Analysis of the implementation of the Construction Products Regulation

Executive Summary & Main Report

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Acronyms

AoC	Attestation of Conformity
AVCP	Assessment and Verification of Constancy of Performance
BRCW	Basic Requirements for Construction Works
BWR	Basic Work Requirement
CPD	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
CPR	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
CUAPs	Common Understanding of Assessment Procedures
DoP	Declaration of Performance
EAD	European Assessment Document
EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area
EOTA	European Organisation for Technical Assessment
ETA	European Technical Assessment
ETAG	European Technical Approval Guidelines
EU	European Union
FPC	Factory Production Control
hEN	Harmonised European standard
MAS	Manufacturing Advisory Service (UK)
MS	Member States
MSA	Market Surveillance Authority
NANDO	New Approach Notified and Designated Organisations
NB	Notified Body
NPD	No performance declared
PCP	Product Contact Point
PCPC	Product Contact Point for Construction
SB	Standardisation Body
SMEs	Small and medium sized enterprises
TAB	Technical Assessment Body

Executive Summary

Background

The Construction Products Regulation (EU No 305/2011; hereafter the CPR) entered into full force on the 1 July 2013[1] and, in so doing, replaced the Construction Products Directive (89/106/EEC; hereafter the CPD). The main objective of the CPR - compared with the CPD - was to facilitate the consolidation of the Internal Market for construction products through, *inter alia*, simplification, clarification and increasing the credibility of the legislative framework for construction products.

Although the CPR has only recently been implemented, technical, economic and societal developments over recent years mean that it is essential to assess the extent to which the CPR has met (or is likely to meet) its main objectives, based on the first experiences of its implementation. There is also a need to identify, based on a thorough and objective review across all Member States (MS) and parts of the construction sector, whether further actions still need to be taken to ensure the consolidation of the Internal Market for construction products.

Risk & Policy Analysts Ltd (RPA), with support from its partner (EPRD), and selected experts has been contracted by DG for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) of the European Commission (EC) to undertake this analysis of the implementation of the CPR. It is foreseen that the findings of this study will feed into the reporting obligation for the Commission on the implementation of the CPR, as set out in its Article 67(2).

This Executive Summary summarises the key findings of the study.

Study Findings

Definitions

Article 2 of the CPR sets out a number of key definitions. Of particular relevance, the CPR updates the definition of a construction product, compared to the definition that was in the CPD[2].

Information obtained from consultation indicates that the definitions provided in Article 2 have been effective in terms of reducing ambiguity and enhancing legal clarity and also increasing ease of compliance and enforcement. There are, nevertheless, some terms and concepts referred to in the CPR that would benefit from further clarification, or new definitions. These include the terms non-series production process; construction works; identification code; single user/customer; specific technical documentation; and individually manufactured.

Obligations of economic operators

Chapter III of the CPR clarifies the legal obligations of economic operators (i.e. manufacturers, authorised representatives, importers and distributors that deal with construction products).

[1] Note that some parts had already been applicable from April 2011.

[2] Note that the CPD only defined a construction product, while the CPR contains many more definitions.

Responses to consultation indicate that clarifying the obligations of economic operators has been effective in terms of increasing legal certainty and transparency regarding the rules. In turn, the improved understanding of companies has facilitated their ability to comply with the CPR and made enforcement of the legislation easier for Market Surveillance Authorities (MSAs). The legal certainty provided by these provisions has also increased the respect of legal obligations by economic operators.

Some stakeholders have, however, indicated that there has been an increase in the administrative burden on economic operators as a result of this aspect of the CPR and that the practical interpretation of the obligations varies in some cases. It has also been indicated that some economic operators (particularly importers and distributors) are not aware of their obligations under the CPR.

Declaration of performance

Under the CPR, a Declaration of Performance (DoP)[3] must be drawn up for each construction product placed or made available on the market that is covered by a harmonised European standard (hEN) or European Technical Assessment (ETA) and must be made available to all purchasers. The CPR makes it possible for the manufacturer to make the DoP available electronically and there is evidence that this approach is utilized and viewed positively by industry. Article 5 of the CPR sets out a number of exceptions (or 'derogations') to the DoP requirements.

