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IMPACT ASSESSMENT REPORT

[…]

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

laying down harmonised conditions for the marketing of construction products, , amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011

{COM(2022) 144 final} - {SEC(2022) 167 final} - {SWD(2022) 87 final} - {SWD(2022) 89 final}

Table of Contents

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT 1
2. PROBLEM DEFINITION 4
   2.1. What are the problems? 4
3. WHAT ARE THE PROBLEM DRIVERS? 12
   3.1. Problem drivers 12
   3.2. How will the problems evolve? 15
4. WHY SHOULD THE EU ACT? 19
   4.1. Legal basis 19
   4.2. Subsidiarity: Necessity of EU action 20
   4.3. Subsidiarity: Added value of EU action 20
5. OBJECTIVES: WHAT IS TO BE ACHIEVED? 21
6. WHAT ARE THE AVAILABLE POLICY OPTIONS? 22
   6.1. What is the baseline from which options are assessed? 23
   6.2. Description of the policy options 24
   6.3. Options discarded at an early stage 39
7. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS? 39
   7.1. Option A – baseline (no revision) 40
   7.2. Option B - Repairing the CPR 42
   7.3. Option C - Focusing the CPR 45
   7.4. Option D - Enhancing the CPR 48
   7.5. Option E – Repealing the CPR 50
8. HOW DO THE OPTIONS COMPARE? 53
   8.1. Comparison of the options 53
   8.2. Preferred option 56
9. REFIT (SIMPLIFICATION AND IMPROVED EFFICIENCY) 56
10. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED? 57

ANNEX 1: PROCEDURAL INFORMATION 60
ANNEX 2: STAKEHOLDER CONSULTATION 70
ANNEX 3: WHO IS AFFECTED AND HOW? 81
ANNEX 4: ANALYTICAL METHODS 86
ANNEX 5: THE SME TEST – SUMMARY OF RESULTS 90
ANNEX 6: DESCRIPTION OF THE CPR FRAMEWORK 96
ANNEX 7: THE EUROPEAN TECHNICAL ASSESSMENT (ETA) SYSTEM (THE EOTA ROUTE) 101
ANNEX 8: SIMPLIFICATION PROVISIONS UNDER THE CURRENT CPR 104

ANNEX 9: THE ENVIRONMENTAL AND CLIMATE IMPACT OF CONSTRUCTION PRODUCTS 106
ANNEX 10: ARTICULATION WITH OTHER EXISTING EU LEGISLATION AND OTHER INITIATIVES 108
ANNEX 11: INTERACTION BETWEEN THE FUTURE CPR AND THE SPI 112
ANNEX 12: REFINED INDICATIVE OPTIONS PAPER, APRIL 2020 119
ANNEX 13: OPTIONS AND ELEMENTS DISCARDED 156
ANNEX 14: JAMES ELLIOTT JUDGMENT (C-613/14) 158

Glossary

Term or acronym	*Meaning or definition*
AVCP	Assessment and verification of constancy of performance
BWRs	Basic requirements for construction works or Basic Work Requirements
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 (repealed)
CPR	Construction Products Regulation
DoP	Declaration of performance
EAD	European Assessment Document
EDD	Ecodesign Directive
EGD	European Green Deal
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
NB/NBs	Notified body/Notified Bodies
NGO	Non-governmental organisation
NLF	New Legislative Framework, formerly New Approach
OIOO	one in, one out approach
OJEU	Official Journal of the European Union
PCPC	Product Contact Point for Construction
REACH	Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals
REFIT	Regulatory fitness and performance programme
RSB	Regulatory Scrutiny Board
SME	Small and medium-sized enterprise
SPI	Sustainable Products Initiative
TAB	Technical Assessment Body

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

The construction products industry encompasses around 430,000 companies with a turnover of around 800 billion Euros and a gross value added of around 240 billion Euros.[1] It mainly serves the construction industry, which is one of the 14 industrial ecosystems identified in the updated industrial strategy[2], with a significant contribution to the EU economy, accounting for 1,200 billion Euros gross value added (10 % of total value added) and 25 million people employed. Both sectors, the producers of construction products and the construction ecosystem as principal user of the products mainly consist of micro-enterprises.

Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products[3] (the 'Construction Products Regulation' or CPR) was adopted in 2011 and has applied in full since July 2013. The Regulation's main objective, like that of the earlier Construction Products Directive[4] ('CPD'), is to improve the functioning of the single market and the free movement of construction products in the EU by laying down harmonised conditions for their marketing.

Unlike most internal market legislation, the CPR does hardly set any product requirements that construction products would be required to meet. Instead, it mainly sets harmonised rules on how to express their performance in relation to their essential characteristics[5] (e.g. reaction to fire, thermal conductivity or sound insulation) and provides harmonised rules on the CE marking[6] of these products. Since the construction products merely contribute to the construction works[7] – these latter falling within the remit of national competences – the 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 CPR[8] identified certain shortcomings in its implementation. The report also identified a significant number of

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[1] Data source: Eurostat, figures for 2018, Classification of economic activities - NACE Rev.2: C162, C222, C231, C232, C233, C234, C235, C236, C237, C242, C251, C259.

[2] Communication "Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery ", COM(2021)350 final, adopted by the Commission on 5 May 2021. See also Annual Single Market Report 2021, SWD(2021) 351.

[3] Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, OJ L 88, 4.4.2011, p. 5-43.

[4] 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.

[5] 'Essential characteristics' are set in harmonised technical specifications in relation to the basic requirements for construction works (Basic Work Requirements or BWRs), defined in Annex I to the CPR.

[6] CE Marking of Construction Products Step by Step, https://ec.europa.eu/docsroom/documents/12308?locale=en.

[7] Construction works means buildings and civil engineering works, as defined in Article 2(3) of the CPR.

[8] 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

challenges going beyond mere implementation and deserving further serious examination and discussion, including issues linked to standardisation, market surveillance and enforcement, and simplification provisions for micro-enterprises.

The November 2016 Clean Energy for all Europeans[9] 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 also highlighted the need to reinforce the focus of the policy on products with the highest savings potential in terms of energy and circular economy. It referred to the consultation process that followed the 2016 implementation report, mentioning that this could lead to a revision of the Construction Products Regulation within the mandate of the 2014-2019 Commission.

To meet this timetable, the Commission initiated a back-to-back evaluation and impact assessment to provide a solid basis for any possible future adaptation. The approach was presented in the inception impact assessment[10] published in June 2017. However, considering the evidence collected through the supporting studies and public consultation, the Commission decided to decouple the retrospective and prospective assessments. The assessment proved to be more complicated than expected: partly due to the complexity of the CPR itself, but also due to the high expectations expressed by the stakeholders and Member States. These combined factors made clear that it was 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.

Hence, the evaluation of the CPR[11] was published on 24 October 2019[12].

In the meantime, several new policy initiatives with direct impacts on the CPR were adopted by the Commission. In December 2019, the European Green Deal (EGD) Communication[13] mentioned the review of the CPR as part of the efforts towards building and renovating in an energy- and resource-efficient way.

Later in March 2020, in the Circular Economy Action Plan (CEAP)[14], the Commission underlined the objective of addressing the sustainability performance of construction

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down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, COM/2016/0445 final, 7.7.2016.

9 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.

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

11 Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, https://ec.europa.eu/docsroom/documents/37827.

12 The report was accompanied by a Report on the relevance of the tasks of the European Organisation for Technical Assessment (EOTA): Report from the Commission to the European Parliament and 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 305/2011COM/2019/800 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN.

13 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, the European Green Deal, COM(2019) 640, 11.12.2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN.

14 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action

products in the context of the revision of the CPR, including the possible introduction of recycled content requirements for certain construction products, taking into account their safety and functionality.

A similar concept was also included in the Renovation Wave[15], where revision of the CPR was mentioned as one of the areas of interventions addressing the sustainability performance of construction products. It was announced that the Commission will consider, in the framework of the CPR revision, how sustainability criteria could support the uptake of more sustainable construction products in construction works and foster the uptake of the latest technologies. The Renovation Wave also recognised the need for using low-carbon materials in order to render buildings more climate-friendly.

As announced in CEAP, a Sustainable Products Initiative (SPI)[16] is currently under preparation with the aim of making products fit for a climate-neutral, resource-efficient and circular economy. The initiative will widen the scope of the Ecodesign Directive (EDD) to all products and to provide for the setting of specific requirements linked to a list of aspects set out in the CEAP. These include durability, reusability, the presence of hazardous chemicals, energy and resource efficiency; carbon and environmental footprints, as well as recycled content, while ensuring products' performance and safety. It will aim to improve products sustainability, to give access to sustainability information along the supply chain, to incentivise more sustainable products and business models. For construction products, SPI goals shall be mainly realised by means of the Construction Products Regulation (CPR) also to avoid double burden. The CPR shall be able to mirror all obligations and requirements able to be set through the SPI, but for construction products.

By aiming to improve safety, sustainability and circularity of construction products, the CPR would also support the objectives of the New European Bauhaus[17] initiative, namely a healthy and safe living environment as well as sustainability and circularity. As announced in the Communication, and following the Communication on the update of the 2020 New Industrial Strategy[18], the Commission is in the process of co-creating a transition pathway for a green, digital and resilient construction ecosystem[19].

The Council, in its conclusions on "Circular Economy in the Construction Sector" of 28 November 2019 acknowledged the potential of circular economy in construction activities from an environmental and economic viewpoint and urged the Commission to undertake action to promote circularity further[20]. In December 2020 the German Council Presidency presented suggestions on the Future of the Construction Products Regulation regarding the further development of the current CPR and regarding a revised CPR[21].

In March 2021 the European Parliament adopted an own initiative report prepared by the Committee on Internal Market and Consumer Protection on the Implementation of the

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Plan For a cleaner and more competitive Europe, COM/2020/98 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN.

[15] COM(2020) 662 final.

[16] See Annex 11. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en.

[17] COM(2021) 573 final, COM(2021)_573_EN_ACT.pdf (europa.eu)

[18] COM(2021) 350 final, communication-new-industrial-strategy.pdf (europa.eu)

[19] SWD(2021) 419 final, https://ec.europa.eu/docsroom/documents/47996

[20] https://www.consilium.europa.eu/media/41508/st14523-en19.pdf.

[21] https://data.consilium.europa.eu/doc/document/ST-13596-2020-INIT/en/pdf.

Construction Products Regulation[22]. The Parliament welcomed the revision of the CPR with a view to further addressing barriers in the internal market for construction products and contributing to the objectives of the EGD and CEAP.

2. PROBLEM DEFINITION

2.1. What are the problems?

The main objective of the Construction Products Regulation[23] has been to foster a smooth functioning of the internal market for construction products, through providing for a common technical language, based predominantly on harmonised standards. The CPR ensures that reliable information is available to professionals, public authorities, and consumers, so they can compare the performance of construction products from different manufacturers in different EU Member States. Standards provide a common basis for testing and communicating the performance of construction products, allowing manufacturers to prepare a single declaration of performance (DoP) for their products, affix the CE mark and eventually put their products on the EU internal market.

The evaluation of the CPR, as well as feedback received from the Member States and stakeholders point clearly to **the underperformance of the framework**, hindering the functioning of the single market for the construction products, and so failing to achieve the CPR's objectives[24]. This, together with the need for the construction sector to contribute to the European Green Deal objectives of transforming towards a modern, resource-efficient and competitive economy, are the main underlying reasons for the Commission to consider a revision of the framework.

The framework's underperformance is due to a number of overarching issues with regard to the functioning of the CPR, as identified in the evaluation. The main problems are:

Problem 1: Internal market for construction products not achieved

The product performance information system under the CPR requires uniform application in order to be efficient. Hence the crucial role of harmonised standards as essential element of the common technical language. The **use of standards** in support of the CPR is **mandatory** if they are cited in the Official Journal of the European Union (OJEU). Such harmonised standards, developed by the European Standardisation Organisations[25] (ESOs), are necessary for testing and communicating the performance of construction products. As such, harmonised standards in support of the CPR form a common technical language that acts as a link between the performance of construction products and the basic requirements for construction works (also called Basic Work Requirements or BWRs) set out in Annex I of the CPR, depending on their essential characteristics and intended use.

[22] Implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation), 2020/2028(INI).

[23] See Annex 6 Description of the CPR for more details.

[24] See Annex 6 Description of the CPR for more details.

[25] Predominantly by the European Committee for Standardisation (CEN), recognised as one of the three European Standardisation Organisations pursuant to Regulation (EU) No 1025/2012 (Standardisation Regulation).

When harmonised standards in support of the CPR are cited in the OJEU, products covered by such standards have to be CE marked – this indicates that they have been assessed to be in conformity with their declared performance[26]. The Member States are then obliged to allow the marketing of CE marked construction products, without requiring any additional marks, certificates or testing[27]. Up-to-date and comprehensive harmonised standards cited in the OJEU are therefore **essential for the functioning of the internal market**, as they provide the manufacturers with a single framework for testing their products, thereby facilitating market access and creating a level-playing field.

In fact, while at the time of the 2008 Impact Assessment, it was expected that the (then) new CPR would lead to increased levels of competition[28], the statistical analysis could not demonstrate any overall impact of the CPR on cross-border trade for construction products[29].

To date, the **standardisation process** at the core of the CPR has been **underperforming.** In the recent years, draft harmonised standards developed by the ESOs have rarely been cited in the Official Journal (OJEU) mainly due to legal issues, such as contradiction with the requirements of the CPR or trespassing the scope of the mandate/standardisation request. Since early 2019, despite multiple efforts, not a single standard in support of the CPR has been cited in the Official Journal (OJEU). The lack of citation of up-to-date harmonised standards for construction products is considered a key factor undermining the internal market, with outdated harmonised standards causing direct or indirect costs for the businesses, particularly SMEs[30]. This problem was frequently underlined by the stakeholders who observed that the lengthiness of the standardisation process has serious consequences for the realisation of the internal market[31]. The process is too slow to keep pace with the developments in the sector. The resulting standards may then not always be market-relevant[32] as well as do not fulfil the regulatory needs of Member States. Five technical bodies, four business representatives, three public authorities, and one SME

[26] European Commission (2017) Declaration of Performance (DoP) and CE marking, Available at: https://ec.europa.eu/growth/sectors/construction/product-regulation/performance-declaration_en.

[27] European Commission, CE marking of construction products step by step. Available at: http://ec.europa.eu/DocsRoom/documents?tags=ce-guide.

[28] COM(2008)1900, p. 15, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008SC1900&from=EN.

[29] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 70.

[30] Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, Page 46, https://ec.europa.eu/docsroom/documents/37827.
Report on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation) (2020/2028(INI)) https://www.europarl.europa.eu/doceo/document/A-9-2021-0012_EN.pdf.

[31] See e.g. Discussion Paper "The future of the standardisation system within the CPR" of 7 September 2020, by European Builders Confederation (EBC), the European Construction Industry Federation (FIEC), Construction Products Europe and Small Business Standards (SBS), https://www.fiec.eu/application/files/6516/0015/6944/2020-09-07_Discussion_Paper_on_the_Revision_of_the_CPR.pdf.

[32] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p.26.

representative participated in the semi-structured interviews stressed the need to address the problem of the slow citation of harmonised standards under the CPR.[33]

The CPR provides for an alternative route for CE marking for construction products not covered or not fully covered by harmonised standards – the EOTA route – by providing the possibility for manufacturers to request a European Technical Assessment (ETA). The manufacturer may issue a Declaration of Performance and affix the CE marking on the basis of an ETA. ETAs are issued by Technical Assessment Bodies on the basis of European Assessment Documents (EADs), developed by European Organisation for Technical Assessment (EOTA) and cited by the Commission in the OJEU (see Annex 7 on the functioning of the EOTA route). The underperformance of the standardisation system leads also to putting the EOTA route under strain. More details on this are further developed in section "3.2 How will the problems evolve?"

Furthermore, while the CPR lays down no specific, direct requirements in terms of **product safety**, manufacturers declare the performance of products with regard to their essential characteristics, which include safety. However, this is not in all cases appropriate. Product safety related requirements are often hidden as product "description" in the mandatory standards and may not cover inherent safety risks. Examples of inherent safety risks for construction products are mechanical risks (squeezing, cutting, slipping), mechanical failure (e.g. locks of escape doors not opening), physical failure (e.g. too wet/too dry wood installed), risks of electric failure (sensibility of fire detectors, risk of short-cuts and thus fire) or risks of incompatibility of substances/materials (glues for floorings and flooring materials)[34]. All in all, inherent product safety (safety aspects not related to the safety of construction works), is not dealt with in a consistent manner for construction products and is largely left to the Member States, despite Article 114 TFEU (the legal basis for the current CPR) requiring to strive for a high level of protection of safety and consumers. Requirements linked to **inherent safety defined at national level risk adding to the trade barriers** within the internal market for construction products.

Further obstacles to the internal market remain, among others, in the form of **continued existence of the national marks, certifications and approvals**.[35] This creates additional barriers, e.g. through national requirements for additional testing or national product approval for a product to be marketed/used in a given Member States, and leads to additional costs. The existence of national marks, certifications and approvals is clearly linked to the incomplete character of harmonisation under the CPR, the latter not including a possibility for standards to cover environmental nor safety requirements for products.

[33] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 54.

[34] Crucial to acknowledge is that data on safety incidents and other data needed for a quantification of risks on health and safety with regard to construction products is missing. In general, quantified evidence on health and safety incidents resulting from construction products is scarce, particularly since it is also of importance to take into account the way that construction products are used/put in place/combined with other products.

[35] https://wayback.archive-it.org/12090/20200221170910/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.

In a nutshell, if the CPR remained unrevised, there would be no significant changes to market opportunities as a result of the CPR, thus leaving the potential for European legislation on construction products to stimulate further growth in cross-border trade in the sector unexploited[36].

Problem 2: Implementation challenges at national level

Despite improved cooperation among market surveillance authorities, it became apparent during the implementation of the CPR that **market surveillance** activities are broadly seen as **ineffective** and widely varying in quality and effectiveness from one Member State to another[37]. Ineffective market surveillance nurtures limited trust in the regulatory framework and is thus a disincentive for companies to comply with the legislation, either because there is little risk of getting caught, and/or because companies feel that they are exposed to unfair competition[38]. Insufficient market surveillance and enforcement prevents benefits in terms of opening up markets and levelling the playing field for competitors from materialising fully[39].

Furthermore, some drawbacks with regard to the **functioning of Notified Bodies (NBs)** and Notifying Authorities were identified in the report on the implementation of the CPR, indicating that relevant CPR provisions would benefit from more accuracy, e.g. on requirements for NBs (Article 43), on operational obligations for NBs (Article 52) and on coordination of NBs (Article 55).

Problem 3: Complexity of the legal framework /simplification not achieved

Certain features of the CPR differ from the ones used in most internal market legislation. Particularly, the **meaning of the CE marking** refers to assessing the performance of a construction product instead of its conformity with product requirements. However, it is not clear to several stakeholders (even manufacturers, distributors, importers, professional end users and raw material suppliers) that the CE marking under the CPR is not a quality mark and does not indicate product safety or that a product complies with national building requirements. The confusion created by the misunderstanding or misinterpretation of the CE marking creates significant legal uncertainty[40] .

The simplification provisions (see Annex 8 for details) within the CPR are aimed predominantly at SMEs and include Article 5 (derogations from drawing up a

[36] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 49.

[37] Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, page 23, https://ec.europa.eu/docsroom/documents/37827.
See Annex 2 on consultation activities.

[38] This due to "all the others are doing it" behaviour; see also p.62 of Supporting study for the review of the Construction Products Regulation: Evaluation, final report, 2018, https://op.europa.eu/en/publication-detail/-/publication/e0ead9bc-ed3f-11e8-b690-01aa75ed71a1/language-en/format-PDF/source-195168178.

[39] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p.73.

[40] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 52, 55.

Declaration of Performance - DoP), Article 36 (intended to avoid unnecessary repetition of testing), Article 37 (simplified procedures for micro-enterprises) and Article 38 (simplified procedures for products individually manufactured or custom-made in a non-series process). The uptake of these Articles, with the exception of Article 36, remains very limited. These provisions were expected to lead to a simplification effect, reducing the administrative cost of placing the construction products on the market without compromising the level of safety of construction works. However, various assessments and feedback from the stakeholders[41] show a **low uptake of these simplification provisions** mainly due to low awareness and lack of clarity of the provisions, particularly with respect to what actually constitutes "equivalent" documentation. The attempt to "level the playing field" for the smaller companies particularly through Article 37 has not been successful. Furthermore, the justification of measures that allow some manufacturers to implement such "lighter" procedures are called into question, considering that this creates uncertainty for end-users, who may justifiably expect that all products bearing the CE mark are subject to the same procedural requirements.[42] The evaluation showed that while some simplification has been achieved by the CPR, this has been less than expected.

While the expectation for the CPR was a **reduction in costs and administrative burdens**, the result is in fact increased costs.[43] Moreover, the estimate provided by the Study on the economic impacts of the CPR[44], indicates that the smallest companies bear the largest administrative burden.

Furthermore, some CPR provisions are insufficiently clear or create overlaps, either within the CPR framework itself, or between the CPR and other EU legislation. As an example, Article 9(2) of the CPR includes a list of information that has to accompany the CE marking[45], most of which the manufacturer has already presented in the Declaration of Performance (DoP). This situation has been subject to heavy criticism since the beginning of the CPR implementation. The overlap between the information required in the DoP and in the CE marking generates redundant administrative and financial burdens and constitutes a clear inefficiency[46].

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[41] 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.

[42] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 70.

[43] As shown by the results of the two studies (the Supporting study for the fitness check of the construction sector and the study on Economic Impacts of the Construction Products Regulation), these were mainly due to administrative costs.

[44] VVA Europe, the Danish Technological Institute (DTI) & the Netherlands Organisation for applied scientific research (TNO) (2016). Final Report: Economic Impacts of the Construction Products Regulation.

[45] I.e. the two last digits of the year in which it was first affixed, the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity, the unique identification code of the product-type, the reference number of the declaration of performance, the level or class of the performance declared, the reference to the harmonised technical specification applied, the identification number of the notified body, if applicable, and the intended use as laid down in the harmonised technical specification applied.

[46] While there is no information available on the cost of this overlap, the analysis confirmed that it constitutes a clear inefficiency. The results of the study, conducted in 2015, show that these overlaps have resulted in various impacts, including the legal value of the CE marking being unclear for stakeholders, problems in affixing the CE marking (either to the construction product itself or to the

With respect to clarity and **coherence between the CPR and other pieces of EU legislation**, there are a number of areas where they overlap and/or are in conflict with each other, including the Ecodesign Directive[47] (EDD) and several other product/technical directives[48]. This creates potential overlaps with respect to the procedures established for construction products, in particular regarding parallel routes for CE marking.

The supporting study for the fitness check[49] carried out an analysis of the coherence of selected EU acts applying to the construction sector. The study considered the legal overlaps between the CPR and EDD (2009), and Energy Labelling Directive[50] (ELD), which may also apply to construction products, and confirmed the inconsistencies in definitions, lack of cross-references and overlaps between the three pieces of legislation. The precise costs of these legal overlaps could not be quantified but may be significant for manufacturers of those specific products. Existing overlaps between the EDD and CPR for specific product categories currently relate to five product categories, namely solid fuel boilers, (solid fuel) local space heaters and space/water heaters, as regulated by Commission Regulations (EU) 2015/1185, 2015/1188, 2015/1189, 813/2013, and 814/2013[51]. In its opinion XII.8.a[52], the REFIT platform also recommended that the Commission gives priority to addressing the problems of overlapping and repetitive requirements.

Problem 4: Inability of the current CPR to deliver on broader policy priorities, particularly the green and digital[53] transition

With a view to reducing emissions and reaching climate neutrality by 2050, there is a need to mobilise industry to move towards a climate-neutral and circular economy, particularly in resource-intensive sectors such as construction. The building stock, currently responsible for 40% of final energy and 36% of greenhouse gas emissions in the EU, has a large cost-effective potential to reduce emissions. The European Climate Pact recognised the need for using low-carbon materials in order to render buildings more climate-friendly. The analysis underpinning the European Climate Pact has identified that in order to achieve the proposed 55% climate target by 2030, around

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accompanying packaging) and costs to industry (See RPA (2015). Analysis of the implementation of the Construction Products Regulation, p. 151). These findings were confirmed by the evaluation study (see VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 85).

[47] Directive 2009/125/EC.

[48] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p.115.

[49] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation.

[50] Directive 2010/30/EU.

[51] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation, p. 92.

[52] https://wayback.archive-it.org/12090/20200221170910/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

[53] Digital transition in the form of digitalisation of information via digital solutions/tools e.g. digital database.

275 billion EUR of additional investments are needed per year in buildings renovation[54]. Construction products will constitute a substantial part of these additional investments, especially as in renovation the share of the construction products (such as insulation materials, wooden engineered boards, metal structures or glass) on the turnover of projects is higher than in new construction. Therefore, a substantially rising demand for construction products can be expected in the next years. Underperformance of the CPR framework could affect the implementation of the renovation wave, highlighting the need for a frictionless and innovative internal market for construction products to fulfil the targets of the EGD and especially for the renovation wave.

Minimising the climate footprint of buildings requires, among others, resource efficiency and circularity. It also requires shifting the focus from the environmental impacts[55] during the use phase to the entire life cycle of the building. In such a holistic approach, the choice of construction products will play a key role. However, so far it is difficult to compare performance of construction products and materials across various circular design related aspects, such as ease of disassembly, future reuse potential, maximum technical service life, whole life cycle cost/carbon, material intensity/waste and reparability[56].

The climate resilience of specific infrastructure, buildings and civil engineering works is determined by local circumstances and building codes in the Member States, and where relevant other EU legislation. This is therefore outside the scope of the CPR. But in order to properly design, maintain and renovate the construction works also under the changing climate conditions, there is a need to provide accurate information on the performance of construction products.

There is significant mitigation potential to be achieved in the manufacturing of construction products.[57] For instance, for steel the shift away from blast furnace (BF) to electric arc furnace (EAF) (using scrap metal) can lead to sector emissions reduction of around 25-30% compared to 2010. In the cases of hydrogen, electrolysis or CCS and CCU, the reductions can be much higher. If the direct reduced iron is produced via either hydrogen or electrolysis iron ore reduction, it allows for electrification of the most energy-intense step in iron making , leading to reductions up to 85-95%.[58] Similarly, also for the chemicals and cement sector, large emission reduction potential exist.

Other products can even have net-negative CO_2 emissions and thus store CO_2 in construction. To stimulate the incentives and demand for low-carbon construction

[54] Commission Staff Working Document, Preliminary analysis of the long-term renovation strategies of 13 Member States, 2021, https://ec.europa.eu/energy/sites/default/files/swd_commission_preliminary_analysis_of_member_state_ltrss.pdf.

[55] See annex Annex 9 on the environmental impact of construction products for further details.

[56] Deloitte, Building Research Establishment, In Extenso Innovation Croissance (2021), Study on circular economy principles for buildings' design, p.60.

[57] IN-DEPTH ANALYSIS IN SUPPORT OF THE COMMISSION COMMUNICATION COM(2018) 773: A Clean Planet for all A European long-term strategic vision for a prosperous, modern, competitive and climate neutral economy; https://ec.europa.eu/clima/system/files/2018-11/com_2018_733_analysis_in_support_en.pdf, section 7.6

[58] EUROFER (2014), A Steel Roadmap for a low carbon Europe 2050, http://www.nocarbonnation.net/docs/roadmaps/2013-Steel_Roadmap.pdf ; ECOFYS & Fraunhofer ISI (2018), Impact on the Environment and the Economy of Technological Innovations for the Innovation Fund (IF), https://publications.europa.eu/en/publication-detail/-/publication/669226c7-b6ff-11e8-99ee-01aa75ed71a1/language-en/format-PDF/source-77120765

products at the construction works level, **coherent and transparent information on the climate, environmental and sustainability performance of the construction products is needed, but currently not covered by the harmonised system under the CPR**.

In this context, Annex I to the current CPR provides for basic requirements for construction works (BWRs), among which BWR3 already refers to the environmental impacts, and BWR7 refers to sustainable use of natural resources. However, the current harmonised standards under the CPR cover only some elements of BWR3 (e.g. emissions of dangerous substances into the air, emissions into soil or ground water) and none of BWR7. This is because there was a lack of agreement among the standardisers about how to apply these BWRs across different construction products. Additionally, it has not been prioritised, especially as in the past the regulatory needs of the Member States were less obvious when it came to environmental aspects, as opposed to e.g. fire safety or structural stability. The amount of energy consumed, the CO_2 emissions and other negative environmental impacts are mostly significant in the process of the production of construction products[59]. In this view, the performance approach can at best indirectly regulate the production stage. Therefore, the harmonisation provided by the CPR and the legal instruments adopted under it fall short of covering these elements. The construction products are thus not yet subject to harmonised assessment and verification of the constancy of performance in this area. This significantly **limits the possibilities** for the sector **to declare**, in a consistent and harmonised way, **the performance of their products and to differentiate the products with regard to climate, environment and sustainability performances**. It also significantly limits the possibilities for Member States to define national requirements or to include criteria in public procurement for the purposes of sustainability objectives without putting at risk the functioning of the internal market.

The CPR is also not fit to take account of the **new business models** stemming from the progressing digitisation of the sector, such as e.g. 3D printing. Moreover, without a transition of the construction sector towards more digitalised approach to data registration, storage and sharing, the objectives of the European Green Deal risk being undermined as gaps may occur when it comes to the product information, rendering the information available along the supply chain incoherent and not transparent. **Under the current CPR, digital information is not available**. This will become a challenge particularly as reliable product information, from manufacturing to the installation in the building and demolition will be necessary to live up to the goals of circularity and sustainability, and will be required by other linked legislation (e.g. Energy Performance of Buildings or SPI). Similarly, the current CPR does not encompass the application of a Digital Product Passport[60], which could be used in digital building logbooks[61], Level(s)[62] or other tools for assessing and reporting on the sustainability performance of buildings.

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[59] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.12.

[60] A Digital Product Passport (DPP) is a method of digitally recording information about a product. The main purpose of this is to provide an easy to access, centralized bank of information. https://www.re-tek.co.uk/re-tek-news/digital-product-passports/.

[61] A digital building logbook is a dynamic tool that allows a variety of data, information and documents to be recorded, accessed, enriched and organised under specific categories. It represents a record of major events and changes over a building's life cycle, such as change of ownership, tenure or use, maintenance, refurbishment and other interventions. Definition of the digital building logbook - Publications Office of the EU (europa.eu).

[62] Level(s) is an assessment and reporting tool, developed by the European Commission, for sustainability performance of buildings, firmly based on circularity: Level(s) (europa.eu)

Other issues not linked with the four problems presented above

The following issue has been also identified as important to be addressed in the revision, while not explicitly covered in the evaluation:

As the price of construction materials and output price index have increased, the construction sector is challenged by increasing building costs. At the same time housing affordability and energy poverty are a challenge for many European citizens, as house prices have risen faster than the incomes in most Member States.[63] Overall, these increasing costs make it challenging for the construction industry to build affordable houses for low-income households[64]. At the moment, each building, even when they are just replicated, would need at least one permit in each Member State. A European market for (types of) **prefabricated small houses**[65] would allow reaching economies of scale to drive down building costs, if standards for such houses would be developed under the CPR (in line with Member States regulatory needs and the local demand). In addition, national and local authorities could potentially grant building permits in a fast track procedure.

3. WHAT ARE THE PROBLEM DRIVERS?

3.1. Problem drivers

The main problems above are driven by regulatory failures.

[Drivers for Problem 1]

On the one hand, the internal market for construction products cannot function properly without up-to-date harmonised standards in support of the CPR cited in the OJEU. Because of their mandatory character and the exhaustive nature of harmonisation under the CPR,[66] when no new standards are cited, the market needs and regulatory needs of the Member States cannot be addressed. Lack of citation is due to a **mismatch between the legal criteria** applied by the Commission when assessing the harmonised standards under the CPR **and the ability of standardisers to deliver requested outputs**. In the recent past, new standards could not have been cited in the Official Journal mainly due to legal issues, such as contradiction of the standards with the requirements of the CPR or trespassing the scope of the mandate/standardisation request. Several judgments of the Court of Justice of the EU[67] underlining the role of the Commission in monitoring and management of the standards development have resulted in a more stringent approach of Commission services when assessing draft harmonised standards.

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[63] E.g. https://www.oecd.org/housing/policy-toolkit/

[64] Housing affordability and sustainability in the EU, Analytical Report, European Construction Sector Observatory, November 2019, page 50, https://ec.europa.eu/docsroom/documents/38481.

[65] Up to 180 m^2 usable surface and 100 m^2 ground floor.

[66] See judgment of the Court of Justice of 16 October 2014 — European Commission v Federal Republic of Germany (Case C-100/13), para. 62.

[67] Judgment of 27 October 2016 in case C-613/14 James Elliott Construction Limited v Irish Asphalt Limited, ECLI:EU:C:2016:821, EUR-Lex - 62014CJ0613 - EN - EUR-Lex (europa.eu).
Judgment of 26 January 2017 in case T-474/15 Global Garden Products Italy SpA (GGP Italy) v European Commission, ECLI:EU:T:2017:36, EUR-Lex - 62015TJ0474 - EN - EUR-Lex (europa.eu).
Judgment of the Court of 14 December 2017 in Case C-630/16 Request for a preliminary ruling from the Helsingin hallinto-oikeus - Anstar Oy, EUR-Lex - 62016CJ0630 - EN - EUR-Lex (europa.eu).

At the same time, under the current CPR, the Commission has no alternative whenever the standardisation process is not delivering. It lacks empowerment to rely on an alternative solution ('safety net') when standards are not delivered, or are not delivered within a reasonable timeframe or are considered to be of insufficient quality.

Further, in contrast to the former CPD, under the current CPR standards should not address the inherent product safety of essential characteristics. This also creates "gaps" in the standards, particularly in view of the Member States.

The **incomplete character of harmonised standards** under the CPR has contributed to a number of Member States setting additional requirements for construction products, including the reliance on national approvals, certifications and marks, in order to fill the "gaps" in harmonised standards and be able to fully regulate the safety of construction works. Member States added further performance requirements not covered by the harmonised standards, thereby being in conflict with the principle of "exhaustiveness"[68] of the harmonised system under the CPR. Several CJEU rulings[69] have confirmed the exhaustiveness of the harmonised system created under the CPR, thereby leaving no room for any other (national) system to deal with the marketing of construction products, within the harmonised sphere, presenting economic operators with additional requirements which add costs and act as obstacles to the internal market"[70]. However, harmonised standards currently cited in the OJEU cover only some of the Basic Work Requirements set out in Annex I of the CPR (serving as a reference for the Member States to lay down requirements for construction works on their territory), or are out-dated and do not any more contain all elements necessary to fulfil Member States' regulatory needs. The national marks, certifications and approvals are therefore expected to persist, as the incomplete character of the harmonised standards adopted under the CPR prevents the Member States from relying on harmonised performance criteria and assessment methods.

[Drivers for Problem 2]

As presented in the evaluation[71], the implementation of the CPR and multiple feedback from the stakeholders confirm that the market surveillance in many Member States is insufficient and so ineffective. Moreover, several stakeholders noted that there is no clarity which organisations are responsible for market surveillance and enforcement and also there is a lack of reporting mechanisms.[72] The main area where stakeholders have identified inconsistencies in terms of implementation was in relation to the level of market surveillance in Member States.[73] While it is largely because of the **lack of appropriate resources** to tackle the non-compliance effectively, the **lack of clarity of the current CPR provisions** on market surveillance also plays a significant role. This

[68] For construction products covered by harmonised standards, the Member States are not allowed to set any additional requirements outside the existing harmonised structure and must allow market access.

[69] Judgment of the Court (Tenth Chamber) of 16 October 2014 — European Commission v Federal Republic of Germany (Case C-100/13), para 62 https://op.europa.eu/en/publication-detail/-/publication/0771274f-89a6-11e4-b8a5-01aa75ed71a1.

[70] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p.101.

[71] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, pp.23-24.

[72] RPA (2015), Analysis of implementation of the CPR, page 166.

[73] RPA (2015), Analysis of implementation of the CPR, page 179.

results in a diverging application of these provisions because of varying interpretations by national authorities.

[Drivers for Problem 3]

The uptake of simplification provisions[74] under the CPR remains very limited. Various assessments and feedback from the stakeholders[75] show that the driver for this problem is **low awareness and lack of clarity of the provisions**, particularly with respect to what actually constitutes "equivalent" documentation[76]. The notion of "equivalence" is not explained, the conditions for practical implementation of the simplified procedures remain therefore unclear, with small enterprises and other actors, including Member State authorities, struggling to implement the rules. The lack of clarity is backed by the presence of a very strong support for general clarification (redrafting) of the simplification provisions[77]. The lack of clarity prevents achieving simplification and reduced costs for specific types of products and economic operators, particularly for micro-enterprises/craft enterprises.[78]

[Drivers for Problem 4]

The current CPR is **not able to deliver on the policy objectives stemming from the European Green Deal and the Circular Economy Action Plan**, as these new policy objectives are not reflected therein. In particular, the CPR does not permit to establish product requirements which are not performance-related. For this reason, the CPR is also not flexible enough to contribute to the ambitious commitments proposed in the EGD and the CEAP. The **absence of references to sustainability performances** in the harmonised standards adopted under the CPR is resulting in Member States unlawfully introducing additional national requirements for construction products, putting at risk the functioning of the internal market and imposing additional costs on manufacturers, particularly relevant for SMEs.

The current CPR is also unable to deliver on new business models, in particular 3D printing. The problem linked to 3D printers used for decentralised manufacturing derives from the fact that none of the three actors involved (the designer, the client, the owner of the printer) is necessarily a manufacturer or a producer in the meaning of applicable product legislation. Consequently, without a responsible manufacturer **3D printed products escape the current scope of product safety legislation**. Therefore, the obligations of the CPR, which build on the responsibility of a manufacturer, are not applicable. 3D printed products could be produced in high numbers without undergoing any conformity assessment procedure. This regulatory gap might lead to risks for consumers or other users and create unfair competitive relationships[79]. Provisions related

[74] See further details in Annex 8 on simplification provisions.

[75] 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.

[76] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 70.

[77] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p. 60.

[78] Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, p.40

[79] Regarding the regulatory issues raised by decentralised 3D-printing, see https://www.howtoregulate.org/decentralized-3d-printing-a-regulatory-challenge/#more-23.

to 3D printing will provide a level playing field to manufacturers using this technology, preventing the creation of barriers to trade or unjustified compliance cost.

Furthermore, the current **CPR does not foresee broad application of digital tools** e.g. digital information sharing and digital information flow.

3.2. How will the problems evolve?

As previously explained, under the current framework hardly any new standards or amendments of standards in support of the CPR have found their way into the OJEU, and none since early 2019 (see also the table and figures below). Economic operators cannot realise the full benefits of a consolidated internal market nor rely on a harmonised manner to inform users about the performance of their products. With time, harmonised standards already cited in the OJEU become more and more obsolete (the majority of them has been cited more than 10 years ago) and, in addition, often no longer correspond to the technology used. In the meantime, many of the existing standards have been updated by the standardisers and were made available to manufacturers. However, these updated versions have not been cited in the OJEU as harmonised standards under the CPR because of important legal and content-wise shortcomings. As long as they are not cited in the OJEU, they do keep the status of a European Standard (EN)[80], hence can be voluntarily used by the manufacturers, but cannot serve as a basis to draw up a declaration of performance and affix the CE marking. This situation demonstrates the willingness of the industry and standardisers to continue developing state-of-the-art standards for the construction sector. However, these standards do not meet the overriding legal framework requirements of the CPR to give them the status of harmonised standards. If this is not addressed, the discrepancy between the needs of the Member States and the market actors on one hand and the reality of the harmonised system under the CPR on the other hand is thus likely to further increase over the years.

This is also expected to lead to increased burden on the so-called EOTA route[81], allowing for the CE marking based on European Technical Assessments (ETAs)[82] that are issued based on an EAD. This route was originally intended to allow the most *innovative* products not (fully) covered by harmonised standards gaining access to the market. However, due to the malfunctioning of the standardisation system, in recent years it is more and more frequent that the EADs are considered an alternative route to (lacking new) harmonised standards, consequently most of the new EAD developments regard products that slightly deviate from the scope of existing harmonised standards. Such practice benefits mainly the manufacturers requesting an ETA (and so not all manufacturers of the same type of products). Such ETAs are developed at a cost to be borne by the manufacturers requesting them. As only the manufacturer having requested ETA can affix the CE marking to the assessed product, this causes unnecessary cost to many manufacturers requesting ETAs, instead of allowing all manufacturers to rely on

[80] https://boss.cen.eu/developingdeliverables/pages/en/pages//.

[81] Further information about the EOTA route can be found in Annex 7.

[82] The CPR provides for an alternative route for CE marking for construction products not covered or not fully covered under hENs by providing the possibility for manufacturers to request a European Technical Assessment (ETA). The manufacturer may issue a DoP and affix the CE marking on the basis of an ETA. ETAs are issued by Technical Assessment Bodies on the basis of European Assessment Documents (EADs). The development of EADs is the responsibility of EOTA.

harmonised standards for CE marking purposes. These costs would not present themselves in case relevant harmonised standards were cited in the OJEU. While recurring to ETAs is not against the provisions of the CPR, such practice leads to a large number of requests to assess draft EADs[83] (see Article 19(2) and Annex II of the CPR) annually to the Commission and this situation risks becoming dysfunctional as well, due to a higher number of complex assessments to be handled by limited Commission resources. Generally, the EOTA route is commercially beneficial for companies with innovative products (or other products not covered by a harmonised standard), however the problem is that the process of developing EADs and on their basis ETAs was not structured to deliver hundreds EADs per year and therefore it has become too slow, and slowness is particularly detrimental to innovative products. In fact, manufacturers want to CE mark and put their innovative product on the market as quickly as possible, and the slow process may sometimes act as a halt to innovation. The fact that a large number of ETAs has been issued (more than 6,900 as of end 2020[84]), and that the number of ETAs issued each year is growing rapidly, seems to indicate that manufacturers think that this CE marking option is worth the time and cost – in other words, that it is effective for all products not only innovative, despite there being room for improvement in terms of length of the process[85]. This might be especially true in a situation where no harmonised standard is being cited. However, this route to the CE marking brings additional costs for each manufacturer who requests an ETA, compared to the situation if a relevant harmonised standard was cited in OJEU. Moreover, it brings additional burden to the Commissions resources as the number of requests to assess the draft EADs increases.

