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## **GUIDANCE PAPER J**

*(concerning the Construction Products Directive – 89/106/EEC)*

# **TRANSITIONAL ARRANGEMENTS UNDER THE CONSTRUCTION PRODUCTS DIRECTIVE**

(Revision Sep 2002)

*(originally issued following consultation of the Standing Committee on Construction at the 49th meeting on 28/29 March 2000, as document CONSTRUCT 99/382 Rev.1*

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### **Preface**

*Article 20 of the Construction Products Directive (89/106/EEC) states that the Standing Committee may, "at the request of its Chairman or a Member State, examine any question posed by the implementation and the practical application of this Directive".*

*In order to ensure as far as possible a common understanding between the Commission and the Member States as well as among the Member States themselves as to how the Directive will operate, the competent services of the Commission, assuming the chair and secretariat of the Standing Committee, may issue a series of **Guidance Papers** dealing with specific matters related to the implementation, practical implementation and application of the Directive.*

***These papers are not legal interpretations of the Directive.***

***They are not judicially binding and they do not modify or amend the Directive in any way. Where procedures are dealt with, this does not in principle exclude other procedures that may equally satisfy the Directive.***

***They will be primarily of interest and use to those involved in giving effect to the Directive, from a legal, technical and administrative standpoint.***

***They may be further elaborated, amended or withdrawn by the same procedure leading to their issue.***

# TRANSITIONAL ARRANGEMENTS UNDER THE CONSTRUCTION PRODUCTS DIRECTIVE

## 1. Scope

- 1.1 This Guidance Paper considers the issue of transitional arrangements within the context of the implementation of Council Directive 89/106/EEC<sup>1</sup> (hereafter referred to as the Construction Products Directive or CPD), as amended by Council Directive 93/68/EC<sup>2</sup>.
- 1.2 The Guidance Paper is intended for technical specification writers (CEN/CENELEC and EOTA members), regulators and enforcement authorities within the European Economic Area (EEA), notified bodies and industry.
- 1.3 In the context of this Guidance Paper the term “transitional arrangements” refers to the time period during which national and European technical specifications are both available for use by producers placing their products on the EEA market – the period of co-existence. References to Member States in the document also apply to the EEA EFTA States. References to CEN also apply to CENELEC. References to national provisions apply to laws, regulations and administrative provisions of the Member States.
- 1.4 The guidance provided in this document provides a framework within which the Commission and the Member States will bring into use the technical specifications produced in support of the CPD. All aspects of the system’s functioning will be closely monitored by the Commission and the guidance reviewed in the light of experience.

## 2. Introduction

- 2.1 The main objective of a period of co-existence is to allow producers and notified bodies to adapt gradually to the conformity assessment procedures and the essential requirements set up by a directive. Producers, importers and distributors also need to be given time to exercise any rights they have acquired under the rules predating the entry into force of the new regime (e.g. to sell their stocks of products manufactured in line with the national rules previously in force).
- 2.2 Unlike most other “new approach” directives, the CPD does not have an explicit, dated transition period during which producers have the choice between complying with the directive or with national rules. Instead, transitional arrangements are governed by Article 6(2), which states :

*“Member States shall, however, allow products not covered by Article 4(2) to be placed on the market in their territory if they satisfy national provisions consistent with the Treaty until the European technical specifications referred to in Chapters II and III provide otherwise.”*

- 2.3 The interpretation of this article is that each European technical specification will make provisions for a period of co-existence covering the products falling within its scope. It also follows from Article 6(2) that once this period of co-existence is over for a given technical specification, Member States can no longer allow those products satisfying pre-existing national provisions to continue to be placed on the EEA market. All

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<sup>1</sup> OJ L 40, 11.2.1989

<sup>2</sup> OJ L 220, 30.8.1993

products falling within the scope of the technical specification must thereafter comply with all of the provisions of the CPD.

### 3. The case of European product standards (hEN)

#### 3.1 Key events/ dates (see Annex 1)

Event	Description	Action
<b>Date of Availability (DAV) of hEN<sup>3</sup></b>	The date when the definitive text in the official CEN language versions of a ratified hEN is distributed by the CEN/MC. CEN rules require its members to announce the hEN within 3 months and publish (transpose) it within 6 months.	<b>CEN / NSBs</b>
<b>Notification of the hEN to the EC</b>	Official notification by CEN, by letter to the EC, that the hEN fulfils the conditions necessary for presumption of conformity with the provisions of Articles 2 and 3 of the CPD. The Commission will inform the Member States.	<b>CEN / EC</b>
<b>Publication of the hEN reference in the OJEC</b>	The Commission shall publish the reference of the hEN in the “C” series of the Official Journal of the European Communities.	<b>EC</b>
<b>Date of Applicability</b>	The publication notice in the OJEC will include the date of applicability of the standard as an hEN according to article 4(2)a of the Directive 89/106/EEC. This will, by default, be <u>nine months</u> after the DAV of the hEN, unless otherwise agreed by the SCC.	<b>EC</b>
<b>Publication of the hEN reference by national authorities</b>	Member States have an obligation to officially publish the reference to the national standard transposing the hEN, although this is not a precondition for the applicability of the standard. The form of publication will be according to national rules.	<b>MS</b>
<b>Date of Withdrawal (DOW) of national standards</b>	The latest date by which national standards conflicting with the hEN have to be withdrawn by CEN members. The date shall be stated in the foreword of every definitive hEN and shall be published in the OJEC along with the reference. Member States shall give legal validity to this date in a manner appropriate to their national legal system. This will be , by default, <u>one year</u> after the date of applicability of the hEN, unless otherwise agreed by SCC).	<b>EC/ CEN / NSBs</b>
<b>Date of withdrawal of all conflicting national provisions</b>	At the DOW associated with the hEN, Member States have to terminate the validity of all conflicting national provisions allowing products to be placed on the market.	<b>MS</b>

#### 3.2 Start of the period of co-existence

3.1 Publication of the reference of a hEN in the OJEC signifies that the standard fulfils the conditions necessary for presumption of conformity with the provisions of Articles 2 and 3 of the CPD. Article 4(2)(a) provides that from publication in the OJEC (i.e. the date of applicability noted in the publication), the hEN may be used as the basis for the

<sup>3</sup> This may refer to a single product standard or a coherent package of related product standards. Note that all of the supporting standards needed to apply an hEN must also be available before the co-existence period can begin.

