

## **The Association for European Manufacturers of Expanded Polystyrene (EUMEPS) comments to the Proposal for a New Regulation on Construction Products.**

**To win the race of the green and digital transition, construction product manufacturers need clear and transparent rules supported by a stable legal framework right from the start.**

EUMEPS members acknowledge the release of the long-awaited Commission proposal for a new Construction Products Regulation which aims at solving the implementation issues construction product manufacturers have been facing and bringing to the attention of the Commission over the last years. EUMEPS is pleased to provide comments to this core piece of legislation which will help reaching the goals set by the Commission in the Green Deal.

There are a number of principles put forward in the proposal which EUMEPS members welcome:

- Strengthening of the Single market
- Keeping the standardisation system at the core of the system under the roof of CEN / CENELEC
- Maintaining the CE marking to guarantee a free movement of construction products within the EU
- Introducing aspects related to digitalisation which will facilitate the information needs for all economic operators along the value chain
- Focusing on circularity principles and environmental sustainability objectives
- Clarifying the procedures to develop EADs/ETAs
- Strengthening the role of market surveillance authorities

Alongside these positive aspects presented by the Commission in its legal proposal, there are a number of issues which raise high concerns among our members:

### **1. The definitions**

The concept of "**environmental sustainability**" is new in the CPR. It should be clarified, in particular on the aspects of performance and conformity. Indeed, in some places it seems clear that it refers to environmental impacts in relation to the essential characteristics set out in Annex I part A.2 (performance). But, in some places in the text,



it is questionable whether this also refers to the environmental requirements of Annex I part C.2 (conformity).

**EUMEPS recommends making a clear definition of ‘environmental sustainability’.**

The definition of ‘**life cycle**’ deviates from the definition used in EN 15978-1, with missing topics on among others use, transport and design.

**EUMEPS recommends the use of the same wording in definitions throughout all EU legislations.**

## **2. Aspects related to digitalisation**

EUMEPS members fully support the possibility to use digital tools for providing information on construction products. As evidence of this commitment, EUMEPS has responded to the need for digital information by developing the Smart CE marking format and has called for its support and legal implementation over the last few years. While the current proposal offers the possibility to use permalinks to Declarations of Performance and Declarations of Conformity in pdf format, which is much appreciated, the use of machine-readable digital data formats instead of pdf would make the real difference in contributing to the digital transition for all players along the value chain.

**EUMEPS therefore insists** that a more ambitious approach to digitalisation is adopted enabling construction manufacturers to use a harmonised machine-readable format in accordance with Articles 9 and 10 of the Eco-design for Sustainable Products Regulation proposal, making the Declaration of Performance and Declaration of Conformity the Digital Product Passport for construction products, avoiding thereby additional burden and doubling information.

## **3. Principles of good governance**

Like other branches of industry, the construction sector needs a stable legal framework that allows its manufacturers to plan their investments, in order to remain competitive.

In the current proposal, the European Commission is empowered to adopt Delegated Acts in a broad range of situations. The criteria when to adopt Delegated Acts are not clear and transparent and considered by industry as a free ticket for the Commission to decide whether essential characteristics should be compulsory or voluntary for some family of products, to include threshold levels and classes of performance, to add further environmental obligations for manufacturers or to introduce labelling requirements including a ‘traffic-light-labelling’.

The current draft with its multiple possibilities for the Commission to adopt Delegated Acts, even where it may be disputed if some amendments are non-essential, is an open door to an ever-changing piece of legislation. Such empowerment would result in legal uncertainties and further difficulties for construction manufacturers to place their products on the market, adding confusion to the general process for all actors in the value chain which is considered complex and unclear enough.

**EUMEPS strongly recommends** reducing the number of articles that may be amended by Delegated Acts, e.g., by further specifying the requirements in the legal text, and that the delegation of powers to the Commission should be used in **exceptional circumstances to solve a specific issue** not addressed in the legislation. It goes without saying that only a proper consultation of all stakeholders is key upstream and during the whole process.

