

## **MARKETING SYSTEM OF CONSTRUCTION PRODUCTS IN POLAND AFTER THE ENTRY INTO FORCE REGULATION (EU) No 305/2011**

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### Abstract

System of marketing of construction products in Poland is a complex system that allows to control the initial facilitation of construction materials process on the market. The system is complex from the structural and internal relations points of view what still cause numerous issues among building material producers. The manufacturers' position has been much more complicated by the Regulation (EU) No 305/2011 of The European Parliament and of The Council that has taken effect in Poland since the 1<sup>st</sup> of July 2013 and constitutes harmonised conditions for introducing such products to trading. It is a legal act of higher rank than the overridden with its resolutions directive 89/106/EEC concerning construction products. Its regulations must be applied in each EU country identically. The EU regulation forced significant changes in the European system of marketing of construction products and further on to a domestic market in order to ensure its consistency with European solutions.

The purpose of this article is to present general model of the system and chosen algorithms of manufacturers that introduce new construction products with CE marking to the market according to the Regulation (EU) No 305/2011.

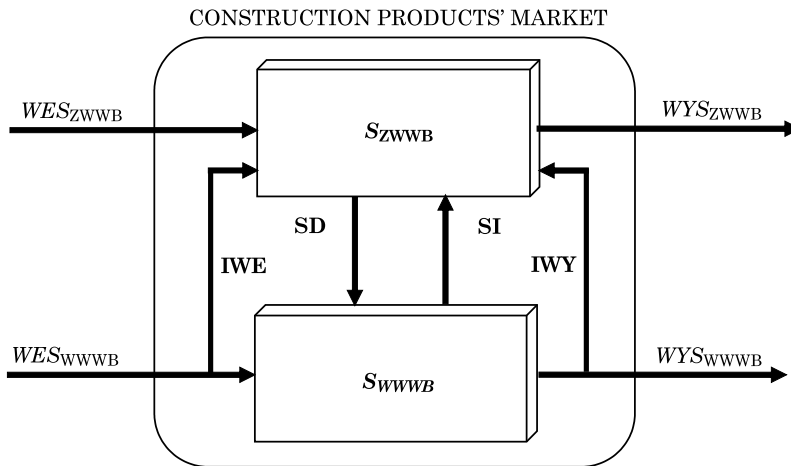
### **General model of the system of marketing of construction products**

Analysed system can be categorised among the real-life systems, acting, with the intended actions. It consists of two compositional sub-systems –  $S_{ZWWB}$  and  $S_{WVWB}$ , and each of them can be considered as a complex system. Scheme of a general model of the system is presented on the Figure 1.

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$S_{ZWWB}$  sub-system in the relation with the  $S_{WVWB}$  system executes management functions within: planning, organizing, controlling, assessment and the conditions for introduction building material to trading. The structure of  $S_{ZWWB}$  sub-system is based on elements and relations (functional, technical and informational) among them. Structural elements of  $S_{ZWWB}$  subjects with the financial means, realising its functions and managing tasks. Key subjects of  $S_{ZWWB}$  sub-system are: Ministry of Infrastructure and Development, Technical Assessment Body (TAB), bodies mentioned in the Regulation (EU) No 305/2011, Polish Centre for Accreditation (PCA), certification, inspection and testing bodies accredited to work within the domestic system of conformity attestation, legal branches licensed to controlling and conducting administrative dealing within the field of introduction construction products to the market.



Denotations:

- $S_{ZWWB}$  – management system of marketing of construction products,
- $S_{WVWB}$  – the system managed in the aspect of marketing of construction products,
- SD – decisive couplings within the planning, organizing, managing, controlling and upgrading the system of introducing construction products to the market,
- SI – informative couplings within the assessment of effectiveness of  $S_{ZWWB}$ , entrance into the  $S_{ZWWB}$ ,
- $WES_{ZWWB}$  – entrance into the  $S_{ZWWB}$ ,
- $WYS_{ZWWB}$  – exit from the  $S_{ZWWB}$ ,
- $WES_{WVWB}$  – entrance into the  $S_{WVWB}$ ,
- $WYS_{WVWB}$  – exit from the  $S_{WVWB}$ ,
- IWE – information about the entrance's into the  $S_{ZWWB}$  quality,
- IWY – information about the exit's from the  $S_{ZWWB}$  quality.

