

Brussels, 30 September 2010

ORGALIME OPINION ON THE POSITION OF THE COUNCIL AT FIRST READING WITH A VIEW TO THE ADOPTION OF A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED CONDITIONS FOR THE MARKETING OF CONSTRUCTION PRODUCTS AND REPEALING COUNCIL DIRECTIVE 89/106/EEC (Reference: 10753/10 2008/0098 (COD))

Orgalime is the European Engineering Industries Association, representing the interests of the Mechanical, Electrical, Electronic, Metalworking and Metal Articles Industries. On behalf of the 33 national association members, Orgalime speaks for an industry, which includes over 130.000 companies, the vast majority of which are small and medium enterprises.

In 2009, these companies employed some 10.6 million people in the European Union and accounted for some € 1 427 billion of annual output: over a quarter of the EU's manufacturing output and a third of its manufactured exports.

Construction products are within the remit of Orgalime's constituency. Our industry covers a heterogeneous sector, which includes a wide variety of products, including structural metal products, metal structures and parts of structures, metal building and construction products in general.

GENERAL COMMENTS

Orgalime believes that the European industry needs a clear and harmonised framework, avoiding different national implementation and interpretations, which have for a long time given rise to significant problems and barriers to trade for European manufacturers.

Therefore we welcome the Position of the Council at first reading and the efforts carried out by Member States to reach this Council Political Agreement.

We would like to underline our strong support especially regarding the conditions for drawing up the declaration of performance and the whole content of **Article 4 (Declaration of performance)**: Orgalime believes that the best solution is to make the CE marking and the Declaration of Performance mandatory when an essential characteristic of a product in relation to basic works requirements is covered in the harmonized technical specifications.

Moreover, Orgalime agrees and fully supports the whole content of current **Article 6 (Content of the declaration of performance)** and the possibility to use the letters "PND" (Performance Not Determined) for the listed essential characteristics for which no performance is declared. The solution foreseen by Article 6 would prevent the unsatisfactory situation, whereby a large number of construction products may be placed on the market without accurate product information.

Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

It is worth underlining that the letters “PND” should only be allowed for characteristics for which this is foreseen in the relevant harmonised specification. We will therefore clarify this issue at point f) of Article 6.3 of the Council Common Position, in order to remain coherent with the relevant harmonised specification.

Article 6.3 – Orgalime proposal for amendment

<p>The Declaration of Performance shall in addition contain:</p> <p>(f) for the listed essential characteristics for which no performance is declared, the acronym "PND" (Performance Not Determined);</p>	<p>The Declaration of Performance shall in addition contain:</p> <p>f) for the listed essential characteristics for which no performance is declared, the acronym "PND" (Performance Not Determined), if this is foreseen in the harmonised specification;</p>
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Despite of the overall Orgalime support to the Position of the Council at first reading, we would like to submit to your attention some issues which could be further improved:

1. Duplication of Regulations – Whereas 24, Article 1 (Subject matter)
2. Article 5 (Derogation from drawing up a declaration of performance)
3. Article 7 (Supply of the declaration of performance)
4. Article 10 (Product Contact Points for Construction)
5. Article 37 (Use of simplified procedures by micro-enterprises)
6. Article 38 (Other simplified procedures)

1. Duplication of Regulations

The proposed Regulation covers aspects of construction products design, which are already regulated by other European directives or regulations (for example the Ecodesign Directive, REACH Regulation and RoHS Directive). These regulations already address issues which are being duplicated by the draft Construction Products Regulation. Orgalime feels that duplication of legislation should be avoided and so should the introduction of pointless administrative burden for products.