The figures below present the evolution of the harmonised standards under the CPR, the European Technical Assessments (ETAs) and European Assessment Documents (EADs) over the recent years.

Table 1: The evolution of harmonised standards, ETAs and EADs under the CPR

		2014	2015	2016	2017	2018	2019	2020
Harmonised standards (hENs)[a)]	hENs offered by CEN	30	89	57	20	21	19	1
	hENs published in OJEU	23	25	18	19	9*	0	0

[83] The European Assessment Document (EAD) is a harmonised technical specification for construction products developed by European Organisation for Technical Assessment (EOTA) for cases where a product is not fully covered by a harmonised European standard. EADs are the basis for issuing European Technical Assessments (ETAs).

[84] EOTA – 2020 Annual Report, https://www.eota.eu/news/eota-2020-annual-report.

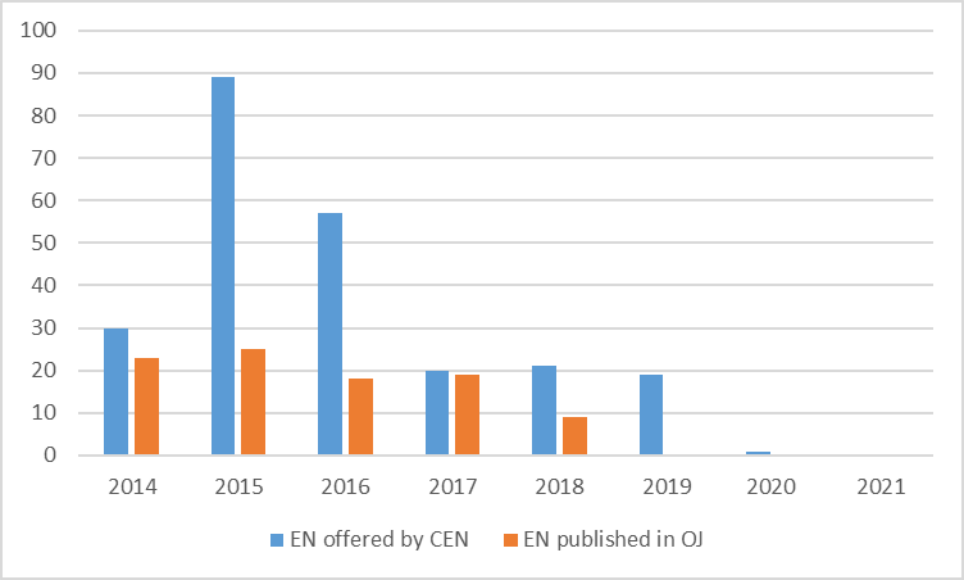
[85] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p.68.

European Technical Assessments (ETAs)[b)]	based on ETAGs[86]	381	581	703	777	638	272	237
	Based on EADs	2	55	176	374	972	831	937
European Assessment Documents[b)]	Registered as DPs (draft EADs)	50	135	99	182	124	103	93
	Cited in OJEU	0	19	65	71	64	13	44

Source: [a)] COM internal data; *publication of 6 standards delayed to early 2019; [b)] EOTA

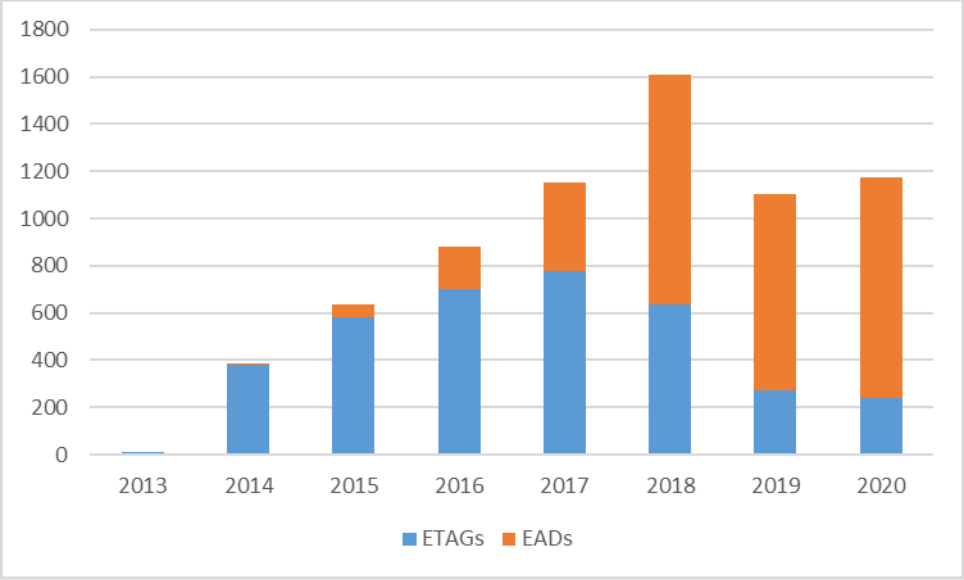
[86] European Technical Approval Guidelines (ETAGs) were elaborated as common approval guidelines under the Construction Products Directive 89/106/EEC (CPD). Since 2013, when the CPD was replaced by the Construction Products Regulation (EU) No 305/2011 (CPR), they were in use as European Assessment Documents (EAD) in accordance with Article 66 of this Regulation. However, EOTA and the European Commission agreed that ETAGs should be converted into EADs. This conversion exercise has now been completed. The conversion comprised all ETAGs but ETAG 016, ETAG 021, ETAG 023, ETAG 024, ETAG 025, ETAG 031, ETAG 033 and ETAG 035. Please note that the mentioned ETAGs, which have come out of use, will only be converted into an EAD if a manufacturer requests an ETA on their basis. https://www.eota.eu/etags-archive.

Figure 1: Number of hENs offered by CEN and hENs published in the OJEU



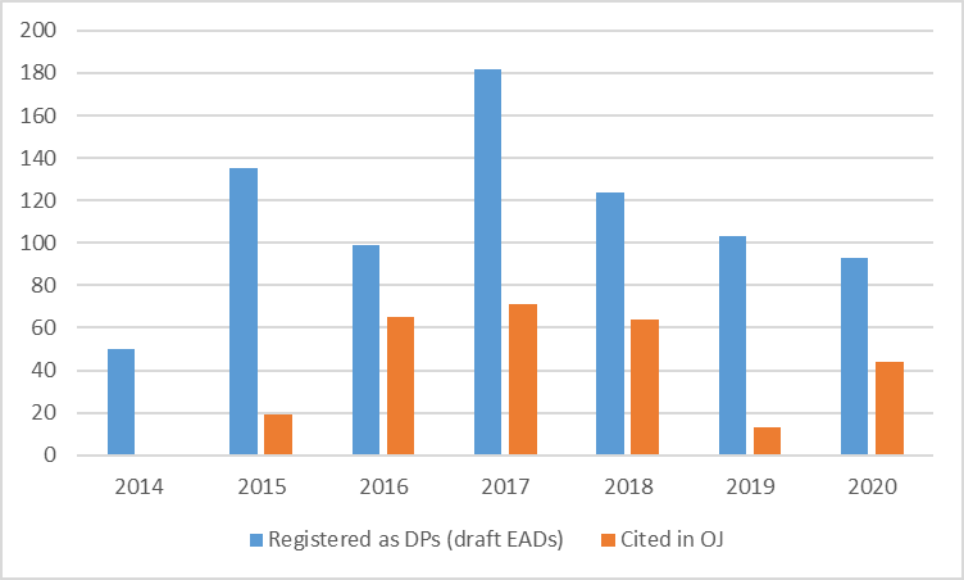
Source: COM internal data

Figure 2: Number of ETAs based on ETAGs and on EADs



Source: EOTA

Figure 3: Number of EADs registered as draft and number of EADs cited in OJEU



Source: EOTA, COM internal data

Based on this overview, the expectations are that these issues will become more pressing over time, with manufacturers continuing to use the EOTA route for CE marking, incurring unnecessary additional costs on top of putting under strain the Commissions limited resources.

Finally, new political goals, namely stemming from the European Green Deal and the CEAP, cannot be effectively pursued under the current CPR making it difficult if not impossible to deliver on the objectives relevant for construction products, including circularity and environmental impacts. Although the current CPR could address partially these goals (with the BWR3, referring to the environmental impacts, and BWR7, referring to sustainable use of natural resources), this is hardly achievable with the blocked technical harmonisation system. As consequence, the current CPR cannot address the SPI goals. Without a revision of the CPR, the sustainability aspects of construction products would then need to be addressed under the SPI with a risk of double administrative burden (the same product regulated under two acts). This could also put at risk the coherence between safety and sustainability aspects which is crucial considering the role of construction products in construction works. Also, without an overarching framework to ensure sustainability of construction products in the EU the fragmentation of the EU Internal Market will gain further momentum, as individual Member States will continue their attempts to tackle the described issues at national level.

4. WHY SHOULD THE EU ACT?

4.1. Legal basis

The first paragraph of Article 114 of the Treaty on the Functioning of the European Union (TFEU) empowers the European Parliament and the Council to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action

in Member States which have as their object the establishment and functioning of the internal market. Article 114 TFEU allows the EU to take measures both to eliminate current obstacles to the establishment and functioning of the internal market and to address barriers that dissuade economic operators from taking full advantage of the benefits of that market.

Through the CPR, the EU has sought to remove these obstacles to the circulation of construction products within the European single market – this being an objective since the adoption of the Construction Products Directive. Article 114 TFEU forms the legal basis for the current CPR and is the appropriate legal basis for its revision.

In addition to pursuing internal market objectives, the initiative aims to contribute to a high level of environmental protection and combatting climate change (Article 11 and Articles 191 to 193 of the TFEU) as it also aims to contribute to the Circular Economy Action Plan, the Renovation Wave and other linked initiatives. However, internal market objectives are predominant, as the absence of adequate and comprehensive internal market rules to regulate marketing of construction products in a way to contribute to their sustainable production and use leaves room for solutions being developed by the Member States or by industries, which contributes to the dysfunctionality of the internal market by generating potential barriers, fragmentation and incoherent approaches.

4.2. Subsidiarity: Necessity of EU action

The deficiencies of the current CPR cannot be remedied by Member States' laws as the Member States have no competence for revising the CPR framework nor for correcting its failures through national, or even regional, measures. EU action is therefore relevant and necessary. Only at EU level conditions to ensure the free circulation of construction products can be set whilst ensuring a level playing field. In particular, environmental protection objectives and climate performance of construction products are being addressed in different ways in the EU, considering also the different geographical and local conditions, and this variance in Member States' approaches to construction products' sustainability and safety causes barriers to trade. An envisaged role for the EU should be to promote the development of a competitive internal market in construction products by removing any unnecessary disparities in regulation of performance of construction products, including environmental one, while allowing Member States to reflect their specificities in national building codes. Therefore, coordinated EU action can more effectively reinforce and supplement national and local actions, contributing in particular to construction products' sustainability regarding climate performance and environmental protection.

4.3. Subsidiarity: Added value of EU action

The revision of the CPR is expected to improve the overall functioning of the internal market for construction products, particularly by addressing the current issues relevant to the standardisation system and eradicating further barriers to trade, such as duplication or overlapping of regulatory provisions either at the EU or national/regional levels. This would in turn increase legal certainty as well as predictability and improve the level playing field for the construction industry. Trust in the entire system would be leveraged thanks to more streamlined market surveillance practices across the EU. Finally, the

revision would address the aspects of environmental performance and circularity of construction products, which can only be tackled at the EU level, where the common technical language is being developed.

The proposed measures are proportionate as they will not go beyond what is necessary to provide regulatory certainty while ensuring a high level of protection of safety and of the environment. EU action is therefore justified and necessary.

5. OBJECTIVES: WHAT IS TO BE ACHIEVED?

The two general objectives of the revision are to:

1. Achieve a well-functioning internal market for construction products; and to

2. Make the framework apt to contribute to the objectives of the green and digital transition, particularly the modern, resource-efficient and competitive economy.

These general objectives respond to the problems and the underlying drivers, as presented above. They build, on one hand, on the long-term experience gained during the implementation, showing areas of improvement; and on the other hand respond to the objectives of the industrial policy[87]. The industry, operating in the EU market, needs harmonisation, legal clarity, adequate enforcement and reinforced market surveillance in order to benefit from the level-playing field and from the green and digital transition.

These general objectives are complemented by the following **specific objectives**:

1.1. To deblock the technical harmonisation system;

1.2. To reduce national barriers to trade for products covered by the CPR;

1.3. To improve enforcement and market surveillance;

1.4. To provide more clarity (more comprehensive definitions, reducing overlaps, collision rules with other legislation) and simplification;

1.5. To reduce the administrative burden, including through simplification and digitalisation;

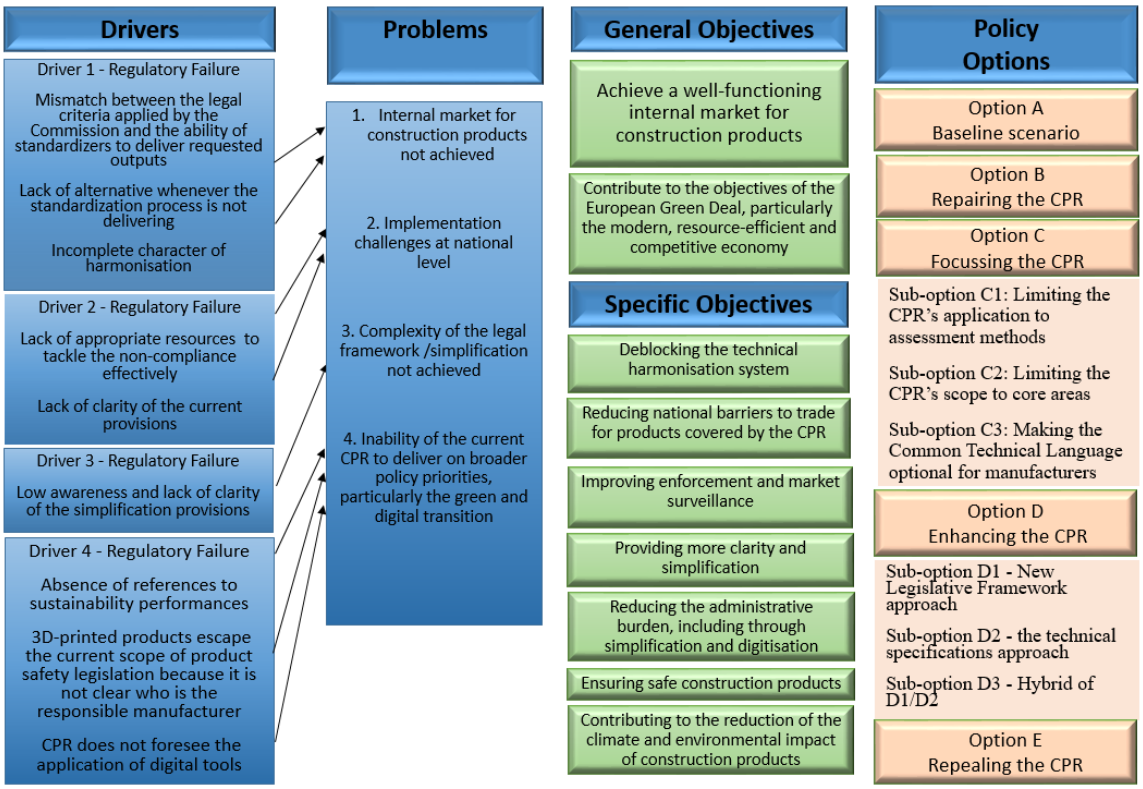
1.6. To ensure safe construction products;

2.1. To contribute to reducing the overall climate and environmental impact of construction products, including through the application of digital tools (Digital Product Passport).

The below figure 4 presents the intervention logic.

[87] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery. https://ec.europa.eu/info/sites/default/files/communication-new-industrial-strategy.pdf.

Figure 4: Intervention logic



6. WHAT ARE THE AVAILABLE POLICY OPTIONS?

The intervention logic presented in Figure 4 illustrates the underlying drivers, the links between the problems the CPR is expected to address, the objectives assigned to it, the CPR's policy options, and the sub-options. The content of each option[88] (i.e. the detailed measures that form part of them) were analysed and consulted with the Member States, industry and other stakeholders[89].

Not considered explicitly as an element of the options but essential to the delivery of the preferred option, is the question of the Commission's **administrative setup and capacity**. Ambitious solutions can only be delivered if there are adequate resources in place to implement them. The current situation has, for example, demonstrated that delays have accumulated in the evaluation of CEN harmonised standards and EOTA deliverables resulting in legal uncertainty for the market and users, hindering the free circulation of construction products in the EU and impacting the competitiveness of manufacturers.

The social dimension linked to the manufacturing of construction products (social conditions of production of construction products placed on the EU market) has not formed part of the options devised for the CPR revision. Firstly, because of their size and volume, the construction products are predominantly produced in the EU where no

[88] See Annex 12 for the Refined indicative options paper, https://ec.europa.eu/docsroom/documents/40762.
[89] See Annex 2 on consultation activities. See also the Results of the Survey on the Refined indicative options paper, April-August 2020, https://ec.europa.eu/docsroom/documents/43103.

concerns linked to the social aspects of their manufacturing are known. Secondly, the envisaged Sustainable Corporate Governance initiative (SCGI) is considering the possible introduction of a general due diligence duty for companies of a certain size, covering human rights and environmental aspects related to all company activities (not a particular product) including the supply chain. Finally, the upcoming SPI considers the possibility of setting requirements on social aspects along the value chain of products.

6.1. What is the baseline from which options are assessed?

The baseline scenario (referred to as "option A" during stakeholders' consultations) implies no revision of the Regulation. This means the current CPR being in force, together with the entirety of the harmonisation system it put in place, hence including making use of all existing tools already at hand, i.e. Delegated Acts, Implementing Acts and harmonised standards[90].

The baseline scenario means therefore a continuation of the harmonisation system and its implementation, e.g. dialogue and efforts to provide further guidance and streamlining the standardisation work; actions taken upon the national marks[91]; promoting the understanding of the CPR; enhancing the market surveillance, through e.g. by recommending effective default market surveillance controls, within the framework of Regulation (EU) 2019/1020 on market surveillance[92].

It is to be noted that the system, under the baseline scenario, would still to a very large extent be the one described in the evaluation and that some of the actions suggested in the evaluation have been taken, but failed to deliver. The likely evolution under the baseline scenario is reflected in section 3.2 (*How will the problems evolve?*).

Under the baseline, it would be at most only partially possible to address climate and environmental performance aspects of construction products through the CPR (i.e. no reparability, no durability, availability of spare parts). However, this would require a much better performing harmonisation system. Therefore, more likely the SPI would have to address the goals stemming from the European Green Deal and the CEAP for construction products. Certainly, it would take a long time to cover a considerable number of construction products owing to their diversity. This would lead also to unnecessary additional administrative burden, with different aspects of the same product being regulated under different acts and through separate procedures. This could also put at risk the coherence between safety and sustainability aspects which is crucial considering the role of construction products in construction works.

Individual Member States are also expected to compensate the lack of an EU-wide framework for sustainability and safety requirements for construction products by

[90] As of 23 October 2021, 21 delegated and implementing acts have been adopted under the CPR. A list of implementing and delegated acts adopted by the Commission in accordance with the Construction Products Regulation is available on the Commission's website. See Annex 6 Description of the CPR.

[91] While the number of infringements of the CPR can be vast, the Commission has concentrated its efforts on cases where it can be most effective. As the Commission won several cases in the CJEU, e.g. C-100/13, joined cases C-475/19P and C-688/19P, a solid basis for effective judicial protection at the national level was provided.

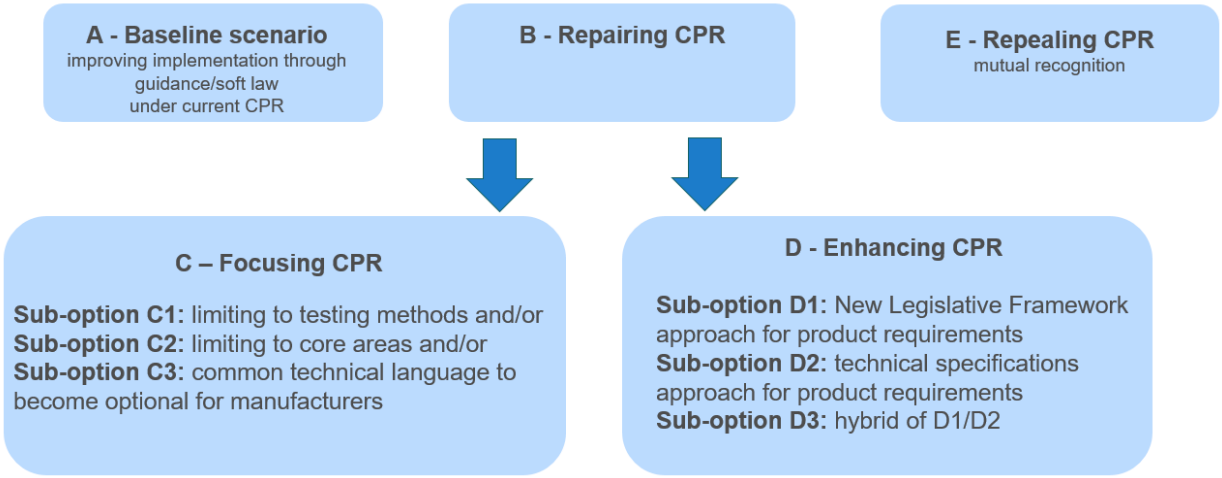
[92] OJ L 169, 25.6.2019, p. 1–44.

introducing uncoordinated approaches at the national level, thereby further deteriorating the internal market for construction products.

6.2. Description of the policy options

This section provides a detailed description of each of the policy options proposed to promote a well-functioning internal market for construction products in the EU. The policy options, with the exception of Option E, are further able to make the framework apt to contribute (to a different extent) to the objectives of the European Green Deal. The below graph also presents the content of the different options and how they interact:

Figure 5: Policy options



Amid increasing environmental and climate concerns, and particularly in the light of the need to support the European Green Deal, in case of a revision, the CPR provisions could better target the aspects of the environment and sustainable use of natural resources, while respecting Member States' responsibility for the safety of construction works. In the 2020 survey, 56% of participants in the CPR Revision Technical Stakeholders' Conference showed preference for inherent environmental product requirements to be integrated into the CPR and its harmonised sphere when asked about the preferred way that construction products can contribute to the transition towards a more sustainable built environment, in the frame of the European Green Deal. It was also supported by several participants that the EU regulatory requirements at the EU and Member States levels on information on the characteristics, contents and environmental impacts of construction products need to be strengthened[93]. The Council and the European Parliament also called for stronger integration of circularity and environmental sustainability into the CPR.[94]

[93] Deloitte, Building Research Establishment, In Extenso Innovation Croissance (2021). Study on circular economy principles for buildings' design, p.78.

[94] https://www.consilium.europa.eu/media/41508/st14523-en19.pdf; Implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation), 2020/2028(INI).

Option B – repairing the CPR

Option B is designed as a stand-alone option aimed at addressing the issues highlighted in the evaluation and can thus be considered as an option of "repairing the CPR". It covers measures aimed at addressing the problems and objectives identified in previous sections. These issues are numerous and often interlinked, hence the need of a significant revision in order to offer appropriate solutions. Consequently, option B can be regarded as an overhaul of the current CPR.

In the context of option B, the following actions are foreseen:

- To address the challenges of the technical harmonisation system, option B foresees introducing an **empowerment for the Commission** to rely on a **'safety net'** (alternative/fall back) solution in case the standardisation system is not delivering standards in time and of sufficient quality. Such empowerment would allow the Commission services to draft **Commission Acts containing technical specifications** in support of the CPR. A similar approach is also available in other sectoral legislation, e.g. the Fertilisers Regulation[95], the Medical Devices Regulation[96], and in recent legislative proposals, e.g. the proposal for the Machinery Regulation[97]. Additionally, the Member States will be requested to proactively identify their regulatory needs upfront, in view of reducing the number of iterations of standards developed. Furthermore, where delivered standards are incomplete or insufficient, the Commission would be empowered to act in such situations, to render the system functioning and efficient. Such a solution would imply that the development process of technical content will take place in a close dialogue and cooperation with the industry and Member States experts and other relevant stakeholders but will be under the lead of the Commission services. These Commission Acts containing technical specifications will have a status similar to the harmonised standards; the manufacturers of products covered by such specification would thus be able to draw up the Declaration of Performance and to acquire the CE marking, allowing to place respective products on the market.

- Continued existence of national requirements and marks would be mitigated by **clearly defining the area regulated** at the EU level. In order to respond to new and urgent Member States' regulatory needs, Option B would allow the Commission to modify by subsequent legal acts the exact borderlines of the 'harmonised zone', to quickly integrate those new issues, thus avoiding the needs for dedicated national marks. Transitional provisions would ensure that the harmonised standards cited under the current CPR would maintain their legal effect until they are replaced by new harmonised standards developed under the revised CPR. Furthermore, introducing provisions clarifying competences of the Member States and the interplay between the EU and the Member States' level, e.g. with regard to unsafe or non-

[95] Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003.

[96] Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC.

[97] Proposal for a Regulation of the European Parliament and of the Council on machinery products, EUR-Lex - 52021PC0202 - EN - EUR-Lex (europa.eu).

compliant products (e.g. right to sue[98], minimum benchmarks for market surveillance), is also part of this option.

- Option B is enabling a harmonised framework to **assess and communicate the environmental performance** of construction products. This would take place in coherence with a horizontal approach on the environmental performance assessment of products, as currently developed within the SPI. General principles of such assessment will form part of the provisions, while the operationalisation of those principles per product family would be laid down in subsequent Commission acts, via standardisation.

- To support the **access to and use of the environmental product data**, the setting up of a digital structure fully compatible with the Digital Product Passport (as foreseen by the parallel Sustainable Products Initiative), is of crucial importance. Easy access to coherent and transparent information on construction products will also be furthered through the use of digital tools, notably the Single Digital Gateway[99] by Product Contact Points for Construction and by national authorities.

- Under Option B, the revised CPR would also promote **reuse of construction products**, particularly to reduce the overall climate and environmental impacts. In particular, the CPR would support the placing on the market of certain used or used and remanufactured construction products, allowing such products to obtain CE marking and gain access to the European market[100].

- Option B proposes to **enhance market surveillance**[101] by strengthening enforcement powers and aligning the performance of different market surveillance authorities. The strengthening of enforcement powers would entail the introduction of appropriate sector-specific provisions to supplement the horizontal provisions contained in Regulation (EU) 2019/1020 on market surveillance and compliance of products. Moreover, it would aim to dispel interpretative confusion and facilitate the use of safeguard mechanisms, by creating procedures that are more streamlined (see Annex 12 with Refined indicative options paper for more details). The Commission will also be empowered to adopt delegated acts on the minimum number of checks to be performed by the market surveillance authorities of each Member State, as well as delegated acts on the minimum human resources to be deployed by the Member States for purposes of market surveillance with regard to products covered by this Regulation. These latter will be accompanied by a specific assessment of the resources implications.

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[98] E.g. competitors are given the right to sue non-compliant manufacturers and their distributors. See Refined indicative options paper, p.32, https://ec.europa.eu/docsroom/documents/40762.

[99] Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012, OJ L 295, 21.11.2018, p. 1–38.

[100] See Annex 12 on Refined indicative options paper, p.9.

[101] Such provisions would include stronger empowerments for market surveillance authorities related to fact-finding (e.g. the right to confiscate samples or to seize documents related to presumably non-compliant products) and possible punitive measures (e.g. the right to impose financial sanctions or to exclude non-compliant operators from public tenders). See p. 32 of Refined indicative options paper, Annex 12.

- In a similar vein, to further **improve the enforcement at the national level**, option B foresees enhancing harmonised decision-making amongst all authorities and **Notified Bodies**[102], striving for alignment across Member States and across groups of authorities/bodies. The Notified Bodies[103] would also be strengthened with a capacity to **assess the correctness of declared environmental impacts** of construction products, through either designating specialised bodies or creating a responsible sub-group. Option B also foresees that a revised CPR improves the efficacy of Notified Bodies[104].

- With a view to **improve the clarity** of the provisions, option B would aim at enhancing the definitions in order to make them more precise and comprehensible. In this sense, the provisions in the future CPR would also clarify e.g. the situation of 3D printing of construction products, where currently neither the seller of the 3D printing dataset nor the 3D printing service provider is a manufacturer in the meaning of the CPR. It would thus render the revised CPR future-proof and create a level playing field.

- Prefabricated small houses (including built by 3D printing) would also be covered by the CPR. This would allow to build the same (types of) affordable houses in several Member States.[105]

- Similarly, **overlaps with other EU legislation** will be mitigated by introducing collision rules and ensuring coherence; additionally, wherever needed and relevant, the scope of the applicability of the future CPR will be adjusted (e.g. in relation to drinking water installations, currently covered under both the CPR and Drinking Water Directive – see Annex 10 for more details). To clarify the scope of applicability, avoid possible gaps and address the circularity objectives, option B would make sure obligations are extended over the supply chain to suppliers of the construction products and related services[106].

- As a solution to the lack of clarity around the meaning of the **CE marking,** option B proposes the introduction of a specific marking for construction products (European Construction Product – ECP) to clarify that the marking refers primarily to performance declaration and not to conformity.

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[102] A revised CPR would set up a structured mechanism for the exchange of information between the relevant actors. See pp. 29-30 of Refined indicative options paper, Annex12.

[103] The current Notified Bodies are not necessarily competent to assess whether the calculation of environmental impacts by manufacturers is correct or, subject to the AVCP system, to make such calculations from scratch.

[104] Information from consultation on the Analysis of the implementation of the Construction Products Regulation (2015) suggests that there is not yet a level playing field for the designation and monitoring of notified bodies in Europe and that the common accreditation schemes to determine the competence of Conformity Assessment bodies for areas covered by EU community legislation envisaged in the New Legislative Framework are not yet operational. The actions would aim at strengthening the designation process and introducing control mechanisms for the time after the designation.

[105] Up to 180 m^2 usable surface and 100 m^2 ground floor. Member States would have the possibility to opt out of the application of the CPR to such houses.

[106] This is linked to making the CPR application clear with regard to emerging new circular business models.

- Option B foresees clarifying the **simplification provisions and** introducing an empowerment for the Member States to **exempt micro-enterprises** not trading across the borders from the obligations of the CPR.

- Under option B, with a harmonised framework to assess, communicate and access the environmental performance of construction products and the promotion of the reuse of construction products, some of the **SPI's aims** could be addressed in the CPR framework. However, option B does not allow to introduce product requirements. These requirements would need to be set under the SPI risking a fragmentation of legislation.

- Option B addresses the issue of inherent product safety only indirectly, as the unblocking of the technical harmonisation system and an improved market surveillance would improve the quality of products.

<u>Option C – Focusing the CPR</u>

Option C can be described as "focusing the CPR" – or reducing the scope of the application of the CPR, freeing up capacity to improve the quality and comprehensiveness of the remaining harmonised sphere. This option takes Option B as starting point, meaning that it builds on the elements described in Option B. However, in Option C the scope of application of the CPR is then limited in certain areas, depending on the following three sub-options which can be combined:

- Sub-option C1: Limiting the CPR's application to assessment methods: Harmonised standards and Commission Acts containing technical specifications would include only assessment methods for performance calculation, with no performance threshold levels, classes nor other requirements to be established at EU level.

- Sub-option C2: Limiting the scope of the CPR: the scope of the CPR would focus on the core areas, identified according to three criteria: (1) the coherence of Member States' regulatory needs, (2) the relevance for the environment or for product safety, and (3) market relevance. These criteria are thus not only applied by the Commission when setting priorities for preparing harmonised standards and Commission Acts containing technical specifications as described under option B, but already by the legislator when determining the overall scope of the CPR. Such an approach would allow to better focus on the regulatory needs of the Member States, the disadvantage being the lack of agility to adjust quickly the scope to respond to new harmonisation, safety or environmental needs. Mutual recognition principles would apply outside the core areas.

- Sub-option C3: Making the common technical language optional for manufacturers: Member States would have the option to offer an alternative path to market access based on national regulations and not relying on harmonised standards and Commission Acts containing technical specifications. In such a case, manufacturers could choose whether they use the common technical language under the CPR or the alternative (national) path to market access. However, if a manufacturer would choose to use the common technical language to assess and communicate performance of its products and affix the CE marking, Member States would remain obliged to offer market access to this product.

Sub-option C1 alone would relate to the SPI similar as option B. However, under sub-options C2 and C3 a considerable number of construction products would not be regulated by the CPR. In particular, under sub-option C2 less products would be regulated under the CPR than today. Under sub-option C3 the same product could fall under the CPR or national regulations depending on the choice of manufacturer how to market it. Therefore, under C2 and C3 the SPI's aims would have to be addressed by the SPI directly to avoid different sustainability approaches. This would lead to a complex regulatory structure for construction products with CPR, SPI, national regulations and the mutual recognition principle applicable.

Option D – Enhancing the CPR

Option D, "enhancing the CPR", is triggered predominantly by the goals of ensuring a high level of safety and environmental protection, including circularity aspects. Option D foresees a process to introduce product requirements dealing with product inherent aspects when needed to protect health, safety and the environment[107]. In this sense, Option D mirrors the expected requirements applicable under the future SPI (see Annex 11 for further details). While it further builds on Option B, relying on mandatory harmonised standards relevant for the assessment of products' performance, it goes beyond this through provisions that empower the Commission to set, when needed, mandatory (minimum) requirements for products.

Beyond these horizontal environmental and product safety requirements and obligations laid down in an Annex of the CPR, this product-specific requirements would be formulated via three sub-options/approaches (sub-options D1 and D2 could also be combined):

- Sub-option D1: To complement the horizontal environmental and product safety requirements and obligations laid down in an Annex of the CPR, sub-option D1 would formulate more specific product requirements based on the New Legislative Framework approach. For the products or product families concerned, essential requirements would be laid down in standardisation requests addressed to CEN, who would be mandated to develop standards providing technical details. These voluntary standards would be harmonised by referencing in the OJEU. Following the voluntary standards would lead to the presumption of a product's conformity with the relevant essential requirements, but other means to prove conformity would remain possible. As such, in the absence of essential requirements tailor-made to particular groups of products specified in Commission acts, it may lead to lack of harmonised approach towards assessing and demonstrating given performances. Divergence in product requirements between products following the harmonised standards path and products manufactured and tested according to other methods would imply additional effort needed on the side of the market surveillance authorities.

[107] In this context, important to note that inherent product safety should be distinguished from "construction work safety", which is framed by national legislation The competences with respect to safety are divided between the EU and the Member States: while the EU is responsible for the rules relating to access of construction products to the Internal Market (the marketing of construction products), the Member States retain responsibility for safety as well as environmental and energy requirements applicable to construction works.

- Sub-option D2: It would formulate product requirements based on the technical specifications approach. Requirements would be included in harmonised technical specifications and be developed as under Option B, meaning either by mandatory harmonised standards (preferred) or by Commission acts containing technical specifications (as fall back). Where product requirements will be defined, the Declaration of Performance would be complemented by a Declaration of Conformity, and both would be combined in one document.

- Sub-option D3: Based on the feedback received during the public consultation and further deeper analysis of the legal constraints, a hybrid solution between sub-option D1 and sub-option D2 has been developed while keeping the core elements of the two other sub-options. These include:

  - As in the NLF, the product requirements ("essential requirements") would be established by an Annex of the CPR.

  - However, as the requirements have to target more than 30 widely differing product families encompassing more than 100 product categories, they cannot be sufficiently specific to be applied without legal uncertainty. Hence, they would only become applicable once they have been specified for a certain product family or category by a Commission Act. This is an element stemming from sub-option D2.

  - As these Commission Acts may not cover all relevant aspects of application, voluntary standards based on standardisation requests may also be needed to complement them to providing more details and, eventually, presumption of conformity. This is an element stemming from sub-option D1 and the NLF.

Against the ambitions of the European Green Deal and particularly, the transition towards a more sustainable built environment, Option D would be the one ensuring that all safety, circularity, sustainability and climate related aspects can be assessed under the CPR future framework, including the possibility to put forward product requirements. Option D is therefore fully aligned with the SPI and does not require the SPI to prioritise the construction products.

<u>Option E – repealing the CPR</u>

Option E would imply relying on mutual recognition for the internal market of construction products. There would be no harmonisation, i.e. no common technical language, no mandatory harmonised standards, no voluntary harmonised standards either, no basic work requirements for construction works, no obligation to draw up a Declaration of Performance or communicate it, no CE marking, no classes or thresholds, no AVCP[108] systems and no conditions for classification determined at EU level. This would extend to all construction products the situation currently existing for the non-harmonised sphere.

[108] Assessment and verification of constancy of performance, corresponding to conformity assessment in classic NLF legislation.

Therefore, under option E, climate and environmental performance requirements at EU level would have to be set by the SPI. As consequence, even without a CPR there would be EU requirements targeting construction products, this time stemming from the SPI.

While Member States would be free to come up with their own national requirements, the principle of mutual recognition would imply that they cannot simply refuse market access, if products from a different Member State do not comply with these requirements. Instead, they would need to check whether the products were marketed in accordance with the national rules applicable in the Member State in which they were manufactured. Additionally, Member States could adopt national regulations relevant for construction works where certain performance criteria could be envisaged for certain conditions (e.g. reflecting climate change risks).

Figure 6: Comparison of options against the specific objectives

Problem drivers	Specific Objectives	Option A	Option B	Option C	Option D	Option E
Problem 1 drivers **-Mismatch between the legal criteria applied by the Commission and the ability of standardisers to deliver requested outputs** **- Lack of alternative whenever the standardisation process is not delivering** **- Incomplete character of harmonisation** ***Problem 4 drivers*** **- 3D printed products escape the scope of CPR**	**Deblocking the technical harmonisation system**	• Apply the existing empowerments and procedures.	• Introducing empowerment for the Commission foreseeing alternative (safety-net) solution, to draft technical specifications where no timely and/or quality standards are delivered, i.e. developing technical content in a close dialogue and cooperation with the industry and Member States experts and other relevant stakeholders; • Member States will be requested to proactively identify their regulatory needs upfront, with a view of reducing the number of	• The same as option B in the remaining harmonised sphere.	• The same as option B.	• As there will be no harmonisation, only mutual recognition, no mandatory nor voluntary harmonised standards would be necessary.

			iterations of standards developed.			
	To ensure safe construction products	• No change.	• Indirectly addressed with improved market surveillance and unblocked technical harmonisation system. • Bringing 3D-printed products in the scope of CPR	• The same as option B in the remaining harmonised sphere.	• Setting a dedicated process to introduce product inherent safety requirements, where needed complemented by more specific product requirements (per categories or group of products) by either; → **D1** – New Legislative Framework approach for product requirements; • **D2** – Technical Specifications Approach for product requirements. • **D3 –** Hybrid of D1/D2	• The CPR repealed and mutual recognition applying, hence no harmonised sphere.
Problem 2 drivers **- Lack of clarity of the current provisions** **- Lack of appropriate resources to tackle the non-compliance**	**Reducing national barriers to trade for products covered by the CPR**	• Act upon national marks, ex-ante processes and verifications, including infringement procedures and support for economic operators	• Introducing provisions clarifying competences of the Member States and improving the interplay between the EU and the Member States'	• The same as option B but also with changes to the scope of the CPR to free up capacity and improve the quality and comprehensiveness of the remaining	• The same as option B but also covering inherent product safety requirements at EU level (horizontal mandatory minimum safety requirements for	• The CPR repealed and mutual recognition applying, hence no harmonised sphere.

effectively		acting against infringements at national courts.	level, e.g. with regard to unsafe or incompliant products.	harmonised sphere: → **C1**: Scope of the CPR limited to assessment methods only (no thresholds, classes nor other requirements at EU level); → **C2**: Focusing the scope on regulatory needs of the Member States, with limited agility towards new needs; → **C3:** Giving the Member States the possibility additionally offer market access based on national regulations.	products, where needed complemented by more specific product requirements per categories or group of products). → **D1** – New Legislative Framework approach for product requirements; → **D2** – Technical Specifications Approach for product requirements; → **D3 –** Hybrid of D1/D2.	
	Improving enforcement and market surveillance	• Recommending highly effective default/standard market surveillance controls.	• Strengthening enforcement powers and aligning the performance of different market surveillance authorities; • Creating more streamlined procedures to address interpretative confusion and facilitate the use of safeguard mechanisms; • Delegated acts on minimum number	• The same as option B in the remaining harmonised sphere.B.	• The same as Option B.	• No CPR in place, authorities checking whether the products were marketed in accordance with the national rules applicable in the Member State in which they were manufactured.

			of checks performed by the market surveillance; • Delegated acts on minimum human resources to be deployed for the market surveillance of construction products; • Enhancing harmonised decision-making amongst all authorities and Notified Bodies, striving for alignment across Member States and across groups of authorities/bodies; • Strengthening the capacity of Notified Bodies to assess the correctness of declared environmental impacts of construction products.			

