



Brussels, 24.10.2019
SWD(2019) 1770 final

COMMISSION STAFF WORKING DOCUMENT

EVALUATION

of

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

{SWD(2019) 1771 final}

Table of contents

| | | |
|-----|---|----|
| 1. | INTRODUCTION | 3 |
| 1.1 | Purpose | 3 |
| 1.2 | Evaluation scope..... | 5 |
| 2. | BACKGROUND TO THE CPR..... | 6 |
| 2.1 | Description of the CPR and its objectives | 6 |
| 2.3 | Baseline and points of comparison..... | 9 |
| 3. | STATE OF PLAY OF THE SECTOR AND IMPLEMENTATION OF THE CPR | 9 |
| 4. | METHOD..... | 14 |
| 4.1 | Methodology | 14 |
| 4.2 | Limitations and robustness of findings | 16 |
| 5. | ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS | 17 |
| 5.1 | Effectiveness | 17 |
| 5.2 | Efficiency | 33 |
| 5.3 | Relevance | 37 |
| 5.4 | Coherence | 39 |
| 5.5 | EU added value | 42 |
| 6. | CONCLUSIONS | 44 |
| | ANNEX 1: PROCEDURAL INFORMATION | 47 |
| | ANNEX 2: SYNOPSIS REPORT ON THE STAKEHOLDER CONSULTATION | 52 |
| | ANNEX 3: METHODS AND ANALYTICAL MODELS | 64 |
| | ANNEX 4: OVERVIEW OF COSTS AND BENEFITS..... | 66 |
| | ANNEX 5: MAIN FEATURES OF THE CPR..... | 70 |

Glossary

| <i>Acronym</i> | <i>Meaning or definition</i> |
|----------------|---|
| AVCP | Assessment and verification of constancy of performance |
| BWRs | Basic requirements for construction works |
| CEN | European committee for standardisation (Comité européen de Normalisation) |
| Cenelec | European committee for electrotechnical standardisation (Comité européen de normalisation en électronique et en électrotechnique) |
| CPD | Construction Products Directive |
| CPR | Construction Products Regulation |
| DoP | Declaration of performance |
| EAD | European Assessment Document |
| ELD | Energy Labelling Directive |
| EOTA | European Organisation for Technical Assessment |
| EPBD | Energy Performance of Buildings Directive |
| ETA | European Technical Assessment |
| ETAG | Guidelines for European technical approval |
| EU | European Union |
| GPSD | General Products Safety Directive |
| NB | Notified body |
| NGO | Non-governmental organisation |
| PCPC | Product Contact Point for Construction |
| REACH | Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals |
| REFIT | Regulatory fitness and performance programme |
| SME | Small and medium-sized enterprise |
| TAB | Technical Assessment Body |

1. INTRODUCTION

1.1 Purpose

Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products (the ‘Construction Products Regulation’ or ‘CPR’¹) was adopted in 2011 and has applied in full since July 2013. The Regulation’s main objective, like that of the earlier Construction Products Directive² (‘CPD’), is to make the single market work better and improve the free movement of construction products in the EU, as provided for in Article 8(4) of the CPR, by laying down harmonised conditions for their marketing.

EU legislation on construction products does not follow the common ‘new approach to technical harmonisation’ applicable to most internal market legislation. This is due to the combination of two important specific factors: the nature of such intermediate products and the fact that construction works are a competence of the Member States. Indeed, the CPR does not set any product requirements that construction products would be required to meet. Instead, it sets harmonised rules on how to express their performance in relation to their essential characteristics³ (e.g. reaction to fire, thermal conductivity or sound insulation) and provides harmonised rules on the CE marking of these products. Member States remain fully responsible for the safety, environmental and energy requirements applicable to buildings and civil engineering works.

The Commission’s July 2016 implementation report on the CPR⁴ concluded that certain challenges had been met related to implementation difficulties and delayed adaptation by stakeholders, and that further work was necessary to improve implementation. The report also identified a significant number of issues going beyond mere implementation and deserving further serious examination and discussion. These challenges are as follows:

- the need to clarify simplification provisions and the limited evidence of uptake of simplification provisions/lighter regimes by micro-enterprises;
- the link with Regulation 1025/2012 on standardisation⁵;
- the need for a quicker and better streamlined standardisation process given the mandatory use of standards;

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. 5-43.

² 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, 11.2.1989, p. 12-26.

³ What is covered by ‘essential characteristics’ is defined in Annex I to the CPR.

⁴ Report from the Commission to the European Parliament and the Council on the implementation of 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, COM/2016/0445 final, 7.7.2016.

⁵ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, OJ L 316, 14.11.2012, p. 12-33.

- the need for sector-specific market surveillance and enforcement provisions;
- the need for detailed rules on notified bodies and
- streamlining of procedural rules for finalising European Assessment Documents by the European Organisation for Technical Assessment (EOTA).

To tackle these aspects, the Commission has launched further studies and engaged in wide stakeholder consultation through: (i) technical platforms⁶ gathering Member State authorities, professionals and professional representatives of the sector; and (ii) technical bodies. Overall, the studies and analyses that feed into this evaluation confirm the above points as key salient issues.

The November 2016 ‘Clean Energy for all Europeans’⁷ Communication mentioned the need to unlock the construction sector’s growth and jobs potential by improving the functioning of markets, in particular the still fragmented internal market for construction products. The Communication referred to the consultation process with stakeholders, following up on the 2016 implementation report, mentioning that this could lead to a revision of the Construction Products Regulation within the mandate of this Commission.

To meet this timetable, the Commission initiated a back-to-back evaluation and impact assessment to provide a solid basis for any future adaptation, should results from consultations and assessments warrant this. The approach was presented in the inception impact assessment⁸ published in June 2017.

Ultimately, the Commission decided to decouple the retrospective and prospective assessments, basing its decision on: (i) the evidence collected in this context, in particular the results of the external supporting study and the replies to the January-April 2018 public consultation; and (ii) the outcomes of exchanges with stakeholders and Member States. Indeed, the assessment proved more complicated than expected. This was partly due to the complexity of the CPR itself, but also given the high expectations from stakeholders and Member States, in particular the political pressure caused by the case pending at that time at the European Court of Justice⁹. These combined factors meant that before addressing potential remedies, it was first necessary to establish a clear and comprehensive picture of the present situation before identifying all of the key horizontal issues and the assessment of potential options for the future. Thus, this document only deals with the retrospective evaluation of the CPR.

The evaluation sets out to assess to what extent the CPR has delivered against its objectives and in how far it has actually contributed to reducing obstacles to the internal market for construction products. The evaluation assesses the:

- relevance (whether the CPR objectives are still meeting today’s needs);
- effectiveness (whether the CPR objectives have been achieved);
- efficiency (assessing the costs, benefits and simplification potential);

⁶ Five thematic meetings took place: on 12 October 2016 on standardisation, on 18 January 2017 on simplification issues, on 14 March 2017 on information needs, on 21 June 2017 on the coexistence of EU and national systems and on 4 October 2017 on the future of EOTA. See summaries on http://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Clean Energy For All Europeans, COM(2016) 860 final, 30.11.2016, Annex 1, p. 9.

⁸ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3070078_en

⁹ Case T-229/17 (*Federal Republic of Germany v. European Commission*); in the meantime, the General Court judgment was issued on 10 April 2019, but subsequently appealed by Germany (cf. case C-475/19P) (see Section 5.1 on effectiveness).

- coherence (internal consistency between different CPR mechanisms, and external consistency with other EU legislation); and
- EU added value of the CPR.

Central to this evaluation are informed answers to a series of evaluation questions, considering the needs to be met, the main objectives, the main features of the CPR, its actors and the stakeholder groups. The evaluation analyses the impacts the CPR may have had over the period considered, presents the performance achieved by its components, looks into the key aspects highlighted by the stakeholders and presents some conclusions that can support any future decision on the need to revise the Regulation.

1.2 Evaluation scope

While this evaluation deals with the CPR as a whole, including delegated and implementing acts adopted on its basis, the EOTA route is specifically assessed in a separate report on the implementation of Article 34(2) of the CPR¹⁰, which will contribute to any further examination and potential revision of the CPR. In addition, when looking at the overall impacts of EU harmonisation legislation on construction products, the evaluation takes into account developments that took place already under the application of the Construction Products Directive that the Regulation repealed, as standardisation of construction products started under that Directive. Other EU legislation¹¹ is examined to the extent that it has a direct impact on the functioning of the CPR, in particular when analysing external consistency in the ‘coherence’ section. Since the harmonised system created in or by means of the CPR is largely implemented by Member State public authorities, this assessment also examines, where appropriate, the relationship with Member States’ legislation.

The CPR defines ‘construction products’ as products placed on the market for incorporation in buildings and civil engineering works in a permanent manner¹². This includes a wide variety of products, for example cement, mortar, windows, doors, roof tiles, paving stones, bricks, bathtubs, kitchen sinks, fire detection systems, smoke alarms, traffic signs and structural steel beams. This definition excludes products not placed on the market and products incorporated in a non-permanent manner in buildings and civil engineering works.

The geographical scope of the evaluation focuses on the European internal market, comprising the European Union¹³, Iceland, Liechtenstein and Norway, and other relevant third countries such as Switzerland and Turkey¹⁴.

The CPR has applied in full since 1 July 2013. However, as mentioned above, harmonisation has been a central tenet of the internal market for construction products since the entry into force of the old Constructive Products Directive. Therefore, unless

¹⁰ Report from the Commission to the European Parliament and to the Council on the outcome of the evaluation of the relevance of the tasks set out in Article 31(4) that receive Union financing pursuant to Article 34(2) of 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, COM(2019) 800.

¹¹ Including proposed or planned revisions where appropriate.

¹² Article 2(1) of the CPR; cf. also Article 1(2) of the CPD.

¹³ Including the United Kingdom.

¹⁴ As members of the European Economic Area, the European Free Trade Association and the EU-Turkey Customs Union.

stated otherwise, the timeline under consideration in this evaluation is the period 2007-2018¹⁵.

The sectoral scope of this evaluation is formed by all parties involved, be it in manufacturing, trading, assessing, controlling or using construction products. The collection of primary data has thus targeted the following categories of stakeholders:

- companies (manufacturers, importers and distributors of construction products, raw material suppliers, construction companies, architects, civil engineers) and business representatives of these companies;
- technical bodies (notified bodies, Technical Assessment Bodies, EOTA, standardisation organisations);
- public authorities (national public authorities, market surveillance authorities, accreditation bodies, notifying authorities, inspectors/enforcement officers, Product Contact Points for Construction, contracting authorities);
- and possibly other stakeholders, including construction worker organisations, private consumers using construction products for ‘do-it-yourself’ purposes, inhabitants and users of buildings and civil works, consumer organisations and environmental NGOs. However, efforts to include these other stakeholders have had limited result. One NGO participated in the online stakeholders survey. In the public consultation, 94 people replied in a personal capacity, representing 15% of the respondents and only 9 NGOs, 4 representatives of construction workers and 1 consumer organisation contributed.

2. BACKGROUND TO THE CPR

2.1 Description of the CPR and its objectives

The overarching objective of EU legislation on construction products is to ‘achieve the proper functioning of the Internal Market for construction products’ (Recital 58 of the CPR).

With respect to the division of powers between the EU and Member States, construction is a field of clearly identified subsidiarity. Member States have exclusive competence for building regulations (i.e. the rules on design and construction of buildings and civil works), while EU legislation is put in place to ensure free circulation in the internal market of the products used in these buildings and civil works. Member States retain full control of construction design rules in their respective territories, relating in particular to public safety and security, energy efficiency and the protection of workers.

The system set up first by the CPD and then the CPR aims to put in place conditions for the proper functioning of the internal market for construction products. In practical terms, this means allowing construction products legally placed on the market in one Member State (i.e. made available on the EU market for the first time) to be marketed on the territory of any other Member State.

¹⁵ The supporting study for the review of the CPR, which is the main source used for the evaluation, considered the impacts of standardisation on a 10 year period, from 2007 to 2017; whenever possible the evidence used was updated to cover 2018. Data older than 10 years were indeed judged insufficiently reliable and pertinent for the evaluation.

This does not, however, guarantee that a product bearing the CE marking can systematically be *used* (i.e. incorporated in construction works) in every Member State. This is because the legislation on construction works and civil engineering works remains broadly a competence of Member States, exercised at national, regional or even local level, in accordance with relevant secondary EU law¹⁶ and Articles 49 and 56 TFEU.

Like its predecessor the CPD, the CPR aims to ensure adequate conditions for the free flow of construction products throughout the EU (and associated countries). This is achieved by ensuring that CE-marked construction products undergo single testing and require the drawing up of a single declaration of performance (DoP) wherever they are made available on the EU market. By introducing a common technical language expressing the performance of construction products, the CPR lays down harmonised conditions for marketing construction products.

The CPR thus provides national public authorities with the means to set their performance requirements on buildings and civil works and to check compliance in their field of national competence. The Regulation is there to enable the Member States to pursue the goals of ‘safety in case of fire’, ‘energy economy’ and ‘sustainable use of natural resources’ (which are among the seven basic requirements for construction works defined in Annex I to the CPR).

The common technical language (which is the operational objective of the CPR) consists of harmonised technical specifications. These are: (i) harmonised European standards prepared by CEN/Cenelec; and (ii) European Assessment Documents (EADs) prepared by EOTA and TABs (Technical Assessment Bodies), which are the alternative to harmonised standards for products that are not or not fully covered by harmonised standards. Annex 5 presents in more detail the CPR’s main features.

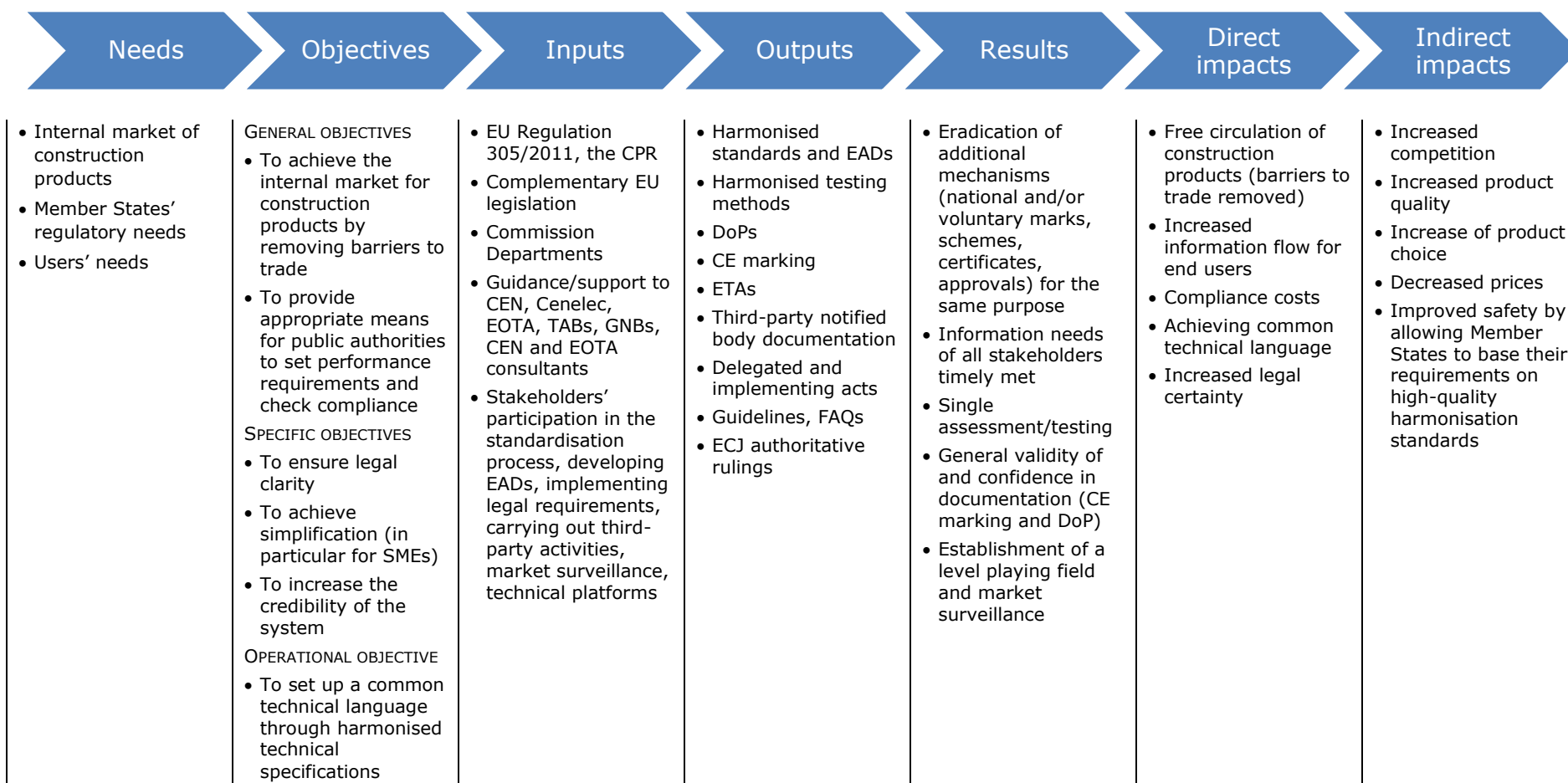
The rationale behind replacing the former CPD by the CPR was to respond to the main problems identified at that time. These were: (i) the CPD’s lack of clarity; (ii) controversial interpretation by Member States and other stakeholders; (iii) difficulties and delays in putting the Directive in place and applying its tools; (iv) burdensome procedures; (v) a disproportionate administrative burden; and (vi) unsatisfactory implementation on the ground¹⁷. The specific objectives of the CPR were thus ‘to simplify and clarify the existing framework, and improve the transparency and the effectiveness of the existing measures’ (Recital 8 of the CPR). Simplification specifically targeted SMEs, as explained in Recital 38: ‘It is necessary to provide for simplified procedures for the drawing up of declarations of performance in order to alleviate the financial burden of enterprises, in particular small and medium-sized enterprises (SMEs)’.

The intervention logic presented on the following page is an attempt to illustrate, in a simplified way, the links between the problems the CPR was expected to address, the objectives assigned to it, the CPR’s inputs and outputs, and the short-term results and long-term impacts it was expected to deliver. It has guided the design of the evaluation, the data collection and the analysis of the evidence collected. Indeed, the main issues explored consist in the links existing between the various strands of the intervention logic. For example, ‘relevance’ considers how the initial objectives match current needs, while ‘effectiveness’ assesses the results and impacts against the objectives.

¹⁶ Among others the Services Directive, 2006/123/EC, and its Article 16(2)(f).

¹⁷ Commission staff working document accompanying the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products, Impact Assessment, COM(2008) 311 final.

Intervention logic of the Construction Products Regulation:



External factors: national competence for building safety, other EU legislation, market trends, technological changes, economic situation

2.3 Baseline and points of comparison

Mutual recognition has in the past proven not to be effective for the free circulation of construction products on the EU market, as reported in the 2017 impact assessment accompanying the proposal for a regulation of the European Parliament and of the Council on the mutual recognition on goods lawfully marketed in another Member State¹⁸.

The general baseline for the evaluation is, except in specific cases, the Construction Products Directive (as was the case in the 2008 impact assessment for the CPR). This is because the harmonisation of construction products began with the CPD and was pursued with the CPR. Indeed, the CPR's replacement of the CPD makes it fully relevant to compare the current situation with the CPD era, in particular when considering the specific objectives that guided such replacement.

The baseline for the evaluation also includes other important EU pieces of legislation that have had an indirect impact on the functioning of the CPR-based structure, in particular the market surveillance system established through the 2008 new legislative framework package and REACH¹⁹.

3. STATE OF PLAY OF THE SECTOR AND IMPLEMENTATION OF THE CPR

State of play of the sector

There are no specific statistics available on the construction products manufacturing sector. This is because the sector is not reflected in the NACE nomenclature or the Prodcom database based on NACE. Any attempt to measure the sector needs to rely on certain assumptions.

The study on the economic impacts of the Construction Products Regulation²⁰ assessed the total value of construction products manufactured in the EU in 2013 at €418 billion. The production value in the overall construction sector in 2013 stood at €1,485.7 billion; thus, the manufacturing of construction products represented 28% of the whole construction sector²¹ (by value) in that year. Assuming that the proportion of construction products value to sector value has remained stable over years, the trend in the value of the construction products produced in the EU has been calculated based on this 28% share and is presented in the graph below.

¹⁸ SWD(2017) 471 final, 19.12.2017 (in particular pages 13, 35 and 68).

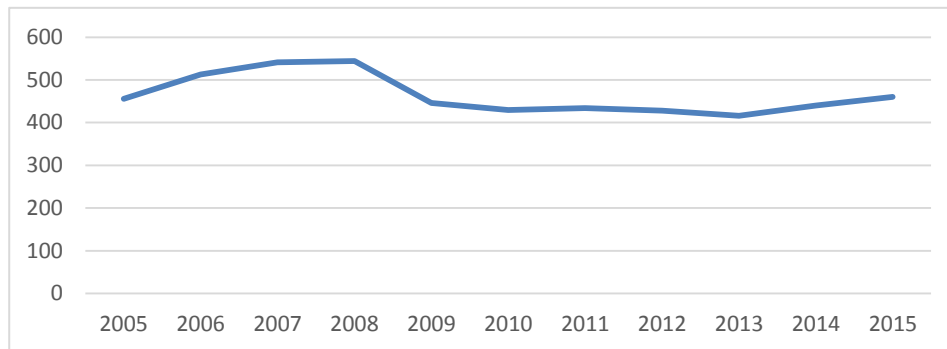
¹⁹ The recent Commission Proposal on Market Surveillance (COM(2017) 795 final)⁵⁶, tabled as a part of the 'Goods Package' and still under examination by the co-legislators, is not considered in this retrospective assessment.

