



Construction Products Regulation

PROVISIONS IN THE CPR RELATING TO THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

Executive Summary

The Construction Products Regulation was published in March 2011. It includes two sets of requirements regarding health protection. One is included in the Basic Works Requirement No 3 which is in fact an extended version of the current Essential Requirement No 3. The other one is new and refers to REACH articles 31 (preparations) and 33 (articles). PU Europe has compiled this factsheet with a view to providing clarification to both manufacturers and regulators regarding the practical consequences of these two somewhat overlapping provisions.

The following should be noted:

- PU insulation products are articles in the sense of REACH and must comply with article 33 of REACH independently from the CPR.
- **To the best of our knowledge and based on the situation in June 2011, PU insulation products will not be affected by CPR article 6 (5)**, as they do not contain any substance referred to by art. 33 (REACH) (i.e. substances meeting the criteria of art. 57 (REACH) in a concentration above 0.1 % w/w).
- Declarations linked to BWR3 (currently ER3) will only have to be made in Member States that specifically require it and only after approval of the harmonised test methods and their integration in product standards. The test methods should be available as Technical Specifications by mid-July 2013.

Comparison of Article 6(5) and BWR3 of the Construction Products Regulation

The Construction Products Regulation (CPR) was adopted on 9th March 2011 and published as regulation No 305/2011. The provisions on human health and environment (dangerous substances) shall apply as from 1st July 2013. The CPR introduces some changes which may cause confusion in the market.

The new Article 6 (Content of the declaration of performance), paragraph 5 stipulates that "the information referred to in Article 31 or, as the case may be, in Article 33 of Regulation (EC) No 1907/2006 (REACH) shall be provided together with the declaration of performance."

The **extended Basic requirements for construction works 3** (former Essential Requirement) on Hygiene, health and the environment states that "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 their 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 following¹:

- a) the giving-off of toxic gas;
- b) the emissions of dangerous substances, 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."

In the following, the scope, requirements and impacts of these two provisions will be

analysed and open questions identified.

CPR Article 6 Content of the declaration of performance Paragraph 5	CPR Annex 1 Basic requirements for construction works (BWR) n° 3
Terms used	
<ul style="list-style-type: none"> • Hazardous substances (no official definition) • Differentiates between preparations / mixtures (art. 31 REACH) and articles (art. 33 REACH) 	<ul style="list-style-type: none"> • (Regulated) dangerous substances² • Construction products (covering substances, articles and preparations / mixtures)
Legislation referred to	
<p>Articles 31 and 33 of Regulation (EC) No 1907/2006 (REACH)</p>	<p>All types of European or national regulations covering a certain product / family (for example thermal insulation products) and notified to the European Commission.</p> <p><i>Note: This interpretation is contested by industry, which says that CPD / CPR, being Internal Market legislation, should only refer to national regulations in strict accordance with ER / BWR n° 3.</i></p>
Communication requirements	
<p><u>Art. 33 (REACH): Articles (relevant for PU insulation):</u> Communicate information on <u>content</u> of substances of very high concern (SVHC) included in annex XIV (authorization) or the candidate list (for inclusion in annex XIV), <u>provided</u> individual substances are contained in a concentration above 0.1 % w/w.</p> <p><u>Art. 31 (REACH): Preparations / mixtures (not relevant for PU insulation):</u> In the cases specified in <u>art. 31 (REACH)</u>, provide Safety Data Sheet <u>together with</u> the DoP (information on <u>content</u> of hazardous substances to professional and private users).</p>	<p><u>Construction products:</u> Declaration <u>in the DoP</u> of <u>release</u> of dangerous substances to the indoor air and / or leaching to the groundwater and soil for all dangerous substances regulated in a specific national market and notified to the Commission.</p> <p>If required by a Member State, declaration on the <u>content</u> may be required.</p> <p>In the absence of national requirements, nothing needs to be declared.</p>
Communication requirements according to CPR as compared to REACH	
<p>Requirements for preparations / mixtures (<u>not relevant for PU insulation</u>) do not change.</p> <p>Requirements for articles change with the CPR, as content of SVHC (candidate list and annex XIV of REACH) needs to be <u>systematically</u> communicated to private users, too (REACH: communication on request only).</p>	<p>No link with REACH.</p>

