ECS
Engineered Construction Systems

CFE Construction Fixings Europe
A sub-association of European Tool Committee CEO

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Strengthening the ETA route

This paper addresses the current situation regarding the issue of ETAs based on ETAGs and EADs. It aims to eliminate uncertainties and formal obstacles for the manufacturers in order to give them the opportunity to use ETAs as a way to CE marking for innovative products, as intended by the CPR.

The separate issues refer to

- **Procedural aspects**
- **Involved institutions and**
- **Legal requirements.**

1. Change from ETAGs to EADs (procedural aspects, legal requirements)

Situation

We have been informed at short notice by EOTA, that from the day of the citation of an EAD in the OJEU, which replaces an ETAG, EOTA (TABs) will no longer issue an ETA based on the ETAG used as EAD, even if the application and the contract between manufacturer and TAB for this ETA are based on the ETAG used as EAD.

Consequences for the industry

For the industry, this procedure creates lack of transparency, legal uncertainty, unforeseeable delays for the issue of the ETA and additional efforts as well as possibly considerable additional costs, e. g. for the adaption of labels, DoPs (in various languages), software and possible delay of product introductions.

The date of publication of an EAD in the OJEU is not known with certainty ahead of time and does therefore not allow for proper preparation.

Furthermore, for the newly published EAD no Notified Body has yet been notified at that date, which affects the placement of a CE-mark on the product.

Our interpretation of the legal context

It is a main goal of the CPR to simplify the ETA route. Therefore, any procedure which leads to avoidable additional burdens and costs for the industry is not in the sense of CPR.

According to Article 20, the procedure for developing and adopting European Assessment Documents shall:

(a) be transparent to the manufacturer concerned;
(b) define appropriate mandatory time limits in order to avoid unjustified delay;
⋮
(e) be cost-effective for the manufacturer.

> ### Our proposal
> CFE & ECS ask EOTA to inform all manufacturers, which have already applied for an ETA based on an ETAG at an early stage on a reliable timeline for the replacement of the ETAG by an EAD and to define transition periods in order to give the manufacturers as much time as possible to prepare.
> In addition, manufacturers should be informed at an early stage if additional tests or other technical changes become necessary through the replacement of the ETAG by an EAD.

2. Transition between EAD versions (procedural aspects, involved institutions)

Situation
We have been informed by EOTA, that from the day of the citation of new version of an EAD in the OJEU, references to the previous version are no longer possible. This would affect all ETAs issued on the basis of the previous version and the respective DoPs.

The reason for this interpretation is the statement in the OJEU when a new EAD version is cited, that the new version replaces the previous version.

Consequences for the industry
For the industry, this procedure would create additional efforts well as considerable additional costs. All DoPs and other technical documents referring to the ETA (in various languages), labels through the complete supply chain had to be adapted, even if there is no technical change in the EAD. Costs (fees) also result from the necessary change of each ETA by the TAB.

Our interpretation of the legal context
According to the CPR, an ETA has an unlimited validity, as long as there is no technical reason to change it according to article 11(7).

The statement in the OJEU, that the new EAD version replaces the previous version, refers to new ETA application and does not affect issued ETAs.

For harmonised standards, article 17(5) of CPR provides a coexistence period in case that a new version of an hEN is cited. The fact, that the CPR does not envisage a coexistence period also for EADs, shows that CPR does not intend that each new EAD version affects issued ETAs or pending ETA applications.

It is a main goal of the CPR to simplify the ETA route. Therefore, any procedure which leads to avoidable additional burdens and costs for the industry is not the intention of CPR.

CPR does not at all define a procedure for the amendment of valid ETAs for formal reasons.

> **Our proposal**
> CFE & ECS ask for an immediate clarification that the unlimited validity of ETAs is not affected by revisions of the respective EAD, as long as there is no technical need for an amendment of the ETA according to Article 11(3).

3. Availability of all EADs which are the basis for a valid ETA (procedural aspects, involved institutions)

Situation
At the EOTA website, only the latest versions of the EADs are available.