²⁰ Study on the Economic Impacts of the Construction Products Regulation, by VVA Europe, the Danish Technological Institute (DTI) and the Netherlands Organisation for applied scientific research (TNO), 2016, <https://ec.europa.eu/docsroom/documents/20903/attachments/1/translations/en/renditions/native>

²¹ The construction sector also includes the construction of buildings, civil engineering and specialised construction activities.

Estimates produced by the study on cross-border trade²² and the study on the review of the CPR²³ based on different methodologies show a similar trend, which tends to corroborate the data.

**Estimated value of construction products produced in the EU-28 between 2005 and 2015
in current prices (€ billion)**



Source: Study on the review of the CPR - evaluation, p. 15

The graph illustrates how impactful the two crises of 2008 and 2012 have been on the production of construction products.

Based on both the data from the supporting study to the fitness check on the construction sector²⁴ and the above-mentioned study on the economic impacts of the CPR, the number of construction products manufacturers in the EU was estimated at 215,772 in 2012. Based on Eurostat data, the number of enterprises in the whole construction sector was 3,269,946 in 2013; therefore, the share of manufacturers of construction products is estimated at 7% of the total number of companies in the construction sector.

SMEs dominate the construction products manufacturing sector. The 2016 study on ‘the European construction value chain: performance, challenges and role in the GVC’²⁵ estimates that firms manufacturing construction products have 10 employees on average and that 82% of them are micro-enterprises (below 10 employees), while 94% are small enterprises (below 50 employees) and 99% SMEs (below 250 employees).

Estimates of the number of workers in construction products manufacturing show a steady increase until 2008 (close to 3.9 million), a sharp decline in 2008, followed by a slight decrease until 2012 and a period of stagnation until 2016 (2.8 million in 2016)²⁶.

²² Study on cross-border trade for construction products, CSIL (Centre for Industrial Studies), in partnership with CRESME Recherche, 2017, <http://ec.europa.eu/docsroom/documents/27301>

²³ Supporting study for the Review of the Construction Products Regulation — Evaluation, Joint Institute for Innovation Policy (JIIP), VVA Economics & Policy, Danish Technological Institute (DTI), Global Data Collection Company (GDCC), 2018, https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en.

²⁴ Fitness check on the construction sector, Supporting study on EU legislation on internal market and energy efficiency legislation, Economisti Associati, Milieu and CEPS, with contributions from BPiE and DBRI, 2016, <http://ec.europa.eu/DocsRoom/documents/19343/attachments/1/translations>

²⁵ https://ec.europa.eu/growth/content/single-market-integration-and-competitiveness-eu-and-its-member-states-2016_en.

²⁶ Source: 2016 study on ‘the European construction value chain and own calculations, based on SBS data (Structural business statistics, Eurostat).

Implementation of the CPR

As of 31 December 2018 (the reference date for this section unless otherwise stated), 646 notified bodies have been established in all EU Member States (except Luxembourg and Malta), as well as in Norway, Switzerland and Turkey. Notified bodies are the means to ensure third-party involvement in assessing and verifying the constancy of performance of construction products.

Some 49 Technical Assessment Bodies (TABs) have been established in EU Member States (except Bulgaria, Estonia, Greece, Hungary, Latvia, Malta and Luxembourg), as well as in Norway, Switzerland and Turkey. TABs are in charge of the technical assessment of construction products and are entitled to issue European Technical Assessments (ETAs).

As per 31 January 2019, the references to 444 harmonised European standards on construction products have been published in the Official Journal of the European Union, of which 432 under the CPD (or superseding standards cited under the CPD). All 444 standards are based on 42 mandates drawn up in the 1990s and early 2000s. These harmonised standards are estimated to cover around 75 to 80% of all construction products. As the use of harmonised standards is obligatory for construction products, there is a particular need for them to be of high quality, both technically and legally. The 2016 implementation report sees room for improvement on two main aspects: (i) the fair and equitable representation of various categories of stakeholders in the harmonisation process; and (ii) compliance with Articles 3(3) and 27 of the CPR, which require classes or threshold levels of performance to be set up through delegated acts or through harmonised standards, but only if the standardisation request specifies such need.

Where no harmonised standard exists, manufacturers can ask for an ETA, which allows them to CE mark their product even in the absence of a harmonised standard. The uptake of ETAs has been significant. Between 1 July 2013 and 31 December 2018, 6,240 ETAs were issued. The number of annual ETAs based on guidelines for European technical approval (ETAGs), dating back to the CPD era, has remained almost stable from 2015 until mid-2018 while the number of ETAs based on European assessment documents (EADs), introduced by the CPR, has seen a constant increase since 2014.

This increase can be explained by the adoption of EADs without their being based on documents from the CPD era, but also by the conversion of ETAGs into CPR-based EADs. The table below shows their relative shares in the total number of ETAs.

Number of ETAs issued

| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|---------------------|-----------|------------|------------|--------------|--------------|--------------|--------------|
| ETAs based on ETAGs | 20 | 598 | 801 | 968 | 1,001 | 677 | 4,055 |
| ETAs based on EADs | 3 | 45 | 125 | 314 | 575 | 1,133 | 1,995 |
| Total | 23 | 643 | 926 | 1,262 | 1,576 | 1,810 | 6,240 |

Source: Figures provided by EOTA

The table below shows the annual number of EADs proposed and the annual number of EADs cited in the Official Journal since 2015. The difference corresponds to the EADs rejected by the Commission for reasons of non-compliance with the CPR and the EU *acquis*.

Number of EADs cited

| Year | 2015 | 2016 | 2017 | 2018 |
|------------------------------------|------|------|------|------|
| EADs registered as DPs | 135 | 99 | 182 | 124 |
| EADs cited in the Official Journal | 19 | 65 | 70 | 64 |

Source: Figures provided by EOTA (DP = draft EADs)

Further information about the implementation of the EOTA route is to be found in the Article 34(2) Report, which deals with EOTA.

As of 28 February 2019, 18 delegated and implementing acts have been adopted under the CPR²⁷. They include:

- Commission decisions on the applicable systems to assess and verify the consistency of performance of specific product families;
- Commission regulations on the conditions for classification, without testing, of specific product families;
- Commission regulations on the classification of specific performances for specific products;
- two Commission Regulations amending Annex III and Annex V respectively;
- a Commission Regulation making available the performance information (the e-supply of DoPs); and
- a Commission regulation on the ETA format.

The Commission has produced and disseminated information to clarify and help interpretation and application of the CPR, including a webpage with FAQs on the Europa site²⁸, an information campaign on CE marking in 2014²⁹, a brochure on CE marking in all official EU languages in 2015³⁰, and guidelines for CEN and EOTA. A ‘product contact point for construction’ per country has been put in place (there are currently 30 in total) to answer questions from economic actors (and other stakeholders) on the national requirements.

European Parliament and the European Ombudsman

Parliament’s Committee on Internal Market and Consumer Protection (IMCO) organised a hearing on 31 January 2017 devoted to the CPR and its impact on the internal market, following the publication of the 2016 implementation report and of the Communication on clean energy for all Europeans. The European Commission’s confirmation that all future options including repeal would be examined provided the first opportunity for various stakeholders to show their reluctance for radical change, despite the general dissatisfaction they have expressed so far.

In its report closing query Q2/2013/EIS following a question raised by the Finnish Ombudsman, the European Ombudsman concluded that it is hard to reconcile the mandatory nature of the harmonised standards with the fact that they are not available in

²⁷ Full list and access to measures on <http://ec.europa.eu/growth/sectors/construction/product-regulation/>

²⁸ https://ec.europa.eu/growth/sectors/construction/product-regulation/faq_en.

²⁹ See the video on <http://ec.europa.eu/avservices/video/player.cfm?ref=I088654>.

³⁰ CE marking on construction products step by step, <http://ec.europa.eu/DocsRoom/documents?tags=ce-guide>.

all the official languages of the EU. The main issue at stake stems from the fact that the CPR does not address the issue that while the standards are mandatory, their full text is not available in all the official languages.

Monitoring and reporting arrangements

There are no specific monitoring and reporting arrangements under the CPR, which may partly explain the lack of quantitative information on the Regulation's implementation.

REFIT platform

The REFIT platform has issued three opinions on the CPR.

In opinion XII.8.a, the REFIT platform recommended that the Commission give priority to addressing the problems of overlapping and repetitive requirements and the need for clear and full European standards covering all requirements for construction products. This opinion fed into the ongoing fitness check on the construction sector, the focus of which is precisely the consistency of the various pieces of legislation applying to the whole construction sector and the cost of implementing them³¹. The evaluation of the CPR includes the conclusions of the fitness check (see Section 5.4).

In opinion XII.8.b, the REFIT platform recommended assessing the issues related to declarations of performance in the context of the review of the CPR. Opinion XII.8.b is also covered by this evaluation (see Section 5.3). It relates to the cases in which obligations of manufacturers apply to distributors, in particular the obligation to keep the technical documentation and the declaration of performance for a period of 10 years when construction products are sold directly to private end consumers.

In opinion XII.8.c, the REFIT platform recommended that the European Commission, together with the European standardisation organisations (ESOs), continue working towards a set of structural solutions within the shortest possible timeframe to decrease the stock of non-cited harmonised standards and to prevent any repetition of such a situation in the future. Opinion XII.8.c is dealt with in Section 5.1 of this evaluation.

The recent submission XII.8.d to the REFIT platform proposes that Commission take additional measures to clarify and stress that national authorities are not permitted to set additional requirements on construction products if the same requirements are covered under the Construction Products Regulation. The issue is also examined in Section 5.1 of this evaluation.

Court cases

Through its judgment in Case C-613/14 *James Elliott Construction Limited v Irish Asphalt Limited*, the ECJ clarified the role and legal status of harmonised standards by concluding that harmonised standards 'form part of EU law' even though they are developed by independent private organisations³². The Court reiterated the Commission's responsibility in the process of initiating, managing and monitoring of harmonised

³¹ The fitness check aims to assess the costs and benefits of compliance with EU legislation for the whole construction sector: it examines 15 pieces of legislation, including the CPR.

³² Cf. *para 40* of the judgment.

standards³³. Such responsibility can only be seen as even more binding in a field where the use of standards is mandatory.

Under the CPR, certain Member States have asserted that many standards implementing the current system for construction products are not detailed enough, meaning that their provisions do not set out broadly and deeply enough the assessment methods and criteria for all the essential characteristics of construction products. This issue was subject to an ECJ ruling concerning the CPD era (C-100/13, 16 October 2014, *European Commission v Federal Republic of Germany*), by which the Court ruled that imposing additional requirements on construction products covered by harmonised standards for their effective access to the market and their use on the national territory is contrary to the CPR. Two other ECJ ruling (Case T-229/17, of 10 April 2019, *Federal Republic of Germany v European Commission* and T-53/18, of 9 July 2019, *Federal Republic of Germany v European Commission*) have confirmed the principles of this earlier ruling as remaining valid under the application of the CPR, but the judgment on Case T-229/17 has been appealed by Germany (cf. C-475/19P).

4. METHOD

4.1 Methodology³⁴

This evaluation mainly relies on an external study launched in July 2017 for this specific purpose³⁵. It made use of the various Commission reports, studies and surveys already available or launched during the same period, as well as other relevant parallel initiatives (see the detailed list in Annex 3).

The evaluation also includes: (i) the outcomes of the consultation process launched as a follow-up to the implementation report (the CPR review technical platforms mentioned earlier and the hearing in the European Parliament on 31 January 2017); and (ii) feedback on the inception impact assessment³⁶.

Other relevant parallel exercises also contributed to this assessment:

- the Joint Initiative on Standardisation³⁷;
- the ‘Internal Market for Goods — Enforcement and Compliance’ Initiative;
- the ‘Achieving more and better mutual recognition for the single market for goods’³⁸ Initiative
- the Single Digital Gateway³⁹;

³³ Cf. *para 43* of the judgment.

³⁴ For an in-depth discussion of the methodological aspects, see Annex 3.

³⁵ Supporting study for the review of the Construction Products Regulation — Evaluation, Joint Institute for Innovation Policy (JIIP), VVA Economics & Policy, Danish Technological Institute (DTI), Global Data Collection Company (GDCC), 2018, https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

³⁶ See extensive feedback on https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3070078/feedback_en?p_id=31424; summary of the feedback on <https://ec.europa.eu/docsroom/documents/31222>.

³⁷ See http://ec.europa.eu/growth/content/joint-initiative-standardisation-responding-changing-marketplace-0_en.

³⁸ See https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en.

³⁹ See https://ec.europa.eu/growth/single-market/single-digital-gateway_en.

- the REFIT platform opinions on the CPR⁴⁰; and
- the ongoing work for the fitness check of the Construction sector⁴¹.

Besides desk research, stakeholder were consulted extensively in the context of the supporting study. The different forms of stakeholder consultation are set out below.

Interviews: beyond the six scoping interviews carried out in the early stages of the study with representatives of European associations of construction products manufacturers, a series of in-depth interviews were carried out with stakeholders across 10 Member States: Belgium, Denmark, France, Germany, Ireland, Italy, Poland, Romania, Spain and the UK⁴². A total of 76 in-depth interviews were carried out, including 22 business representatives (industry associations), 29 technical bodies (standardisation bodies, NBs and TABs), 20 public authorities and 5 other stakeholders (4 EU-level SME organisations and one at national level). Efforts to involve workers' organisations, environmental NGOs and consumers' organisation did not pay off.

To also give relevant stakeholders from other Member States the chance to contribute to the study, an online survey targeted the same types of stakeholder groups in the other Member States: the online survey was answered by 101 stakeholders from across the 18 Member States (17 manufacturer organisations, 4 technical bodies, 27 public authorities, 2 end user organisations and 13 other stakeholders, including one NGO⁴³).

A company phone survey collected views from a representative sample of individual companies from across the value chain, with a focus on small and micro companies⁴⁴ established in the 10 Member States covered by the interview programme. Some 736 companies participated in the survey, distributed as follows: construction products manufacturers 51%, professional end users 25% (architects/consulting engineers: 12%, building industry/contractors: 13%), importers and/or distributors 13%, and raw material suppliers 11%. 93% of the participating companies were SMEs (i.e. with less than 250 employees), and 78% were small and micro-enterprises with less than 50 employees. The survey thus reached a significant number of SMEs in the sector, providing relevant evidence complementing the public consultation.

The open public consultation⁴⁵ on EU rules for products used in the construction of buildings and infrastructure works triggered 641 replies. 85% of the respondents answered in their organisational capacity, out of which 42% were companies⁴⁶, 38% business organisations, 8% technical bodies and 5% from public authorities or testing bodies. Despite proactive contacts to maximise their participation, only 9 NGOs, 4 representatives of construction workers and 1 consumer organisation participated in the

⁴⁰ See https://ec.europa.eu/info/sites/info/files/opinion_internal_market_8a.pdf, <https://ec.europa.eu/info/sites/info/files/xii8bconstructionproductregulation.pdf> and https://ec.europa.eu/info/sites/info/files/xii-8-c_consumerproductregulation_en.pdf

⁴¹ See https://ec.europa.eu/growth/sectors/construction/fitness-check_en.

⁴² These countries are considered representative of the main construction business systems in the EU; in terms of output, these 10 Member States represent more than 80% of EU turnover in the sector (source: 2013 data from Eurostat structural business statistics); finally, they cover the various EU geographical sub-regions, and both large and small Member States.

⁴³ For the full detail, see Annex 2.

⁴⁴ Firms with fewer than 10 employees are estimated to account for 94% of the construction sector.

⁴⁵ The consultation took place from 22 January to 16 April 2018, see https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en.

⁴⁶ Of the 232 businesses, 10 were self-employed people (4%), 28 were micro-enterprises (12%), 44 small (19%), 54 medium-sized (23%) and 96 large companies (41%).

consultation. 15% of the participants were individuals answering in their personal capacity; this gives a figure of 94 people.

The evaluation has made use of expert advice, in particular through the following channels:

- The CPR review technical platforms: five thematic meetings were held between October 2016 and April 2017 with Member State representatives, business representatives, companies, technical bodies and testing bodies. The following topics were addressed: standardisation, simplification issues, information needs, coexistence of EU and national systems, and the future of EOTA.
- A final validation workshop (sixth technical platform meeting) gathered 96 stakeholders in Brussels on 3 May 2018, including Member State representatives, business representatives, companies, technical bodies and testing bodies. The workshop presented and discussed the key preliminary findings of the evaluation.

4.2 Limitations and robustness of findings

As the CPR has applied in full only since July 2013, it can be expected that not all intended impacts have materialised yet.

The absence of an accurate definition of the construction products sector in statistical terms makes it extremely challenging to establish a solid overview of the sector with respect to enterprise population, economic data, trade data, etc. Attempts have been made in particular through the 2019 in-house analysis of production and trade data on construction products, the 2017 study on cross-border trade, the 2016 study on the economic impacts of the CPR, the 2016 study supporting the fitness check on the construction sector and the 2016 study on the European construction value chain⁴⁷. However, available quantitative evidence remains somewhat fragmented and dependent on estimates/hypotheses.

Due to the wide variety of products concerned, a more product specific approach cannot provide better insight into the topic. Such an approach would lead to more fragmentation or mislead any interpretation of the use of the CPR as many factors influence cross-border trade and cross-border tradability of construction products: national and local preferences, based on climate or building traditions, location of manufacturing plant, perishable nature of the product, weight-to-value ratio, existence, technicity and scope of harmonised standards. This is shown in the examples presented in Section 5.1 on effectiveness.

Data on the costs of implementing the CPR have been based on stakeholders' estimates of the time and money that their company spends on complying with the Regulation. These estimates tend to be imprecise, since the costs specifically attributable to the CPR are usually not accounted for separately within companies and are often difficult to distinguish from the other costs accrued from related activities such as quality control. This leads to a significant margin of error. Therefore any estimates based on the data gathered via surveys and interviews can thus only be approximate and indicative, independently of the size of the sample considered.

⁴⁷ All references are provided in Annex I.

Moreover, it must be stressed that this evaluation makes use of existing quantitative data on costs collected by earlier studies that were based on limited sources (30 interviews for the study on economic impacts and 17 for the supporting study to the fitness check). In addition, both studies used different assumptions and models in their approach.

Baseline data are scarce. The main source is the 2008 impact assessment for the proposed revision of the CPD, which tried to estimate expected impacts based on a very limited dataset. The lack of data available for that impact assessment was mainly explained by the sector's complexity (the number of product families involved) and the lack of statistical data (as discussed above).

Quantitative data on benefits are very sparse. Previous studies have only to a very limited extent been able to quantify the CPR's benefits (cost savings). Thus, the analysis relies largely on qualitative data. Collection and analysis of qualitative data demonstrate a certain amount of subjectivity, both on the part of the interviewees and in the synthesis and selection of data presented.

The data collection tools designed and used in the evaluation have not produced equally 'quantifiable' evidence. Indeed, the semi-structured interviews have formed the most important source of primary data but have not necessarily led to statistics comparable to those based on the online survey, company phone survey and open public consultation, which were used to complement the evidence gathered through the semi-structured interviews.

The semi-structured interviews and the online survey addressed the same types of stakeholders in the 10 selected Member States and in the remaining Member States respectively. Since the methods of collecting data were different, the two datasets have been treated as separate but complementary data sources in the analysis.

As a result, this evaluation undertakes a triangulation of different data sources and presents in a transparent way cases where different data sources lead to similar or somewhat different results.

5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

5.1 Effectiveness

This section analyses to what extent the CPR has reached its objectives to achieve the internal market for construction constructs by removing barriers to trade and to provide appropriate means for public authorities to set performance requirements and check compliance. It also considers the objectives assigned to the replacement of the CPD: legal clarity, simplification (in particular for SMEs) and credibility of the system (the baseline being the move from the CPD to the CPR). The analyses covers the operational objective of setting up a common technical language through harmonised technical specifications. This section also identifies the intended and unintended impacts the CPR has had, and tries to examine the underlying factors driving those results..

To what extent has the CPR made the internal market for construction products a reality?

Internal market

No comparable statistics are available on construction products as a whole and any attempt to aggregate data at product level is highly dependent on how construction products are defined, with the definition used in the construction sector being much wider than the definition in Article 2 of the CPR. Whereas there is a positive perception of the impacts of the CPR, there is no conclusive evidence of a causal link between the trends in the cross-border trade of construction products and the CPR.

The 2008 impact assessment expected that the CPR would lead to increased levels of competition, but not necessarily to a significant increase in cross-border trade. This is because it regulates at the level of supply, while Member States regulate at the level of demand. In addition, a number of factors play a role in manufacturing or trading, like the relative transport cost linked with weight and price. Other factors can be decisive at the design and construction stage, in particular national requirements based on local particularities related to climate, topography, seismic activity or local building traditions. Consideration should also be given to the wide variety of products covered by the CPR : as shown by the 2017 study on cross-border trade of construction products , the market of each of these presents its own characteristics at all levels i.e. production, consumption and trade.