#### **4. Standardisation**

Whereas a first-hand solution is provided in the draft proposal in case the standardisation system is not performing timely or delivering as expected, inter alia by empowering the Commission to adopt other technical specifications by means of Delegated Acts, **EUMEPS insists it should be applied only in exceptional circumstances to avoid undermining the whole standardisation system.** To this, as foreseen in the industry proposal for a new CPR, Member States' experts and stakeholders should be consulted in the assessment and adoption process of standardisation deliverables, to advise on the best approach in case of short comings.

Likewise, the rules behind issuing a standardisation request for mandatory or voluntary harmonised standards by the Commission need further clarification. Furthermore, as these standards are particularly valuable to SMEs for demonstrating compliance, standardisation requests for voluntary harmonised standards should become an obligation rather than an option.

**EUMEPS regrets** that the current situation of blocked harmonised standards for citation will remain unchanged until the new Regulation will be applicable to standardisation deliverables.

**EUMEPS strongly emphasises and reiterates the need for a** reliable, i.e., stable, official and binding guidance for standard writers. This long-awaited guidance, which is still not available, is the centre piece for drafting complete standardisation deliverables in a timely manner.

## 5. Obligations for manufacturers

One of the novelties of the draft proposal as regards obligations imposed on manufacturers is the request to issue a Declaration of Conformity in addition to the already existing Declaration of Performance. Although manufacturers are obliged to issue a 'Declaration of Conformity and a Declaration of Performance' in one single document, there is great concern regarding the administrative burden and additional costs for manufacturers, especially in absence of voluntary harmonised standards that provide presumption of conformity.

A second new obligation tabled in the proposed draft is the obligation for manufacturers to upload information in an EU construction database or system. The establishment of such an information tool raises many questions in terms of ownership and maintenance on one hand and in terms of administrative and financial burden for manufacturers on the other hand, especially where the added value of a central database has not been demonstrated. Other considerations include the quantity of information as well as the possible access of authorities and organisations, including from third countries to this information which belongs to companies and may be considered confidential. Last but not least, considering the significantly increasing complexity of datasets that needs to be made available, the obligation to make available all data within two months after the database availability is not realistic. Even if the database will be filled subsequently per product family, manufacturers will have to handle hundreds of products in this short timeframe. A reasonable transition period needs to be foreseen.

Other obligations which are currently not in place in the current Regulation, and which would require further consideration in terms of extra burden or technical feasibility for manufacturers include the obligation to label products as to their intended use (professional or non-professional).

**EUMEPS fears** that these new obligations will make the life and daily business of construction manufacturers even more complex, adding administrative and financial burden on them. **EUMEPS recommends that some of these obligations, which are not adding any value for any of the stakeholders involved, are fully reconsidered in the final text.**

## 6. Reporting of batch numbers in Declaration of Performance (Annex II, 1a)

The introduction of batch numbers and serial numbers would require implementing constant changes and updates of Declaration of Performance. This would rise the costs and hinder the identification. There can be thousands of batch numbers per year. It is difficult to plan how many of them can be established in the future - this depends on the market.



Therefore, **EUMEPS recommends keeping the current system which still functions well. We are afraid that the implementation of the proposed system would worsen the proper and quick identification.**

## **7. Focus on environmental obligations and sustainability principles**

EUMEPS members are since long voluntarily providing Environmental Product Declarations based on EN 15804. As already mentioned at the beginning of this document, EUMEPS members therefore welcome that life cycle assessment of construction products is now integral part of the proposal.

For sake of transparency and clarity, **EUMEPS members request** that EN 15804:2012 +A2:2019 is clearly mentioned in the proposal as the methodology to assess these obligations, avoiding any misinterpretation.

Likewise, for construction manufacturers not to be obliged to buy a pig in a poke, they should know timely which other life cycle assessment indicators will be imposed on them, when and whether these will be mandatory or voluntary over the time.

