



Brussels, 7.8.2014
COM(2014) 511 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

as foreseen in Article 67(1) of Regulation (EU) 305/2011

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ABBREVIATIONS USED IN THE PRESENT REPORT

The following abbreviations are frequently used in this report and are included here for ease of reference:

CEN	European Committee for Standardisation
CENELEC	European Committee for Electrotechnical Standardisation
CPR	Regulation (EU) 305/2011 on construction products
DoP	Declaration of Performance
EAD	European Assessment Document
EN(s)	European standard(s)
EOTA	European Organisation for Technical Assessment
ETA	European Technical Assessment
REACH	Regulation (EC) 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals
SVHC	Substance of Very High Concern

EXECUTIVE SUMMARY

The present report is submitted pursuant to Article 67(1) of Regulation (EU) 305/2011¹, the Construction Products Regulation (CPR).

In line with Article 4(1) of the CPR the manufacturer must draw up a Declaration of Performance (DoP) when placing on the market a construction product which is covered by a harmonised standard, or for which a European Technical Assessment has been issued. A copy of the DoP must be further supplied with every product which is made available on the market. The CPR also provides in Article 6(5) that the information referred to in Article 31, or Article 33, of Regulation (EC) 1907/2006 (REACH) shall be provided together with the DoP.

The reporting obligation for the Commission is defined in the first subparagraph of Article 67(1) of the CPR as follows:

“By 25 April 2014, the Commission shall assess the specific need for information on the content of hazardous substances in construction products and consider the possible extension of the information obligation provided for in Article 6(5) to other substances, and shall report thereon to the European Parliament and to the Council. In its assessment, the Commission shall take into account, inter alia, the need to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials.”

To respect this obligation the Commission has procured the independent **“Study on specific needs for information on the content of dangerous substances in construction products”** with the overarching objective to clarify and analyse the existence of specific needs for information on content of construction products.

The study has identified and focused on 30 schemes dealing with the content of hazardous substances in construction products. The study has found that no sector specific schemes are both focusing solely on this content and covering only construction products. National legislation, where existing, has a mixed approach, though examples focusing on the content have been identified in particular when addressing restrictions (bans) of certain substances. The study has revealed that stakeholders have different views on the role of the labelling of content on construction products. Those supporting see its particular value in the enforcement of substance bans and in facilitating application of re-use and recycling although most of these schemes are only voluntary.

The Commission has assessed the findings of the study together with the legal provisions of the CPR and of REACH. Furthermore the Commission has assessed the progress of harmonisation work in the area of assessment of dangerous substances in construction products and arrived to the following conclusions.

The current harmonised technical specifications for construction products cover all aspects of product performance in relation to regulatory provisions on substances in place today at national and at European level.

¹ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p.5).

The standardisation work which has been undertaken for the elaboration of European assessment methods covers, inter alia, all content-related national or European regulatory provisions. Standardisers are expected to introduce shortly these assessment methods in harmonised European standards and the EOTA bodies will also use them in the European Assessment Documents (EADs). This procedure is followed whenever new national or EU legislation is adopted.

The manufacturer is thus empowered to inform about the required product performance, where appropriate including the content of substances, through the DoP. This ensures the availability of this information for all downstream users of the product.

According to the REACH regulation, products that are themselves substances or mixtures under REACH and belong to a specific subset² of substances with probable adverse effects to human health and the environment as identified by Article 31 of the REACH regulation must be accompanied down the supply chain to any actor, excluding suppliers to the general public and consumers themselves, by a Safety Data Sheet. However, this obligation is not applicable to products that are articles. For those products, Article 33 of the REACH Regulation requires submission of information to recipients (and only upon request also to consumers) to allow safe use, at minimum the name of the substances of very high concern² when present in article products in a concentration above 0.1% in weight.

According to Article 6(5) of the CPR this information must be provided together with the DoP. This information (Safety Data Sheets for dangerous substances or information on dangerous substances contained in the construction product) therefore accompanies the construction product in all steps of the supply chain till the final end user (contractor, worker and consumer), extending the dissemination obligation set by the REACH regulation.

However the REACH-related information which the manufacturer has to provide takes into account the protection of users, workers and consumers. Any future extension of the REACH Regulation to cover new substances will automatically apply also to the obligation of construction products manufacturers to disseminate the relevant information, thus keeping pace with scientific progress.

Having regard that the information to be provided is restricted to the information pursuant to Articles 31 and 33 of REACH and the lack of any explicit national or EU legislation requesting the coverage of additional information under DoP, the obligations under CPR do not, at present, constitute a vehicle to provide information on the content of any hazardous substance in all construction products to the users because a Safety Data Sheet is only provided next to a DoP when REACH requires it. It can be considered however to comprehensively address some pressing health and environmental concerns.

Moreover, the DoP presented together with REACH information as intended by Article 6(5)

² See chapter 3 for details. Requirements to provide safety data sheets (SDS) under Article 31 of REACH applies to substances that are classified as hazardous, persistent, bioaccumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB), identified as substances of very high concern (SVHC), established, in accordance with Article 59(1) of REACH. Similar provisions apply to mixtures for which information to the supplier is to be available upon request. Article 33 requires to provide information in the supply (and to consumers who so request) on any SVHC substance in articles in a concentration above 0.1% in weight by weight with sufficient information to allow safe use and as a minimum the name of the substance.

of the CPR can constitute a useful tool to fulfil, for example through informed user and consumer choices, the goals of the high level of protection of human health and the environment, or the sustainable use of resource inter alia via recycling and reuse.

