Position on draft amendments to Commission proposal for Construction Products Regulation (dated 19 February 2009)

EuroWindoor assessed the comparative table in working document MD-24 of Working Party on Technical Harmonisation, dated 19 February 2009 with amendments voted in the IMCO Committee of the European Parliament on 11 February 2009 and provisional outcome of the Working Party examination. We like to point out some principle arguments for complex products using windows as example. Windows do feature for infinite possibility of combinations from different framings and infills, in different types and sizes as well as any configuration and segmentation of the product. The following suggestions shall give input to an approach with less effort but the same benefit.

EuroWindoor is an umbrella organization of the European associations of fenestration and door sector FAECF, FEMIB, EPW and UEMV for the three frame materials metal, wood and plastic and the infill material glass. On a European scale EuroWindoor represents more than 50.000 companies and more than one million employees. The European window industry is mostly an industry which consists of small and medium sized companies, with local employees. In view of the construction supply chain, the window industry supplies local construction companies with building components and is thereby a part of a local supply chain with local employment.

EuroWindoor considers the Construction Products Regulation to be a very important initiative for the achievement of economic success in the EU. It may be regarded as a common language allowing all partners in business to co-ordinate their activities and understand one another. For EuroWindoor it is obvious that we should strive for a better and more transparent way of working in the building sector, but we see some of the proposed amendments in contradiction to this aim.

Amendment 32: exclusions from making available on the market

EuroWindoor sees with the proposed amendment a big danger for misunderstandings. Especially proposed listing (b) “any product manufactured on and/or off site and incorporated by the manufacturer into a work without being placed on the market” may be used to exclude most of the fenestration products from CE marking. Often windows are manufactured in a factory and installed on site by the same company. Furthermore it is always possible to deliver frame and glass separate to the building site to be assembled there, which means “to be incorporated by the manufacturer into a work”. Both cases are often identified as **not** being placed on the market (and therefore without CE marking). The proposed amendment support this meaning, which we feel is not the aim of the CPR.
CE marking might not be applicable only for individual one off products which are constructed for a specific project; this does not include different sizes of the same basic product or the final assembly on site as mentioned before.

- ⇨ We demand to clarify these specific cases and the products concerned. As a minimum CE marking should be possible on a voluntary basis for the excluded cases. This enables the manufacturer to use CE marking for showing compliance with building regulations instead of being asked to use different national procedures.

Amendment 25 and proposal 12a: “products which are not covered or not fully covered by a harmonised standard”

In particular the amendment “not fully covered by a harmonised standard” allows manufacturer to provide for a European Technical Assessment instead of using the harmonized standard. This may cause distortion of competition for similar products. There is an example from the past: for “balcony glazing” a CUAP was developed although it belongs according to the definition to windows. The justification was that due to the construction type “balcony glazing” has no special air tightness. By this procedure it was possible to get CE marking without any declaration of bad air tightness or using the npd option.
Furthermore Member States may be enabled to ask for ETA or national approvals when indicating the harmonised standard as not sufficient. This is the wrong way to deal with such a problem. The right way would be to adapt the harmonised standard.
If a product falls under the scope of a harmonised standard it should be used.

- ⇨ We recommend to use only “are not covered by a harmonised standard” and to be very careful when using “not fully covered”. This applies especially for amendment 25 and proposal 12a listings
  - *(b) the product does not meet one or more technical definitions of characteristics included in any such harmonised standard;*
  - *(c) one or more essential characteristics of the product are not adequately covered by any such harmonised standard; and*
  - *(d) one or more test methods necessary to assess the performance of the product are missing or not applicable.clarify these specific cases and the products concerned. As a minimum CE marking should be possible on a voluntary basis for the excluded cases. This enables the manufacturer to use CE marking for showing compliance with building regulations instead of being asked to use different national procedures.*

Amendment 40: definition "factory production control”

The amendment 40 to the definition of FPC *“...carried out by the manufacturer ensuring that the production of the construction product and the product produced are in conformity with the technical specifications”* is misleading. The intention of FPC is to ensure that the declared performance of the product is in line with the determined performance of the ITT. This is not always the case, if FPC is conforming to the technical specification.