The studies⁴⁸ that have attempted to assess the volume of intra-EU trade in construction products have led to significantly different results⁴⁹. Despite this, they show the same trends, i.e. a general but uneven increase, despite the decrease caused by the 2008 crisis.

Recently, the 2019 analysis of production and trade data for construction products⁵⁰, based on data related to 116 product types, has assessed the value of cross-border trade in construction products at €50 billion in 2009 and €76 billion in 2017; it has estimated that the value of EU-wide sold production has decreased from 380 to €336 billion (in current prices). Other studies have provided different estimations: for example, the 2016 study on the European construction value chain also concluded that there had been an increase in cross-border trade, but from €47 billion in 2004 to €77 billion in 2014, despite the effect of the 2008 crisis.

After examining a varied sample of 25 construction products over the 2003-2015 period⁵¹, of which 24 were subject to harmonised standards, the 2017 study on cross-border trade of construction products found that the CPD/CPR's harmonisation instruments have not had a statistically relevant impact on cross-border trade within the

⁴⁸ Sources: The European construction value chain: performance, challenges and role in the GVC, by ECORYS in cooperation with WIIW and WIFO, 2016 (<https://ec.europa.eu/docsroom/documents/20210/attachments/6/translations/en/renditions/native>); 2017 study on cross-border trade of construction products; 2019 analysis of production and trade data for construction products (<https://ec.europa.eu/docsroom/documents/34401>).

⁴⁹ One of the main issues is the scope of these studies and the definition of construction products (restrictive in the meaning of the CPR, see Article 2.1).

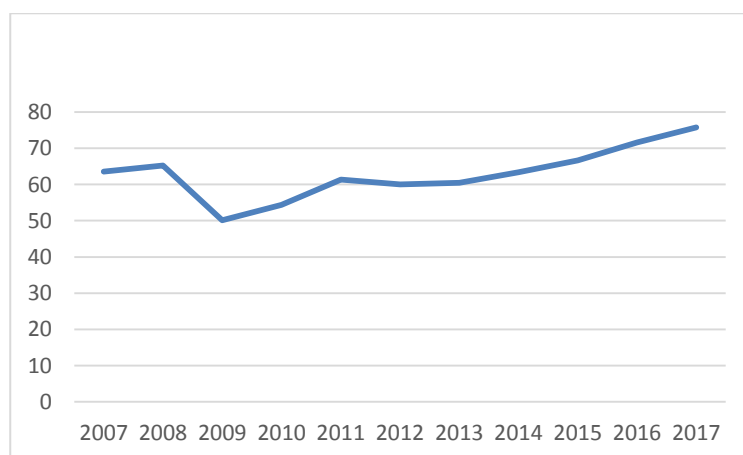
⁵⁰ Available on <https://ec.europa.eu/docsroom/documents/34401> (the analysis has covered 116 product types).

⁵¹ The specific character of the construction product market indeed lies in the fact that there is no specific pattern and that the situation varies a lot from one construction product to another. This was clearly shown by the 2019 Analysis of production and trade data on construction products, which identifies various trade intensities for various construction products.

EU. This limited impact is in contrast to the significant effects of economic developments at macroeconomic level (i.e. the 2008 and 2012 crises) and supporting measures by national governments. That study concluded that the main determinants are ‘the size of the origin and destination markets as reflected in the GDP and fixed investment in construction, membership in the EU and/or the Eurozone, the distance between countries, the use of a common official language and the currency exchange rate’.

The variations in intra-EU trade indeed show that the most significant factors were the 2008 crisis and the economic crisis in 2012⁵²:

Intra-EU trade in construction products in constant 2015 prices (in € billion)



Source: 2019 Analysis of production and trade data for construction products European Commission.

This analysis shows that intra-EU trade increased more than production from 2007 to 2017, including from 2013 to 2017 (when the CPR fully applied). The ratio of the intra-EU trade to sold production shows a continuous increase from about 17% in 2007 to 23% in 2017. From 2013 (when the CPR became fully operational) to 2017, annual intra-EU trade has grown by 25% (or more than € 15 billion), while production has grown by 13%.

The analysis also shows significant differences in the tradability of construction products among different product families.

Construction products with a low value-to-weight ratio are *de facto* rarely transported over long distances. The flow in construction products also depends to a high extent on national and local preferences, based on climate or building traditions. The location of manufacturing plants obviously also has a bearing here.

The 2019 analysis of production and trade data⁵³ identified different product families according to: (i) the level of their trade intensity — this involves comparing the total EU-wide sold production of each type of construction product with the cross-border sales on the internal market; and (ii) the variation in each trade intensity over time.

⁵² Figures are different in the 2016 study on the European construction value chain but they show the same evolution.

⁵³ See tables 1 to 5.

- Trade intensity is below 1% for ready mixed concrete⁵⁴ and remains under 10% for the following products: construction sands, gravel and pebbles of a kind used for concrete aggregates, factory-made mortars, worked monumental/building stone and articles thereof, hot-rolled concrete reinforcing bars.
- Intermediate products (trade intensity between 10 and 25%) comprise windows, French windows and their frames, of wood, doors and their frames and thresholds, of wood, roofing or water-proofing felts based on bitumen (in rolls), copper tubes and pipes, iron or steel towers and lattice masts.
- Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics, non-refractory surfacing preparations for façades, indoor walls, floors, ceilings or the like, plastic lavatory seats and covers, plastic bidets, lavatory pans, flushing cisterns and similar sanitary ware appear among the products with high trade density (trade intensity above 25%).
- Prefabricated buildings are a special case: here trade intensity seems to depend on the material of which the buildings are made, but without being particularly high.

Regarding the impact of harmonised European standards on the intra-EU trade, the 2017 study on cross-border trade showed the absence of correlation between the 25 construction products examined and the number of new or updated standards introduced every year from 2003 onwards. The analysis at product level looked specifically at the impact of individual standards on the exports of a particular product. It shows a diversified scenario, with some standards being positively correlated with exports (e.g. EN1326-1 for trade of additives, or EN14251-1 for doors and windows in plastic), and others negatively (e.g. EN13915 for plasterboards). Interviewees believe that the introduction of new harmonised product standards can be a strong stimulus to the trade of construction products, depending on several factors. For example, standards that have a more technical nature may have a negative impact on trade as they are harder to implement for enterprises. Standards applying to widely used products are likely to have a stronger and more visible effect on cross-border trade than standards applying in very specific cases. The way standards are written is another influencing factor. However, these influences could not be confirmed by the statistical and econometric results. This would seem to indicate that other factors play a stronger role (building traditions, climatic and geological conditions, weigh-to-value ratio, localisation of the production, perishable nature of the product etc...).

Despite the lack of firm evidence regarding the impacts of the CPR on the internal market, stakeholders generally perceive a positive impact of the CPR on cross-border trade in line with the increase of cross-border trade. In the 2018 evaluation supporting study, 77.5% of the 76 stakeholders surveyed see some or a large increase in market opportunities in other Member States, while 62.5% noted some or a large increase in competition on their national market. 69.5% consider the current situation as satisfactory concerning cross-border trade across Member States⁵⁵.

In the public consultation⁵⁶, 72% of the 641 respondents see the CPR tools as having provided some or a large increase in market opportunities to companies in the EU, while 17.3% have not noted any effect (figures are similar for companies: 70% and 20% respectively). 38% of respondents have seen some or a large increase in competition on

⁵⁴ Which can be explained by its relatively low value-to-weight ratio and perishable nature.

⁵⁵ Questions 3 and 7.

⁵⁶ Questions 15a and 15b.

their own market (but 62.5% of responding companies), while 39.2% have not seen any effect (26.7% of responding companies).

Replies to the company phone survey (where most respondents were SMEs) were more mixed, with 32% of the 736 respondents considering that it has become easier to buy or sell construction products from other Member States or expecting it to become easier, while 37% saw no change. Another 8% saw no change yet but expect it will become easier, while 9% believe it has become more difficult and 14% do not know⁵⁷. Of those that replied that it has become easier, 15% see a significant effect of EU regulation?, 48% some effect, 17% see no effect and 28% do not know. Results differ when focusing on the replies of manufacturers, twice as many of which see no effect (the replies are 15%, 43%, 32% and 10% respectively). Considering the size of respondents, more large companies see a significant effect or some effect (64%) than smaller ones (24.8% for companies below 49 employees).

The perceived improvements in cross-border market opportunities seem to benefit medium-sized and large enterprises more than micro and small enterprises. This is not surprising since the smallest companies tend to be those least involved in exports. As for competition on national markets, which would be a result of increased cross-border trade, the evidence does not point to a significant increase in the level of competition⁵⁸. This is an indication that the level of integration is still relatively low and, potentially, that markets still tend to be fragmented.

Standardisation and national marks

Obstacles to the internal market remain in the form of national marks and certifications. From the CPR perspective, the use of national marks and certifications undermines the internal market for construction products as they create barriers preventing products from entering the market. Such barriers typically consist of requirements for additional testing or national product approval in order for it to be marketed or used within the Member State in question, with associated additional costs, even when these products have undergone the harmonised European procedures for that purpose.

The recent submission XII.8.d received by the REFIT platform states that a number of EU Member States still set requirements on, for example, national type approvals and documentation of fire properties for ceiling panels (in wood and wood-like products). The submission to the REFIT platform proposes that the Commission take additional measures to clarify and increase focus on the fact that national authorities are not permitted to set additional requirements on construction products if the same requirements are covered under the CPR.

Some of the stakeholders interviewed in the evaluation supporting study⁵⁹ do not consider these marks as obstacles, but rather a supplement to the harmonised system. These stakeholders are usually on the end user (constructor) side of the sector. These additional national marks have a very direct impact on the overall effectiveness of the harmonised structure, which is affected by these national practices.

⁵⁷ Question 12.

⁵⁸ Source: replies to Question 3 of the stakeholders' online survey and Question 10 of the company phone survey (2018 evaluation supporting study).

⁵⁹ Source: stakeholders' interviews, 2018 evaluation supporting study, see page 63.

The existence of these obstacles is to some extent linked to the incomplete character of the harmonisation provided by the CPR and legal instruments adopted under it⁶⁰. Harmonisation is incomplete in particular because it falls short of covering completely all the basic requirements for construction works (BWRs) laid down in Annex I to the CPR, or also when it does not provide an appropriate European testing method⁶¹. This in turn is largely due to the CPR inheriting most of its standards from the CPD era (despite the changes effected by the CPR), coupled with the cumbersome and time-consuming procedures applying to and framing standardisation in the CPR. These procedures have actually been strengthened, but simultaneously rendered more complex in response to the Court cases mentioned in Section 3.

In a 2018 survey on Member States' regulatory practices⁶², only 5% of respondents replied 'never' when asked whether regulations in their country (i.e. building codes for buildings, legislation applicable to public works contracts for civil engineering works, or legislation applicable at control level) set specific values for product performance (e.g. a minimum threshold level or range). While 25% stated that this does concern 'most/all products and building requirements', 70% consider this to concern some specific building requirements and/or some specific products. Specific building requirements are the most frequently reported in this respect, by 47% of respondents. The building requirements in question are mainly the following (in descending order): fire safety, structural integrity, noise/noise insulation and energy efficiency.

Bilateral meetings with Member States on how the CPR is implemented at national level confirm that the situation varies significantly between Member States and that there is no common pattern in the way national legislations refer to the CPR:

- Some Member States complement the CPR by setting up performance requirements for construction products on the basis of the common technical language. This is acceptable under the CPR. However, sometimes they do this without a basis in the common technical language, which could go against the CPR.
- Other Member States complement the CPR by setting up requirements for systems (e.g. infrastructure, entire buildings or subsets such as floors or ventilation). In those Member States, there are no product-related requirements, but architects and construction companies are asked to meet the requirements for these systems. To do this, they calculate values (e.g. on bearing load or emissions) with the help of the product-related information provided by the manufacturer in the common technical language.
- Finally, some Member States apply a combination of both approaches.

⁶⁰ For more information about the claimed information needs from Member States on construction products, see subsection on information needs.

⁶¹ For example, EN 13707 on flexible sheets for waterproofing, reinforced bitumen sheets for roof waterproofing, definitions and characteristics, which on "external fire performance" provides for classification of the products according to four different test methods described in EN 13501-5. The manufacturer may choose which method to be used for testing the product taking into account the regulatory provisions of Member States in which it intends the product to be used; to cover the whole EU territory all four tests need to be undertaken.

⁶² Survey on Member States' regulatory practices, European Commission, September 2018, available on http://ec.europa.eu/growth/sectors/construction/support-tools-studies_en. The results cannot be seen as statistically significant given the limited number of respondents (57), the absence of checks of dissemination and the lack of validation of the respondents/replies. However, the results may have an informative value.

When the CPR was proposed, national marks and certifications were expected to disappear. This has, however, proven not to be the case: such national systems remain in place in several Member States. The issue has come into sharper focus following the ECJ judgment in 2014 on Case C-100/13⁶³, where the Court clarified that such unilateral actions by Member States have a direct impact on the *effet utile* of the harmonised system in place for construction products (this case related to the CPD era⁶⁴).

It is important to underline the principle of "exhaustive harmonisation" as confirmed by the Court⁶⁵, according to which Member States: (i) may only refer to the contents of harmonised technical specifications, in practice predominantly harmonised standards in their legislation; and (ii) can set requirements on the use of construction products in buildings and other construction works, using only the harmonised structure created in or by means of the CPR. Conflicting interpretations have been supported by a non-negligible share of stakeholders and Member States: at the validation workshop, 56% of participants estimated that Member States should be allowed to set additional requirements for the performance of construction products on top of those included in the harmonised standards, against 44% who believe they should not.

The situation was clarified by the General Court on 10 April 2019 in its ruling on case T-229/17 concerning two Commission decisions issued in response to German formal objections⁶⁶. The General Court stated that the harmonised system created under the CPR is to be considered exhaustive and that Member States are to refrain from unilateral actions, even when harmonised standards do not contain all the elements necessary to fulfil their regulatory needs⁶⁷. This ruling is a confirmation of the principles already established in case C-100/13 under the CPD and the Court has maintained the same line in its judgement on case T-53/18 on 9 July 2019⁶⁸.

These cases shed light on the failure of the standardisation system operating under the CPR, which has not yet met Member States' regulatory needs and thus eradicate protectionism. Germany has appealed⁶⁹ against the ruling on case T-229/17 and the final outcome is expected for 2020.

Market surveillance

While market surveillance structures under the CPR have been established in all Member States and have increasingly cooperated within the market surveillance administrative cooperation group (AdCo-CPR⁷⁰), market surveillance activities are broadly seen by stakeholders as ineffective and varying widely in quality and effectiveness from one Member State to another. The 2008 impact assessment cited the improvements required in this field as one of the reasons for replacing the CPD with the CPR. As shown by the public consultation, large-scale support still prevails for improving market surveillance

⁶³ Judgment of the Court (Tenth Chamber) of 16 October 2014, *European Commission v Federal Republic of Germany*, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=158649&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=6491028>

⁶⁴ Cf. para 60 of this judgment.

⁶⁵ Cf. para 62 of this judgment.

⁶⁶ *Federal Republic of Germany v. European Commission*, case T-229/17.

⁶⁷ Cf. paras 98 & 100 of this judgment.

⁶⁸ *Federal Republic of Germany v European Commission*, Case T-53/18.

⁶⁹ Cf. case C-475/19P.

⁷⁰ Source: 2016 Implementation report, page 10.

and enforcement⁷¹. Simultaneously, the stakeholder interviews strongly indicate that market surveillance by many Member States is insufficient and has not provided the expected impacts. The reason for this seems mainly to be the lack of resources to tackle non-compliance effectively. For more on market surveillance, see the reply to the evaluation question on the factors that influenced effectiveness.

Information needs

Meeting the information needs of stakeholders better was another expected benefit of the CPR. The common technical language established by the harmonised structure was expected to create transparency and increase the possibilities for users to compare products with respect to their declared performance. 62% of respondents to the public consultation consider that the CPR has increased product information for end users⁷². In the stakeholders' online survey, the score reached 68%⁷³.

Despite this, the utility of such information is somewhat hampered by a certain lack of understanding of the meaning of the CE marking on construction products⁷⁴. This situation persists despite the Commission's efforts to produce guidance on and improve awareness of the CPR, and the role played by the product contacts points for construction (see the reply to the next evaluation question).

The DoP and the CE marking appear to be an important source of product information for professional users. The 2018 survey on the information needs of economic users⁷⁵ shows that: (i) the most searched for information (with 50% of replies) is the intended use of the product; and (ii) users are generally able to find this information via product data sheets (77%) and/or the DoP and the CE marking (53%). Their preferred sources are the DoP/CE marking and the product data sheets on the web (53% and 52%) or on paper (45% and 41%). Users also generally indicate that the information on intended use of the product and other frequently needed types of information is sufficiently precise for their needs, even if it could be improved⁷⁶.

The 2018 survey on information needs among Member State authorities seems to indicate that although the DoP and the CE marking are seen as the first and preferred source for technical information on construction products, market surveillance and building control authorities also consider other sources, including certificates provided by authorities and quality marks/logos⁷⁷. Such practices obviously stand in potential contradiction to the CPR.

Some evidence from market surveillance and building control authorities in Member States indicates that the accessibility and quality of the information provided on construction products (e.g. in the declaration of performance, DoP) is not always sufficient for fire safety or hygiene/health-related issues. However, this may be due to

⁷¹ See in particular free text replies to Questions 15, 18, 22 and the analysis of complementary documents at <https://ec.europa.eu/docsroom/documents/32082/attachments/1/translations/en/renditions/native>

⁷² Question 15f.

⁷³ Question 3.

⁷⁴ Unlike the mainstream new legislative framework legislation, the CPR does not follow the principle of fitness for use (see Annex 5).

⁷⁵ Survey on users' need for information on construction products, ECORYS, 2018, Final report available on <https://publications.europa.eu/en/publication-detail/-/publication/50666501-3d3c-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-69036660>

⁷⁶ The maximum share of negative opinions by information type considered is 22%.

⁷⁷ See replies to questions 6, 13 and 14.

Member States' misunderstanding or misuse of their possibilities under the CPR to set up requirements: the CPR limits only the assessment methods and criteria to be used, but it does not prevent Member States from setting requirements as long as they are set using these assessment methods and criteria.

As shown by the 2015 analysis of the implementation of the CPR⁷⁸, product contact points for construction seem to be called on by economic operators mostly to provide information and interpretation of rules within their national context, and only to a minor extent for applicable rules in other Member States. This limits this information mechanism's impact on the functioning of the internal market.

Improved product choice

Improved (increased) product choice for end users was another expected impact of the CPR. 49% of respondents in the public consultation⁷⁹ believe that the CPR has increased product choice for end users, while 31.7% see no effect, 9% see negative effects and 7.9% have no view. In terms of enterprise size, including both manufacturers and end users, larger companies seem more positive, with 50% of medium-sized companies and 53.1% of larger companies seeing a positive effect, as opposed to 28.6% of micro-enterprises. Replies to the stakeholders' online survey present a similar picture (46.5%, 41.5% and 12% respectively⁸⁰). While the overall perception is positive, it is not fully clear whether this result has been achieved and even whether this issue is particularly prioritised by stakeholders (see analysis of relevance in Section 5.3).

To what extent has the CPR achieved its specific objectives?

As stated in the Commission proposal for the CPR⁸¹, the CPR had three specific focal areas for improvement compared with the CPD era: legal clarity, simplification and increasing the credibility of the harmonised system. These specific areas will be analysed in this section.

Legal clarity

The CPR sought to clarify the definitions of the most pertinent concepts used and the specific meaning of CE marking for construction products.

Whereas most of the definitions included in Article 2 present limited or no controversy⁸², the CE marking still continues to cause difficulties. CE marking under the CPR differs from how it is covered in other pieces of internal market legislation since it relates to product performance instead of essential requirements. Actually, the CE marking on a construction product does not attest that the product satisfies any specific product requirements, contrary to most other products that are CE marked under the mainstream new legislative framework. Under the CPR, the CE marking only proves that the product

⁷⁸ See page 38.

⁷⁹ Question 15e.

⁸⁰ Question 3.

⁸¹ COM(2008) 311 final; cf. p. 6.

⁸² However, the application of Article 5 derogation from drawing up a declaration of performance raises problems in terms of legal clarity, in that it seems to be in conflict with Article 2(16) and Article 2(17) CPR definitions of making available and placing on the market.

performance has been assessed as required by existing harmonised technical specifications.

Thus, while 99% of the respondents in the public consultation⁸³ stated that they know the CE marking symbol and 95% chose its correct meaning, only 71% chose solely this alternative, with the rest referring also to other concepts not in line with the CPR or with the common technical language and product performance. While 47% of the participants in the validation workshop agreed that the CPR provides sufficient legal clarity, 24% disagreed and 29% did not reply to the question.

In relation to the DoP, the second opinion of the REFIT platform on construction products (Ref. XII.8b⁸⁴) dealt with the alleged need to clarify who is bound by the obligation to keep the declaration for 10 years. The REFIT stakeholder group invited the Commission to review the issue as part of the review of the CPR and recommended paying particular attention to the distinction between retailers selling to businesses and/or consumers as there seems to be an implementation problem at national level. However, the REFIT platform government group considered the requirements laid out in the CPR to be sufficiently clear and had not observed problems in relation to the period for which the DoP needs to be kept⁸⁵.

