



**COMMENTS OF BING**  
**on the Commission proposal COM(2008) 311 regarding the revision**  
**of the Construction products directive (89/106/EC)**

**BING is the European association representing the rigid polyurethane insulation industry. Rigid polyurethane foam is the premium insulation material used in a wide variety of applications in buildings, district heating, cooling and refrigeration, and industrial systems.**

**General comments**

- BING supports the revision of directive 89/106/EC with a view to adding clarification, simplifying procedures and harmonising its application.
- BING supports the transformation of the directive into a regulation to eliminate inconsistencies introduced in the implementation process at national level.

**Specific comments**

BING can largely support the proposed changes, and they are not commented on in this document. On the other hand, certain clauses require amendments, which are explained in more detail below.

- **Article 4 – Conditions for drawing up declaration of performance**

**Paragraph 4.1** stipulates the conditions under which a declaration of performance of a product must be issued by a manufacturer, namely if “a requirement in relation to essential characteristics of that product exists where the manufacturer of importer intends to place the product on the market”.

Following the spirit of the construction products regulation (CPR), we understand that these requirements are directly relating to products. In reality, however, several Member States have only few product-related requirements but mainly requirements for buildings (B, NL, UK). If our interpretation is correct, no performance would have to be declared for products placed on those markets and CE marking would not be required.

The current phrasing of paragraph 4.1 is ambiguous and needs clarification. BING believes that as soon as a product is placed on the market and covered by one or more requirements in relation to the essential characteristics of the product, to satisfy the basic work requirements, the declaration of performance should be compulsory.

**Paragraph 4.2** offers the possibility to declare, on a voluntary basis, performance criteria in addition to those required by the declaration of performance. BING supports this possibility which allows manufacturers to reduce the number of different declarations of performance if products are sold into different markets. However, it must be ensured that the principles applying to the use of additional criteria are clearly defined and these additional criteria are scientifically robust

- **Article 6 - Form of the declaration of performance**

Paragraph 1 (second phrase) refers to “a batch of the same product”. To avoid misinterpretation, this word should be replaced by “confinement”.

Paragraphs 2 and 3 stipulate the conditions for the use of electronic means. Paragraph 2 may be read in two different ways: “may be supplied by electronic means only.....” or “... only with the express agreement of the recipient”. BING assumes that the latter interpretation is correct. This should be clarified.

With a view to simplifying procedures and anticipating future developments, BING asks that manufacturers be authorised to provide the declaration of performance using web-site and electronic tools **without** prior authorisation from the client or the Commission.

However, this should not cover production-related data. This would require permanent updating of the website leading to a significant burden for businesses.

- **Article 19 - Assessment and verification of constancy of performance**

This article proposes that the current attestation of conformity levels (1+, 1, 2, 3, 4) by 1, 2, 3, 4, 5). This would require the adjustment of all administrative documents currently in use in the companies (internal communication) as well as of official documents (decrees, acts etc.). BING can support the decision not to use the modules included in the New Legislative Framework – horizontal decision.

On the other hand, BING does not see the added value of renumbering the existing AoC (Attestation of Conformity) levels. This would require a change in all the administrative documents currently used by enterprises, both for internal communication and for official documents. BING therefore requests the retention of system numbering 1+, 1, 2+, 3 and 4.

- **Art 20 - European Assessment Document**

The phrasing of this article will have a significant impact on the future of the European standardisation process and hence requires very careful drafting.

BING believes that the European Assessment Document (EAD) should only be used for innovative products provided they significantly depart from the products covered by a harmonised standard and only if the EAD is based on type testing, factory production control and on the same level of attestation of conformity as the other construction products of the same family.

In other words, the EAD should not be accessible to products which simply want to bypass the CEN / CENELEC route for achieving CE marking. This would

- jeopardise the system of harmonised standards;
- lead to unfair competition;
- turn Technical Assessment Bodies into de facto but not de iure standardisation bodies;
- cause overlapping between standards and ETAs and different or even contradictory requirements;

A definition of “innovative product” should be added to article 2.