The study has identified certain voluntary certification and labelling schemes that pursue these goals via information of the content of substances in the construction products. They would however generally not be tailored to construction products, have limited geographic coverage and would by large not be covered by the DoP. The study has not attempted to develop a scheme of its own or assess costs and benefits of extending existing obligations by one of these schemes.

The manufacturers of construction products, especially SMEs, responding to the survey in the study, considered any extension of the current information obligations to be a significant and unjustifiable burden.

The European Commission considers therefore that for the purpose of consolidating the Internal Market for construction products within the framework of the implementation of Regulation (EU) 305/2011 the specific needs for information on the content of hazardous substances in construction products, are sufficiently addressed by the current provisions of the CPR, in particular Article 4 in combination with Article 6(5). However, the need for further options to inform final users on the presence of substances in construction products, so as to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials, should be further assessed and, if appropriate, addressed under the relevant instruments available in EU legislation.

It needs to be underlined that the above conclusions concerning the implementation of the Regulation (EU) 305/2011, do not prejudge the possibility for the Commission, having regard to the provisions of the Treaty on the Functioning of the EU other than Article 114, to undertake the appropriate legislative initiatives.

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

as foreseen in Article 67(1) of Regulation (EU) 305/2011

1. Introduction

The present report is submitted to the European Parliament and the Council as foreseen in Article 67(1) of Regulation (EU) 305/2011³ (Construction Products Regulation, the CPR).

Article 6 of the CPR defines the content of the manufacturer's obligation to provide information on the performance of the construction product in the form of the Declaration of Performance (DoP). In accordance with Article 6(5), the manufacturer shall provide the information required by Articles 31 and 33 of the REACH Regulation together with this declaration.

During the discussions preceding the adoption of the CPR, certain Member States were considering to extend the current provisions of Article 6(5) of the CPR to specific content related information on hazardous substances, as well as to additional substances, both extensions thus going beyond the obligations created by the REACH Regulation.

In the framework of the legislative process for the adoption of the CPR, the Commission was finally requested to analyse the specific need for information on the content of hazardous⁴ substances in construction products and on the possible extension of the information obligation provided for in Article 6(5) of Regulation (EU) 305/2011 to other substances. This reporting obligation is included in Article 67(1).

2. Background

Member States' rules require that construction works be designed and executed so as not to endanger the safety of persons, domestic animals or property nor damage the environment. Construction works are considered in a broader sense, comprising buildings and civil engineering works (e.g. roads, bridges, dams and sewerage networks).

The rules of the Member States may influence the requirements imposed on construction products. These requirements are often reflected in national product standards, national technical approvals or other national technical specifications and provisions related to construction products. Due to their disparity, these national regulatory requirements hinder trade of construction products within the European Union.

³ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p.5).

⁴ In these contexts, the CPR uses the wording "hazardous substances", whereas the customary term utilized within the construction sector so far has been "dangerous substances". For the purposes of this report they are to be considered identical.

The predecessor of the CPR, Council Directive 89/106/EEC⁵ aimed to remove technical barriers to trade in the field of construction products in order to enhance their free movement in the internal market by establishing harmonised technical specifications for construction products. The CPR has replaced Directive 89/106/EEC in order to simplify and clarify the existing framework, and to improve the transparency and the effectiveness of the existing measures. Without prejudice to the provisions in other EU and national legislation, the CPR also indicates at various instances such as recitals 4, 25, 55, article 28(2) and 67(1) an aim to take into account EU objectives on the high level of protection of the health and safety of workers using construction products and users of construction works, as well as aims to improve possibilities for sustainable construction and to facilitate the development of environment-friendly products.

It has been considered of utmost importance to obtain transparency and clarity regarding the assessment of performance of construction products and the presentation of this performance in the DoP, drawn up by the manufacturer. This enables the final end users of the construction product (contractors, workers and consumers alike) to take into account and into consideration this performance, so as to ensure that each product is used appropriately, i.e. only when its performance meets the demands prescribed by the designer of the construction works in question and set by the regulatory provisions in force where the product is used.

To achieve this it is necessary to elaborate harmonised technical specifications in order to define the European methods and criteria for the assessment of the performance of construction products. On the basis of the said harmonised technical specifications the performance of the product can be assessed in a commonly accepted European way and afterwards declared in the DoP. The DoP is thus providing accurate and reliable information concerning the performance of the construction product.

In line with Article 4(1) of the CPR the manufacturer must draw up a DoP when placing on the market a construction product which is covered by a harmonised standard or for which a European Technical Assessment has been issued. A copy of the DoP must be further supplied with every product which is made available on the market. The CPR also provides in Article 6(5) that the information referred to in Article 31, or Article 33, of REACH shall be provided together with the DoP. The extent of this information and its availability down the supply chain is discussed in detail in the next chapter.

For example, Article 31 covers wider subset of substances than Article 33, but applies only to products that are themselves substances or mixtures (e.g. paints). When provided, information under either of the Articles would only indicate presence⁶ rather than quantitative information on the content of the substance in the article.

