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English Version

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

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

Bauprodukte - Bewertung der Freisetzung von gefährlichen Stoffen - Handelsbarrieren

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CEN/TR 15855:2009 - Preview only Copy via ILNAS e-Shop

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.

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'.¹

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.

¹ 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