The transition from the Declaration of Conformity (DoC) to the DoP appears to have been smooth and information from stakeholders indicates that this provision has been effective in terms of increasing legal certainty and transparency regarding the rules and increasing the ease of compliance and enforcement.

There are, however, only isolated examples of Article 5 being applied by industry and, consequently, the financial burden on companies has not been alleviated to the extent envisaged. Stakeholders have attributed the limited uptake of this provision to *inter alia* a lack of certainty regarding key terms, including the caveat "*absence of Union or national provisions*" in the chapeau, determining what constitutes a product that is "*individually manufactured*" or "*custom made in a non-series process in response to a specific order…*" and when a construction product can be considered to be "*manufactured on the construction site for its incorporation in the respective construction works*".

CE marking & quality marks

From 1 July 2013, the CE marking must be affixed to all construction products in conformity with a hEN (with a limited number of exceptions) or be issued with the product's accompanying documentation. A manufacturer may also affix the CE marking to products not covered, or not fully covered, by a hEN, if the product conforms to a ETA issued by a Technical Assessment Body (TAB).

Across Europe, industry has taken the necessary steps to comply with the new (mandatory) requirements for CE marking. The CPR has increased legal certainty and transparency of the rules associated with CE marking, which in turn has increased the credibility of the CPR and made compliance and enforcement easier. Overall, mandatory CE marking has not enhanced the free movement of construction products, most likely because CE marking was previously undertaken in all but four MS under the CPD and quality marks are still in use.

[3] The Declaration of Performance (DoP) under the CPR replaces the Declaration of Conformity (DoC) under the CPD.

In terms of improvements, stakeholders have indicated that there is a duplication of information, which is already provided in the DoP, in the CE marking information. Looking to the future, it may be necessary to address the duplication issue in order to make compliance easier for economic operators. The information included in the CE marking itself could be simplified and further efforts should be made to clarify the meaning of the CE marking within the context of the CPR.

Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)

European Assessment Documents (EADs) are harmonised technical specifications that form the basis for the issuing of European Technical Assessments (ETAs). In turn, ETAs provide the means of CE marking construction products not covered by a hEN. EADs have replaced the concept of European Technical Approval Guidelines (ETAGs) and the Common Understanding of Assessment Procedures (CUAPs) established under the CPD.

EOTA has experienced significant delays in the development of EADs, specifically in the publication phase, with the first nine EADs published at the time of writing. As a result, the anticipated benefits associated with this provision have not yet been fully achieved, but have started to be realised following the recent publication of EADs and in light of the expected publication of further EADs in the near future.

Product Contact Points for Construction

Article 10(1) of the CPR requires MS to designate Product Contact Points for Construction (PCPC).

All MS have established a PCPC, which are functioning and responding to requests for information from industry. However, awareness of the PCPCs remains relatively low.

Where PCPCs are being used, they are helping industry to better understand how to apply the CPR, and have increased legal certainty and transparency regarding the rules. However, some stakeholders have noted that PCPCs are slow to respond to requests for information and provide only enough detail to fulfil their obligations, rather than necessarily responding to the specific question from industry.

There is no evidence to suggest that PCPCs have had any impact in terms of enhancing the free movement of construction products within the EU. To some extent, this is because industry is mostly unaware of the PCPCs in other MS.

Harmonised standards

HENs outline the methods and the criteria for assessing the performance of construction products in relation to their essential characteristics. Under the CPR, it is mandatory for manufacturers to draw up a DoP and apply the CE marking to any of their products which are covered by a hEN (or ETA). The Commission must assess the conformity of the hEN with the relevant mandate before citing the reference to the hEN in the OJEU.