Fig. 1. General model of system of marketing of construction products in Poland

Source: The author's own study

Regulation No 305/2011 (Regulation of the European Parliament and of the Council (EU) No 305/2011...) imposed a duty on emerging new subjects in the current sub-systems that manage the introduction of new construction products to the market – Technical Assessment Bodies (TABs). They can include research institutions – accredited for independent opinions, considering the validity of European Technical Assessment (ETA) for construction products<sup>1</sup> (in the past, when the directive 89/106/EEG (Council Directive 89/106/EEC...) was in force there was an EC acceptance required), and compiling European Assessment Documents (EAD) as a basis for ETA acceptance. As a result of such broad eligibility, European ordinance precisely describes the requirements accompanying the assigning and assessing the TAB. All the TABs function within the Technical Assessment Organization (TAO), which tasks are i.a. compiling, receiving EADs (documents harmonising scope, ways and methods of researches as well as the assessment of the construction products) and ensuring that accepted EAD and references to issued ETA were commonly available.

Till now in Poland there were numerous TAB designated: Building Research Institute (ITB), Road and Bridge Research Institute (IBDiM), Institute of Mechanised Construction and Mining Rock (IMBIGS) and Institute of Ceramics and Building Materials (ICiMB). For example ITB's scope of activity includes 33 (among 35) construction products groups pointed in the appendix IV of Regulation 305/2011, IBDiM – 23<sup>rd</sup> group ( materials for building roads), while ICiMB – the 1<sup>st</sup> group ( precast manufactures made of regular/light/autoclaved and aerified concrete), and 4<sup>th</sup> group (thermal insulation materials, complex sets/systems of insulation). Nowadays there is no detailed catalogue of products categorised to particular group, which have been described sweepingly what makes things awkward for producers to establish the obligation for the construction products with the CE marking. MiiR is responsible for JOT designation.

Bodies notified in Regulation No 305/2011 (Regulation of the European Parliament and of the Council (EU) No 305/2011...) are the subjects legislated to do so called „the third side's” tasks in all (apart from 4<sup>th</sup> system) assessment procedures and verification of the constancy of the construction product performance. The list of the authorised bodies is available at KE NANDO

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<sup>1</sup> European Technical Assessment (ETA) – a document prepared by Technical Assessment Body (TAB) on the manufacturer's request, stating the construction product performances in the reference to its basic characteristics described in European Assessment Document (EAD). The equivalent of European Technical Approval (ETA), that can be issued when the manufacturer on purpose modifies particular properties of the material or fill them with new properties not included in the harmonized standards (in this group there are innovative products that have not been applied yet).

website (European Commission...) and includes hundreds of institutions, including 19 Polish ones, that are not fully covered by the previous version of the list of institutions designated for the construction products' assessment according to Directive 89/106/EEC (Council Directive 89/106 / EEC...).

Compiling and updating the list of notified institutions covered by Regulation No 305/2011 on the domestic ground is confided to MiR. The list is available on the ministry official website (List of Polish, notified institutions under the Regulation of the European Parliament and of the Council (EU) No 305/2011 of 9 March 2011...). New task confined to notified institutions is also verification of technical documentation prepared by the producers who apply simplified procedures (*Analiza potrzeb zmian legislacyjnych...* 2012).

One of the PKN's duties is transposition of European harmonised standards concerning construction products into the set of Polish standards. By virtue of the transitional agreement, the set of Polish standards harmonised with published on 28.06.2013 the „construction” directive, became at the same time a register of standards harmonised with the regulation. The document tied with the standards published in the second half of 2013. It is available in the EU Gazette No C259 from 08.08.2014 (Commission communication in the framework of the Regulation...).