Problem 3 drivers **- Low awareness and lack of clarity of the simplification provisions** ***Problem 4 drivers*** **- CPR does not foresee broad application of digital tools**	**Providing more clarity and simplification**	• No change.	• Introducing an empowerment for the Member States to exempt conditionally certain micro-enterprises from the obligations of the CPR; • Clarify the simplification provisions; • Eliminating information overlap between the CE marking and the Declaration of Performance; • Combining the Declaration of Performance with the Declaration of Conformity; • Enhancing the definitions in order to make them more precise, thorough and comprehensible; • Clarifying possible loopholes or overlaps with other legislation, including through clear collision rules and clarifying the scope; • Introducing specific marking for	• The same as option B in the remaining harmonised sphere, but also: → **C2:** Focusing the area of application and/or scope to core areas, hence limiting possible overlaps; → **C3:** The possibility of an alternative national path to market access is creating new regulatory overlaps.	• The same as option B.	• CPR repealed, no need for simplification provisions at the EU level. • Manufacturers have to market products in accordance of national rules.
	Reducing the administrative burden, including through simplification and digitalisation					

			construction products (ECP instead of CE marking); • Ensuring access to comprehensive information in a digitalized manner, through Single Digital Gateway. • Access to a common database, via Digital Product Passport, to ensure information is stored in a comprehensive and durable manner.			
Problem 4 drivers **- Inability to deliver on the policy objectives stemming from the European Green Deal and the Circular Economy Action Plan** **-Absence of references to sustainability performances** **- Unable to cover new business models** **- CPR does not foresee broad application of digital tools**	**Contributing to the reduction of the climate and environmental impact of construction products, including through the application of digital tools**	• It would not be possible to address environmental performance aspects of construction products or product requirements through the CPR but through SPI. Individual Member States might introduce additional uncoordinated approaches at the national level.	• Enabling a harmonised framework to assess and communicate the environmental performance of construction products; • Possibly additional sustainability product requirements from SPI; • Promoting and incentivising the reuse of construction products, through communicating their performance down the use-chain	• The same as option B in the remaining harmonised sphere, beyond this • **C1**: Enabling a harmonised framework to assess and communicate the environmental performance of construction products; • **C1:** Possibly additional sustainability product requirements from SPI; • **C2/C3:** SPI would have to address environmental	• The same as option B; plus • Setting a dedicated process to introduce product inherent requirements in order to enhance environmental protection (horizontal mandatory minimum requirements for products, where needed complemented by more specific product requirements per categories or group of products) by	• No environmental performance requirements at EU level stemming from CPR but most likely from SPI and Individual Member States might introduce additional uncoordinated approaches at the national level.

			until the preparation of used products for re-use and their second making available on the market.	performance aspects of construction products or product requirements.	either; → **D1** – New Legislative Framework approach for product requirements; → **D2** – Technical Specifications Approach for product requirements; → **D3 –** Hybrid of D1/D2.	

6.3. Options discarded at an early stage

Due to an extremely critical feedback and the fact that certain legally mandatory objectives can, in the case of the CPR, not be reached by voluntary standards, the possibility of relying entirely on voluntary harmonised standards has been limited in terms of scope to the question whether inherent product requirements shall be established by voluntary standards, as under option D1, and also be functionally replaced by sub-option C3.

Moreover, the suggestion of a Member State to limit Option B to only a few core elements has been discarded for the following reasons: there are multiple links among the problems and objectives to be addressed. Due to these manifold interrelations, it was necessary to consider potential mitigation for each of the numerous horizontal issues identified. For further information, see Annex 13 on the discarded options.

7. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This section analyses the policy options described in the preceding section, and assesses how they contribute to reaching the specific objectives. It presents particularly the economic, social and environmental impacts, as well as stakeholders' views. The analysis is quantitative whenever possible, otherwise qualitative.

Regardless of the options, the most relevant stakeholders affected by the Regulation in relation to obligations and compliance are the economic operators (manufacturers of construction products). Also affected is the construction ecosystem (construction companies and employed construction workers as the main users of the products). A small number of construction products is sold in hardware stores. Therefore, also consumers might be directly affected. The options have also an impact on Member States' authorities responsible for the supervision of the safety, environmental and energy requirements applicable to buildings and civil engineering works.

The main costs for the manufacturers to comply with the Regulation are administrative burden, substantive compliance costs and regulatory charges[109]. While some quantification of these costs was presented in the study[110] supporting this impact

[109] According to the economic impact study conducted in 2016 regulatory charges are fees applicable to the activities of the AVCP systems, fees charged by TABs for the ETA procedure etc.

[110] The study supporting this impact assessment provides relevant evidence for the analysis of the impacts of the different options envisaged for the revision of the CPR. The study collected and complement the available evidence for the analysis of the options and the assessment of their possible impacts.The options have been explored in depth to assess preferences and impacts primarily via a survey among companies and a public consultation. The survey targeted selected experts and aimed at identifying how to address the various horizontal issues identified during the evaluation of the CPR. The public consultation includes a broad range of respondents e.g. companies, business associations, EU citizens, NGOs, academic institutions.

assessment[111], certain limitations such as low response rate and lack of detailed feedback on the nature of the costs incurred, affected the analysis of economic impacts. Wherever needed, this analysis is complemented with a qualitative analysis of the options. All other costs are presented in a qualitative manner due to the lack of data.

The analysis of environmental impacts and social impacts (especially safety) was carried out in a qualitative manner and whenever data was available in a quantitative manner. With respect to the social impacts, benefits could not be quantified due to the missing data on safety incidents and other data needed for a quantification of risks on health and safety with regards to construction products. Therefore, the impact assessment also includes non-quantified social and environmental benefits and drawbacks.

7.1. Option A – baseline (no revision)

Economic Impact

No change in the CPR implies that the costs for businesses associated with maintaining the CPR will remain initially unchanged. The study estimated these costs for manufacturers to be approx. 2.56 billion EUR annually[112]. This corresponds to 0.6% of the revenue of these. Previous studies of the costs for the CPR-related manufacturing sector in the EU estimated the annual baseline costs to be between 2.6[113] and 3.4 billion EUR[114] - so roughly the same magnitude.

These costs are mainly driven by the administrative burden (estimated at 900 million EUR), substantive compliance costs (estimated at 450 million EUR) and regulatory charges (estimated at 300 million EUR) due to CE marking and Declaration of Performance, and compliance cost due to national requirements of around 300 million EUR[115]. These costs serve as the comparative basis for the other options in order to provide an indication of the expected economic impacts of the different options.

The supporting study also estimated for the baseline a foregone revenue for EU manufacturers associated with the shortcomings in market surveillance of more than 4 billion EUR annually, corresponding to a little more than 1% of the overall revenue. The findings show that foregone revenue due to competition from non-compliant products is substantial, whereas costs related to identifying and reporting non-compliant competing products can be neglected as part of the aggregate result. Insufficient or

[111] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report. 2021.

[112] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p.25. This estimate should be considered with a great degree of caution, due to the limited number of responses received.

[113] VVA Europe, the Danish Technological Institute (DTI) & the Netherlands Organisation for applied scientific research (TNO) (2016). Final Report: Economic Impacts of the Construction Products Regulation, p. 38.

[114] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation, page 49-50.

[115] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p. 26.

ineffective market surveillance appears to be the reason for this significant impact on medium and small companies and the reason behind this might be that they have fewer brands/products with smaller volume, compared to large companies with stronger brands and wider portfolio[116]. This makes small and medium companies more vulnerable and exposed to a bigger impact from unfair competition.

In the online survey of 2018[117], respondents were divided about the future development of these costs under the baseline: manufacturers and national contact points expected a small increase in cost, while testing and certification bodies, market surveillance authorities and end-user organisations expected a small decrease.

However, taking into account the most likely continuing malfunctioning of the standardisation process and therefore deteriorating conditions for the internal market for construction products, over time rising costs for all stakeholders are expected (i.e. higher cost for manufacturers relying on the EOTA route or more national requirements introduced). This would imply higher costs for construction with less product choice/more national requirements.

Social impact

The current CPR is following a performance-based approach, meaning that no product requirements for construction products are established within the regulatory framework. Consequently, no particular impact on product safety can be identified. Inherent product safety will continue to be dealt with in an inconsistent manner by Member States and potentially in contrast to the objective of removing technical barriers.

This has been confirmed by the 2018 online survey, where under the baseline all stakeholder groups expect either no (28%) or a small positive impact (26%) on health and safety[118].

Environmental impact

As explained in the problems section, harmonisation provided by the current CPR falls short of covering completely the Basic Work Requirements relevant for environmental impact or sustainability, therefore the construction products are not subject to mandatory assessment and verification of the constancy of performance in these areas. Therefore, at best only a slightly positive environmental impact would be expected from the CPR.

In view of the political priorities of the EGD and linked initiatives, this may create an obstacle for the sector to contribute and to benefit from the green transition, while also impeding the national authorities from setting measures towards use of greener construction products and greening of construction works. As possible solution, these aspects could be addressed, if needed, under the SPI. This however, may result in unnecessary additional administrative burden, with different aspects of the same product

[116] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, p. 28.

[117] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, pp. 56-57.

[118] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p.60.

being regulated under different acts and through separate procedures. This could also put at risk the coherence between safety and sustainability aspects which is crucial considering the role of construction products in construction works.

Stakeholders' views

Feedback received during the public consultation and the company survey reflects a broad preference for the baseline (Option A) across most stakeholder groups[119]. At the same time, many of these stakeholders also wished for action to be taken to resolve the issues linked to the implementation of the CPR[120] – such action would require a solution closer to Option B or D.

During the survey on the Refined indicative options paper, in general, participants have shown concerns about the economic consequences that changes to the CPR (the options apart from option A) would mean for the construction products industry. Participants which were in favour of option A, feared that changes would delay the application of the CPR and create difficulties on the market[121]. In a similar line, stakeholders outlined that changes in the CPR would result in the need for economic operators to mobilise further resources at a time when most of them are weakened by the Covid-19 crisis and that most companies in the sector were micro or small sized and changes were costly for them[122].

7.2. Option B - Repairing the CPR

Economic impact

Option B addresses all the issues identified in the evaluation as shortcomings in the implementation of the CPR. It would therefore contribute to improved harmonisation at the EU level, facilitating the circulation of construction products on the internal market and benefitting their manufacturers and users. In particular, it is expected that market access would be facilitated and the harmonisation of the internal market for construction products would be deepened. At the same time, substantial benefits are expected to come along with improved market surveillance and enforcement. The possibility of introducing, by delegated acts, minimum number of checks to be performed by the market surveillance and the minimum human resources deployed for market surveillance of construction products is expected to significantly improve the effectiveness. Such delegated acts will be accompanied by a specific assessment of the resources implications.

Option B also offers some reduction of administrative burden for manufacturers by empowering the Member States to exempt certain micro-enterprises from the obligations

[119] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p.30.

[120] E.g. in the horizontal survey, more than two thirds (68%) of the respondents believe that interpretation issues require a revision of the CPR either in conjunction with guidance (63%) or without any further measures (5%). See Annex 2 for more details.

[121] European Commission (2020). Review of the Construction Products Regulation (CPR) - Survey on the Option Paper, April-August 2020 – results, Annex I on option A, pages 2, 13.

[122] European Commission (2020). Review of the Construction Products Regulation (CPR) - Survey on the Option Paper, April-August 2020 – results, Annex I on option A, page 21.

under the CPR, by reducing overlap between the CE (new ECP) marking and the Declaration of Performance; allowing the DoP to be supplied electronically and by combining the DoP with the Declaration of Conformity (DoC).

The estimates show that a regulatory shift towards Option B would lead to a total reduction of 160 million EUR in costs annually for construction products manufacturers, roughly corresponding to a 6% reduction compared to the baseline compliance costs[123]. This impact is driven mainly by a decrease in the administrative burden, substantive compliance cost and regulatory charges in relation to the CE marking and Declaration of Performance, and in substantive compliance cost stemming from reduced national requirements. This may not be overwhelming, but nevertheless a non-negligible expected reduction in costs.

Relying on digital tools, such as a Construction Products database or system will provide the information along the distribution chain, increasing the transparency to the benefit of safety and the environment and save resources of the economic operators, while also ensuring an interface with the Digital Product Passport, ultimately improving the system's efficiency. Overall, Option B is expected to improve the effectiveness, efficiency and coherence of the regulatory framework.

There appear to be significant benefits that can be reaped from improved market surveillance, with a potential 2.5 billion EUR annually to be gained in terms of revenue, equalling more than half the costs (burden) under the baseline. Notwithstanding the significant uncertainties associated with this estimation due to the small number of observations that it is based on, this would be a remarkable result. Notably, about half of this benefit accrues to small companies, where aggregated revenue gains are estimated to amount to roughly 1.3 billion EUR annually corresponding to 1% of the total revenue for that group[124].

The above suggests that the improvement in market surveillance would lead to significant benefits, which together with harmonisation of decision-making of authorities and Notified Bodies should also enhance the legal certainty as regards the role and obligations of economic operators and Notified Bodies. This, in turn, could increase the assurance that compliance with the legal rules and requirements benefits the operators and enhance the functioning of the internal market.

Social impact

Improving the market integration of construction products would contribute to enhanced access to these products across different Member States, benefitting the users and consumers. Thanks to the improved legal clarity of the framework and harmonised methods for assessing and communicating environmental performance the users would have access to reliable information on the performance of construction products, eventually contributing to more conscious and informed choices made, particularly in terms of construction works to be executed. Better streamlined market surveillance and

[123] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p.33.

[124] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p.35. See Annex 2 on stakeholders' consultation.

enforcement is also expected to improve the reliability of performance declarations, increasing the users' trust.

Moreover, including in the scope of the CPR also prefabricated (small one-family) houses would allow the creation of an internal market for entire small houses, permitting economies of scale and increasing competition, thereby favourably influencing the prices, ultimately fostering their affordability and deployment. Pre-fabricated houses could also be an important factor when addressing crisis social situations, like in the aftermath of recent weather-related disasters where citizens were in urgent need of housing solutions.

Respondents to the public consultation[125] (see also Annex 2), who prefer option B, primarily expect it to lead to an increase in construction product innovation, construction product safety, and economic actors' compliance with relevant rules and regulations.

Environmental impact

A harmonised method for assessing and communicating the climate and environmental performance of construction products would contribute to the green transition of the sector and to a better built environment, by providing the relevant environmental data allowing the Member States to assess the climate and environmental performance of construction works, thereby supporting the implementation of relevant national and EU legislation (e.g. the Energy Performance of Buildings Directive) and avoid market fragmentation.

Respondents in the consultation[126] who prefer option B primarily expect it to lead to an increase in the sustainable use of resources for producing construction products and the quality of the built environment in the EU.

Stakeholders' views

The only stakeholder group preferring option B overall was EU citizens. However, in relation to multiple elements, NGOs and public authorities also prefer Option B, this particularly in terms of improvements on market surveillance and enforcement. Business associations and companies/business organisations do not prefer option B altogether.

During the survey on the option paper, stakeholders pointed out that they welcomed the Commission's initiative to review the CPR with the aim to improve the functioning of the single market for construction products, but the feared that a revision of the CPR would require additional resources (manpower and finances) from industry to adapting to new procedures and processes[127].

[125] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p.35.

[126] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report, p.35.

[127] European Commission (2020). Review of the Construction Products Regulation (CPR) - Survey on the Option Paper, April-August 2020 – results, Annex I on option A.

Policy option B	Positive impacts	Negative impacts
Economic impacts	• Reduction of 160 mEUR in costs annually for **manufacturers** • Potential revenue of 2.5 billion EUR to be gained for **manufacturers** • Increase in system effectiveness • Enhancing the functioning of the internal market	• None identified
Social impacts	• Increase in construction product innovation • Increase in construction product safety • **Consumers** ca profit from favourable influence on **the prices** of prefabricated (small one-family) houses ↓ • Fostering **affordability** of prefabricated (small one-family) houses for **consumers**	• None identified
Environmental impacts	• Increase in the sustainable use of resources for producing construction products • Increase in the quality of the build environment	• None identified

7.3. Option C - Focusing the CPR

Option C builds on Option B, to the extent there is compatibility between the two. Option C includes three additional sub-options, which can be combined. The impacts of this option can then be considered comparable to those of Option B, where compatible[128] (e.g. improvements in area of market surveillance, legal clarity, simplification etc.).

At the same time, sub-option C1 would mean focusing the CPR's scope on assessment methods only, with no performance thresholds nor characteristics established at the EU level. This in the end would not improve the degree of harmonisation at the EU level, nor would it be the case when focusing the CPR on core areas only (sub-option C2); further national provisions would emerge, thereby creating possible obstacles to the free circulation of construction products within the EU.

Economic impact

According to the estimates of the study, option C (the three sub-options combined) would lead to a small reduction of 23 million EUR annually in costs for manufacturers associated with the CPR. This corresponds to less than 1% of the baseline costs of 2.6 billion EUR. Benefits (reduction of foregone revenue due to improved market surveillance) are the same as for option B. However, these estimates should be considered with caution as they were calculated on the basis of responses of stakeholders preferring option C and it remains unclear to what extent these respondents reflected on the risk that there could be more fragmentation of the internal market; hence implying limitations on the representativeness of the data.

Option C implies limiting the scope of the CPR to assessment methods (sub-option C1) and to core areas only (sub-option C2). As the harmonisation area covered under the CPR would be more focused (covering less aspects compared to the baseline), further national provisions would very likely emerge, thereby creating possible obstacles to free circulation of construction products within the EU. Consequently, the functioning of the internal market could be impeded. Moreover, concerns about the effectiveness of this option might arise since there could be an indirect risk of having access to products with varying degrees of requirements implemented which could lead to an increased need for market control.

Under sub-option C3, the common technical language would be voluntary, meaning that the manufacturers could choose for an alternative route to demonstrate performance

[128] See Figure 6.

rather than the assessment method prescribed in the harmonised technical specifications[129] (if offered by the respective Member States). Manufacturers would most likely choose this alternative route if the regulation would be lighter and if they only would target the respective market. On the one hand this could have positive impact on SMEs. However, on the other hand the level of protection of human safety or of the environment could be lowered and it might disrupt the internal market.

Social impact

Due to the fact that, under sub-option C3, the Member States would be allowed to regulate an alternative path to market access, a risk exists that users could be negatively affected by diverging requirements followed by manufacturers who choose not to rely on the harmonised standards. This risk would stem from allowing test methods which are less stringent than the ones foreseen at EU level or by refraining from minimum threshold levels, which might lead to endangering the safety of construction products and having a negative impact on end-users health.

Due to differences in national legislations, it is expected that users will not have access to products of the same level of performance on the market.

With respect to sub-option C3 (making common technical language optional), the online survey results show that all stakeholder groups considered this policy option would result in negative impacts on health and safety (39%)[130]. Such negative effects would lead to a risk of more grave accidents, with associated negative social consequences.

Environmental impact

As this approach would deprive the Commission and the Member States of the possibility to react, in a harmonised manner, to new regulatory needs in relation to environmental or safety needs for construction products, the risk exists that progress on these sub-options will differ among the Member States – due to emerging national requirements – and that the progress towards green and safe construction products will be overall hindered.

With respect to sub-option C3 (making common technical language optional), the online survey results show that all stakeholder groups thought this policy option would result in a negative impact on the environment (35%)[131].

Among the feedback received on the Refined indicative options paper[132], some stakeholders have voiced negative views on this option by stating that the advantage and the relevance of this option for the environment or for citizens in terms of safety and market relevance and the practical meaning of limiting the scope of the CPR is not obvious.

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[129] Either by harmonised standards or by Commission acts containing technical specifications

[130] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 83.

[131] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 83.

[132] see Annex 12

Overall, this option will at most only be able to partially address the goals stemming from the European Green Deal, the Circular Economy Action Plan and other linked initiatives, as regards to construction products. Therefore, it would have to be complemented by the SPI covering also construction products.

Stakeholders' views

In the 2020 survey on the Refined indicative options paper, only 11% of respondents, including business representatives, companies, technical bodies, NGOs, and public authorities fully or partly supported sub-option C1, 9% sub-option C2 and 9% sub-option C3[133]. In the 2020 company survey, option C was the least preferred revision option, with the share of respondents stating their preferred option was option C varying between 6 and 11%[134]. In the 2020 public consultation, option C likewise was the least preferred revision option, with the share of respondents stating their preferred option was option C varying between 3 and 11%.

Concerning sub-option C3, the company phone survey results showed that this approach could potentially result in very small (<1,000 EUR per annum) per manufacturer cost savings in all size groups and across the sector as a whole: potentially a total cost saving of between EUR 8.5 million annually and EUR 9.5 million annually, a negligibly small amount considering the size of the sector[135].

In addition, regarding sub-option C3, the general perception of this option was well summarised by a market surveillance authority who stated that "making the common technical language voluntary would not cure the conceptual defects of the CPR, but it would increase uncertainty and create chaos"[136]. In the 2020 survey, where a broad selection of the stakeholder groups took part, the participants noted that "if the harmonised standards become the preferred but non-exclusive means of proof, thus making CE marking optional (not compulsory by regulation), a two-speed system would create confusion for all stakeholders in construction"[137].

It is clear that the sub-options of this option could create, in fact, new barriers to trade within the European internal market since there might be significant divergence in Member States' requirements. Among the feedback received on the Refined indicative options paper, many stakeholders expressed that "It is not obvious what the practical added value would be of limiting the scope of the revised regulation" and notably that "All three options outlined by the Commission for so-called 'focussing' of the CPR (option C) would significantly impact the existing internal market. Construction products already harmonized (product categories) would be de-harmonised again. This was

[133] https://ec.europa.eu/docsroom/documents/43103, questions 30, 31 and 32.

[134] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report 2021, Annex 7, questions about preferred variant across the 3 elements considered individually for option C.

[135] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p.80.

[136] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p.79.

[137] See Results of the Survey on the Refined indicative options paper, April-August 2020, Annex III on option C, available: https://ec.europa.eu/docsroom/documents/43103

considered as unnecessary as it would weaken the internal market and adversely affect all stakeholders[138].

The overall support for the sub-options of option C is thus very limited as they are considered to weaken the current regulatory system. The sub-options would even less fit into a CPR framework which tries to be more ambitious regarding the European Green Deal goals. In terms of environmental impacts and circularity of construction products, option C would not be effective in reaching the objective and the CPR would not become more focused in the meaning of that option.

Policy option C	Positive impacts	Negative impacts
Economic impacts	• Small reduction of 23 mEUR annually in costs for **manufacturers** • Potential revenue of 2.5 billion EUR to be gained by **manufacturers** • A total cost saving of between EUR 8.5 million and EUR 9.5 million across the **sector** as a whole	• Possible obstacles to free circulation of construction products within the EU • Increased need for market control
Social impacts	• None identified	• Negative impact on health and safety with respect to sub-option C3 • Harm to **users** health
Environmental impacts	• None identified	• Negative impact on the environment with respect to sub-option C3

7.4. Option D - Enhancing the CPR

Option D, building on Option B but distinguished from other options by introducing product requirements addressing health, safety and the environment, is expected – according to the companies preferring this option in the public consultation – to have a positive impact particularly on safety, compliance and quality of the built environment[139]. Pursuing this option would allow a consistent approach for the environmental assessment of construction products under the CPR and the SPI[140]. As the sub-options only differ in the path to develop the product-specific requirements, the same impact can be expected for all three.

Economic impact

According to the estimates of the study, option D is expected to lead to an increase of approx. 200 million EUR in costs among manufacturers associated with the CPR, equal to approximately 8% of the baseline costs. This is due to an expected increase in costs associated with preparing the CE marking and the Declaration of Performance. The benefits (reduction of foregone revenue due to improved market surveillance) are the same as for option B. However, as the concrete requirements for relevant products (groups) will be defined only at a later stage, through Commission Acts, a more accurate estimation of the costs incurred by the manufacturers will only be possible at a later stage, when developing subsequent legal acts.

[138] See Results of the Survey on the Refined indicative options paper, April-August 2020, Annex III on option C, available: https://ec.europa.eu/docsroom/documents/43103.

[139] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review, p. 42.

[140] This method has not yet been determined at this point in time. However, see in this context e.g. Commission Recommendation (2013/179/EU) of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations.

As Option D, similarly to Option B, addresses the main shortcomings of the current CPR framework, including the possibility for the Member States to exclude certain micro-companies from the CPR obligations, it would potentially enable further cost savings for **micro companies**, currently facing the highest compliance burden as a share of their turnover (estimated at 1.3% of turnover on average)[141].

Social impact

On top of the social impacts described under Option B and relevant also for Option D, the social impact linked to the introduction of product safety requirements would imply improving the safety and protection of end-users of construction products. This decrease in the level of potential risks for users is driven by ensuring that the products are appropriately assessed before they reach them.

With respect to this positive social impact of policy option D on safety (improving the safety and protection of end-users), it is important to note that SMEs in the construction contractors sub-sector employing less than 250 people account for approximately 91% of all employees[142]. This suggests that the majority of benefits in terms of cost savings from a reduction in risks of accidents accrue to SMEs. This is crucial as in some Member States, national authorities reported that safety incidents tend to be higher among SMEs[143]. In general, by improving the product safety, thereby contributing to protecting workers from accidents and health risks, the legislation makes a positive contribution to improving the human capital basis of the sector[144].

Environmental impact

In response to the European Green Deal objectives Option D is expected to address these effectively, rendering the revised CPR framework future-proof as the revised CPR will be able to deliver on broader policy priorities, particularly the green and digital transition. Environmental impacts of Option B, i.e. offering a harmonised approach for assessing and communicating the climate and environmental performance of construction products and providing access to reliable and comprehensive data in terms of environmental performance (through the Digital Product Passport) contribute to the Circular Economy Action Plan, Renovation Wave and other linked initiatives, and are relevant also for Option D. Additionally, Option D would ensure that protection of climate and environment and safety would be safeguarded, by foreseeing a possibility of introducing product requirements. It is therefore apt to reflect the framework expected to be introduced for other products under the SPI (for more details, see Annex 11 on the interaction between the future CPR and SPI).

As this option is the only one fully suited to effectively address the goals stemming from the European Green Deal, the Circular Economy Action Plan and other linked initiatives,

[141] VVA Europe, the Danish Technological Institute (DTI) & the Netherlands Organisation for applied scientific research (TNO) (2016). Final Report: Economic Impacts of the Construction Products Regulation. European Commission, p. 71.

[142] RPA(2016) Supporting Study for Fitness Check on the Construction Sector – The Second Phase on EU Environment, Health and Safety Legislation, p. 163.

[143] RPA(2016) Supporting Study for Fitness Check on the Construction Sector – The Second Phase on EU Environment, Health and Safety Legislation, p. 88.

[144] RPA(2016) Supporting Study for Fitness Check on the Construction Sector – The Second Phase on EU Environment, Health and Safety Legislation, p. 156.

in the context of construction products, it can ensure the full support towards circular use of products and materials and ameliorating the built environment. Option D allows for synergies with other initiatives, including the SPI, EPBD or transition pathways for the construction ecosystem.

Stakeholders' views

In the company survey and the public consultation, Option D gained relatively low support of 13% and 16% of consulted stakeholders respectively. There was, however, a variation among different groups of stakeholders, with NGOs preferring Option D (sub-option D2) as compared to the other options. In both surveys, there was a stronger preference for introducing construction product requirements via the New Legislative Framework approach (sub-option D1) than via the Technical Specifications approach (sub-option D2).[145]

Policy option D	Positive impacts	Negative impacts
Economic impacts	• Potential revenue of 2.5 billion EUR to be gained for **manufacturers** • Enhancing compliance • Increase in the level of competitiveness for **manufacturers**	• Increase of approx. 201 mEUR in costs among **manufacturers**
Social impacts	• Improving the safety and protection of **end-users** of construction products • Benefits for **citizens** in the form of lower prices • Labour market of designers might improve • Positive effect on the **consumers and to society** (the costs of cause by the shadow economy)	• None identified
Environmental impacts	• Ameliorating the quality of the built environment • Decrease of carbon footprint • Increase in the sustainable use of resources for producing construction products • Reduction in the need for energy consumption, transportation and extraction of raw materials • ↓ • Positive externality to the all citizens • Contribution to the European Green Deal	• None identified

7.5. Option E – Repealing the CPR

Economic impact

The stakeholders expect a large negative impact due to lacking CPR-based market surveillance. Repealing the CPR would also imply limited free circulation of construction products compared to the baseline. The objectives of protection of safety or environment relevant for construction products could not be pursued in a harmonised manner without the CPR framework being in place. Correspondingly, the main economic impact of a repeal of the CPR is expected to be a deterioration of the market surveillance situation. 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[146]. The interviewed stakeholders state that insufficient market surveillance and enforcement prevents benefits in terms of opening up markets and levelling the playing field for competitors from materialising fully[147]. Also, a deterioration in the market surveillance situation can lead to market distortion and

[145] Sub-option D3 was developed after the company survey and the public consultation. Therefore, it is not included here.

[146] Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, p.44.

[147] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 84.

mistrust in the system among economic operators. A lack of trust is one of the many obstacles that could lead to negative impacts on cross-border trade.

In the 2018 study, this option was assessed negatively with regard to all assessment parameters. Most stakeholders (companies, technical bodies, public authorities) think it would produce negative impacts, resulting in compliance cost increases and a reduction in market opportunities for companies. While the impact on product quality is uncertain, respondents believe the repeal would be detrimental for product information, surveillance and enforcements costs[148]. Many respondents stated in free text that a repeal of the CPR would lead to a collapse of the EU Single Market for construction products[149]. In the online survey, one market surveillance authority said that "the fact that mutual recognition didn't work was the very reason why the CPD was introduced in 1989; mutual recognition was not strong enough a tool to eliminate barriers to trade."[150]

Based on the company phone survey, it is estimated that this option could lead to negligible cost increases (<1,000 EUR per annum) per manufacturer for manufacturers across all size groups. For the manufacturing sector, option E could result in cost increases of between EUR 5.6 million and EUR 6.4 million per annum (not reflecting the costs of the market fragmentation).[151] However, the few respondents who prefer variants of option E expect it primarily to lead to a small decrease in administrative burden[152].

Social Impact

The results from the online survey confirm that all stakeholder groups consider this option to produce either very little change (i.e. product quality) or have a negative impact on health and safety (72%)[153]. Negative effects on health and safety would manifest in a higher number of grave accidents, with associated negative social consequences. Further, the deterioration in the level of safety might increase the risk of safety hazards for end users.

[148] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 99, p.104.

[149] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review. Annexes: First Findings report, page 143.

[150] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 94.

[151] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 98.

[152] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review. Annexes: First Findings report, page 143.

[153] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 99.

Environmental impact

The results from the online survey confirm that all stakeholder groups consider this option to produce either very little change (i.e. product quality) or have a negative impact on the environment (71%)[154].

Ultimately, among the feedback received on the Refined indicative options paper, many stakeholders, including business representatives, companies, technical bodies, NGOs etc., have voiced their negative views such as: "repealing the CPR, in addition to being a significant step back for the safety of European Citizens, would be a missed opportunity to raise to the challenges of the European Green Deal". Therefore, the environmental sustainability would have to be addressed by the SPI.

Stakeholders' views

Among all responses received during the public consultation and the company survey, option E was considered as preferred option by the lowest share of respondents, in all stakeholder groups and across all sub-options[155]. This reflects the adverse consequences to which repealing the CPR could potentially lead.

Further, stakeholders expected that option E would have limited or no impact on key parameters except for some expecting a reduction in the administrative burden (although it should be kept in mind that this is based on replies from respondents preferring option E). Moreover, it is important to acknowledge that companies who have cross-border trade would have to comply with the national legislations of each country they trade with, resulting in an increase in administrative burdens for them. However, while administrative burdens directly associated with the CPR would disappear, other cost factors (or even market losses) were considered likely to emerge.

Policy option E	Positive impacts	Negative impacts
Economic impacts	• Primarily a small decrease in administrative burden	• Cost increase of between EUR 5.6 million and EUR 6.4 million per annum for **manufacturing sector** • Limited free circulation of construction products • Deterioration of the market surveillance situation • Forgone revenue in terms of opening up markets and levelling the playing field for **competitors** • Market distortion • A certain level of mistrust in the system among **economic operators** ↓ • Negative impact on cross-border trade • Compliance costs increases • Reduction in market opportunities for **companies**
Social impacts	• None identified	• Deterioration in the level of safety for **consumers** • Decrease in the level of trust in the products on the market among **users and consumers** • Risk of increased safety hazards for **users** • Negative impact on health and safety
Environmental impacts	• None identified	• Negative impact on the environment • No contribution to the European Green Deal

[154] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, p. 99.

[155] See Annex 2 on consultation activities.

8. HOW DO THE OPTIONS COMPARE?

8.1. Comparison of the options

This chapter provides an overview of the effectiveness and efficiency of the policy options with regards to the specific objectives that triggered the initiative.

The three key assessment criteria are understood as follows[156]:

- Effectiveness: the degree to which the policy options allow achieving the general and specific objectives;
- Efficiency: the likely costs and benefits of the policy options on different stakeholders;
- Coherence: the fitting of the goals of other legislations and initiatives.

Table 2 summarises the effectiveness of the policy options in terms of achieving the specific objectives.

Table 2: Effectiveness of the policy options against the specific objectives

	Unblocking the technical harmonisation system	Reducing national barriers to trade for products covered by the CPR	Improving enforcement and market surveillance	Improving simplification, clarity and reducing administrative burden	Ensure safe construction products	Contributing to the reduction of the climate and environmental impact of construction products	Net effect
Option A	0	0	0	0	0	0	0
Option B	++	++	+++	++	++	++	++
Option C1	+	0	++	+	-	+	+
Option C2	+	+	+	+	-/+	+	+
Option C3	+	+	++	+	--	-	+
Option C1-C3	+	+	+	+	--	-	+
Option D1	++	+++	+++	++	+++	++	+++
Option D2	++	+++	+++	++	+++	+++	+++
Option D3	++	+++	+++	++	+++	+++	+++
Option E	+++	--	--	--	---	---	--

Legend: 0- almost no impact/no change; + reduced positive impact; ++ positive impact; ++ very positive impact; - reduced negative impact; -- negative impact; --- very negative impact

[156] Better regulation guidelines. https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en.

The following Table 3 presents an overview of the policy options in terms of effectiveness (how each option achieves the specific objectives), efficiency (cost-benefit analysis) and coherence with other pieces of the EU law.

Table 3: comparison of the policy options against the Better Regulation criteria

	Effectiveness	Efficiency	Coherence
Option A	0	0	0
Option B	++	++	++
Option C1	+	+	+
Option C2	+	+	+
Option C3	+	0	0
Option C1-C3	+	0	0
Option D1	+++	++	+++
Option D2	+++	++	+++
Option D3	+++	+++	+++
Option E	--	---	---

Legend: 0- almost no impact/no change; + reduced positive impact; ++ positive impact; ++ very positive impact; - reduced negative impact; -- negative impact; --- very negative impact

Effectiveness

In terms of **harmonisation and reduction of national barriers to trade**, a fully operational CPR under Option B will provide better clarification of the scope of harmonised sphere at the EU level, address the current underperformance of standardisation system and prevent national requirements. In this sense it outperforms Option C (where the CPR would cover less aspects than under option B, hence more national provisions would create obstacles), but is less effective than Option D which, on top of addressing the current issues also adds product requirements; as such, Option D will provide an even stronger level of harmonisation, contributing to improved free circulation of construction products. Option E would eliminate the harmonisation as no regulatory framework at EU level would be set.

In terms of **market surveillance and enforcement**, **simplification** and **legal clarity** Options B, C and D have a similar degree of effectiveness, because they build on the same set of measures as explained previously for Option B. In particular, option D has the highest degree of effectiveness, followed by option B, and then option C. Option E would imply repealing of the regulatory framework at the EU level, hence addressing the above specific objectives is not feasible.

In terms of **contributing to the reduction of the climate and environmental impact of construction products,** Option D offers the possibility to create inherent environmental product requirements, making the regulatory system complete: construction works related environmental performance aspects can already now be regulated by thresholds, but not the inherent environmental aspects. Effectiveness of this option in terms of environment is thus highest, as compared with other options.

Moreover, the impacts in terms of effectiveness of option D in the context of pursuing the political objectives set by initiatives related to sustainability of products should be considered as very significant, even against possible costs related to the implementation of this option. As construction products absorb more than 40% of all raw materials in

terms of quantity, the revised CPR will have a systemic impact on the European Green Deal and Circular Economy Action Plan as such. This not just by a possibility to determine a minimum quota of recycled materials to be used, but also by many other fine-tuned, product-specific requirements still to be developed under the future Commission acts and technical specifications. The uptake of progressive, environment-friendly regulatory solutions in the CPR is thus crucial for the success of the EGD and the CEAP.

In contrast, option A can hardly address the sustainability aspects, option C only partly. Option B is less effective than option D as it does not foresee the possibility of introducing inherent product requirements. Therefore, options A, B and C would rely on the SPI taking over – at least partially – to reach the same ambition in a less effective way.

In terms of **ensuring safe construction products**, Option D offers the possibility to create inherent safety product requirements, making the regulatory system complete: safety performance aspects related to construction works can already now be regulated by thresholds (e.g. smoke detectors), but not the inherent safety aspects (e.g. need for an anti-entrapment device in a door). Effectiveness of this option in terms of product safety is thus highest, as compared with other options.

Efficiency

In terms of costs and benefits, the study supporting the Impact Assessment estimated that Option B is most efficient. This estimate should be considered with a great degree of caution as it was based on the feedback from consulted stakeholders and often limited in terms of representativeness, due to limited number of responses received. Negative impacts in terms of efficiency of Option D were considered to be driven particularly by the expected increase of costs incurred due to the regulatory change from baseline to Option D. However, it needs to be stressed that such concrete costs cannot be estimated at this stage yet, because concrete product requirements would still need to be developed, where relevant, at a later stage. A targeted assessment of the costs and benefits will only be feasible at that point. Furthermore, the study did not take account of the SPI. For addressing the climate and environmental impact of construction products, option D is much more efficient than a combination of the other options with the SPI. Therefore, option D is considered as the most efficient option.

Finally, it needs to be stressed that such concrete costs cannot be estimated at this stage yet, because concrete product requirements would still need to be developed, where relevant, at a later stage. A targeted assessment of the costs and benefits will only be feasible at that point.

Coherence

In terms of coherency with other existing EU legislation, and as explained in the Problems section (Problem 3), without any intervention, overlaps will continue to exist and are expected to increase, particularly in relation to the future SPI. In addition, the CPR framework could hardly address the goals of the EGD. Option B foresees significant improvements in these respects, by addressing the scope of harmonisation, providing for clear definitions and collision rules, thereby eliminating overlaps, except with the SPI, or loopholes. It would also bring the CPR more in line with the EGD. Option D, which builds on the measures foreseen in Option B, responds favourably to the objectives of the EGD and CEAP, by anticipating, and – where relevant – contributing to the actions stemming from linked policy initiatives. It becomes more pressing to avoid overlapping requirements in the context of the SPI, expected to provide for the setting of

specific requirements linked to a list of aspects set out in the CEAP. Thus, Option D offers the most coherent approach for a future-proof CPR. For more details on the CPR-SPI interface, see Annex 11.

8.2. Preferred option

In light of the analysis in the previous chapters, **Option D** is considered the **preferred option**, in particular in view of the objectives to be achieved. Option D provides the necessary means to achieve the objectives satisfactorily by addressing the main shortcomings of the current CPR framework, including standardisation, national barriers to trade, ineffective market surveillance, lack of clarity and of simplification; while at the same time, it is the only one fully suited to effectively address the goals stemming from the European Green Deal, the Circular Economy Action Plan and other linked initiatives, in the context of construction products.

The very significant benefits and effectiveness of the Option D, as described above, substantiate its choice as the preferred one. Option D represents the approach with the highest degree of effectiveness and coherence, even though it may lead to additional costs for the economic operators. The additional costs would be justified by the positive impacts on economic operators, consumers and the environment in the long run. These costs cannot be quantified at this stage but will need to be considered when developing the technical specifications.

As explained in the previous section, Option D builds on Option B, including the need of mandatory harmonised standards for assessment of products' performance. A complementary element, clearly distinguishing it from option B, is the possibility of setting mandatory product requirements in the CPR.

Out of the three sub-options D3 is the preferred one as it can be seen as enhancement of the sub-options D1 and D2. The approach is in practice similar to the one of the EDD and of the future SPI.

While this preferred option may bring about some additional costs for the manufacturers (see section 7.4), it is expected that in other areas it will generate costs savings. In particular, given the expected better performing standardisation process supporting the CPR framework, potential cost savings in terms of administrative burdens would occur. The decrease in ambiguity in the provisions should allow cost savings due to reduced overlaps and duplication of obligations with other EU legislation. A small decrease in regulatory charges and compliance costs is expected as a result of the clarification and enhancement of the harmonisation scope at the EU level. Altogether, Option D is expected to result in a net reduction of administrative burden of approx. 180 million EUR (for more details, see Annex 3). Finally, due to the anticipated better market surveillance and enforcement, a reduction of foregone revenue of roughly 2.5 billion EUR for manufacturers of compliant products is expected.

9. REFIT (SIMPLIFICATION AND IMPROVED EFFICIENCY)

The assessment of the economic impacts demonstrates several cost savings with respect to the preferred option, namely option D. It is expected that the costs savings would be

for manufacturers and would include a decrease of administrative burden, regulatory charges and compliance costs. Furthermore, for manufacturers falling under the simplification provisions, costs savings are also expected due to decrease in the level of ambiguity. These costs savings could potentially balance to some extent the costs which are expected with this option. This is important for manufacturers in the long run.

Table 4: REFIT Cost Savings – Preferred Option(s)

REFIT Cost Savings – Preferred Option(s)		
Description	***Amount***	***Comments***
Well-performing standardisation process supporting the CPR framework	n/a	Cost savings in terms of administrative burdens expected for the standardisers, manufacturers and construction ecosystem
Less ambiguity in the provisions and application of digital tools (e.g. Digital Product Passport)	n/a	Cost savings expected particularly for manufacturers due to reduced overlaps and duplication of obligations with other EU legislation , as well as due to application of digital tools for e.g. products declarations and access to information
Clarification and enhancement of harmonisation scope at the EU level would, to a significant extent, make national requirements redundant	n/a	Small cost saving in regulatory charges and compliance costs expected
Better market surveillance and enforcement	2.5 billion EUR [157]	Cost saving (reduction of foregone revenue) coming from improved market surveillance
Net reduction of administrative burden	180 million EUR	Net cost savings, see Annex 3

10. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Policy monitoring and evaluation going forward related to the revision of the CPR would be centred around the core issues to be addressed by the revision. The successful implementation of the revised Construction Product Regulation depends on several factors. This chapter proposes several indicators to monitor and evaluate the implementation of the changes. More indicators could be formulated depending on the contents of the final revision of the CPR, if any.