CE marking of construction products falling within its scope, provided that it has already been transposed by at least one EU CEN member<sup>4</sup>. Article 6(1) obliges Member States not to impede the free movement, placing on the market or use in their territory of products which satisfy the provisions of the CPD. These two articles together thus provide the legal basis for the commencement of the period of co-existence for the hEN in question.

- 3.2 Member States have an obligation to officially publish the reference to the national standard transposing the hEN (Article 4.2.a), although this is not a precondition for the standard to be used for the purposes of CE marking. In principle, the obligation on Member States to publish this reference arises as soon as the hEN becomes applicable. Failure to publish would constitute an infringement of European law, unless a procedure is initiated against the standard under the safeguard clause (Article 5.1). Assuming the latter is not the case, Member States' national provisions must also have been adapted/ approximated to provide for the use of hENs and CE marked products in parallel with products complying with the existing national provisions.
- 3.3 As the transposition of the CPD in the Member States will have already established the framework for the acceptance and use of CE marked products, only product-specific provisions will need to be adapted/ approximated (e.g. to establish what the CE marked product is equivalent to in the existing provisions). This activity will include the specification of any classes and levels of performance that are to be observed on the national territory for given intended uses of the products (see EC Guidance Paper E for more information on classes and levels). Such changes to national provisions do not have to be notified to the Commission under the procedure established by Directive 98/34/EC<sup>5</sup>, unless there is a change in the level of requirement involved. They do, however, have to be communicated to the Commission (Article 22.2 of the CPD).
- 3.4 In order to overcome any practical problems associated with different dates of transposition and publication in the Member States, it is proposed that the publication of the reference to the hEN in the OJEC shall establish the date of applicability of the hEN, which, by default, will be nine months after the Date of Availability of the standard. In specific cases, this period may be shortened or lengthened, if such a change can be justified<sup>6</sup> (the SCC will be consulted on a case by case basis). This delay in the date of applicability will provide time for the Member States to adapt/ approximate their national provisions and confirm the notification of approved bodies. It will also enable producers to start the process leading to CE marking, if they so wish. Figure 1 gives an example of a notification for the OJEC.

Figure 1: Example of the notification in the OJEC

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<sup>4</sup> Since a European standard has to be transposed in a uniform way by the NSBs, a manufacturer may choose any of the national standards transposing it.

<sup>5</sup> OJ L 204, 21.07.1998

<sup>6</sup> The necessary changes in national provisions will vary according to the type of product involved and the national legal framework. Changes in provisions for products may also necessitate modifications to related provisions on the design and execution of works (e.g. design codes, workmanship standards etc).

ESO*	Reference	Title of the standard	Date of Applicability of the standard as a harmonised European standard according to article 4.2.a of Directive 89/106/EEC.	Date of the end of the co-existence period**
CEN	EN 197-1	Cement – Part 1: Composition, specifications and conformity criteria for common cements	1 April 2001	1 April 2002

(\*) ESO: (European standardisation organisation):

- CEN: Rue de Stassart/Stassartstraat 36, B-1050 Brussels, tel. (32-2) 550 08 11, fax (32-2) 550 08 19 ([www.cenorm.be](http://www.cenorm.be));
- Cenelec: Rue de Stassart/Stassartstraat 36, B-1050 Brussels, tel. (32-2) 519 68 71, fax (32-2) 519 69 19 ([www.cenelec.be](http://www.cenelec.be));
- ETSI: BP 152, F-06561 Valbonne Cedex, tel. (33-4) 92 94 42 12, fax (33-4) 93 65 47 16 ([www.etsi.org](http://www.etsi.org)).

(\*\*) The date of the end of the co-existence period is the same as the date of withdrawal of conflicting national technical specifications, after which presumption of conformity must be based upon harmonised European specifications. (harmonised standards or European Technical Approval).

3.5 During the period of co-existence, which will thus start on the date of applicability established in the publication in the OJEC, producers are free to choose whether to continue to apply the existing national systems, or to affix the CE marking according to the CPD (or both if the market situation so requires)<sup>7</sup>. Member States must permit products satisfying either set of provisions to be placed on the market and used on their territory<sup>8</sup>. Refusal to accept CE marked products onto the national market would constitute an infringement of European law, unless a safeguard procedure is initiated against the hEN (Article 5.1) or against the product itself (Article 21).

3.6 It follows that Member States are obliged to maintain their existing national systems as an option for producers until the end of the period of co-existence (Article 6.2 uses the word “*shall*”). The national standards bodies should also continue to make available copies of national standards applicable under the existing national system, even if they have become obsolete through withdrawal before the Date of Withdrawal specified<sup>9</sup>.

