



COMMENTS of BING¹
on the proposal to integrate a list of dangerous substances contained in
construction products in to the declaration of performance
(Article 5.2 of the draft Construction Products Regulation (COM 2008 (311)))

BING 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. Amendments 49 and 101 adopted by the European Parliament in first reading² call for the inclusion of a list of dangerous substances in the declaration of performance. BING strongly rejects this proposal for the following reasons:

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 dangerous 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.

It would indeed be the wrong signal if products were deselected simply because they contain certain substances although they show a better environmental life cycle performance than other products and, in addition, do not pose health risks.

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

According to article 5.1, 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 clear 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 buildings 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 a 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. This approach has been successfully used in the food contact materials and articles legislation for the past thirty years.

¹ European association of polyurethane insulation

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

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

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. Such uncertainties on the markets would be detrimental for the construction industry and its suppliers.

Finally, the EU legislation on CLP is part of a world-wide harmonised system which includes the USA, Canada, China, New Zealand, Brazil, Russia, Japan, Mexico, South Africa and other African countries.

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.

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.

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.

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 however much longer. Moreover, in many instances the manufacturer is no longer identifiable once the product is installed (concrete, wooden floors etc.). In conclusion, the declaration of performance can in most cases not be used to provide information at the end of the product life.

List of dangerous substances will not ensure product quality

It could be claimed that the list would enable users check unchanged product quality. This argument is not valid, as product quality is ensured by Initial Type Testing and regular Factory Production Control. The manufacturer guarantees product properties through the declaration of performance which has to be renewed regularly. A mere list of certain ingredients cannot replace this.

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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