At the time when the European Commission presented its proposal for a new Regulation to repeal Directive 89/106/EEC, some provisions were brought forward by stakeholders which would have entailed new obligations for the manufacturers, specifically providing additional information on the content of hazardous substances in construction products, and the subsequent delivery of this information within or alongside the DoP foreseen in Article 6 of

⁵ Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ L 40 of 11.02.1989, p.12.)

⁶ In excess of a certain concentration or the proportion of the substance, by weight, in the product.

the CPR.

The solution finally adopted in the CPR substituted these new obligations with a reporting structure. Within its recital 25, the choice of this solution was explained as follows:

“However, the specific need for information on the content of hazardous substances in construction products should be further investigated with a view to completing the range of substances covered so as to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials.”

The reporting obligation for the Commission is defined in the first subparagraph of Article 67(1) of the CPR as follows:

“By 25 April 2014, the Commission shall assess the specific need for information on the content of hazardous substances in construction products and consider the possible extension of the information obligation provided for in Article 6(5) to other substances, and shall report thereon to the European Parliament and to the Council. In its assessment, the Commission shall take into account, inter alia, the need to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials.”⁷

In order to prepare for this reporting obligation, the Commission has initiated an independent study on the information needs on the content of dangerous substances in construction products. The findings of the study are presented in Chapter 5 of the present report.

3. REACH & its consequences for construction products

The REACH Regulation on registration, evaluation, authorisation and restriction of chemicals, entered into force on 1 June 2007. It aims to ensure a high level of protection of human health and the environment, including the promotion of alternative methods for assessment of hazards of substances, as well as the free circulation of substances on the Internal Market while enhancing competitiveness and innovation.

REACH imposes certain specific obligations concerning individual substances manufactured, imported or used in the EU. REACH places the burden of proof on companies. To comply with the REACH Regulation, companies must register substances they manufacture and market in the EU in more than 1 tonne per year. The registration dossier should document safe use of substances, by including information on the hazards of the substance enabling registrants to classify and label them and identifying risk management measures, and communicate this information down the supply chain⁸. The level of information to be provided by the registrant is dependent on the volume of the substance registered by that individual registrant.

⁷ In these contexts, the CPR uses the wording “hazardous substances”, whereas the customary term utilized within the construction sector so far has been “dangerous substances”. For the purposes of this study, they are to be considered identical.

⁸ Article 31 of the REACH Regulation.

For substances manufactured or imported in quantities above 10 tonnes per year, registrants must also perform a chemical safety assessment to identify if and which additional risk reduction measures are required.

REACH impacts on a wide range of companies across many sectors, even those who may not think of themselves as being involved with chemicals. Construction products in the framework of REACH might either be substances, mixtures or articles.

Therefore, companies manufacturing or supplying construction products have to comply with requirements set out in REACH:

- Firstly, according to Article 31 of REACH, for construction products that are registered substances or mixtures (but not for products which are articles under REACH), the supplier is obliged to provide the recipient with safety data sheets compiled in accordance with Annex II to REACH:
 - (i) for all substances or mixtures that are either classified as hazardous⁹, persistent, bio-accumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB)¹⁰, which are identified as Substances of Very High Concern (SVHC) included in the Candidate list for Authorisation¹¹;
 - (ii) on request for non-classified mixtures which contain:
 - at least one substance posing human health or environmental hazards above specified concentration limits¹²; or
 - substances that are persistent, bio-accumulative and toxic or very persistent and very bio-accumulative in an individual concentration $\geq 0.1\%$ by weight; or
 - Substances of Very High Concern (SVHC) that are included in the Candidate List of substances for authorisation for other reasons; or
 - substances for which there are Community workplace exposure levels.

An exemption applies to obligation (i) above if the mixture is offered or sold to the general public and sufficient information for safe use is provided. In such cases a safety data sheet need not be supplied unless requested by a downstream user or distributor.

- Secondly, according to Article 33 of REACH, for construction products (which are articles), suppliers have a duty to communicate down the supply chain sufficient

⁹ Physical, health and environmental hazard. See Regulation (EC) No 1272/2008 - classification, labelling and packaging of substances and mixtures. For mixtures, those that meet criteria as dangerous in accordance with Directive 1999/45/EC (to be repealed by Regulation (EC) No 1272/2008 by 1 June 2015).

¹⁰ Identified in accordance with the criteria set out in Annex XIII of REACH.

¹¹ These so-called SVHC substances are listed in Annex XIV of REACH. List includes a subset of carcinogenic, mutagenic, toxic for reproduction, PBT or vPvB substances as well as substances of equivalent concern (e.g. endocrine disruptors) and serves as a candidate list for REACH authorisation. List is continuously updated and by December 2013 included 151 substances. See <http://echa.europa.eu/candidate-list-table>. An SVHC Roadmap has been established by the Commission to ensure that all relevant substances are put on the list by 2020.

¹² Article 31(3) of REACH: $>1\%$ by weight for non-gaseous mixtures and $>0.2\%$ by volume for gaseous mixtures.

information to allow safe use - as a minimum, the name of the substance - on substances of very high concern (SVHC) - if they are present in the article in a concentration above 0.1% w/w. The same information must be provided also to consumers upon request. In addition, a notification to the European Chemicals Agency (ECHA) by the producers/importers of articles of the presence of SVHC in those articles is required if both the following conditions are met:

- the SVHC is present in the articles in total quantities of more than 1 tonne per producer/importer per year, and
- the substance is present in those articles above a concentration of 0.1% (weight by weight).