Monitoring of the implementation of the (revised) CPR would start right after the adoption of the CPR, focused on its implementation. Table 5 presents suggested key indicators for monitoring and evaluation.

The starting point for indicators in the area of standardisation is the number of references of harmonised standards (hENs) cited in the OJEU out of the total number of hENs submitted to the Commission for citation. This indicator allows to calculate the percentage of citation and to better monitor and identify the reasons for non-citations or withholding citation, if any are still present. Also, an improvement of data completeness will be to add the number (or share) of rejections by the Commission of proposed

[157] Estimate by the study supporting this Impact Assessment. This represents a benefit for producers of compliant products (to the detriment of producers of non-compliant products). While this is a redistribution, improved market surveillance implies that the products sold are more compliant, hence it could be considered a real benefit.

standards. Moreover, the average length of the process from issuing a standardisation request by the Commission to delivery of draft standards by CEN is important as it will allow to assess whether one of the problems identified by stakeholders of the standardisation process, namely lengthiness of the standardisation process, is solved/improved. This can also be compared with the work in EOTA using similar indicators.

Another indicator of success would be data for environmental and product safety information, and environmental and product safety requirements incorporated in technical specifications. The number of technical specifications (or product families) with environmental information and requirements, and their relative importance in terms of environment is a crucial factor to evaluate the extent to which environmental consideration has increased as a result of the review of the CPR.

To measure an improved market surveillance the Commission could consult the Member States. A successful implementation would be supposed to lead first to detecting more non-compliant construction products and then to a reduction of this number. An indicator for monitoring could be the level of trust among economic operators, for which an evaluation after four to five years could provide information through stakeholder consultations. Relevant stakeholders could be consulted to evaluate the impact of the revision, in particular with respect to market surveillance.

An expected impact of the preferred option is an improvement of the functioning of the internal market for construction products. This should have a positive impact on cross-border trade within the EU. Accordingly, the data on trade values and trade volumes can be compared to the figures before the review of the CPR and to the production data.

Table 5: Suggested key indicators including source and timing of data collection

Area	Indicator	Unit	Source and timing
Standardisation	Number of cited references to hENS out of number of hENS submitted to COM for citation	Number and %	Internal Commission data; to be tracked by Commission (as is done already) Timing: bi-annual or annual
	Number (or share) of rejections by the COM of proposed standards	Number and %	Same as above
	Average length of process from issuing a standardisation request by the Commission to delivery of draft standards by CEN	Months	Same as above
	Number of cited EADs out of number of EADs submitted to COM for citation	Number and %	EOTA and Commission data
Market surveillance and enforcement	Non-compliant construction products detected (with reference to CPR)[158]	Number of products/ cases	Data from MS, reported to Commission Timing: annual
Production and cross-border trade of construction products	Production and cross-border trade of construction products in/within the EU (proxy indicator for the extent of trade barriers)	Volume in EUR (adjusted for inflation, if relevant) Volume in kg could also be a relevant unit	Dedicated study (external or internal) could be foreseen, based on EU trade statistics. Timing: Baseline (year 0) and follow-up (year 4, in connection with evaluation)
Sustainability and product safety	Environmental and product safety information incorporated in technical specifications	E.g. Number and share of technical specifications (or product families) with environmental or product safety information and their relative importance in terms of environment and health and safety	Data from draft/published standards as tracked by Commission services
	Environmental e.g. on minimum recycled content) and product safety requirements (incorporated in technical specifications	E.g. Number of technical specifications (or product families) with environmental and product safety requirements and their relative importance in terms of environment and health and safety	Data from draft/published technical specifications as tracked by Commission services

Evaluation

It is proposed that an evaluation of a revised CPR should take place within 4 to 5 years after the date of entry into force.

Such an evaluation should, in particular, assess the effectiveness of the revised legislation – with a special, but not exclusive, focus on the issues covered by the suggested indicators above - as well as its efficiency, relevance, coherence and EU value added. Options for further modification, update or enhancement of requirements should be considered by the evaluation, as is standard for any full-scale evaluation.

[158] This indicator would need to be elaborated in more detail after careful consideration of the fact that an *increase* in the number of non-compliance cases might indicate a more effective market surveillance and enforcement, whereas the ultimate goal would be to *decrease* the number of infractions.

ANNEX 1: PROCEDURAL INFORMATION

1. Lead DG, Decide Planning/CWP references

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

Decide Planning reference: 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 then 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.

This approach was presented in the inception impact assessment, published in June 2017.

However, considering the evidence collected through the supporting studies and public consultation, the Commission decided to decouple the retrospective and prospective assessments. In fact, the assessment proved to be more complicated than expected. This was partly due to the complexity of the CPR itself, but also due to the high expectations expressed by the stakeholders and Member States, in particular the political pressure caused by a case pending at that time at the European Court of Justice . These combined factors made clear that it was 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.

The evaluation of the CPR was published on 24 October 2019, together with the Report on the relevance of the tasks of the European Organisation for Technical Assessment (EOTA).

Two dedicated meetings with the Member States took place on 4 March[159] and 22 September 2020[160]. A so-called "Refined indicative options paper", aimed at presenting the options for a potential revision of the CPR, was published on 8 April 2020[161] (see Annex 12). A survey on it took place between 15 April and 31 August 2020[162]. A revised Inception Impact Assessment was published on 17 June 2020[163]. Feedback on this IIA was gathered in the period between 17 June 2020 and 19 August 2020. Dedicated Q&A sessions for stakeholders were organised on 22 June, 6 July and 20 July 2020. A technical stakeholders' conference on the CPR revision was organised on 7 September 2020[164]. A public consultation followed in the period between 4 September 2020 and 25 December 2020.

[159] DocsRoom - European Commission (europa.eu).
[160] DocsRoom - European Commission (europa.eu).
[161] DocsRoom - European Commission (europa.eu).
[162] https://ec.europa.eu/docsroom/documents/43103.
[163] Ares(2020)3153709.
[164] https://ec.europa.eu/docsroom/documents/43001.

An inter-service steering group (ISSG) was set up in September 2019 to follow the process of developing a study[165] launched in support of the Impact Assessment and the preparation of the Impact Assessment itself. The group included the following services: Secretariat-General, Legal Service, DG Energy, DG Environment, DG Climate Action, DG Employment, social affairs and inclusion, DG Competition, DG Justice and consumers, DG Research and innovation, Joint Research Centre.

The ISSG met on 25 September 2019 (kick-off meeting), 21 November 2019 (inception report), 19 February 2020 (first progress report), 8 December (second progress report), 5 February 2021 (first findings report), 29 April 2021 (draft final report), 19 May 2021 (draft Impact Assessment), 15 June 2021 (Impact Assessment) and 30 November 2021 (revised IA).

The ISSG was consulted on the consultation strategy (25 June 2020) and on the questions for the study validation workshop (4 February 2021). The validation workshop took place on 24 March 2021.

3. Consultation of the RSB

An upstream meeting took place on 17 March 2021.

Feedback from the Regulatory Scrutiny Board (RSB) was sought on the way to construct and compare the policy options as well as more general issues related to objectives, impacts and evidence.

The Impact Assessment was discussed at a meeting with the RSB on 22 July 2021. Following the negative opinion of the RSB from 26 July 2021, changes were made to the Impact Assessment report in order to reflect the recommendations of the Board. Table 6 below presents an overview of the RSB's comments and how these have been addressed.

The revised Impact Assessment was resubmitted to the RSB on 16 December 2021. The RSB delivered a positive opinion with reservations on 26 January 2022. Table 7 below presents an overview of the RSB’s comments and how these have been addressed.

Table 6: RSB recommendations I and how they have been addressed

RSB recommendations	Revisions introduced
(B) Summary of findings	
(1) The report does not sufficiently analyse and substantiate with evidence the key problems it aims to tackle. It is not sufficiently clear to what extent the Sustainable Product Initiative (SPI) determines the scope and measures of the initiative and how this interaction is reflected in the baseline.	The problem analysis has been complemented by available evidence from studies in section 2. It has been identified clearly the most important problems to be addressed. The report has established clear links between the problems and the drivers. The links and planned interaction with the SPI initiative and its interaction with the preferred option have been better explained in the text and in Annex 11.
(2) The report does not provide a clear presentation of the options and how they differ from each other. The available policy choices are not brought out clearly enough. The links between the options, the specific objectives and the problem drivers are not	The following have been added in section 6: - A clearer presentation of the options has been provided; - The narrative of the report has been made more comprehensible in order to explain to

[165] Supporting study for the impact assessment for the CPR Review 738/PP/GRO/IMA/19/1133/11072.

well established.	the non-expert reader the available policy options. - In addition to a much clearer presentation of the problem drivers and the general and specific objectives in section 5, Figure 4 (the intervention logic) was strengthened by linking problems, problem drivers, objectives and options.
(3) The analysis of impacts on administrative costs, simplification and SMEs is underdeveloped.	In Section 7, the impacts of the various options on SMEs have been systematically described and assessed fully using the available evidence. An annex on SME-specific impacts (SME test) has been developed and included in the report (Annex 5).
(4) The comparison of options does not reflect all available evidence, it is not coherent and its conclusions are not clearly justified.	The statements and arguments of the report have been backed-up with further facts and evidence. Namely, additional information from the following studies has been added to the various sections and annexes: - the 2016 Supporting studies for the Fitness Check on the construction sector; - the Commission's July 2016 implementation report on the CPR; - the REFIT Platform recommendations; - several Judgments of the Court of Justice of the EU; - the 2021 EP own initiative report on the implementation of the CPR; - the 2018 supporting study for the Review of the Construction Products Regulation; - the 2016 Report on the Economic Impacts of the Construction Products Regulation.
(C) What to improve	
(1) The report should better explain what the key problems are and how they inter-relate. It should better explain what aspects of the Regulation's underperformance are within the scope of this revision and which are not.	The problems with highest priority to be addressed and their inter-relation have been better explained in section 2. Also, the explanation of the drivers of the problems was enhanced in section 2. The report further elaborated on the links between the problems and the drivers in section 2.
(2) The report should make better use of the evidence available in the implementation and evaluation reports and the support studies. It should present the key findings upfront, so that the reader knows from the problem description what the key design and implementation issues with this Regulation are. It should substantiate with evidence the environmental protection and sustainability problems related to construction products, so that the need for harmonised environmental performance methods can be properly assessed. It should provide clear evidence for the need for action in the safety area and as regards pre-fabricated small houses.	The following has been added: - Further qualitative and quantitative data and analysis has been added in the section 3.2 and section 7; - A new Annex 5 (SME test); - The problems description in section 2 has been complemented by additional findings and evidence from various sources (e.g. the 2019 evaluation, the 2018 Evaluation, supporting study, the REFIT Platform recommendations); - Evidence on the environmental protection and sustainability problems related to construction products in section 2 and a new Annex 9 (environmental impacts of construction products); - Evidence on the need to act regarding the safety of construction products, as well as regards the pre-fabricated small houses; - In section 2, the report has further

	underlined new general objectives linked to the new EU policy initiatives on environmental sustainability and how they relate to construction products.
(3) The report should better explain the planned interaction with the SPI. It should consider possible options to avoid loopholes and overlaps with the SPI. It should clarify how the SPI is reflected in a consistent manner in the baseline scenario and in the presentation and comparison of options.	The baseline scenario now already presumes the introduction of the SPI. It is described how all options interact with the SPI. The coverage of environmental performance and product requirements by relevant options is described in Section 6, while the interface between the future CPR and the SPI has been explained in details in Annex 11. Furthermore, in Annex 11, an example, namely bricks, has been elaborated with the aim to illustrate in a comprehensive and exhaustive way the planned interaction with the SPI.
(4) The report should provide a clearer presentation of options covering the full set of policy choices. It should clearly explain the difference, and interdependence, between the options as well as the measures that would be part of each option. It should be clear how the policy options each address the objectives and there should be a clear link between objectives and problems. It should better explain how the options incorporate the new EU sustainability ambitions set out in recent initiatives.	The following have been added in section 6: - More comprehensive and coherent overview of the options and their measures, including where relevant the sustainability ambitions set out in recent initiatives. The following have been added in sections 5 and 6: - Figure 4 (the intervention logic) was strengthened by linking problems, problem drivers, objectives and options; - Figure 6 detailing the clear link between problems, objectives and options. In particular, the figure illustrates the comparison of the options against the specific objectives; - In section 7 (impacts of the options), an explanation whether each option addresses the new EU sustainability initiative; - In section 7, in the case when an option integrates the new initiatives, there is a description how/to what extent the option encompasses the new EU sustainability initiative; - In section 7, after each sub-section, tables illustrating and summarizing the negative and the positive impacts of each option. In section 8, the following have been added: - a comparison of the options against the specific objectives has been introduced, to show the effectiveness of every option (Table 2); - a comparison of the policy options against the Better Regulation criteria (Table 3).
(5) The report should analyse more thoroughly the impacts of the different options in terms of costs, burden reduction and simplification potential. Given that SMEs play a particular role in the construction product sector and that the current ineffective exemption for SMEs is part of the problem, the impacts of the various options on them should be systematically assessed. If sector competitiveness is considered as a problem to be tackled, the report should assess the corresponding impacts of the options. The report needs to present the costs better and should clearly summarise them	The following elements have been added in section 7: - More in depth analysis of the impacts of the different options in terms of economic, social and environmental aspect has been added, including an assessment of the costs and implications on administrative burden; - The impacts of the various options on SMEs have been systematically assessed; - An annex 5 with the SME test was developed; - After each option's impact, a table clearly

in the cost/benefit table in annex, while clarifying who has to bear the costs.	presenting the benefits and the costs to different stakeholders; - The impact of the options on competitiveness has been taken into account, wherever relevant; - Table showing the overall comparison of the options, including, but not limited to the comparison of the impact of each option in terms of effectiveness, efficiency and coherence; - In Annex 3, the methodology used to estimate the direct benefits in terms of improved market surveillance was described.
(6) The report should strengthen the comparison of options and the analysis leading to the choice of the preferred option. It should use all available evidence to present a coherent analysis of the implications of the different options, in comparison with a dynamic baseline. It should avoid relying almost exclusively on stakeholder views. The report should justify how it aggregates scores across the assessment criteria. The costs and benefits of the preferred option need to be more clearly identified and its choice better justified.	The comparison of the options and the analysis leading to the choice of the preferred option have been strengthened in section 8 by adding findings and evidence from various sources (e.g. the 2016 Supporting studies for the Fitness Check on the construction sector, the 2018 supporting study for the Review of the Construction Products Regulation, the 2019 evaluation). The cost and the benefits of the preferred option have been clearly identified and presented in table in section 8. Section 8 has been elaborated in more detail to clearly present the analysis of the options against the criteria of effectiveness, efficiency and coherence (including Table 2). Separate Table 3 on effectiveness of the options as compared with the specific objectives has also been introduced in this section.
(7) The report should make better use of the feedback from stakeholders and in particular illustrate better how different stakeholder groups view the policy options and the associated costs and benefits.	In section 7, the analysis of the impacts of the different options has been improved by distinguishing between the different stakeholder groups to the maximum extent of the available evidence (e.g. manufacturers, users, consumers, citizens).

Table 7: RSB recommendations II and how they have been addressed

RSB recommendations	Revisions introduced
(B) Summary of findings	
(1) The report is not sufficiently clear about the problems that the initiative aims to tackle and how these link to the objectives and options. It is not clear how the baseline scenario, options and impact analysis reflect and articulate with the expected effects of the parallel SPI.	In section 2, the report has established clearly the problems that the initiative aims to tackle and how these link to the objectives and the options. In addition, it has been explained how the baseline scenario, options and impact analysis reflect and articulate with the expected effects of the parallel SPI.
(2) The report is not sufficiently clear whether all of the options identified can tackle all of the problems, whether the selection of measures contained in the preferred option is the best performing combination and whether all measures are necessary.	In section 8, the analysis has been complemented by information concerning whether all of the options identified tackle all the problems. The report has established whether the selection of measures contained in the preferred option is the best performing combination.
(3) The report is not sufficiently clear on the net benefits, efficiency advantages and justification of incorporating sustainable product requirements into the CPR, compared to addressing them in the horizontal SPI framework as for other products.	A clear presentation of the net benefits, efficiency advantages and justification of incorporating sustainable product requirements into the CPR has been offered in the report.
(4) The summary comparison of options is not sufficiently clear or robust on the cost and benefit estimates of the options. Some of the effectiveness and efficiency scores are not convincingly justified.	The summary comparison of the options in section 8 has been strengthened in order to ensure the robustness of the cost and benefit estimates of the options. Moreover, the effectiveness and efficiency scores have been additionally justified.
(C) What to improve	
(1) The problem section should be further improved to ensure problems and their drivers are clearly differentiated and that the issues identified are sufficiently explained. The report should be more explicit about the safety issue and clarify whether it is (i) a self-standing problem beyond the functioning of the internal market and harmonising the way performance is communicated across Member States (and therefore to be tackled by the options) or (ii) an issue already covered by other EU instruments. In this context, the explanation and evidence related to the inclusion of 3D printed products as well as prefabricated small houses should be clearer.	The narrative of the problem section 2 has been made more comprehensive to ensure that the problems and their drivers are differentiated enough. The narrative provided in the report on the safety issue has been made more explicit with the aim to clarify that inherent product safety (safety aspects not related to the safety of construction works), is not dealt with in a consistent manner for construction products and is largely left to the Member States, despite Article 114 TFEU (the legal basis for the current CPR) requiring to strive for a high level of protection of safety and consumers.
(2) When describing the difficulties with implementation and enforcement of the current CPR, the way the problem is described implies that clearer CPR provisions would solve this. However, the issue of lack of administrative capacity in Member States is not addressed. The report should be clearer about how a revised CPR would address this core problem, especially if the framework becomes more complex as proposed, since it would not only regulate how information on the products is presented across the EU but also include sustainability requirements.	The statements and the arguments of the report with respect to the issue of lack of administrative capacity have been completed by explaining how the revised CPR would address this core problem, i.e. through empowerment for delegated acts on minimum number of checks to be performed and on minimum human resources to be deployed for construction products.
(3) The report should be clearer about the links between options, problems and objectives. For instance the report should clarify whether: (i) sub-option C3 (making the common technical language	The report has established clear links between the options, problems and the objectives. It has been clarified whether sub-option C3 would not undermine the objective related to the functioning

voluntary) would not undermine the objective related to the functioning of the single market, (ii) sub-option D1 (voluntary standards leading to a presumption of conformity, while allowing for other means to prove conformity) would not further lead to diverging approaches and make it more difficult for the objective related to market surveillance authorities to be achieved.	of the single market, and whether sub-option D1 would not further lead to diverging approaches and thus make it more difficult for the objective related to market surveillance authorities to be achieved.
(4) While the report provides a better explanation of the envisaged interaction between the future CPR and the SPI, it still needs to better explain how the SPI is reflected in a consistent manner in the baseline scenario and in the presentation, assessment and comparison of options.	The explanation of the envisaged interaction between the future CPR and the SPI has been strengthened by additional explanations on how the SPI has been reflected in the baseline scenario and in the presentation, assessment and comparison of the options.
(5) The report should clearly explain whether the options considered are realistic and can effectively deliver all the objectives of the proposed initiative (i.e. product safety, sustainability). It should also explain whether the selection of measures contained in the preferred option is the best performing combination and whether all envisaged measures are necessary. It should identify the hybrid sub-option D1/D2 upfront and then compare it with the two stand-alone sub-options, including in terms of adding legal complexity. It should provide more detail on the envisaged empowerment of Member States to exempt micro-enterprises and explain how this would be in line with the envisaged single market objectives.	The analysis of the options in section 7 has been complemented by information whether the options could effectively deliver all the objectives. The selection of measures contained in the preferred option has been further proved with explanations to be the best performing combination. In section 6, the hybrid option D1/D2 (now D3) has been identified upfront and then compared with the two stand-alone options. Additional information has been provided on the envisaged empowerment of Member States to exempt micro-enterprises. Further explanations how this empowerment would be in line with the envisaged single market objectives have been presented in the report.
(6) The report should better explain how the simplification provisions would be implemented and enforced compared to the current situation, to ensure they actually deliver the described benefits. It should be clearer on the net benefits and efficiency gains of incorporating sustainable product requirements into the CPR compared to regulating these issues exclusively in the horizontal SPI framework as for other products. It should better explain how coherence would be ensured and legal complexity avoided.	The procedure with respect to the way that the simplification provisions would be implemented and enforced, compared to the current situation has been outlined. Information on the net benefits and efficiency gains of incorporating sustainable product requirements into the CPR compared to regulating these issues exclusively in the horizontal SPI framework as for other products has been clarified in the report. Explanation on how coherence would be ensured has been provided.
(7) While the comparison of options has improved, the report still needs to better justify and substantiate the scores presented in the comparison overview tables. For instance, it is not clear why (i) option D receives a higher score in contributing to the reduction of the climate and environmental impact than option B (in combination with the horizontal SPI framework) or (ii) option B is considered more efficient than D given that efficiency arguments are considered as the main reason for bringing sustainability requirements under the remit of the CPR. Overall, the report should provide a clearer comparison of the costs and benefits of the options, including quantitative estimates as available to support the efficiency analysis.	The scores presented in the comparison overview tables in section 8 has been justified and substantiated with additional information. A clearer comparison of the costs and benefits of the options has been elaborated in section 8.
(8) While the report is transparent about the overall preference of stakeholders for the baseline scenario, it should more explicitly discuss the reasons why	The analysis in section 7 has been backed-up with the reasons, outlined by various stakeholders in the survey on the options paper, why they did not

there is only very limited support for any of the policy change options (e.g. empowering the Commission, integrating sustainability requirements), given the expected significant benefits.	support the policy change options, given the expected significant benefits.

4. Evidence, sources and quality

Available report and studies, in particular:

- Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report. Available at: https://op.europa.eu/en/publication-detail/-/publication/20f672b4-1503-11ec-b4fe-01aa75ed71a1/language-en

- European Commission (2019b). Commission Staff Working Document SWD(2019)1770 - Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC. Available at: https://ec.europa.eu/docsroom/documents/37827.

- European Commission (2019c). COM(2019) 800 Final. Report from the Commission to the European Parliament and 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 (EO) 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. Available at: https://eur-lex.europa.eu/legalcontent/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN.

- European Commission (2020a). Refined indicative options for the review of the Construction Products Regulation. Available at: https://ec.europa.eu/docsroom/documents/40762.

- European Commission (2020c). Review of the Construction Products Regulation (CPR) - Survey on the Option Paper, April-August 2020 – results. Available at: https://ec.europa.eu/docsroom/documents/43103.

- VVA, JIIP, Danish Technological Institute and GDCC (2018a). Supporting study for the Review of the Construction Products Regulation: Evaluation. European Commission. Available at: https://op.europa.eu/en/publication-detail/-/publication/e771a8cf-ed42-11e8-b690-01aa75ed71a1/language-en.

- VVA, JIIP, Danish Technological Institute and GDCC (2018b). Supporting study for the Review of the Construction Products Regulation: Impact Assessment. European Commission. Available at: https://op.europa.eu/en/publication-detail/-/publication/57fd5ffaed41-11e8-b690-01aa75ed71a1/language-en.

Use was made of expert advice, in particular through the following channels:

- The CPR review technical platforms: six meetings were held between March and September 2020, with Member State representatives, business associations, companies, technical bodies and testing bodies. The following topics were addressed:

standardisation, simplification, information needs, coexistence of EU and national systems, environmental requirements and the future of EOTA[166].

- A validation workshop gathered 225 participants on 24 March 2021, including Member State representatives, business associations, companies, technical bodies and testing bodies. The workshop presented and validated the draft findings and conclusions from the study.

- Economisti Associati, Milieu and CEPS, with contributions from BPIE and DBRI (2016) Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation. Available at: https://ec.europa.eu/docsroom/documents/19343

- RPA(2016). Supporting Study for Fitness Check on the Construction Sector – The Second Phase on EU Environment, Health and Safety Legislation. Available at: https://ec.europa.eu/docsroom/documents/19661

- VVA, DTI and TNO (2016). Economic Impacts of the Construction Products Regulation. Available at: https://ec.europa.eu/docsroom/documents/20903

- Refit platform recommendations. Available at: https://wayback.archive-it.org/12090/20200221170910/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

- BRE, Ecorys, and Vito (2016), Supporting study for the evaluation of the relevance of EOTA tasks. Available at: https://op.europa.eu/en/publication-detail/-/publication/62e85006-d313-11e6-ad7c-01aa75ed71a1

- RPA(2015). Analysis of the implementation of the Construction Products Regulation. Available at: https://op.europa.eu/en/publication-detail/-/publication/d3449aa6-8775-11e5-b8b7-01aa75ed71a1

- Centre for Industrial Studies (2017). Cross-border trade for construction products. Available at: https://ec.europa.eu/docsroom/documents/27301

- Centre for Industrial Studies (2020). EADs and ETAs: Added value to the construction sector. Available at: https://www.eota.eu/sites/default/files/uploads/EOTA%20positions/2020-csil-eota-report-0109.pdf

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.

Judgement of 27 October 2016, *James Elliot Construction*, C-613/14, ECLI:EU:C:2016:821,

[166] Minutes available at: Review of the CPR | Internal Market, Industry, Entrepreneurship and SMEs (europa.eu).

http://curia.europa.eu/juris/document/document.jsf?text=&docid=184891&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5620375.

Judgement of 13 June 1958, *Meroni* v *High Authority*, C-10/56, ECLI:EU:C:1958:8, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61956CJ0010&from=EN.

Judgement of 5 September 2012, *Parliament* v *Council*, C-355/10, ECLI:EU:C:2012:516, paras. 64-82, http://curia.europa.eu/juris/document/document.jsf?text=&docid=126363&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=935739.

Judgement of 22 January 2014, *UK* v *Council and Parliament*, C-270/12, ECLI:EU:C:2014:18, paras. 41-55, http://curia.europa.eu/juris/document/document.jsf?text=&docid=146621&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5618770.

Report on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation), 2021, https://www.europarl.europa.eu/doceo/document/A-9-2021-0012_EN.html.

ANNEX 2: STAKEHOLDER CONSULTATION

In the context of the impact assessment study on the revision of the Construction Products Regulation (Regulation (EU) No 305/2011) various consultation activities were conducted between October 2019 and December 2020. The aim was to assess the potential areas of revision and the impacts of the suggested policy options on different stakeholder groups. This Annex presents the results of the consultation activities carried out.

The consultation activities[167] included a horizontal online survey (survey on horizontal issues), a company survey and a public consultation. The horizontal survey targeted selected experts and aimed at identifying how to address the various horizontal issues identified during the evaluation of the CPR in order to collect input to be used for the further refinement of the draft options. With respect to the company survey, the survey targeted companies relevant to the construction products market and therefore the questionnaire was sent out to economic operators in the construction products sector. Concerning the public consultation, the consultation was publicly accessible, thus also open to companies, as well as any other types of respondents.

In addition, two ad hoc meeting with Member States' experts on the Review of the CPR took place in the year 2020. The goal of the first meeting in March was to discuss this process and to answer questions about the options paper distributed ahead of the meeting. In the second meeting, in September, the Commission services aimed at giving the floor to Member States' experts to collect their views on the four main agenda topic: Scope and relationship with other EU law, Harmonised sphere, national law and information needs, Annex I (basic requirements for construction works), Environmental requirements.

1. OVERVIEW OF THE PARTICIPANTS

For all consultation activities, the main stakeholder groups addressed were:

- European technical bodies and associations (EOTA and "other" incl. consumer and standardisation organisations) and other stakeholders involved in standardisation;
- Companies/manufacturers, importers and distributors;
- Consumer associations;
- European/international organisations (industry associations);
- Market Surveillance Authorities;
- National authorities;
- Notified bodies;
- Others, such as citizens and other NGOs;

[167] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review.

- Workers/professionals' associations.

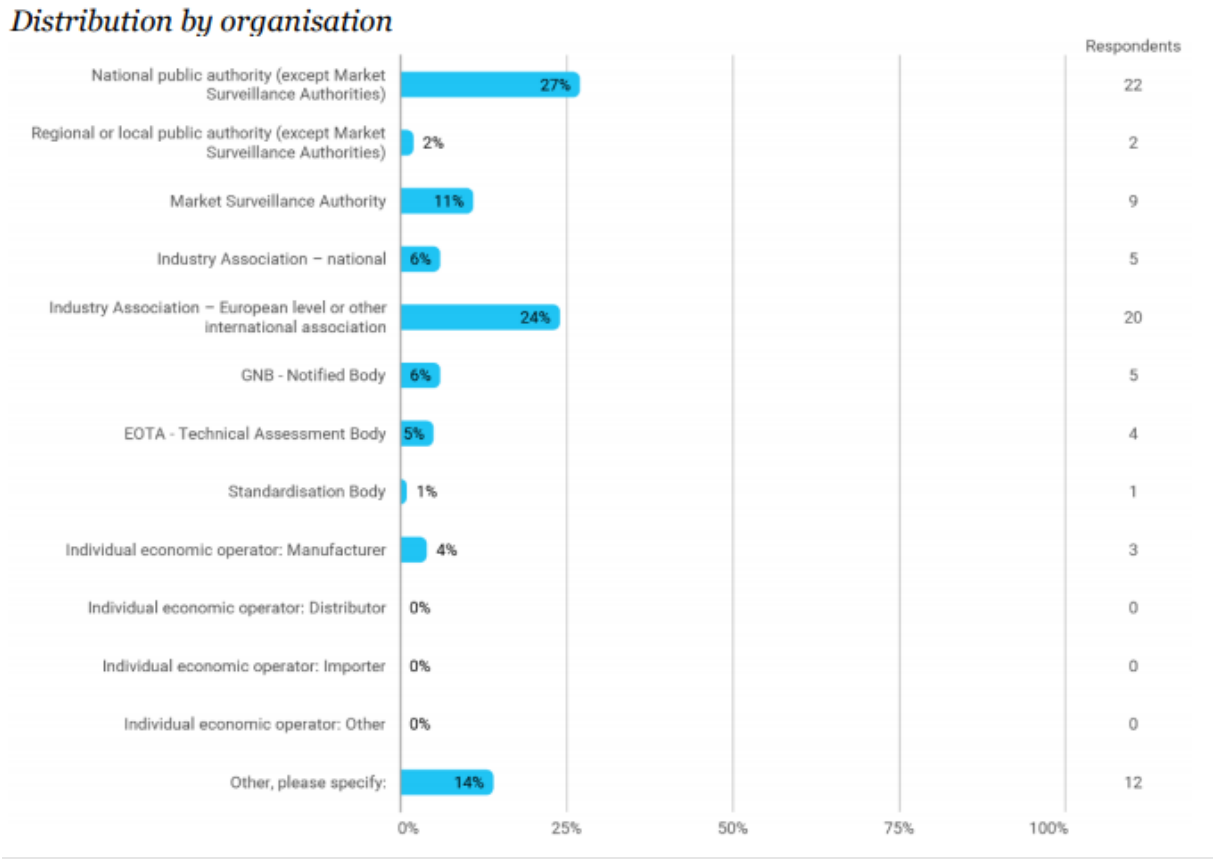
217 potential respondents were invited to participate in the **horizontal survey** on October 11, 2019. The survey closed on October 31, 2019.

The survey on horizontal issues gave 83 complete answers and thus a response rate of 38%. The largest group of organisations that have participated were the national public authorities (without Market Surveillance Authorities) (27 %), while Industry Associations were represented with 24% and Market Surveillance Authorities with 11%. 4% of the total participants were manufacturers (individual economic operators).

The "other" category (12 respondents) varied widely; 7 were individual consultants/experts, and the rest included 1 research institute, 1 consumer association, 1 crafts association, 1 professional association and 1 European stakeholder association (type not specified).

Figure 7 below summarise the participation of the different stakeholder groups in the horizontal survey.

Figure 7: Distribution of respondents by organisation in the survey on horizontal issues



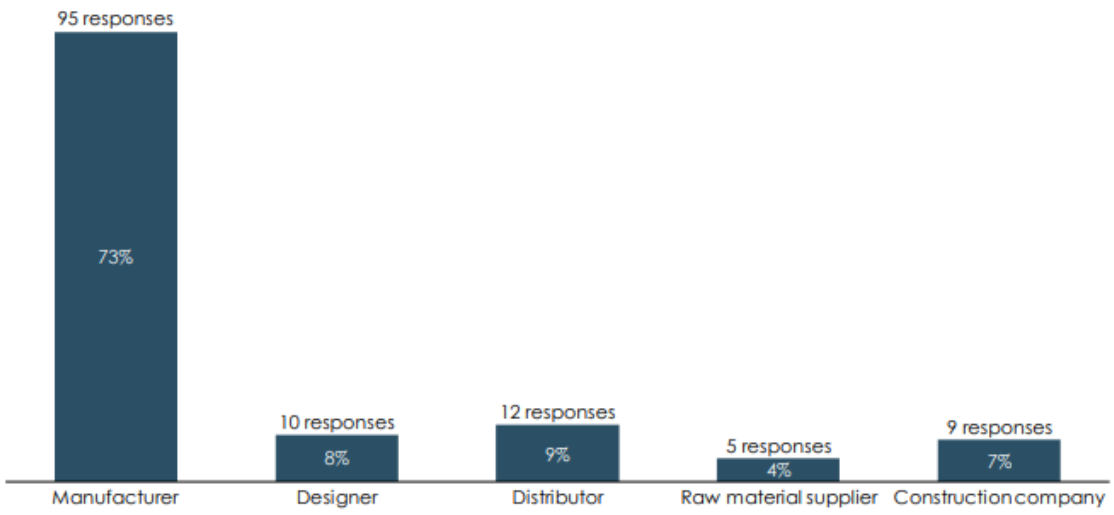
With respect to the geographical distribution of the participants, the largest number of participants came from Belgium with 30 participants (36%) and Germany with 10 participants (12%). Participation from other countries was between 0 and 4 participants. It should be noted, however, that among the 30 respondents based in Belgium, 20 were European/international organisations (industry associations), and another 5 were other types of European technical bodies and associations (EOTA and "other" incl. consumer and standardisation organisations).

The Company survey was launched on Monday 10 August 2020 and invitations were distributed to 1,200 companies' info/main contact email-addresses. The sample of 1,200 firms was selected to correspond to the above target criteria for types of relevant economic operators and firm sizes (based on number of employees), as well as a country-representation of respondents from all EU27 Member States, the UK, Norway and Switzerland. The Company survey was closed on 30 October 2020.

In addition, invitations were shared with 125 national and European business organisations in mid-September 2020, asking them to circulate the invitation to their member companies. In addition, the European Commission forwarded invitations to the companies that had registered for the Online CPR Revision Technical Stakeholder Conference on 7 September. The last two extensions turned out to be particularly effective at increasing the number of companies responding to the survey. In total, 12,304 invitations were sent to companies (not including the business organisations and the outreach facilitated by the Commission) – manufacturers of construction products, distributors of construction products, construction companies, designers and raw material suppliers around the EU, the UK, Norway and Switzerland. Thus, the number of invitations increased tenfold compared to the initial planned outreach to 1,200 companies.

In total, 150 completed questionnaires were received, corresponding to a response rate of approximately 1.2 per cent. However, out of the 150 respondents, 8 were business associations and these are subsequently not included in the figures and the analysis. Furthermore, the results focus on companies from the EU27 Member States, with results including both EU27 companies and non-EU companies reported separately. Thus, in total, the central sample consisted of 131 companies from Member States.

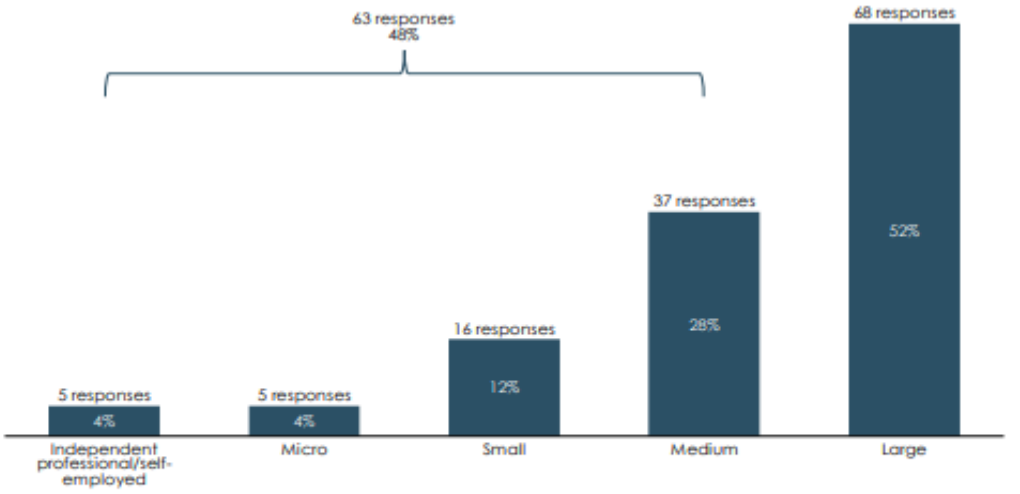
Figure 8: Distribution of respondents by type of economic operator in the company survey



Note: 24% of the above respondents also reported that they are importers of construction products.
Source: CPR review Company survey.

The respondents across types of economic operators were distributed as shown in Figure 8. Besides manufacturers a considerable number economic operators from upstream and downstream participated.

Figure 9: Distribution of respondents by firm size (based on number of employees and turnover)



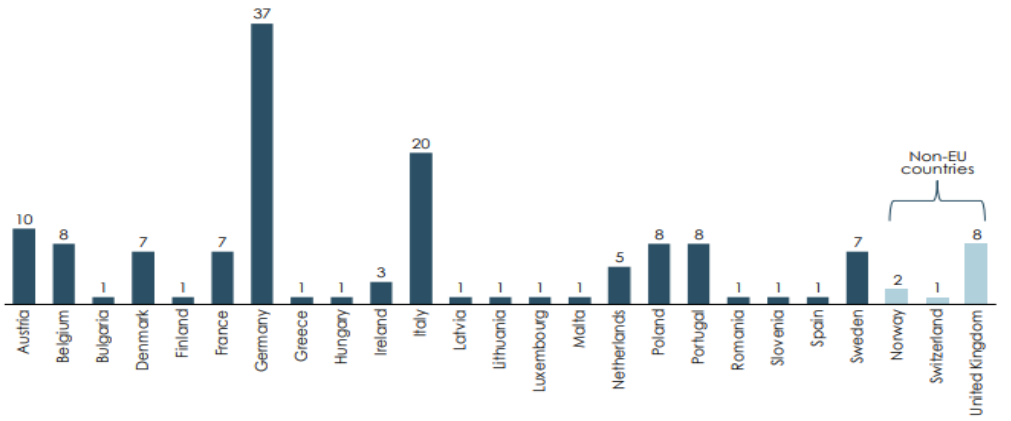
Note: Microenterprises have 0 to 9 employees and turnover equal to or less than EUR 2 million, Small enterprises have 10 to 49 employees and turnover equal to or less than EUR 10 million, Medium-sized enterprises have 50 to 249 employees and turnover equal to or less than EUR 50 million. Large enterprises have 250 employees or more and/or a turnover greater than EUR 50 million.

Source: CPR review Company survey.

With regards to firm size, approximately 48% of the respondents are microenterprises, small enterprises medium-sized enterprises (SMEs), as shown in Figure 9.

Regarding the geographical spread, Figure 10 reveals that companies from Germany are the most represented in the sample, with 28% of the respondents. Italy was the country with the second highest number of respondents, followed by Austria, Belgium, Poland and Portugal. There were no respondents from Croatia, Cyprus, Czech Republic, Estonia and Slovakia.

Figure 10: Distribution of respondents by country of headquarters



Source: CPR review Company survey.

The Public Consultation was launched on 4 September 2020 and was open until 25 December 2020 (16 weeks). The public consultation was publicly accessible, thus also open to companies, as well as any other types of respondents.

There were in total 263 respondents, out of which 23 citizens (21 EU individuals and 2 non-EU individuals. Out of those, 9 respondents chose to give their input via the

shorter questionnaire, whereas 14 opted for the longer, more detailed questionnaire. Thus, in total 254 respondents gave their input via the longer questionnaire.

Companies/business organisations were the most represented stakeholder groups representing 37% of the answers (n=97), followed by business associations with 33% (n=87), EU citizens with 8% (n=21), public authorities with 7% (n=19), non-governmental organisations (NGOs) with 3% (n=8), academic/research institutions, consumer organisations, environmental organisations, non-EU citizens and trade unions represented between 1-4 respondents each and 7% selected "other" as their type of respondent(n=19).

With regard to the country of origin of the respondents, 85% (n=223) of the respondents reported an EU Member State as their country of origin, while 15% (n=40) were from non-EU countries.

The distribution of respondents by country of origin was as follows: 23% (n=60) of respondents indicated Germany as their country of origin, 18% (n=48) Belgium, 10% (n=25) Italy, 7% (n=19) Norway, ~5% (n=14) France, ~5% (n=14) Switzerland and ~5% (n=13) Spain. These 7 countries represented 73% of the replies. The other 27% were from Poland (9 respondents), Austria (8 respondents), Czech Republic (7 respondents), Portugal (7 respondents), Sweden (7 respondents), Netherlands (6 respondents), Denmark (5 respondents), the United Kingdom (5 respondents), Hungary (3 respondents), Ireland (3 respondents), Romania (2 respondents), Bulgaria (1 respondent), Canada (1 respondent), Croatia (1 respondent), Estonia (1 respondent), Finland (1 respondent), Greece (1 respondent), Liechtenstein (1 respondent) and the United States (1 respondent).