Circularity principles (**durability**, reparability, recyclability) are at the heart of the whole process of the green transition and are much welcome by the construction sector. However, it should be clear for manufacturers how to implement them.

### **Recycled content**

Longevity of many building and construction products make that legislation and green public procurement pushing for higher recycled content what causes undesirable competition to alternative products as recyclates evolving from such long lifetime applications are not always available as a direct consequence of the durability success of that product. In applications where the use of recycled plastics to replace virgin plastics can technically be done, downstream users and technical specifications often do not allow to do so. Whereas the use of recycled plastics compared to the use of virgin plastics in controlled loop applications has considerable and clear CO<sub>2</sub> emission advantages, there is no economic driver to stimulate the uptake of it. The present proposals do not foresee to stimulate the uptake other than by aiming to introduce minimum recycling content measures. Whereas from an industry perspective we are open to maximize the use of recycled materials where possible, identified hurdles and bottlenecks will need to be tackled first.

**EUMEPS requests the feasibility of these obligations to be assessed for each category or family products in co-operation with industry.**

**One size fits all approach is not applicable** given the wide variety of construction sectors and the way circularity principles are applied to them.

## **8. Mass balance credit method**

According to the current draft of the Construction Products Regulation the Environmental Product Declarations (EPDs) will become mandatory. They indicate the environmental impact and carbon footprint of construction products.

The use of renewable and recycled feedstocks will contribute to the reduction of fossil resources, greenhouse gases emission and it will support the circular economy. As the demand will keep growing in the incoming years and as technologies are not yet at scale, the Mass Balance Approach enables to process sustainable feedstocks in existing production networks.

The added share of sustainable raw materials is mathematically assigned to the corresponding mass-balanced new product. The products have the same physical and chemical properties as products based on fossil raw materials.

Mass Balance would help to avoid shortages in construction material supplies, and when applied to recycling it will help reduce incineration and landfill. It has been already implemented in sectors like green electricity, biofuels, consumer products and a range of other products. It is a well-established method certified by widely recognized scheme (e.g., ISCC+, REDcert<sup>2</sup>). It avoids double counting and ensures reliable and transparent claims.

**EUMEPS recommends accepting the Mass Balance Credit Method as chain-of-custody in the Environmental Product Declarations.**

## **9. Implementation of the Legal framework**

As repeatedly brought forward in meetings and consultations of the European Commission, a common market and a competitive construction sector requires a clear, stable, and functioning legal framework. This is valid for all construction manufacturers, not only for SMEs which are a majority within the construction industry as a whole.

The current draft foresees repealing the existing Construction Products Regulation on 1<sup>st</sup> January 2045 with the direct consequence of having a 'transition' period of at least 20 years. During this long period, the new Construction Products Regulation shall be implemented stepwise, causing an unlevel playing field between products still under the existing and already under the new Regulation.



This would oblige Member States and stakeholders to work and meet the requirements of two parallel systems for a very long transition period, not only with regards to the common market for construction products, but also with regards to the applicable national building requirements. This will not help strengthening the internal market but confuse and burden not only manufacturers, but all players in the construction value chain.

**EUMEPS members regret to see the proposed repealing year of the current Construction Products Regulation and recommend that the transition is clear and transparent, avoiding distortions and ensuring that all necessary tools (e.g., voluntary harmonised standards) are available right from the start, for construction manufacturers to be well prepared for the years to come.**

## 10. Harmonised zone

Whereas the intention described in the proposal goes in favour of strengthening the internal market by setting rules beyond which Member States cannot regulate, European Assessment Documents (EADs) are no longer considered as Harmonised Technical Specification. EADs are *de facto* excluded from the Harmonised Zone, which is seen as being contrary to strengthening the common market, enabling in this case Member States to continue imposing further regulatory needs for those products covered by EADs.