3.7 During the period of co-existence, Member States should not make changes to the national system in force which would modify product requirements or the conformity assessment procedure or which would otherwise have an effect on acquired rights. If any such changes are made, in accordance with the EC Treaty, they must be notified at the draft stage, as required by Council Directive 98/34/EC, so that the Commission and other Member States may have an opportunity to submit comments on the proposed amendments.

### ***3.3 End of the period of co-existence***

3.8 The Date of Withdrawal (DOW) of the national standards conflicting with the hEN marks the end of the period of co-existence for products falling within the scope of the hEN. Whilst CEN rules on the Date of Withdrawal only place an obligation on CEN members, Article 6(2) of the CPD makes use of this date to place a more wide-ranging obligation on the Member States. The Date of Withdrawal shall be stated in the

<sup>7</sup> Note also that Article 4(4) of the CPD, which addresses the partial or non-use of a hEN by a producer for products whose attestation of conformity falls under system 3 or 4, also comes into play from the start of the period of co-existence. Further guidance on this procedure is being developed.

<sup>8</sup> See also EC Guidance Paper E regarding the use of products in the context of national provisions on works.

<sup>9</sup> Member States may need to take action to ensure that this objective is achieved.

foreword of each definitive hEN<sup>10</sup> and shall be published in the OJEC along with the reference to the harmonised standard. However, the Member States will have to give legal validity to this date on their territory in a manner appropriate to their national legal system. As the Date of Withdrawal effectively determines the conditions under which products may be placed on the EEA market, the legal competence for its determination lies with the Commission, in consultation with the Member States (SCC), rather than with CEN.

- 3.9 It is proposed that the default Date of Withdrawal (i.e. the duration of the period of co-existence) for hENs shall be one year after the date of availability established in the publication of the reference in the OJEC (i.e. normally 21 months after the Date of Availability of the hEN), unless it can be demonstrated to the Commission (e.g. by the CEN TC concerned or the SCC) that this length of time is insufficient for the products in question <sup>11</sup>. In such cases the Commission, after consulting the Member States, will inform CEN of the date to be applied.
- 3.10 Once the period of co-existence has ended, products falling within the scope of the hEN must comply with all of the provisions of the CPD in order to be placed on the EEA market. Products manufactured in line with the pre-existing national provisions may no longer be placed on the EEA market (Article 6.2). Consequently, products may no longer be manufactured according to national (non-EN) standards, national technical approvals, or other type approvals or certificates issued under the previous system (except for use outside the EEA). **Note** : the validity of a pre-existing national approval or certificate is thus terminated at the end of the period of co-existence, whatever its original lifetime (legal basis : Art. 6.2 of the CPD). However, given the nature of the construction industry, with sometimes long project lead times, this principle should be interpreted with some flexibility by the Member States.
- 3.11 It follows that the Member States have to take action to terminate the validity of the national system previously in force for the placing on the market of the products in question (e.g. to repeal the relevant national laws, regulations and administrative provisions). As a result, the national measures implementing the CPD and the hEN will be the only mandatory rules in force for the products concerned in every Member State.
- 3.12 However, as the CPD does not have specific provisions regarding the “putting into service” of construction products, national rules apply to the case of products already placed on the EEA market under the old system prior to the end of the period of co-existence. Member States may authorise the continued use of such products for a reasonable period of time. Of course, this only applies to individual products and not to product types or ranges.
- 3.13 The Commission will track the implementation of the harmonised standards in all Member States using the CPD scoreboard, published on the internet. <http://europa.eu.int/comm/enterprise/construction/internal/score/scorehome.htm>

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<sup>10</sup> If this is missing, for whatever reason, then other provisions will have to be made.

<sup>11</sup> Note that an extended period of co-existence could place local producers, complying with a less onerous national standard, in an advantageous position with respect to competitors complying with the European standard. However, there may be sound technical and/or economic arguments for a longer period of co-existence (e.g. capacity of the notified bodies, time required for re-testing, product adaptation etc).

***Summary : Harmonised European product standards – see Annex 1***

<p><b>Start of co-existence period</b> <b>(Date of Applicability)</b></p>	<p><b><i>The co-existence period will begin on the Date of Applicability as given in the published reference to the hEN in the OJEC.</i></b> Producers may now affix the CE marking. By this time, MSs must therefore be in a position to accept the placing on the market and use of CE marked products alongside those produced according to pre-existing national provisions (e.g. official publication of the reference to transposed hEN, adaptation of national provisions etc).</p>
<p><b>During co-existence period</b></p>	<p>MS must accept the placing on the market and use of CE marked products alongside products conforming with pre-existing national provisions. Producers have a free choice to apply the European and/ or national systems.</p>
<p><b>End of co-existence period</b></p>	<p><b><i>Date of Withdrawal of conflicting national standards.</i></b> End of validity of the pre-existing national provisions. Products placed on the EEA market must comply with all of the provisions of the CPD. Products manufactured in line with the previous national systems in force may no longer be placed on the EEA market.</p>

#### 4. The case of European technical approvals (ETA) with guideline (ETAG)

##### 4.1 Preamble

- 4.1 Although an ETAG is not a technical specification as defined by the CPD (hENs and ETAs only), it does have the character of a “*technical specification*” as defined by Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations – “*a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.*”.
- 4.2 An ETAG serves as the basis for the delivery of ETAs, which themselves have to fulfil the conditions necessary for presumption of conformity with the provisions of Articles 2 and 3 of the CPD. As such, an ETAG can be considered to be an instrument for the European harmonisation/ approximation of requirements on construction products. The maintenance of conflicting national requirements is therefore incompatible with EC law and they must be withdrawn within a reasonable period of time.
- 4.3 For the sole purposes of Article 6(2) of the CPD, the ETAG will therefore be accorded the status of a technical specification<sup>12</sup>. In principle, then, the treatment of ETAGs should be analogous to that of harmonised European standards – Member States need time to adapt their national provisions to accept CE marked products and producers need a period of co-existence to prepare for the ultimate withdrawal of conflicting national provisions.