To avoid confusion between the requirements of CE marking for this Regulation and that of other European legislation, we propose the following:

Article 1 (Subject matter) – Orgalime proposal for amendment

<p>This Regulation lays down conditions for the placing or making available on the market of construction products by establishing harmonised rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products.</p>	<p>This Regulation lays down conditions for the placing or making available on the market of construction products by establishing harmonised rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products.</p> <p>Where, for construction products, the essential characteristics with respect to the basic works requirements referred to in Annex I are wholly or partially covered by other Community legislations, this Regulation shall</p>
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	not apply to that construction product in respect of such characteristics from the date of implementation of those other regulations
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Whereas 24

We welcome the proposal in the Position of the Council to delete the obligation to insert information about hazardous substances into the Declaration of the performance, as it was instead first introduced by the European Parliament during the first reading (amendments nr. 49 and nr. 101 - **Ref. Doc. EP P6_TA-PROV(2009)0320**). Orgalime opposes the two European Parliament amendments since the obligation to insert information about hazardous substances is already covered at present by the REACH Regulation (1907/2006) requirements, in particular article 33. In addition, these amendments go far beyond this Regulation with regards to the substances to be declared.

The Position of the Council at first reading has deleted this obligation, but Whereas 24 states that the declaration of performance may usefully include information on the content of hazardous substances. Orgalime would like to clearly request that the implementation of Whereas 24 should be fully in line with article 33 on communication requirements of the REACH Regulation.

2. Article 5 (Derogations from drawing up a declaration of performance)

We would like to suggest narrowing the current version of derogation a) in Article 5 only to system 3 and 4, because we believe this derogation shall be restricted only to products with a low contribution to the safety of the building, i.e. when system 3 or 4 applies to them.

Therefore we propose the following amendment:

Article 5 (Derogation from drawing up a declaration of performance), point a) – Orgalime proposal for amendment

<p>By way of derogation from Article 4(1) and in the absence of Union or national provisions requiring the declaration of essential characteristics where a manufacturer intends to place a product on the market, a manufacturer may refrain from drawing up a declaration of performance when placing a construction product covered by a harmonised standard on the market where:</p> <p>(a) the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules;</p>	<p>By way of derogation from Article 4(1) and in the absence of Union or national provisions requiring the declaration of essential characteristics where a manufacturer intends to place a product on the market, a manufacturer may refrain from drawing up a declaration of performance when placing a construction product covered by a harmonised standard on the market where:</p> <p>(a) the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules; this derogation is valid only for a construction product when system 3 or 4 as set out in</p>
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	Annex V applies to it.
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3. Article 7 (Supply of the declaration of performance)

Orgalime would like to stress the importance of the use of electronic means in sending the copy of the declaration of performance. We manufacturers should be clearly entitled to supply the declaration of performance either on paper form or by electronic means.

Therefore, on this particular issue, Orgalime is more in line with the position of the European Parliament in its first reading compared to the Council's one. We support European Parliament amendments (**Ref. Doc. EP P6_TA-PROV(2009)0320**) n. 50 and n. 51, stating that a copy of the Declaration of Performance shall be supplied in paper form or sent by electronic means; the producer shall send in paper form the copy of the Declaration of Performance, if the recipient requests it. We also support that the content of the Declaration of Performance may be available on a website in accordance with conditions established by the European Commission.

4. Article 10 (Product Contact Points for Construction)

For sake of easy and clear understanding of the information provided by Product Contact Points, we would like to add at bullet 3) of Article 10 a further requirement regarding the language.

Article 10 (Product Contact Points for Construction) – Orgalime proposal for amendment

<p>1. Member States shall designate Product Contact Points for Construction pursuant to Article 9 of Regulation (EC) No 764/2008.</p> <p>2. Articles 10 and 11 of Regulation (EC) No 764/2008 shall apply to Product Contact Points for Construction.</p> <p>3. With regard to the tasks defined in Article 10(1) of Regulation (EC) No 764/2008, each Member State shall ensure that the Product Contact Points for Construction provide information on the provisions within its territory aimed at fulfilling basic requirements for construction works applicable for the intended use of each construction product, as provided for in Article 6(3)(e) of this Regulation.</p>	<p>1. Member States shall designate Product Contact Points for Construction pursuant to Article 9 of Regulation (EC) No 764/2008.</p> <p>2. Articles 10 and 11 of Regulation (EC) No 764/2008 shall apply to Product Contact Points for Construction.</p> <p>3. With regard to the tasks defined in Article 10(1) of Regulation (EC) No 764/2008, each Member State shall ensure that the Product Contact Points for Construction provide, in a language that could easily understood by the enquirer, information on the provisions within its territory aimed at fulfilling basic requirements for construction works applicable for the intended use of each construction product, as provided for in Article 6(3)(e) of this Regulation.</p>
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5. Article 37 (Use of simplified procedures by micro-enterprises)

