

**COMMENTS OF PU Europe¹
on the amended Commission proposal COM(2009) 579 regarding the revision
of the Construction products directive (89/106/EC)**

General comments

PU Europe notes the publication of the amended Commission proposal COM(2009) 579 final for the revision of the Construction products directive (89/106/EC).

This amended proposal clarifies a number of provisions and represents a workable compromise which could be accepted by PU Europe in most of the points.

Specific comments

This section contains amendments on which PU Europe wishes to comment. Elements of the revised Commission proposal which are supported without comments are listed in annex I.

DEFINITIONS

Amendment 124 - Recital 7 a (new) and amendments 32, 33, 36 & 39 – Article 2, point 4i
(making available on the market: derogations)

PU Europe does not oppose to the amended Commission proposal, but notes that some sectors that wish to have generalised CE marking but are covered by this derogation, cannot accept it. The Parliament and the Council should discuss solutions.

Amendment 41 - Article 2, point 20 a (new) (definition of “kit”)

PU Europe fully supports the amended Commission proposal. The Parliament proposal would exclude polyurethane spray foam from the definition, although a mandated product standard is currently in the CEN formal voting process based on the assumption that PU spray foam is a kit. In fact, the foam is the result of a chemical reaction between two components. The result is therefore not an assembled system but a new substance which is fitted in the works.

PU Europe calls on the European Parliament to respect the significant standardisation efforts undertaken over the past years and accept the definition as proposed by the Commission. Alternatively, the definition should be deleted completely.

¹ PU Europe, formerly 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.

DECLARATION OF PERFORMANCE

Amendment 117 - Article 2, point 3 par. 3 b (new) & amendment 44 (European essential characteristics)

Affixing a CE mark on a construction product even in cases where the DoP does not contain performance declarations relating to any of the essential characteristics would not be acceptable. In principle, PU Europe can therefore support this amendment which introduces “European” essential characteristics, to be declared irrespective of where the product is placed on the market. This would mean that the Declaration of Performance (and, hence CE marking) becomes compulsory even on markets where no requirement in relation to these essential characteristics exists.

PU Europe wishes to emphasise the following requirements in this context:

- European essential characteristics must be specific to each product group and be limited to the one or two most relevant features of that product group in relation to a specific end-use application. An excessive number of European characteristics would increase the burden on manufacturers.
- European essential characteristics must be covered by the corresponding harmonised technical specification.
- European essential characteristics should be determined on a case by case basis by decision of the European Commission after consultation of the Standing Committee on Construction (SCC) and with the involvement of CEN product TCs.

PU Europe proposes the following wording for Article 2, point 3 paragraph 3 b (new):

“(b) a small number of the most relevant characteristics which must be notified irrespective of where the product is placed on the market....”

Amendment 42 – Article 4, par. 1 (Declaration of performance - DoP)

Having similar products on the Internal Market, some of them CE marked, others not, would lead to significant confusion.

With the introduction by the Parliament of article 2, point 3 paragraph 3 b (new) relating to European essential characteristics, the risk of a DoP without any content (without any declared performances) can be excluded. PU Europe therefore supports amendment 42 (subpara (a) and (b)) of the European Parliament, which makes CE marking largely mandatory.

Amendment 43 – Article 4, par. 2 (Content of the DoP)

As outlined below (amendment 107), PU Europe does not support the deletion of paragraph 2.

PU Europe urges the European Parliament to reinstate paragraph (b).

Amendment 107 – Article 5, par. 2, point (b) (List of essential characteristics)

PU Europe does not support amendment 107 which requires manufacturers to list **all** essential characteristics in the DoP. As proposed by the Commission, the manufacturer should, at least, list those characteristics for which requirements exist on a specific market (including European essential characteristics). It should be optional to add more characteristics that respond to the requirements of specific end-use applications.

The term “NPD” is misleading as, in most cases, the performance is determined but not declared as not considered relevant in a specific end-use application.

PU Europe calls on the European Parliament to accept the initial Commission proposal.

Amendment 49 – Article 5, par. 2, point c c (new) & Annex III a (new) (Information on dangerous substances)

For the reasons outlined below, PU Europe strongly supports the Commission position according to which amendment 49 should be withdrawn.

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 substances without risk assessment relating to specific end-use applications does not provide any added value to the consumer.

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

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. The proposed list goes beyond this scope.

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. Based on these release scenarios, Member States can restrict certain uses or impose emission limits. 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 approach fully complies with the Commission Guidance Paper H, section 3.4².

Proposal is in contradiction with REACH

With REACH, the EU adopted the most stringent and comprehensive chemicals policy instruments in the world. With its entry into force, the chemical safety assessment procedure initiated by the ESR³ will become the rule for practically all substances including those used in construction products. 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 of very high concern if the concentration in the article exceeds 0.1%. This must be accompanied by recommendations for the safe use.