##### 4.2 Key events/ dates (see Annex 2)

Event	Description	Action
<b>Date of availability of ETAG</b>	The date when the definitive text of the ETAG in English is distributed by the Commission to the Member States, with a covering letter of notification. The ETAG officially exists from this date.	<b>EOTA / EC</b>
<b>Publication of the ETAG in Member States</b>	Member States have an obligation to publish the ETAG, although this is not a precondition for its applicability on the European market. The form of publication will be according to national rules. ( <i>A common date, stated in each ETAG, will be assumed for the purposes of transition. Proposal : by default <u>nine months</u> after the availability of the ETAG, unless otherwise agreed.</i> )	<b>MS</b>
<b>Date of withdrawal of conflicting national provisions</b>	A common date to be stated in each ETAG. ( <i>Proposal : by default <u>two years</u> after the start of the co-existence period, unless otherwise agreed.</i> )	<b>MS</b>

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<sup>12</sup> This interpretation will allow orderly transitional arrangements to be established in relation to ETAGs, but certainly does not imply that ETAGs can be used as technical specifications generally, (e.g.) as a direct basis for the CE marking of construction products.

### *4.3 Start of the period of co-existence*

- 4.4 Once an ETAG has been notified to the Member States by the Commission, by letter, a producer may request an ETA from one of the notified approval bodies, although there is not yet any obligation to do so. In principle, the CE marking of products with an ETA is also possible at this time, but Member States have to be given time to adapt/ approximate their national provisions and confirm the notification of approved bodies for attestation of conformity purposes.
- 4.5 As no time period for publication is specified in the CPD, the obligation to publish arises immediately upon receipt of the EC letter. However, the Commission will afford the Member States a reasonable period within which to act. To prevent possible market distortions arising from different dates of publication across Europe, it is reasonable to fix a date by which a given ETAG must be published. This date shall be set by the Commission in consultation with the SCC prior to the ETAG being formally adopted. A default date of nine months has been taken as a base. The agreed date shall appear in the definitive version of the ETAG notified to the Member States by the Commission<sup>13</sup>. Failure to publish the ETAG by a Member State would constitute an infringement of European law. The Commission has the intention to publish the co-existence periods for ETAGs in the OJEC, in the same way as for harmonised product standards, see figure 2.
- 4.6 The period of co-existence will therefore start on the date specified in the ETAG, rather than on its date of availability, as long as all of the required supporting documents (test methods etc) are also available. By this time, the Member States' national provisions must have been adapted/ approximated to provide for the use of ETAs and CE marked products in parallel with products complying with the existing national provisions (see chapter on hENs for more detail). Producers may seek an ETA on the basis of the ETAG and carry out the procedures leading to CE marking before the start of the period of co-existence.
- 4.7 During the period of co-existence producers are free to choose whether to continue to apply the existing national systems or to affix the CE marking according to the CPD. Member States must permit products satisfying either set of provisions to be placed on the market and used on their territory. Refusal to accept CE marked products onto the national market would constitute an infringement of European law, unless a safeguard procedure is initiated against the ETA (Article 5.1) or against the product itself (Article 21). National technical approvals, or similar instruments, may continue to be issued right up until the end of the period of co-existence, although their validity will necessarily be limited in time (i.e. only until the end of the period of co-existence).

Figure 2: Example of the notification for ETAGs in the OJEC

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<sup>13</sup> If this is missing, for whatever reason, then other provisions will have to be made.

EOTA <sup>(1)</sup> Reference	Title of the ETA Guideline	Date of Applicability <sup>(2)</sup>	Date of the end of the co-existence period <sup>(3)</sup>
ETAG 001 - 1	Metal Anchors for use in Concrete Part 1: Anchors in general	31.07.2000	31.07.2002
ETAG 001 - 2	Metal Anchors for use in Concrete Part 2: Torque-controlled expansion anchors	31.07.2000	31.07.2002
ETAG 001 - 3	Metal Anchors for use in Concrete Part 3: Undercut anchors	31.07.2000	31.07.2002
ETAG 001 - 4	Metal Anchors for use in Concrete Part 4: Bonded Deformation-controlled expansion anchors	31.07.2000	31.07.2002

<sup>(1)</sup> EOTA: European Organisation for Technical Approvals:

Avenue des Arts 40 Kunstlaan, B - 1040 Brussels Tel.: +32 (0)2 502.69.00; Fax: +32 (0)2 502.38.14 E-Mail: [info@eota.be](mailto:info@eota.be) ([www.eota.be](http://www.eota.be))

<sup>(2)</sup> Date of Applicability of the ETA Guideline as a harmonised European Specification according to article 4(2)(b) of Directive 89/106/EEC.

<sup>(3)</sup> The date of the end of the co-existence period is the same as the date of withdrawal of conflicting national technical specifications, after which presumption of conformity must be based upon harmonised European specifications. (harmonised standards or European Technical Approvals). The translations of the titles given above have been provided by EOTA and represent the “official” language versions given by the National members of EOTA.