The notification has to be made at the latest six months after a given SVHC substance has been included in the Candidate List.

Producers and importers are advised to update the notification if the information they have included has undergone changes. Examples of such changes could be: change in tonnage range, production/import of different articles containing the same SVHC (with e.g. different use).

- And finally, manufacture, placing on the market and use of certain dangerous substances, mixtures and articles might be restricted, according to Title VIII of REACH¹³. A number of restrictions in Annex XVII to REACH are applicable to construction products: for example entry 19 on arsenic compounds, entry 31 on creosote restrict their use as a wood preservative (but allow for certain derogations) and entry 47 on chromium VI restricts its use in cement and cement-containing mixtures (but allows derogation for use in controlled closed and totally automated processes).

In summary, REACH imposes a number of obligations on the construction sector as it is directly applicable to manufacturing of construction materials or their chemical components, but also to downstream construction companies who use chemicals during construction processes. In addition, health and environmental information provided by REACH should be used in the risk assessment of construction products.

Complying with REACH by the registrant thus addresses risks to health and environmental damage that might be posed by exposure to his registered volume of the substance and during the registered uses e.g. during manufacturing of construction materials, use of construction materials containing chemicals at construction sites, release during service life of buildings and release during decommissioning.

REACH is not the only regulation addressing these risks. Risks of failure of materials or risks resulting from improper use are not, in general, addressed by compliance with REACH, but through other legislation. Compliance with REACH registration obligation also does not cover issues related to the aggregated exposure or end of life issues, addressed for certain pollutants through further REACH risk management measures such as restrictions and authorisation, sectoral EU legislation (e.g. regulation of VOC in solvents and paints), environmental standards, labelling provisions, waste legislation etc.

In the context of effectiveness of REACH, the Commission has recently completed an

¹³ See Annex XVII of the REACH Regulation

evaluation exercise addressing all elements of REACH. After thorough examination, noting that it is too early to assess the full impact as not all its provisions are fully operational¹⁴, the Commission concluded that REACH¹⁵ delivers on all objectives that could be assessed and decided not to propose changes to the enacting terms of the Regulation.

Nonetheless, some areas of concern have been found with regard to the impact of REACH on SMEs. The Commission concluded that there is a need to reduce the adverse impact of REACH on those SMEs impacted by the REACH processes such as registration and authorisation. With regard to the construction sector this is of high relevance, as certain small construction contractors are facing challenges related to compliance with REACH. The Commission recognised also the need to raise awareness among all downstream sectors, including construction sector, with regard to the proper understanding and compliance with the REACH obligations.

4. Developments and processes based on the CPR

4.1 The harmonisation mechanism

The aim of the CPR is to consolidate the Internal Market of construction products by ensuring the abolishment of unjustified technical barriers to the cross-border trade. The mechanism to achieve this is the following:

The CPR provides for the establishment of harmonised technical specifications which all actors in the construction sector are obliged to follow:

- Member States' authorities shall express their requirements for the use of construction products in their territory by reference to assessment methods (based on tests, calculations or descriptive provisions) and classifications established in the harmonised technical specifications (Articles 8(3) to (6) and 17(5) *in fine* of the CPR).
- manufacturers shall declare the performance of their products in a DoP by applying the harmonised technical specifications (Articles 4 and 8 of the CPR). This information will be rendered available for the whole downstream supply chain.
- design engineers shall prescribe the performance of products to be used in the construction works by referring to the same harmonised technical specifications in order to demonstrate compliance with the requirements set by the public authorities and with the demands of performance ensuing from design choices.
- contractors / users will buy construction products which have for the foreseen use the required performance as prescribed by the design engineer on the basis of, again, the harmonised technical specifications.

The harmonised technical specifications are defined in Article 2(10) of the CPR as harmonised standards and European Assessment Documents.

The harmonised standards are elaborated by CEN/CENELEC on the basis of mandates issued by the European Commission after consultation of the Member States' authorities and other

¹⁴ The registration deadline for pre-registered substances below 100t is only in 2018. Development of Candidate List for authorisation is in progress, and only in 2014 have the first authorisation requests been processed. All elements of REACH evaluation are however already fully operational.

¹⁵ COM(2013)49

stakeholders (manufacturers, notified bodies, consumers, etc.).

The objective of this broad consultation is to ensure that all legislative requirements imposed in Member States which constitute barriers to trade are taken into account in the mandates which the Commission addresses to CEN/CENELEC.

The Technical Committees of CEN/CENELEC which elaborate the harmonised ENs take into account the above issued mandates and therefore all such national and European regulatory requirements for which measurement/test methods have already been developed and are used at national or EU level, find their way in the harmonised ENs. Manufacturers can therefore declare the performance of their products in relation to these requirements. The final end users of the construction product (contractors, workers and consumers alike) can also take into account and into consideration this performance, so as to ensure that each product is used appropriately, i.e. only when its performance meets the demands prescribed by the designer of the construction works in question and set by the regulatory provisions in force where the product is used.

4.2 How can new regulatory needs of the Member States can be accommodated?

If Member States consider necessary to establish new regulatory provisions on the performance of construction products, they must notify the new draft regulations to the Commission and the other Member States through the procedure established by Directive 98/34/EC. This allows the Commission and the Member States to be informed on the new justified regulatory aspects and to initiate the procedure to amend the mandates accordingly aiming at including the necessary changes in the harmonised technical specifications. The Commission would act in the same way in case the EU regulatory provisions on the performance of certain construction products are modified or adopted at the EU level.