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 testing cost increases and hence clearly penalize manufacturers of small series, in particular small and medium-sized enterprises.

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 at the end of the product life

The list of dangerous substances would probably not be available at the end of the product life. 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

² Guidance paper H: A Harmonised Approach Relating To Dangerous Substances Under The Construction Products Directive (European Commission, 2002)

³ Existing Substances Regulation - No 793/93 on the evaluation and control of the risks of existing substances.

longer. Moreover, in many instances the manufacturer is no longer identifiable once the product is installed (concrete, wooden floors etc.).

PU Europe calls on the European Parliament to withdraw amendments 49 and 101.

Amendment 50 - Article 6, par. 1, subpara 1 & amendment 51 - Article 6, par. 2 (*electronic supply of the DoP*)

PU Europe supports amendment 50 of the European Parliament. Manufacturers should have the possibility to supply the Declaration of Performance either on paper or by electronic means. Information linked to the CE marking (e.g. printed on the product or the packaging) is not concerned by this proposal. The conditions for using electronic means should be determined by Commission decision.

CE MARKING

Amendment 17 - Recital 30 (*additional national marks*)

PU Europe does not support Parliament amendment 17. The existence of additional marks can be accepted provided they are market driven and do not cover characteristics and specifications already dealt with in the CE mark. Moreover, these voluntary marks must not be made compulsory. Consequently, PU Europe supports the Commission proposal for recital 30 and article 7.2 (Use of CE marking in the text of 23 May 2008).

PU Europe calls on the European Parliament to accept the initial Commission proposal.

Amendment 53 - Article 7, paragraph 1, subpara 1 (*"The CE ... not be affixed"*)

PU Europe supports amendment 53 with the alterations introduced by the amended Commission proposal. It should only be possible to affix the CE mark, when a declaration of performance (DoP) was drawn up. Inversely, when the DoP was drawn up, the CE mark must be affixed on the construction product.

HARMONISED TECHNICAL SPECIFICATIONS

Amendment 22 – Recital 43 b (new) & amendment 118 – article 16 point 1 (*balanced participation in standardisation*)

PU Europe appreciates efforts by the European Parliament to increase transparency and balanced participation. In practice, these goals are however difficult to achieve. Firstly, the composition of national delegations is agreed at Member State level with no possibility for the European standardisation bodies to intervene. Secondly, it is unclear what balanced participation means: implication of all national standardization bodies, participation of all size classes of enterprises, involvement of all professional groups such as architects, designers, manufacturers, contractors, users, testing institutes etc.).

Amendment 68 - Article 20, par. 1 (*parallel use of ETAs and harmonised standards*)

PU Europe supports the amended Commission proposal and applauds the European Parliament for having limited the use of ETAs to construction products not covered or not fully covered by a harmonised standard. The initial Commission proposal would have led to significant confusion in the market and undermined the system of harmonised standards.

Amendment 120 - Article 20 par. 3 a (new) (*move from ETAs to hENs*)

PU Europe supports the **Parliament** amendment. The Commission amended proposal with a reference to the non-binding recitals is rather weak.

The move from EADs to harmonised standards should be strongly encouraged.

Amendments 102-106 – Annex V, part 1, points 1.1-1.5 (*Attestation of conformity classes*)

PU Europe supports the Parliament amendments maintaining the current numbering of AoC classes, as they are well known in the market. Any change would lead to transition costs.

SIMPLIFIED PROCEDURES

Amendment 78 - Article 27 – title and amendment 79 - Article 27, par. 1 (*STD for micro-enterprises*)

PU Europe does neither support the amended Commission proposal nor Parliament amendment 78. Compliance costs largely depend on the mode of production and only to a less extent on the size of the company. The draft revised CPR introduces a completely arbitrary threshold (up to nine employees) which leads to competitive disadvantages for competitors with ten staff or more.

On the other hand, article 28 is non discriminatory in that it clearly refers to the mode of production. As most micro-businesses make made-to-measure products, they would be the major beneficiary. In addition, SMEs and larger enterprises making made-to-measure products could also benefit from these simplified procedures. The benefits of article 27 are therefore very limited.

PU Europe calls on the European Parliament to remove any discrimination according to company size and to link the use of simplified procedures solely to the mode of production.

BASIC WORKS REQUIREMENTS

Amendment 4 - Recital 11 a (new) (*Use of EPDs*)

The argumentation of the Commission is, in principle acceptable. PU Europe proposes however a slightly altered wording to take account of the fact that Environmental Product Declarations (EPD) should be one, but perhaps not the only tool to demonstrate compliance with Basic works requirement (BWR) 7.

