

Draft

Regulation xx.xx.xxxx no. yyy relating to the marketing of products for construction works

Statutory authority: Laid down by the Ministry of Local Government and Regional Development on dd.mm.yyyy pursuant to the Act of 27 June 2008 No. 71 relating to planning and the processing of building applications (Planning and Building Act), section 29-7, and the Act of 16 June 1994 no. 20 relating to technical assessment bodies responsible for conducting conformity assessments, section 7.

EEA references: The EEA Agreement, Annex II chapter III no. 5 (Directive 95/16/EC), chap. V no. 2 (Directive 90/396/EEA amended by Directive 93/68/EEC), chap. XXI no. ...(Regulation (EU) no. 305/2011), chap. XXIV no. 1c (Directive 2006/42/EC), Annex IV no. 10 (Directive 92/42/EEC amended by Directive 93/68/EEC).

## **I. Introductory provisions**

### *Section 1. The Regulation's scope*

The provisions in this Regulation apply to products that are manufactured, marketed and distributed for use in construction works.

### *Section 2. Sale of products*

Pursuant to this Regulation, products for construction works with documented characteristics shall be marketed and distributed freely.

### *Section 3. Use of products*

Documentation proving that the products have the characteristics necessary to ensure that the completed construction works comply with the requirements stipulated by the Regulation is required before products are built into construction works.

## **II. Implementation of the Construction Products Regulation**

### *Section 4. Marketing of construction products - the Construction Products Regulation*

The EEA Agreement, Annex II chapter XXI no. ...(Regulation (EU) no. 305/2011) laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC applies as a regulation with the amendments pursuant to Annex II, Protocol 1 of the Agreement and the Agreement otherwise.

### *Section 5. Requirements relating to language in declarations of performance*

Declarations of performance, cf. Regulation (EU) no. 305/2011 Article 7 no. 4, shall be written in Norwegian or another Scandinavian language.

### *Section 6. Requirements relating to language in instructions and safety information*

Instructions and safety information, cf. Regulation (EU) no. 305/2011 Article 11 no. 6, Article 13 no. 4 and Article 14 no. 2, shall be written in Norwegian or another Scandinavian language.

### *Section 7. Designation of technical assessment bodies*

Technical assessment bodies, cf. Regulation (EU) no. 305/2011 Article 29, shall be designated by the Norwegian Building Authority.

### *Section 8. Notifying authority*

The Norwegian Building Authority is the notifying authority, cf. Regulation (EU) no. 305/2011 Article 40, and is responsible for setting up and carrying out the necessary procedures for the

assessment and notification of the bodies to be authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance for the purposes of Regulation (EU) no. 305/2011, and for the monitoring of notified bodies.

An entity must be accredited by a national accreditation body in order to be designated a notified body. Nonetheless, a notified body that is not accredited may in special circumstances be designated provided that the notifying authority can document that the body fulfils the relevant requirements.

### **III. National requirements for marketing construction products**

#### *Section 9. Scope of chapter III*

This chapter applies to construction products that are not CE marked.

Section 9, second paragraph, and sections 10, 11, 12 and 13 do not apply to construction products ordered or manufactured for a particular construction works and where the method of manufacture is not a part of the manufacturer's ordinary activities.

Section 9, second paragraph, and sections 10, 11, 12 and 13 do not apply to construction products that are not of material importance with regard to the construction works fulfilling the requirements of the Technical Regulations (TEK 10).

#### *Section 10. Marketing, distribution and use of construction products*

Manufacturers, their agents, importers and distributors shall ensure the characteristics of construction products are documented and satisfactory product documentation is available before the construction product is marketed, distributed or used in construction works.

Construction products must be accompanied by the manufacturer's contact details, the construction product's characteristics, any technical specifications upon which they are based, and, where relevant, the name of the third-party body that carried out the tasks described in section 13, the tasks that were carried out and when these were carried out.

The product documentation, and instructions and safety information, shall be written in Norwegian or another Scandinavian language.

The use of incorrect or incomplete information liable to be misleading with regard to the construction product's lawful use in construction works or with regard to the construction product's characteristics is not permitted.

#### *Section 11. Requirements for documenting product characteristics*

The following product characteristics shall be documented before a construction product can be distributed or marketed:

- a) Dimensions
- b) Fire characteristics
- c) Fire resistance
- d) Mechanical strength
- e) Thermal resistance characteristics
- f) Sound proofing capacity
- g) Airtightness
- h) Rain proofing
- i) Damp proofing
- j) Leaching of metals into drinking water
- k) Emission of polluting substances
- l) Content of hazardous substances, cf. Article 57 of the REACH Regulation (EF) no. 1907/2006.

The characteristics in the first paragraph shall nonetheless be able to be documented to the extent they are required to assess the suitability of the construction product for use in construction works, but at least one characteristic shall always be documented in marketing.

Depending on the construction product's intended use in construction works, further documentation of product characteristics may be required prior to marketing, sale and use.

