be possible for such restrictions to cover, for example, outdated references to other standards or documents, provisions which contradict this Regulation or other Union law, provisions which contradict other harmonised standards the references of which have already been published in the Official Journal, or provisions which are not in conformity with the demands to be met in relation to the basic principles and reference points set out in a standardisation request.</p>	<p>The inclusion of European assessment documents as proposed by the council WG is not necessary, because the European Commission has sufficient influence on the EAD content during the drafting phase- We support the suggestion of the EP to delete this section.</p>

No.	Commission proposal	European Parliament	Council	CFE recommendation
Article 35(2), first subparagraph, point (b)				
550	(b) a harmonised technical specification intended to be adopted in the next 2 years as from the date of verification with the Commission;	(b) a harmonised technical specification intended to be adopted in the next 2 years 1 year as from the date of verification with the Commission;	<i>deleted</i>	For reasons of legal certainty, the EP position should be supported.
Article 35(2), second subparagraph, point (iii)				
555a		<u>2a. The Commission shall task EOTA and CEN with coordinating to ensure that there is no overlap between a European assessment document and harmonised standards or parts thereof.</u>		EP proposal should be supported.
Article 36(1), first subparagraph, point (b)				
561	(b) disclose as little as possible information protected by intellectual property rights, and protect commercial secrecy and confidentiality;	(b) disclose as little as possible not to disclose the information protected by intellectual property rights, and protect commercial secrecy and confidentiality;	(b) disclose confidential information only when necessary to assess the compliance of a European assessment document with regulatory provisions, and otherwise as little as possible information protected by intellectual property rights, and protect commercial secrecy and confidentiality;	Council position to be supported.
Article 36(1), first subparagraph, point (d)				
563	(d) allow at any stage for adequate participation by the Member States and the Commission;	(d) allow at any stage for adequate participation by the Member States and the Commission;	(d) allow at any stage for adequate participation by the Member States and the Commission;	EP position to be supported. The Commission should participate in early stages of EAD development only. Any intervention in a late stage of the process leads to unacceptable delays and creates legal uncertainty for the manufacturer.

No.	Commission proposal	European Parliament	Council	CFE recommendation
Article 36(3)				
568	3. TABs and the organisation of TABs shall avoid any proliferation of European assessment documents where there is no technical justification for differentiating between products and therefore in particular give preference to the extension of a scope of an existing European assessment document.	3. TABs and the organisation of TABs shall avoid any proliferation of European assessment documents where there is no technical justification for differentiating between products and therefore in particular give preference to the extension of a scope of an existing European assessment document.	3. TABs and the organisation of TABs shall avoid any proliferation of European assessment documents where there is no technical justification for differentiating between products and shall therefore in particular give preference to the extension of a scope of an existing European assessment document.	Extensive extensions of the scopes of EADs will lead to very complex documents (number of pages more than 100) which will confuse manufacturers, especially SMEs, as well as end users, which may have problems to identify a suitable product for a given special intended use.
Article 38(1)				
578	1. The Commission shall assess the conformity of European assessment documents with harmonised technical specifications, with this Regulation and with other Union law. The Commission shall publish or publish with restriction in the Official Journal of the European Union the list of references of accepted conforming European assessment documents. The Commission shall publish any updates to that list.	1. The Commission shall assess the conformity of European assessment documents with harmonised technical specifications, with this Regulation and with other Union law. The Commission shall publish or publish with restriction in the Official Journal of the European Union the list of references of accepted conforming European assessment documents. The Commission shall publish any updates to that list.	1. The Commission shall, in accordance with Annex III, Point 8a, assess the conformity compliance of European assessment documents with harmonised technical specifications, with this Regulation and with other Union law. Where a European assessment document is in conformity with applicable legal requirements, the Commission shall publish or without delay publish with restriction a reference of that document in the Official Journal of the European Union. Where a reference to a the list of references of accepted conforming European assessment documents cannot be published in the Official Journal, the Commission shall may publish any updates to that list such a reference with restrictions .	Council position regarding a publication without delay to be supported. But the possibility to publish an EAD with restrictions would create an unacceptable level of legal uncertainty for the manufacturer. The experience of more than 10 years with unkept deadlines for publication without any explanation given to the industry is a clear indicator that future deadlines most probably will also not be kept, and major delay will be most likely.