- **Article 21 - European Technical Assessment**

BING strongly opposes the possibility for construction products covered by a harmonised standard to ask for a European Technical Assessment (ETA). As outlined above, the EAD / ETA route should only be open to innovative products to which harmonised standards cannot be applied for serious reasons.

In any case, the test methods used for the technical assessment of the performance must follow, as far as possible, the methods included in the harmonised standard of the relevant product group.

- **Article 27 - Use of Specific Technical Documentation by micro-enterprises**

Even though most of our members are SMEs, we cannot accept that the safety or the energy efficiency of buildings may depend on the size of construction products manufacturers. Independently from the size of the manufacturer, reliable information is needed on the performance of construction products to avoid potential risks for occupants and meet all requirements in the fields of health, safety, environment and energy savings (whether the manufacturer is a micro-enterprise or not). If a STD provided the same level of confidence and reliability, there would be no need for assessment of conformity (AoC) systems. If AoC systems are considered as an “administrative burden” as suggested in 3.3 of the explanatory memorandum, the only logical consequence would be to replace them. But this is certainly not the intention of the CPR.

Furthermore, there are many micro-enterprises already spending considerable amounts of money and manpower to demonstrate the conformity of their products in accordance with the CPD. In the future, these small manufacturers will face competition by enterprises which use simplified routes to CE mark. So, why should they continue to opt for the more onerous way?

It should also be considered that the definition of micro-enterprise (less than ten employees) is completely arbitrary and does not take account of market realities and the differences between product families. Furthermore, it introduces a serious barrier to growth as micro-enterprises would be reluctant to take on a tenth employee if this completely changed their approval system.

Most micro-enterprises are making made-to-measure products. BING recognises that, for those enterprises, the cost of the AoC system would indeed lead to disproportionate burdens (see comments on article 28).

- **Article 28 - Use of Specific Technical Documentation for individually manufactured products**

The cost of performance assessment has to be recovered through the sales price of a construction product. The smaller the series, the higher the supplement per output unit would be. This article offers a solution to producers of made-to-measure products, most of which are small or even micro-enterprises.

- **Annex 1 - Basic works requirement n°3 Hygiene, health and the environment**

The scope of the Basic Work Requirement (former essential requirement n° 3) has been extended to include the construction and demolition phases in addition to the use phase.

BING recognises that the CPR cannot include, for legal reasons, an explicit reference to European standards. Nevertheless, BING calls on the European decision makers to ensure that the mandate given to CEN (TC351) is taken into due account by the CPR and that additional, duplicating initiatives are avoided.

BING would welcome a clear indication as to how the requirements of the additional life cycle stages will have to be fulfilled. As far as waste is concerned, there is a series of EU legislative texts regulating how waste should be treated. Also, waste management options and techniques are very much dependant on the local situation, national laws and construction techniques. Including the demolition phase may lead to liability problems, as the manufacturer has obviously no impact as to when and how buildings are demolished.

- **Annex 1 - Basic works requirement n°7 Sustainable use of natural resources**

BING recognises that the CPR cannot include, for legal reasons, an explicit reference to European standards. Nevertheless, BING calls on the European decision makers to ensure that the mandate given to CEN (TC350) on the sustainability of construction works is taken into due account by the CPR and that additional, duplicating initiatives are avoided.

This new BWR emphasises once again that the environmental compatibility of construction materials can only be assessed at the building level ( and not at the material level) in an integrated life cycle approach. This fundamental aspect was also put forward in the final report of the DG Enterprise working group on Sustainable Construction which concluded that “Construction products cannot be assessed on a stand-alone basis since construction works with the highest “green” credentials may use products which might have relatively high environmental loads but which will significantly contribute to reducing building’s environmental impact throughout its lifetime.” BING would therefore recommend that a similar philosophy be incorporated to ensure that the most energy and resource efficient works designs can be achieved.

The requirement to ensure the “use of environmentally compatible raw and secondary materials in the construction works” is very vague and could hence lead to confusion and misinterpretation. The meaning of “environmentally compatible” should be clarified. It should be clearly stated that compatibility refers to the life cycle behavior of construction products within defined construction works. A different approach would disregard ongoing standardization work mandated by DG Enterprise.

Brussels, 24 September 2008