The mandatory nature of hENs under the CPR has improved legal certainty and increased the credibility of the legislative framework without significantly impacting (positively or negatively) the free movement of construction products (this is because hENs were already widely applied under the CPD). However, it is clear that many hENs still need to be adapted to the CPR and it has been indicated that the process for drawing up and amending hENs needs to be more inclusive, particularly with regard to taking into account the position and needs of SMEs.

Assessment and verification of constancy of performance

The CPR sets out five systems for the AVCP[4]. While some stakeholders acknowledged that this aspect of the CPR has been effective in terms of improving legal certainty and enhancing the credibility of the legislative framework, the changes which took place under the CPR (e.g. the removal of System 2+, which was barely used under the CPD) are generally perceived as a streamlining exercise and, as such, have had limited tangible impact for the majority of stakeholders.

Levels and classes of performance

Article 27 permits the Commission to adopt delegated acts to establish levels and classes of performance in relation to the essential characteristics of construction products (Article 27(1)). It also provides the basis for adopting delegated acts to establish the conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing (Article 27(5)).

While the potential benefits of this provision (in the form of reduced costs for manufactures, increased legal certainty and transparency regarding the rules and enhanced free movement of construction products) were acknowledged by stakeholders, it has been identified that these benefits have not (yet) been achieved because only few delegated acts have been issued and those that have, have only recently been adopted. Some stakeholders believe that the process for establishing levels and classes will be more time consuming and onerous than the old regime (under the CPD), which may negatively impact upon the credibility of the CPR.

Technical assessment bodies

Article 29(1) of the CPR allows MS to designate Technical Assessment Bodies (TABs) within their territory, according to their national procedures for the designation of TABs. However, TABs must meet strict requirements, as outlined in Article 30 and Annex IV (Table 2) of the CPR. This aspect of the CPR has been effectively implemented; i.e. those MS that wish to designate a TAB have done so.

Outlining strict requirements that TABs must meet has not had any tangible impact (positive or negative) in terms of increasing legal certainty and transparency regarding the rules, ensuring that TABs have the necessary competence (technical and personnel) for carrying out their tasks or enhancing the credibility of the CPR. This is mainly because many TABs already satisfied similar criteria under the CPD. In terms of scope for improvement, stakeholders have indicated that further work may be required with regard to harmonising the accreditation process for TABs.

Notified bodies

Notified bodies are required to fulfil the requirements outlined under Article 43 of the CPR and may be accredited as part of the notification procedure under Article 48. This aspect of the CPR has been effectively implemented, with notified bodies designated across Europe.

The strict requirements for notified bodies have had a positive effect in terms of increasing the credibility of the CPR, increasing legal certainty and transparency regarding the rules and ensuring that notified bodies have the necessary competence for carrying out their task. Moreover, the strict

[4] As set out in Commission Delegated Regulation (EU) No 568/2014 of 18 February 2014 amending Annex V to Regulation (EU) No 305/2011 of the European Parliament and of the Council as regards the assessment and verification of constancy of performance of construction products.

requirements are also likely to have had a positive effect in terms of ensuring the impartiality of notified bodies and addressing issues relating to conflicts of interests.

There is, however, a perception amongst stakeholders that the practices of notified bodies can vary greatly, in part because Articles 46 (concerning the use of facilities outside the testing laboratory of the notified body) and 52(2) (concerning operational obligations for notified bodies) are not sufficiently precise in their wording. Stakeholders also identified that the process for challenging the competence of a notified body should be made faster and more efficient to ensure the credibility of the CPR is not jeopardised. Finally, concerns have been raised with respect to Article 53 (concerning information obligations for notified bodies); namely that it is not possible to implement this provision and for the notified body to maintain confidentiality.

Notifying authorities

Article 40(1) of the CPR requires MS to designate a notifying authority. Notifying authorities are responsible for setting up and carrying out the necessary procedures for the assessment, notification and monitoring of notified bodies, including their compliance with Article 43. This aspect of the CPR has been effectively implemented.