The above procedure ensures that mandates and consequently harmonised European standards are kept up- to-date with the justified national requirements.

4.3 From Basic Requirement 3 and 7 to harmonised technical specifications

Basic Requirements for Construction Works of the CPR(i.e. buildings and civil engineering works) comprise Requirement Nr 3 and Requirement Nr 7 as follows:

“3. Hygiene, health and the environment

The construction works must be designed and built in such a way that they will, throughout their life cycle, not be a threat to the hygiene or health and safety of workers, occupants or neighbours, nor have an exceedingly high impact, over their entire life cycle, on the environmental quality or on the climate during their construction, use and demolition, in particular as a result of any of the following:

- (a) the giving-off of toxic gas;*
- (b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or outdoor air;*
- (c) the emission of dangerous radiation;*
- (d) the release of dangerous substances into ground water, marine waters, surface waters or soil;*
- (e) the release of dangerous substances into drinking water or substances which have an otherwise negative impact on drinking water;*
- (f) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid waste;*
- (g) dampness in parts of the construction works or on surfaces within the construction works.”*

and

7. Sustainable use of natural resources

The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and in particular ensure the following:

- (a) reuse or recyclability of the construction works, their materials and parts after demolition;*
- (b) durability of the construction works;*
- (c) use of environmentally compatible raw and secondary materials in the construction works.*

These provisions constitute the framework under which notably hazardous substances are regulated in Member States.

Although Basic Requirement Nr. 3 refers to emission / release of dangerous substances, regulatory provisions are in place which, in order to ensure limited emissions from construction products and to bring about rational methods for assessing these emissions, are referring to the content of dangerous substances in them.

4.3.1 Provisions in harmonised standards:

In order to provide information to manufacturers and standardisers and to mitigate the difficulties arising from the disparity of national provisions during the period where European assessment methods are under elaboration the Commission has created a database available on the web in: <http://ec.europa.eu/enterprise/construction/cpd-ds/index.cfm>

The database contains the national regulatory provisions of the Member States which contributed to this exercise. The database supports manufacturers that need to declare the performance of their products in these Member States.

In order to elaborate European assessment methods concerning dangerous substances the Commission has issued in 2005 Mandate M/366 to CEN/CENELEC (based on Directive 89/106/EEC), requesting the development of horizontal assessment methods for dangerous substances.

Clause IV.7 of the mandate provides that:

“The development of the horizontal measurement/test standards 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 of dangerous substance;*
- 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.”*

Clause IV.9 of the same mandate provides that:

“Due to regulatory requirements (e.g. the content of restricted and banned substances in construction products) ... it is also intended to consider content measurement/test standards.”

Annex 3 of Mandate M/366 defines “Technical terms of reference for the mandated measurement / test standards dedicated to the content of regulated dangerous substances in construction products.”

The Commission has thus requested CEN/CENELEC to develop assessment methods for dangerous substances regulated either through national or through European legislation.

CEN Technical Committee TC/351 has undertaken the work requested by Mandate M/366. In January 2014 the Technical Committee finalised the following documents:

- CEN/TS 16516:2013:** Construction products - Assessment of release of dangerous substances - Determination of emissions into indoor air
- CEN/TR 16496:2013:** Construction Products - Assessment of release of dangerous substances - Use of harmonised horizontal assessment methods
- CEN/TR 16410:2012:** Construction products - Assessment of release of dangerous substances - Barriers to use - Extension to CEN/TR 15855 Barriers to trade.
- CEN/TR 16220:2011:** Construction products - Assessment of release of dangerous substances - Complement to sampling.
- CEN/TR 16098:2010:** Construction products: Assessment of release of dangerous substances - Concept of horizontal testing procedures in support of requirements under the CPD.
- CEN/TR 16045:2010:** Construction Products - Assessment of release of dangerous substances - Content of regulated dangerous substances - Selection of analytical methods.
- CEN/TR 15858:2009:** Construction products - Assessment of the release of regulated dangerous substances from construction products based on the WT/ WFT procedures.
- CEN/TR 15855:2009:** Construction products - Assessment of release of dangerous substances - Barriers to trade.

The list of work items which have not yet been finalised can be found at:

http://standards.cen.eu/dyn/www/f?p=204:22:0:::FSP_ORG_ID,FSP_LANG_ID:510793,25&cs=135BD767027D4B4E081006EF46B5E957C

As a further harmonisation step, the Commission has revised a number of CEN mandates for construction products in order to initiate the procedure for updating harmonised products standards by introducing the assessment methods on dangerous substances which are developed under Mandate M/366.

Special emphasis is given to identify precisely all national regulations on content and/or emission from construction products (indicative list of substances and regulations is included in all mandates as Annex II) and their relevance for construction products.

In addition, each amendment to the existing CEN mandates (to elaborate harmonised standards for construction products) includes in Annex I a list of substances for each product standard and reference to the relevant national regulatory requirements.

The Commission services are also working in close co-operation with Member States in order to identify those essential characteristics in relation to the Basic Requirement 7 (e.g. related to the recyclability of construction products, environmentally compatible raw materials, etc.). Any needs related to dangerous substances identified under this Basic Requirement 7 will also be covered under the mandate M 366.

