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**Gradbeni proizvodi – Ocenjevanje sproščanja nevarnih snovi – Ovire pri  
trgovanju**

Construction products – Assessment of release of dangerous substances –  
Barriers to trade

Produits de construction – Evaluation de l'émission de substances dangereuses –  
Barrières aux échanges

Bewertung der Freisetzung von gefährlichen Substanzen aus Bauprodukten –  
Handelsbarrieren

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## NACIONALNI UVOD

Tehnično poročilo SIST-TP CEN/TR 15855 ((sl)en), Gradbeni proizvodi – Ocenjevanje sproščanja nevarnih snovi – Ovire pri trgovanju, 2009, ima status slovenskega tehničnega poročila in je z metodo ponatisa z nacionalnim dodatkom privzeto evropsko tehnično poročilo CEN/TR 15855:2009.

## NACIONALNI PREDGOVOR

Evropsko tehnično poročilo CEN/TR 15855:2009 je pripravil tehnični odbor Evropskega komiteja za standardizacijo CEN/TC 351 Gradbeni proizvodi – Ocenjevanje sproščanja nevarnih snovi.

Pripravo tega dokumenta sta Evropska komisija in Evropsko združenje za prosto trgovino poverila CEN. Ta evropski dokument ustreza bistvenim zahtevam direktiv EU.

Slovensko tehnično poročilo SIST-TP CEN/TR 15855:2009 je dne 1. oktobra 2009 po pooblastilu Strokovnega sveta SIST za splošno področje sprejel tehnični odbor SIST/TC NES Nevarne snovi.

## NACIONALNI DODATEK

Proizvajalci gradbenih proizvodov lahko uporabljajo samo surovine, ki ne vsebujejo prepovedanih snovi, za omejene snovi pa morajo upoštevati omejitve iz Priloge XVII k Uredbi (ES) št. 1907/2006 Evropskega parlamenta in Sveta o registraciji, evalvaciji, avtorizaciji in omejevanju kemikalij (REACH). Člen 67 Uredbe (ES) št. 1907/2006 določa, da se snovi, zmesi ali izdelki ne smejo proizvajati, dajati v promet ali uporabljati, če ne izpolnjujejo pogojev iz kakršne koli omejitve zanje iz Priloge XVII. Ta uredba je v celoti zavezujoča in se neposredno uporablja v vseh državah članicah EU.

Proizvajalci gradbenih proizvodov morajo spremljati spremembe in dopolnitve Uredbe (ES) št. 1907/2006 Evropskega parlamenta in Sveta o registraciji, evalvaciji, avtorizaciji in omejevanju kemikalij (REACH). Prva sprememba Priloge XVII k Uredbi (ES) št. 1907/2006 je 1. junija 2009 razveljavila in nadomestila Direktivo 76/769/EGS o približevanju zakonov in drugih predpisov držav članic v zvezi z omejitvami pri trženju in uporabi nekaterih nevarnih snovi in pripravkov.

Za zaščito gradbenih proizvodov se lahko uporabljajo le priglašeni oziroma avtorizirani ali registrirani biocidni proizvodi na podlagi Zakona o biocidnih proizvodih (ZBioP) (Uradni list RS, št. 61/06).

Več informacij dobite na spletni strani Urada Republike Slovenije za kemikalije: <http://www.uk.gov.si/>.

## OPOMBI

- Povsod, kjer se v besedilu uporablja izraz “evropsko tehnično poročilo”, v SIST-TP CEN/TR 15855:2009 to pomeni “slovensko tehnično poročilo”.
- Nacionalni uvod in nacionalni predgovor nista sestavni del evropskega tehničnega poročila.

TECHNICAL REPORT  
RAPPORT TECHNIQUE  
TECHNISCHER BERICHT

**CEN/TR 15855**

March 2009

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## Construction products - Assessment of release of dangerous substances - Barriers to trade

Produits de construction - Evaluation de l'émission de substances dangereuses - Barrières aux échanges

Bewertung der Freisetzung von gefährlichen Substanzen aus Bauprodukten - Handelsbarrieren

This Technical Report was approved by CEN on 3 February 2009. It has been drawn up by the Technical Committee CEN/TC 351.

