



**COMMENTS of BING<sup>1</sup> and EUMEPS<sup>2</sup>  
on the IMCO amendments 137, 147, 148, 149, 150 and 294  
relating to the  
Commission proposal COM(2008) 311 regarding the revision of the  
Construction products directive (89/106/EC)**

BING and EUMEPS call on the European Parliament to

**reject amendments 137, 147, 148, 149, 150 and 294  
(or a corresponding compromise amendment)**

referring to the **inclusion of details of hazardous substances in the declaration of performance** in order to:

- **Avoid contradiction and duplication with existing community legislation and prevent excessive requirements which do not add to the safety of end-users.**
- **Accept the principle that the end-user's health is best protected by the determination of exposure to the release of dangerous substances from construction products in a given end-use application. This is covered by the basic works requirement 3 of the CPD/CPR and the corresponding harmonised standards developed in CEN/TC351.**

BING and EUMEPS are fully committed to continuously improving the performance of their products and to providing specifiers and end-users with solutions that meet highest safety levels.

In the following, it will be explained why BING, EUMEPS and the whole of the European construction products industry still reject these proposed amendments.

**Declaration of performance proves fitness for use**

According to article 5.1, the declaration of performance shall express the performance of construction products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specification.

In other words, the declaration of performance provides the necessary technical details to demonstrate the fitness for use of a construction product for a given end-use application in a specific Member State.

Adding information to this declaration, which are not covered by the system of harmonised standards, would go beyond its scope of demonstrating fitness for use and make it more costly, complex and confusing.

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<sup>1</sup> European association of rigid polyurethane foam insulation

<sup>2</sup> European association of expanded polystyrene insulation

## **Declaration of performance and release of dangerous substances**

The Construction products regulation (CPR) already includes a requirement to provide information on the release of dangerous substances in the declaration of performance.

DG ENTRE mandated CEN/TC351 to develop methods to measure emissions to indoor air or leaching into ground water or soil, considering end-use applications and exposure risks. The substances to be considered are included in a list of regulated dangerous substances based on notifications from Member States. A manufacturer who wishes to sell into a national market must declare in the declaration of performance the release values of all substances for which regulations exist in that Member State.

The reference to the release of dangerous substances was chosen for good reason. The presence of a substance in a construction product does not automatically lead to exposure risks or concerns for the health or the environment. The provisions of the Construction products directive (future regulation) and, more specifically, the basic works requirement no. 3, require that buildings must not pose health threats to the occupants or the environment.

This system guarantees the functioning of the internal market, which is the aim of the construction products directive / regulation and, at the same time, ensures that buildings do not pose health risks.

Internal Market legislation, such as the CPR, cannot become implementation measures for REACH of the Water framework directive.

## **What about hazardous substances covered by REACH?**

First of all, the REACH approach is entirely different from the CPR, as it focuses on substances / preparations and not on the final product (article). With REACH, the European Union has adopted one of the most comprehensive and demanding chemicals policy instruments in the world. Therefore, the outcomes of scientifically sound risk assessments satisfying the legal requirements of REACH should be accepted in other Community legislation. It should be noted that the risk assessments cover the whole life cycle of a substance, including the use-phase.

Furthermore, REACH includes so-called cut-off criteria which mean concentration thresholds below which the content of hazardous substances does not have to be declared (or cannot be determined due to limits in measurement technologies).

## **Are end-users informed about risks relating to REACH substances?**

Information on the content of substances of very high concern must be passed through the supply chain and on to the end-user on his/her request.

The communication of safety advice for users is governed by regulation 1272/2008 on classification, labeling and packaging of substances and mixtures. If the risk assessment concludes that a substance does not represent any risk for users when incorporated in an end-product, then the product does not have to be labelled. If, however, the risk assessment identifies a certain risk (corrosive, flammable etc.), the product label / packaging will inform about this and provide safety advice (wearing of gloves, or not to be used in closed rooms etc.). Hence, the user is already informed about possible risks.

Introducing declaration requirements that go beyond of what is required by that legislation, would lead to disproportional cost increases for manufacturers – mainly for additional product tests without any benefit for individuals or society. In particular smaller enterprises with smaller product series would be heavily penalised. This would be in clear contradiction to the CPR's objective to simplify its application by SMEs.

## **Disclosure of commercially sensitive information**

Innovation is a major driving force in the industry. Manufacturers should not be obliged to disclose the formulation of new products, if full compliance with REACH and the risk assessments does not require the declaration of the substances used and they are not included in the list of regulated dangerous substances as drawn up by DG ENTRE. Otherwise, product innovation would be strongly discouraged.

## **Ambiguous phrasing may have significant cost implications**

The phrasing of the amendments is ambiguous and contradictory and will therefore increase confusion and costs in the implementation phase.

When talking about “details of hazardous substances”, it is unclear whether this refers to

- Raw materials (substances) used for the production of a construction product. In many cases, raw materials / substances are fully reacted in the production process and hence not present in the end product as put on the market.
- Substances present in the end product as put on the market. This would not provide any information on risks for users.
- Substances that are released from the installed construction product to the environment (indoor air, ground water, soil). The reference to the “expert group for dangerous substances related to the work of TC 351” suggests that the latter might be the case. In any case, this is already covered by the CPR.

For the reasons outlined above, BING and EUMEPS strongly oppose provisions relating to substances used in the production phase or present in the final product.

Amendment 294 is in contradiction to amendments 137, 147-150. Amendment 147 states that the declaration of performance must include “details of hazardous substances **which are required to be declared** pursuant to other Community harmonisation rules.” However, the title of amendment 294 reads “Hazardous substances to be declared in the performance declaration” (i. e. independently from what is required to be declared pursuant to other EU legislation).

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