The Commission has also developed harmonisation frameworks (criteria and methodologies) for the labelling and the health-based evaluation of indoor emissions of construction products¹⁶. These frameworks were developed in line with the requirements of the Basic Requirement Nr 3 of CPR, the CEN/TS 16516:2013 and the REACH guidance documents and may be considered for future convergence and harmonisation of existing labelling schemes in Europe.

4.3.2 Provisions in for issuing ETA (for products not covered by harmonised standards):

For products which are not covered or not fully covered by harmonised standards the manufacturer may in line with Article 19(1) of the CPR submit a request to obtain a European Technical Assessment (ETA). The ETA is issued by one of the Technical Assessment Bodies designated for this purpose by the Member States.

In order to determine the assessments necessary for products not covered by harmonised standards, EOTA (the organisation of the TABs) has collected national provisions related to the content of dangerous substances and has used also the relevant information available in CEN. This resulted in the elaboration of a checklist which the EOTA bodies apply for assessing the product in order to issue a European Technical Assessment.

The said checklist is available in www.eota.eu as “EOTA Technical Report 34: Checklist for ETAGs/CUAPs/ETAs - Content and/or release of dangerous substances in products/kits”.

5. Results of the study on specific needs for information on the content of hazardous substances in construction products and discussion

5.1 Study framework

The Commission procured the “**Study on specific needs for information on the content of dangerous substances in construction products**” with the overarching objective to identify whether there are any needs for manufacturers to provide additional information on the content of dangerous substances in construction products. This was examined in the context of the protection of the health and safety of not only workers who install/use construction products but also of all persons who live in buildings and use civil engineering works throughout their whole life cycle.

The primary focus of the study was therefore to present information on construction product certification and labelling schemes which assess the content of hazardous substances in construction products. It did not assess the impact of individual schemes on the health and

¹⁶ JRC ECA report no 29: Harmonisation framework for health based evaluation of indoor emissions from construction products in Europe (EU-LCI), EUR 26168 EN, 2013.

JRC ECA report no 27: Harmonisation framework for indoor products labelling schemes in EU, EUR 25276 EN, 2012.

safety of workers and users of construction works, or the cost for implementing it. The study also did not explore the aspect of extension of information on the content of other substances or the recycling/reuse issues.

To fulfil its objectives and ensure that all relevant schemes and legislation have been considered, the contractors (RPA and Tecnia) have undertaken an extensive literature review of relevant legislation and certification/labelling schemes. To the extent possible, European and national legislation containing provisions on the content of hazardous substances in construction products have been examined. In addition, the study contractor has taken into account other sources of information, including stakeholders' responses to the consultation exercise undertaken for the study.

In addition, over 300 key stakeholders were invited to participate in an online consultation exercise. Two workshops were also held in Brussels, allowing the study team to gather additional information from key industry associations and Member States' authorities, some of which administer the schemes analysed.

The analysis focused on whether existing schemes were based on setting general requirements only, and whether they were taking account of the specific intended uses of products. Where appropriate the study has also examined how risks for consumers, workers and for the environment have been defined within them and which substances as well as risk scenarios have been selected.

The focus was on public and private schemes as:

- European Union legislation or administrative practices, requiring the assessment and/or declaration of content of dangerous substances notably in construction products (e.g. Drinking Water Directive or technical guidance on Green Public Procurement);
- National or regional legislation or administrative practices in Member States, requiring the assessment and/or declaration of content of hazardous substances notably in construction products;
- Public and private schemes currently used in these countries also for construction products at national and regional level (e.g. Blauer Engel, Nordic Swan).

The emission of hazardous substances from construction products was not a subject of this study. As explained in the previous Chapters of this report, this aspect is covered by the European standardisation work within this field, and will be taken into account within the obligations for declaring the performance.

Within the examination of purely content-related systems, the contractor examined how the content of hazardous substances was identified (e.g. manufacturer declaration, third party control, use of specific labels). The report also investigated which construction products were actually covered by these schemes: How relevant was the intended use of these products within a building (civil engineering works) when setting requirements and selecting substances that have to be declared? In case of using test methods, which methods were used (e.g. covered by international standards (ISO standards), by European standards (EN standards) or national standards, tests developed by scheme providers)? How often are products tested under these schemes? How are testing bodies or certification bodies chosen (are they specialised for construction products or generally for a wider range)? What steps have been taken to ensure a neutral and reliable assessment of products?

In the more general context, the study looked into the quantity and quality of the information provided to downstream users:

- Was the complete list of substances provided with the product declaration? Is the information aggregated?
- Who took the final responsibility for the correct declaration?
- Has there been a clear and measurable goal identified (e.g. reduction of substances used in products, fewer cases of illness due to effects of hazardous substances in construction products)?
- How have these goals been set?
- How often have they been evaluated?

The final report of the study is publicly available on the website:

http://ec.europa.eu/enterprise/sectors/construction/studies/index_en.htm

5.2 Study findings

5.2.1 Construction related schemes with content criteria

The focus of the study was on schemes that have content criteria only. However, due to the fact that only one scheme was identified that focuses solely on the products' content, the study also considered dual schemes, i.e. those that rely on a mixture of content and emissions based approaches. With this in mind, 30 schemes were identified that appear to a) have established requirements that are specific to construction products and b) consider the content of the product.

These schemes are listed in the table below. Schemes that only have emission criteria and schemes that have not established specific criteria for construction products were not covered by the final study report.