Relevant calculation, testing or classification standards shall be used in the documentation of product characteristics.

#### *Section 12. Requirements for factory production control*

The manufacturing of construction products that are not CE marked shall be subject to factory production control that ensures that the construction product distributed has the characteristics specified in the product documentation.

#### *Section 13. Requirements for the use of third-party bodies*

Depending on the importance of the construction product in the construction works, a technical assessment body or an accredited certification body shall specify the construction product's fire characteristics, fire resistance, mechanical strength, thermal resistance characteristics, sound proofing capacity, airtightness, rain proofing, damp proofing and leaching of metals into drinking water.

For construction products where further documentation of product characteristics is required, cf. section 10, third paragraph, and these product characteristics are of material importance to the quality of construction works, the use of a technical assessment body or accredited certification body may be required to specify the characteristics

For construction products of importance to fire safety or the leaching of metals into drinking water of the construction works, product certification must be undertaken by an accredited certification body.

#### *Section 14. Reciprocal approval*

If a construction product may lawfully be marketed in another EEA country, the product shall be approved for marketing in Norway without new testing or verification.

Nevertheless, further documentation may be required in cases where it can be proven that the levels of protection in Norway and other EEA member states diverge. The requirement for further product documentation must be necessary and proportional, cf. Article 13 of the EEA Agreement.

### **IV. Lifting equipment and hot water boilers**

#### *Section 15. Scope of chapter IV*

This chapter applies to lifting equipment and hot water boilers, and appliances for heating rooms and hot water production.

#### *Section 16. Lifting equipment*

This provision applies to permanent lifting equipment such as lifts, lifting platforms, escalators, moving pavements, and stair lifts, with the exception of lifting equipment that is part of a manufacturing process. The following requirements apply:

- a) Lifts and their pertinent safety components shall comply with the Lifts Directive

Lifts are defined in article 24 of the Machinery Directive as: A lifting appliance serving specific levels, having a carrier moving along guides which are rigid and inclined at an angle of more than 15 degrees to the horizontal, intended for the transport of: persons, persons and goods, goods alone if the carrier is accessible, that is to say a person may enter it without difficulty,

and fitted with controls situated inside the carrier or within reach of a person inside the carrier.

Lifting appliances moving along a fixed course even where they do not move along guides which are rigid shall be considered lifts falling within the scope of the Machinery Directive.

A carrier (lift car) means a part of the lift by which persons or goods are supported in order to be lifted or lowered.

Lifting appliances, which move at a speed equal to or slower than 0.15 m/s are defined as other lifting appliances.

- b) Other lifting appliances shall comply with the Machinery Directive.
- c) As the basis of EC type-approval the conformity assessment shall be performed by a technical assessment body. The product shall be assessed against technical specifications and against relevant safety requirements in the directives.
- d) In the case of lifts and their related safety components, installers of lifts pursuant to the Lifts Directive and other lifting equipment pursuant to the Machinery Directive shall carry out a conformity assessment according to the procedure laid down in the respective directives.

#### *Section 17. Hot-water boilers fired with liquid or gaseous fuels*

Provisions apply to liquid and gaseous fuel fired hot water boilers fired with a rated output of between 4 kW and 400 kW. The provision does not apply to boilers which can use various types of fuel.

Hot water boilers shall have a declaration of conformity, or EU type approval, which includes the boiler's energy efficiency. The type approval shall be performed by a technical assessment body and assessed directly against the safety requirements described in the directive that applies to the product in question.

Type testing and assessment shall be performed in accordance with the rules stipulated in or in pursuant to, respectively:

- a) Directive 92/42/EEC on hot water boilers
- b) Directive 90/396/EEC on gas appliances
- c) Directive 93/68/EEC on the coordination of CE marking rules.

#### *Section 18. CE marking*

A CE mark shows that a product complies with technical specifications. *Technical specifications are defined as harmonised product standards published in the Official Journal of the European Union or national technical specifications regarded as conforming to the fundamental requirements and which are published in the Official Journal of the European Community.*

The following products shall have a CE mark affixed as stipulated in the products' applicable directives:

- a) lifts and their pertinent safety components that comply with fundamental requirements stipulated in the Lifts Directive
- b) lifting appliances that comply with fundamental requirements stipulated in the Machinery Directive
- c) hot water boilers that comply with fundamental requirements stipulated in the directive on hot water boilers

The CE mark shall be affixed on the product by the manufacturer or its agent.

The CE mark shall consist of the letters "CE" in the following graphic form:



If the CE mark is reduced or enlarged, the proportions appearing in the model above shall be retained.

The CE marking shall comply with the requirements stipulated in the applicable directive for the products and can include:

- a) the identity number of the body participating in the production control phase
- b) the manufacturer's name or identifying mark
- c) the last two digits of the year the marking was affixed and, if necessary, the product certificate number
- d) declared product characteristics, classification and similar as stated in directives applying to the product.

The various parts of which the CE mark consists shall insofar as possible be of the same height and not less than 5 mm.

