

COMMENTS of PU Europe¹
on amendments 17 and 49 of the Draft Recommendation for Second Reading
regarding the Construction Products Regulation
(Article 6.2 d a (2008/0098 (COD)))

PU Europe and its members are fully committed to continuously improving the performance of their products and to providing users with solutions that meet highest safety levels. Amendment 17 proposed by IMCO in second reading² calls for the inclusion “if applicable” of “information about hazardous substances in the construction product”.

At first glance, this proposal seems sensible as it provides additional information to users and consumers. However, a closer look at the consequences shows that the proposal would not improve health protection while leading to significant additional costs, in particular for SMEs.

IMPACT ON HEALTH PROTECTION

Proposal has no positive impact on health and environment

The proposal does neither allow the consumer to make better informed choices nor does it reduce risks. A mere list of hazardous substances in the product without risk assessment does not provide any added value as the consumer will not know the concentration of these substances nor will he be able to conclude whether a specific end-use application could lead to a risk potential. A substance may be hazardous without causing risk, as long as there is no exposure to it. Another substance might be less hazardous but could be released in such doses that it causes a significant risk.

IMPACT ON THE ENVIRONMENT

Use of recycled products discouraged

Recycled content in construction products almost always contains certain hazardous substances which may have been used in the original product or are due to contaminations caused by contacts with such substances over the life cycle of the original product.

The amendment could discourage users from buying products with recycled content, even if there would not necessarily be any additional risk. In a time where industry invests significant amounts of money to increase the recycled content in its products, this new requirement may therefore have a discouraging effect.

Declaration of performance not available and the end of the product life

It could be argued that the list of dangerous substances is necessary to provide details to demolition contractors and waste treatment companies. In practice, the declaration of performance accompanies the construction product up until its fitting into the works. The manufacturer usually keeps the declaration of performance for up to ten years. Any longer period would be disproportionate. The life cycle of most construction products is much longer. Moreover, in many instances the manufacturer is no longer identifiable once the product is installed (concrete, wooden

¹ European association of polyurethane insulation manufacturers

² EP Legislative Resolution of April 24, 2009 P6_TA(2009)0320

floors etc.). Hence, the declaration of performance can in most cases not be used to provide information at the end of the product life.

INTERACTION WITH OTHER REGULATIONS

Causing contradiction with Basic Works Requirement 3 (BWR 3) of the Regulation

According to article 6.2, the declaration of performance expresses the performance of a construction product in relation to its essential characteristics in accordance with the relevant harmonised technical specification. Hence, it provides the necessary technical details to demonstrate the fitness for use of a construction product for a given end-use application (works) in a specific Member State. The Parliament proposal is in contradiction to this philosophy and, in particular to BWR 3 regarding the obligation to declare the release of dangerous substances in the declaration of performance. BWR 3 rightly requires that works must not pose health threats to the occupants or the environment. DG ENTR mandated CEN/TC351 to develop methods to measure release to indoor air and ground water or soil, considering end-use applications and exposure risks. The substances to be considered are included in the list of regulated dangerous substances based on notifications from Member States.

The reference to release was chosen, as the presence of a substance in a construction product does not automatically lead to exposure risks or health / environmental concerns. This fully complies with the Commission Guidance Paper H, section 3.4³.

Based on these release scenarios, Member States can restrict certain uses or impose emission limits.

Proposal is in contradiction with REACH⁴

With REACH, the EU adopted the most stringent and comprehensive chemicals policy instrument in the world. With its entry into force, the chemical safety assessment procedure initiated by the ESR⁵ will become the rule for practically all substances including those used in construction products. REACH focuses on gathering existing data, filling potential data gaps, identifying potential hazards, determining exposure and evaluating potential risks through the scientific chemical safety assessment process. REACH clearly recognises that a risk is related to a use or an application. The safe use of a substance is documented via the exposure scenarios in the extended Safety Data Sheet which is passed down the supply chain.

REACH includes the obligation to inform customers of the presence in an article of substances on the candidate list for substances for authorization (substances of very high concern) if the concentration in the article exceeds 0.1%. This must be accompanied by recommendations for the safe use.

This risk-based approach is the common ground of the EU chemicals regulation. By adopting provisions strictly based on the CLP⁶ status of a substance (classification, labelling, packaging), the Construction Products Regulation would introduce a hazard-driven approach that will enter in conflict with the rest of the applicable regulatory framework.

FINANCIAL IMPACTS

Penalising SMEs through disproportionate costs

Product life cycles become shorter and product ranges increase to respond to specific market needs. The proposal would lead to significant cost increases and hence clearly penalize manufacturers of small series, in particular small and medium-sized enterprises.

³ Guidance paper H: A Harmonised Approach Relating To Dangerous Substances Under The Construction Products Directive (European Commission, 2002)

⁴ Regulation (EC) No 1907/2006: Registration, Evaluation, Authorization / Restriction of Chemicals (REACH).

⁵ Existing Substances Regulation - No 793/93 on the evaluation and control of the risks of existing substances.

⁶ Regulation 1272/2008 on classification, labeling and packaging of substances and mixtures

This is mainly due to the fact that the information required is neither available through REACH nor through Factory Production Control. The latter serves to check compliance with the essential characteristics. These do not include the content of substances.

The disproportionate burden on SMEs was the main conclusion in an Ökopol report commissioned by the German construction ministry (BMVBS)⁷ to assess the impacts of this proposed requirement.

IMPACT ON INNOVATION

Introducing confidentiality issues for innovative products

The competitiveness of the European construction products industry depends on its capacity to innovate. If manufacturers were obliged to publish a complete list of all dangerous substances in the declaration of performance (even if no risk is involved), commercially confidential information would be given away to competitors in a light-hearted way and manufacturers would be less motivated to invest in research.

TECHNICAL PRACTICALITIES

- Will a simple manufacturer's declaration suffice or will testing be required?
 - If a manufacturer's declaration was considered sufficient, the information would always be incomplete, as he would only mention what was intentionally added to the product. All naturally contained substances, impurities and substances contained in recycled content would not appear in the list. The objective of providing information to the consumer would not be met and exposure risks would be ignored.
 - If measurements were required, the manufacturer would have to deal with thousands of substances which might potentially be present in his product. The number of tests would be enormous. Furthermore, this would require the development of harmonised test methods, which are not available today.
- Detection limits are constantly lowered. Moreover, the content of hazardous substances in natural or mineral products is subject to changes depending on their origin. The same applies to products using recycled content. This could lead to inaccurate declarations or, alternatively, to frequent tests, which would cause extraordinary costs in particular for SMEs.
- Would a concentration-related cut-off criterion be applied (0.1%)?

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⁷ Dirk Jepsen & Heike Luskow „Verpflichtende Deklaration gefährlicher Stoffe - Inhalt und mögliche Wirkungen des ergänzenden Anhang IIIa zu BP-VO, Beitrag zum Symposium des BMVBS „Entwurf einer VO des EP und des Rates zu Bauprodukten“ (2009)