PCA is responsible for the technical competences assessment of domestic institutions that assess conformity of construction products, surveillance over accredited institutions and creating their open to public lists. What is more, their tasks are also the assessment and monitoring the notified institutions.

Polish bodies, specialised in the construction products' control are The General Office of Building Control (GINB) and The Provincial Office of Building Control (WINB). Their competences are determined in the Act on construction products (Act of 16 April 2004 on construction products...).

The sub-system that is managed in the aspect of introducing new construction product to the market, is the executive sub-system  $S_{WWWB}$ . Its structure is based on elementary  $S_{WWWB_i}$  systems, which basic, legal task is to release the producers on the market or introduce the construction product to the consumer. Regulation No 305/2011 (Regulation of the European Parliament and of the Council (EU) No 305/2011...) introduced changes in the process of allowance the CE marked products into the market. What is significant from their functionality correctness is precisely defined range of executive duties required after the analysed document take effect in life.

## **Legal basis of the system of marketing of construction products**

The framework of introducing construction products to the market in Poland is defined by expanded set of legal acts. This set is based on the record taken from the Regulation No 305/2011 (Regulation of the European Parliament and of the Council (EU)...) (so-called European system) or amended Act on construction products (The Act of 16 April 2004 on construction products...) and executive acts to it (so-called Polish system).

The Regulation introduced significant changes in the range of allowing to the market products covered by European technical specifications repealing at the same time statements of the Directive 89/106/EEC (Council Directive 89/106/EEC...). The changes between the directive and the European regulation are presented in table 1.

For all other construction products' categories intended to use in Poland, the decree allowed an opportunity for applying the domestic system. It did not change the rules of making available on the Polish market construction products lawfully marketed in another member state of the EU.

In spite of a short period of Regulation No 305/2011 being in force, it has been already novelised twice. One of them concerns the declaration of performances – the document that replaced previous declaration of conformity for products with the CE marking. There were introduced changes in the declaration's pattern – the appendix No III for EU regulation, due to the entrepreneurs' problems concerning its correct fulfilment. For instance, the responsibility of identification of the product by its serial number, type or batch's number was abandoned. The information that the producer puts directly on the product are sufficient and do not have to be included in the declaration. Another significant change is resigning from presenting the notified body and its certificates' numbers and research results that can be several. It is sufficient to present the institution data that make it possible to recognise the institution that takes part in the product's assessment. The changes were introduced with the Regulation No 574/2014 (Commission Delegated Regulation (EU) No 574/2014...), that was put into practice on the third day after its publishing (which is 28<sup>th</sup> on May 2014). Although the changes did not forced modification of previously prepared declaration of the performance made by the producer (if they were prepared accordingly to the initial pattern), they obviously disorganized its functioning for some time.

Table 1

Basic changes introduced by the Regulation No 305/2011 in relations to the Directive 89/106/EEC within introducing new construction products to the market

Directive 89/106/EEC (repealed)	Regulation No 305/2011
Was introduced into Polish law with the use of 3 acts: Construction Products Act, Building Law Act and The System of Conformity Attestation Act along with the decree to it.	Is in force directly for all EU member countries as shown in EU journal with no need for transposition into the domestic law.
Formed general purpose for ensuring construction products safety.	Departs from defining the requirements for construction products that would ensure its safety in favour of assurance that the construction products come with reliable information concerning its performances.
Mentions two types of European technical specification: harmonised standards (for traditional products), and European Technical Assessment (for innovative products).	Defines two types of harmonised technical specifications: harmonised European standards (for traditional products), and European Assessment Document (for products not covered or not fully covered by harmonised standard or innovative products).
Introduced 6 systems of conformity attestation for construction products with European technical specification: 1, 1+, 2, 2+, 3, 4	Resigns from the usage of the notion of product's declaration of conformity with technical specification, introducing 5 systems of assessment and verification of constancy of performance for construction products: 1+, 1, 2+, 3, 4
Allowed possibility of building marking of products covered by harmonised standards.	Reverse characteristics
Did not include strict criteria for institutions responsible for technical assessment of the construction product, which could be only one (ITB).	Describes strict criteria for the subject dealing with the assessment and verification of the construction products (TAB), which can be several (such as. ITB, IM).
Required the declaration of conformity to be prepared by the manufacturer before the construction product is introduced to the market. Unitary document's pattern has not been established yet. The declaration of conformity did not have to be made accessible to the consumers.	Requires manufacturer to prepare the declaration of performance when he wants to introduce a product covered by the harmonised standard or consistent with European Technical Assessment issued for the product. The declaration pattern is described in a delegated decree EU Commission No 574/2014. A copy of the declaration can be delivered to a user in a written form (if he requested), by e-mail or can be made available on the producer's official website.
Did not include any conveniences for micro-entrepreneurs.	Introduces conveniences for micro-entrepreneurs.