Consequences for the industry
For the industry and for the users, this fact creates legal uncertainty, because the version of the EAD, which is the basis for a valid ETA, is needed as reference document.

Our interpretation of the legal context
According to Annex II of CPR, each EAD, which has been used as basis for an ETA, has to be published.

> **Our proposal**
> CFE & ECS ask for publication of all EAD versions, which are basis for valid EADs, (e. g. in an archive) at the EOTA website.

4. Availability of Notified Bodies for new or updated EADs (procedural aspects, involved institutions, legal requirements)

Situation
A new or updated EAD is cited in the OJEU only after the first product with an ETA based on this EAD and the respective CE marking is available on the market. For this CE marking, a Notified Body is necessary, but the list of Notified Bodies for an EAD is published only after the EAD is cited.

Consequences for the industry
This situation makes it impossible for the manufacturer to use the CE marking legally. Any use of the CE marking without an officially Notified Body is not only a derogation from the CPR, it puts the manufacturer also in jeopardy of civil claims (unfair competition and product liability).

This situation is tightened by the fact that in some cases the citation of EADs after their finalisation and after the first ETAs have been issued in the OJEU is delayed by several months.

Our interpretation of the legal context
The CPR does not justify the procedure described above. According to Annex II point 8, only the publication of an EAD by EOTA is linked with the availability of a product with the respective CE mark, not the citation of the EAD in the OJEU and the update of the list of Notified Bodies.

Our proposal
CFE & ECS ask for

- immediate citation of finalised EADs in the OJEU
- update of the list of Notified Bodies based on finalised EAD drafts before or in parallel with their citation in the OJEU
- availability of the list of Notified Bodies also for outdated EAD versions as long as ETAs based on their basis are valid.
- Amendment of Annex II of CPR by a Delegated Act in order to eliminate any possible misinterpretation regarding the procedures.

5. Industry friendly amendment of the rules for DoPs for products covered by an ETA (legal requirements)

Situation
After the amendment of Annex III of CPR by Delegated Act 574/2014 the use of references in the DoP to external documents is explicitly not allowed.

Consequences for the industry
Because it would be misleading to state only some selected values from the ETA in the DoP without additional information, this pushes the manufacturers to double the content of their ETAs in the respective DoPs, although the ETAs already give a complete description of the construction product. Statements of the users show that they continue to use the ETAs, which they are used to, and not the DoPs. Therefore, the exclusion to use a reference on ETAs in DoPs create unjustified costs and efforts for the manufacturers.

Our proposal
We ask for amendment of Annex III of CPR in order to define a DoP-format which allows reference to an ETA to reduce the burdens for the manufacturer (compare Economic Impacts of the Construction Products Regulation (Final report), Section 5.2.3 , p. 36 ff, Table “Administrative burden”).

6. Modularity of EADs (legal requirements)

Situation
Following the development of the state of technology, EADs may be newly developed, adapted or amended in future.

Under BWR 1, construction products have to fulfil general requirements as well as additional requirements. The fulfilment of the general requirements is a prerequisite for the fulfilment of the additional requirements (e. g. seismic). For fasteners, static loads can be seen as general requirement and seismic and fatigue loads can be seen as such additional requirements.

Consequences for the industry
If both general and additional requirements were covered in one EAD, this would lead to frequent changes of this EAD due to the introduction and maintenance of the additional requirements. This would lead to an extensive effort for document management for all stakeholders: industry, end users, EOTA, TABs and European Commission.

Our proposal
Lean EAD document management by establishing a modular document structure of EADs for the general requirements and EADs for the additional requirements with the following benefits:

- Easy-to-read and transparent documents
- No doubled content in the respective EADs
- Clear separation by different intended uses

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Used abbreviations:

ETA	European Technical Assessment	EOTA	European Organisation for Technical Assessment
ETAG	European Technical Approval Guideline	OJEU	Official Journal of the European Union
EAD	European Assessment Document	TAB	Technical Assessment Body
CPR	Construction Products Regulation (= Regulation (EU) 305/2011)	DoP	Declaration of Performance