Overall, it appears that the designation of notifying authorities has had a positive effect in terms of increasing legal certainty and transparency regarding the rules and ensuring notified bodies have the necessary competence and are impartial. The establishment of notifying authorities has also had a positive effect in terms of enhancing the credibility of the CPR. Stakeholders have, however, identified that the accreditation process for notified bodies could be improved.

Simplified testing procedures for products covered by harmonised technical specifications

Chapter VI of the CPR lays out simplified procedures for some construction products, specifically:

- Article 36 enables a manufacturer to replace the type-testing or type-calculation stage of the assessment with Appropriate Technical Documentation, under certain conditions;
- Article 37 of the CPR provides micro-enterprises with the option to use simplified procedures when carrying out the AVCP, provided compliance is demonstrated via Specific Technical Documentation; and
- Article 38 provides that Specific Technical Documentation may be used in place of the performance assessment part of the applicable system (as set out in Annex V of the CPR) for all construction products which are individually manufactured or custom-made in a non-series process in response to a specific order, and which are installed in a single identified construction work.

Article 36 has successfully transposed Guidance Paper M (under the CPD) into legislation and is commonly applied in some sectors, thereby making compliance easier for economic operators. However, the uptake of Articles 37 and 38 has been low, which has prevented their associated benefits from being achieved.

To increase the uptake of these simplified procedures, the Commission and MS authorities should raise awareness amongst industry, particularly SMEs, of these provisions and clarify the key terms mentioned in these provisions (e.g. Specific Technical Documentation).

Information campaigns

The Commission and MS, in collaboration with stakeholders, have carried out a range of information campaigns to inform the construction sector of legislative changes introduced by the CPR. These campaigns appear to have been successful, in that they were informative and reached a wide audience.

Further information campaigns should be targeted at those stakeholders that are traditionally hardest to reach (e.g. micro-enterprises and SMEs) and should focus on promoting the simplified procedures that seek to alleviate the burdens of complying with the CPR. Additional efforts should also be made to raise the awareness of PCPCs. The Commission's webpage should be updated more regularly and more of the content should be translated into all EU languages.

Market surveillance

Articles 56-59 of the CPR set out the procedures relating to the surveillance of the construction products market:

- Article 56 sets out the national level procedures to deal with construction products presenting a risk;
- Article 57 sets out the Union safeguard procedure, for ensuring the compatibility of national measures with EU legislation;
- Article 58 sets out provisions relating to compliant construction products which nevertheless present a risk to health and safety; and
- Article 59 sets out provisions dealing with formal non-compliance with the CPR.

It is evident that MSAs across Europe are undertaking their activities on both a proactive and reactive basis. There is also evidence of economic operators taking corrective action to comply with the CPR, where necessary. Despite this, industry perceives that more needs to be done in order for MSAs to fulfil their obligations and properly enforce the CPR (e.g. more sample testing, more visible enforcement action). Industry stakeholders thus believe that the anticipated benefits of market surveillance (in terms of increased compliance with the CPR, reduction in products posing a risk to health and safety, increased credibility of the CPR and improved competitiveness for EU economic operators) have not yet been achieved. It can be concluded that there is a need for more visible market surveillance and enforcement action across the EU.

Overall effectiveness

The table overleaf provides an overview of the extent to which the CPR's objectives (in terms of simplification, clarification, credibility and free movement) have been achieved, based on the research undertaken for this study.

Summary of findings				
Aspect	Objectives achieved[1]			
	Simplification	Clarification	Credibility	Free movement
Definitions		✓		
Obligations of economic operators		✓		
Declaration of performance	✓ X	✓		
CE marking	✓ X	✓	✓	X
Simplified testing procedures	✓ X			
Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)	X	X	X	
PCPC	X			X
hENs		✓	X	X
AVCP		✓ X	✓ X	
Levels and classes of performance	X			X
TABs			✓ X	
Notified bodies			✓	
Notifying authorities			✓	
Information campaigns		✓		
Market surveillance			X	

[1] **Key:**

✓	Objective achieved
✓ X	Objective partly achieved
X	Objective not achieved
	Not applicable

Competitiveness, Innovation and Sustainability

The CPR accords with the Commission's policy objectives of competition, innovation and sustainability. Provisions designed to ease the burden of compliance for SMEs and boost their competitiveness (e.g. the simplified procedures and derogation from drawing up a DoP) form an integral part of the CPR. The CPR has also updated the regime that governs innovative construction products (EADS/ETAs) to facilitate their route to market within Europe. The CPR also includes a formal reference to sustainability in Annex I.