No.	Commission proposal	European Parliament	Council	CFE recommendation
	Article 38(2)			
579	<p>2. Only European assessment documents referred to in that list and published in at least one language of the Union by either the Commission or by the organisation of TABs shall authorise the issuing of European technical assessments in accordance with Article 42 and trigger legal effects in accordance with Article 42(5), including with regard to the manufacturer who requested the development of the European assessment document. This legal effect of European assessment documents shall expire ten years after their first citation in the Official Journal of the European Union unless they have been renewed in the last year prior to expiry and the Commission decides to maintain the listing.</p>	<p>2. Only European assessment documents referred to in that list and published in at least one language of the Union by either the Commission or by the organisation of TABs shall authorise the issuing of European technical assessments in accordance with Article 42 and trigger legal effects in accordance with Article 42(5), including with regard to the manufacturer who requested the development of the European assessment document. This legal effect of European assessment documents shall expire ten years after their first citation in the Official Journal of the European Union <u>or immediately where the European technical document has been withdrawn</u> unless they have been renewed in the last year prior to expiry and the Commission decides to maintain the listing.</p>	<p>2. Only European assessment documents referred to in that list and published in at least one language of the Union by either the Commission or by the organisation of TABs shall authorise the issuing of Following publication in accordance with paragraph 1, a European assessment document may in accordance with Article 42 be used as a basis for a European technical assessments in accordance with Article 42 and trigger legal effects in accordance with Article 42(5), including with regard to the manufacturer who requested the development assessment for a period of 10 years, unless the reference has been withdrawn from the Official Journal of the European assessment document. This legal effect of European assessment documents shall expire ten years after their first citation in the Official Journal of the Union. The organisation of TABs may in the last year prior to the expiration of a European Union unless they have been assessment document decide to submit it for renewed in the last year prior to expiry and the Commission decides to maintain the listing validity. The Commission shall in that case reassess it in accordance with paragraph 1.</p>	<p>For the following reasons, the current procedure, that an EAD is only published after a first ETA on this basis is issued, should be maintained:</p> <ol style="list-style-type: none"> 1. shorter time to market for the applicant 2. higher legal certainty for the applicant 3. high level of confidentiality until the first ETA is issued 4. quality assurance for the EAD, because the experience gained with the issuing of the first ETA can be used to streamline the final EAD before publication.

No.	Commission proposal	European Parliament	Council	CFE recommendation
579a		<p><u><i>2a. In order to ensure the high quality of European assessment documents and to accommodate the confidentiality needs of the applicant for the related European technical assessment, before the reference to a new European assessment document is cited in the Official Journal of the European Union, a draft of the first European technical assessment based on that European assessment document shall be issued. If necessary, the final draft of the European assessment document shall be amended based on the experience gained with the issue of the first European technical assessment. The Commission, jointly with organisation of TABs, shall communicate the date of citation of the reference to the European assessment document.</i></u></p>		<p>EP position to be supported, but change "...a draft of the first European technical assessment..." to "...a draft of the first European technical assessment..."</p>

No.	Commission proposal	European Parliament	Council	CFE recommendation
Article 42(4)				
602	4. European technical assessments issued on the basis of a European assessment document remain valid for five years after the expiry date of the European assessment document in accordance with Article 38(2).	4. European technical assessments issued on the basis of a European assessment document remain valid for five years after the expiry date of the European assessment document in accordance with Article 38(2).	4. European technical assessments issued on the basis of a European assessment document remain valid for five years either after the expiry date of the European assessment document in accordance with Article 38(2) or after the reference to the European assessment document is withdrawn from the Official Journal of the European Union in the course of its validity. Products may no longer be placed on the market on the basis of a European technical assessment when a harmonised technical specification covering that product has entered into force.	The position of the council should be supported, because of the high effort for manufacturers and distributors to change product marking and technical documents, a sufficient transition period is needed for placing on the market on the basis of a European technical assessment when a harmonised technical specification covering that product has entered into force.
Annex III, point 9., second subparagraph				
1310	The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union, for the publication of its reference in the Official Journal of the European Union. The organisation of TABs shall publish the European Assessment Document.	<i>deleted</i> Moved to Annex IIIa, point 7	The organisation of TABs shall adopt the final European Assessment Document and shall send a copy thereof to the Commission, together with a translation of its title in all the official languages of the Union, for the publication of its reference in the Official Journal of the European Union without delay Official Journal of the European Union. The organisation of TABs shall publish the European Assessment Document in one or more languages of the Union and, as a minimum, keep it accessible until no European technical assessments based on it remain valid.	In order to ensure a reasonable and reliable timeframe for the publication of adopted EADs, the amendment of the council (“without delay”) to be supported in combination with amendment 1310a on Annex IIIa of the EP (6.1 ... “If no comments are received from the Commission within two months, the European Assessment Document shall be deemed to be accepted by it “)

No.	Commission proposal	European Parliament	Council	CFE recommendation
	Annex IIIa			
1310a		... (6.1 ... "If no comments are received from the Commission within two months, the European Assessment Document shall be deemed to be accepted by it ")		In order to ensure a reasonable and reliable timeframe for the publication of adopted EADs, this amendment of the EP to be supported in combination with amendment of the council on Annex III, point 9., second subparagraph ("... without delay ...").