Concerning the size distribution of responses from companies, 46% (n=45) of the company respondents have 250 employees or more, 22% (n=21) have 50-249 employees, 18% (n=17) have 1-9 employees, and 14% (n=14) have 10-49 employees. Thus, 54% of the company respondents were SMEs.

2. SUMMARY OF RESULTS

With respect to the underlying survey methodology for the company survey and public consultation, the method used was Choice modelling (CM)[168]. A fundamental reason for using choice modelling for providing new insights into economic operators' preferences and valuations of the revised policy options is that it enabled, at a minimum, to establish a ranking of preferences for the options being put forth by the Commission, alongside estimations of their relative values. This allowed to establish which options are most and least preferred and, importantly, by how much. The core of the questionnaire was the same for the two main surveys, namely the paired comparison part, where respondents were asked to compare the different options.

[168] Choice modelling (CM) relates to a set of survey methods that use sets of options, or choices, to obtain information from respondents. As such, CM is a subset of stated preference methods – the difference being that preferences are obtained indirectly, as opposed to directly asking for valuations. The big advantage associated with this method is that it is possible to identify individuals' valuations for goods and services for which where there is no market price and individuals find it difficult to directly place a 'true' value on the good's or service's worth.
Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review, Annex VI: Results of the horizontal survey (Inception report), page 116.

This report provides a short overview of the consultation activities with regards to the policy options assessed. A more detailed information is provided in the Supporting study for the impact assessment of the CPR Review[169].

2.1 The horizontal survey

The evaluation of responses to the horizontal questionnaire yielded strong support for the CPR's goal to ensure the free circulation of construction products in the Single Market. On a scale from 0 to 3, where 0 implies "no importance at all" and 3 implies "absolute importance", 75% of respondents selected 3, while another 18% selected 2.

Interestingly, 53% of respondents also deemed it of absolute importance (i.e. a 3 on the scale) that the CPR should ensure the health and safety of EU citizens, while another 33% selected 2. Lastly, 37% of respondents selected 3, and 36% of respondents selected 2, regarding the importance of the CPR to protect the environment. While these three policy goals may not always be mutually compatible, the results indicated that at least 73% of respondents found it at least important that the CPR addresses each goal.

Furthermore, an overwhelming majority of experts consulted (80%) expressed support for the common technical language for assessing the performance of construction products – i.e. the current approach – in order to achieve the free circulation of construction products. As only 3% of respondents supported mutual recognition as the best way to achieve free circulation, an overwhelming majority was against a repeal of the CPR. At the same time, more than two thirds (68%) of the respondents believed that interpretation issues[170] required a revision of the CPR either in conjunction with guidance[171] (63%) or without any further measures (5%).

2.2 The company survey

The purpose of the Company survey was to assess how the Refined indicative policy options for the CPR, prepared and developed by the European Commission and informed inter alia by the horizontal survey among technical stakeholders during the inception phase of this project, were expected to impact firms in the European construction products sector.

The variants of the baseline policy option A were the most preferred across all elements (in element 11 (New business models), "I do not know/Indifferent" was however the most commonly selected answer). On average, variant A was chosen as the most preferred variant by 40% of the respondents across all the 13 elements in which it was available to select. The variants of policy option B were the second most preferred variants. The variants of policy option D were the third most popular variants. Policy option C contained three sub-options C1, C2 and C3. Variant C1 was chosen as the most

[169] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review.

[170] Interpretation issues: there are differences in the way Member States, economic operators and Notified Bodies interpret some of the CPR Articles.

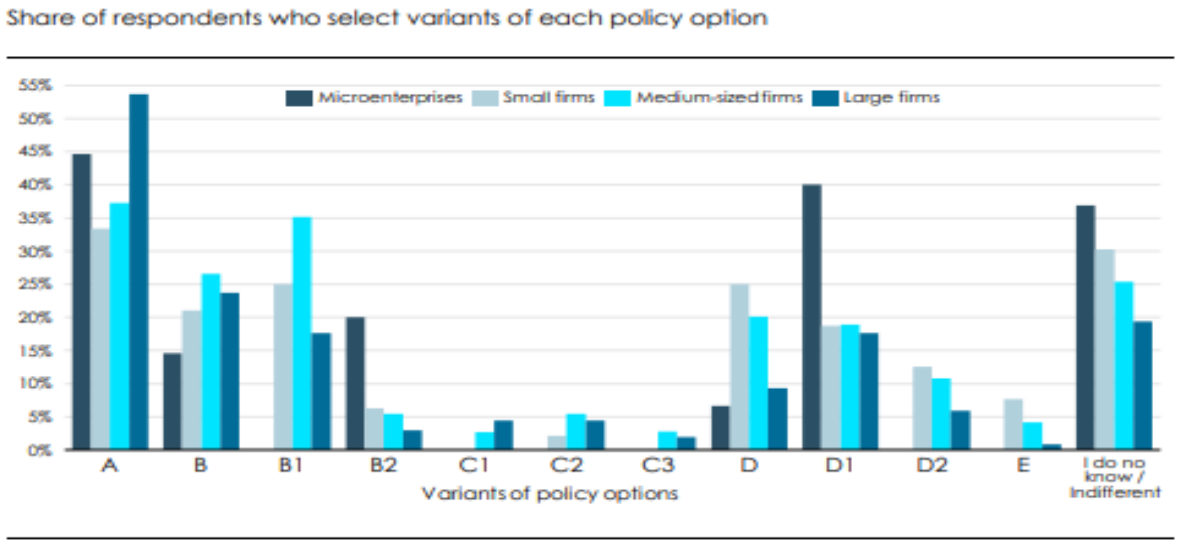
[171] Guidance elaborated at EU level exclusively.

preferred variant by 3% of the respondents in the element in which it was available to select. On average, variant C2 was chosen as the most preferred variant by 4% of the respondents across the 3 elements in which was it available to select. On average, variant C3 was chosen as the most preferred variant by 2% of the respondents across the 3 elements in which is it available to select. On average, the variants of policy option E was chosen as the most preferred variant by 2% of the respondents across all the 13 elements where it was available to select. On average, 21% of the respondents selected "I do not know/Indifferent" across all 13 elements.

Concerning preferences across types of economic operators, manufacturers tended to be more in favour of the variants of the baseline policy option A, compared to the other types of operators. Across all elements, 54% of manufacturers selected variants of option A as their preferred variant, while 26% of other types of operators selected variants of Option A as their preferred variant. However, variants of option A were still the most preferred also among other types of operators, save for the very high share (47%) on average selecting "I do not know/Indifferent". The second most preferred option among manufacturers was variants of option B, preferred on average by 25% of manufacturers (and alternative B1 was preferred by 26% in element 13 (circular economy), compared to 3% preferring alternative B2 in that element.

With respect to preferences across firms of different sizes, Figure 11 summarises the average preferences of all variants across all policy options, across the different size classes of companies. It is worth to keep in mind that manufacturers make up 10% of the microenterprises (including independent professionals/self-employed), 56% of the small enterprises, 76% of medium-sized enterprises and 84% of the large enterprises, in the sample.

Figure 11: Average preference ranking across all 13 elements, by different firm sizes



Note: n=131, of which 68 large enterprises, 37 medium-sized enterprises, 16 small enterprises and 10 microenterprises (including self-employed/independent professionals). Microenterprises have 1 to 9 employees and turnover equal or less than EUR 2 million, Small enterprises have 10 to 49 employees and turnover equal to or less than EUR 10 million, Medium-sized enterprises have 50 to 249 employees and turnover equal to or less than EUR 50 million, and Large enterprises have 250 employees or more and/or a turnover of more than EUR 50 million.

Source: CPR review Company survey.

Overall, the survey data suggested that economic operators were broadly in favour of the current CPR, but they noted that there were issues that needed to be solved. Primarily,

this concerned issues related to the standardisation process. If legal revision was needed to solve the issues, economic operators seemed to prefer that the issues were repaired without a fundamental change of the underlying principles of the CPR (i.e. a preference for policy option B if the CPR was to be revised). Compared to the baseline option A, respondents who preferred variants of option B expected it to bring increases in, primarily, construction product safety, economic actors' compliance with relevant rules and regulations, sustainable use of resources for producing construction products, cross-border trade in construction products within the EU Single Market and competition among manufacturers of construction products in the EU.

There was only limited support for enhancing the CPR by introducing EU-wide product safety requirements (option D), and very limited support for focusing the CPR by means of limiting the scope of the CPR (option C). However, the respondents who preferred variants of options D and C typically expected them to lead to larger impacts than those that preferred option B, compared to the baseline option A. Respondents preferring variants of option D expected it to increase construction product safety, compliance with relevant rules and regulations, quality of the built environment in the EU, cross-border trade of construction products in the EU Single Market and competition among manufacturers of construction products in the EU.

Respondents who preferred variants of option C (where variants of Option C2 – focusing the CPR to core areas only – are the most preferred) primarily expected it to lead to an increase in construction product innovation, competition among manufacturers of construction products, cross-border trade of construction products in the EU Single Market, construction product safety, competitiveness of SME manufacturers of construction products vis-à-vis large manufacturers and compliance with relevant rules and regulations.

The strongest individual result of the survey was that repealing the CPR was not preferred by the economic operators. Many respondents stated in free text that a repeal of the CPR would lead to a collapse of the EU Single Market for construction products. However, the few respondents who preferred variants of option E expected it to lead to a decrease in administrative burden for companies and an increase in cross-border trade of construction products in the EU Single Market. They also expected it to lead to a decrease in competitiveness of SME manufacturers of construction products vis-à-vis large manufacturers.

2.3 The public consultation

Generally, the result of the public consultation showed that a large majority of stakeholders rejected repealing the CPR (i.e. policy option E). Within each stakeholder group, this variant was the least preferred by at least 76% of the respondents in all elements. Numerous respondents stated in free text that a repeal of the CPR would lead to a collapse of the EU Single Market for construction products. Nevertheless, the few respondents who preferred variants of option E (on average across elements only 0-6% of the respondents within each stakeholder group) expected it essentially to lead to a small decrease in administrative burden, and a very small increase in construction product safety.

Mainly, business associations, manufacturers of construction products, raw material suppliers and trade unions were in favour of the current CPR (i.e. baseline policy option A, no revision of the CPR but improvements to the CPR system to be made under the

current rules and available mechanisms). It was the most preferred variant for all elements except element 6 (market surveillance and enforcement). Nevertheless, several stakeholders preferring option A noted that there were issues that needed to be resolved. However, these respondents expressed concerns regarding the risks of a lengthy and complicated revision process.

With regard to the other options, a considerable part of respondents preferred revision of the CPR (i.e. options B, C and D). Principally, this was the case regarding market surveillance and enforcement (50% prefer revision), Scope of EU harmonisation (45%), environmental aspects (45%), CE marking and DoP (44%), and Notified Bodies (43%). The preference for revision was lowest regarding EOTA and TABs (11%), new business models (27%) and the Standardisation process (30%).

There was an almost equal preference for enhancing the CPR with EU-wide construction product requirements (i.e. policy option D) and for repairing the issues without a fundamental change of the scope and underlying principles of the CPR (i.e. policy option B). Among those supporting option D, there was a substantially stronger preference for introducing construction product requirements via the New Legislative Framework approach (i.e. sub-option D1) than for the Technical Specifications approach (i.e. sub-option D2).

Option C (limiting its scope to testing methods and/or to core areas, and/or to make the common technical language optional for manufacturers) was preferred by a lower share of respondents than the other revision options (D and B).

Figure 12 summarises the average preferences of all variants across all policy options, for the different types of respondents including also different sub-types of companies.

Variants corresponding to Option E were strongly rejected. No group of respondents had an average preference for the variants corresponding to Option E above 11%, and most had a preference of 0-2%.

A majority of business associations, manufacturers of construction products, raw material suppliers and trade unions tended to prefer variants corresponding to the baseline policy option A.

A majority of academic/research institutions, consumer, environmental and non-governmental organisations, construction companies, designers, distributors of construction products, EU and non-EU citizens, Other, Other types of companies not related to the construction sector, Other types of companies related to the construction sector, and public authorities tended to prefer variants corresponding to the three policy options for revising the CPR, i.e. options B, C and D.

From the responses to the open consultation, four main dividing lines could be derived. The first dividing line was between respondents wishing to maintain harmonisation legislation for construction products and those preferring, either expressly or implicitly, to rely on the principle mutual recognition, which would be the consequence of repealing the CPR (option E). The vast majority of all stakeholders wished to maintain harmonisation legislation for construction products; they rejected the repeal option. Many respondents stated that a repeal of the CPR would lead to a collapse of the EU Single Market for construction products. However, the few respondents who preferred variants of option E expected it primarily to lead to a small decrease in administrative burden, and a very small increase in construction product safety.

The second dividing line concerned the development of the harmonised technical specifications and seemed to be between the preference for the current system based solely on mandatory harmonised standards and the preference for adding a fall-back path towards technical specifications by Commission acts (option B and those based on it). A common characteristic that was observed amongst those who preferred either of the options A and B was a positive perception of the 'common technical language approach' and of the high degree of stakeholder involvement in the development of technical specifications.

A third dividing line concerned the extent of the harmonisation. While the current harmonisation for construction products was considered 'exhaustive', the different variants of option C would result in less exhaustive harmonisation. Both options B and D would seemingly maintain the principle of exhaustive harmonisation. A vast majority of all respondents seemed to reject the reduction in harmonisation, which would be the result of option C.

The fourth dividing line was between the pure common technical language approach (no product requirements, only common methods and criteria) on the one hand and the product requirement approach on the other, whilst the latter was only deemed to be complementary in option D.

Figure 12: Preferred variants by the different types of respondents across all elements

	A	B	C	D	E	Idk/indif-ferent	n
Academic/research institution	40%	**53%**		7%			4
Business association	**60%**	22%	3%	12%	1%	2%	87
Consumer, environmental and non-governmental organisations	29%	32%		**33%**	2%	4%	10
EU and non-EU citizens	27%	**34%**	14%	22%	1%	1%	14
Other	**37%**	25%	6%	29%	2%	1%	19
Public authority	**47%**	40%	4%	8%	1%	0.5%	19
Trade union	**69%**	15%		6%		10%	4
Companies	**56%**	22%	4%	15%	2%	2%	
Companies - Manufacturer of construction products	**67%**	19%	4%	10%	0.1%	1%	59
Companies - Construction company	23%	24%	9%	**31%**	6%	7%	11
Companies - Designer (architect, engineer, specifier, etc.)	11%	**29%**	17%	12%	11%	19%	3
Companies - Distributor of construction products	21%	26%	**30%**	17%		7%	2
Companies - Raw material supplier	**65%**	35%					1
Companies - Other company, not related to the construction sector		31%		**69%**			19
Companies - Other, related to the construction sector		**46%**	12%	36%	4%	3%	2

Note: There is a large variation in the number of respondents. A smaller number means a less robust result.

Source: CPR review Open public consultation.

ANNEX 3: WHO IS AFFECTED AND HOW?

1. Practical implications of the initiative

The estimates on costs and benefits of the preferred option (Option D) presented in this Annex are based on three aproaches:

- Quantitative estimates on direct effects from the accompanying studie[172]
- Qualitative estimates on indirect benefits building on these and economic analysis of the Commission
- Calculations based on the available information and the knowledge of the Commission team responsible for the CPR using the tools from the Commission's Better regulation toolbox – November 2021 edition[173].

The study supporting this Impact Assessment expected that option D would lead to an increase in the costs for manufacturers associated with the CPR. The expected cost increase is driven by an increase in substantive compliance costs, administrative burden and regulatory charges in relation to CE marking and Declaration of Performance (DoP), to a small degree offset by cost reductions related to national requirements and product safety requirements. It should be noted that the study did not cover relevant changes in the legal text such as the the declaration of environmental information, circular economy clauses, the additional provisions for reused products and the new database/system to register declarations of performance and conformity.

The largest sector-wide impact is expected for medium sized companies, where the change towards option D is estimated to increase costs, on aggregate, by 211 million EUR for manufacturers corresponding to 0.19% of the revenue among medium companies in the sector. The corresponding cost increase among large companies is estimated to amount to, on aggregate, 48 million EUR, 0.03% of revenue. Meanwhile, the cost among small companies is estimated to decrease, on aggregate, by 58 million EUR, 0.05% of revenue. It should be noted that these figures are based on a rather limited number of replies in the context of the supporting study and should therefore be considered best available estimates and be considered with appropriate caution as regards their accuracy.

The expected cost decrease among small companies is somewhat counterintuitive and is particularly inconsistent with the expectation among medium-sized and large companies of substantial cost increases. The study supporting this Impact Assessment has provided no obvious explanation for this, other than perhaps the uncertainties associated with the projections due to a relatively small number of observations received.

Beyond this, the study expected substantial benefits of potentially 2.5 billion EUR annually of an improved market surveillance (see table 8).

[172] Copenhagen Economics, Danish Technological Institute and Office for Economic Policy and Regional Development Ltd. (2021). Study supporting the Impact Assessment for the CPR revision, Final report.
[173] https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en

The revision of the CPR will lead to indirect benefits, which could not be quantified, notably an increased safety of construction products, an increase in economic actors' compliance with relevant rules and regulations, more cross-border trade in construction products within the EU Single Market and more innovation.

After the positive opinion with reservations of the RSB on 26 January 2022 (see Annex 1) the administrative burden and adjustment costs of all newly introduced, changed or abolished obligations of the legal draft for the CPR revision were calculated. For this the Commission's OIOO (one in one out) online calculator tool based on the EU standard cost model was used. The estimates were based on Eurostat data, previous reports developed in the context of the CPR e.g. previous Impact Assessment and EOTA report[174] or in the context of other regulations e.g. Inception Impact Assessment on the Single Digital Gateway[175] and the knowledge of the responsible Commission team as there were no further data sources available for this exercise.

The calculations add up further direct annual benefits of more than 200 million EUR annually stemming mainly from the circularity provisions expected to facilitate consumers' (building owners or facility management services) interaction with construction products. Further, the CPR revision will save administrative burden of around 630 million EUR annually compared with additional administrative burden of around 450 million EUR. Altogether, there will be an annual net reduction of administrative burden of companies of around 180 million EUR. On the cost side direct annual adjustment cost of around 420 million EUR were identified and around 19 million EUR indirect adjustment costs.

The most relevant introduced/changed or abolished obligations identified during the OIOO calculations are as regards the administrative burden:

- Additional information to be provided by the manufacturer as regards environmental performance:

With the update of the harmonised standards under the revised CPR the manufacturers will have to provide information on the environmental performance of their products. A pertinent number of companies will be subject to this obligation and will need external support for the calculation and verification. Assessments are expected to be performed every 5 years and the cost per company will shrink when using the relevant provisions for sharing calculations. The administrative burden is estimated at 330 million EUR. As a few manufacturers have already undertaken these calculations voluntarily, the administrative burden after business as usual costs is estimated at 310 million EUR.

- Introduction of product requirements and declaration of conformity

For some construction products product requirements linked with a declaration of conformity will be introduced. The gross burden per product is similar compared to the environmental performance. However, manufacturers may collect the required

[174] EOTA – 2020 Annual Report | EOTA
[175] 2017_grow_012_single_digital_gateway_en.pdf (europa.eu)

information together. Therefore, the administrative burden after business as usual costs is estimated at 26 million EUR.

- Additional validation of the provisions related to the custom-made non-series product

The revised CPR will introduce an external assessment of custom-made non-series products. This action will apply to a limited number of manufacturers, which in many cases currently already undertake this assessment voluntarily. The additional administrative burden is estimated at 75 million EUR.

- The introduction of a fall back option for standardisation

In cases where standardisation process fails to deliver, the Commission may step in under the revised CPR. This will incentivise standard development or replace it if not possible. Therefore, more products than today will be covered by the CPR and more standards will be updated. This will increase the competitiveness of the market and replace existing national requirements by harmonised standards. This is expected to reduce the administrative burden by 160 million EUR.

- Duplication of information in CE marking and DoP is not required anymore

The current CPR requires the repetition of information in the CE label and in the declaration of performance (DoP). Under the revised CPR, this will be simplified, the ECP will contain the permalink to the declarations (DoP & DoC). This will reduce the administrative burden for all products slightly. This is expected to reduce the administrative burden by 40 million EUR.

- Availability of declarations in a centralised database or alternative system

As part of the digitalisation efforts under the revised CPR, the introduction of an online database or information system is foreseen, which will store the DoP, DoC and instructions for use of all harmonised products. This system will facilitate access to the declarations reducing the time needed by the users of construction products to find the right information. This is expected to reduce the administrative burden by 310 million EUR.

2. Summary of costs and benefits

Table 8: Overview of Benefits (total for all provisions) – Preferred Option

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Improved market surveillance	2.5 billion EUR annually	There appears to be significant benefits that can be reaped from improved market surveillance, with a potential 2.5 billion annually[176] EUR to be gained in terms of revenue, equalling more than half the costs (burden) associated with the CPR.
New obligations for reused products	17 million EUR annually	Provisions on reused products will increase the business of companies conditioning reused products (usually SMEs) and potentially save costs as reused products are less expensive than new ones.
Additional requirements to online shops	2.5 million EUR annually	Additional systems to be implemented for e-commerce to protect consumers likely to reduce unjustified cost due to non-compliance or lack of information.
Product Contact Points requirements	2.5 million EUR annually	Stricter rules for Product Contact Points to deal with information demands expected to improve market efficiency.
Circularity provisions expected to facilitate consumers interaction with construction products	190 million EUR annually	Reparability, availability of spare parts, extended life and easy disassembly will reduce the cost related to reparation and maintenance of installed construction products.
Indirect benefits		
Increased safety of construction products	No quantification available	Benefits would occur thanks to enhanced safety of construction products, implying better protection particularly of construction workers and users/consumers using construction products.
Increase in economic actors' compliance with relevant rules and regulations	No quantification available	Improved compliance with the regulatory framework is expected to create benefits in terms of levelling the playing field for construction products manufacturers (particularly important for SMEs).
Increased quality of the built environment in the EU	No quantification available	Benefits particularly for the citizens, stemming from more sustainable and durable built environment (buildings, urban architecture etc.).
Increase in cross-border trade in construction products within the EU Single Market	No quantification available	Beneficial for manufacturers, through expected increase in revenues, as well as to end-users, allowing improved access to broader range of construction products.
Increase in construction product innovation	No quantification available	Beneficial for the end-users of construction products, providing access to innovative products.
Administrative cost savings related to the 'one in, one out' approach*		
Gross savings	630 million EUR annually	See above for explanations

[176] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review – Final report, Annexes, Annex II: Methodology note (survey design and analysis), page 11.

Table 9: Overview of costs – Preferred option

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent*
Direct costs	Increase in total costs				an increase of ~200 million EUR in costs among manufacturers associated with the CPR, equal to approximately 8% of the baseline costs and corresponding to 0.05% of the construction product manufacturing sector's total revenue	Increase in administrative costs and resources to administrations in all Member States related to the progressive adaptation to the revised CPR and the changes it brings with it.	
	Increase in substantive compliance costs in relation to CE marking and Declaration of Performance (DoP)				78 million EUR		
	Increase in administrative burden in relation to CE marking and Declaration of Performance (DoP)				70 million EUR		
	Increase in regulatory charges in relation to CE marking and Declaration of Performance (DoP)				64 million EUR		
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs			4 million EUR	420 million EUR		
	Indirect adjustment costs				19 million EUR		
	Administrative costs ~~(for offsetting)~~[177]				450 million EUR		

** The possible future delegated acts introducing a minimum number of checks to be performed and a minimum human resources needed for market surveillance will be accompanied by a specific assessment of the resources implications.*

[177] Offset by the benefits, net saving of 180 million EUR, see table 8

ANNEX 4: ANALYTICAL METHODS

This Impact Assessment is supported by a study[178], collecting evidence and complementing the available evidence in order to analyse potential future options for the EU legislation on construction products and to assess their possible impacts.

Input from key experts within the field was collected via an initial horizontal survey[179] and used by the Commission services to refine and complement the indicative revised options. The resulting options have been explored in depth to assess preferences and impacts primarily via a survey among companies and a public consultation, supplemented with evidence from previous studies carried out in the context of the CPR review[180] and a Survey on future options carried out by the Commission services in 2020. Finally, the study provides an evidence-based comparison of the various options based on the broader evidence base, inter alia, including the previous impact assessment supporting study from 2018, as well as feedback from the validation workshop[181] conducted in the concluding phase of this project.

Public consultation

The policy options were mapped around 13 distinct elements, corresponding to the horizontal issues and main features of the CPR system. Each of the 13 elements were then attributed various "levels" reflecting the different ways in which the various policy options would address these (henceforth referred to as variants). The answer option “Do not know/Indifferent” was also available for respondents to select, in every element. The mapping of the policy options around 13 elements makes it comprehensible for respondents to provide informed input about the many different and individually complex issues and features of the CPR system.

Respondents were asked whether they wished to provide input on each of the 13 elements. Only respondents who replied “Yes” were asked the following questions, while the other were directed to the next element (or, in the case of the last element, to the final page of the questionnaire).

The respondents were asked to grade the impact they expect their preferred variant to have on each type of impact, compared to the baseline variant A according to a 5-grade

[178] Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review – Final report.

[179] The survey was a preparatory step focusing on substance and was sent to a limited number of experts in the field, including members of the Advisory Group on construction products, former participants in one of the meetings of the Technical platforms on the CPR Review, as well as a few additional stakeholders that were added in order to cover most relevant stakeholder categories.

[180] Particularly VVA, DTI and TNO (2016): Economic Impacts of the Construction Products Regulation, and VVA, JIIP, DTI and GDCC (2018a): Supporting study for the Review of the Construction Products Regulation: Evaluation, and (2018b): Supporting study for the Review of the Construction Products Regulation: Impact Assessment.

[181] The validation workshop was carried out online on 24 March 2021. In total, 225 people participated in the virtual event with a peak attendance of 171. Participants were not registered by category but represented a broad selection of the stakeholder groups that were also covered by the survey and the public consultation, particularly industry associations (EU level and national), companies, Member State authorities’ standardisation organisations, notified bodies.

scale encompassing: large decrease, small decrease, no or negligible impact, small increase and large increase.

Methodology: impacts on costs

The study has mirrored the approach of the previous study supporting the Impact Assessment for the CPR conducted for the European Commission[182] to the extent possible based on the responses from the company survey. Based on this, we provide the following two outcomes:

1) Quantification of the impact on costs and benefits of each option as a percent of revenue[183] by company size;

2) Quantification of the sector-wide impact on costs and benefits for companies in the CPR-related manufacturing sector from a regulatory shift towards different options relative to the baseline for companies by both company size and aggregated.

It is important to note that the insights to be gained from cost and benefit impact estimates are less crucial than those that can be obtained from preference rankings for three primary reasons:

- Firstly, the complexity of the questions related to cost and benefit impacts may prevent some respondents from being able to answer the question accurately;
- Secondly, the results are sensitive towards a single company's response since only few respondents[184] provided input on the impacts;
- Thirdly, an inconsistency appears in the company survey responses where multiple respondents have selected the same option (for example option D) as both their preferred and least preferred option.

This introduces a substantial amount of uncertainty around the estimates on cost impacts compared to results on preference rankings.

The methodology for calculating cost impacts was based on four steps:

i. Calculate the baseline costs and foregone revenue of option A;

ii. Estimate the change in the costs and benefits of each option relative to the baseline;

iii. Calculate the impacts on the costs and benefits of each option;

iv. Estimate the sector-wide impacts on the costs and benefits of each option.

Regarding the first step, the baseline costs and foregone revenue were calculated as the share of revenue by dividing it with the average reported revenue by company size. In the second step the average percentage change in costs and foregone revenue of a regulatory shift towards each option within four elements, four cost categories (except for element 6

[182] VVA, JIIP, Danish Technological Institute and GDCC (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, Annexes to the final report, page 14-15.
[183] Revenue is based on respondents reported turnover in 2019 or latest available year.
[184] To limit the extent of this issue, two responses where respondents reported extreme values were disregarded: one small company reported 100,000 EUR in hassle cost, and another reported an increase of 100,000 pct. from option B.

which holds only one cost and foregone revenue category) is estimated and split them by company size where possible. The reported percentage change in the costs of respondents preferred and least preferred options for each of the cost categories within each of the four elements is used. In the third step, calculations of the change in costs or foregone revenue of a regulatory shift towards each option by multiplying the percentage change in costs with the reported costs and foregone revenue of the baseline option A are made. These calculations are made for each of the elements and each of the cost/foregone revenue categories within each element. Lastly, in the fourth step an estimation of the sector-wide impact on costs and benefits for companies in the CPR-related manufacturing sector is made by scaling up the estimated change in the costs and the benefits as a percent of revenue. As the scalar, an estimate of the sector-wide revenue for companies in the CPR-related manufacturing sector is used.

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

Table 10: Sources of evidence

Evaluation questions	Sources of evidence
EFFECTIVENESS	
What is the problem and why is it a problem?	• Supporting study for the Review of the Construction Products Regulation: Evaluation • Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation • Study on Analysis of the implementation of the Construction Products Regulation • Study on Economic Impacts of the Construction Products Regulation. • Refit platform recommendations • Survey on horizontal issues
EFFICIENCY	
What are the proposed solutions?	• Survey on horizontal issues • Company phone survey • Public consultation
What are the benefits of each option and how beneficial are they for the various stakeholders' groups?	• Survey on horizontal issues • Company phone survey • Public consultation • Survey on the indicative future options
What are the regulatory and administrative costs and are they affordable for the various stakeholders' groups?	• Survey on horizontal issues • Company phone survey • Public consultation • Survey on the indicative future options

RELEVANCE	
How do the policy options compare? To what extent the impacts of each policy option meet the needs, the problems and the objective?	• Company phone survey • Public consultation
What should be the role of the CPR pivotal actors and their deliverables?	• Survey on horizontal issues
COHERENCE	
To what extent is the CPR consistent with other legislation pieces applying on the same stakeholders? Are there any inconsistencies, overlaps or gaps?	• Feedback on the roadmap • Survey on horizontal issues • Company phone survey • Public consultation • Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation
EU added value	
Which is the preferred policy option which will yield highestet benefits?	• Survey on horizontal issues • Company phone survey • Public consultation • Survey on the indicative future options
Could more added value be achieved by limiting the scope of EU legislation to most relevant products?	• Survey on horizontal issues • Survey on the indicative future options
What would be the most likely consequences of repealing the CPR?	• Company phone survey • Public consultation • Survey on the indicative future options • Supporting study for the Review of the Construction Products Regulation: Impact Assessment

ANNEX 5: THE SME TEST – SUMMARY OF RESULTS

(1) Preliminary assessment of businesses likely to be affected	
Manufacturers, importers, to a lesser degree distributors and designers (affected by construction product innovation, competition).	(See Supporting study for the impact assessment of the CPR Review, 2021, Annex First findings report, page 115)
(2) Consultation with SMEs representatives	
The SMEs and representatives of SMEs associations in construction have provided their feedback during the public consultation. They were also consulted in a more targeted manner, during the so-called CPR Technical Platforms. These were a series of meetings organised as a follow-up to the Report on the implementation of the CPR adopted on 07.07.2016. The discussion on the 18 of January 2017 focussed on the limited uptake of the CPR provisions of Article 5 (derogations from drawing up a Declaration of Performance - DoP), Article 37 (simplified procedures for micro-enterprises) and Article 38 (simplified procedures for products individually manufactured or custom-made in a non-series process), the so-called simplification provisions for the SMEs. • There was a valuable variety of views in the feedback received by stakeholders. For instance, some stakeholders expressed the view that simplification should benefit all firms, including adaptation to technological evolution for CE marking, digitalisation or increased customisation. On the other hand, other stakeholders expressed shortly that SMEs need legislative stability.	(See Second Technical Platform, 18.01.2017 on the topic of Simplification, including SME-related provisions, DocsRoom - European Commission (europa.eu))
• Moreover, on the fifth technical platform, which focused on the future of EOTA, European Organisation for Technical Assessment, a stakeholder expressed that there was a need for a national dimension (expertise and proximity contact for SMEs in their language) and an EU dimension (coordination).	(See Fifth Technical Platform, 04.10.2017 on the topic of the future of EOTA, European Organisation for Technical Assessment, DocsRoom - European Commission (europa.eu))
• Also, with respect to efficiency, during the public consultation, when stakeholders were asked about the benefits and the costs in comparison to the situations before and since the introduction of harmonised European standards, it was notable that across the totality of respondents, 36.6% were of the opinion that the	(See public consultation on EU rules for products used in the construction of buildings and infrastructure works, January-April 2018, page 25, DocsRoom - European

benefits outweighed the costs, **while 38.6% of the responds stated that the costs outweigh the benefits**. If only companies were selected and broken down by size of enterprise, the highest rate of sceptical respondents was among the representatives **of micro-enterprises (60.7%).** The free text comments further explained the mixed results of the closed question. A significant amount of participants stated that **the benefits do not outweigh the costs and that they do not see advantages of the CPR**. As can be expected, these critical statements came in particular from locally oriented **SMEs**. • Furthermore, in the results of the consultation, a frequent comment was that SMEs were disproportionally strongly "hit" by the administrative costs. • In addition, the view of Small Business Standards, expressed, as a feedback to the inception impact assessment, was that the consequences of unavailable or outdated harmonised product standards increased direct or indirect costs for the businesses (especially SMEs). In summary, multiple feedback was provided from stakeholders via the technical platform and consultations, together with desk-research, including available evidence already collected through various reports and studies, as well as through surveys.	Commission (europa.eu)) (See public consultation on EU rules for products used in the construction of buildings and infrastructure works, January-April 2018, page 33, DocsRoom - European Commission (europa.eu)) (See feedback received from: Small Business Standards[185] (SBS) on the Inception impact assessment, Feedback period: July-August 2020, Feedback from: Small Business Standards (SBS) (europa.eu))
(3) Measurement of the impact on SMEs	
The main cost expected for the SMEs remain the administrative costs. The 2021 study supporting the Impact Assessment report concluded that **a cost increase of 201 mEUR p.a.** was estimated for the preferred option D, corresponding to 0.05% of the construction product manufacturing sector's total revenue. This was mainly driven by **an increase in costs for medium-sized companies of 211 mEUR p.a.**, corresponding to 0.19% of revenue, and based on an increase in regulatory, compliance and administrative costs in relation to CE marking and Declaration of Performance (DoP).	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, page 69)

[185] Small Business Standards (SBS) is a European non-profit association. Its goal is to represent and defend small and medium-sized enterprises' (SMEs) interests in the standardisation process at European and international levels.

It also corresponded to a roughly 8% increase compared to the current *baseline costs*, likely due to the expectations that the number of parameters that companies would have to declare would increase with the introduction of product requirements, increasing the costs associated with preparing the CE mark and the DoP.	
At the same time, the expected benefit from a revision of the CPR (option B/C/D) in relation to improved market surveillance and enforcement were estimated to amount to approx. 2.5 billion EUR annually (0.6% of the total revenue).	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, page 70)
• In particular, looking at the effect on SMEs, the **baseline costs (option A) for SMEs** were expected to amount to **2,496 mEUR** annually corresponding to 1.1% of aggregate revenue.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 27, Table 4, Table 5)
• Notably, looking across all options, the effect on costs differed for each option. Concerning the expected impact of **option B on SMEs,** it was estimated that it would lead to a **decrease of costs**, on aggregate, by **151 mEUR** annually for manufacturers corresponding to 0.06 % of the revenue among SMEs in the sector. Moreover, the expected **benefit** from **option B** in relation to market surveillance and enforcement was estimated to amount to approx. 2,500 mEUR annually. More than a half of this benefit accrued to **SMEs**, where aggregated revenue gains were estimated to amount to **2,166 mEUR** annually corresponding to 0.9 % of the total revenue for that group.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 34, Table 9) (See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 35, Table 10)
• Alternatively, the impact expected for **SMEs** under **option C** was estimated to **decrease costs** by a total of **16 mEUR annually** for manufacturers, corresponding to 0.01% of the revenue among medium companies in the sector. As option C could be assimilated to option B in relation to market surveillance and enforcement, a revision of the CPR towards option C was expected to yield the same **benefits** as described above for option B.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 39, Table 14)
• Conversely, the change towards **option D** was estimated to **increase costs**, on aggregate, by **153 mEUR annually** for manufacturers (SMEs) corresponding to 0.07% of the revenue among SMEs in the sector. With respect to benefits, as option D could be assimilated to option B in relation to market surveillance and enforcement, a revision of the CPR towards option D was expected to yield the same benefits as described above for option B.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 43, Table 18)

• Finally, the largest sector-wide impact was expected for **SMEs**, where the change towards **option E** is estimated to **increase costs** by, on aggregate, **97 mEUR annually** for manufacturers, corresponding to 0.04% of the revenue among medium companies in the sector. Distinctively, respondents answering this question foresaw **a significant loss in terms of foregone revenu**e from repealing the CPR **(option E)** in relation to market surveillance and enforcement (element 6). The estimated loss, which was most significant among SMEs, amounts to **4,803mEUR annually**.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 48, Table 22) (See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Page 49, Table 23)
4) Assess alternative options and mitigating measures	
• Across all the options (except option E), there was a notable positive effect on SMEs with respect to competitiveness. As revealed by the 33 respondents who preferred **option B** compared to the baseline option, the largest expected impact **was an increase in the competitiveness of SME manufacturers of construction products** vis-à-vis large manufacturers.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, page 70)
• Similarly, of the 5 respondents that selected **option C2** (same as option B for the core areas covered by the CPR, but national requirements fully allowed for construction products outside the core areas) as preferred, **the largest impacts were expected for SME manufacturers' competitiveness** vis-à-vis larger manufacturers.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, page 42)
• Additionally, among manufacturers, **the largest decrease in the administrative burden** was expected by the 3-5 respondents who selected **option C2** as preferred. In particular, of the 3 respondents that selected **option C3** (where Member States would be allowed to offer alternative paths to market access not based on the common technical language), **the largest impacts were expected** for safety of construction products, construction product innovation and **competition among manufacturers of construction products.**	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, page 42, 86)
• **Above all, option D** was expected to **lead to <u>the largest increase in competitiveness</u> of SME manufacturers.** Across all option, the expected impacts on SME competitiveness were lower than the expected impacts on e.g. construction product safety, innovation, competition and intra-Single Market cross-border trade.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, page 95)

• Furthermore, **Option D** would allow for the introduction of mandatory environmental requirements, which would not only improve the sustainability and durability of construction products, but would act as a driver for innovation and improve competition by creating a more level playing field for low-carbon**, alternative construction products (which may often be developed by SMEs, thereby improving their competitiveness vis-à-vis larger manufacturers).**	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, First findings report, page 29)
• Looking at the respondents that preferred **option D** (EU-wide construction product requirements, and national requirements only allowed where the EU had not fully harmonised requirements), 16 out of them, **the largest impacts expected were** a higher safety of construction products, and better compliance with relevant rules and regulations, more cross-border trade of construction products in the EU Single Market, **as well as the higher competitiveness of SME manufacturers of construction products** vis-à-vis large manufacturers.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, page 25) (See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, First findings report, page 29)
• **In the same line, option D was expected to lead to a very slight decrease in the administrative burden, among small manufacturers.**	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, First findings report, page 43, 44)
• Option D foresaw the possibility for the Member States to **exclude certain microenterprises** from the obligations of the CPR, when they did not trade across the borders.	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, page 87)
• Finally, out of the 3 respondents preferring **option E** (market surveillance up to each Member State and according to national rules and procedures), **<u>the largest expected impact was a decrease in the competitiveness of SME manufacturers</u> of construction products vis-à-vis large manufacturers**, as well as a decrease in the administrative burden. On one hand, out of the 5 respondents preferring **option E**, the largest expected impacts were **an increase in competition among manufacturers of construction products and cross-border trade of construction products in the EU Single Market**. However, they also expected it to lead to a decrease in economic actors'	(See Supporting study for the impact assessment of the CPR Review – Final report, 2021, Annexes, Second Progress report, pages 54, 61, 67, 87)

compliance with relevant rules and regulations, construction product durability and quality of the built environment. On the other hand, the 3 respondents preferring **option E** (no obligation for Member States to administer PCPCs), expected **decreases in administrative burden, and SME manufacturer competitiveness vis-à-vis large manufacturer**.	

Table 11: Measurement of the impact on SMEs in million EUR per annum

OPTION	COSTS	BENEFITS
Option A (baseline)	0 (baseline)	0 (baseline)
Option B	↓ by 151	↑ 2,166 (reduction in foregone revenue for compliant producers)
Option C	↓ by 16	↑ 2,166 (reduction in foregone revenue for compliant producers)
Option D	↑ by 153	↑ 2,166 (reduction in foregone revenue for compliant producers)
Option E	↑ by 97	↓ 4,803 (additional forgone revenue for compliant producers)

It should be noted that these figures are based on a rather limited number of replies in the context of the supporting study and should therefore be considered best available estimates and be considered with appropriate caution as regards their accuracy.

ANNEX 6: DESCRIPTION OF THE CPR FRAMEWORK

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 Construction Products Regulation, 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 Construction Products Directive (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.

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 law[186] and Articles 49 and 56 TFEU.

The CPR is different from 'New Legislative Framework' (NLF) legislation 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 under the NLF. The standards' mandatory use reinforces the necessity 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 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.

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

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, very exceptionally, Cenelec, on the basis of standardisation requests/mandates issued by the Commission after consultation of the Standing Committee on Construction[187]. 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 Regulation[188]. 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 an alternative to standards for such construction products: the manufacturer may request an ETA from a Technical Assessment Body (TAB). The ETA is issued on the basis of a European Assessment Document (EAD). 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 (See Figure 13).

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;

[187] In accordance with Article 17 of the CPR and with comitology procedures.
[188] Article 10(6) of Regulation (EU) 1025/2012.

6. Energy economy and heat retention;

7. Sustainable use of natural resources.

The seven Basic Work 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 bodies[189]. All AVCP systems require that the manufacturer establish factory production control[190]. The Commission is required to choose the least onerous system or systems consistent with the fulfilment of all basic requirements for construction works.