The exclusion of EADs from the Harmonised Zone needs to be further analysed in the framework of the whole EAD system and in the context of applicable obligations and exemptions.

**EUMEPS members recommend EADs to be integrated in the so-called Harmonised zone** and be considered as an equal route for placing construction products on the market. This integration will enable construction products covered by Harmonised Standards and European Assessment Documents be considered on an equal basis and guarantee a level playing field for all construction manufacturers, whether their products are covered by Harmonised Standards or EADs.

## 11. Complaint portal

EUMEPS members are of the opinion that this kind of portal where anyone (citizen or company alike) can report about non-compliance of products without any conditions or consequences would create many problems and facilitate potential misuse. Besides, users can already complain in front of national authorities.

## **12. Inherent Safety products requirements**

The list of risks is considered too long, and it would be difficult to implement for each product group. Allowing the EC to further amend this list would bring further confusion.

**EUMEPS requests full transparency on the application of such inherent safety requirements** only when a Delegated Act is issued, and for the list of risks to be reduced. In this respect, we also ask for a clarification of the role of the CPR in demonstrating compliance with the General Products Safety Regulation.

## **13. Product Information Requirements (Annex I part D)**

The bulk of information manufacturers need to provide is extensive and does not always bring any added value. To the contrary, adding information requirements for manufacturers to provide is only seen as an extra administrative and financial burden for them. Again, the Commission may amend this list through Delegated Acts leading to unclarity and confusion over the time.

**EUMEPS recommends that the list of product Information is reconsidered taking into account the needs of all stakeholders but without overburdening manufacturers in their daily business**

## **14. Assessment and Verification Systems (Annex V)**

The obligations described in this Annex V, in relation with the Assessment and Verification System are raising high concerns among our members, considered to be unrealistic to implement due to the high level of random checks to be performed by notified bodies. The verification system of allocating points ahead of issuing a certificate is bordering with a school system which might not even be workable in daily business. Furthermore, given that the verification from notified bodies of environmental sustainability requirements does not suffer any tolerance for incorrectness is seen as a 'no go' from most of our members.

**EUMEPS recommends that the Assessment and Verification System described in Annex V is reconsidered to have a system that is workable for all players: industry and notified bodies alike.**



## **15. CPR translation**

Some of the EUMEPS members spotted translation errors and incompatibility with the vocabulary of the current CPR in their national language.

**EUMEPS recommends a translation check-up.**

### **Conclusion**

While EUMEPS welcomes the efforts deployed in the current draft to strengthen the internal market, the whole system as described in the proposal is considered very heavy and not user-friendly for construction manufacturers to place their products on the market and participate actively to the goals set by the Commission in terms of green and digital transition.

Our sector needs clarity in the process, an easy to perform system for placing construction products on the market and a stable legal framework to remain competitive and win the race of digital and green transition. Much to our regret, the current proposal is not fulfilling these needs.

As representative of expanded polystyrene industry, we stand ready by all means to engage in a constructive dialogue with the co-legislators to achieve a whole system which takes into account the needs of all economic operators.

### **EUMEPS**

Our members cover the entire Expanded Polystyrene (EPS) value chain from raw material suppliers to EPS converters and recyclers, as well as supporting industries including machinery and additive suppliers. Members include individual companies as well as 23 European national EPS associations. This unique representation of the entire value chain ensures that EUMEPS represents both large companies and small- and medium-sized converters and recyclers. Altogether its membership represents more than 1,000 companies, most of them small- and medium-sized enterprises (SMEs) and employs more than 80,000 people.

EPS is a perfect insulation material. It has been used in insulation industry for more than 60 years. The long experience of EPS is thanks to its perfect insulation properties and high resistivity towards water and fungus. It is durable, it is able to insulate buildings for more than 50 years and its insulation properties only slightly change within time. It does not have a negative impact on health, it is 100% recyclable and its low production costs made it a successful material in the global market. It has a low carbon footprint what allows it to be still used under the current, strict environmental standards.