### 4.3 End of the period of co-existence

- 4.8 Article 6(2) requires that the technical specifications provide for a period of co-existence. On the basis of the above arguments, this concept can be extended to ETAGs. Thus, each ETAG shall specify the date of withdrawal of conflicting national provisions<sup>13</sup>. However, the Member States will have to give legal validity to this date on their territory in a manner appropriate to their national legal system. As this date of withdrawal effectively determines the conditions under which products may be placed on the EEA market, the legal competence for its determination lies with the Commission, in consultation with the Member States (SCC), rather than with EOTA.
- 4.9 The default date of withdrawal (i.e. the length of the period of co-existence) for each ETAG shall be two years after the start of the period of co-existence (i.e. 33 months after the date of availability of the ETAG), unless it can be demonstrated to the Commission (e.g. by the EOTA WG concerned or the SCC) that this length of time is insufficient for the products in question. In such cases the Commission, after consulting the Member States, will inform EOTA of the date to be applied.
- 4.10 Once the period of co-existence has ended, products falling within the scope of the ETAG must comply with all of the provisions of the CPD in order to be placed on the EEA market<sup>14</sup>. Products manufactured in line with the pre-existing national provisions may no longer be placed on the EEA market (Article 6.2). Consequently, products may no longer be manufactured according to national (non-EN) standards, national technical approvals, or other type approvals or certificates issued under the previous system (except for use outside the EEA). (*see also paragraph 3.10*)
- 4.11 It follows that the Member States have to take action to terminate the validity of the national system previously in force for the placing on the market of the products in question (e.g. to repeal the relevant national laws, regulations and administrative

<sup>14</sup> Note that if the ETAG concerns kits, then the kit is the product referred to here. Components of the kit may still be placed on the market according to national provisions unless they themselves are covered by a technical specification for which the period of co-existence has ended.

provisions). As a result, the national measures implementing the CPD and the ETAG will be the only mandatory rules in force for the products concerned in every Member State.

4.12 However, as the CPD does not have specific provisions regarding the “putting into service” of construction products, national rules apply to the case of products already placed on the EEA market under the old system prior to the end of the period of co-existence. Member States may authorise the continued use of such products for a reasonable period of time. Of course, this dispensation only applies to individual products and not product types or ranges.

4.13 The Commission will track the implementation of the ETAGs in all Member States using the CPD scoreboard, published on the internet. <http://europa.eu.int/comm/enterprise/construction/internal/score/scorehome.htm>

**Summary : European technical approvals with guideline -see Annex 2**

<b>Start of co-existence period</b>	<b>Common date to be fixed in the ETAG.</b> Producers may now affix the CE marking on the basis of an ETA granted in accordance with the ETAG. By this time, MSs must therefore be in a position to accept the placing on the market and use of CE marked products alongside those produced according to pre-existing national provisions (e.g. official publication of the ETAG, adaptation of national provisions etc).
<b>During co-existence period</b>	MS must accept the placing on the market and use of CE marked products alongside products conforming with pre-existing national provisions. Producers have a free choice to apply the European and/ or national systems.
<b>End of co-existence period</b>	<b>Date of withdrawal of conflicting national provisions (fixed in ETAG).</b> End of validity of the pre-existing national provisions. Products placed on the EEA market must comply with all of the provisions of the CPD. Products manufactured in line with the previous national systems in force may no longer be placed on the EEA market.

**5. The case of European technical approvals without guideline**

5.1 European technical approvals granted according to the procedure laid down in Article 9(2) of the CPD apply to one manufacturer for one product type and do not impose any specific obligations on other producers. The producer applying for an ETA via this route is effectively voluntarily moving to the European system.

5.2 Due to the individuality of products using this route to CE marking, it is not envisaged to specify transitional arrangements for these cases, unless a particular problem is identified by the Member States or EOTA. If the need for an ETA Guideline or European standard is subsequently identified, then the relevant transitional arrangements identified above will apply.

5.3 Member States have the same obligations regarding their acceptance of the placing on the market and use of these CE marked products as for products following any other route to CE marking (see sections 3 and 4).

**6. The case of products not covered by European technical specifications**

- 6.1 National provisions apply (Art. 6.2). CE marking is not permitted for such products. The CPD does not impose any obligation on producers to request an ETA within a specific time period.

## **7. The case of harmonised European fire standards and classification systems**

### ***7.1 Preamble***

- 7.1 The existence of national fire classification systems represents a technical barrier to trade, irrespective of whether European product specifications are available or not. Once a legal instrument for European harmonisation/ approximation exists, the maintenance of conflicting national systems is incompatible with EC law. The national fire classification systems will therefore have to be withdrawn within a reasonable period of time. This applies not only to construction products, but also to construction works or parts thereof, where the requirements also have an influence on the Internal Market (e.g. resistance to fire for assemblies not covered by product specifications). However, it should be noted that the final withdrawal of the national fire classification systems is not governed by Article 6(2) of the CPD, as complete European product specifications are not involved.
- 7.2 The fire classification systems for reaction to fire<sup>15</sup> and resistance to fire<sup>16</sup> are now available and in the coming months several European product specifications will be ready and waiting to make use of them. The classification systems must therefore be brought into use as soon as possible for products covered by such technical specifications. For other products, producers should also be given the option of using the Euro-classifications at the earliest practical opportunity.
- 7.3 The final withdrawal of national systems should normally only occur once a significant proportion of European product specifications have been delivered and their co-existence periods ended. Nevertheless, to eliminate the problems associated with the maintenance of two parallel systems, it would be in the interests of Member States to definitively adopt the European classification systems as the sole national system at an earlier date. This would also serve to remove technical barriers to trade, in line with Articles 28/30 of the EC Treaty.

### ***7.2 Key events/ dates***

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<sup>15</sup> Commission Decision 2000/147/EC: Commission decision of 8<sup>th</sup> February 2000 implementing Council Directive 89/106/EEC as regards the classification of the reaction to fire performance of construction products.