CEN members are the national standards bodies of Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

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## Foreword

This document (CEN/TR 15855:2009) has been prepared by Technical Committee CEN/TC 351 "Construction Products Assessment of release of dangerous substances", the secretariat of which is held by NEN.

This document has been prepared under a mandate given to CEN by the European Commission and the European Free Trade Association, and supports essential requirements of EU Directive(s).

This Technical Report is prepared by CEN/TC 351 "Construction products – Assessment of release of dangerous substances" and indicates the barriers to trade as identified by CEN product Technical Committees in relation with emission of regulated dangerous substances into indoor air, surface water, groundwater or soil. CEN was asked in Mandate M/366 to describe if and how these barriers to trade can be resolved or prevented by the set of standards included in the work programme.

This report looks first at existing technical barriers, but also examines whether potential technical barriers exist and provides examples of these barriers.

However the market sometimes makes little or no distinction between a technical barrier to trade (or even a potential barrier to trade) and the existence of barriers to the use of products that are legally placed on the market having already met the technical standard requirements. Manufacturers are disturbed that they can comply with the requirements of the CPD and any harmonised standards, but still encounter difficulties in having their products specified and used, or even where they have to complete additional hurdles beyond those required in the harmonised technical specification. As the subject came up many times, this report contains numerous references to such "barriers to use", but this subject will be dealt with separately in greater detail in another report since it is not within the scope of CEN Standardisation to remove barriers to use.

Similarly, there is no attempt in this report to examine the question of trade barriers resulting from any other market mechanisms introduced at either EU level or national level, which results in or from fiscal penalties, quotas or international trade agreements since these are beyond the scope of technical harmonisation.

This Technical Report is expected to be used by the Commission to address the issue of barriers to trade with Member States and to discuss with regulators their requirements to prevent harmful effects as stated in Essential Requirement 3 of the CPD as described in the main body of the mandate M/366.

## CEN/TR 15855:2009 (E)

## 1 Introduction and Background to the Technical Report

Mandate M/366 of the European Commission to CEN, titled: “DEVELOPMENT OF HORIZONTAL STANDARDISED ASSESSMENT METHODS FOR HARMONISED APPROACHES RELATING TO DANGEROUS SUBSTANCES UNDER THE CONSTRUCTION PRODUCTS DIRECTIVE (CPD), emission to indoor air, soil, surface water and ground water”, which created CEN/TC 351, required a number of technical reports (TRs) to assist in the process of standardisation. The first of these TRs was to establish the extent of or presence of technical barriers to trade resulting from requirements under Essential Requirement 3 (ER3), as perceived or experienced by manufacturers of construction products, demanded by EU Member States.

Since the CPD (Council Directive 89/106/EEC of December 21, 1988 concerning construction products) is aiming to lift barriers to trade, there would be no point, in theory, in developing standards in CEN/TC 351 for the purpose of ER3 if no technical barriers to trade exist.

However, the “Grounds” for this Mandate, given by the Commission, state:

‘... this standardisation mandate refers to products for which the two following conditions are fulfilled:

- a) the products are or risk to be subject to technical barriers to trade arising from regulated dangerous substances;
- b) the characteristics of the products regarding regulated dangerous substances influence the satisfaction by the construction works, in which they are to be incorporated in a permanent manner, of the essential requirements as laid down in article 3 of the CPD and set out in terms of objectives with regard to hygiene, health and the environment, in Annex 1 of the CPD. These works are subject to legislative, regulatory or administrative regulations of Member States covering such essential requirements specifically in the field of dangerous substances'.<sup>1</sup>

Further, in Clause 7 of the “Execution of the Mandate” (referring to the work programme of CEN, it states:

‘It [the work programme] shall identify and cover all products or product families for which the three following conditions are fulfilled:

- European or national regulations are limiting or banning the emission or content (see IV.8) of dangerous substances;
- Existing or potential barriers to trade have been identified;
- Measurement/test methods for these specified regulated dangerous substances have already been developed and are used on a national or EU level.