The fact that: (i) standards are subject to copyright by CEN and its member organisations and not freely available; and (ii) most standards are not translated into all EU official languages⁸⁶ also triggers legal uncertainty.

Simplification

The replacement of the CPD by the CPR was listed as one of the simplification measures in the 2005 simplification rolling programme (now under the regulatory fitness and performance programme (REFIT)) and as part of the Commission's annual work programme⁸⁷. Simplification was to be achieved through derogations and simplified procedures for micro-enterprises, simplified procedures for issuing ETAs, and by replacing testing in the harmonised technical specifications with other less onerous methods⁸⁸.

These measures were expected to lead to significant simplification effects and thus to reduce the administrative cost of placing construction products on the internal market, without decreasing the level of safety for construction works. The 2008 impact

⁸³ Questions 13 and 14.

⁸⁴ Source: REFIT platform <https://ec.europa.eu/info/sites/info/files/xii8bconstructionproductregulation.pdf>

⁸⁵ This issue does not feature in the findings of the Evaluation supporting study.

⁸⁶ European Ombudsman report Q2/2013/EIS of 2015.

⁸⁷ Cf. also the CPR proposal, COM(2008) 311 final, p. 3.

⁸⁸ 'In the absence of national provisions', Article 5 allows for products covered by a harmonised standard to be exempted from the obligation to draw up the DoP and affix the CE marking, if they are individually manufactured/custom-made for a given use, if they are manufactured on the construction site, or if the manufacturing must maintain traditional processes for the conservation of officially protected works; Article 37 provides micro-enterprises with an option to use simplified procedures when assessing the performance of their products, under conditions set out in this provision and referring to the definition in Article 2(15); Article 36 enables any manufacturer to replace the type-testing or type-calculation stage of the assessment process with Appropriate Technical Documentation, in case the product fulfils the conditions for classified without testing (CWT) or tests have been carried out for corresponding products or systems of components (sharing and cascading); Article 38 allows manufacturers to replace performance assessment with Specific Technical Documentation for construction products that are individually manufactured or custom-made in a non-series process, again with conditions as set out in that provision and referring to the definition in Article 2(15).

assessment estimated the order of magnitude of the annual net cost savings for companies to be around €140 million per year.

This simplification potential has only been partially realised. Article 36 simplifications, which are intended to avoid unnecessary repetition of testing, are being applied. On the other hand, the take-up of simplification measures under Articles 5, 37 and 38 remains very limited⁸⁹, as these provisions⁹⁰ lack clarity, resulting in a risk of conflicting interpretations. This could actually make it simpler for the manufacturers concerned to apply the general (non-simplified) rules. This was confirmed by the semi-structured interviews and by the online survey, with only 10% of respondents to the latter stating that significant simplification has been attained and 35% stating that no simplification has been attained.

Further to this, stakeholders at the CPR review technical platform of January 2017⁹¹ (mainly Member States, industry representatives and standardisation organisations) suggested that companies, including micro-enterprises, might find more advantages than disadvantages in complying with the general rules, rather than striving to apply the simplification provisions. Companies might even find that the general regime is not so complex as to require derogations for smaller enterprises. It was also stated that the manufacturer's size does not have any impact on the performance of its products, while specific manufacturing processes (individual manufacturing or custom-made manufacturing in a non-series process) would merit the derogations of Articles 5 and 38. Furthermore, the justification of simplified procedures was called into question, considering the uncertainty created for end users, who may justifiably expect the performance of all construction products bearing the CE mark to be equally accurate and reliable.

The expected simplification effects of Articles 5, 37 and 38 have thus not been achieved. The attempt to 'level the playing field' for smaller companies, particularly through Article 37, has obviously not been successful. In this respect, the CPR has fallen far short of expectations, due to the complexity introduced in the final drafting of the Regulation.

Another aspect is that unlike the Commission proposal, the final wording of Article 9(2) includes a list of information that has to follow the CE marking, most of which the manufacturer has already presented in the DoP. This duplication is inevitably creating additional unnecessary administrative burdens and consequently adding to the costs involved in applying the CPR system (see the 'efficiency' analysis in Section 5.2). The current situation has been subject to heavy criticism since the beginning of CPR implementation, and these opinions have also dominated the most recent consultations, including the stakeholders' interviews under the 2018 evaluation supporting study⁹². Some Member States accept less demanding practices, for example allowing for simple references to the content of the DoP in the context of the CE marking, but this results in fragmentation of the internal market.

⁸⁹ As indicated in the 2016 implementation report, in the 2016 supporting study for the fitness check on the construction sector and in the 2018 evaluation supporting study.

⁹⁰ The wording of these provisions differs considerably from the CPR proposal, which did not contain Article 5. In this context, see also the definition of the concept of 'Specific Technical Documentation' in Article 2(15), which additionally has been formulated incoherently when compared to the wordings of Articles 37 and 38.

⁹¹ See summary on <https://ec.europa.eu/docsroom/documents/25681/attachments/2/translations/>.

⁹² See pages 55 and 82.

Reinforcing the credibility of the harmonised system

The CPR proposal explicitly brought up the need to increase the credibility of the harmonised system created under the CPD. This was to be achieved by strengthening the criteria for designation and notification of bodies and by better coordination of market surveillance⁹³. Consequently, the proposal comprised new and stricter criteria for the notification and designation of bodies, as well as a safeguard mechanism within market surveillance⁹⁴.

The new criteria for notifications and designations are appreciated by the construction sector and have thus created stronger confidence in the appropriate functioning of the CPR-based harmonised structure. Consequently, the work of the notified bodies under the CPR has not received noteworthy criticism. Although the Technical Assessment Bodies (and EOTA) seem to be seen as working well by their clients (despite their wish for quicker delivery⁹⁵), several issues must be noted: first, the observed difficulties and delays in adapting from the CPD (ETAGs) to the CPR (EADs), and, second, the proliferation of EADs within some product families, which artificially breaks the market on affected products. A detailed analysis of the technical assessment bodies and of EOTA is provided by the Article 34(2) report.

Finally, while the coordination of market surveillance activities carried out in Member States has intensified since the CPR's entry into application, due in part to the additional resources assigned from the Commission, market surveillance itself remains largely ineffective according to stakeholders and has been criticised heavily in the recent consultations⁹⁶. Uneven and ineffective market surveillance is also complained about in almost all CPR-related conversations with economic operators. Weak and uneven market surveillance has affected some market actors' confidence in the CE marking.

What are the factors that have influenced positively and negatively the achievements observed? In particular, which obstacles to the internal market for construction products still remain?

Making the common technical language function appropriately requires: (i) high-quality and above all complete and up-to-date harmonised technical specifications; and (ii) sufficiently speedy and inclusive processes to develop those specifications. In both respects, the CPD/CPR-based harmonised structure has been found lacking, in spite of the expectations that the time taken to prepare the specifications would be reduced, as indicated in the 2008 impact assessment.

Standardisation process

Pursuant to Article 17 of the CPR, the Commission assesses whether the harmonised standards established by the European standardisation bodies fulfil the requirements of the CPR based harmonised system. The standardisation procedures and the demands for the Commission monitoring of them have developed since the CPR's adoption.

⁹³ See COM(2008) 311 final, p. 5.

⁹⁴ Article 57 of the CPR.

⁹⁵ Source: 2016 supporting study for the evaluation of EOTA tasks.

⁹⁶ In particular through the feedback on the roadmap, the interviews and the results of the public consultation, as well as in the position papers sent through it (see Section 4.2 of the 2018 supporting study for the evaluation of the CPR).

In regards to the finding of the implementation report of 2016 regarding the inappropriate application of Articles 3(3) and 27 (inclusion of non-mandated thresholds and classes in harmonised standards), the Commission adopted the position to reject standards not fulfilling this requirement.

The Commission has also rejected standards developed without a fair and equitable participation of SMEs, as required by Article 17 (2) of the CPR as well as Regulation (EU) No 1025/2012 on standardisation⁹⁷ after it entered into application (1 January 2013), in response to the non-inclusiveness of the CPR harmonisation process also noted in the implementation report. In as much as these developments have strengthened procedures, they have made them more complex and demanding.

Strengthening of procedures has continued through the impact of ECJ case-law: first, the ruling on the *James Elliott* case (C-613/14) in October 2016, and second, the subsequent General Court judgment on the *Global Garden* case (T-474/15) in January 2017. Based on these judgments, the Commission's role has been emphasised very strongly and the new procedures put in place have brought about additional changes to the applicable procedures, together with more stringent interpretation of Regulation (EU) No 1025/2012. These general developments, having occurred outside the CPR framework, are affecting the fluidity of its functioning.

Harmonised standards are the main tool for harmonisation under the CPR (and before that, under the CPD), the other one being EADs. However, as explained in the 2016 implementation report, standardisation has not delivered in line with expectations. Problems of quality and delays affect European standardisation under the CPR, especially as the use of harmonised European standards is mandatory and the harmonised system is meant to be legally 'exhaustive'⁹⁸ and thus forbidding Member States from stepping in⁹⁹.

Most of the existing 444¹⁰⁰ harmonised product standards were developed in the 1990s and early 2000s, and first came into use between 2002 and 2009. They were all based on mandates issued even earlier, so they could only partially bridge the gap between the market and regulatory needs of Member State authorities.

Since the full entry into force of the CPR (1 July 2013-31 January 2019), CEN/Cenelec has proposed 218 new or revised standards to be cited in the Official Journal.

Of the 218 standards and amendments to standards proposed, only 76 have been cited and 142 rejected by the Commission for reasons of non-compliance with the CPR and the EU *acquis*¹⁰¹. Of the 76 standards that have been cited, 64 correspond to amendments to existing standards and 12 are new standards. This means that out of the current 444

⁹⁷ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, OJ L 316, 14.11.2012, p. 12-33.

⁹⁸ The term 'exhaustive' is used to indicate that according to the ECJ, within the harmonised sphere, the system created under the CPR cannot be supplemented by national requirements. The term 'complete' is used to describe to what extent the harmonised system de facto covers all the seven BWRs to justify the legal consequence of 'exhaustiveness'.

⁹⁹ Cf. the ECJ judgment in Case C-100/13, mentioned above, *para* 62.

¹⁰⁰ As per 31 January 2019.

¹⁰¹ The annual non-citation rate has been over 60% in the past 5 years (67% in 2014 and 2015; 31% in 2016, 80% in 2017 and 71% in 2018).

harmonised standards, only 12 date from the CPR era and thus can be deemed up-to-date when it comes to their technical content. Additionally, all standards, including these 12, fail to cover at least one of the seven basic requirements for construction works (BWRs). Admittedly, in the case of BWR 7 (sustainable use of natural resources), non-compliance is not attributable to the standardisation organisations but to the Commission. The ECJ judgment in Case C-100/13¹⁰² has set an additional demand on the harmonised system for construction products: this system is expected to be complete, which for harmonised standards means that all BWRs should be covered by essential characteristics included in them. At present, this is not the case.

Out of the 142 rejected standards, 125 are still being further elaborated by CEN, while the other 17 require action by the Commission owing to CEN's introduction of new classification systems without respecting the procedural demands laid down in Article 27 of the CPR. The numbers above mirror the absence of an adequate internal quality control, based on the acceptability criteria for citation of standards, in the standardisation organisations.

Developing harmonised European standards is by nature a long process. However, the developments mentioned above have made it even longer since the adoption of the CPR. Two elements have played a key role: the *James Elliott* case (see Chapter 3) and the additional consultation and validation requirements imposed by the better regulation agenda of the Commission. Since mid-2018, all standardisation requests under the CPR are to follow in full the procedures set up under Article 10 of Regulation (EU) No 1025/2012 on standardisation. The adoption of delegated acts (required when proposed standards include new classification systems) also has an impact in terms of delays. Finally, as of 2019, the citation of standards is to be carried out through Commission implementing decisions. At present, both private and public stakeholders complain that the process of drafting and citing harmonised standards overall is too lengthy.

The standardisation process has been a recurring issue in the free text replies to question 27 and in the additional position documents uploaded by participants in the public consultation¹⁰³. It is also the subject of the third opinion of the REFIT platform (XII.8.c¹⁰⁴). The topic was thoroughly discussed at the first meeting of the CPR review technical platforms on 12 October 2016.

CEN and stakeholders (industry and Member States) have criticised the Commission for delaying the standardisation process at the pre-citation quality control phase and for rejecting a large proportion of the proposed standards. Delays to the process can be partially attributed to the procedural complexities involved, but not, in most cases, to the Commission's treatment of standards proposed for citation. There have been though some cases where the Commission had, for technical reasons, difficulties in adopting standardisation requests or delegated acts necessary for the citing of harmonised standards in the Official Journal. Nevertheless, the reasons for non-citation are openly and transparently communicated to CEN and stakeholders.

For the reasons listed above, public consultations have identified the anomalies apparent in standardisation under the CPR as the most important problem in the implementation of

¹⁰² The principles of this judgment, which relates to the CPD era, were enshrined in the recent General Court judgment on case T-229/17 also as regards the application of the CPR. However, this judgment has been appealed.

¹⁰³ See summary on <https://ec.europa.eu/docsroom/documents/25681/attachments/1/translations/>.

¹⁰⁴ Source: REFIT Platform (https://ec.europa.eu/info/sites/info/files/xii-8-c_consumerproductregulation_en.pdf).

the harmonised system. This is especially relevant because of the mandatory nature of standards under the CPR and because Member States are not allowed to supplement them. This issue has therefore been identified as the foremost one to be tackled in the event of a CPR review.

EOTA

The European technical assessment (ETA) system is generally seen as a positive aspect of the CPR by the manufacturers using it. This is because it grants them the possibility to CE mark their products in cases when they are not covered by a harmonised standard. The uptake of the European assessment document (EAD) option has been growing rapidly, with 6,240 ETAs issued, indicating that the manufacturers concerned assess the ETA option as attractive (i.e. effective) even though some stakeholders think that the process is too slow¹⁰⁵.

However, whereas the EAD route was proposed in order to allow the market entry of innovative products, the vast majority of the ETAs do not concern innovative products¹⁰⁶.

In addition, about half of all cited EADs have been developed in four product areas only: (i) fixings; (ii) thermal insulation products — composite insulating kits/systems; (iii) structural metallic products and ancillaries; and (iv) structural timber products/elements and ancillaries. This may indicate a potential need for a standardisation request rather than for EADs/ETAs. Indeed, it may be that the high number of ETAs is a result of the failure of standardisation.

Further analysis of the ETA system is provided in the Article 34(2) report, which identifies similar issues between the CEN and EOTA routes, albeit to a lesser extent, as fewer products and manufacturers are concerned by the alternative route.

National marks

As developed above, obstacles to the internal market remain in the form of national marks and certifications. It is evident that the use of such national marks and certifications undermines the internal market for construction products, since national marks create barriers preventing products from entering the market, even when these products have undergone the harmonised European procedures for that purpose.

Market surveillance

One of the key factors behind the less than full achievement of the internal market is insufficient and ineffective market surveillance and enforcement. The lack of market surveillance creates the basis for lack of trust in the legislation since companies feel that they are exposed to unfair competition.

From a legal point of view, the safeguard mechanism of Article 58 cannot be used as intended as Article 56(1) of the CPR conditions the launch of non-compliance procedure to the existence of a safety risk. While there is indeed de facto a clear link between the accuracy of a product's declared performance and its inherent safety, especially in the

¹⁰⁵ Source: 2016 Supporting study for the evaluation of the relevance of EOTA tasks.

¹⁰⁶ Source: 2016 Supporting study for the evaluation of the relevance of EOTA tasks.

case of inaccurate declared performance, this requirement seriously limits the possibilities to launch non-compliance procedures.

Also, the CPR does not set up minimum requirements in terms of resources to be made available or results to be reached by Member States. As a result:

- In some Member States, market surveillance is centralised, whereas in others it is regionalised or even delegated to sub-regional geographic entities. The more market surveillance is decentralised, the more possibilities there are for regional discrepancies within the same Member State.
- In some Member States, market surveillance for construction products is independent of enforcement with regard to national provisions on construction works. Other Member States combine the two, or treat the first only as a subset of the second.
- Some Member States scrutinise public tenders in the light of the common technical language set up by the CPR, whereas others do not, and some deviate from the common technical language in their public tender specifications.
- Based on findings in other product sectors, it can be supposed that there is wide variation in the number of full-time person equivalents per product on the market or per population leading to uneven levels of effective surveillance.

The overall tendency is towards budget cuts in Member State administrations, including market surveillance authorities. It is reasonable to assume that, as any organisation faced with reducing means, market surveillance authorities tend to prioritise and concentrate on the most problematic and sensitive sectors, which are usually medicines or chemicals rather than construction products, especially in the case of a single authority in charge of market surveillance for a large variety of products.

A further consideration is that building control authorities and even engineers and architects can be seen as operating a kind of lower level *de facto* market surveillance.

Has the CPR had unintended positive or negative consequences or collateral effects? To what extent has the CPR followed/allowed for technological, scientific and social development (or do adaptation mechanisms in place allow the CPR to do so?)

The only causality link identified between technological, scientific and social development and legislation aimed at regulating the performance of construction products was considered under the heading of “innovation”, as this seemed the most realistic outcome of the legislation in these fields and the CPR does not seem to have any significant impact on innovation. It neither hinders it nor fosters it¹⁰⁷. Evidence also indicates that stakeholders do not think that innovation is an issue that should be addressed by EU legislation on construction products, but rather left to the market¹⁰⁸. The slow adoption of standards and EADs can, however, be seen as hampering innovation, as commented in the public consultation.

¹⁰⁷ Public consultation (question 15g): 49% see no effect on innovation, do not know or choose not to answer the question; 35.4% see a positive effect, and 15.6% a negative effect. The views of companies are rather consistent across all company sizes. Stakeholders online survey (Question 3): 41% see a positive effect, 46% no effect, and 13% a negative effect (2018 Evaluation supporting study). 58% of the participants in the validation workshop considered that the CPR has had no impact on innovation (32% positive impact, 10% negative impact).

¹⁰⁸ Public consultation (question 18i): 69.7% of respondents confirm the significance of innovation, but only 24.6% consider that it should be addressed by EU legislation (2018 Evaluation supporting study).

In response to the question of whether the CPR is able to use the adaptation mechanisms in place (i.e. legislative tools making it possible to amend annexes, adopt delegated and implementing acts, and mandate and cite new or updated harmonised standards) to support innovation and technological development, stakeholders seem for the most part to regard delegated acts as a good tool¹⁰⁹. However, the process is considered to take too long in practice: all the consecutively added procedural elements have to be seen as a reason for this common perception among stakeholders.

5.2 Efficiency

This section presents the available information on costs and benefits, and attempts to assess whether the costs are proportionate to the benefits the CPR has generated. The table in Annex 4 summarises the results of this assessment.

What are the benefits and how beneficial are they for the various stakeholders' groups?

The main benefit expected from harmonisation is that it would improve conditions for access to other EU markets, facilitated by the existence of the common technical language and common rules, including harmonised standards. Other expected benefits include: (i) uniform information for end users; and (ii) a greater focus on quality and on end users being better able to (and more focused) set their requirements/specifications regarding the use of products. Some stakeholders also point to implementation of the harmonised structure created under the CPD/CPR as having helped companies improve their production processes, due to the requirements to put in place systems for factory production control.

The 2008 impact assessment¹¹⁰ identified expected cost savings of between €245 million and €685 million per year, mainly for manufacturers placing products on the market in the territory of more than one Member State (€190 million to €500 million per year). These savings would result from: (i) a reduction in manufacturers' costs when placing products on the market (from reduced testing costs, reduced costs of ETAs and greater flexibility the CPD in how to demonstrate compliance); and (ii) the eradication of national marks and certifications.

The 2016 supporting study for the fitness check on the construction sector¹¹¹ identified — but did not quantify — efficiency gains and new business opportunities due to easier cross-border conditions for specific segments of the industry, such as high value-to-weight and niche products, and for large multinational companies. It also identified the following types of benefits:

- benefits from harmonisation (potential regulatory economies of scale, albeit limited by various product specifications between countries for non-regulatory reasons);
- benefits related to the provision of information (these would, however, also possibly exist in the absence of the CPR);
- benefits from simplification (that has not delivered as expected);

¹⁰⁹ Source: stakeholders' interviews in the 2018 supporting study for the evaluation of the CPR.

¹¹⁰ See in particular pages 38 and 49.

¹¹¹ See page 142.

- benefits related to sustainability (BWR 7, ‘Sustainable use of natural resources’, although this is not yet operational).

About 25% of the interviewed stakeholders¹¹² cannot name any benefits, claiming that insufficient market surveillance and enforcement prevent any benefits in terms of opening up markets and a level playing field for competitors from materialising fully.

Nevertheless, respondents to the public consultation¹¹³ confirmed the following main impacts, in decreasing order:

- more market opportunities in other Member States;
- improved product information for end users;
- increased competition on own market;
- increased cost of production;
- improved product safety;
- increased administration costs related to the application of SME and simplification provisions;
- improved product choice for end users;
- improved ability for SMEs to compete with large companies (38.5% of all respondents, mainly among medium-sized companies, while 46.4% of micro-enterprises see a decline instead);
- innovation.

The responses in the stakeholders’ online survey¹¹⁴ also identified (again in decreasing order):

- an increase in market opportunities abroad;
- improved product information for end users;
- increased competition on own market;
- increased product safety;
- an increase in product costs;
- increased product choice for end users;
- increased innovation.