Unfortunately, as has been discussed above, it is these aspects of the CPR that have not yet been effectively implemented (i.e. only nine EADs have been cited in the OJEU). Nevertheless, additional EADs are likely to be published in the near future and the Commission and industry are aware of the need to clarify aspects related to simplified procedures and the derogation from drawing up a DoP. Had this study been undertaken in 2016/17 (i.e. several years after implementation) these issues may already have been resolved.

Despite this, it should be recognised that Article 36 has been beneficial in terms of enhancing competition, as has the CPR more generally. For instance, mandatory hENs and CE marking, coupled with the system for the AVCP and the impartiality of notified bodies has helped to ensure fair competition in the European market for construction products. The ability to supply DoPs electronically has also been successfully implemented and is in accordance with the Commission's policy on innovation and competition.

Finally, Basic Works Requirement (BWR) 7 of the CPR that relates to sustainability represents a first step from which further progress can be made in the future.

1 Introduction

1.1 Background

The Construction Products Directive (CPD) (89/106/EEC) was introduced in 1988 with the aim of removing technical barriers to trade in construction products across EU Member States (MS). The CPD introduced harmonised technical specifications and the CE marking of construction products in MS in order to show compliance with the Directive.

The Construction Products Regulation (EU) No 305/2011 (the CPR) was published in April 2011 and repealed the CPD. The CPR creates a harmonised framework for expressing the performance of construction products in relation to their essential characteristics and for applying CE marking to these products. It aims to remove technical barriers in the field of construction and simplify construction product performance assessment procedures in order to make them more transparent and to reduce costs to manufacturers of construction products. Overall, the main objective of the CPR (compared with the CPD) is to facilitate the consolidation of the Internal Market for construction products through, *inter alia*, simplification, clarification and increasing the credibility of the legislative framework for construction products.

The CPR entered into full force from 1 July 2013 onwards, although some parts had already been applicable from April 2011. While it is the case that the CPR has only recently been implemented, technical, economic and societal developments over the last few years have created new issues to be addressed and, as such, it is essential to assess the extent to which the CPR is meeting (or is likely to meet) its main objectives, based on the first implementation experiences. Of particular interest is the identification – based on a thorough and objective review across all MS and parts of the construction sector – of whether further actions still need to be taken to ensure the consolidation of the Internal Market for construction products. It is foreseen that the findings of this study will feed into the reporting obligation for the Commission on the implementation of the CPR, as set out in CPR Article 67(2).

1.2 Objectives of the study

The aim of this study is to analyse the implementation of the CPR in MS as regards their legal provisions and administrative practices, as well as at the level of the whole EU. More specifically, the objective of the study is to gather, analyse, validate and summarise data in order to answer three key questions which can be paraphrased as follows:

1. How and to what extent has the CPR been implemented at national and EU level?
2. To what extent has the CPR been useful in producing the intended results and effects in terms of free movement of products, clarification, credibility and simplification?
3. To what extent has the CPR fulfilled the objectives of the Commission's policy for products regarding competitiveness, sustainability and innovation, including in order to respond to future technological developments?