Source: The author's own study on the basis of Council Directive 89/106 / EEC of 21 December 1988..., MROZKO (2012).

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**The manufacturers' responsibilities concerning marketing of construction products accordingly to the Regulation No 305/2011**

Regulation No 305/2011 did not lessen the responsibilities laid on the manufacturers concerning introduction of new construction product to the market. The manufacturer is obliged to: determining the product type to ensure its identification, conducting initial researches of the representative sample of the product, introducing factory production control (fpc), establishing the notified body that will be engaged with the process of the attestation of conformity of his product, preparing the technical documentation and declaration of the performances as well as putting the CE marking on the product. Laxity of the manufacturer's responsibilities' description stated in the regulation ended up with unnecessary issues with its initial recognition in the beginning of appliance. In the appendix V, stating that the manufacturers' and the notified bodies; responsibilities in systems: 1, 1+ and 3 of assessment and verification of constancy of performance, the determination of the product type was entrusted to the notified body, whereas the regulation states that the manufacturer is responsible for the determination of the product's type for each product that he plans to introduce to the market.

Notified bodies were bounded with the responsibility of the assessment of the performances of the construction products which constancy can be the matter for certification. The analysed incohesion of the rule was eliminated by the delegated Regulation (EU) No 568/2014 (Commission Delegated Regulation (EU) No 568/2014...).

Dependently on the type of the reference document for the product (a harmonised standard, European Technical Assessment), the moment of making it public on the market (first or another one to the seller or the user) and the manufacturer's status, the realisation of the executive tasks set is obligatory. There are possible several algorithms of the manufacturer's actions: introducing or making available on the market the construction product that was covered by a harmonised standards after the Regulation No 305/2011 (Commission Delegated Regulation (EU) No 574/2014...), applying for the European Technical Assessment or application of simplified procedures. Three among four stated procedures are presented on Figures 2, 3 and 4.