<sup>16</sup> Commission Decision 2000/367/EC: Commission decision of 3<sup>rd</sup> May 2000 implementing Council Directive 89/106/EEC as regards the classification of the resistance to fire performance of construction products, construction works and parts thereof.

<b>Event</b>	<b>Description</b>	<b>Action</b>
<b>Date of Availability of fire classification EN package (fEN)<sup>17</sup></b>	The date when the definitive text in the official CEN language versions of a ratified fEN is distributed by the CEN/MC. CEN rules require its members to announce the fEN within 3 months and publish (transpose) it within 6 months.	<b>CEN / NSBs</b>
<b>Publication of the EC Decision in the OJEC</b>	The Commission shall publish the Decisions establishing the European classification systems in the “L” series of the Official Journal of the European Communities.	<b>EC</b>
<b>Entry into force of the EC Decision</b>	This occurs upon notification of the Decision to those to whom it is addressed (the Member States). However, the Decision will not be applicable until the European fire standards necessary to implement it have been made available.	<b>EC/ MS</b>
<b>Date of Withdrawal of national standards</b>	The latest date by which national standards conflicting with the fEN have to be withdrawn by CEN members. The date shall be stated in the foreword of every definitive fEN. Withdrawal dates for the classification EN and related test ENs should coincide wherever possible.	<b>CEN / NSBs</b>
<b>Withdrawal of conflicting national classification systems</b>	A date to be determined by the Commission in consultation with the Member States. May be different for reaction and resistance to fire.	<b>EC / MS</b>

### ***7.3 Start of the period of co-existence***

7.4 Once the relevant Commission Decision has been notified to the Member States<sup>18</sup> and entered into force, a European classification system becomes operational with the availability of the complete package of European fire standards necessary to implement it (i.e. the classification standard and related test methods). After this time, Member States have an obligation to accept onto their market CE marked products that incorporate a Euro-classification for one or more fire characteristics. In addition, they must not impede the use of such products (Article 6.1).

7.5 The period of co-existence therefore effectively starts on the Date of Availability of the final European standard of the package required to implement a given Decision<sup>19</sup>. By this time, Member States’ national provisions must have been adapted to provide for the use of CE marked products with European fire classifications in parallel with products complying with existing national provisions.

7.6 For products not covered by European technical specifications (hENs and ETAs) for which the associated period of co-existence has ended (see chapters 3 and 4), producers may also choose to apply and use the European fire classification systems independently. However, where the European fEN package does not provide sufficient information for a product to be correctly classified (e.g. because detailed mounting and fixing instructions are to be provided in a European product specification), then it will

<sup>17</sup> Classification EN and all supporting fire test ENs. Note that the obligations on CEN members arise for each individual EN, but this section considers the fEN package as a whole.

<sup>18</sup> Note that publication of the Decision in the OJEC is not obligatory (EC Treaty), but is normally done shortly after its notification.

<sup>19</sup> Since European standards have to be transposed in a uniform way and neither the CPD or the classification Decisions refer to transposed standards, it is not necessary for the fEN package to have been transposed into corresponding national standards.

not be possible to use the European system, for regulatory purposes, until that information is available in a legally acceptable form.

- 7.7 In principle, the EC Treaty obliges Member States to accept the use of the European classification systems in place of the existing national systems, even in the absence of CE marking. Member States must therefore make provision for the parallel use of European and national classifications for all products within a reasonable period of time.
- 7.8 When a producer chooses to use the European classification system, a Member State may not request an additional national classification for the same end-use application. Conversely, during the period of co-existence for fire classification systems, a producer cannot be obliged to supply a European classification, except for CE marking purposes.

#### ***7.4 CE marking requirements***

- 7.9 Once the co-existence period for the Euro-classification systems has started, the CE marking of construction products with a fire-related requirement becomes possible, but not compulsory, once the co-existence period for the corresponding European product specification has also begun. For the purposes of CE marking, use of the European classes is obligatory.
- 7.10 Once the period of co-existence associated with the European product specification in question has ended, use of the European classes becomes obligatory for CE marking products falling within its scope (assuming that the characteristic is relevant for the product in question). The continued use of national tests and classifications will thus no longer be permitted for such products placed on the EEA market (i.e. in these cases, the end of the transitional arrangements for fire testing and classification is governed by the ending of the co-existence period associated with the European product specification). Until the end of the co-existence period laid down for the product specification, producers will have a choice to continue to use the national system, whether or not the conflicting national standards have become obsolete through withdrawal.

#### ***7.5 Withdrawal of national fire standards***

- 7.11 The Date of Withdrawal of national fire standards conflicting with the European standards is governed by CEN rules. The minimum period allowed after the date of availability of the EN is 6 months, whilst the maximum should not normally exceed 3 years.
- 7.12 However, the withdrawal of conflicting national test standards is not a determining step in the implementation of the European fire classification systems<sup>20</sup>. The periods of co-existence will be governed by CE marking obligations and the final withdrawal of national classification systems rather than the withdrawal of national fire test standards. To fulfil the objectives of any transitional period, Member States should maintain the existing national systems throughout the period, even if this means making reference to national standards that have become obsolete through prior withdrawal<sup>21</sup>. Fire test certificates according to the national systems may therefore remain valid until either an

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<sup>20</sup> In any case, it is not always clear if a national standard can be considered to be conflicting if it concerns a different test method to the European one – e.g. reaction to fire tests. They may also be required for non-construction products.