1.3 Structure of this report

This Draft Final Report sets out the key findings of the study to date. The remaining sections of this report have been organised as follows:

- **Section 2** summarises our methodological approach to the study and provides important information on the sources of information upon which subsequent findings are based.
- **Section 3** assesses the implementation of the CPR at national and EU levels (Question 1).
- **Section 4** provides an analysis of the intended results and effects of the CPR in terms of free movement of products, clarification, credibility and simplification. In particular, this section assesses the "effectiveness" criterion of the evaluation by assessing the extent to which the legislation's anticipated benefits have been achieved (Question 2).
- **Section 5** addresses (Question 3) the extent to which the CPR has fulfilled the objectives of the Commission's policy for products regarding competitiveness, sustainability and innovation, including in order to respond to future technological developments.
- **Section 6** sets out a preliminary evaluation of the CPR implementation to date against the relevant evaluation criteria considered to be relevant for this ex-post evaluation (i.e. effectiveness, relevance, coherence and added value).
- **Section 7** sets out the study conclusions.
- **Section 8** sets out suggested solutions and recommendations for the areas where improvements are necessary for achieving the objectives of the CPR.

Further information is contained within the Annexes to this report, which are presented as separate documents:

- Annex 1 contains the template for the questionnaires used for the online survey;
- Annex 2 contains the template used for the telephone interviews;
- Annex 3 contains information from the EU level literature review; and
- Annex 4 contains the results of the online survey.

In addition to the above, four topical reports have been developed for the purpose of generating discussion at the workshop[5] and country reports have been produced for the 28 EU MS and the EFTA countries. These have been provided to the Commission separately as independent documents.

[5] Note that some of the ideas contained within the topical reports have been developed further since the workshop, as shown in the content of this main report.

2 Methodology

2.1 Overview

Our approach to this study has comprised the following steps and tasks:

Step 1: Project Inception

- **Task 1: Project Inception.** In order to obtain a clearer understanding of the work to be undertaken and to clarify the main aspects of the proposed methodology, a kick-off meeting was held in Brussels on 2 October 2014. Following the meeting, an Inception Report was provided to the Commission on 10 October 2014. A Revised Inception Report, addressing comments made by the Commission on the Inception Report, was submitted to the Commission on 6 November 2014.

Step 2: Data Collection

- **Task 2: Online Survey.** For this task, four tailored questionnaires were developed targeted at four key stakeholder groups[6] and hosted on Survey Monkey (Task 2a). The questionnaires were disseminated widely on 6 November 2014 to a comprehensive database of relevant stakeholders (Task 2b). The original deadline for responses was 18 December; however, this was extended to 23 January. Following this deadline, an analysis of the survey responses was carried out (Task 2c).

- **Task 3: Literature Review.** A comprehensive desk-based review, synthesis and analysis of available information relating to the construction industry, the implementation of the CPR in the MS and its associated impacts at MS and EU level was undertaken, drawing on the expertise of the study team's national experts. This Report provides a summary of the main provisions of the CPR and implementation context, based on the information that was gathered.

- **Task 4: Telephone Interviews.** For this task, telephone interviews were carried out with 166 organisations spread evenly across the EU-28. To support this task, a semi-structured interview guide was prepared and interviews were held with knowledgeable individuals/organisations in order to obtain further information on the implementation of the CPR.

- **Task 5: Workshops/Roundtable Meetings with selected experts and stakeholders.** Group discussions are particularly useful where there are concerns on the respondents' side regarding the political sensitivity of the topic, confidentiality issues, sector-specific concerns, etc. A **roundtable discussion** was therefore held on 27 October 2014 with the aim of generating more awareness of the study and encouraging key industry associations to provide information to the study. The study team also made a presentation at the **group meeting of CPE members/technical experts** held in Brussels on 18 November 2014. The

[6] Namely: (1) **companies** (e.g. manufacturers, distributors, importers, and users of construction products); (2) **organisations involved in conformity assessment** (notified bodies, TABs, notifying authorities, etc.); (3) **public authorities**; (4) **associations and construction industry stakeholders** (e.g. industry associations, NGOs, etc.)

outcome of these discussions was positive, taking into account the effort put in by these organisations to disseminate information about the survey. A **one-day workshop** for around 60 participants was held in Brussels on **23 March 2015**. The aim of this workshop was to set out some of the preliminary findings of the study and obtain feedback from the stakeholders' present. This workshop was particularly useful for verifying and cross-checking the findings of the topical reports.