[189] The different systems are designated 1+, 1, 2+, 3, and 4.

[190] 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.

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 products[191]. 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.

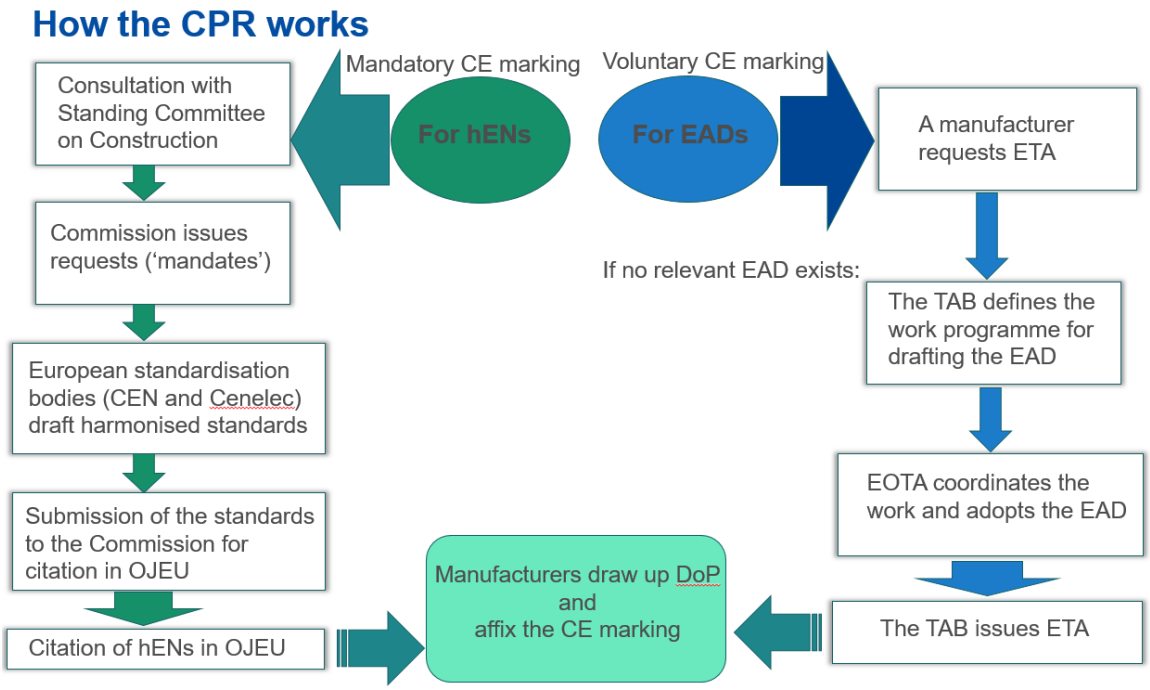
- Article 36 enables any manufacturer to replace the type-testing or type-calculation stage of the assessment process with 'Appropriate Technical Documentation', if tests have been carried out for corresponding products or systems of components (test sharing and cascading).

- 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 for construction works applicable for the intended use of each construction product'.

[191] 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.

Figure 13: How the CPR works



ANNEX 7: THE EUROPEAN TECHNICAL ASSESSMENT (ETA) SYSTEM (THE EOTA ROUTE)

The European technical assessment (ETA) system grants manufacturers the possibility to CE-mark their products in cases when these are not covered by a harmonised standard.

If the product is not covered by a harmonised European standard, the manufacturer can decide to request a European Technical Assessment (ETA) from a Technical Assessment Body (TAB) in order to affix the CE marking on the product. When an ETA is requested, the TAB contacted first checks whether there is already a European Assessment Document (EAD) covering the product. 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. In cases where an EAD does not already exist, development of the EAD is the responsibility of this TAB and EOTA. The preparation of draft EADs and the issuing of ETAs are entrusted to TABs. EOTA coordinates the work and adopts the EAD.

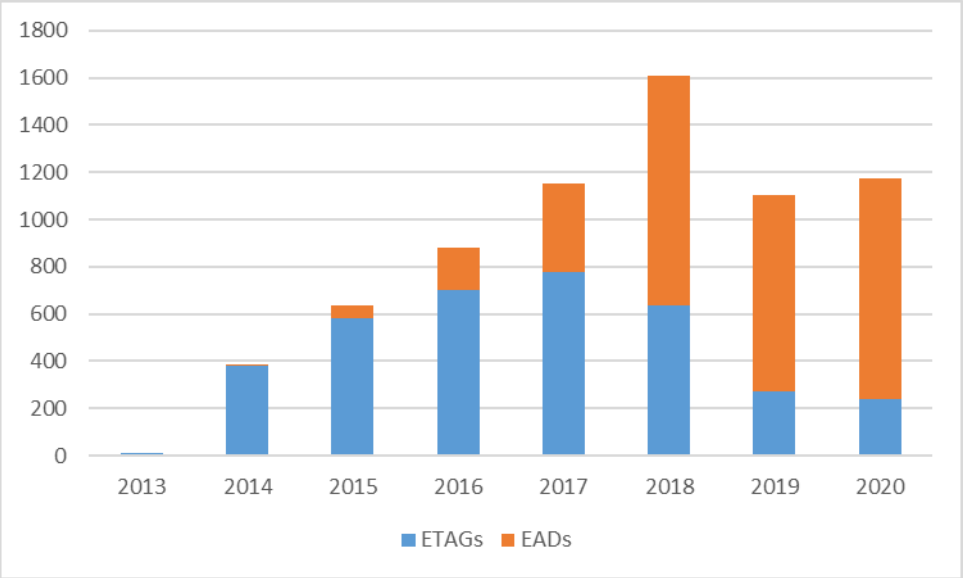
The preparation of draft EADs and the issuing of ETAs are entrusted to TABs. Article 29(1) of the CPR allows Member States to designate TABs within their territory, according to their national procedures for the designation of such bodies. However, strict requirements are set out in Article 30 and Annex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

While it is voluntary for a manufacturer to apply for an ETA, once the ETA has been issued, the manufacturer is obliged to draw up a DoP and CE-mark the product concerned. Indeed, 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. Also, each construction product covered by a European harmonised standard, or for which an ETA has been issued, must be CE marked.

The uptake of the ETA option has been significant. As of 31 December 2020, EOTA's Technical Assessment Bodies had issued 8,900 European Technical Assessments (ETAs) for manufacturers from 72 countries around the globe[192], among them 6,900 since the adoption of the CPR.

[192] EOTA – 2020 Annual Report, https://www.eota.eu/news/eota-2020-annual-report

Figure 14: Number of ETAs based on ETAGs and on EADs since the adoption of the CPR



Source: EOTA

The ETA system, is generally, perceived as a positive aspect of the CPR by the manufacturers using it. Among the feedback received from stakeholders during the fifth Technical Platform meeting[193], stakeholders expressed the view that "in the presence of gaps in the mainstream route, EOTA provides an adequate answer for niche sectors, and particularly for many SMEs for which time to market makes the difference" and also, that "in the CPR system, the EOTA route provides the only freedom to produce non-standardised products and it has to be maintained as such".

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 slow[194]. Furthermore, the feedback received during the fifth Technical Platform[195] points out the necessity to improve this route by strengthening EOTA through stronger involvement from stakeholders and also, strengthening EOTA vis à vis TABs, through taking more of a leading role in the development of EADs. It was also noted that "the process should be made more transparent."

A potential drawback is that 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 products[196].

[193] Summary of the fifth Technical Platform, 04.10.2017, The future of EOTA, European Organisation for Technical Assessment, https://ec.europa.eu/docsroom/documents/26204/attachments/5/translations/

[194] BRE, Ecorys, and Vito (2016), Supporting study for the evaluation of the relevance of EOTA tasks

[195] Summary of the fifth Technical Platform, 04.10.2017, The future of EOTA, European Organisation for Technical Assessment, https://ec.europa.eu/docsroom/documents/26204/attachments/5/translations/

[196] BRE, Ecorys, and Vito (2016), Supporting study for the evaluation of the relevance of EOTA tasks

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[197]. 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.

Lastly, it is worth mentioning that EOTA plays an important role in ensuring the objectives of the CPR are realised. Its role changed significantly, with greater emphasis on the coordination of the development of test procedures and dissemination of best practices as new key tasks[198]. In this line, for the functioning of TABs and EOTA, finance is a key issue, as these organisations bear most of the cost of developing EADs. Although, in 2014, EOTA received 360,000 EUR from the Commission, it has been noted by EOTA that the administrative burden on their organisation has increased (allegedly due to delays caused by the Commission and the requirement for EOTA to provide translations) and that insufficient funds are available for them to carry out their tasks.[199]

[197] Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, p.31, https://ec.europa.eu/docsroom/documents/37827

[198] BRE, Ecorys, and Vito (2016), Supporting study for the evaluation of the relevance of EOTA tasks

[199] RPA(2015) Analysis of the implementation of the Construction Product Regulation, p.30

ANNEX 8: SIMPLIFICATION PROVISIONS UNDER THE CURRENT CPR

A specific key objective of replacing the CPD with the CPR was to achieve simplification, with a particular view to levelling the playing field for SMEs and micro-enterprises. The CPR therefore provides derogations from the obligation to draw up a DoP and simplified procedures for placing construction products on the market. Specifically:

Article 5 provides derogations from the obligation to draw up a DoP when the construction product is **individually manufactured or custom-made in a non-series process** in response to a specific order and installed by the manufacturer; or is manufactured on the construction site; or manufactured in a traditional manner or in a manner appropriate to heritage conservation.

Article 36 aims to avoid the unnecessary testing of construction products for which performance has already been demonstrated. It enables any manufacturer to replace the type-testing or type-calculation part of the assessment of performance with Appropriate Technical Documentation, if the product by nature is deemed to obtain a certain level or class of performance (conventionally accepted performance), in case tests have been carried out for corresponding products (shared ITT[200]), and for assembled systems of components, when testing has been carried out for the same system (cascading ITT).

Article 37 provides **micro-enterprises** with the option to use simplified procedures when carrying out the AVCP. It allows micro-enterprises to use different methods from those contained in the applicable hEN for products covered by Systems 3 and 4, and to resort to System 4 for products for which System 3 would be required. It is up to the manufacturer to demonstrate compliance of the product with the applicable requirements by means of a Specific Technical Documentation and to demonstrate equivalence of the procedures used with those laid down in the harmonised standard.

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.

Previous studies[201] have shown that the uptake of these provisions is very limited, with the exception of sharing and cascading (Article 36), which is reported to be widely applied, but none of these studies were able to quantify the uptake or associated cost savings.

These studies conclude that the reasons for the very low uptake (except for Article 36) include, on the one hand, low awareness of the derogations and simplified procedures and, on the other, a lack of clarity and risk of different interpretations by national authorities of the relevant articles of the CPR. Interviewees (industry associations, standardisation bodies, NBs, TABs, and Public Authorities) pointed to a lack of awareness among enterprises of the simplified procedures and several interviewees called for improved guidance and communication about the provisions and how to use them. Moreover, the lack of clarity causes legal uncertainty. In particular, with

[200] Initial Type Testing.

[201] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation; RPA (2015). Analysis of the implementation of the Construction Products Regulation.

respect to the lack of clarity of the provisions, there is unclarity to what actually constitutes "equivalent" documentation. Specific mention was made by several interviewees of the notion of "equivalence" of the used procedures to the procedures laid down in the harmonised standards, which is not explained. Thus, the conditions for practical implementation of the simplified procedures remain unclear, with small enterprises and other actors, including Member State authorities, struggling to understand the rules[202].

In the 2018 study, criticism about the ambiguity of the derogations was expressed by a majority of the interviewed stakeholders (representatives of European associations of construction products manufacturers from different sectors)[203].

Lastly, another issue which came out strongly in the 2018 study was a questioning of the justification of the simplified procedures aimed at micro-enterprises. The point was repeatedly made that if one of the aims of the CPR is to allow for Member States to regulate buildings and thereby ensure the protection of users and consumers, it is difficult to justify relaxing the requirements for technical documentation in order to benefit smaller companies. Related to this, several interviewees pointed out that the degree of confidence in the product needs to be the same for all products, regardless of whether these products have been put on the market by micro-enterprises, SMEs or large companies[204].

[202] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 44.

[203] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 44.

[204] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p. 45.

ANNEX 9: THE ENVIRONMENTAL AND CLIMATE IMPACT OF CONSTRUCTION PRODUCTS

Aggregates and other materials such as bricks, gypsum, lime and copper, buildings alone use some 1.6 billion tonnes of materials per year. Producing these materials, in turn, results in about 250 million tonnes (Mt) of CO_2 emissions annually. Cement, steel, aluminium and plastics account for almost 80% of those emissions[205]. Half of the steel produced today is used in construction and infrastructure. At the same time, the steel industry releases some 230 CO_2 Mt per year, while cement emits more than 110 Mt CO_2 per year[206]. In a 2018 study, the findings show that more material-efficient products can cut emissions by 56 Mt CO_2 per year.[207] Construction and demolition (including infrastructure) generate 25–30% of total waste volumes[208], far more than any other sector.

The way of using construction has significant impact for reaching future climate targets. By 2050, just the cement, steel, aluminium and plastic used for construction will result in emissions of 230 Mt CO_2 in a baseline scenario where they are made with today's production processes[209]. Demand-side measures[210] could reduce this by more than half, or 123 Mt CO_2, by the second half of this century. Of this, 80 Mt CO_2 per year would be available by 2050, making a major contribution to EU mid-century climate targets[211]. A 2018 study shows that material use for buildings can decrease by 30% as they are used more efficiently[212]. As a major contributor to global greenhouse gas (GHG) emissions, buildings and infrastructure must rapidly decarbonise before 2050 in order to meet global GHG reduction goals[213]. The built environment is responsible for generating approximately 40% of energy-related global GHG emissions, and 11% is generated by the manufacturing of materials[214].

Concerning the CPR, while many stakeholders have noted that sustainability considerations are reinforced in the CPR (in particular through BWR 7), and that this is a progression relative to the situation under the CPD, the majority of stakeholders were of the view that the CPR has not yet translated into an actual improvement in terms of sustainability because the processes and procedures needed to implement BWR 7 have not yet been established.[215] The 2011 CPR

[205] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.142. https://materialeconomics.com/publications/the-circular-economy-a-powerful-force-for-climate-mitigation-1.
[206] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.20.
[207] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.28.
[208] European Commission (2016). Construction and demolition waste, http://ec.europa.eu/environment/waste/construction_demolition.htm.
[209] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.140.
[210] E.g. one demand-side option is to substitute from high-carbon to low-carbon materials. Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.154.
[211] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p.140.
[212] Material Economics, 'Circular Economy – A Powerful Force for Climate Mitigation', 2018, p. 43.
[213] IPCC. (2018). Summary for policymakers—Global warming of 1.5°C. 2018. Intergovernmental Panel on Climate Change (IPCC), https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/.
[214] IEA. (2019). Global status report for buildings and construction 2019. International Energy Agency (IEA). DOI: https://doi.org/10.1038/s41370-017-0014-9.
[215] RPA(2015) Analysis of the implementation of the Construction Product Regulation, p. 134

provision are not yet producing any effect and have not triggered an improvement in the sustainability of the sector.[216]

Furthermore, the ambition of strengthening the climate and sustainability aspects in the context of the future revised CPR was highlighted by the CEAP and the Renovation Wave objectives. Accordingly, to contribute to reducing the overall climate and environmental impact of construction products is a specific objective of the revision of the CPR.

[216] Economisti Associati, Milieu and CEPS, with contributions from BPIE and DBRI (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation, p. 48.

ANNEX 10: ARTICULATION WITH OTHER EXISTING EU LEGISLATION AND OTHER INITIATIVES

The CPR is not the only European legislation that applies to the construction products. The co-existence of many pieces of legislation that apply to the construction sector may be the reason for potential overlaps in terms of procedures and requirements, notwithstanding the fact that they pursue similar and complementary objectives[217]. With respect to external coherence with other European legislations, there are a number of areas where the legislation overlap and/or are in conflict with each other, including the **Ecodesign Directive (EDD)[218]** and several other product/technical directives[219]. Thus, there are potential overlaps between the CPR and the EDD with respect to the procedures established for construction products, in particular to parallel routes for CE marking.

The supporting study for the fitness check[220] carried out an analysis of the coherence between selected EU acts applying to the construction sector. More specifically, the study considered the legal overlaps between the CPR and the EDD (2009) and the **Energy Labelling Directive[221]** (ELD, 2010), which may also apply to construction products and found that:

- Inconsistencies in definitions, lack of cross-references between the three pieces of legislation: Negligible cost impact;
- Overlap of the CPR and the (current) EDD/ELD:
  - Limited costs for the whole sector, but increasing if and when the scope of the EDD is extended to other construction products;
  - High costs for manufacturers of specific products covered by both hEN and the EDD.

The costs of these legal overlaps could not be quantified but may be significant for manufacturers of those specific products.

Furthermore, the 2016 study[222] found that "existing overlaps between the EDD and CPR for specific product categories currently relate **to five product categories**, namely solid fuel boilers, (solid fuel) local space heaters and space/water heaters, as regulated by recently adopted Commission Regulations (EU) 2015/1185[223], 2015/1188[224], 2015/1189[225], 813/2013[226], and

[217] Centre for Industrial Studies (2020). EADs and ETAs: Added value to the construction sector, p. 56.
[218] Directive 2009/125/EC.
[219] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p.115.
[220] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation.
[221] Directive 2010/30/EU.
[222] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation.
[223] Commission Regulation (EU) 2015/1185 of 24 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for solid fuel local space heaters, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.193.01.0001.01.ENG.

814/2013[227]. Hence, potential impacts are very limited when compared to the whole market for construction products".

The study concluded that the objectives of the CPR, the ELD and the EDD are clearly distinct and are mostly considered complementary and coherent.

Also, the same study[228] considered the relationship between the CPR and the **Energy Performance of Buildings Directive**[229] (EPBD, 2010), noting that there is a link between the EPBD and the CPR, as the latter establishes harmonised rules for the marketing of construction products, hereby allowing the comparison of the energy-related performance of products from different manufacturers. As the EPBD takes a system approach while the CPR acts at product level, it was concluded that the two pieces of legislation do not overlap and that the adoption of a new standard on sustainability or energy economy under the CPR could contribute to achieving the objectives of the EPBD. There is thus an opportunity to achieve synergies between the CPR and the EPBD through a coordinated approach.

Besides, there is a conflict between the CPR and the **Standardisation Regulation** since the use of harmonised standards is mandatory under the CPR but voluntary under the Standardisation Regulation[230]. A key problem relates to the CPR adding additional regulatory complexity (and time) to the standardisation process compared to voluntary standards.

Furthermore, the CPR does not align with other **Internal Market (New Approach[231]) directives**, since the basic function and meaning of the CE marking is different.

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[224] Commission Regulation (EU) 2015/1188 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for local space heaters, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2015.193.01.0076.01.ENG.

[225] Commission Regulation (EU) 2015/1189 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for solid fuel boilers, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.193.01.0100.01.ENG&toc=OJ:L:2015:193:TOC.

[226] Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for space heaters and combination heaters, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0813.

[227] Commission Regulation (EU) No 814/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for water heaters and hot water storage tanks, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0814.

[228] Economisti Associati, Milieu & CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation.

[229] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.

[230] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation, p.116.

[231] 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 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. As noted by the Supporting study for the fitness check of the construction sector, "While a New Approach Directive on e.g. the safety of certain products would state the minimum safety level that a manufacturer needs to guarantee to place a product on the Single Market, the CPR 'only' sets a common methodology for measuring the performance of construction products over their essential characteristics".

Furthermore, interlinks between the revised CPR and upcoming legislation exist, particularly **the Sustainable Products Initiative.** Therefore, there is a need to define interfaces between horizontal legislation, namely the SPI, and vertical legislation, in view of avoiding negative interferences and duplications. The links with the SPI are presented and analysed in Annex 11.

In the 2018 supporting study[232], respondents to the public consultation provide quite a large number of examples of specific pieces of legislation that overlap or contradict the CPR. The pieces of legislation that were mentioned multiple times were the following: public procurement rules at national and/or local level as well as EU "green public procurement" rules, Ecodesign Directive, Drinking Water Directive, REACH, Waste Framework Directive, Marine Equipment Directive, Classification, Labelling and Packaging Regulation, Energy Performance of Buildings Directive, Product Liability Directive, Machinery Directive.

Moreover, with respect to **EADs**, in a survey[233] conducted in 2020, when analysing manufacturers' responses by the product areas they deal with, for the vast majority of product areas, the EADs are neither overlapping nor conflicting with EU legislation other than the CPR[234]. Only in a few cases, manufacturers indicated a problem of overlapping, but not conflicting EU legislation.

In this view, it is important to note that, with respect to the policy options outlined in this Impact Assessment; Options B to D would include a clarification of the relationship of the CPR with current rules and introduce clear collision rules for potential future overlap. Coherence with existing EU legislation would be ensured by making explicit the CPR's relationship to overlapping rules (e.g. **REACH** or the **Waste Framework Directive**). Certain construction products would be excluded to prevent overlap with other EU legislation (e.g. in relation to the **Drinking Water Directive**).

The **Climate Law** requires that any new legislative proposal is aligned with the objective of ensuring the 2050 climate neutrality objective, in a socially fair and cost-efficient manner. The Commission has to assess that the proposal ensures climate adaptation.[235] While the climate resilience of buildings is largely dependent on local conditions and is regulated in national, regional or local building codes, under the revised CPR manufacturers could provide product information allowing construction works to be better adapted to future climate conditions.

Finally, some of the legislation overlapping with the CPR also entails potential for synergies, if sufficient coordination is applied, including that the procedures and approaches involved could remain sufficiently similar. The potential for synergies was already mentioned above for the EPBD, but could also apply to other pieces of legislation such as the EDD and the ELD.

In sum, several pieces of European legislation apply to construction products, and this could pose overlap and conflict with the CPR. Actual and potential overlaps exist with Ecodesign Directive and may also materialise for Energy Labelling Directive and its future delegated acts.

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[232] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment, Annex VIII, pp.162-163.

[233] Centre for Industrial Studies (2020). EADs and ETAs: Added value to the construction sector. 2020-csil-eota-report-0109.pdf.

[234] Centre for Industrial Studies (2020). EADs and ETAs: Added value to the construction sector, p. 58.

[235] Regulation (EU) 2021/1119, Article 6(4).

Such overlaps are expected to become more and more frequent but also entail potential for synergies through coordination. Indisputably, all economic actors would benefit from increasing the cost-effectiveness through reduction of overlaps, hence one of the goals of the CPR revision.

ANNEX 11: INTERACTION BETWEEN THE FUTURE CPR AND THE SPI

The actions announced in in the CEAP include 'addressing the sustainability performance of construction products in the context of the revision of the Construction Product Regulation (CPR), including the possible introduction of recycled content requirements for certain construction products, taking into account their safety and functionality.' At the same time, with regard to the Sustainable Products Initiative (SPI), the CEAP announced that 'the core of this legislative initiative will be to widen the Ecodesign Directive (EDD) beyond energy-related products so as to make the Ecodesign framework applicable to the broadest possible range of products and make it deliver on circularity.'

The SPI will aim to improve products' sustainability, to give access to sustainability information along the supply chain and to incentivise more sustainable products and business models – of all products. In terms of the prioritisation, the product categories such as energy related products (including means of transport), textiles, furniture, high impact intermediary products and chemicals would be expected to be tackled first. Therefore, the SPI will intend to broaden the current empowerments of the Ecodesign framework to set new kinds of requirements (e.g. on minimum recycled content, on the declaration of the environmental footprint, on the remanufacturing of components or on due diligence requirements in relation to specific social or human rights risks along the value chain of products) in relation to those products.

Hence, the question arises how the CPR and the SPI should articulate.

Only when overcoming the standardisation deadlock, option A could partially address climate and environmental sustainability already foreseen under the current CPR. But it would not reach the same ambition as the SPI and would not be able to mirror the same level of empowerments. Therefore, under option A as well as under option E the SPI would have to apply to and to prioritise construction products to address their sustainability. However, it would take a long time for the SPI to cover a considerable number of construction products owing to their diversity. Under A, this would lead to overlapping requirements, as construction product be covered by two legislation (SPI and CPR) with high risks of unjustified administrative burdens, inconsistency and suboptimal results in terms of trade-off between environmental performances and CPR 'traditional' ones (e.g. safety). In contrast, Option E would avoid this problem, as there would be no CPR anymore. However, this would be from the CPR point of view the least optimal option.

Under option B, which foresees a harmonised framework to assess, communicate and access of the environmental performances of construction products and the promotion of the reuse of construction products, most of the SPI's aims could be addressed in the CPR framework. However, only with option D, which additionally foresees the possibility to set inherent product requirements (e.g. durability, reparability, availability of spare parts) as is expected under the expected requirements of the SPI, the SPI's aims could be fully addressed within the CPR framework. For option B these product requirements would have to developed under the SPI.

Sub-option C1 would relate to the SPI similar as option B but even more environmental requirements would need to be dealt under the SPI considering the refocus of the CPR only on test methods (i.e. no classes no thresholds). However, under sub-options C2 and C3 a considerable number of construction products would not or only partially be regulated by the

CPR. Therefore, the SPI's aims would have to be addressed by the SPI directly, the CPR would cover less products than today, national regulations would cover more with some overlap under option C3 and mutual recognition would be relevant for more products. The result would be a complex regulatory structure for construction products.

Thus, only option D of the CPR revision, as the preferred option, can provide a consistent framework for construction products and align with the SPI's aims. In this case the CPR would include empowerments to address the climate and environmental sustainability aspects of construction products. Under all other options the SPI would have to prioritise construction products.

1. Four fundamental principles of the interaction between the preferred option and the SPI

Four fundamental principles guided the development of a solution on how the two instruments shall articulate:

- The situation that products are assessed both under the SPI and the CPR should be avoided to the extent possible, not least to avoid double burden.
- Further, the two legal frameworks need to be complementary, as e.g. the SPI will cover intermediate products (such as steel, glass or chemicals) that are used in manufacturing of construction products;
- Construction products shall be subject to the same level of sustainability requirements as the other products covered by the SPI. This principle will have many concrete practical consequences, see e.g. below for the empowerments needed to enable measures similar to and as stringent as those adopted under the SPI.
- The CPR system has the longstanding practice to balance intended requirements on construction products with construction work aspects. The SPI intends to set specific minimum sustainability requirements and information requirements for products, taking into account safety aspects where relevant. In so far as either instrument covers construction products, it should be noted that environmental and safety aspects of construction works will remain the competency of Member States and therefore will not be regulated at the EU level by any of these pieces of legislation. Environmental and safety aspects of construction works should nevertheless be taken into account where relevant when setting requirements on products to supporting Member States' regulatory needs. The CPR system is a priori better suited to do so for construction products, i.e. to identify and arbiter in a fine-tuned way the possible trade-offs between different safety and environmental aspects[236].

[236] E.g. it can foresee, by relating to its load bearing performance classes, low minimum recycling quota for concrete intended to be used for high-rises and high minimum recycling quota for the big majority of concrete intended to be used for other purposes, thus avoiding that for safety reasons only a low minimum recycling quota can be established for all concrete.

2. The architecture envisaged

In view of these principles, the following architecture is envisaged:

- For construction products, the CEAP and SPI goals shall be mainly realised by means of the CPR.
- The CPR shall be able to mirror all obligations and requirements able to be set through the SPI that are relevant for construction products. Hence, it must have extensive empowerments, both for setting environmental product requirements as foreseen in relevant policy option for the revision of the CPR and for information requirements on environmental performance.
- It shall aim at a high level of climate and environmental sustainability at product level without endangering safety or sustainability of the construction work.
- The CPR method for the assessment and communication of environmental performances shall to the extent possible follow the corresponding method used by the SPI, as many suppliers provide components or materials both to the construction products industry and to other industries.
- To be able to close possible gaps in regulation between CPR and SPI, the SPI should be empowered to step in.

The architecture can be resumed as follows: Construction product will be formally covered by the SPI. However, the environmental requirements for construction products, will be regulated via the CPR and not via Commission acts based on the SPI. The SPI can step in case of regulatory gaps.

3. Technical fine-tuning

A few elements of fine-tuning will be needed:

- It should be determined precisely under which conditions the SPI can intervene where requirements established within the CPR system fall without justification below the level of stringency needed to realise the goals set for SPI, or where the objectives and schedule pursued by CPR on sustainability aspects are not met. A set of criteria and a process for joint assessment could be incorporated into the SPI or both the SPI and the CPR to determine precisely under which conditions the CPR has realised in a satisfactory way the goals set for the SPI. In case of conflicting views of both sides, the final decision on whether the CPR has realised the SPI goals in a satisfactory way is incumbent on the SPI (administrative) system.
- The SPI can cover intermediate products (steel, glass etc.) regardless of what happens under CPR. The only exception is cement that has no other use than construction.

- For most of the products covered by the current EDD[237], they would be primarily regulated by the SPI in continuation of the EDD, while respecting/taking into account safety aspects. The CPR would only regulate these products in a complementary way where there is a noteworthy need to do so, also taking account of other legislation on products such as on gas appliances, low voltage, and machinery. The rationale for this particular rule is that the current eco-design aspects are the dominant aspect to be regulated for these products whilst this will not change with the extension of the current EDD to the future SPI.

  As the borderline between these products and ordinary construction products might not be always clear, both legal instruments shall obtain the empowerment to adopt Commission acts determining whether a given product falls under one instrument or the other. The committees involved in the adoption of those acts under CPR and SPI shall deliberate jointly[238].

- Potential loopholes or overlaps (e.g. products or components with different possible uses) will be addressed by coordination between the two (administrative) systems. There are manifold situations that could in theory emerge and that cannot be anticipated other than by establishing comprehensive empowerments in both legal instruments.

4. Example: Bricks

Modern fired clay bricks are formed and then burned in a kiln to make them durable. Normally, bricks contain the following ingredients:

- Silica (sand) – 50% to 60% by weight
- Alumina (clay) – 20% to 30% by weight
- Lime – 2 to 5% by weight
- Iron oxide – ≤ 7% by weight
- Magnesia – less than 1% by weight[239]

Additives can be added in order to improve certain behaviours of the product (e.g. calcium carbonate).

Under the current CPR, the producer would e.g. declare the following characteristics for a certain brick (according to the hEN EN771-1:2011+A1:2015):

[237] This concerns in particular products and systems in the field of heating, ventilation, cooling and lighting. A detailed analysis between the involved services currently taking place might come to the result that in particular certain products formally falling under the current Eco-Design Directive, but for which no effective requirements have been set up, namely due to technical difficulties to integrate construction works' aspects, might better go into the basket of the CPR.

[238] A merger of the two committees is unlikely to be legally possible. Conflicting decisions can, however, be avoided as the Commission has to adopt the acts, not the committees. The Committees would thus informally deliberate together, but give their opinion formally separately. The Commission will have to adopt the act(s) and arbiter in case of diverging opinions.

[239] See https://en.wikipedia.org/wiki/Brick#cite_note-punmia-17

Table 12: Example for a DoP of a certain brick

Essential Characteristics	Performance	Harmonised Technical Specification
Dimensions and Dimensional Tollerances	Complies Tolerance Class T2 Range Class R1	EN771-1:2011+A1:2015
Configuration	Solid Unit as shown in Figure 3a of EN771-1	EN771-1:2011+A1:2015
Compresive Strength	In Excess of 125 N/mm²	EN771-1:2011+A1:2015
Dimensional Stability	NPD	EN771-1:2011+A1:2015
Bond Strength	0.15 N/mm²	EN771-1:2011+A1:2015
Active Solluble Salts	Class S2	EN771-1:2011+A1:2015
Reaction to Fire	Class A1	Commission Decision 2000/605/EC
Water Absorption	<4.5%	EN771-1:2011+A1:2015
Water Vapour Permeability	NPD	EN771-1:2011+A1:2015
Direct Airborne Sound Insulation	Net Dry Density 2200kg/m³ (Typically)	EN771-1:2011+A1:2015
Thermal Property	NPD	EN771-1:2011+A1:2015
Durability Against Freeze Thaw	F2	EN771-1:2011+A1:2015
Dangerous Substances	NPD	EN771-1:2011+A1:2015

Source: Ketley Brick

Under the new CPR (preferred option, after the citation of the updated standard), the producer could inform about the following additional characteristics as in Table 12 below. Blue highlighted are the new elements introduced in the revised CPR. Most but not all of them also address the needs of the SPI (marked with YES in the fourth column).

The manufacturer will have to comply with all future product requirements. Regarding the essential characteristics, the revised CPR will foresee that at least one of these has to be declared. Additionally, the CPR could make the declaration of certain environmental related indicators mandatory (probably “Climate change – total a Global Warming Potential total (GWP-total)”). By means of Commission Acts, the declaration of further indicators could be made mandatory.

The Member States, which are responsible for the safety of construction works, can require certain performances of essential requirements of the product for certain uses of it.

Table 13: Example for a possible future DoP of a certain brick[240]

Essential characteristics	Performance	hTS	Related to SPI targets?
Dimensional tolerances	Tolerance class T2 Range Class R1	EN 771-1: 20XX	NO
Configuration	Solid Unit Figure 3a	EN 771-1: 20XX	NO
Compressive strength	In Excess of 125 N/mm2	EN 771-1: 20XX	NO
Dimensional stability	NPD	EN 771-1: 20XX	NO
Bond strength , flexural bond strength	0.15 N/mm2	EN 771-1: 20XX	NO
Active soluble salts content	Class S2	EN 771-1: 20XX	NO
Reaction to fire	Class A1	EN 771-1: 20XX	NO
Water absorption	<4.5%	EN 771-1: 20XX	NO
Water Vapour permeability	NPD	EN 771-1: 20XX	NO
Dangerous substances	NPD	EN 771-1: 20XX	potentially
Direct airborne sound insulation	Net dry density 2200 kg/m3	EN 771-1: 20XX	NO
Thermal resistance	NPD	EN 771-1: 20XX	NO
Durability against freeze thaw	F2	EN 771-1: 20XX	NO
Climate change – total a Global Warming Potential total (GWP-total)	XXXXX kg CO^2 eq	EN 15804: 20XX	YES
Climate change - fossil Global Warming Potential fossil fuels (GWP-fossil)	XXXXX kg CO^2 eq	EN 15804: 20XX	YES
Climate change - biogenic Global Warming Potential biogenic (GWP-biogenic)	XXXXX kg CO^2 eq	EN 15804: 20XX	YES
Climate change - land use and land use change b Global Warming Potential land use and land use change (GWP-luluc)	XXXXX kg CO^2 eq	EN 15804: 20XX	YES
Depletion of abiotic resources - minerals and metals c d Abiotic depletion potential for non-fossil resources (ADPminerals&metals) kg Sb e	NPD	EN 15804: 20XX	YES
Depletion of abiotic resources - fossil fuels c Abiotic depletion for fossil resources potential (ADP-fossil)	XXXXX MJ, net calorific value	EN 15804: 20XX	YES
Water (user) deprivation potential, deprivation-weighted water consumption (WDP)	XXXXX m^3 world eq. deprived	EN 15804: 20XX	YES

[240] Blue highlighted are the new elements introduced in the revised CPR. Most of them also address the needs of the SPI.

REQUIREMENTS ENSURING THE APPROPRIATE FUNCTIONING AND PERFORMANCE	Related to SPI targets?
Dimensions for units intended to be used in elements subject to structural requirements (coming from old E.R.)	NO
The content in calcium carbonate is within 3%	NO
The colour is within the range foreseen at the end of the firing process.	NO
The bricks are to be installed with the following mortar types: type XXX, type YYY (compatible with the full de-installation from the wall to foster the reuse and the re-manufacturing of the bricks.)	YES
INHERENT PRODUCT REQUIREMENTS	**Related to SPI targets?**
The bricks are transported in packaging of at most 1.000 kg in weight	NO
The GWP-Total for a cubic metre of bricks is at most 50 kg CO2 eq.	YES
The calcium carbonate content derives only from a recovery process of the CO2 emitted in the production of the bricks (in particular in the grinding and firing process).	YES
The thermal energy required for the drying process of clay bricks is ensured only by the heat recovery of the firing process.	YES
The minimum durability of the product performances is 100 years	YES
The minimum recycled quota of clay is 50%	YES
The packaging of bricks with paper-derived materials.	YES
INFORMATION REQUIREMENTS	**Related to SPI targets?**
The packaging informs which type of mortars can be used to install the bricks (compatible with the full de-installation from the wall to foster the reuse and the re-manufacturing of the bricks.)	YES
The bricks shall display on the largest surfaces the type of mortars that can be used;	YES
The packaging shall inform on how the products have to be stocked	YES

Using the digital product passport (DPP) the producer of the bricks would need to receive data from its raw material supplier concerning e.g. Global Warming Potential total ideally provided under the SPI. The producer would provide all data regarding its bricks via the DPP to its customers. This information could then be inserted in the digital building passport of a building where the bricks are installed.

ANNEX 12: REFINED INDICATIVE OPTIONS PAPER, APRIL 2020

REFINED INDICATIVE OPTIONS FOR THE REVIEW OF THE CONSTRUCTION PRODUCTS REGULATION, VERSION 2 - 08.04.2020

The purpose of this document is to present the options regarding the potential revision of the Construction Product Regulation (CPR). At the same time, this document is deemed to become the basis for discussion with all interested parties in the course of 2020 and to inform the two legislators on the many choices and sub-choices to be made.

To reach these goals, the options need to be concrete, whilst remaining as open as possible as neither the Commission nor the legislators have expressed any views with regard to the elements contained in these options.

Therefore, this document follows two approaches:

- It describes different ways how the various elements of the options could materialise;
- Where the presentation of different ways of materialisation becomes too complex, the most far-reaching materialisation has been presented. This is meant to open the space between the current state and the far-reaching, radical way of materialisation, whilst not favouring any of these ways.

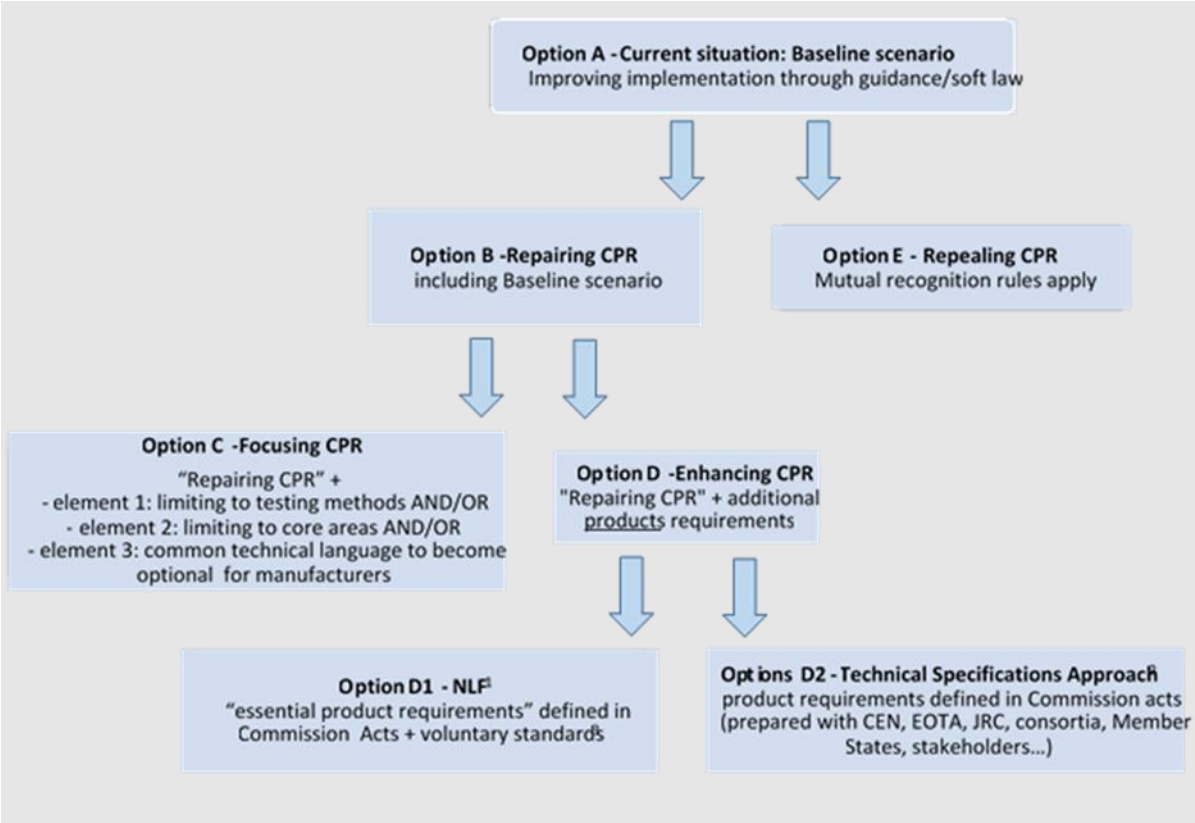
Accordingly, this text is not deemed to express any views in terms of how the future CPR should look like, but rather to trigger an open debate.

Table of contents:

Overview of the options 2
Detailed presentation of the options 4
Option A – Baseline scenario 4
Option B – Repairing the CPR 6
Option C – Focusing the CPR 20
Option D – Enhancing the CPR 23
Option E – Repealing the CPR 27
Annex I – Harmonising decision-making under Option B 28
Annex II – Enforcement measures under Option B 31
Annex III – HTSs under Options A and B 34

OVERVIEW OF THE INDICATIVE REFINED OPTIONS

The following graph presents the reformulated options and the logical relationship between them. A detailed description of each option is provided in the next section.



[1] "NLF" stands for „New Legislative Framework" as laid down in Decision 768/2008/EC. The predecessor to the NLF is the so-called "New Approach".

[2] "Technical specifications" or "Common technical specifications" are technical provisions adopted by the European Commission as Delegated or Implementing Acts. This approach is sometimes also called "Old Approach".