Schemes considered in the study	
AENOR Medioambiente	Milieukeur
Architettura Naturale (ANAB)	Natureplus
Association of Environmentally Friendly Carpets (GUT)	NF Environment
Austrian Institute for Health and Ecological Building (IBO)	Nordic Swan
BASTA	SundaHus Miljödata
Blue Angel	BRE Environmental Assessment Method (BREEAM)
BRE Global	DGNB System
Byggarubedömningen (BVB)	Eco Green Building
Cradle to Cradle	European Ecolabel
DGNB Navigator	Ecolabel (National) Austria
Ecocycle Council – Building Product Declaration (BPD3)	El Distintiu (the Catalanian Ecolabel)
Eco-Institut Label	Ecolabel (National) Croatia

Schemes considered in the study	
ECOproduct	Ecolabel (National) Czech Republic
EMICODE	Ecolabel (National) Hungary
GISCODE	Ecolabel (National) Slovakia

The 30 identified schemes are very diverse in terms of objectives, scope, criteria and procedures.

5.2.2 Objectives of the Schemes

The objectives of the vast majority of the identified schemes are broader than focusing solely on the health of construction workers and users of construction products. Most schemes are motivated by a range of considerations. In addition, some schemes are standalone tools, while others complement systems that certify whole buildings. Another crucial difference relates to the target audience of the 30 schemes, i.e. whether they are aimed at professionals, consumers or both. To a certain extent, differences in objectives explain the varying approaches adopted by the different schemes and in some cases may account for the inclusion of content-related criteria.

5.2.3 Geographical Coverage

Most schemes are predominantly used in the Member State of their origin and to a lesser extent in other countries. The most widely applied scheme is the Blue Angel which is used in 21 European countries. This geographical spread can be a result of deliberate expansion to other markets but can also occur spontaneously where schemes expand in an unmanaged manner due to the demand from buyers of construction products. Almost half of the schemes originate from two countries (Germany and Sweden), possibly reflecting a high level of awareness as regards human health and environmental issues.

5.2.4 Product Coverage

Only one scheme (IBO) exclusively certifies construction products. The range of products certified by the remaining schemes is variable, although some patterns were identified. Comparing the relative percentage of construction products certified by schemes, those schemes predominantly used by professionals tend to certify a higher percentage of construction products.

The percentage of construction products certified by Ecolabels is much lower. This is not surprising given that the broad objective of these schemes is to promote products that have a lower environmental impact compared to equivalent products. As a result of this broad scope, products certified under these schemes range from toner and cartridges to wood flooring. This wide range of products explains why criteria under these schemes are product specific.

The construction products that are most likely to be certified by a scheme are flooring, insulation, concrete, mortar and grout. Flooring is perhaps the product most likely to be certified because these products can be marketed by different schemes that appeal to both the professional and consumer market.

5.2.5 Substances Considered

The big majority of the schemes define the substances that are restricted, whilst some refer to European legislation (most often to REACH, or the Dangerous Substances Directive

67/548/EEC¹⁷, or to the Regulation (EC) 1272/2008¹⁸ on Classification Labelling and Packaging of substances and mixtures) or to national regulations. Some substances appear to be a popular target for many schemes. By way of example, these include substances classified as carcinogenic, mutagenic, reprotoxic, persistent organic pollutants, heavy metals and phthalates.

5.2.6 Assessment Criteria/Procedures

Five case study schemes rely on diverse approaches to assessing conformity, reflecting differences in their objectives and roles. Broadly speaking, possible approaches to assessing criteria with certification and labelling schemes include:

- full or partial self-certification by the manufacturer;
- examination of documents provided by the manufacturer, including application forms and safety data sheets by the scheme organiser; this may involve requesting additional information from the manufacturer and may require that the manufacturer tests their products; and
- tests carried out by an independent body.

Certain schemes rely on self-certification by the manufacturer while others require that products applying for certification undergo testing. In addition, the approval procedure for certain schemes involves an inspection of the production site. More generally it is clear that some schemes use only one of the above approaches and many rely on a combination of different assessment methods and procedures (e.g. in the first stage the assessment may involve the examination of documentation provided by the manufacturer, followed by independent testing to determine compliance with certain criteria).

5.2.7 Ways to communicate “conformity”

Two main methods have been identified. The first one (used by 75% of schemes) is the use of a logo or label which is displayed on the product, the packaging, accompanying documents or in marketing literature. Secondly, 64% of schemes publish a list of certified products online.

5.2.8 Extent of application of the schemes

The different schemes have been applied to varying degrees. BASTA (based on content) currently covers around 80,000 products, while other schemes have been applied to only a few construction products. To a large extent this may be a result of the different approaches to product registration and of the time the scheme is in operation (e.g. BASTA relies on self-certification by the manufacturer and exists since 2007).

5.2.9 National and EU Legislation

The study has identified only a few examples of national legislation that focus primarily on the content of potentially hazardous substances in construction products. Where such legislation exists, a mixed approach is applied: for some substances or groups of substances emission limits are imposed; for others, the content of the substance in the product above a

¹⁷ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p.1). To be repealed by 1 June 2015 by Regulation (EC) No 1272/2008.

¹⁸ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p.1).

certain maximum value. The most notable is probably the labelling requirement for construction products that are at the same time also substances and mixtures under CLP regulation¹⁸.

In terms of product coverage, some legislation focuses on individual construction products whereas other legislation covers a range of construction products.