<sup>21</sup> National Standards Bodies may withdraw the conflicting standards at any time up until the Date of Withdrawal, but this does not prevent Member States from maintaining references to these standards.

obligation to CE mark a product arises or the final date of withdrawal of national classification systems has been reached (see below). Testing to national systems may also be permitted until the same time.

7.13 The fixing of the Dates of Withdrawal for the fENs is a matter for CEN, in consultation with the Commission and the Member States. The agreed dates will be stated in the foreword of every definitive fEN. For practical reasons the dates of withdrawal associated with a classification package should be co-ordinated.

**7.6 End of the period of co-existence** <sup>22</sup>

7.14 The final date of withdrawal of the national fire classification systems will be determined by the Commission in consultation with the Member States, taking account of the needs and concerns of industry. The time to withdrawal should normally be sufficiently long so that a large proportion of European product specifications have been delivered and their periods of co-existence ended (i.e. the use of the Euro-classification systems will anyway be required for the majority of construction products). However, if most Member States have already voluntarily moved definitively to the European system, then this time could be shortened (see para 7.3).

7.15 It is proposed that the definitive date by which the *national classification systems* shall be fully withdrawn be reviewed in the future in the light of progress with technical harmonisation for construction products. Current indications are that a period of between 5 and 10 years from the entry into use of the corresponding European classification systems will be required before such a withdrawal could be contemplated.

7.16 From the agreed date, the existing national provisions relating to fire testing and classification for construction products or works will have to be repealed. Only the European classification systems will be valid in the EEA, whether or not all of the European product specifications have been delivered by this time. For products/elements not covered by harmonised technical specifications, the national provisions in force will have to be amended to refer to the EC classification system and associated test methods<sup>23</sup>.

**Summary : European fire classification systems**

<b>Start of co-existence period</b>	<b><i>Date of availability of the whole EN classification package, assuming that the corresponding Decision has entered into force.</i></b> Member States' regulations must have been adapted to make provision for the use of CE marked products with European fire classifications in parallel with products complying with the existing national provisions. Member States
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<sup>22</sup> Note that this refers only to construction products for which there is not already an obligation to use the European classification systems as a result of the ending of the co-existence period for the product technical specification.

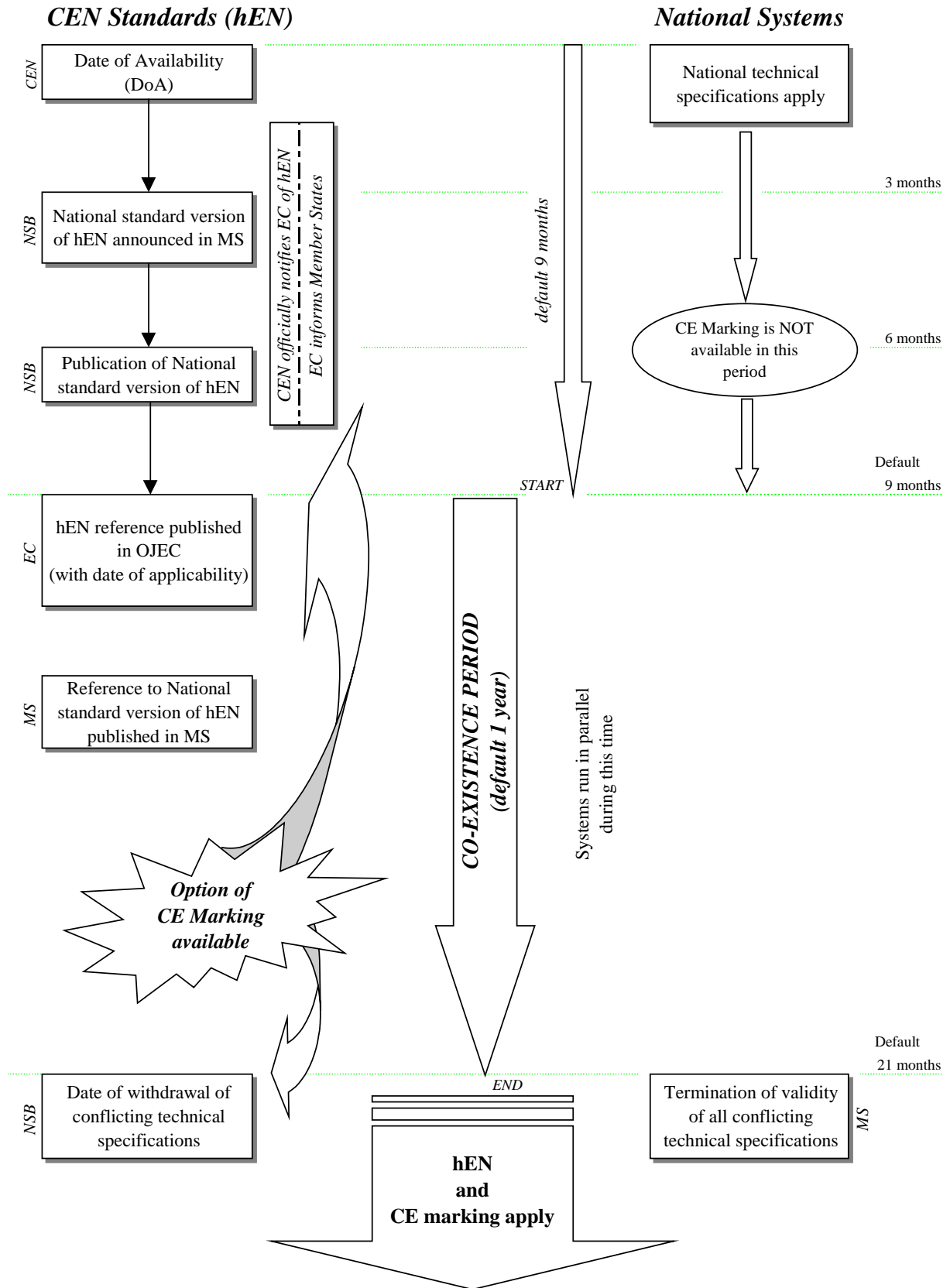
<sup>23</sup> Note that national classification systems may remain in force for products not falling within the scope of the CPD (e.g. curtains and drapes in the case of reaction to fire).