Considering point (a) in the “Grounds” for the Mandate it is stated that products “*at risk*” from technical barriers to trade are equally important to existing barriers to trade, and also in the above Clause 7, Execution of the Mandate, the second dash refers to “*potential barriers*” as well as established barriers. This makes the scope of the work wider than simply identifying existing technical barriers.

The Mandate also specifically refers to ‘technical’ barriers to trade, and CEN is especially asked to consider in the Work Package the following TR:

“Work Package 1: technical reports: procedures for testing and testing schemes

1. Technical Report on examples of existing and potential barriers to trade in relation with emission of regulated dangerous substances into indoor air, surface water, ground water or soil.

<sup>1</sup> Any other type of barrier to trade falls within Articles 30/36 of the Treaty and must be directly eliminated by the Member States.

This Technical Report (TR) shall indicate the barriers to trade as identified by the product Technical Committees in relation with emission of regulated dangerous substances in indoor air, surface water, groundwater or soil. CEN is asked to describe if and how these barriers to trade can be resolved or prevented by the set of standards included in the work programme. This TR will be used by the Commission to address the issue of barriers to trade with the Member States and to discuss with regulators their requirements to prevent harmful effects as stated in ER3 of the CPD as described in the main body of the mandate.”

Therefore, this report is intended to look first at existing technical barriers, but also to establish whether potential technical barriers exist and to provide examples of such barriers.

However the market sometimes makes little or no distinction between a technical barrier to trade (or even a potential barrier to trade) and the existence of barriers to the **use** of products that are legally placed on the market having already met the technical standard requirements. Manufacturers are disturbed that they can comply with the requirements of the CPD and any harmonised standards, but still encounter difficulties in having their products specified and used, or even where they have to complete additional hurdles beyond those demanded in the harmonised technical specification. As the subject came up many times, this report contains numerous references to such “barriers to use”, but this subject will be dealt with separately, and in greater detail, in another report since it is not within the scope of CEN Standardisation to remove barriers to use.

Similarly, there is no attempt in this report to examine the question of trade barriers resulting from any other market mechanism introduced at either EU level or national level, which results in or from fiscal penalties, quotas or international trade agreements since these are beyond the scope of technical harmonisation.

## 2 Implementation of this Work Item

### 2.1 Administrative Procedures and Objectives

#### 2.1.1 General

At its inaugural meeting in Malta in April 2006, the members of CEN and CEN/TC 351 agreed to create a number of Task Groups, including Task Group 1 (TG 1). TG 1 was to respond to the TR on Barriers to Trade. A small core group of members, in consultation with a larger ‘consultation’ group created a proposal to tender for the creation of the TR1. The tender called for, *inter-alia*,

‘a preliminary report to provide information on technical barriers to trade in construction products, as EU producers exporting products to other Member States might encounter them. The information should enable decisions on the necessity for agreement on harmonised test methods. Any difficulty of a producer exporting his construction products to another Member State because of differences in regulation regarding the environmental aspects of the product should be regarded as a barrier to trade.’

It was agreed that at least 10 European trade associations would be interviewed on this topic with preliminary information and questionnaires being sent in advance.

#### 2.1.2 Concepts and Scope of Barriers to Trade

Although the principle emphasis of the Mandate and the report was ‘technical’ barriers to trade, discussions outside of the TG meetings with the Commission DG Enterprise, established that the Commission was interested in all barriers to trade including barriers to “use” although it was acknowledged that such barriers could be beyond the scope of CEN harmonisation activities. The Commission also confirmed that the presence of a single national requirement and test method was sufficient grounds for commencing harmonisation procedures since the presence of an existing requirement and test method may create a future barrier to trade scenario – see later.