In terms of identifying regulated substances, legislation either refers to substance groups or names specific substances. The measures called for in legislation can also vary, with some legislation restricting named substances while other legislation requires the declaration of such substances.

5.2.10 Content based approach - discussion

In addition to the legislative provisions, the study has identified 30 certification and labelling schemes that cover construction products and have inter alia content based criteria. Only one however relies for all the product/substance combinations solely on content related requirements (BASTA) as most probably emission testing can be complicated, expensive and requires external expertise.

The importance of assessing emissions from products is rather generally acknowledged and some of the consulted stakeholders have noted that, even for re-use and recycling, the actual leaching tests may be more reliable than the compiled content-based information.

The information on the content of substances in the products is however also an important feature of the implementation of national and EU legislation, in particular when it comes to bans and the presence of substances of very high concern (SVHC). While very important in supporting the EU objectives on the high level of protection of human health and the environment, the restricted scope of the CPR does not serve as a vehicle to systematically provide information on the content of substances in construction products. However, such information could serve to further promote, for example through informed consumer choices, the development and use of environment-friendly construction products or the sustainable use of resources inter alia via recycling and reuse. The study has not attempted to develop a scheme of its own or to assess costs and benefits of extending existing obligations by one of these schemes.

5.2.11. Impact on manufacturers, particularly SMEs

The consultation of construction product manufacturers through the on-line questionnaire and during the discussion of the study findings made evident that manufacturers consider that any extension of their obligations on communicating information on hazardous substances to the downstream supply chain would constitute an unjustified burden, particularly for SMEs.

6. Conclusions

The current harmonised technical specifications for construction products cover all aspects of product performance in relation to regulatory provisions on hazardous substances in place today at national and at European level.

The standardisation work which has been undertaken under Mandate M/366 for the elaboration of European assessment methods covers also content related national or European regulatory provisions. Standardisers (CEN) are expected to introduce shortly these assessment methods in harmonised European standards and the EOTA bodies will also use them in the

European Assessment Documents (EADs).

The manufacturer is thus empowered to inform about the required product performance, where appropriate including the content of hazardous substances, through the DoP. This ensures the availability of this information for all downstream users of the product. The manufacturer is obliged by the CPR to provide together with the DoP the information requested in Article 31 (Safety Data Sheet for products that are themselves hazardous¹⁹ substances or mixtures), or Article 33 (sufficient information to allow safe use, including as a minimum a name of the substance, when product contains an SVHC substance in a concentration above the 0.1% in weight) of the REACH Regulation.

According to Article 6(5) of the CPR this information must be provided together with the DoP. This information (Safety Data Sheets for dangerous substances or information on dangerous substances contained in the construction product) therefore accompanies the construction product in all steps of the supply chain till the final end user (contractor, worker and consumer).

The REACH related information which the manufacturer may have to provide takes into account the protection of users, workers and consumers. Any future extension of the REACH Regulation to cover new substances will automatically apply also to the obligation of construction products manufacturers to disseminate the relevant information, thus keeping pace with scientific progress.

In an analogous fashion, the mandate M/366 and subsequent development of standards to be used for declaring the performance of the construction product will be following any national and EU development in the sector.

Having regard that the information to be provided is restricted to the information pursuant to Articles 31 and 33 of REACH and the lack of any explicit national or EU legislation requesting the coverage of additional information under DoP, the obligations under CPR do not, at present, constitute a vehicle to provide information on the content of any hazardous substance in all construction products to the users because a Safety Data Sheet is only provided next to a DoP when REACH requires it.

The DoP presented together with REACH information as intended by Article 6(5) of the CPR can constitute a useful tool to fulfil, for example through informed user and consumer choices, the goals of the high level of protection of human health and the environment, or the sustainable use of resource inter alia via recycling and reuse.

The independent study on specific needs for information on the content of substances in construction products identified a number of schemes and legislative provisions that use information on content of substance in the products. Most of these schemes would apply a combined content/emission approach with a particular emphasis on the emissions from construction products. As the study was effectively conducted only as a survey and compilation of the relevant schemes, it did not identify and assess individual scheme or provisions from the scheme that could be recommended as the extension of the current obligation under Article 6(5). The lack of detailed information provided by the schemes assessed does not allow more precise conclusions on the content of substances (beyond SVHC

¹⁹ For detailed scope of the Article 31 of REACH see above Chapter 3.

substances).

Manufacturers of construction products, especially SMEs surveyed in the study on the other hand consider any extension of the current information obligations to be a significant and unjustifiable burden.

The European Commission considers that, for the purpose of consolidating the Internal Market for construction products within the framework of the implementation of Regulation (EU) 305/2011 the specific needs for information on the content of hazardous substances in construction products, are sufficiently addressed by the current provisions of the CPR, in particular Article 4 in combination with Article 6(5). However, the need for further options to inform final users on the presence of substances in construction products, so as to ensure a high level of protection of the health and safety of workers using construction products and of users of construction works, including with regard to recycling and/or reuse requirements of parts or materials, should be further assessed and, if appropriate, addressed under the relevant instruments available in EU legislation.

It needs to be underlined that the above conclusions concerning the implementation of the Regulation (EU) 305/2011, do not prejudge the possibility for the Commission, having regard to the provisions of the Treaty on the Functioning of the EU other than Article 114, to undertake where necessary the appropriate legislative initiatives.