	<p>should also have adapted their legislation to permit all producers to make use of the Euro-classification alongside the existing national system.</p> <p>Producers may now affix CE marking, if the product technical specification is also in application. Producers may choose whether to use the European and/ or national fire classification systems, except for the purposes of CE marking.</p>
<b>During co-existence period</b>	MS must accept the use of either the European or existing national classification systems. Producers have a free choice of which system to apply, except for the purposes of CE marking.
<b>End of co-existence period</b>	<i>Date of withdrawal of conflicting national classification systems.</i> MS must terminate use of the existing national system. Products placed on the EEA market must from now on have a Euro-classification (if required). (N.B. for CE marking purposes, the end of the period of co-existence of fire classifications is more likely to be governed by the product technical specification).

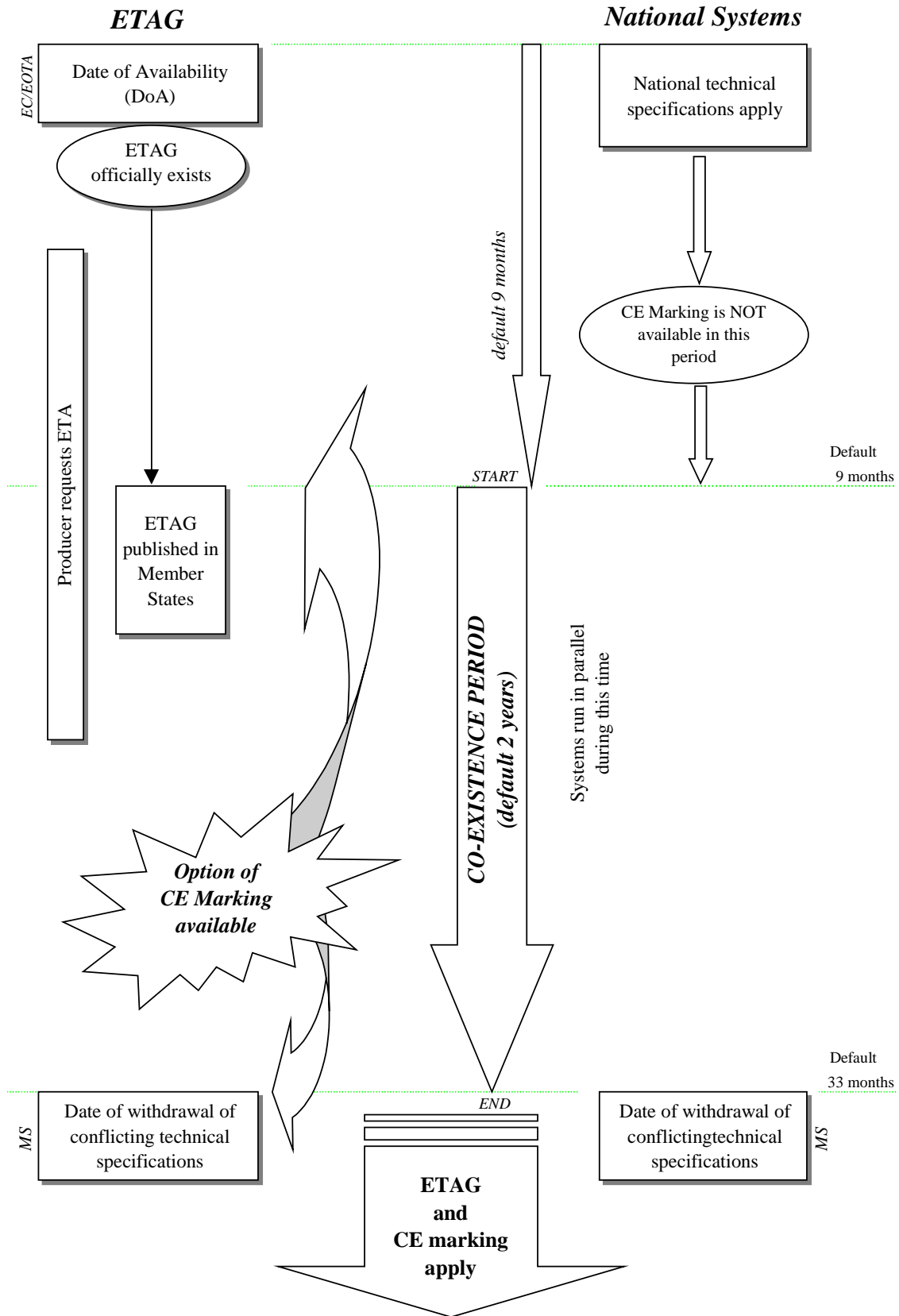
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# ANNEX 1 : TRANSITIONAL ARRANGEMENTS

## Harmonised product standards



## ANNEX 2 : TRANSITIONAL ARRANGEMENTS ETAG



# TRANSITIONAL ARRANGEMENTS

## *CEN Standards (hEN)*

## *National Systems*