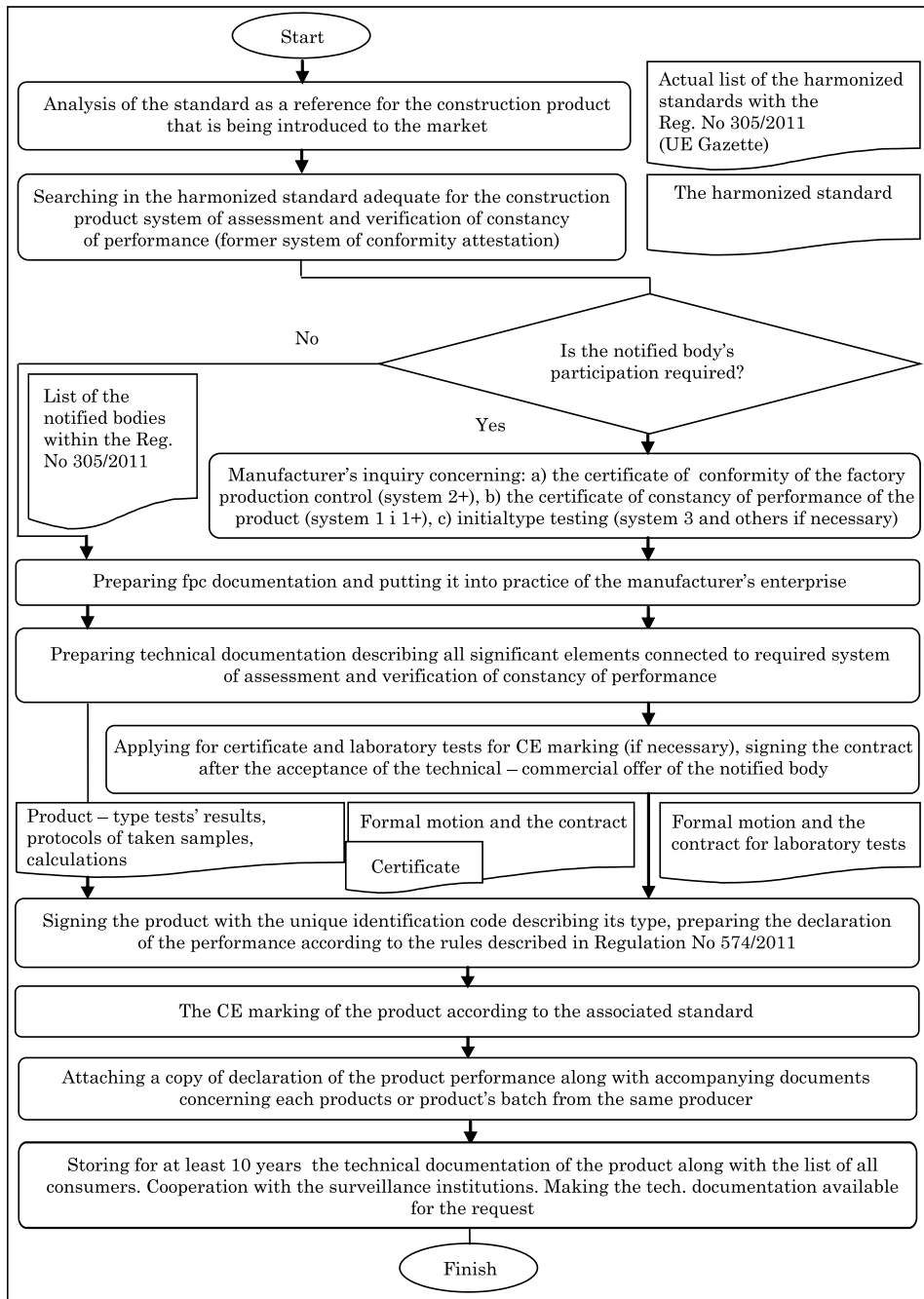


Fig. 2. Algorithm for the manufacturer's proceedings introducing a new construction product to the market after the Regulation No 305/2011

Source: The author's own study on the basis of *Wprowadzanie – udostępnianie...* (2013).