The CPR is an important tool to ensure full implementation of the Public Procurement Directive¹¹⁵. Without the CPR, there would be no limit to the extremely divergent specifications in public tenders for construction works and, by implication, for construction products. The common technical language approach of the CPR constitutes a significant limit on the discretion of tendering administrations¹¹⁶.

More generally, the CPR’s main merit is that it has pre-empted further regulation at Member State level, even if national marks have not disappeared yet.

¹¹² Source: 2018 supporting study for the evaluation of the CPR.

¹¹³ See the replies to Question 15 and figures in Annex 2.

¹¹⁴ Question 3.

¹¹⁵ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0024-20180101>.

¹¹⁶ Two recent examples are the reasoned opinion sent to Germany and the letter of formal notice to Czechia. In both cases, the Commission has called on the countries in question to comply with the CPR as both impose additional requirements on road safety barriers that have already been assessed under the Regulation and CE marked accordingly. See memo 19/1472 of 7 March 2019 ([http://europa.eu/rapid/press-release MEMO-19-1472_en.htm](http://europa.eu/rapid/press-release_MEMO-19-1472_en.htm)).

What are the regulatory and administrative costs and are they affordable for the various stakeholder groups? Is there evidence that the CPR has caused unnecessary regulatory burden?

The 2008 impact assessment estimated the CPR costs would remain between €100 and 130 million per year (of which €55 million borne by manufacturers). The expectation for the CPR was that benefits would outweigh costs, in a range between €115 million and €585 million per year.

In fact, in the absence of the expected benefits and/or the impossibility to quantify all potential benefits, the evidence points to increased costs, assessed at €2.6 billion to €3.4 billion per year constituting in the order of 0.6% to 1.1% of the sector's turnover. The lower estimate is provided by the 2016 study on the economic impacts of the Construction Products Regulation; the higher estimate is provided by the 2016 fitness check supporting study on EU legislation on the internal market and energy efficiency legislation.

The main costs of the CPR are linked to the supply of DoPs and to CE marking. Costs linked to testing and quality control mechanisms are largely costs that the company would also have incurred without the CPR (i.e. the 'business as usual' scenario). The costs of the CPR are mainly initially borne by manufacturers, but these are partly passed on to end users, as shown from the stakeholders' online survey¹¹⁷. The potential benefits are felt by a wide range of stakeholders. The cost impact of the CPR on distributors appears to be much more limited than for manufacturers and importers.

Significant cost savings (€1.5 billion per year as of 2013¹¹⁸) can be attributed to the possibility to provide the DoP electronically¹¹⁹. However, the system's efficiency is limited by the overlap between the information required in the DoP and in the CE marking, which generates redundant administrative and financial burdens and constitutes a clear inefficiency. Even taking into account the cost saving from having digital DoPs, the CPR is considerably less efficient than intended at achieving its goals as set out in the 2008 impact assessment.

Cost reductions from simplification were expected when the CPR was proposed. The 2008 impact assessment already foresaw that complying with the CPR would generate relatively large administrative burdens of compliance for micro-enterprises, craftsmen, non-series products, etc. In response, simplification provisions were included in the Regulation, aimed specifically at these types of manufacturers and products. However, this type of simplification impact has clearly not been achieved as expected, as was also seen in the discussion of simplification impacts above.

The significance of administrative costs and burdens depends to a large extent on the size of the company and on the type of product, as well as on the product range of each manufacturer. The analysis confirms the existence of economies of scale in compliance activities. It also confirms that these costs can be quite substantial for SMEs, particularly micro-enterprises; in contrast, relatively speaking, they are negligible for large

¹¹⁷ 50.5% saw an increase in all costs, 65.5% in the costs borne only by manufacturers, 49.5% in the costs borne by manufacturers and partly passed on to consumers/end users and 36.5% in the costs borne by manufacturers but fully passed on to consumers/end users, while 54.5% saw no effect on costs (Question 4, 2018 supporting study for the evaluation of the Construction Products Regulation).

¹¹⁸ 2016 supporting study for the fitness check on the construction sector, page 49.

¹¹⁹ Commission Delegated Regulation (EU) No 157/2014 of 30 October 2013 on the conditions for making a declaration of performance on construction products available on a website, OJ L 52, 21.2.2014, p. 1-2.

enterprises: the 2016 study on the economic impacts of the CPR assesses the direct costs of the CPR at 1.31% of the annual turnover of micro-enterprises, 0.49% for small enterprises, 0.42% for medium enterprises and 0.07% for large enterprises.

The fact that standards are subject to copyright by CEN and its member organisations and not freely available and that most standards are not translated into all EU official languages also increases the burden on manufacturers.

In general, the expectations on cost and burden reduction have only partially materialised. Even when a part of the compliance costs incurred can be considered either to represent business as usual or to occur only once, the evidence indicates an increase instead of a decrease in these costs. Furthermore, the costs and the administrative burdens are not evenly balanced, but weigh heavier on smaller companies than the larger ones.

To what extent has the CPR been cost effective? Are the costs proportionate to the benefits attained? What are the factors influencing the proportionality of costs?

It is not possible to assess whether the CPR has been cost effective in quantitative terms due to the difficulties in quantifying benefits.

For the smallest companies - particularly those that do not export and thus do not benefit from access to the internal market - cost-effectiveness is low: in the public consultation, when questioned on the balance between costs and benefits of the EU legislation on construction products, 60.7% of micro-enterprises are negative, while the share is at 38.6% among all companies. For larger companies, cost-effectiveness seems to be satisfactory, although all economic actors would benefit if this were increased, for instance by reducing the overlaps between the DoP and CE marking.

None of the interviewed stakeholders stated that the costs overall are disproportionate, but interviews point to the fact that this depends to a large extent on the industry/product type, and especially on the size of the company, as indicated above. There are indications that costs are marginal for manufacturers who already had production control systems in place, whereas those that did not have such systems before experience high compliance costs.

In the stakeholders' online survey, 45.5% judged that the benefits outweigh the costs, 20% that they equal the costs and 16.5% that the costs outweigh the benefits (while 18% had no view)¹²⁰.

Respondents were more mixed in the public consultation¹²¹, with the respective figures coming in at 36.2%, 12.6% and 38.4% (while 12.9% had no view). The share of negative replies was higher for companies: 44.4%, in particular smaller ones: among micro-enterprises the figure reached 60.7%, followed by 50% for the self-employed, 45.5% for small enterprises, 46.3% for medium-sized companies and 37.5% for larger firms.

As to whether the same benefits could be achieved at lower cost¹²², 50% believe that this possibility does exist. In the case of business representatives, the figure is 66.7%; this group also has the smallest share of 'I don't know' replies or no replies (22.2%). By comparison, 47% of the responding companies believe the benefits could be achieved at a lower cost but 33.2% of them admit that they do not know.

¹²⁰ Question 5.

¹²¹ Question 16.

¹²² Question 17.

In the validation workshop, 55% of the participants agreed that the benefits outweigh the costs, while 24% disagreed and 20% stated that the costs are about the same as the benefits.

Overall, stakeholders do not seem to deem the costs of the CPR as being incommensurate to its benefits and thus as outrageously disproportionate. However, this is an assessment based on average costs. As mentioned under the previous evaluation question, the main factor influencing the proportionality of costs is the size of the company. For large companies, the costs are negligible. The smaller the company, the larger the costs in proportion to turnover. For the smallest companies, the costs are quite significant. Moreover, these companies are less likely to be able to benefit from increased access to cross-border markets. Thus, cost-effectiveness for this group is low. However, the burden of costs also depends on other factors, particularly the type of product and the complexity of requirements of the relevant standard, as well as the number of different products that each company produces. Moreover, insufficient market surveillance could have an unintended and perverse effect, that the burden of these formal obligations may be experienced less by non-compliant operators than it is by those who wish to comply with the rules.

5.3 Relevance

This section investigates whether the objectives of the harmonised system in place still meet the needs of the different stakeholders.

To what extent are the objectives of the CPR appropriate to meet the needs and problems it is expected to solve?

The CPR's objectives remain relevant, although on some aspects full correspondence between stakeholders' priorities and the CPR's overall objectives does not exist. In the public consultation, stakeholders cited the following issues as the top issues that EU legislation on construction products should address: (i) safety of construction products; (ii) legal certainty; (iii) the environmental impact of construction products; and (iv) the usefulness of information available to users. These issues were followed closely by a further set of issues, which were prioritised by more than half of respondents: (i) the extent of cross-border trade between EU Member States; (ii) the administrative costs market operators face in order to comply with EU legislation on construction products; and (iii) the energy efficiency of construction products. Innovation and product choice for consumers are not seen as particularly relevant.

In the public consultation, 87.4% of respondents confirmed that the safety of construction products is significant and 70.7% consider this is the issue of highest relevance for EU legislation¹²³; 56.2% of all respondents consider that EU legislation on construction products has had a positive effect on product safety, while for the responding companies¹²⁴ the figure was 53.4%. As for the environmental impact of construction

¹²³ Question 18f.

¹²⁴ Question 15: between 40% and 59.3% for all ranges, except 28.6% for micro-enterprises.

products, 80% of the respondents to the public consultation consider the issue as relevant and 64.6% consider that it should be addressed by EU legislation¹²⁵.

In the semi-structured interviews, stakeholders largely agree with the needs that the CPR is designed to address, but some add more to the list. Needs that are not explicitly addressed (or not strongly enough) in the view of many stakeholders are: (i) information on product safety and on what they call ‘fitness for use’ (i.e. information necessary to assess whether the product is fit for the purpose and conditions in which they intend to use it), which indeed are not covered by the CPR; (ii) sustainability issues; and (iii) (perhaps more in a long-term perspective) the circular economy.

In the validation workshop, 51% of participants estimated that the CPR should address the issue of fitness for use, while 49% did not believe that it should address this.

On product safety, many of the interviewed stakeholders emphasise that the CE marking gives little guidance or help for the user to determine whether a construction product is safe. However, the CE marking is not meant to be used in such a way. The competences on construction product safety are clearly divided between the EU and Member States: the EU is responsible for the rules on access to the internal market (the marketing of construction products), whereas Member States retain responsibility for the safety of construction works. In addition, the common technical language created at EU level allows for national building codes to regulate safety.

In this context, as explained earlier, Article 58 of the CPR on compliant construction products which nevertheless present a risk to health and safety has never been applied¹²⁶ due to the wording of Article 56(1)¹²⁷. The issue, however, has not prevented the pre-emptive use of RAPEX¹²⁸, the rapid alert system for dangerous non-food products, as provided for in the General Product Safety Directive (GPSD)¹²⁹ and Regulation 765/2008¹³⁰.

The demand presented by some stakeholders, mainly constructors, for more information about fitness for use is often linked to the aspects lacking from the DoP. Such stakeholders would prefer the DoP to contain, for example, installation instructions on how to properly incorporate the product into construction works so that the declared performance is preserved. However, Article 11(6) of the CPR already obliges manufacturers to ensure that their products are accompanied by precisely this kind of information.

Safety issues are often linked to deficiencies in harmonised standards, in particular where harmonised standards do not cover all the relevant safety aspects. This concerns obviously basic work requirement 3 on hygiene, health and the environment, but most basic work requirements relate to safety: for example, BWR1 on mechanical resistance and stability, BWR 2 on safety in case of fire, BWR 4 on safety and accessibility in use,

¹²⁵ Question 18g.

¹²⁶ According to Article 58(3), the Commission is to be informed of any such cases, but such communications have not taken place.

¹²⁷ This is because of the link it makes between the inherent product safety issue, apparent also in Article 58, and the accuracy of its declared performance.

¹²⁸ Source: 2018 supporting study for the evaluation of the CPR (Section 4.2).

¹²⁹ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0095>).

¹³⁰ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, OJ L 218, 13.8.2008, p. 30-47.

and BWR 5 on protection against noise. Safety issues sometimes also originate from the national or regional building codes. Often national or regional building codes have a requirement that the product fulfil specific performance requirements in order to be fit for a specific use. Setting performance and other requirements to ensure public safety, including the product's inherent safety, remains an unresolved issue that may need to be considered if the CPR is revised.

On environmental protection, the relevance of BWR 7 on the sustainable use of natural resources is undisputed, despite the absence of delivery so far. Stakeholders see the need for EU legislation to clarify the set of rules to be applied to re-used and recycled construction products in order to contribute effectively to a circular economy.

Lastly, as mentioned earlier, the insufficient effectiveness of standardisation may lead to question its relevance: indeed most of the existing harmonised product standards have been developed and have come into use before the CPR and all of the existing mandates are based on mandates issued earlier, so they cannot fully bridge the gap between the market and regulatory needs of Member State authorities.

Is there demand/potential for more cross-border trade between Member States?

As concluded in the section on effectiveness, there is to date no statistical evidence of any CPR effect on the volume of cross-border trade in the EU, although some evidence points in this direction and an increase can be observed in cross-border trade for construction products.

A demand or a potential for more cross-border trade within the EU seems indeed to exist but varies substantially depending on the type of product and its specific trade intensity, as explained in the section on effectiveness. Asked whether they expect to export or import more than now to other EU Member States in the future, 57.5% of companies replied negatively, against 40.5% that replied positively¹³¹. However, obstacles to cross-border trade remain, for reasons related to issues with the implementation of the CPR, such as the persistence of national marks, lack of understanding of the CE marking among some stakeholders, insufficient market surveillance leading to distrust among some economic actors, etc. These obstacles help explain why there has not been a larger impact on cross-border trade and could indicate that - at least for some products - there could be potential for 'more internal market'.

5.4 Coherence

In this section, we assess whether the CPR is internally and externally coherent, i.e. whether the different provisions of the CPR are consistent with one another and with other relevant EU directives and regulations, as well as with the national rules in place.

To what extent do the CPR features work together sufficiently well? Are there any inconsistencies, overlaps or gaps?

The responses to the stakeholders' online survey asking about the existence of any inconsistencies and gaps in the CPR were very mixed, with 34.5% positive replies, 33.5% 'I don't know' replies and 32% negative replies. This suggests the existence of

¹³¹ Question 9 of the company phone survey (2018 Supporting study for the evaluation of the CPR).

some inconsistencies and gaps. The main issue reported by stakeholders is the previously mentioned overlap between the CE marking and the DoP.

An inherent conflict remains between mandatory standards being the key instrument for harmonisation in relation to the CPR and the slow adoption of these standards. With harmonised mandatory standards as the key instrument for delivering the CPR's objectives, the Regulation is by default 'set up' for slow implementation and long response times to adapt to new requirements and developments. The problem is exacerbated by the frequent quality issues and the draft standards' lack of conformity with the CPR requirements, leading to delays in standardisation, which already takes several years under the best of circumstances. The issue is particular to the CPR due to the mandatory nature of standards under the CPR.

The lack of clarity in the simplification provisions is a key factor in their low uptake (again, with the exception of Article 36). Articles 5, 37 and 38 of the CPR present significant interpretation problems, which lead to almost no simplification having been achieved through these provisions. Thus, the lack of clarity functions as an internal barrier within the CPR for achieving simplification and reduced costs for specific types of products and economic operators, particularly for micro-enterprises/craft enterprises. Similarly, the lack of clarity in Article 56(1) of the CPR has been an obstacle to the uptake of market surveillance and safeguard procedures (see Section 5.1).

To what extent is the CPR consistent with other pieces of legislation applying to the same stakeholders? Are there any inconsistencies, overlaps or gaps?

58.5% of respondents in the public consultation¹³² (but 75% of business organisations and 52.6% of companies) see contradictions or overlaps between the CPR and other EU legislation. Replies are more mixed on the existence of positive synergies¹³³ with other national or EU legislation, with 35% of respondents giving positive replies (with a higher share among business representing organisations, public authorities and testing bodies), 30% giving negative replies and 32% stating that they do not know.

The REFIT platform opinion XII.8a recommends that the Commission give consideration in the ongoing fitness check on the construction sector to overlapping and repetitive requirements stemming from various EU legal acts and to the need for clear and full European standards covering all requirements for construction products. The Commission has followed up on this opinion by examining the issues relating to potential legislative shortcomings and overlapping requirements as part of its fitness check on the construction sector.

The supporting study for the fitness check confirmed the potential overlaps between the CPR and the Ecodesign Directive¹³⁴ in the procedures established for construction products, citing in particular the parallel routes for CE marking. The issue here is the need to assess the same performance differently under these two harmonised systems. Several product categories are currently potentially concerned, in particular solid fuel boilers, (solid fuel) local space heaters and space/water heaters. One product family (solid fuel local space heaters) is actually covered both by harmonised standards based on

¹³² Question 19.

¹³³ Question 20.

¹³⁴ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of eco design requirements for energy-related products, OJ L 285, 31.10.2009, p. 10-35.

the CPD/CPR and by a specific ecodesign implementing regulation. This issue could spread to other product categories when new secondary regulations are adopted under the Ecodesign Directive. The costs of the overlap cannot be quantified (see the section on efficiency), but they might become significant for manufacturers of those specific products. This issue will need to be addressed in the event of a review of the CPR.

Similar issues with similar impacts, notably on the products mentioned above, may become relevant for the Energy Labelling Directive¹³⁵ and its delegated acts in areas where their scope relates to construction covered by harmonised standards.

For product safety, it has been unclear for a long time whether the General Product Safety Directive (GPSD¹³⁶) and the CPR (similarly to the CPD before it) both apply to ‘consumer products’. An attempt was made to clarify this in the Commission legal proposals in the market surveillance package of 13 February 2013. Of these proposals, the one on consumer product safety¹³⁷ is of particular note in this context, as Article 2(4) of the proposed regulation states that its Chapters II to IV would not ‘apply to products subject to requirements designed to protect human health and safety laid down in Union harmonisation legislation or pursuant to it’. In addition, Recital 8 specifies that construction products belong to this category of products. However, until now these proposals have not been adopted by the co-legislators.

Overlaps such as those mentioned above are expected to become more and more frequent in the wake of progress towards achieving the objectives of consumer protection, energy sustainability, human health, etc. This will make it necessary to put in place a global mitigating approach. For instance, a potential revision of the CPR could include the definition of collision rules to anticipate such situations.

A link exists between the CPR and Energy Performance of Building Directive (EPBD¹³⁸), as the CPR establishes harmonised rules for the marketing of construction products, making it possible to compare the energy-related performance of products from different manufacturers. However, the two pieces of legislation do not overlap, and the adoption of a new standard on sustainability or energy economy under the CPR could contribute to achieving the objectives of the EPBD. An opportunity thus exists to achieve synergies between the CPR and the EPBD through a coordinated approach.

The Standardisation Regulation makes the use of harmonised standards voluntary, whereas under the CPR it is mandatory. This is frequently presented as a clear conflict, although the practices in the construction sector have consistently followed the CPR-based rules.

Under the CPR, the basic function and meaning of the CE marking is different from those under most internal market (new approach) directives, focusing on assessment of performance instead of product conformity. This creates some interpretation problems and confusion among economic actors, as discussed in the section on effectiveness. This

¹³⁵ Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU, OJ L 198, 28.7.2017, p. 1-23.

¹³⁶ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0095>).

¹³⁷ COM(2013) 78 final (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52013PC0078>).

¹³⁸ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, OJ L 153, 18.6.2010, p. 13-35; Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, OJ L 156, 19.6.2018, p. 75-91.

leads to specific overlaps where products are subject to the CPR and to the Machinery Directive (2006/42/EC¹³⁹), e.g. for automated doors, or to the Electromagnetic Compatibility Directive¹⁴⁰, Low Voltage Directive¹⁴¹ or Pressure Equipment Directive¹⁴². These issues should be addressed in the event of a CPR revision.

Many stakeholders also point to conflicts with national legislation on buildings, and in particular to additional requirements on the measuring and declaration of the performance of products. 28.5% of the companies in the phone survey identified differences in standards as the main reason for their difficulties in selling/sourcing construction products from other EU countries¹⁴³. When exporting to other EU Member States, the main barriers reported are different product requirements (29% of respondents) and different testing methods (26.5%¹⁴⁴), although 46% state that there are no major barriers. The CPR provides means for public authorities to set performance requirements and to check compliance with these requirements using the common technical language through the mandatory standards. Some Member States have their own building codes making use of the common technical language to set national requirements for buildings, with these codes coexisting with the CPR. While this potentially can create synergy effects and consistency between the national building codes and the CPR, there is also a risk that Member States will set up additional requirements to the performance of construction products outside the harmonised system created under the CPR. This would present economic operators with additional demands, adding to costs and acting as obstacles to the internal market.

Finally, some of the legislation overlapping with the CPR also has potential for synergies if sufficient coordination is applied, including ensuring that the procedures and approaches involved remain sufficiently similar and not duplicate each other. The potential for synergies was already mentioned above for the EPBD, the GPSD and the national rules in place, but could also apply to other pieces of European legislation¹⁴⁵.

5.5 EU added value

This section analyses whether action at EU level through the CPD and the CPR has generated added value compared to Member States acting alone. As harmonisation has been a key part of EU legislation on construction products since the CPD, this analysis covers both the former directive and the current regulation.

¹³⁹ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, OJ L 157, 9.6.2006, p. 24-86.

¹⁴⁰ Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility, OJ L 96, 29.3.2014, p. 79-106.

¹⁴¹ Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits, OJ L 96, 29.3.2014, p. 357-374.

¹⁴² Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment, OJ L 189, 27.6.2014, p. 164-259.

¹⁴³ Question 14.

¹⁴⁴ Question 8.

¹⁴⁵ Respondents in the public consultation quoted the Product Liability Directive, REACH, fire safety regulations, Drinking Water Directive, General Product Safety Directive (question 20).