PU Europe proposal for amended recital 43c

Manufacturers shall have the possibility to use Environmental Product Declarations (EPD) in the context of assessing the sustainability of the use of resources and the impact of construction works on the environment.

Amendment 23 – Recital 43 c (new) (*Content of the basic works requirement 7*)

PU Europe does not see the necessity of this recital. It would also be in contradiction with amendment 2 (amended recital 43c), as the EPD will not necessarily provide the information required at product level. Furthermore, the term “use of environmentally compatible raw and secondary materials” is unclear.

PU Europe proposal for recital 43b (*amended Commission proposal*)
Delete recital.

Amendment 93 - Annex I, Part 7 (*Basic works requirement 7*)

PU Europe cannot support the proposed BWR7. The second part, listing sustainability elements such as recyclability, durability of the construction work and environmentally compatible raw and secondary materials is unclear and too limiting. In fact, sustainability consists of three pillars (environmental, economic and social) which should be approached in a holistic manner. Rather than selecting three sub-elements, BWR7 should encompass all sustainability pillars.

Furthermore, it should be possible to use European EPDs to demonstrate compliance. Other compliance tools should not be excluded.

PU Europe proposes the following wording:

Sustainability of construction works

The construction works must be designed, built and demolished in such a way that the use of resources is sustainable as a part of the sustainability of construction works over their whole life cycle.

It shall be possible to use European Environmental Product Declarations (EPD) for the assessment of the sustainable use of resources and for the impact assessment of building works on the environment as aspects of sustainability."

~~The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and ensure the following:~~

~~(a) recyclability of the construction works, their materials and parts after demolition;~~

~~(b) durability of the construction works;~~

~~(c) use of environmentally compatible raw and secondary materials in the construction works.~~

TRANSITIONAL MEASURES

Amendment 89 - Article 53, par. 3 (*transitional measures for ETAs and CUAPS, move from ETAs to hENs*)

PU Europe supports the amended Commission proposal. However, as outlined in our comments on Parliament amendment 120, the move towards harmonised standards should be encouraged. PU Europe therefore supports amendment 120.

Brussels, 15th November 2009

Annex I

PU Europe supports the following elements of the revised Commission proposal without further comments:

Amendment 1	Recital 1 (impact of works on persons and the environment)
Amendment 2	Recital 8 a (new) (health and safety aspects)
Amendment 125	Recital 11 b (new)
Amendment 5	Recital 14
Amendments 8 and 9	Recitals 16 and 17 (parallel use of ETAs and harmonised standards)
Amendment 11	Recital 20 (principle of transparency in the context of establishing EADs and issuing ETAs)
Amendment 18	Recital 33 a (new)
Amendment 21	Recital 43 a (new)
Amendment 24	Article 1
Amendment 115	Article 2, point 1 a (new)
Amendment 27	Article 2, point 3 a (new) (Performance of construction product)
Amendment 116	Article 2, point 3 b (new) (Threshold levels)
Amendment 30	Article 2, point 4 a (new)
Amendment 39	Article 2, order of points 4 b to 4m (partially new)
Amendment 36	Article 2, point 4 c (definition of EAD)
Amendment 33	Article 2, point 4 e (definition of manufacturer)
Amendment 32	Article 2, point 4 l (definition of “making available on the market”)
Amendment 34	Article 2, point 16 a (new) (definition on “user”)
Amendment 35	Article 2, point 16 b (new) (definition of “Technical Assessment Body”)
Amendment 40	Article 2, point 18 (definition of “factory production control”)
Amendment 47	Article 5, paragraph 2, point c a (new) (Intended use)
Amendment 56	Article 8, paragraph 4 a (new)
Amendment 58	Article 9, paragraph 1 a (new) (Product Contact Points)
Amendment 61	Article 16, para 2, subpara 1, part 2 (“generic intended use”)
Amendment 70	Article 21 par. 1 (Use of European Technical Assessments)
Amendment 119	Article 18, paragraphs 2, 3 & 4 (performance classes & thresholds)
Amendment 67	Article 19, paragraph 3 (generic intended use)
Amendment 71	Article 24, paragraph 2, subpara 1
Amendments 122, 111 & 77	Article 26, paragraph 1 points b and c & subpara 1a (new), paragraph 2 a (new) (simplified procedures: sharing and cascading)
Amendment 83	Article 27, paragraph 2 c (new)
Amendment 84	Article 28, paragraph 1 (made-to-measure products)
Amendment 86	Article 33, paragraph 5 (notified bodies)
Amendment 88	Article 51, paragraph 2 a (new) (independence of the SCC members)
Amendment 90	Annex I, paragraph 1
Amendment 91	Annex I, Part 3. Introductory wording (BWR3)
Amendment 92	Annex I, Part 6, part 1 (BWR6)