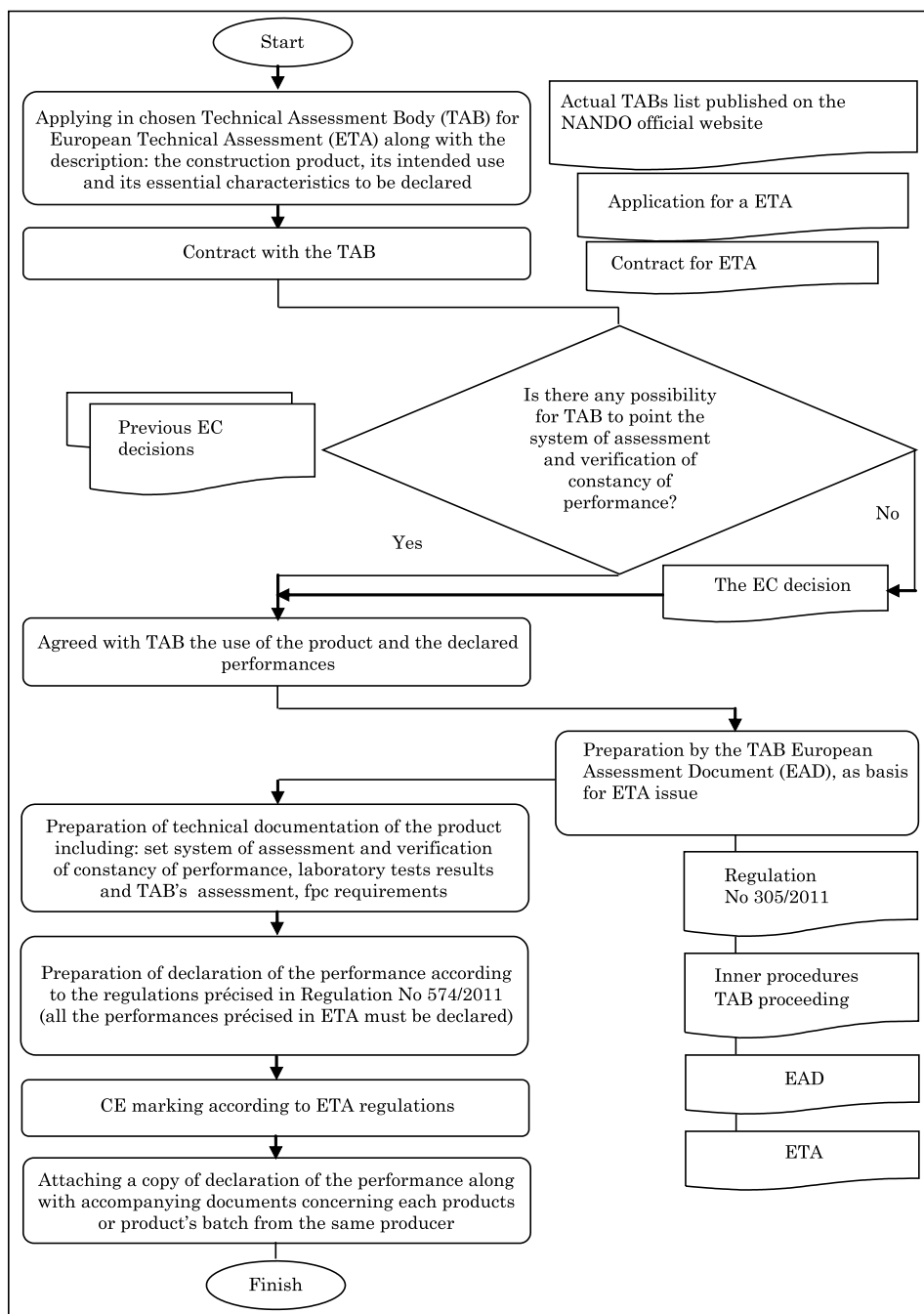


Fig. 3. Algorithm for the manufacturer's proceedings making a construction product available on the market after the Regulation No 305/2011

Source: The author's own study on the basis of *Wprowadzanie – udostępnianie...* (2013).