- ⇨ We propose to delete the amendment and to stay with the commission proposal.

Amendment 41 and proposal 1a: "definition of kit"

If "assembled system" is used in the definition of “kit”, the definition should also be amended.

- ⇨ We propose to use the definition of a "kit" according GP C, 2.3 including i) and ii).

Amendment 45: declaration of performance depending on requirement in the Member State, npd if no requirement

NPD (No Performance Determined) is an option, not an obligation. The manufacturer may use this option where and when no requirement for a given characteristic is in force for the intended end use of the construction product in question.

- ⇨ We propose to revise the amendment accordingly.

Amendment 49 and Amendment 101: “declaration of hazardous substances”

We have to point out that these amendments ask for much more than REACH, the European Chemical Products Regulation, does. REACH regulates material, material processing and products and asks with § 33 “Duty to communicate information on substances in articles” in a practical way manufacturers to furnish information to consumers.
A large number of REACH-products are at the same time construction products in line with the Construction Product Directive (CPD) and in accordance with the new Construction Product Regulation (CPR), respectively. Thus it is possible to efficiently and comprehensively evaluate construction products with regards to consumer protection.

The suggestion to evaluate the “Hazard” is an attempt closely linked with construction material that may well be practised; however, its implementation might pose considerable difficulties in conjunction with more complex construction products, particularly for SME’s. In most cases, a complete declaration of hazardous materials contained in construction products is not necessary, and might even be misleading as it would lead to a considerable information overload with consumers. We cannot believe that the evaluation of the hazardousness of materials refer to the 2.7 Mio materials already registered with the ECHA. A double regulating would be the outcome and not a reasonable solution. Interesting to the consumer are substances which release the product in a relevant amount.

- ⇨ We see the need for clarification of the meaning of ”hazardous/dangerous” according to the CPR. We expect differences considering the following relation:
  risk = hazard x exposure
  We ask therefore, to assess the suggestion especially in view of the coming Basic Works Requirement 3 (BWR 3) and to limit the evaluation requirements for construction products to a practicable degree. Before this is done we propose to stay with the Commission proposal.

Amendment 60: composition of standardisation bodies

To limit categories of actors in any one sector to 25% will not work in practice, e.g. because the enforcement will be virtually impossible. CEN is trying to speed up standardisation since years. Such a regulation will result in the opposite and slow down the whole process.

- ⇨ We propose to stay with the Commission proposal.

Amendment 61: content of harmonised standards

For some construction products the durability of one or more essential characteristics is an important issue, for others this is not the case. Therefore, durability should only be dealt with if relevant and legal requirements are in force. The sentence "Harmonized..... for in Article 51(2)" is confusing and superfluous.

- ⇨ We propose to stay with the Commission proposal.

Amendment 92: products must be energy-efficient

We fully agree that construction products must also be energy-efficient, but to require that they must use as little energy as possible during their life cycle is too much. This would limit the number of useable products unnecessary, because only few will reach the goal to use as little

energy as possible. Furthermore for many products it is not clear how to calculate the energy use, because many different characteristics and different climatic conditions are relevant for the result. Finally the cost effectiveness must be considered. The recast of EPBD is dealing with this matter in an appropriate way.

⇨ We propose to stay with the Commission proposal.

Discussion on Article 26 "Use of Specific Technical Documentation"

We have to point out that it is very important to the fenestration sector, that manufacturers are allowed to use test results obtained by a system supplier/provider and not only from another manufacturer. Guidance Paper M uses the term "system houses" in 4.13.2. "Cascading ITT (to be applied under systems 1, 1+ and 3 only)". IMCO rejected the ITRE Amendment 27 (Former ITRE 19 – Den Dover) with the proposal to amend the relevant text. The amendment is also mentioned in the provisional outcome of the Working Party examination to Article 26.1.c.

⇨ We like to support this amendment as very important.

We would be grateful if you would take note of our concerns which we would be happy to discuss further at the appropriate time.

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EPW: European Plastic Window Association
FAECF: Federation of European Window and Curtain Wall Manufacturers' Association
FEMIB: Federation of the European Building Joinery Associations
UEMV: European Glaziers Association

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