[3] These would contain concretions of the Essential Product Requirements, as foreseen in the New Legislative Framework laid down in Decision 768/2008/EC.

There is a range of links between the different options:

- "Repairing the CPR" (Option B) is a stand-alone option especially based on the issues highlighted in the implementation report.
- However, it would be absurd to be in favour of focusing (Option C) or enhancing the CPR (Option D) without at the same time trying to solve the issues identified in the implementation report (i.e. "Repairing the CPR"). This aspect has been reflected in the decision tree graph above.
- A combination of focusing (Option C) and enhancing (Option D) is only possible for Element 2 of Option C (limiting scope to core areas), which could also be combined with both Options D1 (NLF) or D2 (technical specifications approach).
- It would not make sense to combine Element 1 of Option C (limiting scope to assessment methods") with the enhancement by product requirements of Options D1 or D2, as the

enhancement of product requirements is only possible where technical specifications are complete.

- Likewise, there is a logical contradiction between the goal of Options D1 and D2 to establish mandatory product requirements and making the common technical language optional for manufacturers (Element 3 of Option C)

DETAILED PRESENTATION OF THE INDICATIVE REFINED OPTIONS

OPTION A - BASELINE SCENARIO

No legislative change, but improving implementation through guidance / soft law by the European Commission.

The Commission would pursue its efforts at implementation level to:

- **Streamline the standardisation work**, to the (limited) extent that it is in the hands of the European Commission[241], e.g.:
  - following initiatives like the Joint Initiative for Standardisation;
  - inviting CEN to ensure clarity of the scope of harmonised standards;
  - inviting CEN to front-load[242] acceptability criteria to be applied by the European Commission;
  - inviting CEN to ensure internal quality control;
  - inviting CEN to speed up the revision of CPD-era standards with high market relevance or relevance for the safety of citizens;
  - inviting CEN to ensure fair and equitable representation of various categories of stakeholders;
  - ensuring that the rules in Articles 3(3) and 27 CPR on classes or thresholds are used and respected;
  - issuing, where needed and promising, new standardisation requests which respond to current legal requirements, Member States' regulatory needs and market needs.
- Go against **national marks, ex ante processes and verifications,** by using informal dialogue and the formal tools provided by primary or secondary EU law (pending Court judgement on German case T-229/17), namely by infringement procedures and support for economic operators acting against infringements at national courts;
- **Enhance market surveillance and enforcement** (e.g. by recommending highly effective default/standard market surveillance controls[243]), and this clearly in the context of Regulation (EU) 2019/1020 on market surveillance[244];
- **Improve the functioning of EOTA and Technical Assessment Bodies, Notified Bodies, national authorities, PCPCs[245]**, to the extent that the functioning can be influenced by the European Commission;
- **Increase**, to the limited extent possible under the current CPR, **the legal sustainability of the EAD route to CE marking**, namely by formal Commission Decisions on the citation of EADs in the Official Journal;
- **Promote the uptake of simplification provisions** by clarification / guidance / information, to the extent possible[246] (incl. Art. 5, 9(2), 37, and 38 CPR);

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[241] The elements listed below have indeed already been pursued by the European Commission services, though with limited success.

[242] This would mean that the acceptability criteria become quality goals for the development of the respective standards during the entire process of development.

[243] E.g., it is very efficient to control formal compliance because in most of the cases of formal non-compliance, the manufacturers are also non-compliant for requirements of substance, e.g. regarding performance. Hence, a program could be set-up to list elements of formal non-compliance which can be easily verified.

[244] OJ L 169, 25.6.2019, p. 1–44.

[245] Product Contact Points for Construction.

- **Promote the understanding of the CPR** in general and in particular with regard to the CE marking and the Declaration of Performance, and this with special focus on SME and microenterprises and including the "Your-Europe-Portal" and possibly the "Single Digital Gateway";
- Apply the existing empowerments for **delegated and implementing acts, as well as the formal objections procedure,** also **to complement, correct, overrule or delist deficient standards**. The empowerments to correct or overrule deficient standards are uncertain and content-wise limited. Thus only a small part of the deficiencies of harmonised standards can, if any at all, be remedied.

[246] The extent is limited because the European Commission cannot disseminate an authoritative interpretation where different interpretations are equally possible due to an unclear wording of the CPR. Only the European Court of Justice can provide for authoritative interpretations in such situations.

OPTION B – REPAIRING THE CPR

This option would not so much invest into the implementation of the current CPR, but focus on the repair of the CPR by its revision. Option B might include legislative amendments to realise the following aims (the envisaged amendments are outlined below)[247]:

1) Scope and objectives

- **Clarifying and streamlining the scope of the CPR**
- **Ensuring coherence with other EU legislation**
- **Addressing environmental aspects of construction products (BWR7)**
- **Promoting circularity of construction products**

2) Harmonisation

- **Empowering the Commission to act against partial system failures**
- **Ensuring the comprehensiveness of the CPR's Common Technical Language**
- **Allowing manufacturers to obtain preliminary CE marking**
- **Reducing the administrative burden for manufacturers**
- **Improving access to Harmonised Technical Specifications**

3) Improving effectiveness

- **Improving the use of the CPR's non-conformity procedures**
- **Enhancing market surveillance**
- **Improving the efficacy of Notified Bodies**
- **Supplementing Notified Bodies with special bodies in charge of BWR7**
- **Evaluating the role of PCPCs**
- **Better covering information needs**
- **Allowing for true claims or no claims**
- **Better coverage of Member States' needs by determining the "harmonised zone"**
- **Improving legal certainty**

4) Transition

- **Ensuring a smooth phasing in of the revised CPR**

1) Scope and objectives

Clarifying and streamlining the scope of the CPR

The future CPR would dispel confusion by specifying application to certain products or product categories, as well as prevent future confusion by anticipating future developments and allowing the Commission to modify the CPR's scope in light of such developments. This would include the explicit exclusion of certain product categories, in particular to avoid overlap with other EU legislation (e.g. Drinking Water Directive).

[247] It follows from the preliminary remarks of this document that, while any of the elements might find its way into the final revised CPR, it is extremely unlikely that all the elements will be taken up by the legislator.

In order to dispel confusion about the scope of the regulation as much as possible, a revised CPR would make explicit its application to possibly confusing products or product categories. It would exclude some products for which there are little regulatory needs from Member States, little intra-EU trade and little safety or environmental aspects to be covered as well as explicitly include others for which currently there is uncertainty (e.g. construction products manufactured for immediate incorporation by their manufacturer in construction works[248]). In addition, a revised CPR would provide clearer definitions of modules, kits and assemblies and specify in what circumstances they can be considered construction products, as well as stipulate under what circumstances used construction products newly made available on the market come under its scope.

To prevent future confusion about the CPR's scope, a revision would also anticipate new business models. In anticipation of the increased use of 3Dprinting, a revised CPR would bring the placing on the market materials and datasets used for the decentralised 3Dprinting of construction products by other operators than those responsible for the materials and datasets within its scope[249]. It would assign to operators of 3Dprintshops the responsibilities of distributors under the current CPR. In addition, it would bring prefabricated one-family-houses of less than 150 m^2 exterior ground surface with one floor or of less than 80 m^2 with two floors within its scope (probably without the fundament, the roof coverage and façade coverage to permit adaptation to Member States' construction codes). This could be reached by letting them become a construction product altogether or by qualifying them as a kit.

In terms of clarification, lastly, a revised CPR would allow the Commission to modify the CPR's scope, by Delegated Act, to exclude specific products or to close regulatory loopholes, in particular where this is necessary to clarify the CPR's application to emerging new business models. The control mechanisms foreseen for the adoption of Delegated Acts would guarantee the involvement of Member States and the European Parliament.

Overall, the scope of the future CPR would remain rather broad. However, as today, the harmonised sphere (i.e. the sphere covered by technical specifications) will be not as large as the scope of the CPR. The broad scope of the CPR thus has the function to give room for technical specifications to be developed in accordance with the needs of today and tomorrow.

Ensuring coherence with other EU legislation

In order to ensure coherence with other EU legislation, a revision of the CPR would clarify its relationship with current rules as well as introduce clear collision rules for potential future overlap.

Coherence with existing EU legislation would be ensured by making explicit the CPR's relationship to overlapping rules (e.g. REACH[250] or the Waste Framework Directive[251]). Additionally, a revised CPR would exclude certain construction products to prevent overlap (e.g.

[248] Regarding this issue: see also the possibility for Member States to exempt certain economic operators on a national basis.

[249] Regarding the regulatory issues raised by decentralised 3D-printing, see https://www.howtoregulate.org/decentralized-3d-printing-a-regulatory-challenge/#more-23.

[250] OJ L 396, 30.12.2006, p. 1–849 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008D0768).

[251] OJ L 312, 22.11.2008, p. 3–30 (https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576749547065&uri=CELEX:32008L0098).

in relation to the Drinking Water Directive[252]). For other legislation (e.g. the Energy Labelling Directive[253] and the Ecodesign implementing regulations[254]), coherence would be ensured at the level of tailor-made Harmonised Technical Specifications that cover all aspects amongst those that are not governed by the other legal instrument ("Harmonised Technical Specifications" in this document shall be understood as harmonised standards cited in the Official Journal, or Implementing or Delegated Acts that contain technical specifications).

In anticipation of the expected increase in energy efficiency, environment, health and consumer protection rules, a revised CPR would also include provisions governing the CPR relationship with such future rules.

Addressing environmental aspects of construction products (BWR7)

A revised CPR would speed up the operationalisation of environmental aspects by introducing a harmonised method for assessing and communicating construction products' environmental performance.

Amid increasing environmental concern, Member States are likely to increasingly implement national legislation on how to assess the environmental footprint of construction works and thus implicitly also construction products. As a result, diverging approaches could weaken the internal market. A revised CPR would therefore provide a harmonised method for assessing and communicating the environmental performance of construction products. This would take place in full coherence with the horizontal approach regarding the environmental assessment of products, currently under development at EU level. First, Annex I would be amended to include all relevant environmental aspects in Basic Work Requirement 7[255]. Second, the CPR would prescribe the general principles of a harmonised method for assessing and communicating construction products' performance in relation to those aspects; the method itself would be laid down more precisely in a Commission act. The harmonised method would be based on an existing Life Cycle Assessment method, such as the Commission's Product Environmental Footprint[256] or EN 15804, and provide for the development of harmonised Product Category Rules and the use of common datasets in order to ensure fairness and comparability. Importantly, a revised CPR would ensure that the resulting environmental data can be used in the assessment of the environmental performances of buildings[257].

The supervision of the application of these very specific systems could be based on the current Notified Bodies system which would ensure minimisation of burden. However, in view of harmonising the assessment of environmental footprints across all product sectors and to optimise assessment methods, there could also be a separate designation and supervision process (see below under Supplementing Notified Bodies with special bodies in charge of BWR7).

[252] OJ L 330, 5.12.1998, p. 32–54 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31998L0083).

[253] OJ L 198, 28.7.2017, p. 1–23 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32017R1369).

[254] OJ L 285, 31.10.2009, p. 10–35 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0125), a list of implementing regulations can be found here: https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/ecodesign_en.

[255] One might regard some environmental aspects as nowadays being covered in BWR 3 and 6 instead of 7. This makes the regulatory management difficult.

[256] Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0179&from=EN (for proposed updates see https://eplca.jrc.ec.europa.eu/permalink/PEF_method.pdf).

[257] Council of the European Union, *Conclusions on Circular Economy in the Construction Sector*, 28 November 2019, Doc. 14653/19, n9.

Measures directly supporting the reduction of environmental impacts of construction, such as funding the research and development of more sustainable construction products or the creation of incentives to limit the surplus of construction products, as suggested by Member States[258], are beyond the remit of the CPR. As mentioned below, the CPR could contribute indirectly through facilitation of the use of certain recycled or used construction products by allowing them to be CE marked. It will also contribute to the transparency of the market by facilitating the comparability of construction products based on their environmental impacts.

Promoting circularity of construction products

In order to promote the circular economy, the CPR would support the placing on the market of certain used or used and remanufactured construction products. However, several aspects of the CPR would need to be adapted. In addition, the issue of trans-generational availability of product data needs to be tackled. Finally, the CPR might contain a series of provisions reflecting the Circular Economy Action Plan and the European Green Deal.

The revised CPR might cover certain construction products which were used and remanufactured or just used but newly made available on the market, allowing such products to obtain CE marking and gain access to the European market. We speak here of "remanufacturing" to cover processes like cleaning, cutting-off of damaged parts and new coating because the term "recycling" in the meaning of the Waste Framework Directive is limited to items which have become waste in the first place, whilst the regulatory approach of the CPR would be different, aiming at used construction products to undergo a process *before* they become waste[259]. The purpose would be to promote re-use, in particular to reduce construction products' climate and other environmental impacts. These goals cannot be pursued without limiting obligations for the relevant economic operators (when compared to the original manufacturer). This could often lead to a marginal loss in terms of safety when compared to new products. If the legislators oppose this approach, a revised CPR might only define a gold standard for certain used or remanufactured construction products permitting free circulation of these (at the end of the day very few) products and empower Member States to regulate on all other products not fulfilling the gold standard. Member States would then be empowered and invited to decide on the best domestic trade-off between two not fully compatible goals: promoting re-use on one hand and preserving full safety as for new products. They would most likely make different choices, adapted to their domestic balancing of interests.

Used construction products will have to be treated slightly different in terms of CE marking, declaration of performance, performance assessment and certain other obligations of economic operators. Maybe, the original manufacturer should remain responsible to some extent, e.g. with regard to information that only he can provide, whilst overlapping responsibility fields of different economic operators have to be avoided.

Given the likely enhanced longevity of construction products, re-use and remanufacturing will depend to a large extent on the trans-generational availability of product data. The establishment of a public database is the classic response to such a situation. However, alternatives have to be

[258] Ibid., n7.

[259] See Article 3(17) of the Waste Framework Directive, OJ L 312, 22.11.2008, p. 3–30 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098)

investigated. High market value IT companies are likely to be subject to mergers and acquisitions, but not disappearance. Hence, a multi-generational public tender might be a suitable alternative to the not always efficient process of setting up a public database. Alternatively, a tender could be launched every 5 years, with the running contract to be automatically renewed in case no competitor makes a potentially better offer.

In addition, the recently published Circular Economy Action Plan[260] and European Green Deal[261] foresee a comprehensive change of our economy. In the next months and years, there will be a discussion on which measures shall be taken across all sectors. It might not be ideal for construction products to be covered by horizontal regulation as horizontal regulation can hardly be fine-tuned to construction products and might trigger overlapping and partly conflicting obligations. Hence, it is to be considered to which extent the CPR can and should foresee measures applying the policies of the Circular Economy Action Plan and the European Green Deal to construction products. Measures to be considered in this context, as applicable to individual construction products and taking into account safety aspects, might notably include:

- The obligation to take back construction products which, after delivery onto the construction site, have not been used[262];
- conformity assessment or other procedural privileges for construction products which are based on recycled materials, typically derived from a previous construction product which has become waste;
- minimum recycled content quota; or
- the obligation to give preference to recycled materials where possible;
- the obligation to give preference to materials with a low overall environmental footprint, unless a higher environmental footprint is later overcompensated at the building level;
- the obligation to refrain from premature obsolescence;
- the obligation to reach state-of-the-art durability; and
- the obligation to facilitate repair, re-use, remanufacturing and recycling by appropriate design, information and, for repair, accessibility of spare parts.

These measures describe only the frame in which the discussion will take place. Not all these measures will be taken, the more so as hardly any of them is applicable to all construction products.

Furthermore, a Sustainable Product Policy Initiative has been announced under the umbrella of the European Green Deal and the Circular Economy Action Plan. The core of this legislative initiative will be to widen the Ecodesign Directive beyond energy related products so as to make the Ecodesign Framework applicable to the broadest possible range of products and make it deliver on circularity. As construction products would potentially fall within the scope of this future initiative, there could be multiple interactions between the horizontal policy, its concretion within the CPR and the many other elements of the CPR directly or indirectly aiming to enhance the sustainability of the construction products. It even cannot be excluded that the listed

[260] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN.

[261] Available at: https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf.

[262] This could be economically interesting for both sides if the manufacturer reimburses the transportation costs, capped by his own manufacturing costs, whilst the dumping of the not used construction product would be costly, due to national law.

measures will mostly be laid down in the horizontal framework. In the latter case, defining a clear interface and avoiding duplications will be paramount.

Finally, measures to promote the use of tools that could facilitate the recycling or reuse of construction products, as suggested by Member States[263], are, in so far as such tools apply to the construction work or demolition level, beyond the remit of the CPR. E.g., both economic operators who remanufacture used construction products and those who manufacture new products on the basis of recycled (CP) materials need information about the previous use of the products, at least so as to appropriately inform their own customers. The CPR revision could, informally or in the form of a European Commission Recommendation, be accompanied by some prototype national legal provisions that would generate the relevant data. This example illustrates a general potential, still to be levied, which consists in developing finely imbricated regulatory approaches both at the EU and the Member States' level, to jointly pursue the common goals.

2) Harmonisation

Empowering the Commission to act against partial system failures

The current situation where the Commission is not empowered to act against system failures should be remedied. Therefore, a revised CPR would introduce a full range of empowerments for Delegated and Implementing Acts.

E.g., the situation today is that the legislator has empowered CEN and EOTA to adopt Harmonised Technical Specifications, thus bodies outside the EU law legitimation chain, without empowering the Commission in the first place. Thereby the CPR deviates crucially from the standard pattern of EU legislation according to which the Commission is empowered in the first place and outside bodies only in the second. In the light of the current breakdown of the standardisation system under the CPR[264], this unfortunate inversion merits revision, the more so as the ECJ has in the meantime set up severe conditions for delegation of regulatory powers to bodies not already mentioned in the Treaties.

But this is only an example of the past, whilst more system failures can emerge in the future. To reduce the likelihood of another system breakdown, comprehensive empowerments to act against system failures should be foreseen.

Ensuring the comprehensiveness of the CPR's Common Technical Language

Using its aforementioned empowerments to act against system failures, the Commission would complement the Common Technical Language where needed. Furthermore, it might become possible for other bodies than CEN to develop harmonised standards.

At least in cases where no harmonised standards exist or where these are insufficient[265], the Commission would be empowered to adopt Delegated or Implementing Acts in order to ensure the availability of complete assessment methods and criteria for essential characteristics related to the basic requirements for construction works listed in Annex I. Such acts would contain Harmonised Technical Specifications or, where needed, normative references to existing

[263] Council of the European Union, *Conclusions on Circular Economy in the Construction Sector*, 28 November 2019, Doc. 14653/19, n15 and n16.

[264] For analysis and explanation, see the evaluation of the current CPR accessible at https://ec.europa.eu/docsroom/documents/37827 (especially pages 28-31).

[265] See e.g. the wording of Article 9(1) of Regulation (EU) 2017/745.

standards or other documents containing technical specifications (e.g. EADs). When formulating technical specifications, the Commission would gather information from different actors, including namely industry, depending on the products and characteristics under consideration (e.g. CEN, private standardisation consortia, the Joint Research Centre, industry groups, Technical Assessment Bodies or Regulatory Advancement Bodies[266], Member States or groups of Member States), and all this in addition to the already now mandatory consultation processes. The governance mechanisms foreseen for the adoption of Delegated or Implementing Acts would guarantee the control by Member States.

In addition to the development of technical content for Delegated or Implementing Acts, it is conceivable that other organisations than CEN would be charged with developing harmonised standards. Again we could think of private standardisation consortia, industry groups, Technical Assessment Bodies or their successors, the Regulatory Advancement Bodies, but also Notified Bodies or combinations of these actors. The harmonised standards' path would thus be enlarged. This would lead to a two-tier system of technical specifications, with Delegated or Implementing Acts on top and harmonised standards below, the first overruling the second if needed.

Allowing manufacturers to obtain preliminary CE marking

Where a harmonised technical specification is in the pipeline, a revised CPR would allow manufacturers to have their products assessed by a Regulatory Advancement Body in order to obtain a preliminary right to CE mark their products. This option would replace the current EOTA/TABs route.

Assuming the Commission is empowered to ensure the completeness of the common technical language, the current EOTA/TABs route will become less relevant. Moreover, the EOTA/TABs route raises many systemic issues, the majority of which have been described in the EOTA report[267]. To close the loophole in case of its deletion and to advance the development of new harmonised technical specifications in particular for innovative products, the following procedure could be foreseen. The TABs would be replaced by Regulatory Advancement Bodies with the primary task to investigate the potential for new Harmonised Technical Specifications[268]. Where the Commission assesses a draft Harmonised Technical Specification, of which the technical content was elaborated by a Regulatory Advancement Body, as likely to be cited as Harmonised Standard in the Official Journal or to be transformed into a Delegated or Implementing Act within one year, this and other Regulatory Advancement Bodies would be allowed to issue certificates confirming the performance and the conformity of a construction product as requested in that draft Harmonised Technical Specification. The certificate would be valid until the actual citation[269] or publication[270] takes effect or, if no citation / publication takes place, for a maximum of 18 months. Once the certificate has been issued, a manufacturer could affix the usual marking followed by the letters "(pr)" and the date of expiry to its products.

Member States would be invited to designate Notified Bodies or authorities to fulfil the role of a Regulatory Advancement Body. The current TABs would become obsolete.

[266] Replacing the TABs, see below under 'Allowing manufacturers to obtain preliminary CE marking.'

[267] Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN (COM/2019/800 final, 24.10.2019).

[268] To be adopted either as Delegated or Implementing Act or as Harmonised Standard.

[269] In case it becomes a harmonised standard.

[270] In case of a Commission act.

Reducing the administrative burden for manufacturers

The CPR would strive to reduce the burden for manufacturers by offering simplification measures, empowering Member States to exempt certain micro-enterprises from the scope of the CPR, reducing overlap between CE marking and the Declaration of Performance, and establishing empowerments for the Commission to define conditions for reducing or lifting AVCP obligations in case of coverage by a liability insurance.

In order to promote the uptake of simplification measures, current provisions could be considered to be redrafted with a view to clarification, though feasibility has not yet been completely ascertained. For example, a revised CPR might strive for a clearer difference between Article 5 and 38, clarify the content of Article 37 and 38, notably by defining more clearly what is understood as a 'non-series process.'

To further promote simplification, Member States will be offered the possibility to exclude from the CPR's scope enterprises, or at least SME or micro enterprises, individually producing construction products meant for direct final installation under their own responsibility. Alternatively, Member States could be allowed to exempt such enterprises from certain conformity assessment obligations. There would be a size-limit: to ensure that such a provision does not allow bigger manufacturers to circumvent their obligations, it would exclude cases where individual production is based on materials provided by another economic operator who manages a network of SMEs or craftsmen, e.g. under a franchising structure.

To reduce the administrative burden for all manufacturers, a revised CPR would aim to eliminate the current performance information overlap between the CE marking and the Declaration of Performance. Moreover, all viable possibilities for digitisation will be used.

Finally, a revised CPR might contain an empowerment for the Commission to adopt Delegated Acts determining conditions under which AVCP obligations can be reduced or lifted provided that the manufacturer has concluded a liability insurance which is proportionate to the maximum damages potentially caused by non-compliant or underperforming construction products. In cases where risks are not minimal, the exemption from AVCP obligations can be made subject to the application of a risk reduction scheme[271] that is established by the insurance or an association of insurances and verified by agents acting on behalf of the insurance.

Improving access to Harmonised Technical Specifications

The revised CPR would improve access to Technical Specifications by ensuring translation into all official languages and free availability.

Under the current CPR, accessing the content of harmonised standards is sometimes made difficult or costly because they are not available in all official languages or because they are subject to copyright protection. If, under the future CPR, the Commission adopts Harmonised Technical Specifications by Delegated or Implementing Acts, such acts would have to be translated into all official languages, as is the case for all Union acts. Moreover, their content would be included in the Official Journal and would thus be freely available. Where Harmonised

[271] Covering both aspects of performance and aspects of inherent product safety.

Technical Specifications contain normative references to other documents, the revised CPR would ensure that the pertinent content of the referenced documents is available in all languages and free of charge.

3) Improving effectiveness

Improving the use of the CPR's non-conformity procedures

By redrafting Articles 56 to 59, a revised CPR would aim to dispel interpretative confusion and facilitate the use of safeguard mechanisms, possibly even by creating a more streamlined procedural sequence for the different steps to be taken.

In its current form, Article 56(1) requires for the launch of the procedure both the inaccuracy of a product's declared performance and a risk to health and safety. This overly restrictive wording has led to the current situation where Article 56 is hardly used whilst Article 58 is not used at all. Article 58 deals with construction products that achieve their declared performance but nevertheless present a risk to health and safety. By removing the cumulative condition of a product's inherent safety and the accuracy of declared performance from Article 56(1), a revised CPR would therefore aim to unlock the use of the procedures defined in both articles.

Enhancing market surveillance

A revised CPR would enhance market surveillance by strengthening enforcement powers and aligning the performance of different market surveillance authorities. For the fill list of envisaged measures regarding market surveillance, see Annex II.

The strengthening of enforcement powers would entail the introduction of appropriate sector-specific provisions to supplement the horizontal provisions contained in Regulation (EU) 2019/1020 on market surveillance and compliance of products, which are already part of the Baseline scenario (Option A). Such provisions would include stronger empowerments for market surveillance authorities related to fact-finding (e.g. the right to confiscate samples or to seize documents related to presumably non-compliant products) and possible punitive measures (e.g. the right to impose financial sanctions or to exclude non-compliant operators from public tenders). Special focus will be put on internet trade. Surveillance would be further enhanced by allowing manufacturers to sue their competitors and by allowing consumer and environment organisations to sue non-compliant operators, as well as by setting up a sector-specific EU-wide whistle blowing portal and a Member State forum to discuss and follow up on external complaints (using one of the fora provided for by Regulation 2019/1020 if possible[272]).

Aligning the performance of different market surveillance authorities would entail the introduction of absolute[273] and parameter-based[274] minimum benchmarks for Member State authorities, for example in terms of the number of full-time equivalents dedicated to CPR-related surveillance, as well as the introduction of procedures designed to ensure the proper performance of market surveillance staff. To further improve alignment, appropriate and effective mechanisms would be set up to allow for communication, coordination and cooperation between

[272] See Chapter VIII of Regulation 2019/2011, OJ L 169, 25.6.2019, p. 1–44 (accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1020&from=EN).

[273] Even the smallest Member State should have available three full-time equivalences for the enforcement of the CPR.

[274] Parameters could be the size of the market in terms of €, tonnes or numbers of products sold, inhabitants etc. Evidently, these parameters can be combined.

market surveillance authorities and to make them even mandatory, in particular where this is necessary to align decision-making practice, see Annex I.

Improving the efficacy of Notified Bodies

A revised CPR would improve the efficacy of Notified Bodies by strengthening the designation process and introducing control mechanisms for after designation.

In order to moderately strengthen the Notified Bodies' system, a revised CPR would introduce a mandatory qualification matrix (matching staff to product groups and technologies), to be used by Member States when designating Notified Bodies. Member States would also be asked to provide an accreditation or another assessment report for revision by peers and the European Commission. It would further grant the Commission the explicit right to block the registration of a Notified Body in NANDO where there is a lack of evidence of its competence.

Measures to strengthen the work of Notified Bodies towards manufacturers would include:

- Asking Notified Bodies to apply clear pass-fail criteria in their certification practice, thus avoiding that the Notified Body becomes by repetitive feed-back on non-conformities a consultant on the way to certification;
- requiring Notified Bodies to change the staff responsible for deciding on certification as regards products of a given manufacturer every 3 years;
- introducing structured reporting obligations for Notified Bodies to their respective Notifying Authority;
- making control of subcontracting stricter;
- complementing existing provision to make currently implicit obligations of Notified Bodies explicit; and
- introducing provisions covering the change of certification from one Notified Body to another.

Notified Bodies and Notifying Authorities would, together with market surveillance authorities also be affected by a package of measures enhancing harmonised decision-making, outlined in Annex I.

Supplementing Notified Bodies with special bodies in charge of BWR7

The current Notified Bodies are not necessarily competent to assess whether the calculation of environmental impacts by manufacturers is correct or, subject to the AVCP system, to make such calculations from scratch. The customary notification procedures are not appropriate to assess these competences either. As these calculations are a science of their own, it might be necessary to complement the current Notified Bodies' system by designating specialised bodies or creating a responsible sub-group.

Today, only very few, namely extremely big, Notified Bodies designated under the CPR would also be able to obtain the competences for assessing these calculations. These extremely big Notified Bodies would have a disproportionate, unjustified competitive advantage if the verification of environmental impact calculations were to be done by the ordinary Notified Body in charge. Also to keep the small and medium Notified Bodies which are geographically close to the SME manufacturers alive, it might be useful to split the verification functions for BWR 1 to 6 and the one for BWR 7. In addition, it is questionable whether the current few big Notified

Bodies able to calculate environmental aspects suffice, capacity-wise, to cover all (manufacturers of) construction products. Hence, it might be commendable to integrate other organisations that have specialised in calculating environmental impacts, hereafter called environmental verification organisations (EVOs). Such EVOs could either function separately from the current system or function as a sub-group within the current system, like for example the existing sub-group of Notified Bodies in charge of fire safety aspects. A possible split of functions could have another advantage: as some data are relevant both for BWR 3 and 6 on one hand and BWR 7 on the other, there could be a kind of mutual control between different verification organisations.

EVOs would in particular be called upon to scrutinise whether the methodology applied by the manufacturer or his suppliers is aligned to best available techniques, to verify samples of particular calculations, and to assess the plausibility of the overall results or, subject to the AVCP obligations, to undertake themselves such calculations.

The designation and supervision mechanisms of the EVOs in charge of BWR 7 might differ from those of the current Notified Bodies because a much closer alignment of practices across different product sectors must be reached. It cannot be that steel (intended to be) used for cars is to be evaluated differently from steel (intended to be) used for construction products, and the same goes for all other materials or intermediate products. To reach this cross-sector alignment of calculation practices, no designation of an EVO should happen without a methodologically competent entity (be it the Commission Joint Research Centre or an external, entrusted service provider) having reviewed the qualification of the candidate EVO. The form of designation might also vary from that of normal Notified Bodies.

Comparability of environmental impact calculations can only be ensured if there is a more intense control and alignment in day-to-day decision-making, the more so as the same material or intermediate product might find its way both into construction and other products. This will imply the need for some knowledgeable supervisory body, e.g. the Commission Joint Research Centre, or peer review or both. Where these mechanisms become unsustainable due to a high number of manufacturers and assessments, a two-level supervisory hierarchy could be envisaged. The top-level supervisory body would entrust certain experienced and reliable EVOs to become supervisory bodies for less experienced EVOs.

When developing further concepts on the verification of environmental aspects, it has to be borne in mind that there is an inherent tension between the goal of alignment of practices across all product sectors on one side and the goals of minimising the burden specifically for the construction products industry and adapting to construction products specificities on the other side. The two sides cannot be fully served at the same time. But many questions must stay open at this point in time as the development of concepts regarding these questions happens also in other products sectors or at a cross-sector level. The final proposal for a new CPR cannot create a construction products island, but must be in harmony[275] with concepts used across other products sectors. Moreover, it cannot be excluded that harmony must be sought for in the light of the different potential uses of environmental impact calculations. In Member States, these calculations are starting to play a role in very different contexts, namely in fiscal policy and for public tenders. Also for manufacturers of construction products it would not be wishful to have

[275] „Harmony“ does not necessarily mean full alignment. Full alignment should not be strived for because construction products need specific environmental read-outs for the environmental assessment of construction works. These read-outs are not needed in most other product sectors.

to calculate the environmental impact in several different ways. Hence, a consensus should be found which goes beyond the field of product regulation.

Evaluating the role of PCPCs

The Commission will investigate how Product Contact Points for Construction are currently being used.

In case they are not or hardly used for their main purpose, i.e. providing information about Member States' building regulations relevant to the intended use of construction products, a different purpose could be envisaged. Namely, they could be put in charge of providing information on the harmonised system created by and under the CPR. To some extent, they do this already today, we learnt.

Better covering information needs

In order to better cover Member States' and stakeholders' information needs, a revised CPR would allow, in certain specified cases, additional information to be included in the Declaration of Performance as well as empower the Commission to make mandatory the declaration of certain characteristics. Manufacturers can declare additional performances and characteristics.

To better cover information needs of architects and users, a revised CPR would include a positive list of additional information that manufacturers are allowed to include in their Declaration of Performance (additional to a product's performance in relation to the essential characteristics covered by Harmonised Technical Specifications). Examples might include information on the presence or absence of certain chemical components[276], the product's conformity with Member State regulations, its durability in the meaning of usability endurance of the product, or a link to instructions for use and installation. The Commission would be empowered to modify this positive list by means of Delegated Acts in light of information needs or other developments.

Currently, manufacturers only have to declare performance for one essential characteristic of a construction product in order to obtain CE marking. While it is not intended to oblige manufacturers to declare performance related to all product characteristics covered by Harmonised Technical Specifications, a revised CPR would, similar to its current Article 3(3), empower the Commission to lay down mandatory characteristics by Delegated or Implementing Acts where necessary, most frequently in the context of having such a specification cited or adopted. Thus the revised CPR would start with the current situation where only one of the characteristics needs to be declared. However, based on a more precise analysis of the respective product group, regulatory needs, safety and environmental aspects, certain characteristics can be made gradually mandatory.

True claims or no claims

Wherever a performance or product characteristic is declared, whilst there is not yet any Harmonised Technical Specification, the manufacturer would be obliged to ensure the

[276] In line with, not duplicating REACH (OJ L 396, 30.12.2006, p. 1–849, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008D0768) and other legislation on chemicals such as Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures (OJ L 353, 31.12.2008, p. 1–1355, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R1272).

correctness of the declared information by using at least "state of the art" methodology. This brings standards into play in an additional (third) way.

To avoid misleading claims, the manufacturer should be obliged to assess the performance or the characteristic in accordance with a methodology that fulfils the quality notion "state of the art" or "best available technique" (the latter being more severe). The "state of the art" or "best available technique" is to be determined on a case-by-case basis in the light of available methodological documents, namely but not exclusively international and EU standards. Thus, in addition to the incorporation of the content of standards into Commission acts[277] (1st path) and harmonised standards becoming harmonised technical specifications (2nd path), there would be a third, more remote and indirect way of using the valuable content of standards (3rd path). This third path would not be subject to the same legal and formal constraints as the other two. It might resuscitate some of the advantages of the "New Approach" in its initial stage, meaning before full legal control of harmonised standards became obviously mandatory through Regulation (EU) 1025/2012 on European Standardisation and rulings of the European Court of Justice.

Better coverage of Member States' needs by determining the "harmonised zone"

Following a given procedural order, Member States would, after a fair standstill period, become free to establish national requirements where EU provisions do not yet satisfactorily cover the relevant aspects.

In order to better cover Member States' regulatory needs, a revised CPR would allow the Commission to determine by Delegated or Implementing Acts the exact borderlines of the "harmonised zone"[278], the sphere effectively covered by EU law. This clarification would work with product lists and lists of aspects covered. This would bring the legal concept of "exhaustiveness" (hindering Member States to regulate or otherwise interfere) in line with the de facto degree of "completeness" of the CPR Acquis. It would also reduce a good part of the legal uncertainty of the current CPR.

The procedure upstream to the determination of the "harmonised zone" together with the development of technical specifications would give Member States the right and obligation to communicate needs for technical aspects to be covered. If, after determination of the "harmonised zone", Member States discover additional regulatory needs, they have to communicate them first to the Commission so as to give opportunity to cover them at EU level. Only after a standstill period of e.g. 4 years Member States would be authorised to establish additional national requirements, provided there is evidence of the relevant Member State's regulatory need and if the claimed needs are legitimate. In order to avoid too the establishment of protectionist trade hurdles by the back-door, some acceptability criteria for Member States' needs should be developed – not every need, even when well documented, might be legitimate.

A variant for the above mentioned standstill period could be that, after obtaining a formal[279] or implicit[280] validation, any Member State could introduce a national assessment method, to be used in relation to essential characteristics still lacking a harmonised EU method, for the duration

[277] Either by taking over text or by normative reference where, exceptionally, translations into all languages exist.

[278] The expression "harmonised zone" has been chosen on purpose because the expression "harmonised sphere", referred to in the context of rulings of the European Court of Justice, is broader and also encompasses aspects that are not covered by harmonised technical specifications in reality.

[279] By a decision of the European Commission.

[280] No objection by other Member States or the European Commission.

of that standstill period. Notified Bodies across the EU could also apply that method and issue certificates on the basis of it. Other Member States would be obliged to recognise as well the respective assessment method and certificates.

Improving legal certainty

A revised CPR would improve legal certainty by addressing interpretation issues and clarifying the validity of Commission acts adopted prior to the application date of a revised CPR.

Many of the sections above deal also with legal uncertainty. In addition, the revised CPR could contain the following elements:

Under the current CPR, several ambiguous definitions have led to divergent interpretations. A revised CPR would seek to address such interpretation issues as far as possible. This would include making more specific existing definitions (e.g. for 'construction product', 'construction work' and 'placing on the market') as well as introducing new definitions where necessary (e.g. for 'assembly', 'module' and 'building').

An internal analysis showed that under the current CPR, substantive legal uncertainty exists regarding the validity of acts adopted under the CPD, its predecessor, in particular where their content is not fully in line with the CPR. To prevent this from occurring again, a revised CPR would lay down clear rules on the validity of Commission acts adopted prior to its application date. This is evidently also part of the smooth phasing-in of the revised CPR.

4) Transition

Ensuring a smooth phasing-in of the revised CPR

For a variety of legal reasons, only very few of the current Harmonised Technical Specifications, Commission Delegated and Implementing Acts could be used immediately and as such under the future CPR. Hence, clear transitional provisions would provide for a multiannual phase-in period, during which a large part of the CPR Acquis would be readopted whilst the old CPR remains applicable.

Almost the entirety of the current CPR Acquis has to be rebuilt and readopted. This will not happen overnight. Given the size of the current Acquis (444 Harmonised Standards and 157 EADs[281]), the entire exercise will take at least 5 to 10 years. In the meantime, transitional provisions would provide, where appropriate and for a limited time, for the continued application of the current CPR's Acquis for those product groups not yet covered by Harmonised Technical Specifications fit for the future CPR. Both regimes would thus exist in parallel for many years to come. This would trigger the need for authorities and economic operators to distinguish between products placed on the market under the old CPR and those placed on the market under the new CPR, possibly even with a distinct marking. A distinct marking would also make sense in so far as, contrary to other sectors, the CE marking on construction products refers to performance declaration, not to conformity. To shift to a distinct marking on the occasion of the introduction of the new CPR could thus kill two birds with one stone.

[281] There are 210 in NANDO, but these include superseded ones.

To organise this process, transitional provisions would lay down priorities according to which the development of the future CPR Acquis could be planned. Priority would be given to product groups that are of high importance to Member States (in view of the safety of buildings), that are most relevant for the internal market, or that raise problems regarding inherent product safety, consumer protection, or the environment (see legal basis of Article 114 TFEU).

As it is likely that the harmonised technical specifications adopted under the CPD and the CPR cannot be transferred to the future CPR, there is a need to adopt a high number of technical specifications in very short time, that is to say much less than the previously mentioned 5 to 10 years. As the first wave of technical specifications will mainly consist of technical content of the current Harmonised Technical Specifications, major impacts for economic operators are not to be expected. Therefore we expect the acts to be adoptable without impact assessments.

Lastly, the transitional provisions would stipulate the continuation of the legal validity of certificates and other documentation issued under the current CPR or before, or clarify that certain document types have to be reissued, either by the end of the general transition period or by the respective ends of the “coexistence” periods between the current and the new CPR regimes per product family.

OPTION C – FOCUSING THE CPR

The CPR would be focused, freeing up capacity to improve the quality and comprehensiveness of the remaining harmonised sphere. This option builds on the "Repairing CPR" option, meaning that it would, to the extent that there is compatibility, include all the elements described in Option B. The three elements presented here could be combined:

Element 1: Limiting the CPR's scope to assessment methods

The Common Technical Language would be limited to assessment methods

Harmonised Technical Specifications would include only assessment methods for performance calculation. No performance threshold levels or classes would be laid down at EU level. No other requirements or "characteristics" would be established at EU level.

Assessment methods would be developed as set out under Option B

As a primary root, the Commission would adopt Delegated or Implementing Acts containing Harmonised Technical Specifications indicating which assessment methods apply to certain identified essential characteristics of a specific product family. In doing so, the Commission would base itself on the assessment methods included in existing standards. The result would be a list of assessment methods specifying the range of product families and the essential characteristics they address, published in the OJEU.

National construction regulation would refer to these harmonised assessment methods

Member States would be obliged to refer to harmonised assessment methods when setting up product-related requirements in their construction regulation and to list the product families to which a particular assessment method should be applied. Indirectly, therefore, manufacturers of products covered by harmonised assessment methods will be obliged to use those methods when selling on the EU market.

Entire product groups for which no harmonised assessment methods have been provided would fall outside the harmonised sphere and would be covered freely by national legislation, including national assessment methods and EU rules on mutual recognition. The Member States would have the same freedom with regard to the essential characteristics of a certain product group that have not been covered by a harmonised assessment method.

Element 2: Limiting the CPR's scope to core areas

Core areas would be identified during the legislative process

The CPR's scope would be redefined to focus on core areas, and this would be done at the level of the CPR itself so that the CPR would need to be revised to go beyond the boundaries of that scope. The core areas would be identified according to three criteria: the coherence of Member States' regulatory needs[282], the relevance for the environment or for citizens in terms of safety[283]

[282] Thus excluding areas where Member States' regulatory expectations and needs differ so much that a harmonised approach barely makes sense.

[283] "Safety" in a broad sense, including e.g. harmful emissions.

and market relevance. These criteria are thus not only applied by the Commission when setting priorities for formulating Harmonised Technical Specifications as described under Option B, but already by the legislator when determining the overall scope of the CPR.