What is the added value of the CPR compared to what could be achieved at merely national level?

The CPR (as the CPD before it) can be seen as achieving EU added value by facilitating the potential access of economic operators to cross-border trade through the establishment of common rules and a common technical language. It is unlikely that the internal market could have been improved in this way at national level.

The vast majority of stakeholders agree that EU legislation on construction products is needed. Thus 79.5% of respondents in the public consultation¹⁴⁶ stated that legislating at EU level is merited compared to doing it at national level; the score is 78% among companies but 96% among public authorities and testing bodies. Stakeholders strongly agree that it would not be possible to achieve the main benefits and achievements of EU legislation (such as the common technical language, a strong legal framework, better information for end users and better opportunities for cross-border trade) if construction products were only subject to national legislation. Also, the existence of a single European public procurement market could not be envisaged in the absence of EU legislation on construction products.

For companies, the mere existence of the CPR has restricted Member States' protectionism, even if it has not eradicated it. For Member States, the CPR plays a major role in feeding their legislation on construction works and civil engineering works.

The high support for maintaining EU legislation on construction products may seem somewhat surprising considering the many issues with the CPR that have been identified in this evaluation, in particular the weakness of standardisation, the lack of significant simplification effects and the poor market surveillance. This may indicate large-scale support for the overall objectives of harmonisation and strengthening the internal market for construction products. It may also denote a general preference for legal stability, or concerns about the 'unknown', i.e. about the possible alternatives, despite the demonstrated costs of the CPR and its largely still-to-demonstrate benefits. As stated repeatedly, manufacturers of construction products have invested considerably in complying with the CPR. Replacing it with a different approach would mean losing this investment and having to invest again in new compliance costs.

However, the ineffective harmonisation process under the CPR has affected its ability to meet Member States' regulatory requirements. Furthermore, the exhaustiveness of the system recently confirmed by the Court threatens *de facto* the balance between EU and national competence and is expected to considerably change the situation in terms of Member States' and stakeholders' appetite for revision.

Do the needs and challenges addressed by the CPR correspond to the needs of an EU internal market? Do the needs and challenges addressed by the CPR continue to require (harmonisation) action at EU level?

The key needs and challenges addressed by the CPR include: (i) increased trade opportunities for economic actors in the EU internal market; (ii) increased choice of products for end users; (iii) better communication and information (including availability of comprehensive product information); and (iv) reduced legal uncertainty. These needs

¹⁴⁶ Question 21.

are key to the smooth functioning of the internal market for construction products and continue to be relevant, whatever the level of effectiveness achieved so far.

What would be the most likely consequences of repealing the CPR?

Very strong support exists among all stakeholder groups for construction products legislation and harmonisation at EU level. In the public consultation, 70% of respondents were in favour of maintaining EU legislation on construction products, either as it is or with some changes (68% of companies, 74.4% of business representatives, 78.6% of public authorities or testing bodies), while 23% answered that it should not be maintained as it is (25.4% of companies, 21.8% of business representatives, 17.9% of public authorities or testing bodies¹⁴⁷).

Of those respondents who do not believe that EU legislation should be maintained as it is, a large majority (77%) do not think that the EU legislation on construction products should be replaced by national regimes¹⁴⁸. A substantial majority of respondents consider that repealing the CPR would result in increased fragmentation of the market and in Member States putting up new or strengthened barriers. This would entail for example facing again multiple testing requirements for selling cross border. The most likely consequences of a repeal of the CPR would be a roll-back of the achievements of the CPR and CPD in the last three decades, wrecking all the costly efforts made by stakeholders to comply with EU legislation, and dismantling the improved conditions for cross-border trade for economic operators in the internal market.

6. CONCLUSIONS

Four out of five stakeholders agree on the need for EU legislation on construction products. There is support for EU legislation in this field despite the shortcomings of the CPR as identified in this evaluation and despite the lack of firm statistical evidence of a causal link between the CPD/CPR harmonisation instruments and the observed increase in cross-border trade within the EU.

A significant number of comments point out that repealing the Regulation would potentially lead to increased costs, increased administrative burdens and additional fragmentation of the internal market for construction products. Stakeholders also see the CPR as having a positive impact on cross-border opportunities and trade, even though these opportunities seem to benefit medium-sized and large enterprises more than micro and small enterprises.

In this respect, reactions from stakeholders to the questions in this evaluation acknowledge that potential for increased cross-border trade depends on many factors linked to each specific product, which may go beyond the CPR per se (e.g. type of product, respective specific requirements, place of business of the stakeholder).

¹⁴⁷ Question 22 (see on <https://ec.europa.eu/docsroom/documents/32082/attachments/1/translations/en/renditions/native>).

¹⁴⁸ Question 23, replied by the 148 respondents who gave a negative reply to Question 22 (see on <https://ec.europa.eu/docsroom/documents/32082/attachments/1/translations/en/renditions/native>).

The overarching issues identified in this evaluation are, in order of importance:

1. The standardisation system at the core of the CPR is underperforming. This affects the internal coherence of the CPR as most standards have been found to be outdated and all of them cover only partly the seven basic work requirements set out in Annex I to the CPR. This has contributed to a number of Member States' setting of supplementary requirements, which has led to fragmentation of the internal market. Worryingly, the acceptance rate for standards newly proposed by CEN for citation in the Official Journal has been lower than one in three in recent years, despite efforts towards improvement from the Commission side.

The insufficiency of the harmonised standards system is the main reason for the CPR's limited effectiveness in creating a harmonised internal market. A significant number of CEN standards do not fulfil the legal requirements that have to be applied so that they can be cited in the Official Journal to become part of EU law as provided for in recent European Court of Justice rulings. This, together with the complexity of the standardisation development process, are the two main issues making it necessary to reflect on whether the current system for developing harmonised technical specifications is fit for purpose and meets Member States' regulatory needs. Delivering high quality and complete harmonised technical specifications in reasonable deadlines is central to ensure the safety and sustainability of construction works. It should also lead to consideration of which future arrangement would allow this to happen. A revision of the current method of developing common technical specifications should be considered as the top priority if a revision of the legal framework is envisaged.

2. Role of Member States: despite improved cooperation between market surveillance authorities, market surveillance activities are broadly seen as ineffective and widely varying in quality and effectiveness from one Member State to another. This is likely to be one of the main reasons why the assessment of the effectiveness of the CPR is so disparate. Bringing market surveillance up to a fairly high and equal level should be seen as a priority in a potential revision of the CPR. Obstacles to the internal market remain in the form of national marks and certifications among others. Their continuing existence is linked also to the fact that the harmonisation provided by the CPR and the legal instruments adopted under it fall short of covering completely all the seven basic work requirements laid down in Annex I to the CPR.
3. Simplification: some simplification has been achieved by the CPR, but less than expected, resulting in lost opportunities in the form of absent cost savings. However, despite the compliance costs incurred by the smallest companies in particular, some evidence suggests that companies, including micro-enterprises, might find more advantages than disadvantages in complying with the general rules rather than in striving to apply the simplification provisions of Articles 5, 37 and 38. This could imply that the general regime might not be considered so complex and costly as to require derogations for smaller enterprises. Accordingly, revision — or possibly even deletion — of these specific simplification rules could be considered.

The three preceding aspects result in lack of legal clarity, which is a general issue that reoccurs in various forms and which is cited under many different topics in exchanges with stakeholders. In the event of a revision, all possible options to address these issues should be considered, including a repeal.

4. Additionally, other relevant conclusions of this evaluation are:

- a) Contradictions and overlaps with other EU legislation need to be remedied and boundaries with national requirements need to be clarified.
- b) The European assessment documents are, from a structural point of view, being used fundamentally as a substitute for a non-functional standardisation process and not as a route to promote innovation, which was its intended objective. As the utility of this route depends first and foremost on how mainstream harmonisation functions, any possible future solution for the main route should also question the value of this alternative. Full details on the EAD route and EOTA are presented in the Article 34(2) report adopted jointly with this evaluation.
- c) Overall, views are mixed on the balance between costs and benefits, but there seems to be a larger share of stakeholders who consider that the CPR's benefits equal or outweigh the costs. However, despite this overall acceptance, costs are proportionally higher for SMEs and highest for micro-enterprises. The expectations on cost and burden reduction have only partially materialised.
- d) The evidence points to an improvement in the information provided to users compared to the past: as expected in the CPR proposal, the common technical language has created more transparency and made it easier for users to compare products against their declared performance. According to some stakeholders, this has contributed to some extent to increased product choice for end users. However, there is still room for improvement: particular attention is needed to tackle confusion about the meaning of the CE marking for construction products and the duplication of information between the CE marking and the DoP.
- e) Delegated acts were mostly seen as a good tool, but the overall process (Commission standardisation requests, followed by development of the standards, then delegated acts) was perceived as being too slow.

If the CPR is revised, the following aspects could also be improved, improved for construction products, while respecting Member States' responsibility for the safety of construction works: (i) the environment and sustainable use of natural resources; and (ii) (to an extent still to be investigated) inherent product safety, in particular when consumers themselves buy and use construction products¹⁴⁹.

¹⁴⁹ These two paths should be explored: (i) strengthening BWRs 3, 4 and 7 (hygiene, health and environment; safety and accessibility in use; sustainable use of natural resources); and (ii) establishing product specific safety requirements.

Annex 1: Procedural information

1. Lead DG, Decide planning/CWP references

Lead DG: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.

CWP references: PLAN/2017/972.

2. Organisation and timing

The European Commission announced in the ‘Clean Energy for All Europeans’ Communication of 30 November 2016 that the ongoing consultation process with stakeholders (in particular the technical platforms launched as a follow-up to the CPR implementation report of 7 July 2015) might possibly lead to revision of the CPR.

The CPR review was initially planned as a back-to-back evaluation and impact assessment when included in the planning on 29 March 2017.

An interservice steering group (ISSG) was set up in January 2017 to follow the whole process and the supporting study launched for the evaluation and impact assessment. The group included the following departments: Secretariat-General, DG Eenergy, DG Employment, social affairs and inclusion, DG Competition, DG Environment, DG Justice and consumers and DG Research and innovation.

The ISSG met on 25 April 2017 (draft terms of reference), 11 July 2017 (kick off meeting), 23 August 2017 (inception report), 13 November 2017 (first progress report), 6 December 2017 (second progress report), 16 February 2018 (draft final report), 4 June 2018 (final report).

The ISSG was consulted on 23 November 2018 on the quality assessment and on 19 March 2019 on the draft Commission staff working document (a meeting took place on 26 March 2019).

3. Exceptions to the better regulation guidelines

Not applicable

4. Consultation of the Regulatory Scrutiny Board

An upstream meeting took place on 3 July 2018.

The draft evaluation staff working document was discussed with the Regulatory Scrutiny Board (RSB) on 29 May 2019.

The draft staff working document was amended to accommodate the Board’s opinion of 4 June 2019.

| Main considerations of RSB | Corresponding amendments |
|---|---|
| (1) The report does not sufficiently expose the reasons why the standardisation system, market surveillance and simplification measures for SMEs did not work well. | Additional explanations included in Section 5.1 on effectiveness. |

| Main considerations of RSB | Corresponding amendments |
|--|--|
| (2) The analysis focuses mainly on macroeconomic effects of the Regulation, which are inherently difficult to identify given the variety of products and types of producers covered by the Regulation. It does not gauge how well or poorly the Regulation has performed in different subsectors or market segments. | Further explanations included in Section 4.2 on limitations and robustness, further development added in Section 5.1 on effectiveness (internal market). Internal Market), including examples of products and standards. |
| (3) Some conclusions are not well supported by the evidence, including that the benefits of this regulation outweigh its costs. | Some figures in Section 5.2 on efficiency have been corrected; additional developments included and conclusion nuanced. |
| (4) The analysis inappropriately aggregates stakeholder responses when different respondent groups are likely to have divergent views. | Where possible, results have been reported by categories/subcategories of respondents in Chapter 5. |

| Further considerations and recommendations of RSB | Corresponding amendments |
|---|---|
| (1) The report should explore in more detail the reasons behind the identified problems. The evaluation should show what works and why, and what does not work and why not. In particular, the report should provide more analysis about the shortcomings of the standardisation system, the uneven and ineffective market surveillance, and the simplification measures for SMEs. The report should distinguish when they stem from poor implementation or from flaws in the design of the Regulation. | Additional information inserted in Section 5.1 on effectiveness, in particular on the functioning / non-functioning of standardisation, market surveillance and simplification. |
| (2) It would be useful to revise the intervention logic to describe more clearly the channels through which the Regulation affects outcomes. This would help to identify more systematically potential sources of costs and benefits, and potential gaps in design or in implementation. The report should elaborate on policy goals that go beyond removing obstacles to the internal market, such as possible safety aspects. | Intervention logic revised (Section 2.1). Further consideration given to policy goals as health and environment, in particular in Section 5.3 on relevance and in the conclusions. |
| (3) The analysis would benefit from examples of how the Regulation performed | Additional examples of products and standards inserted in Section 5.1 on |

| Further considerations and recommendations of RSB | Corresponding amendments |
|---|---|
| in certain subsectors or market segments. Even if such analysis is not exhaustive, it would shed light on how the standards work in practice. It would also help to illuminate factors behind shortcomings that the report describes, and clarify under which conditions the Regulation has worked. The report could also elaborate further on the macroeconomic impact of the Regulation based on previous studies. | effectiveness. Reporting on the macroeconomic impact of the Regulation further detailed in Section 5.1 on effectiveness (internal market). |
| (4) The evaluation should better support its conclusions with evidence. The report could also provide a more comprehensive picture of the benefits of the Regulation, even if it is not always possible to quantify them, or if some of them are only indirect benefits that materialise outside the scope of the Regulation. It should make clear that the regulation has preempted further regulation at the Member State level. The conclusions should better highlight the confusion on the role and meaning of the particular use of the CE label by this Regulation. The report should also revise its statement that the results of the consultation on coherence are inconclusive, since as much as one third of the respondents point to inconsistencies and gaps in the Regulation. | Adjustments made to Section 5.2 on efficiency. The issue of CE marking has been incorporated in the conclusions. The statement on coherence has been revised in Section 5.4. |
| (5) The report could have a closer look at the results of the consultation activities to go deeper into the categories of respondents. The report should go beyond aggregating responses when different stakeholder groups are likely to have different views. It should try to explain the apparent contrast between the negative assessment of effectiveness and the positive responses from stakeholders. The evaluation should also better justify why there were no targeted efforts to obtain broader inputs from consumers, construction workers and NGOs. | Where possible, results have been reported by categories/subcategories of respondents in Chapter 5. Effort to better explain stakeholders' support to stability/continuity in Section 5.5 on EU added value. Details added in Section 4.1 on methodology. |

5. Evidence, sources and quality

Available reports and studies, in particular:

- Implementation of the CPR, Report from the Commission to the European Parliament and to the Council, 7 July 2016, COM/2016/0445 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0445>
- Study on the Economic Impacts of the Construction Products Regulation, by VVA Europe, the Danish Technological Institute (DTI) and the Netherlands Organisation for applied scientific research (TNO), 2016, <https://ec.europa.eu/docsroom/documents/20903/attachments/1/translations/en/renditions/native>
- Analysis of the implementation of the Construction Products Regulation, RPA, 2015, <https://publications.europa.eu/en/publication-detail/-/publication/d3449aa6-8775-11e5-b8b7-01aa75ed71a1>
- Fitness check on the construction sector, Supporting study on EU legislation on Internal Market and energy efficiency legislation, Economisti Associati, Milieu and CEPS, with contributions from BPIE and DBRI, 2016, <http://ec.europa.eu/DocsRoom/documents/19343/attachments/1/translations>
- The European construction value chain: performance, challenges and role in the GVC, by ECORYS in cooperation with WIIW and WIFO, 2016, https://ec.europa.eu/growth/content/single-market-integration-and-competitiveness-eu-and-its-member-states-2016_en
- Study on cross-border trade for construction products, CSIL Centre for Industrial Study in partnership with CRESME Recherche, 2017, <http://ec.europa.eu/docsroom/documents/27301>
- Survey on users' need for information on construction products' users, ECORYS, 2018, <https://publications.europa.eu/en/publication-detail/-/publication/50666501-3d3c-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-69036660>
- Survey on information needs among EU country authorities, European Commission, 2018, <https://ec.europa.eu/docsroom/documents/28684>
- Survey on Member States' regulatory practice, European Commission, 2018, <https://ec.europa.eu/docsroom/documents/28684>
- Analysis of Production and Trade data for construction products, European Commission, 2019, <https://ec.europa.eu/docsroom/documents/34401>.
- REFIT Platform, https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/refit-platform-recommendations-and-other-work_en

The [supporting study for the evaluation for the CPR Review](#) also comprised the following data collection tools:

- **Six scoping interviews** with representatives of European associations of construction products manufacturers from different sectors;
- **Semi-structured interviews with 76 stakeholders across 10 Member States** (Belgium, Denmark, France, Germany, Ireland, Italy, Poland, Romania, Spain, UK). The main stakeholder groups covered by these interviews included 22 business representatives (industry associations), 29 technical bodies

(standardisation bodies, notified bodies and technical assessment bodies), 20 public authorities and 5 other stakeholders.

- An **online survey** covering stakeholders in the remaining Member States from the same types of stakeholder groups covered by the semi-structured interviews; **103 stakeholders from across the 18 Member States answered the online survey** (15 business representatives, 42 technical bodies, 32 public authorities and 14 other stakeholders).
- A **company phone survey** collected views from a representative sample of individual companies from across the value chain, with a focus on small and micro companies established in the 10 Member States covered by the primary research. **736 companies participated in the survey**, 93% of which were SMEs (i.e. with less than 250 employees) and 78% small and micro-enterprises (with less than 50 employees).
- An open public consultation on EU rules for products used in the construction of buildings and infrastructure works, which ran from 22 January 2018 to 16 April 2018. **641 stakeholders responded to the open public consultation**, including 232 companies.

The evaluation made use of expert advice, in particular through the following channels:

- The CPR review technical platforms: five thematic meetings were held between October 2016 and April 2017, with Member State representatives, business representatives, companies, technical bodies and testing bodies. The following topics were addressed: standardisation, simplification issues, information needs, coexistence of EU and national systems and the future of EOTA¹⁵⁰.
- A final validation workshop (sixth technical platform meeting) gathered 96 stakeholders in Brussels on 3 May 2018, including Member State representatives, business representatives, companies, technical bodies and testing bodies. The workshop presented and discussed the key preliminary findings of the evaluation.

¹⁵⁰ See minutes on https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

ANNEX 2: SYNOPSIS REPORT ON THE STAKEHOLDER CONSULTATION

Key outline of the consultation strategy

The consultation strategy¹⁵¹ established in the context of the CPR review was prepared with the objective of opening up the debate as much as possible. This would offer all relevant stakeholders and final users the opportunity to contribute to the whole evaluation exercise, possibly leading to a revision of the CPR.

The strategy was designed to support the initially planned back-to-back evaluation and impact assessment. Following the decision to decouple the retrospective assessment from the prospective assessment, the present synopsis report only covers results relating to the retrospective evaluation.

Scope of the consultation strategy

The main stakeholders are economic actors involved in the design, marketing and use of construction products, i.e. construction products manufacturers, building industry/contractors, raw material suppliers, architects, engineers, importers and distributors of construction products, as well as their sectoral associations at EU, national, regional or local levels.

The consultation strategy also targeted other actors of the system, i.e. European standardisation organisations, EOTA, testing and certification bodies, market surveillance authorities, Product Contact Points for Construction, and other national authorities and other public authorities concerned.

The public consultation was an opportunity to go beyond the targeted consultations and to give the floor to any other interested party, including citizens, consumer organisations and NGOs, academia and research institutions, trade unions and workers.

Consultation methods and tools: the approach built on the evidence available, including evidence resulting from past consultations and from the various consultation tools, specifically designed based on a review of any information gaps and inconsistencies. The review of the CPR included the following consultation methods and tools: already active technical platforms, interviews, surveys, an online public consultation and a final validation workshop.

1. Main results of the CPR review technical platforms

Following up on the 2016 implementation report, the Commission initiated regular CPR review technical platforms with interested stakeholders (mainly Member States, industry, industry representatives and standardisation organisations): these meetings were dedicated to specific issues, i.e. existing problems and how they could be solved in the future. Five meetings have taken place on specific issues: standardisation, simplification issues, information needs, coexistence of EU and national systems and the future of EOTA.

The platforms provided an opportunity to discuss freely the existing issues, their possible causes and potential solutions. The technical platform contributed thus to framing the

¹⁵¹ Available on <http://ec.europa.eu/docsroom/documents/24155/attachments/1/translations/>

exercise, rather than to collecting any quantitative data. The summaries are available on the Europa website¹⁵².

2. Main results of the feedback on the roadmap¹⁵³

The publication of the roadmap on the Better Regulation website between 20 June 2017 and 18 July 2017 gave any potentially interested stakeholders the opportunity to contribute to the design and the evidence basis of the evaluation exercise. It was announced to the members of the Advisory Group on Construction and of the Standing Committee for Construction, as well as on the Europa webpages dedicated to construction. All 121 contributions received, as well as the analysis of the results, are available on Europa¹⁵⁴.