Information that is necessary from the standpoint of safety shall be in Norwegian.

#### *Section 19. Technical assessment bodies*

A technical assessment body shall declare that construction products comply with their stated technical specifications.

A technical assessment body shall be designated by the Norwegian Building Authority pursuant to the provisions of the Act of 16 June 1994 No. 20 concerning technical assessment bodies.

An entity must be accredited by a national accreditation body in order to be designated a technical assessment body. Nonetheless, a notified body that is not accredited may in special circumstances be designated provided that the designating authority can document that the body satisfies the relevant requirements.

## **V. Common provisions**

#### *Section 20. Surveillance authority*

The Norwegian Building Authority is the surveillance authority for construction products.

The Ministry of Local Government and Regional Development is the appeals body for decisions taken by the surveillance authority.

#### *Section 21. Surveillance of construction products*

The surveillance authority may require the submission of product documentation and other information that is available in connection with the marketing and use of construction products, including documentation of attestations of conformity and testing, and calculation data used in the preparation of product documentation.

The surveillance authority shall be granted access to products, rooms, areas or other places deemed necessary to carry out an assessment of the product.

If there are grounds for suspecting that a construction product that is being marketed, distributed or used lacks satisfactory product documentation, including incomplete or incorrect documentation, or where the product could pose a risk to health, safety or the environment, the building authorities and other public authorities that handles projects pursuant to the legislation

relating to the sector covered by section 29-7 of the Planning and Building Act shall report the situation to the surveillance authority.

If the manufacturer or its agent recalls a product that lacks satisfactory product documentation, including incomplete or incorrect documentation, or where the product could pose a risk to health, safety or the environment, from the market, a report shall be submitted to the surveillance authority.

#### *Section 22. Reactions from the surveillance authority*

In the event of violations of the rules in the Regulation's chapter II, the means in Regulation (EU) no. 305/2011), Chapter XIII shall be used.

In the event of violations of the rules in the Regulation's chapters II and IV, the following means shall be used:

- a) If the surveillance authority finds that construction products do not have satisfactory product documentation pursuant to the Regulation, including incomplete or incorrect documentation, it may issue an administrative order to cease marketing, sale and use of the product until satisfactory product documentation is available.
- b) The surveillance authority may issue an administrative order to recall a product as described in the first paragraph or may require other actions to ensure the product is brought into compliance with the rules in the Regulation.
- c) In cases where normal or expected use of construction products may pose a serious risk to safety, human health or the environment, the surveillance authority may temporarily suspend marketing, sale and use of products in order to perform necessary inspections and safety assessments.

The surveillance authority may impose coercive fines pursuant to section 32-5 of the Planning and Building Act in the event of a failure to comply with an administrative order issued pursuant to the first or second paragraph.

#### *Section 23. Violations fines – Size of fines*

The market surveillance authority can according to the Planning and Building Act section 32-8 impose fines up to the stipulated limits for willful or negligent violations if construction products are marketed, distributed or used without satisfactory product documentation pursuant to the Regulation.

The market surveillance authority can impose violations fines up to NOK 50.000 for minor violations and up to NOK 100.000 for serious violations of this regulation.

Higher violations fines can be imposed than those mentioned in the second paragraph for very serious violation. When considering the size of the violation fines, the market surveillance authority shall consider the facts mentioned in section 24.

The violation fines imposed cannot, regardless of the circumstances, exceed NOK 200,000 neither for one violation nor in total for more than one violation.

#### *Section 24. Setting violation fines*

When considering the size of the violation fines, the market surveillance authority can take into consideration to the following facts:

- How serious the violation is,
- Whether or not any of the administrative orders,

- Whether or not the violation contributes to a financial gain,
- Whether or not the violations results in gaining a markedly higher financial value,
- Whether or not the violation was committed with the intent to profit.
- Whether or not the violations fine will have an unreasonable effect given the offender's financial situation.

*Section 25. Fees*

The surveillance authority may require the entity that manufactures or imports a product to partly or fully cover the costs of testing and inspections that is deemed necessary for the market surveillance activity for the product. The payment of such costs is enforceable by execution proceedings.

*Section 26. Entry into force*

This Regulation enters into force on 1 January 2014.

From and including the same date, the Regulation of 26 March 2010 no. 489, chapter 3 shall be repealed.

From and including the same date, the following amendment is made to the Regulation of 26 March 2010 no. 488 relating to building applications, section 12-3 letter a: "chapter 2 of the Technical Regulations" shall be changed to "Regulation relating to the marketing of products for construction works".

Below is provided the EEA Agreement's Annex II chapter XXI no. ...(Regulation (EU) no. 305/2011) as this part of the EEA Agreement with those amendments and addenda that follow from the EEA adaptation of the Commission Regulation pursuant to Protocol 1, etc. of the Agreement as interpreted by the Ministry of Local Government and Regional Development.

*Click here to view Regulation (EU) no. 305/2011: The Regulation's text will be inserted here when the Regulation is published in Lovdata.*