As well as establishing the presence of any true ‘technical’ barriers to trade, TG 1 therefore also considered that other barriers to trade might exist which may not be under the usual definition of a ‘technical barrier’. In particular, TG 1 thought it necessary to investigate indirect technical requirements or barriers to trade that

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might have an impact on construction products one way or another, especially if due to de facto regulations or national requirements. It was therefore considered relevant and useful to include in the report some examples of the various types of barrier to trade where they may directly impact the 'use' of a construction product in one or more Member States compared to the rest of Europe.

### 2.1.3 Barriers to Trade or Barriers to Use

Initial concepts of the different types of barriers in the market place were considered and some examples were provided to consultees to assist in their understanding of the issues and hence their responses. These included voluntary market measures and specific national requirements, whether notified regulations or recommendations. Market measures can become de-facto barriers.

Opinions on what constitutes a barrier to trade vary but national regulatory 'barriers' can be created within the European legal framework. Some regulations, such as the new REACH Regulation for health protection, provide common European levels of protection but the CPD defines Essential Requirements that are open to interpretation by Member States. Under Article 95 of the EU Treaty, the grounds for derogation from a harmonised level are strict, but greater freedom is afforded to countries when they implement non-harmonised levels of protection for health or environment in construction works. According to case law in the European Court of Justice, a measure should be proportional and reasonable, and it can take precedence over other regulations such as Public Procurement. A Member State may have a legitimate health and safety requirement based upon their perception of risk, which is different to that usually accepted in most other Member States. The Member State then notifies this proposed regulation and provided no justifiable and sustained objections are received from other Member States the regulation is adopted and then cannot be regarded as a legal barrier to trade, although it can create a distortion in the market place and possibly result in the creation of different products for each market area. It may also result in different certification requirements for a similar end use in different countries.

The Notification process (98/34 procedure) is seen as being complex for industry and in many cases is not understood. Failure of industry to ask their member state authority to raise objections (either due to lack of knowledge of the proposal, or due to lack of understanding) can result in 'approval' of the new regulation. When in force the industry only then sees the problem and encounters barriers to the use of their products. Even if objections are registered, they may not be considered sufficient to stop the implementation.

Alternatively, it has also been suggested that a similar type of Member State requirement, purported to be needed for health and safety reasons, and based upon a stated demand for a higher level of protection than that generally accepted in the EU, is actually a market protection measure to make the sale of cheaper imported products more difficult.<sup>2</sup> Such measures can be very difficult to identify and the health or environmental grounds for requiring levels of performance higher than those adopted for CE Marking in other countries may not be clear, but they would have the impact of raising the market price for affected products in the Member State by restricting free trade or use of products carrying CE Marking. This type of barrier has been justified in certain markets as a necessity to ensure that sufficiently high levels of quality are achieved. This questions a possible conflict between the meeting of CE Marking requirements – conformity with ER3 and minimum national legislation – and what is perceived by others as a 'minimum practicable level of quality'. The latter implies that unless a certain (higher) quality standard, or a certain level of conformity assessment (including third party factory control), is achieved, then long term product performance or safety will not be guaranteed. However, this still effectively constitutes a barrier to trade.

Within the scope of the mandate of CEN/TC 351, it would not have been possible to attempt to quantify the scale and impact of any measures such as the above, but it was felt that these issues could be explored in looking at consultees' perceptions about market measures. This, it was hoped, would give examples of the concerns, which may need to be addressed elsewhere.

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<sup>2</sup> Note: This explanation is not universally accepted by Member States. An alternative opinion is that although Member States may be tempted to argue for restrictions allegedly based on health or environmental grounds to protect their home industry from imports, but such measures could also make it more difficult for the home industry to export their products abroad. Therefore, it is argued that disguised restrictions cannot generally be regarded as an attractive policy instrument.



## 2.2 Questions to Consultees

To establish the scale of standardisation work in the product area concerned, consultees were asked to list the presence of applicable harmonised or European test methods applicable. Non-harmonised methods were also reviewed.