3. Main results of the interviews

The goal was to perform 80 phone interviews with stakeholders across 10 Member States (Belgium, Denmark, France, Germany, Ireland, Italy, Poland, Romania, Spain, UK¹⁵⁵). The initial goal was to carry out two interviews in each category (business representatives, technical bodies, public authorities and others) in each country, thus 16 interviews of ‘others’ (i.e. worker organisations, consumer associations and environmental NGOs). Despite proactive contacts with a sample of such potential interviewees, no positive reply was received. Therefore five interviews were also conducted with SME representatives (four at EU level, one at national level)¹⁵⁶.

The table below provides a summary of the typology of the interviewees.

| Member States | Business representatives | Technical bodies | Public authorities/ testing/certification bodies | Other | TOTAL |
|---------------|--------------------------|------------------|---|-------|-------|
| Belgium | 4 | 2 | 1 | 1 | 8 |
| Denmark | 3 | 3 | 2 | 0 | 8 |
| France | 2 | 4 | 2 | 0 | 8 |
| Germany | 3 | 3 | 3 | 0 | 9 |
| Ireland | 1 | 0 | 1 | 0 | 2 |
| Italy | 3 | 5 | 1 | 0 | 9 |
| Poland | 4 | 2 | 2 | 0 | 8 |
| Romania | 0 | 4 | 1 | 0 | 5 |
| Spain | 1 | 2 | 5 | 0 | 8 |
| UK | 1 | 4 | 2 | 0 | 7 |
| SME reps | 0 | 0 | 0 | 4 | 4 |
| TOTAL | 22 | 29 | 20 | 5 | 76 |

¹⁵² On http://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

¹⁵³ On http://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

¹⁵⁴ On https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3070078_en and on <https://ec.europa.eu/docsroom/documents/31222>

¹⁵⁵ These countries are considered representative of the five main construction business systems in the EU, and in terms of output they produce more than 80% of EU turnover in the sector (2013 data from Eurostat structural business statistics). In addition, they cover the various EU geographical sub-regions, and both large and small Member States.

¹⁵⁶ Out of the 18 organisations invited.

These semi-structured interviews provided the most in-depth and detailed primary data and have thus been given significant weighting in the evaluation. However, it has not been possible to systematically quantify the views of the interviewees. Indeed, due to the semi-structured interview method, respondents brought up different aspects or perspectives on particular questions that did not always lend themselves to quantification of the type ‘x% of the respondents agree that ...’, since their viewpoints may have gone beyond the direct question asked and explored other perspectives. Interesting issues addressed by one or more respondents without prompting from the interviewer have in many cases been considered in the evaluation findings, although they are not necessarily statistically representative.

4. Main results of the stakeholder online survey

The purpose of the online survey was to complement the stakeholders’ interviews by giving relevant stakeholders from other Member States the chance to contribute to the study by answering a set of specific, targeted questions. The online survey followed the structure of the interviews.

Some 101 online surveys were completed, representing 34% of the total number of stakeholders contacted¹⁵⁷.

Responses were received from 39 testing and certification bodies, 18 market surveillance authorities, 17 manufacturer organisations, 13 others, 9 NCPCs, 3 standardisation bodies and 2 end user organisations. The 13 ‘others’ identified themselves as: two manufacturers, an authority responsible for technical regulation of construction works, a building business association, a consultant for technical legislation and CPR, an Economic Chamber, a national manufacturers association, a ministry, a business database, a national notification authority, an NGO, a research institute and a trade organisation.

Replies mainly came from Austria and Bulgaria (16 each), Slovenia (8), Lithuania (7), Croatia (6), Estonia, Finland, Hungary and Portugal (5 each).

Asked about *the impacts of EU legislation on construction products* (Question 3):

- ‘Market opportunities for companies in other Member States than your own’ were reported by 77.5% of respondents to have scored some or a large increase due to EU legislation (11.5% saw no effect and 11% some or large decrease).
- ‘Competition in your national market’ scored for 62.5% some or a large increase, while 24.5% saw no effect and 36.5% saw some or a large decrease.
- ‘Product choice for end users’ scored score for 46.5% some or a large increase, 41.5% saw no effect and 12% some or a large decrease.
- ‘Product information for end users’: 68% consider the effect as positive (22.5% saw no effect, 9.5% some or a large decrease).
- ‘Innovation in the construction products sector’: a positive effect was seen by 41% of the respondents, while 46% saw no effect (and 13% a negative effect).

¹⁵⁷ 307 stakeholders were contacted (by email, with four rounds of reminders and follow-up calls).

- 'Product safety': 61% of respondents saw a positive effect, 24.5% no effect and 14.5% a negative effect.
- 'Cost of production': 58% of respondents saw some or a large increase in production costs, 31.5% no effect on production costs and 10.5% some or a large decrease.

Asked about *the impact in the last 4 years of the CPR on costs for construction products manufacturers* (Question 4):

- 65.5% saw some or a significant increase in the costs only borne by manufacturers (23.5% saw no effect).
- 49.5% saw some or a large increase in the costs borne by manufacturers and partly passed on to consumers/end users (42% saw no effect).
- 36.5% saw some or a large increase in the costs borne by manufacturers but fully passed on to consumers/end users, while 54.5% saw no effect on them.
- In general, all costs were seen as having increased by 50.5% of the respondents to the three questions, 39.5% judging there was no change and 9.5% seeing some reduction.

On *how the benefits of EU legislation on construction products compare to these costs* (Question 5), 45.5% of respondents judged that the benefits outweigh the costs, 20% thought that they equal the costs, and 16.5% that the costs outweigh the benefits (18% had no view).

Asked *whether the CPR measures aimed at simplifying the requirements for some manufacturers (mainly small companies and those manufacturing customised products etc.) have achieved such simplification in practice?* (Question 6), 47.5% of respondents were positive (limited to some simplification for 37.5%, significant simplification being only stated by 10%). 32% stated no simplification has been achieved, while 20.5% stated they did not know.

The *situation of the EU market for construction products* (Question 7) was seen as satisfactory in terms of 'Cross-border trade among Member States' by 69.5% of respondents. For 'Product/supplier choice for distributors and end users of construction products', the situation was seen as satisfactory by 79.5% of respondents. For 'Comprehensive product information for distributors and end users of construction products', the situation was seen as satisfactory by 70% of respondents. For 'Legal certainty', the situation was seen as satisfactory by 64% of respondents. Lastly, for 'Administrative costs for market operators', the situation was seen as satisfactory by 53% of respondents.

Replies were very mixed on the *existence of any inconsistencies or gaps in the CPR* (Question 9), with 34.5% choosing the 'Yes' option, 32% 'No' and 33.5% 'I do not know'.

5. Main results of the company phone survey

The company phone survey was intended to collect views from a representative sample of 750 individual companies from across the value chain, with a focus on small and micro companies established in the 10 Member States covered by the in-depth research.

The sample was extracted from the Dun & Bradstreet database of companies, based on the following criteria:

- geographic coverage: the 10 Member States¹⁵⁸;
- company size: 90% SMEs and 10% large companies¹⁵⁹;
- sector coverage: 500 interviews of 20 minutes duration with construction production manufacturers; 250 interviews of 10 minutes duration with importers, distributors/suppliers, builders, construction companies, designers (architects, specifiers, etc.), raw material suppliers and professional end users.

The 736 answers received came from 376 construction products manufacturers, 95 importers/suppliers, 83 raw material suppliers and 182 end users (building industry/contractors and architects/consulting engineers).

Micro-enterprises represented 42.5%, small enterprises 34%, medium-sized enterprises 16.5% and large companies 7%.

Most represented countries were Italy (19%), UK (14.5%), Germany (14%), Spain (12.5%), and Poland (10.5%). They were followed by France (9.5%), Ireland (6%), Romania (5.5%), Belgium 4%) and Denmark (4%).

To question 4 - *Are your products or the products you work with covered by harmonised standards?*, 599 replied 'Yes (some or all products)', 115 'No (none of our products)' and 22 'I don't know'.

To question 5 - *Are your products or the products you work with covered by a European Technical Assessment?*, 483 replied 'Yes', 192 'No (none of our products)' and 61 'I don't know'.

To question 6¹⁶⁰ - *Does your company import/export products from/to at least one other EU Member States?*, 165 replied 'Yes, we import from other EU MS and we export to other EU MS', 101 'We export to other EU MS but we do not import from other EU MS', , 75 'We import from other EU MS but we do not export to other EU MS' and 223 'No'.

Question 7¹⁶¹ - *Please indicate the reasons why you do not export your products to other EU Member States* received 298 replies.

'Lack of capacity to export' was the most common reply (32%), followed by 'Your products are adapted to specific national requirements' (28.5%). The following replies were chosen by 13% to 18% of the respondents: 'Technical difficulties to transport across borders' (18%), 'Others' (16%), 'Information/data on how to do it efficiently is not available' and 'It is costly to get all information/data on other countries product requirements' (both 15%), 'The potential countries for exporting your product have different testing methods (additional testing)' and 'The potential countries for exporting your product have different product requirements' (both 13%). 'I don't know' received 4%.

¹⁵⁸ Belgium, Denmark, France, Germany, Ireland, Italy, Poland, Romania, Spain and United Kingdom.

¹⁵⁹ Based on an expected 90% incidence rate (i.e. 90% of the respondents eligible to participate in the company phone survey). The overall incidence rate was significantly lower than anticipated (21.5% compared to the anticipated 90%). In response, the study team focused the interviews on countries where more eligible construction products manufacturers were available, and increased the number of interviews with other stakeholder groups, including builders, architects, etc. In the end, 98% of the target number of responses was achieved.

¹⁶⁰ Question asked only to the 564 manufacturers, importers/distributors, building companies/contractors.

¹⁶¹ Question asked only to respondents who chose one of the last two replies in question 6.

Question 8¹⁶² - *What are the main barriers/obstacles that you face when exporting to other EU Member States?* received 266 replies.

46% of the respondents stated that ‘there are no major barriers’.

‘The countries in which you are exporting your product have different product requirements’ was chosen by 29% of the respondents, ‘The countries in which you are exporting your product have different testing methods (additional testing)’ by 26.5%, and “‘Your products are adapted to specific national requirements’ by 25%. The next most popular replies were ‘It is costly to get all information/data on other countries product requirements’ (17%), ‘Other’ (14.5%), ‘Technical difficulties to transport across borders’ (13%) and ‘I don’t know’ (2.5%).

To question 9¹⁶³ *Does your company expect in the future to export or export more than now to other EU Member States?*, 40.5% of respondents replied positively, 57.5% negatively and 2% ‘I don’t know’.

Question 10¹⁶⁴ *Has your company experienced more competition from manufacturers of other Member States over the last 4 years?* received 39% positive replies, 28.5% negative replies and 2.5% ‘I don’t know’.

Question 11¹⁶⁵ *Does your company expect more competition from manufacturers in other EU Member States in the future?* was answered positively by 50%, negatively by 44.5% and received 5% ‘I don’t know’ replies.

Question 12 was put to all 736 respondents: *In your experience, has it become easier to sell/source construction products from other EU countries over the last 4 years compared to previously?*

‘Yes significantly’ and ‘Yes to a certain extent’ scored 32%, while ‘There has been no change but we expect it to become easier’ scored 37%.

8% of respondents considered ‘consider “There has been no change’ while 9% stated ‘state “No, it has become more difficult’ and 13.5% did not know.

Question 13¹⁶⁶ read ‘*In your view, to what extent is the current/expected ease of selling/sourcing construction products from other EU countries due to improvements in European regulation on construction products?*’.

15% of the 510 respondents chose the reply ‘To a significant extent due to improvements in European regulation on construction products’, 48% ‘To some extent due to improvements in European regulation on construction products’, , 27% ‘Not at all due to improvements in European regulation on construction products’ and 9% ‘I don’t know’.

Question 14¹⁶⁷ asked about the main reasons for difficulties in selling/sourcing construction products from other EU countries.

341 replies were given. “‘I don’t know’ came first with 31.5%, followed by ‘Differences in standards’ with 28.5%, ‘The economic crisis’ with 26%, ‘Lack of

¹⁶² Question asked only to respondents who chose one of the first two replies in question 6.

¹⁶³ Question asked only to the 564 manufacturers, importers/distributors, building companies/contractors.

¹⁶⁴ Question asked only to the 564 manufacturers, importers/distributors, building companies/contractors.

¹⁶⁵ Question asked only to the 564 manufacturers, importers/distributors, building companies/contractors.

¹⁶⁶ Question asked only to the positive and optimistic respondents in question 12.

¹⁶⁷ Question asked to those stating ‘there has been no change’ or ‘it has become more difficult’ to question 12, multiple replies possible.

distributors' with 18%, 'The implementation of European regulation on construction products' with 16.5%, 'Differences in technological advancements' with 14.5% and 'Lack of support for internationalisation' 14%.

Question 15 - *Do you think that the declaration of performance (DoP) provides useful information to economic operators in your sector? Please select the best fitting answer* was asked to the 736 participants.

The reply 'Yes, the DoP has considerably improved quality and quantity of information' was chosen by 16.5% and the reply 'Yes, the DoP has somewhat improved quality and quantity of information' by 34%. 22.5% stated 'No, the situation is the same as before the implementation of European legislation on construction products' and 11.5% 'No, the information provided in the DoP is not useful' while 15.5% stated that they do not know or are not aware of the DoP.

Question 16¹⁶⁸ - *Has the improved level of information raised the level of safety for end users?* received 85% positive replies, 12% negative replies and 3% 'I don't know'.

6. Main results of the public consultation¹⁶⁹

The public consultation took place between 22 January 2018 and 16 April 2018. In total, 641 online questionnaires were completed¹⁷⁰

22.6% of the replies came from Germany. Participation from other countries was roughly in line with the size of their population and economic importance, with France, the UK and Italy all representing around 8%. 11% came from Belgium, reflecting the number of European umbrella organisations with headquarters in Brussels. 30 contributions came from third countries¹⁷¹.

15% of the respondents were individuals, while 75% replied in their organisational capacity, with 42% representing companies, 38% business organisations, 8% technical bodies and 5% public authorities or testing bodies.

Question 13: *Knowledge of the CE marking symbol*

634 out of 641 respondents (98.9%) indicated that they know the CE marking symbol.

Question 14¹⁷²: *In your view, what information does it provide with regard to construction products?*

| | | |
|---|-----|-------|
| This construction product has been assessed as to its performance in accordance with a harmonised European standard or a European Assessment Document | 603 | 95.1% |
| This construction product complies with applicable local, regional or national building requirements and can therefore be used | 73 | 11.5% |
| This construction product is safe | 115 | 18.1% |
| This construction product is environmentally sustainable | 27 | 4.3% |
| This construction product is made in the European Union | 37 | 5.8% |
| I don't know | 6 | 0.9% |

¹⁶⁸ Question asked to the 126 respondents who replied positively to question 15.

¹⁶⁹ For full analysis see http://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

¹⁷⁰ Among those, no complete duplicates were found. In addition to the 641 completed online questionnaires, 96 complementary documents (position papers etc.) were submitted.

¹⁷¹ Including 24 from Switzerland, Norway and Turkey (third countries applying the CPR).

¹⁷² Question asked to the 634 participants who responded positively to question 13.

| | | |
|-----------|-----|------|
| No answer | 8 | 1.3% |
| Total | 869 | 100% |

The right answer was given by 95.1% of the replies. However, only 451 (71%) chose only the correct answer, showing relative uncertainty.

Question 15 (a to j): *The following main elements of the EU legislation on construction products aim to provide a level playing field for all stakeholders working with construction products:*

- *harmonised European standards defining the performance characteristics of a product that could be tested as well as the test method that has to be used, and the reporting format for informing about the results;*
- *a harmonised system to select testing/assessment bodies (called ‘notified bodies’) and to define their precise role, so as to ensure that the testing/assessment is done in all EU Member States in the same way.*

Q15a Market opportunities for companies in other Member States than their own

72% of participants saw ‘some increase’ or a ‘large increase’ for companies in other Member States, with no noticeable differences across all company sizes.

Q15b Competition in your national market

Nearly 60 % see ‘some increase’ or a ‘large increase’.

This is generally confirmed by companies of all sizes, except among small enterprises (10-49 staff), where there is a balance between companies that see a positive impact and those that see either no effect or a negative impact.

Q15c Market opportunities for EU companies in countries outside the EU

There is almost parity between respondents who see no effect (39.2%) and respondents who see ‘some increase’ or a ‘large increase’ (38%). Less than 3% think there has been a negative impact and 20.1% state that they do not know or have not answered the question.

Those who saw either no effect or do not know accounted for the majority across all company sizes, 50% in the case of medium-sized enterprises (50-249 staff) and 80% in the case of the self-employed.

Q15d Ability for small companies to compete with big companies

38.5% see an increase in the ability for small companies to compete with big companies, while 29.5% see a decrease, 21.1% see no impact, and 10.9% are undecided.

Among micro-enterprises, 25% see some or a large increase, while 46.4% see some or a large decrease; for medium-sized companies with 50-249 staff, 42.6% see some or a large increase and 33.3% see some or a large decrease; for companies with 250 or more staff, 38.5% see some or a large increase and 26% see some or a large decrease.

Q15e Product choice for end users

49% see a positive effect, as opposed to only 11.4% who see a negative effect. 31.7% see no effect, and 7.9% do not know or chose not to answer the question.

Larger companies seem more positive, with 50% of medium-sized companies and 53.1% of larger companies seeing a positive effect, as opposed to 28.6% in the case of micro-enterprises.

Q15f *Product information for end users*

Responses are overwhelmingly positive, with 61.9% seeing a positive effect, as opposed to 13.6% seeing a negative effect.

Responses vary quite significantly across the different company sizes. While it would not be scientifically sound to assume any statistical representativeness, one can note that 32.1% of micro-enterprises (excluding self-employed) see some or a large increase, while in the case of larger enterprises with 250 staff or more this rate reaches 68.8%. Out of the 10 self-employed people to whom this question was addressed, 6 saw an increase.

Q15g *Innovation in the construction products sector*

49% see no effect, do not know or choose not to answer the question; 35.4% see a positive effect, while 15.6% a negative effect. The views of companies are rather consistent across all company sizes.

Q15h *Product safety*

56.2% see a positive effect, as opposed to 14.5% who see a negative effect. The answers vary quite significantly depending on company size. 28.6% of micro-enterprises see a positive effect (and 39.3% a negative one); almost 60% of medium-sized and larger companies identify a positive effect (a negative effect was identified by only 14.8% and 7.3% respectively).

Q15i *Overall cost of production*

59.3% of respondents see 'some increase' or a 'large' increase in the overall cost of production as an effect of the CPR. The picture is consistent across all company sizes.

Q15j *Administrative costs to apply SME and simplification provisions*

55.1% see an increase in administrative costs. 26.4% cannot or do not want to answer the question. Among SMEs, between 70% and 80% across all sizes state that there has been an increase in administrative costs.

Question 16: *Before the introduction of harmonised European standards for construction products, you were generally using national/regional systems.*

Comparing the situations before and since the introduction of harmonised European standards, how would you consider that the benefits of the EU legislation on construction products (e.g. improved product information, improved product safety, increased cross-border trade, greater market opportunities, greater product choice, greater legal certainty) compare to the costs you bear (e.g. fees and charges, administrative costs, staff costs, materials costs, investment costs, hassle costs) when applying it?

- The costs greatly outweigh the benefits 23.8%
- The costs just about outweigh the benefits 14.6%
- The benefits are equal to the costs 12.6%
- The benefits just about outweigh the costs 15.5%
- The benefits greatly outweigh the costs 20.7%
- I don't know 12.9%

36.2% of respondents are of the opinion that the benefits outweigh the costs, while 38.4% state that the costs outweigh the benefits. The highest rate of sceptical respondents is to be found among the representatives of micro-enterprises (60.7%).

Question 17: In your view, could the benefits of EU legislation on construction products be achieved at a lower cost?

16.8% of respondents see the current legislation as the most efficient solution to achieve the results. Almost 50% of respondents say that this would have been possible at lower costs and 31% are unsure.

At 66.7%, the group of business representatives shows the highest rate of respondents that say that the same results could have been achieved at lower cost, and only 11% of that group sees the current solution as the most efficient one.

Questions 18 (a to i): Please tell us whether in your view the CPR addresses each of the following potential issues regarding construction products sufficiently or not?

Q18a Extent and usefulness of information available to users of construction products (professional users and consumers)

80.5% confirmed that the issue is significant, including 61% who stated that it should be addressed by EU legislation.

Q18 b Extent of choice available for consumers in construction products

While 61.8% confirm that the issue is significant (with 26.4 % considering it is not significant), 23.9% state that it should be addressed by EU legislation, against 37.9% who believe it should not.

Q18c Legal certainty in the market for construction products

83.6% confirm that the issue is significant and 65.7% confirm that it should be addressed by EU legislation.

Q18d Extent of cross-border trade between EU Member States

67.9% confirm that the issue is significant and 56% consider that it should be addressed by EU legislation.

Q18e Level of administrative costs for market operators to comply with the EU legislation on construction products

73.2% confirm that the issue is significant and nearly 55% confirm that it should be addressed by EU legislation.

Q18f Safety of construction products

This is the issue with the highest significance, which is confirmed by 87.4% of respondents. 70.7% consider that it should be addressed by EU legislation, which is also the highest rate among relevant issues to be addressed by EU legislation.

Q18g Environmental impact of construction products

80% confirm that the issue is relevant and 64.6% consider that it should be addressed by EU legislation.