While the introduction of simplified procedures for micro-enterprises is an innovative approach which can bring benefits to the smallest enterprises reducing financial burden, Orgalime believes that such an approach may be questionable as it creates discrimination between competing companies and may lead to a lower level of confidence for the CE marking. Adequate clarification should also be given as to the case, when a given micro-enterprise would grow above 10

employees after their products have passed the simplified procedure. For these reasons we are against lesser requirements for micro-enterprises and we propose the following amendment:

Article 37 (Use of simplified procedures by micro-enterprises) – Orgalime proposal for amendment

<p>Micro-enterprises manufacturing construction products covered by a harmonised standard may replace the determination of the product-type on the basis of type-testing for the applicable systems 3 and 4 as set out in Annex V by using methods differing from those contained in the applicable harmonised standard. Those manufacturers may also treat construction products to which system 3 applies in accordance with provisions for system 4. When a manufacturer uses these simplified procedures, he shall demonstrate compliance of the construction product with the applicable requirements by means of a Specific Technical Documentation.</p>	<p>Micro-enterprises manufacturing construction products covered by a harmonised standard may replace the determination of the product-type on the basis of type-testing for the applicable systems 3 and 4 as set out in Annex V by using methods differing from those contained in the applicable harmonised standard. Those manufacturers may also treat construction products to which system 3 applies in accordance with provisions for system 4. When a manufacturer uses these simplified procedures, he shall demonstrate compliance of the construction product with the applicable requirements by means of a Specific Technical Documentation.</p>
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6. Article 38 (Other simplified procedures)

While it is recognized that reducing financial burden is useful, especially for companies manufacturing few products, the introduction of these other simplified procedures may lead to a lower level of confidence for the CE marking. In addition, the verification procedure of the STD by a third party certification body, since it is not detailed, could provoke long discussions between the two parties.

Therefore we propose the following amendment:

Article 38 (Other simplified procedures) – Orgalime proposal for amendments

<p>1. In relation to construction products covered by a harmonised standard and which are individually manufactured or custom made in a non-series process in response to a specific order, and which are installed in a single identified construction work, the performance assessment part of the applicable system, as set out in Annex V, may be replaced by the manufacturer by an Specific Technical Documentation demonstrating compliance of that product with the applicable requirements.</p> <p>2. If the construction product referred to in paragraph 1 belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1+ or 1, as set out in Annex V, the Specific Technical Documentation shall be verified by a notified product certification body as referred to in Annex V.</p>	<p>1. In relation to construction products covered by a harmonised standard and which are individually manufactured or custom made in a non-series process in response to a specific order, and which are installed in a single identified construction work, the performance assessment part of the applicable system, as set out in Annex V, may be replaced by the manufacturer by an Specific Technical Documentation demonstrating compliance of that product with the applicable requirements.</p> <p>2. If the construction product referred to in paragraph 1 belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is system 1+ or 1, as set out in Annex V, the Specific Technical Documentation shall be verified by a notified product certification body as referred to in Annex V.</p>
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CONCLUSION

In conclusion therefore, Orgalime thanks regulators for the progress that they have made so far for making the proposed Regulation more operational and effective as an instrument supporting the internal market.

We kindly request your support for these proposals we have made, which we feel will contribute to turning what has long been considered an over complex and, to a large extent, inadequate legislation into an example of Better Regulation.



The European Engineering Industries Association

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