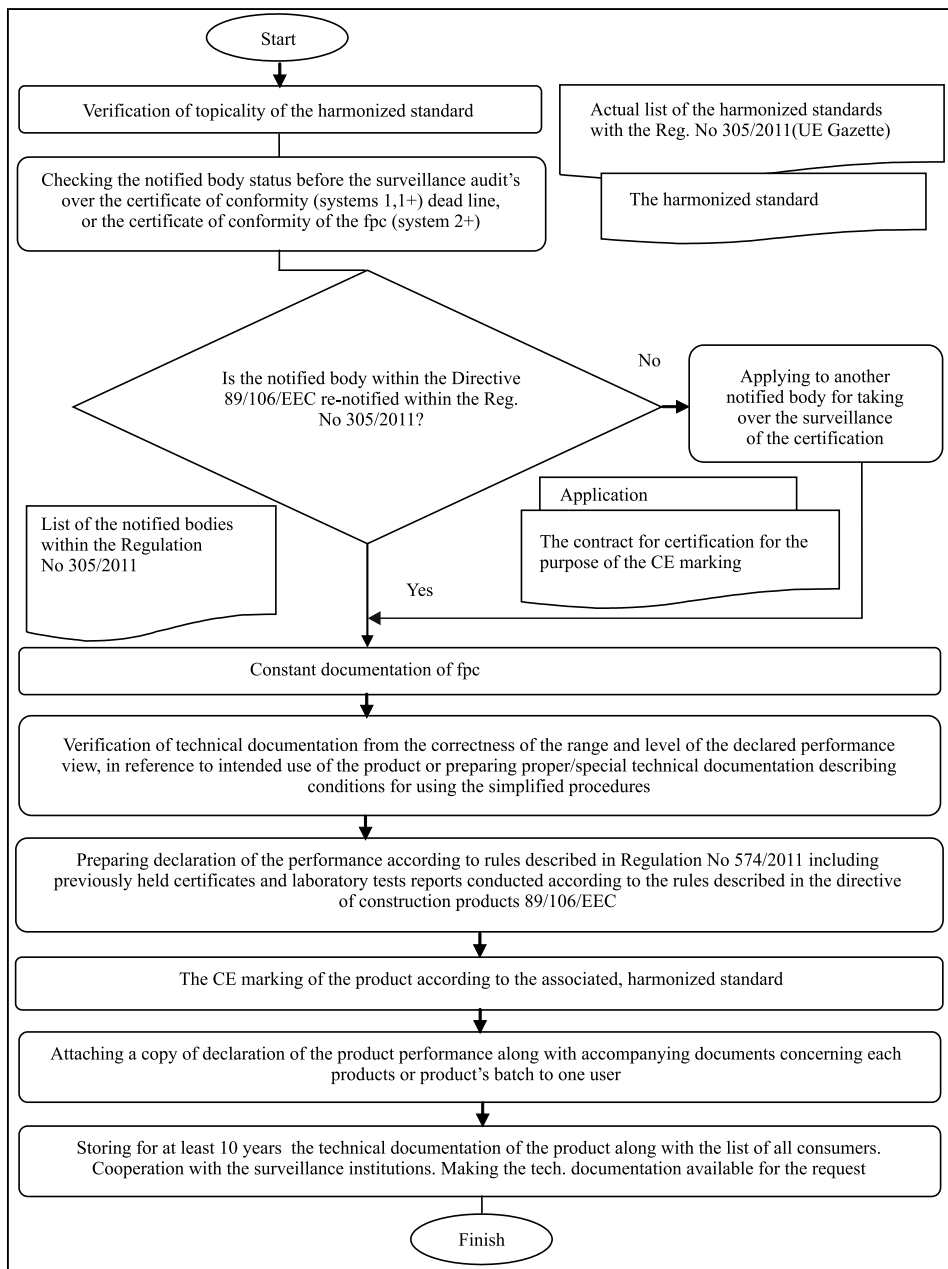


Fig. 4. Algorithm for the manufacturer's proceedings applying for European Technical Assessment  
Source: The author's own study on the basis of *Wprowadzanie – udostępnianie...* (2013).

## Conclusions

Regulation No 305/2011 introduced significant changes in the structure of sub-system that manages with introducing new construction products with CE marking to the market, that influence the functioning of the sub-system.

Next to the European system of marketing of construction products, based on European regulations, there is still functioning a domestic system, based on the novelized Act of Construction Products and its regulations. Applying the European system is obligatory for the products covered by harmonized standards and free for individual manufacturers who were granted with European Technical Assessment on their demand.

General rules for functioning the domestic system of technical approvals has not been changed. Any changes of the domestic system will require new novelization of the Act of building materials.

Regulation (EU) No 305/2011 was to break the barrier of free trading among EU countries, but through ambiguity of its records it still causes problems for the construction products manufacturers.

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