From the presence or otherwise of harmonised product standards and/or test methods, consultees were asked to consider the existence of technical barriers to trade, either through the existence of multiple test methods (and hence multiple testing for the same product/application), or by lack of recognition of existing European or national test methods in a specific Member State, or by the demand to use specified nominated test laboratories to achieve certification for use for their product in that market.

Consultees were also asked to consider whether any de-facto regulations or market restrictions affected the sale or use of their products in one or more countries. Such de-facto regulations or market restrictions could be due to national worker protection requirements affecting the way in which a product may be used, or could be due to the national market demand for compliance with 'voluntary marking', quality schemes or certification marks leading to a perceived de-facto regulatory requirement. In such cases, there is no legal or technical restriction on a product which carries CE Marking but it becomes "normal" that only products carrying a certain additional mark (perhaps indicating higher or local quality standards) will end up being the only ones specified or requested by the market place.

## 3 Industry Groups

The following industry groups, selected by virtue of their interest in the work of CEN/TC 351, their product ranges and diversity, and their presence in European standardisation work, were contacted by mail and telephone to arrange their availability for interviews and/or written feedback on the issues of barriers to trade as required by TG 1 and the Mandate.

- BIBM – pre-cast concrete; [SIST-TP CEN/TR 15855:2009](https://standards.iteh.ai/catalog/standards/sist/cb9e7c9-436a-449b-900c-d827aa150ec1/sist-tp-cen-tr-15855-2009)
- BING – polyurethane foam; <https://standards.iteh.ai/catalog/standards/sist/cb9e7c9-436a-449b-900c-d827aa150ec1/sist-tp-cen-tr-15855-2009>
- CEI-Bois – wood;
- CEMBUREAU – cement;
- CERAME-UNIE – ceramic industries;
- EAACA – aerated concrete;
- EFCC – construction chemicals;
- ERMCO – ready mixed concrete;
- EUMEPS – expanded polystyrene;
- EURIMA – mineral wool;
- EUROFER – iron and steel;
- EUROGYPSUM – gypsum;
- GEPVP – flat glass;
- TEPPFA – plastic pipes;

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— UEPG – aggregates.

Other industry groups who became aware of the consultation process asked for specific information on their products to be included. These were:

- Euratex – flooring products;
- VIB – Association of Industrial Construction Raw Materials;
- EAA – European Aluminium Association;
- Pittsburgh Corning – cellular glass insulation manufacturers.

Furthermore, national trade associations from Switzerland and The Netherlands representing bricks and cement products respectively submitted comments.

Full details of all contacts are included in Annex 1.

**4 Status of the Industry Consultations and Interviews**

Considerable difficulty was encountered in getting responses to the requests for interviews and/or completed answers to the questions; the complexity of the subject and the short consultation time often being cited as a significant problem. Some groups requested a 3 to 6 month delay to consult within their membership and formulate responses through committees or product CEN/TCs. This was made worse by the fact that some product CEN/TCs only meet in plenary session every 12 to 18 months.

Subsequent telephone discussions and meetings with associations elaborated the feeling that barriers to trade appear minimal in areas where harmonised specifications exist, but in product areas where harmonisation is still incomplete, or only starting, the existence of national standards and test methods does cause problems. Despite this latter point, the status of harmonisation activities in CEN was not actually identified as the principle area of concern.

In terms of this current survey, many European trade associations are not finding any real 'technical' barriers to trade under the requirements of ER3, but rather find 'barriers to use'. Hence, some associations felt unable to offer significant contributions to the work of TG 1.

To date only three of the original trade associations selected have not provided formal responses. This brings the total number of replies within the original target of "not less than 10". Six further indirect responses have also been received from national or European associations, or from companies, who were not part of the initial consultation, but who felt that they had concerns or comments to raise. These have been added to the list of consultees in Annex 1A.