This approach would permit a better focusing on the regulatory needs of the Member States. It would give Member States the certainty that the EU cannot quickly extend the harmonised zone beyond what is laid down as the scope of the CPR. It would also to some extent "legalise" the de facto market fragmentation that already exists in some areas. On the other hand, it would deprive the Commission and the Member States to react quickly to new harmonisation, safety or environmental needs

Outside core areas mutual recognition would apply

For essential characteristics and products outside the resulting core areas, Member States could lawfully regulate performance assessment and communication (subject to Articles 34-36 TFEU). National requirements subject to notification under Directive 2015/1535 would be notified through TRIS (Technical Regulation Information System[284]), allowing the Commission to follow up by initiating amendments to harmonised technical specifications if appropriate. If the Commission does not, mutual recognition rules would apply (to the limited extent they are effective in the construction sector[285]). For all other aspects, Option B would apply, however limited to the reduced scope.

Element 3: Making the Common Technical Language optional for manufacturers

Manufacturers could choose whether they use the Common Technical Language

In case manufacturers choose not to use the common technical language to assess and communicate performance, they would not be allowed to affix CE marking or deliver any document that could be mistaken for a Declaration of Performance.

Member States would remain obliged to offer market access to manufacturers that choose to use the Common Technical Language

Member States would continue to be required to offer a path to market access based on national requirements referring to the Common Technical Language. Manufacturers would thereby have the certainty of access to the European market if they use the Common Technical Language. Thus, the free circulation of products, which is the CPR's main goal, would be ensured for CE marked products.

Member States would be allowed to regulate for an alternative path to market access not based on the Common Technical Language

Member States may wish to take into account in their national requirements the possibility of manufacturers not using the Common Technical Language. Such deviating requirements would

[284] The (EU) 2015/1535 procedure aims to stop barriers before they materialize in the internal market. Through TRIS, Member States notify their legislative projects regarding products and Information Society services to the Commission which analyses these projects in the light of EU legislation. Member States participate in this procedure on an equal footing with the Commission and they can also provide their opinions on the notified drafts.

[285] See the analysis of the effectiveness below at the end of Option E (the repeal option).

constitute an alternative path to market access, so that manufacturers have a choice. More leeway would thus be given to the use of national marks, to the extent that these do not hinder market access based on the Common Technical Language[286].

Evidently, such an alternative national path might lead to higher performance requirements and subsequent marketing advantages, although free circulation is ensured. Alternatively, an alternative national path might also lead to lower requirements than in the Common Technical Language path, e.g. by allowing test methods which are less severe than the ones foreseen at EU level or by refraining from minimum threshold levels. Therefore, the EU regulation would no more achieve the goal of establishing minimum environmental or safety requirements. Accordingly, Element 3 might not be in line with the mandate of Article 114 TFEU to pursue a high level of protection of these values.

OPTION D – ENHANCING THE CPR

Under this option, a revised CPR would introduce product requirements dealing with product inherent aspects[287] in order to protect health, safety and the environment. It builds on Option B "Repairing CPR", which in turn includes the Baseline scenario outlined under Option A. Such product requirements could follow two different approaches, which are outlined under D1 and D2. The elements common to both approaches are outlined here:

Product requirements would be gradually introduced into the CPR system

A revised CPR would gradually introduce product requirements for certain specific product inherent aspects of selected products or products families. Going beyond the provision of a common technical language for the assessment of performance, such requirements would prescribe a products' mandatory minimum requirements.[288] The current common technical language approach would thus be complemented by proper product requirements aimed at ensuring the health and safety of citizens and protection of the environment. The degree to which health and safety of citizens and protection of the environment can be improved would determine priorities.

Tailor-made product requirements would in particular ensure inherent product safety

This option would allow for the introduction of effective product safety requirements and obligations meant to guarantee inherent product safety into the standards (see D1) or in the technical specifications (see D2). Inherent product safety should be distinguished from construction work safety, which is framed by national legislation. Manufacturers of the products concerned would have to comply with such requirements and obligations even if their products are not covered by national regulation on construction works, for example in the case of products sold directly to consumers in DIY (do-it-yourself) shops.[289] They would not have the possibility

[286] However, unless deliberately decided otherwise by the legislator, ECJ ruling C-227/06 would apply, limiting the room for national marks.

[287] Thus not with aspects that become relevant for health, safety and the environment via the construction works.

[288] These requirements can go beyond threshold levels as they might also touch upon non-scalable characteristics, labelling, and instructions for use etc. They might relate to physical characteristics like (absence) of sharps, mechanisms or other characteristics protecting users, IT safety, electrical and mechanical safety etc., but also to environmental characteristics like easy disposability or recyclability.

[289] European Commission services took note of the fact that some national regulation on construction works also covers DIY products. However, they are also aware that this is anything but systematic. Furthermore, the

to refrain from CE marking and thereby avoid EU regulation. A similar logic could apply to environmental product requirements.

The CPR itself would include a first thin layer of horizontal product requirements

A first thin layer of "horizontal" environmental and product safety requirements and obligations would be laid down in an Annex to the CPR itself. Currently, the European Commission and the Member States are assessing which types of requirements and obligations are necessary or at least useful for the vast majority of construction products. In order to avoid repetition in each individual Harmonised Technical Specification, these requirements and obligations would already be laid down horizontally. A certain number of these horizontal requirements and obligations are likely to be identified in particular with regard to instructions for (safe and environmentally friendly) use and environmental information[290]. Some of them might also be of such fundamental character (e.g. the obligation to disclose chemical components) that it is legally preferable, if not necessary, to establish them at the level of the CPR itself.

The establishment of such a thin layer of horizontal requirements and obligations would establish a kind of minimum protection of the three goals prescribed by the CPR's legal basis (Article 114 of the Treaty on the Functioning of the European Union) besides ensuring the functioning of the internal market: environmental protection, safety and (in our case: indirectly) consumer protection. It would have this role wherever Harmonised Technical Specifications are incomplete. In particular in the first phase of the applicability of the new CPR, it is likely that some Harmonised Technical Specifications will be incomplete.

Background: One has to distinguish between the safety of construction works and the inherent safety of construction products as such. Article 114 TFEU, the CPR's legal basis, requires a "high level of protection". The Commission's proposal therefore must be oriented towards this goal. The Commission has an obligation to investigate possibilities to enhance citizens' health and safety by establishing requirements for the inherent safety of construction products. It should also be remembered, however, that Option D is only an enhancement option, an add-on. It builds on the CPR as "repaired" under Option B and still has the Common Technical Language approach at its core. It is thus an enhancement option and does not propose a radical system change.

OPTION D1 – NEW LEGISLATIVE FRAMEWORK APPROACH FOR PRODUCT REQUIREMENTS

Beyond the initial thin layer of horizontal environmental and product safety requirements and obligations laid down in an Annex of the CPR, Option D1 would formulate product requirements based on the New Legislative Framework approach. In case the resulting requirements address certain aspects covered by the CPR's horizontal requirements in a more specific manner, these more specific requirements would supersede the relevant horizontal requirements.

- **Essential requirements would be laid down in standardisation requests**

application and in particular the market surveillance varies strongly. In view of all this there is a regulatory loophole.

[290] Which could well go beyond the information needed under BWR 3, 6 and 7, namely in view of chemicals legislation.

For the products or product families concerned**,** essential requirements would be laid down in standardisation requests addressed to CEN.

- **CEN would be requested to develop voluntary standards**

  CEN would be mandated to develop standards providing technical detail. These voluntary standards would be harmonised by referencing in the OJEU.

- **Compliance with standards would provide presumption of conformity**

  Following the voluntary standards would lead to the presumption of a product's conformity with the relevant essential requirements, but other means to prove conformity would remain possible.

- **The Declaration of Performance[291] would, depending on the case, be complemented by a Declaration of Conformity and both would be combined in one document.**

OPTION D2 – TECHNICAL SPECIFICATIONS APPROACH FOR PRODUCT REQUIREMENTS

Beyond the initial thin layer of horizontal environmental and product safety requirements and obligations laid down in an Annex of the CPR, Option D2 would formulate product requirements based on the Technical Specifications Approach. In case the resulting requirements address certain aspects covered by the CPR's horizontal requirements in a more specific manner, these more specific requirements would supersede the relevant horizontal requirements.

- **Detailed requirements would be included in Harmonised Technical Specifications**

  Considering the problems experienced with the quality of the harmonised European standards at the core of the current CPR system[292], it appears appropriate to envisage the possibility for reconsidering the Technical Specifications Approach for product requirements (the "Old Approach"). For the products concerned, the relevant Commission acts would lay down technically detailed product requirements.

- **Requirements would be developed in line with Option B**

  Like under Option B, the Commission would be empowered to adopt Delegated or Implementing Acts containing, alongside the technical specifications pertaining to the Common Technical Language approach, detailed product requirements. When formulating technical specifications, the Commission would gather information from different actors depending on the products and characteristics under consideration (e.g. CEN, private standardisation consortia, the Joint Research Centre, industry groups, Regulatory Advancement Bodies, Member States or groups of Member States). Such Commission Acts

[291] One and the same product may fall under the classic Common Technical Language Approach (triggering the need for a Declaration of Performance) and the newly introduced product requirements, triggering the need for a Declaration of Conformity e.g. for inherent aspects of product safety.

[292] In most cases, harmonised standards do not cover all the essential characteristics impacting the Basic Work Requirements listed in Annex I to the CPR; certain draft standards remain blocked by industry representatives to protect national markets; most harmonised standards offered by CEN for citation in the OJ contain legal and other formal deficiencies (this is the reason for a high rejection rate by the COM services and cumbersome repair exercises, all delaying the timely adoption and subsequent OJ listing of harmonised standards); harmonised standards quite often contain content which aims at the protection of certain major companies and thus turn out to be SME-unfriendly; finally, EADs are often cast in such a way that they cannot be used for a broad range of products (hence they cannot always serve as substitutions for missing harmonised standards).

would be developed step by step and in accordance with clear priority setting, in particular by Member States.

- **Harmonised standards would continue to play a role**

  Harmonised European standards would have a new role because the technical specifications adopted by the Commission would partly refer to such standards, e.g. to the test methods contained in the standards. Other content of the harmonised European standards could simply be integrated into Harmonised Technical Specifications.

- **The Declaration of Performance[293] would, depending on the case, be complemented by a Declaration of Conformity and both would be combined in one document.**

OPTION E – REPEALING THE CPR

1. The CPR would be repealed without any substitute

There would be no harmonisation, i.e. no common technical language, no mandatory harmonised standards, no voluntary harmonised standards either, no basic work requirements for construction works, no obligation to draw up a Declaration of Performance or communicate it, no CE marking, no classes or thresholds, no AVCP systems, and no conditions for classification determined at EU level.

2. Relying on mutual recognition would likely fragment the construction products market

Based on experience outside the sphere for which requirements are set under the CPR doubts must be raised as to the effectiveness of the principle of mutual recognition. The main reason for the supposedly weak effectiveness of the principle is that Member States regulations on construction works (and thus implicitly the product requirements derived therefrom) differ very much, as can be proven by the fact that national regulation requires very different performance levels. Hence, little conclusions[294] can be drawn from the acceptance of a certain product with regard to Criteria list A in Member State X for the Criteria list B in Member State Y, the Criteria list B reflecting other construction work needs that are easily explained by natural factors. A manufacturer strategy based on mutual recognition thus becomes particularly risky in the field of construction products. These elements may explain why, in reality, manufacturers mostly seem to adapt to the different national requirements in all the different Member States where they wish to market their products, without relying on mutual recognition. Repealing the CPR is likely to compel manufacturers of ever more construction products to go down this road.

Equally, the current CPR-imposed criteria on the design of public tenders would cease to apply. The diversity of requirements established in public tenders would widen even more.

3. The repeal would not contribute to the European Green Deal

It must be noted that a repeal without replacement would not, contrary to a CPR as revised as outlined in Options B and D, provide a substantial contribution to the European Green Deal (e.g. by providing harmonised information on construction products' environmental performance or introducing environmental product requirements).

[293] See footnote 51.

[294] Regarding the likelihood of acceptance or matching.

ANNEX I [OF REFINED OPTION PAPER] – PACKAGE OF MEASURES AIMED AT HARMONISING DECISION-MAKING (OPTION B)

In order to harmonise the decision-making of market surveillance authorities (MSAs), Notified Bodies (NBs), Environmental Verification Organisations (EVOs) and Notifying Authorities (NAs), a revised CPR would include a package of measures providing for their structured communication, coordination and cooperation, as well as lay down requirements for their qualification and performance. The measures described here would be part of Option B.

Note: The measures described here are unlikely to be selected all or even by majority. The purpose of this listing is just to describe what might be needed to be considered as possible means for harmonising decision-making.

Setting up a structured information mechanisms

As a necessary fundament for harmonised decision-making, a revised CPR would set up a structured mechanism for the exchange of information between the relevant actors. Such a mechanism would allow for the identification and communication of interpretative questions, as well as the collection and evaluation of different possible interpretations.

To achieve this aim, a revised CPR might possibly:

- Set up a single information infrastructure;
- Provide clear rules on when and how relevant actors must report on new interpretative questions;
- Provide for the possible use of artificial intelligence to detect recurring patterns (e.g. similar decision types) and deviating decisions (to prevent unjust decisions, any final decision would be left to a human agent);
- Permit 3rd parties (citizens and economic operators) to raise interpretative questions (after the single information infrastructure is up and running).

Ensuring common approach to interpretative questions

A revised CPR would provide for the centralised processing of identified interpretative questions, with validity for all relevant actors.

In addition to possible informal interpretations or interpretation rules, the Commission would be empowered to adopt Implementing Acts containing binding interpretations or implementation rules. This empowerment would be used to address pertinent interpretative questions raised through the structured information mechanism. The resulting binding interpretations would be based on careful analysis of the practical, legal and economic impacts of various possible interpretations (maybe even following a testing period of the chosen interpretation). Moreover, before adopting a binding interpretation, the Commission would discuss the options and their effects with the relevant actors and with Member States in virtual fora. Lastly, from the moment an interpretative question is taken under consideration by the Commission a standstill period might apply under certain circumstances to avoid a drifting apart of views.

Introducing rules for the qualification of agents

Knowledge gaps may lead to wrong decisions. As most actors decide correctly and wrong decisions are unlikely to be consistent, knowledge gaps also lead to non-harmonised

decision-making. Qualification measures addressed at the relevant agents could close such gaps.

To close existing knowledge gaps and to prevent the emergence of new knowledge gaps, a revised CPR would provide for the following measures aimed at ensuring the qualification of the agents of MSAs, NBs, EVOs and NAs:

- Inserting minimum qualification criteria;
- Introducing mandatory periodic training after qualification;
- Ensuring availability of online training modules or at least visual recordings of training courses to complement live training courses.

Introducing quantitative minimum requirements

Non-harmonised decision-making often also results from uneven or insufficient human resources. In technical fields, the lack of laboratory capacities plays a role. To address these issues, a revised CPR would set up minimum requirements, in terms of output and input, for relevant actors (in addition to those already mentioned in Option B).

A revised CPR might possibly include two kinds of minimum requirements:

- Input requirements: proportionate, parameter-based minimum resources (for example in terms of full-time equivalents) to be made available by relevant actors;
- Output requirements: different minimum control measures depending on the relevant actor, e.g. a minimum number of unannounced verification to be performed by MSAs.

Promoting a common decision-making culture

Promoting a collaborative attitude among the relevant actors can further favour harmonised decision-making. When relevant agents do not hesitate to inform and ask their peers about interpretative issues, when such issues are viewed as occasions for common learning, they are more likely to be settled in a harmonised way.

In order to promote a common decision-making culture, a revised CPR might possibly:

- Establish requirements for periodic trainings that might bring together actors from different Member States;
- Ensure that such trainings are based on common simulated cases;
- Ensure that such trainings also address cultural aspects (e.g. pace of decisions);
- Create a legal basis for sharing national responsibilities and attribution of shared roles (depending on the context, roles could be shared according to knowledge and capacities).

Ensuring the involvement of peers

At the level of decision-making itself, a revised CPR could provide for the involvement of peers where appropriate. The structure of involvement would depend on the context and relevant actors.

Examples of possible measures might possibly include:

- Reporting obligations on past decision-making practice and discussion thereof;
- Mandatory participation to meetings dealing with decision-making practice;

- Reporting obligations on inspection planning (indirectly disclosing intended decision-making);
- Peers observe each other's enforcement activities like audits and inspections of economic operators and publish a report on their performance;
- Allow for joint decision-making of different relevant actors;
- Setting up a formal or informal entity to coordinate decision-making across different relevant actors, which would also disseminate information and promote alignment of views among relevant actors.

ANNEX II [OF REFINED OPTION PAPER] – PACKAGE OF MEASURES ON ENHANCED ENFORCEMENT (OPTION B)

A revised CPR would improve enforcement by introducing a series of measures already to be foreseen in the legal text (which are not or not fully covered by Regulation (EU) 2019/1020 on market surveillance and compliance of products). The measures listed below are part of Option B.

Note: The measures described here are unlikely to be selected all or even by majority. The purpose of this listing is just to describe what might be needed to be considered as possible means for enhancing enforcement.

Rights to sue:

- Give competitors the right to sue non-compliant manufacturers and their distributors (such a right has been foreseen in EU and Member States' competition law and some Member States have extended the right to sue competitors to cases where EU product law is infringed);
- Give consumer organisations the right so sue non-compliant manufacturers and their distributors (such a right has been foreseen in some pieces of EU environmental law).

Minimum requirements:

- Establish minimum benchmarks for market surveillance, e.g. in terms of qualified full-time equivalences to be made available or of enforcement measures or actions to be taken;
- Establish procedures and other arrangements for the proper performance of the duties of market surveillance staff, e.g. a qualification matrix to be used when hiring staff.

Investigative powers:

- Give market surveillance authorities the power to require any public authority, body or agency within the market surveillance authority's Member State, any natural or legal person or any economic operator to provide any information, data or document (in any form or format and irrespective of its storage medium or the place where it is stored) on compliance, physical aspects, supply chain, distribution network or quantities? (this empowerment goes, except for economic operators, beyond the empowerments foreseen in Article 14(3) of Regulation (EU) 2019/20 - letters (a) and (b) thereof only relate to economic operators);
- Give market surveillance authorities the right to request information directly from economic operators in another Member State;
- Give market surveillance authorities the right to obtain information from internet service providers on communication and data-exchange of presumably non-compliant operators and supervising the internet communication or telecommunication (meta-data or even content) in a personalised or generic way;
- Give market surveillance authorities the right to acquire product samples, including under a cover identity, to inspect them and to reverse-engineer them in order to detect non-compliance and obtain evidence;
- Give market surveillance authorities the right to visit and inspect, without prior announcement, offices, factories, warehouses, wholesaling establishments, retailing establishments, laboratories, research institutions and other premises or vehicles in which products are produced or kept (this empowerment is broader than the empowerment foreseen

in Article 14(3)(e) of Regulation (EU) 2019/1020 in so far as it is not limited to premises 'that the economic operator uses');

- Give market surveillance authorities the right to seize and take possession of all documents, data and products which might serve as means of proof for stating the non-conformity;
- Give market surveillance authorities the right to confiscate samples of possibly non-compliant products;
- Give market surveillance authorities the right to seize and take possession of all non-compliant products, be they in a possession of the person responsible for the infringement or another person;
- Give market surveillance authorities the right to confiscate non-compliant products or property used in or in connection with the illegal activity or obtained in return or in connection with the illegal activity;
- Give market surveillance authorities the right to compel the attendance of witnesses and the production of evidence by third parties, when there are reasons to believe or first evidence exist that an infringement is ongoing;
- Give market surveillance authorities the right to acquire data and documents from third parties, including against payment or providing advantages.

Information exchange:

- Give market surveillance authorities appropriate and effective communication and cooperation mechanisms with other market surveillance authorities and other relevant authorities, including customs authorities for the identification and examination of potential risks related to counterfeit products and withdrawal of such products from the market;
- Give market surveillance authorities the right to communicate or exchange data with third parties, other authorities, courts, natural or legal persons or other jurisdictions and adopting agreements in this regard to obtain further evidence on possible non-compliance;
- Give market surveillance authorities the right to use, without any further formal requirements, evidence produced by a market surveillance authority in one Member State as part of investigations to verify product compliance.

Sanctioning powers:

- Give market surveillance authorities the possibility to block or to remove content from internet websites offering products which are not in compliance with requirements applicable to them (hereafter: "non-compliant products") or to order the explicit display of a related warning to end-users when they access the website (this empowerment goes beyond the empowerment of Article 14(3)(k) of Regulation (EU) 2019/1020 which requires that there is no other effective means to eliminate a serious risk);
- Give market surveillance authorities the right to recover from non-compliant economic operators costs for state action triggered by infringements (Article 15 of Regulation (EU) 2019/1020 gives Member States the right to do convey such empowerments to authorities, but does not itself convey the empowerment);
- Give market surveillance authorities the right to impose other enforcement costs

- Give market surveillance authorities the right to decide on penalties, including fines, for non-compliant natural persons (Article 41 of Regulation (EU) 2019/1020 covers only penalties against economic operators);
- Give market surveillance authorities the right to impose financial sanctions for non-compliant legal persons (Article 41 of Regulation (EU) 2019/1020 covers only penalties against economic operators);
- Give market surveillance authorities the right to enforce financial obligations and financial sanctions or penalties via confiscation of products, rights or money;
- Give market surveillance authorities the right to ban non-compliant economic operators from receiving subsidies;
- Give market surveillance authorities the right to exclude non-compliant economic operators from public tenders;
- Give market surveillance authorities the right to practice public naming and shaming of non-compliant economic operators and, in particular, to publish any final decisions, final measures, commitments given by the economic operator or decisions, including the publication of the identity of the economic operator who was responsible for the non-compliance and of the identity of the natural persons acting on behalf of these operators;
- Give market surveillance authorities the right to extend sanctions to mother or sister companies and their agents, at least in cases where a company has been set-up as a shield for illegal activities;
- Give market surveillance authorities the right to extend sanctions to partner companies and their agents where they contributed to illegal activities.

ANNEX III [OF REFINED OPTION PAPER] – HARMONISED TECHNICAL SPECIFICATIONS UNDER OPTION A (TODAY) AND UNDER OPTION B (POSSIBLY TOMORROW)

1. Issues of the current HTS system

As the system of the current HTSs is well-known and described in detail in the Commission evaluation[295] and the EOTA report[296], we focus on highlighting the issues which might be regarded as necessary to be solved:

a) Both Harmonised Standards and EADs (European Assessment Documents)

- Translations not available in all EU languages, thus potential formal invalidity;
- Infringement of requirements for legal preciseness by imprecise normative references (e.g. undated or to standards which have been withdrawn or contradicting normative reference chains);
- De facto little involvement of authorities and stakeholders other than industry;
- Weak or absent democratic legitimation;
- High risk of deviation from legal requirements (e.g. giving leeway to economic operators not foreseen in law);
- Mixture of requirements that are necessary for the respective regulation and others that are not ("superfluous" ones);
- Requirements which give privileges to certain manufacturers and keep out of the market others;
- SME underrepresentation;
- No possibility for authorities to step in when CEN / EOTA do not deliver.

b) Only Harmonised Standards

- Extremely high rejection rate;
- Refusal of CEN to establish internal legal control, which can be explained by:
- CEN's strategic preference for ISO alignment versus EU regulatory alignment.

c) Only EADs

- No formal validation of EADs by Commission decision[297] and no empowerment for such validation and hence potential formal invalidity in application of ECJ rulings since 1958 (

[295] °COM/2019/800°final,°24.10.2019,°accessible°at°https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN ().

[296] °COM/2019/800°final,°24.10.2019,°accessible°at°https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN

[297] The right of Commission staff to object to the EADs does not constitute a formal decision of the Commission.

see the *Meroni* case[298] - for more recent rulings applying *Meroni*, see for example *Parliament* v *Council*[299] and the *ESMA* case[300]);

- EAD proliferation – too many variants;
- EAD proliferation – EADs going beyond the purpose of EADs ("innovation"), becoming de facto another type of Harmonised Standard;
- Too many stages for EADs, legal uncertainty, which can lead to ETAs being issued without formally valid EADs.

2. Outline of the HTS / standardisation system under Option B

a) The **current system of Harmonised Standards would continue to exist**, but for the time being only as a second best (or "back-up") solution[301]. The range of standardisation organisations would be enlarged, including a follow-up organisation to EOTA. Some of the issues listed above can be remedied within the context of the revision of the CPR, but not all. Others can only be addressed, if at all, by a future revision of the Regulation (EU) 1025/2012 on European Standardisation. Therefore, the current system of Harmonised Standards under the CPR needs to be complemented. It could become complemented "above" by a thick new level of Harmonised Technical Specifications adopted by the European Commission (letter b)) and "below" by a thin layer of indirect references to standards (letter c)).

b) The main pillar of Option B is the **re-introduction of the centuries old principle that regulation is, as default path, formally adopted by public authorities[302]**, in this case by the European Commission. This does not imply that the technical content of the HTS is elaborated by the European Commission or other authorities. Private bodies (CEN, EOTA or its follow-up organisation, industry associations, private standardisation bodies or consortia, Notified Bodies, or combinations/consortia of these) and Member States' authorities/institutes would all be welcome to provide technical content which can be cast into a harmonised standard format for Harmonised Technical Specifications adopted by the European Commission. Subject to readiness, available resources and specialisation, one or the other or a combination of these actors would become entrusted with elaborating the technical content, whilst the European Commission, together with authorities, would ensure by supervision that regulatory needs are covered and that legal requirements are fulfilled. Entrusted actors would be asked to provide for transparency towards other stakeholders and to invite them to contribute to the development of the technical content. At the level of the formal adoption by the European Commission, the usual public consultation mechanisms

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[298] Judgement of 13 June 1958, *Meroni* v *High Authority*, C-10/56, ECLI:EU:C:1958:8, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61956CJ0010&from=EN

[299] Judgement of 5 September 2012, *Parliament* v *Council*, C-355/10, ECLI:EU:C:2012:516, paras. 64-82, http://curia.europa.eu/juris/document/document.jsf?text=&docid=126363&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=935739

[300] Judgement of 22 January 2014, *UK* v *Council and Parliament*, C-270/12, ECLI:EU:C:2014:18, paras. 41-55, http://curia.europa.eu/juris/document/document.jsf?text=&docid=146621&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5618770

[301] In the medium or long term, however, it might become very relevant again, see Section 4. Outlook.

[302] This is anything but new, history of regulation has not started with the New Approach. The New Approach is rather a historic exception to the rule. It is also an exception when we compare the overall number of sectors covered by the New Approach versus others. Finally, the New Approach is also, in a worldwide perspective, the exception from the rule.

would kick-in. Hence, there would be a double-layer of stakeholder information and participation.

On an organisational level, neither CEN nor (the follow-up organisation of) EOTA would be obliged to substantially change its internal organisation. They can provide technical content on the basis of their current internal organisation or another. But both would be discharged of formal adoption mechanisms, which will facilitate their task and permits them to focus on what they are particularly good at: developing technical content.

The integration into Commission acts of technical content can happen in two ways:

- by inserting the content;
- by referencing the content laid down in a document which is publicly available and translated into all EU languages.

The latter path could in particular be practiced if CEN wished to continue to formally adopt standards. In this variant, little would change for CEN, except, for the variant of the second indent, the need to ensure translations into all languages via the national standardisation bodies[303]. In return, the complex administrative process in relation to the European Commission, namely the standardisation requests and the responses thereto, could be dropped.

c) On a level "below" the current Harmonised Standards, a **thin layer of indirect references to standards** (not necessarily "Harmonised Standards", i.e. standards covered by a standardisation request of the European Commission) would be added. To avoid misleading claims, the manufacturer should be obliged to assess the performance or the characteristics they claim in accordance with a methodology that fulfils the quality notion "state of the art" or "best available technique"[304]. Although "state of the art" can be interpreted to mean the best available method[305], this outcome is by no means certain. The severity of this quality notion will thus depend on the formula chosen ("best available technique" being more severe). What then constitutes the "state of the art" or "best available technique" is to be determined on a case-by-case basis in the light of available methodological documents, namely but not exclusively international and EU standards. De facto, standards would become the main source for the concretion of these abstract terms, as they are already today in those Member States that use this regulatory technique. The indirect referencing avoids so far the need for severe legal scrutiny of the standards. It thereby pursues the intention of the now already old "New Approach" of using the flexibility of standards without buying-in the formal burdens of regulation.

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[303] In case of insertion of CEN technical content into the legal acts adopted by the European Commission, the translation would be ensured by the European Commission itself.

[304] See for example Article 5 of Delegated Regulation (EU) 665/2013 supplementing Directive 2010/13 on the energy labelling of vacuum cleaners (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0665-20170307&from=NL), which states that 'the information to be provided […] shall be obtained by reliable, accurate and reproducible measurement and calculations methods, which take into account the recognised **state-of-the-art** measurement and calculation methods'.

[305] See for example Opinion of the Advocate General of 26 January 1999, *Commission* v *Germany*, C-198/97, ECLI:EU:C:1999:23, para. 21, http://curia.europa.eu/juris/document/document.jsf?text=&docid=44378&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5784189 in which the 'État optimal de la technologie' was taken to be equivalent to 'state of the art technology'.

3. Risks and downsides of the HTS / standardisation system under Option B

a) The subsidiary new element of Option B is the introduction of a thin layer of indirect references to standards. This regulatory technique has been used with success and for many decades by some Member States and in particular Germany. It has some downsides at the level of legal preciseness. However, if courts play the game as they did in Germany, the legal preciseness increases over time[306]. As mentioned above, the interpretative outcome also depends on how the reference is formulated.

b) The main element of Option B is the re-opening of the classic, centuries old path for adoption or regulation by authorities. This path has proven to be viable across sectors, across jurisdictions and across centuries. There is no reason why it should not be viable in the case of the CPR either.

c) However, we cannot, at this point in time, estimate the speed of delivery of the system. The speed of delivery depends on a long range of factors such as cooperation and engagement of industry, of CEN, of (the follow-up organisation of) EOTA, of Member States authorities and specialised institutes, but also Commission human resources and intra-administrative obligations / hurdles for the formal adoption of HTSs as Commission acts.

d) Assuming an equivalent engagement of industry, there is no reason to assume that the output in normal times, once basic mechanisms have been established, would be lower than under the current standardisation system – even when we disregard that currently virtually no harmonised standards are newly cited in the Official Journal. As can be seen in many different sectors, the European Commission is able to produce a high number of regulatory acts in a given sector[307].

e) However, a precondition is that Member States engage slightly more than currently. They should engage at the same level as they used to engage – speaking now across all sectors, not just for the CPR – in standardisation one or two decades ago. One or two decades ago, Member States were still very active also at the level of Technical Committees of standardisation bodies, avoiding that standards deviate too much from legal requirements[308]. This level of engagement would need to be re-established to reach a full output of HTSs. Not more.

f) Without any engagement of Member States and of industry, the European Commission would, with the help of its consultants, its Joint Research Centre and contractors, still be in a position to prepare HTSs. However, the overall speed and thus output would be dramatically reduced, whilst being still higher than the output of the current system in terms of HTSs really becoming law. Hence, as much as it would be disappointing if there was no contribution from Member States and from industry, the situation would be much better than

[306] See for example the Judgement of 30 September 1996 of the German Federal Administrative Court (http://web.archive.org/web/19991009005152/http://www.vrp.de/archiv/rupdig/mrz97/aktuell/ar387.htm), in which the "generally recognised state of the art" was defined as those methods that "are tested and proven in practice."

[307] Such regulatory „machines" exist for instance in the field of pharmaceuticals, automotive industry, transport, agriculture, food and feed safety, to name but a few.

[308] With successive budget cuts, the engagement of Member States in standardisation bodies has dwindled and, in parallel thereto, the mismatch with regulation has increased.

today[309]. Accordingly, there does not seem to be an alternative for opening the path of adoption of technical regulation by the European Commission[310].

4. Outlook

From the current perspective, where the standardisation path is at least as procedurally cumbersome as the adoption of technical regulation by the European Commission, it might be questionable why the standardisation path should be kept as an alternative for the CPR. However, things can change, as they changed in the past. Adopting technical regulation by the European Commission was easy three or four decades ago, but became increasingly cumbersome in the last two decades[311]. This gave standardisation a tremendous comparative advantage, in addition to the much less severe legal and formal control. With the Regulation (EU) 1025/2012 on European Standardisation[312] and the fall-out of the *James Elliott* ruling[313] in the years after 2016, however, the standardisation path is now equally if not more cumbersome than the adoption of technical regulation by the European Commission[314]. Hence, the adoption of technical regulation by the European Commission is a – comparatively – more promising path. Subject to a revision of the Regulation on European Standardisation and of the regulatory policies for regulation of the European Commission this might change again. Hence, it is commendable to keep both paths open and to complement both with the thin layer of indirect references to standards.

In an even broader perspective, having three different regulatory techniques at hand provides a large range of choices and possibilities for intelligent combinations that can be arranged in a flexible way in accordance with the concrete situation at a given time. The actual handling of the three regulatory techniques should be made in view of the concrete situation, namely the respective product family, the knowledge, performance and willingness of potential cooperation partners, the specific regulatory needs of authorities and industry, the speed of update to technical progress needed etc. Our services are confident that, if all parties involved realise the full potential given by pragmatic tailor-made combinations of these three techniques, the current debate on whether this or that path "is the right one" will be quickly forgotten.

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[309] Admittedly, the situation could be hardly worse than today.

[310] The detailed reasons for the failure of the current standardisation system in the field of the CPR have been described in detail in the recently published evaluation, accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN (COM/2019/800 final, 24.10.2019). Many efforts have been spent in vain to get the system afloat again.

[311] There were many very valid reasons for the establishment of the different procedural steps, from the better integration of EU policies to a better control by the legislators to more transparency towards trade partners and stakeholders.

[312] OJ L 316, 14.11.2012, p. 12–33, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025

[313] Judgement of 27 October 2016, *James Elliot Construction*, C-613/14, ECLI:EU:C:2016:821, http://curia.europa.eu/juris/document/document.jsf?text=&docid=184891&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5620375

[314] We exempt cases where an impact assessment is needed.

ANNEX 13: OPTIONS AND ELEMENTS DISCARDED

1. Discarded options

During various surveys[315] of the years 2018 to 2019, stakeholders and Member States gave their view on the idea of reverting to voluntary standards under the CPR. Almost unanimously, they voiced massive concerns against replacing the current mandatory standards by voluntary standards for the assessment of the construction products' performance, e.g. in terms of load bearing capacity or fire resistance. The main argument was that voluntary standards cannot guarantee that manufacturers assess the performance of their products in the same way so that the national building codes can rely on the assessed performance. This view coincides with the Commission services' view. Accordingly, the return to voluntary standards has been sidelined in the Refined indicative options paper and thus from the later surveys and the public consultation, whilst elements of the voluntary standards' concept could be maintained in Options C and D.

In late 2019, two Member States voiced the view that the CPR revision should focus on "getting the boat afloat for standardization" in a first round, tackling the remaining issues in a second legislative procedure. The same view was taken by numerous stakeholders. A deeper analysis of this suggestion led to the conclusion that the issues of the CPR are so much intertwined that focusing on standardization cannot even solve the standardization issue. Moreover, political imperatives, in particular the need to incorporate the goals of the European Green Deal and of the Circular Economy Action Plan, made it necessary to go for a more comprehensive solution.

Late 2020 and early 2021, business associations presented a concept paper containing a so-called "Option F"[316]. This concept paper was focusing on a new way of elaborating technical specifications which resembled to the elaboration mode of Option D2 for product requirements. As a result, there would be only Commission acts with – to the extent possible - mandatory references to standards, and this also for the performance assessment of essential characteristics. Besides the fact that this "Option F" could not anymore be integrated into the public consultation, it was perceived as being too radical, for scrapping completely the use of harmonised standards as distinct path for the development of technical specifications. Instead of having at its disposal two elaboration modes for technical specifications, the Commission would again only have one. Bearing in mind that one elaboration mode can easily fail, as seen today, the likelihood of a system functioning can only be increased by having two or more elaboration modes.

[315] VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Evaluation.
VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), Global Data Collection Company (2018). Supporting study for the Review of the Construction Products Regulation: Impact Assessment.
Public consultation on EU rules for products used in the construction of buildings and infrastructure works (January-April 2018), https://ec.europa.eu/docsroom/documents/32082.

[316] See Results of the Survey on the Refined indicative options paper, April-August 2020, Annex II on option B, available: https://ec.europa.eu/docsroom/documents/43103.

2. Discarded elements

In April 2020, Option B was designed as a full package of repair elements that could be combined in multiple combinations. It had been decided to keep all the debatable elements on the table as long as possible in order to be transparent towards the stakeholders: only by presenting all the elements, we made clear how big the playing field of the CPR revision is. This with the view of allowing them to comment on all the elements which potentially could find its way into the revision.

The downside of not discarding some of the potential elements of the options at an early stage was that the options containing these elements were assessed by the stakeholders more critically than they would have been otherwise. However, the differentiated views with regard to all the elements permitted identification of the precise interests of the stakeholders and thus correction of the bias in favour of keeping the current regulatory system.

For several elements the iterative process with stakeholders and deeper analysis has triggered the need to discard them at a later point in time, just before or even during the drafting of the Impact Assessment report. This was the case in particular where the feedback was turning out to be very negative.

In consequence, after the feedback received on the Refined indicative options paper, several elements initially considered within the context of Option B and presented as such in April 2020, in the Refined indicative options paper, have been discarded, amongst them namely:

- Preliminary CE marking on the basis of assessments of Regulatory Advancement Bodies which were to replace the Technical Assessment Bodies (EOTA route): Stakeholders and authorities feared legal uncertainty, in particular regarding the transition from the preliminary to the definitive CE marking;

- Establishment of special bodies for the environmental assessments: Stakeholders and authorities saw no need for these dedicated bodies as the current notified bodies framework permits specialisation, e.g. on fire safety, and the combination of the involvement of different notified bodies;

- Improving the efficacy of notified bodies: Deviation from the default provisions established by the NLF would create different practices amongst different product sectors;

- Streamlining of the procedures in case of non-conformities: Deviation from the default provisions established by the NLF would create different practices amongst different product sectors;

- Enhancing market surveillance: Instead of extending the empowerments, some measures were taken in line with the SPI;

- Reducing or lifting AVCP obligations in case of coverage by liability insurance: This was felt to be an important further complication of the system with little practical added value; and

- Better access to harmonised standards by translation into all official languages and free availability: Budgetary constraints made it necessary to drop this point.

ANNEX 14: JAMES ELLIOTT JUDGMENT (C-613/14)[317]

In the *James Elliott* judgment,[318] the Court gave a preliminary ruling addressing important issues in relation to the role of the European standard-setting bodies and the harmonised standards adopted in compliance with New Approach directives. In particular, for the first time, the Court established its jurisdiction to give preliminary rulings on the interpretation of harmonised standards, clarifying their position in relation to EU law. For the ground-breaking outcome of the case and for the institutional implications it entails, the judgment in James Elliott Construction represents a fundamental step in the evolution of the case law concerning standardisation in its relation to the EU legal system and to the law in general.

The Court started by recalling its case law according to which it has jurisdiction to interpret not only "acts of the institutions, bodies, offices or agencies of the Union", but also other acts which are "by their nature measures implementing or applying an act of EU law"[319]. Thus, in a teleological reading of Article 267 TFEU, the Court can establish its jurisdiction also over such acts of other bodies in order to ensure the uniform application of EU law[320]. Acknowledging that the standard-setting bodies cannot be described as "institutions, bodies, offices or agencies of the Union", the Court considered whether the standard at issue represents a measure implementing or applying an act of EU law.

For this purpose, it analysed the provisions of the Construction Products Directive and stressed the relevance of the essential requirements set out by European legislation[321], as well as the control exercised by the European Commission in initiating, managing and monitoring the procedure for the adoption of a harmonized standard[322]. In light of this, the Court concluded that the standard at issue is "a necessary implementing measure" of the Construction Products Directive[323], and therefore it can be considered as "part of EU law".[324] As such, the harmonised standard can be subject to interpretation by the Court, which thus establishes its jurisdiction to give a preliminary ruling. Moreover, the lack of binding effects of harmonised standards does not preclude the Court from ruling on its interpretation, having regard to the legal effects of the presumption of conformity to the New Approach directives that the compliance with the standard entails.

With reference to the third question, the Court clarified that the presumption of fitness for use of a construction product manufactured in compliance with a harmonised standard must be read in connection with its purpose of guaranteeing the free circulation of the product within the internal market and is meaningful only in this context. Therefore, national courts cannot apply it to give meaning to general clauses of national law, such as the obligation to supply products "of

[317] Excerpts from the Common Market Law Review 54: 591–604, 2017.
[318] Judgment of 27 October 2016 in case C-613/14 James Elliott Construction Limited v Irish Asphalt Limited, ECLI:EU:C:2016:821.
[319] Judgment, para 34. The ECJ refers to Case C-192/89, S.Z. Sevince v. Staatssecretaris van Justitie, EU:C:1990:322; Case C-188/91, Deutsche Shell AG v. Hauptzollamt Hamburg-Harburg, EU:C:1993:24.
[320] Judgment, para 34.
[321] Ibid., para 43.
[322] Ibid., para 45.
[323] Ibid., para 43.
[324] Ibid., para 40.

merchantable quality" or "fit for purpose".[325] Having replied to the referring court's question in the negative, the fourth and fifth questions could be omitted.

Finally, as regards the second question, concerning the application of the CIA Security International and Unilever case law to the Irish provision on the need to provide products "of merchantable quality", the Court considered whether this provision falls within the scope of the notification duty imposed by Article 8 of Directive 98/34. Since the Irish provision did not fall within the concepts of "technical specification", "technical regulation" or "other requirements" within the meaning of Article 1 of Directive 98/34, the Court concluded that there was no need to notify such a provision to the European Commission and, therefore, the Irish judge may apply it in the proceedings before it.

[325] Ibid., para 59.