Q18h *Energy efficiency of construction products*

74.7% of respondents confirm that energy efficiency is a significant issue and 53.4% state that it should be addressed by EU legislation.

Q18i *Innovation in general, in particular information and information processing technologies (including BIM building information modelling) used in the construction product sector*

69.7% of respondents confirm that innovation is a significant issue, but only 24.6% consider that it should be addressed by EU legislation.

Question 19: *Do you see any contradictions or overlaps between the EU Construction Products Regulation and other legislation at EU or national level (for example, rules on public procurement, rules on product safety, rules on ecodesign, rules on health and safety of workers)?*

Nearly 60% of the respondents regard consistency between the CPR and other EU or national legislation as a significant issue. 22.9% of respondents do not know or choose not to answer, which is a rather high proportion.

At nearly 75%, organisations that represent businesses were most likely to see a conflict with or consistency issue relating to other pieces of legislation. Among those that classified themselves as 'other', the rate is even higher, at 85.7%. Among companies themselves, the rate is significantly lower, at only 52.6%.

Question 20: *Do you see any positive synergies between the EU Construction Products Regulation and other legislation at EU or national level (for example, rules on public procurement, rules on product safety, rules on ecodesign, rules on health and safety of workers)?*

The respondents can be split into three groups: those who see positive synergies, those who do not see any and those who do not know.

Organisations representing businesses were the group with the highest share of respondents pointing out contradictions and overlaps with other pieces of legislation. They also had one of the highest shares of respondents (44.4%) pointing to synergies with other pieces of legislation, together with public authorities and testing bodies, where the percentage was 46.6%. Individuals are among those with the lowest share of respondents seeing such synergies (27.7%).

Question 21: *Do you think there is merit in legislating on construction products at EU level compared to doing it at national level (28 (27) national regimes)?*

At nearly 80%, participants confirmed the EU added value to an overwhelming degree, including across all types of organisations (ranging from 69.1% of individuals to 96% of public authorities and testing bodies). The confirmation of EU added value is unambiguous across all countries too.

7. Main results of the validation workshop

The validation workshop took place on 3 May 2018. In total, 96 stakeholders participated. The workshop presented and discussed the key preliminary findings of the evaluation and collected input for the accompanying impact assessment.

A voting tool was used to feed into the discussion; its main outcomes (on the retrospective evaluation) are set out below.

The CPR provides sufficient legal clarity: 11% strongly agree; 36% agree; 29% neither agree nor disagree; 20% disagree; 4% strongly disagree.

What is the impact of the CPR on innovation?: important positive impact 4%; some positive impact 28%; no impact 58%; some negative impact 9%; important negative impact 1%.

The benefits of common European legislation on construction products outweigh the costs associated with compliance: 26% strongly agree; 29% agree; 20% state that costs are about the same as benefits; 17% disagree; 7% strongly disagree.

Should the CPR address the issue of fitness for use? No 51%; yes 49%.

Should it be possible for Member States to set additional requirements for the performance of construction products on top of those included in the harmonised standards? Yes 56%; no 44%.

Should it be possible to complete mandatory standards with voluntary information? Yes 77%, no 23%.

ANNEX 3: METHODS AND ANALYTICAL MODELS

The following evaluation grid shows how the various sources contributed to addressing the evaluation questions:

| Evaluation questions | Sources of evidence |
|---|--|
| EFFECTIVENESS | |
| <p>To what extent has the CPR made the internal market for construction products a reality?</p> <p>To what extent has the CPR achieved its objectives?</p> <p>To what extent has the simplification potential expected at the time of the adoption of the CPR been achieved?</p> | <ul style="list-style-type: none"> • Study on cross-border trade for construction products • Analysis of production and trade data for constructions products, 2019 • Survey on users' needs for information on construction products, 2018 • Survey on information needs among Member State authorities, 2018 • CPR implementation report, 2016 • CPR review — feedback on roadmap, 2017 • Supporting study for the fitness check on the construction sector, 2016 • Study on the implementation of the Construction Products Regulation, 2015 • 2008 impact assessment • Evaluation of the relevance of EOTA's tasks, 2016 • Summaries of technical platform meetings • REFIT platform opinions • RAPEX database • Scoping interviews • Stakeholder interviews in the 10 selected countries • Online survey with stakeholders in the other EU countries • Company phone survey • Public consultation |
| <p>What are the factors that have influenced positively and negatively the achievements observed?</p> <p>In particular, which obstacles to the internal market for construction products still remain?</p> | <ul style="list-style-type: none"> • Stakeholder interviews • Study on the implementation of the Construction Products Regulation • Summaries of technical platform meetings • REFIT platform opinions |
| <p>Has the CPR had unintended positive or negative consequences or collateral effects?</p> <p>To what extent has the CPR followed/allowed for technological, scientific and social development (or do adaptation mechanisms in place allow the CPR to do so)?</p> | <ul style="list-style-type: none"> • Evaluation of the relevance of EOTA's tasks • Stakeholder interviews • Stakeholder online survey • Company phone survey • Public consultation |
| EFFICIENCY | |
| <p>What are the benefits and how beneficial are they for the various stakeholders' groups?</p> | <ul style="list-style-type: none"> • Study on economic impacts of the Construction Products Regulation, 2016 • Study on cross-border trade for construction products • Analysis of production and trade data on construction products • Supporting study for the fitness check • Stakeholder interviews |

| Evaluation questions | Sources of evidence |
|--|--|
| | <ul style="list-style-type: none"> Stakeholder online survey Company phone survey |
| What are the regulatory and administrative costs and are they affordable for the various stakeholders' groups? Is there evidence that the CPR has caused unnecessary regulatory burden? | <ul style="list-style-type: none"> Study on economic impacts of the Construction Products Regulation Supporting study for the fitness check Implementation report Feedback on the roadmap 2008 impact assessment Public consultation Scoping interviews Stakeholder interviews |
| To what extent has the CPR been cost effective? Are the costs proportionate to the benefits attained? What are the factors influencing the proportionality of costs? | <ul style="list-style-type: none"> Stakeholder interviews Stakeholder online survey Public consultation |
| RELEVANCE | |
| To what extent are the objectives of the CPR appropriate to meet the needs and problems it is expected to meet and solve? | <ul style="list-style-type: none"> Stakeholder interviews Public consultation |
| Is there a demand and a potential for more cross-border trade between Member States? | <ul style="list-style-type: none"> Stakeholder interviews Company phone survey |
| COHERENCE | |
| To what extent do the CPR features work together sufficiently well? Are there any inconsistencies, overlaps or gaps? | <ul style="list-style-type: none"> Stakeholder interviews Stakeholder online survey |
| To what extent is the CPR consistent with other legislation pieces applying on the same stakeholders? Are there any inconsistencies, overlaps or gaps? | <ul style="list-style-type: none"> Supporting study for the fitness check Summaries of technical platform meetings Feedback on the roadmap Stakeholder interviews Stakeholder online survey Public consultation |
| EU added value | |
| What is the added value of the CPR compared to what could be achieved at merely national level? | <ul style="list-style-type: none"> Stakeholder interviews Stakeholder online survey Supporting study for the fitness check |
| Do the needs and challenges addressed by the CPR correspond to the needs of an EU internal market? Do the needs and challenges addressed by the CPR continue to require (harmonisation) action at EU level? | <ul style="list-style-type: none"> Stakeholder interviews Stakeholder online survey |
| What would be the most likely consequences of repealing the CPR? | <ul style="list-style-type: none"> Stakeholder interviews Stakeholder online survey |

ANNEX 4: OVERVIEW OF COSTS AND BENEFITS

| | | Citizens/Consumers | | Businesses | | Public administration | | Societal | |
|------------------------------------|--|--------------------|-------------------------|---|---|--|--|-------------|-------------------------|
| | | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary |
| Compliance costs / benefits | Regulatory charges, substantive compliance costs, administrative burden | | | <u>Manufacturers</u> ¹⁷³ : product testing, labelling, factory production control (including benefit of simplification provisions, not yet materialised ¹⁷⁴ , and including potential future duplication costs, not yet materialised ¹⁷⁵) | €2.62 billion to €3.4 billion per year (i.e. -0.6 to 1.1 % of sector turnover per year ¹⁷⁶) | <u>Costs for Market surveillance</u> activities (not considered effective by stakeholders) | No information for cost quantification | | |
| | | <u>Private end</u> | No quantification | <u>Professional end</u> | No quantification | | | | |

¹⁷³ On the share of the costs passed on to end users, the stakeholder online survey obtained the following feedback: 50.5% saw an increase in all costs, 65.5% in the costs borne only by manufacturers, 49.5% in the costs borne by manufacturers and partly passed on to consumers/end users and 36.5% in the costs borne by manufacturers but fully passed on to consumers/end users, while 54.5% saw no effect on those (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁷⁴ Stakeholder online survey: 37.5% see some simplification, 10% significant simplification, 32% no simplification, 20.5% do not know (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁷⁵ This concerns products covered by other standards (see local space heaters also covered by Eco-design Regulation). See Section 5.4 on coherence.

¹⁷⁶ Sources: 2016 study on the economic impacts of the Construction Products Regulation (Chapters 5 and 6); 2016 Supporting study for the fitness cFitness heck on the construction sector (Chapter 3.2); 2018 supporting study for the evaluation of the Construction Products Regulation (Chapter 5).

| | | Citizens/Consumers | | Businesses | | Public administration | | Societal | |
|-----------------------------------|--|--|-------------------------|---|---|-----------------------|-------------------------|----------------------|-------------------------|
| | | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary |
| | | users: part of manufacturers' costs passed on to them (see footnote above) | possible | users: part of manufacturers' costs passed on to them (see footnote) | possible | | | | |
| | BWR3 (hygiene, health, environment) | No data | | | | | | No data | 0 |
| | BWR7 (sustainable use of natural resources) | Not yet materialised | 0 | | | | | Not yet materialised | 0 |
| Impacts on Internal Market | New market opportunities | | | <u>Manufacturers and distributors:</u> increase in market opportunities in other Member States ¹⁷⁷ | Annual intra-EU trade estimated to have grown by more than €15 billion from 2013 to 2017 ¹⁷⁸ | | | | |
| | | | | <u>Manufacturers and distributors:</u> Increased | No quantification possible | | | | |

¹⁷⁷ 72% of respondents in public consultation and 77.5% in online stakeholder survey (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁷⁸ This corresponds to a growth in intra-EU trade of more than 25% from 2013 to 2017. At the same time, sold production is estimated to have grown only 11% from 2013 to 2017 (own calculations based on Eurostat data, see 2019 analysis of production and trade data).

| | | Citizens/Consumers | | Businesses | | Public administration | | Societal | |
|--|--|--|----------------------------|--|----------------------------|-----------------------|-------------------------|-------------|-------------------------|
| | | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary |
| | | | | competition on national market ¹⁷⁹ | | | | | |
| | | | | <u>Manufacturers and distributors</u> : market opportunities outside the EU ¹⁸⁰ | No quantification possible | | | | |
| | | <u>Private end users</u> : increased product choice ¹⁸¹ | No quantification possible | <u>Professional end users</u> : increased product choice ¹⁸² | No quantification possible | | | | |
| | | <u>Private end users</u> : better Product information ¹⁸³ | No quantification possible | <u>Professional end users</u> : better Product information ¹⁸⁴ | No quantification possible | | | | |

¹⁷⁹ Nearly 60% of responses to public consultation, 62.5% of responses to the stakeholder online survey and 39% of respondents to the company phone survey (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁸⁰ Mixed views of the company phone survey: 39.2% see no effect, 38% see some or large increase, 20.1% do not know and less than 3% see a negative impact (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁸¹ Mixed views from the public survey (49% see a positive effect, 11.4% a negative effect. 31.7%; positive effect is seen by 50% of medium-sizedsize companies and 53.1% of larger companies, as opposed to 28.6% of micro-enterprises). In the stakeholder online survey, 46.5% see an increase, 41.5% no effect and 12% a decrease (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁸² See previous footnote.

¹⁸³ 61.9% of respondents to the public survey see a positive effect, 13.6% see a negative effect (32.1% of micro-enterprises see an increase, 68.8% of larger enterprises with 250 staff or more; 68% of respondents to the stakeholders online survey see a positive effect, 22.5% no effect (2018 supporting study for the evaluation of the Construction Products Regulation).

| | | Citizens/Consumers | | Businesses | | Public administration | | Societal | |
|------------------|--|--|-------------------------|--|----------------------------|-----------------------|-------------------------|--|-------------------------|
| | | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary | Qualitative | Quantitative / monetary |
| Indirect effects | | | | Innovation in the construction sector: potential increase ¹⁸⁵ | No quantification possible | | | | |
| | | Safety of private end users ¹⁸⁶ : potential improvement | No data | Safety in the sector ¹⁸⁷ : potential improvement ¹⁸⁸ | No quantification possible | | | Safety of inhabitants / buildings users: potential improvement | No data |

¹⁸⁴ See previous footnote.

¹⁸⁵ Public survey: 49% see no effect or do not know, 35.4% see a positive effect, 15.6% a negative effect (independently of company size). Stakeholders online survey: 41% see a positive effect, 46% no effect and 13% a negative effect (2018 supporting study for the evaluation of the Construction Products Regulation).

¹⁸⁶ See Article 114 of the Treaty on the Functioning of the European Union (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E114&from=EN>).

¹⁸⁷ See earlier footnote.

¹⁸⁸ Public consultation: 56.2% see a positive effect, as opposed to 14.5% who see a negative effect; for micro-enterprises the ratio is 28.6% compared to 39.3%; for medium-sized and larger companies, almost 60% against 14.8% and 7.3% respectively. Online survey of stakeholders: 61% of respondents see a positive effect, 24.5% no effect and 14.5% a negative effect. Company phone survey: 85% believe that the level of information has raised the level of safety for end users, against 12% negative replies and 3% 'I don't know'.'. (2018 supporting study for the evaluation of the Construction Products Regulation).

ANNEX 5: MAIN FEATURES OF THE CPR

The CPR is different from ‘new legal framework’ acts in that it harmonises only the assessment methods of product performance, and does not set EU-wide requirements for construction products. Responsibilities are shared between the EU, which regulates the placing on the market of these products, and the Member States, which set rules on the products’ use that can imply performance requirements. To ensure that these requirements are based on the same assessment methods, the harmonised standards are mandatory, unlike the general situation for the new legal framework. The standards’ mandatory use increases the general need for them to be of high quality and to respond swiftly to the needs of stakeholders and Member States.

Harmonised conditions for the marketing of construction products are established by harmonising information about the performance of construction products (in relation to basic work requirements). This differs from the approach under most EU products directives, which is to harmonise the construction products themselves or their requirements.

The aim of the common technical language created under the CPR is to enable assessment of the performance of construction products. This ensures the availability of reliable information on the performance of construction products (for professionals, public authorities and consumers) and makes it possible to compare the performance of products from different manufacturers in different countries.

The common technical language consists of harmonised technical specifications, i.e. harmonised European standards and European Assessment Documents (EADs), which are the alternative offered for products not (fully) covered by harmonised standards. The common technical language enables: (i) regulatory authorities in EU countries to define legal requirements applicable to construction works; (ii) manufacturers to draw up the declaration of performance (DoP) as defined in the CPR and to affix the CE marking; and (iii) design engineers and contractors to ensure compliance with national legal requirements and to meet demands from their clients.

Harmonised European standards are drafted by CEN and Cenelec, on the basis of standardisation requests/mandates issued by the Commission after consultation of the Standing Committee on Construction¹⁸⁹. These requests are drawn up by the European Commission, taking into account the requirements of Member States and the information needs expressed by the industry and other construction stakeholders. Standards are drafted by the relevant CEN technical committee and submitted for internal CEN approval procedures. They are then submitted to the Commission for citation in the Official Journal of the European Union. Article 17(5) of the CPR provides for the Commission to assess the conformity of the harmonised standards within the mandates, a provision that did not exist in the CPD; this obligation was reinforced and extended by the 2012 Standardisation Regulation¹⁹⁰. Once cited, the standards become the official references for the assessment and declaration of performance of the essential characteristics covered, and manufacturers are obliged to use them and CE mark the products covered by harmonised standards.

Products not covered, or not fully covered by harmonised standards can be voluntarily CE marked. The European Technical Assessment (ETA) is the alternative to standards

¹⁸⁹ In accordance with Article 17 of the CPR and with comitology procedures.

¹⁹⁰ Article 10(6) of Regulation (EU) 1025/2012.

for such construction products: the manufacturer may request an ETA from a Technical Assessment Body (TAB, see below). The ETA is issued on the basis of a European Assessment Document (EAD), which is the documentation of the methods and criteria applicable for the assessment of the performance of a construction product in relation to its essential characteristics. If the product in question is already fully covered by an existing EAD, this will be used as the basis for the ETA to be issued. When a manufacturer requests an ETA for its product and when no relevant EAD exists, the TAB which has received the request draws up the work programme for drafting the EAD, taking into account the essential characteristics relevant for the intended use. EOTA coordinates the work and adopts the EAD.

The preparation of draft EADs and the issuing of ETAs are entrusted to TABs. Article 29(1) of the CPR allows Member States to designate TABs within their territory, according to their national procedures for the designation of such bodies. However, strict requirements are set out in Article 30 and Annex IV (Table 2) of the CPR.

Other construction products - those not covered or not fully covered by a harmonised standards and not voluntarily CE marked - remain under the mutual recognition principle.

Annex I to the CPR lists the seven basic requirements for construction works (BWRs):

1. Mechanical resistance and stability
2. Safety in case of fire
3. Hygiene, health and the environment
4. Safety and accessibility in use
5. Protection against noise
6. Energy economy and heat retention
7. Sustainable use of natural resources

The seven basic works requirements categorise the requirements that Member States may lay down for construction works on their territory; they also circumscribe the sphere of harmonisation for CPR purposes when defining essential characteristics of construction products.

The declaration of performance (DoP) is required for every construction product covered by a European harmonised standard or for which an ETA has been issued. The DoP specifies the product and the standard (or the EAD and the ETA) and contains information about the product's performance in relation to the essential characteristics set out in the applicable harmonised technical specification (harmonised standard or EAD). A DoP should be supplied in the language(s) of each Member State where the product is marketed — or another language decided by that Member State.

Each construction product covered by a European harmonised standard, or for which an ETA has been issued, must be CE marked. This marking indicates that the product is in conformity with its declared performance, and that either it has been assessed according to a harmonised European standard or an ETA has been issued for it.

The Member States are obliged to allow the marketing of CE-marked construction products without requiring any additional marks, certificates or testing. Member States can, however, set requirements on the *use* of such products in buildings and other construction works, using for this purpose only the harmonised structure created by means of the CPR. This means that Member States can specify for a particular use a certain performance value based on a harmonised standard. However, they cannot request

that it be tested by means other than those set out under the standard or add any additional elements not covered by the standard.

Products covered by a harmonised standard may be exempted from the requirement to draw up a DoP and affix the CE marking if: (i) they are individually manufactured/custom-made for a given use; (ii) they are manufactured on the construction site; or (iii) the manufacturing is required to maintain traditional processes for the conservation of officially protected works, as outlined in Article 5 of the CPR.

The assessment and verification of constancy of performance (AVCP) system sets out how to assess the performance of construction products and how to certify the constancy of the performance. Based on Article 28 of the CPR, the Commission establishes by means of delegated acts the system applicable to a given product or family of products. Five different systems are in place for construction products, ranging from self-declaration and monitoring by the manufacturer to large-scale third-party involvement by notified bodies¹⁹¹. All AVCP systems require that the manufacturer establish factory production control¹⁹². The Commission is required to choose the least onerous system or systems consistent with the fulfilment of all basic requirements for construction works.

The AVCP system may require that an NB carry out some of the tasks. Notified bodies are the bodies authorised and notified by Member States to carry out third party AVCP under the CPR (Article 39). The requirements, obligations and other aspects relating to the operation of notified bodies are set out in detail in Articles 43-55 of the CPR.

Article 27 of the CPR permits the Commission to adopt delegated acts to set threshold levels and classes of performance in relation to the essential characteristics of construction products¹⁹³. It also provides the basis for adopting delegated acts to establish the conditions under which a construction product is deemed to satisfy a certain level or class of performance without testing or without further testing.

The CPR aims to contribute to EU SME policy, the objective of which is to level the playing field for SMEs, especially micro-enterprises.

- Article 37 specifically aims to provide micro-enterprises with an option to use simplified procedures when carrying out the AVCP.
- Article 36 enables any manufacturer to replace the type-testing or type-calculation stage of the assessment process with ‘Appropriate Technical Documentation’, if tests have been carried out for corresponding products or systems of components (test sharing and cascading).
- Article 38 allows manufacturers to replace performance assessment with ‘Specific Technical Documentation’ for construction products that are individually manufactured or custom-made in a non-series process.
- Article 10 requires Member States to designate Product Contact Points for Construction (PCPCs) to act as information sources for companies, in particular for SMEs. Member States ‘shall ensure that the product contact points for construction provide information, using transparent and easily understandable terms, on the provisions within its territory aimed at fulfilling basic requirements

¹⁹¹ The different systems are designated 1+, 1, 2+, 3, and 4.

¹⁹² According to Article 2(26) of the CPR, ‘factory production control means the documented, permanent and internal control of production in a factory, in accordance with the relevant harmonised technical specification’.

¹⁹³ Member States’ requirements can then only be presented using the classes established; when thresholds are established, Member States can set more stringent demands but not lower the threshold.

for construction works applicable for the intended use of each construction product’.