All written submissions have been followed up where necessary for clarification.

**5 Results of Surveys****5.1 Perceptions of Barriers to Trade**

The comments raised in this section are derived from, or constitute, actual remarks from some industry groups. They are individual's or industry's perceptions and do not necessarily reflect the situation in all Member States, nor the views of the Rapporteur, TG 1 members or CEN/TC 351.

It was interesting to note that, during discussion, some barriers to trade were identified but these technical issues were not resulting from health and environmental legislation but from other Essential Requirements such as energy economy or strength requirements. Hence, consultees were often aware of the concept and

presence of barriers to trade but by far the largest single response was that for ER3 there were very few real 'technical' barriers to trade that could be cited.

The overall perception was that, with the exception of a few countries, product technical requirements and associated test methods in technical specification that related to ER3 were limited. For harmonised technical specifications, the majority seem already to refer to the harmonised Annex ZA as agreed by the Commission and CEN as an interim measure. Furthermore, many national regulations do not call up specific product requirements but use regulation or building codes that set performance standards for the whole building, not the product, (one exception being the Dutch Building Materials Decree, BMD). A particularly good example of this is radioactivity (or radon) where national regulations often set performance targets, which need to be met wherever the building may be constructed. This allows for variations in the natural ground emissions of radiation in areas with (for example) volcanic rock substrata, and the resultant building techniques to control possible emissions.

This fundamental issue is also reflected in the Commission database of Regulated Dangerous Substances,<sup>3</sup> which, although very substantial, contains substances listed mainly by only a small number of Member States (the majority from only two, Germany and the Netherlands). Other Member States, like the UK, legislate mainly on the basis of performance of the building, rather than what goes into the building.

Another general perception was that many of the current differences in market requirements were already accommodated by manufacturers who had become accustomed to tailoring their products and testing strategy for the different European markets in which they operated. This was demonstrated by a certain level of apathy to the questionnaire and whether barriers existed at all. However, it was also acknowledged that the removal of restrictive practices would make life easier and possibly improve competition.

Although the CPD, and much national regulation on building codes, relates to construction "works" – that is buildings and other construction elements – the works will only meet the Regulations when the products incorporated into the works meet certain minimum standards. Harmonised product specifications in CEN are derived from the requirements set out in national regulations and codes.

German and Dutch regulations and building codes seemed to present the biggest cause for complaint. One respondent stated, "A barrier to trade is anything requested by the German or Dutch authorities". The most commonly cited problem was the demand in (mainly in Germany and The Netherlands) to have testing carried out at specified laboratories<sup>4</sup> before certification for use was granted. These tests had to be in addition to tests carried out for CE Marking and had to use national test methods, whether the methods were derived from harmonised European methods or not. There is also a requirement for attestation of conformity above that usually prescribed for the product.

A further issue was raised by several correspondents, that the publication of the European database on regulated dangerous substances may, in itself, stimulate the creation of new barriers to trade. Seeing the proliferation of substances and associated requirements could make national regulators openly question whether they too should be regulating such substances if they are considered dangerous in another Member State.

Concerns also varied according to the status of other research activities and regulatory development, including the introduction of REACH and research into indoor air at the ECB JRC, which is also Commission (DG Environment) funded. An Austrian producer summed up the situation regarding product for which harmonised technical specifications are still outstanding by saying:

"[What] we fear and we should be aware of is:

<sup>3</sup> This database with Legislation on substances in construction products can be found at [http://europa.eu.int/comm/enterprise/construction/internal/dangsub/dangmain\\_en.htm](http://europa.eu.int/comm/enterprise/construction/internal/dangsub/dangmain_en.htm) but at the moment it is still incomplete and a fuller version is only available to registered users on CIRCA. The relevant list of substances currently being examined as priority by CEN/TC 351 is given in CEN/TC 351 Document N 0054.

<sup>4</sup> The laboratories may be specific identified national or private laboratories in the country of end use (thus refusing to accept mutual recognition procedures).