<p style="text-align: center;">CPR Article 6 Content of the declaration of performance Paragraph 5</p>	<p style="text-align: center;">CPR Annex 1 Basic requirements for construction works (BWR) n° 3</p>
Communication format	
<p>Not specified in the CPR.</p> <p>REACH does also not specify a format for providing information according to Article 33. However, REACH guidance papers offer a number of possible formats³.</p> <ul style="list-style-type: none"> • Modification of existing documents, such as instructions for use and packaging; • information on labels; • link to a website with up-to-date information; • standard communication formats developed by industry sector associations ; <p>The Commission and Member States should be encouraged to accept these formats in the CPR. No decision has been taken yet.</p>	<p>Not yet decided, possibly a combination of the French and German systems (TVOC, TSVOC, carcinogens and a list of individual substances).</p> <p>France has introduced legislation including a communication format consisting of several emission classes (see document PU 10/040).</p>
Thresholds for declaration	
<p><u>Art. 33 (REACH): Articles (relevant for PU insulation):</u> Concentrations above 0.1 % w/w.</p> <p><u>Art. 31 (REACH): Preparations / mixtures (not relevant for PU insulation):</u> As specified in art. 31 point 3 (0.1-0.2 % w/w).</p>	<p>Not defined yet at EU level. The Commission should be asked to adopt the 0.1 % w/w REACH threshold for content.</p> <p>National regulations may limit emissions and / or content (for example formaldehyde or benzene). It is unclear whether there will be national / European emission thresholds below which no declaration has to be made.</p> <p>CEN/TCs cannot define such thresholds as these are outside their technical competence.</p>
Testing	
<p>REACH refers to information from the supply chain (based on the tests listed in Regulation 440/2008).</p> <p>Chemical analysis by manufacturers of articles should only be applied as a last resort, if the supply chain cannot provide this information.</p>	<p><u>Release to the indoor air:</u> CEN/TC 351 WG2 standard (today ISO16000-9)</p> <p><u>Leaching:</u> CEN/TC351 WG1 standards</p> <p><u>Attestation of performance class</u> not determined yet. The Commission preference is to keep the AoC classes determined in the product mandates. If there are several, the Commission would need to decide. Industry favours the same AoC class for all construction products.</p>

<p>CPR Article 6 Content of the declaration of performance Paragraph 5</p>	<p>CPR Annex 1 Basic requirements for construction works (BWR) n°3</p>
<p align="center">Substances naturally contained in construction products</p>	
<p>Naturally contained substances are excluded from REACH registration (REACH annex V, points (7) and (8)). However, they are <u>not</u> exempted from the communication requirements under REACH (see above). This interpretation is in line with the ER / BWR n° 3 and avoids contradictory declarations.</p>	<p>No distinction is made between intentionally added and naturally contained substances.</p>
<p align="center">Overall impact on PU manufacturers</p>	
<p><u>To the best of our knowledge and based on the situation in June 2011</u>, no impact at this stage, as no substance used in PU production is included in annex XIV or on the candidate list for inclusion in this annex.</p>	<p>Declaration of emissions will become compulsory following the adoption of the CEN/TC 351 test standards and the adaption of the modified CEN/TC 88 product standards. The date is not known, as it is still unclear whether the TC88 product standards can refer to a Technical Specification (TS) before the round robin test, instead of a harmonised standard. The Commission seems to assume that product standards could refer to test methods described in a TS, whilst industry doubts this. Normative references in standards must always refer to other standards. The final position of CEN is still pending. The TS could be available by mid-July 2013.</p> <p><u>Declaration only in markets where regulators require it.</u></p>
<p align="center">Future developments</p>	
<p>Art. 67 (CPR) requires the Commission to 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(4a) to other substances, and shall report 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 re-use requirements of parts or materials.</p> <p>If appropriate, the report shall, within two years, be followed up by appropriate legislative proposals."</p>	<p>In July 2013, the extended BWR3 will enter into force covering the entire life cycle of works including construction, use and demolition.</p> <p>It is hoped that the study required under art. 67 (CPR) will conclude that REACH compliance is the most cost effective and comprehensive way to deal with dangerous substances in construction products whilst avoiding duplication with other CPR provisions.</p>

Glossary

AoC	Attestation of Conformity
BWR	Basic requirements for construction works (for Essential requirement)
CPD	Construction products directive
CPR	Construction products regulation
DoP	Declaration of performance
ER	Essential requirement
REACH	Regulation (EC) N° 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals
SVHC	Substance of very high concern
TS	Technical specification
TSVOC	Total semi-volatile compounds
TVOC	Total volatile compounds
VOC	Volatile compounds

Notes

- [1] Until the application date of the CPR, ER n° 3 remains in place which is limited to the building use phase. All CEN/TC 351 test methods will also be limited to the use phase. The CPR will include construction and demolition phases.
- [2] Indicative list of regulated dangerous substances possibly associated with construction products under the CPD (DS 041/051 rev.9, 29 May 2009)
- [3] Guidance on requirements for substances in articles, ECHA, Version 2, April 2011