- **Task 6: Interim Reporting.** The aim of this task was to develop country reports setting out the situation in each of the 28 EU MS (and the EFTA countries) as well as topical reports focusing on representative topics, products, MS and/or stakeholders. The Interim Report was submitted to the Commission on 18 February 2015, along with four topical reports. An Interim Report meeting was held on **5 March 2015**.

Step 3: Data Analysis

- **Task 7: Analysis of extent of CPR implementation at national and EU levels.** The aim of this task was to set out clearly how, and to what extent, the CPR has been implemented in each of the EU MS and, based on this information, to develop a horizontal review of the situation across the EU-28. To this end, Section 3 of this report provides a cross-cutting analysis of how the CPR's requirements have been implemented by each MS.

- **Task 8: Analysis of extent to which the CPR has produced intended results.** The aim of this task was to assess the extent to which the CPR has produced its intended results, namely with respect to the CPR's four main objectives: clarification, simplification, credibility and the free movement of products. The results of this analysis are provided in Section 4. The aim of this task was also to identify the factors that are curtailing the effectiveness of the CPR, issues stemming from implementation and areas for improvement (e.g. in terms of the way the CPR is implemented, applied and enforced). The results of this analysis are provided, using an 'evaluation' framework, in Section 6 of this report.

- **Task 9: Analysis of extent to which the CPR fulfils the objectives of the Commission's policy for products.** The aim of this task was to consider the extent to which the CPR is helping to fulfil the objectives of EU policy in the areas of competitiveness, innovation and sustainability. The results of this task are presented in Section 5.

- **Task 10: Final Reporting, conclusions and recommendations**. This task involves submission of a Draft Final report, Final report and associated meetings.

2.2 Responses to online survey

2.2.1 Overall

In total, 517 completed responses were received from the four questionnaires developed for this study. A breakdown of these responses, by stakeholder group and location, is shown in Tables 2-1 and 2-2 below.

Table 2-1: Responses to online survey

Questionnaire	Stakeholder Group	Response count
Questionnaire 1	Companies	170
Questionnaire 2	NBs, TABs & Standards Bodies	187
Questionnaire 3	Public Authorities	65
Questionnaire 4	Associations, Organisations, Other	95
TOTAL		**517**

Table 2-2: Summary of responses to online survey by location

Country	Q1	Q2	Q3	Q4
Austria	5	7	1	6
Belgium	14	4	3	20
Bulgaria	1	6	1	0
Croatia	8	9	3	0
Cyprus	0	2	1	0
Czech Republic	2	4	3	0
Denmark	1	3	0	1
Estonia	3	2	1	1
Finland	4	3	2	3
France	3	6	2	4
Germany	24	19	2	10
Greece	0	4	4	1
Hungary	3	0	0	2
Iceland	0	1	1	0
Ireland	5	2	1	0
Italy	7	10	0	6
Latvia	2	2	2	0
Liechtenstein	0	0	1	0
Lithuania	3	3	2	0
Luxembourg	0	3	1	0
Malta	0	1	0	0
Netherlands	13	11	2	5
Norway	0	3	1	0
Poland	5	17	18	5
Portugal	14	6	3	6
Romania	6	6	1	1
Slovakia	0	8	2	0

Table 2-2: Summary of responses to online survey by location				
Country	**Q1**	**Q2**	**Q3**	**Q4**
Slovenia	1	3	1	0
Spain	6	10	1	2
Sweden	3	3	1	2
Switzerland	4	3	1	1
Turkey	0	7	0	1
United Kingdom	26	15	2	12
Not specified	3	4	1	3
Other	4	0	0	3
Total	**170**	**187**	**65**	**95**

2.2.2 Questionnaire 1: Companies

Questionnaire 1 was targeted at companies involved in the construction sector. A breakdown of respondents to Questionnaire 1 (as shown in Figures 2-1 and 2-2) shows that the vast majority of responses are from manufacturers of construction products and SMEs.

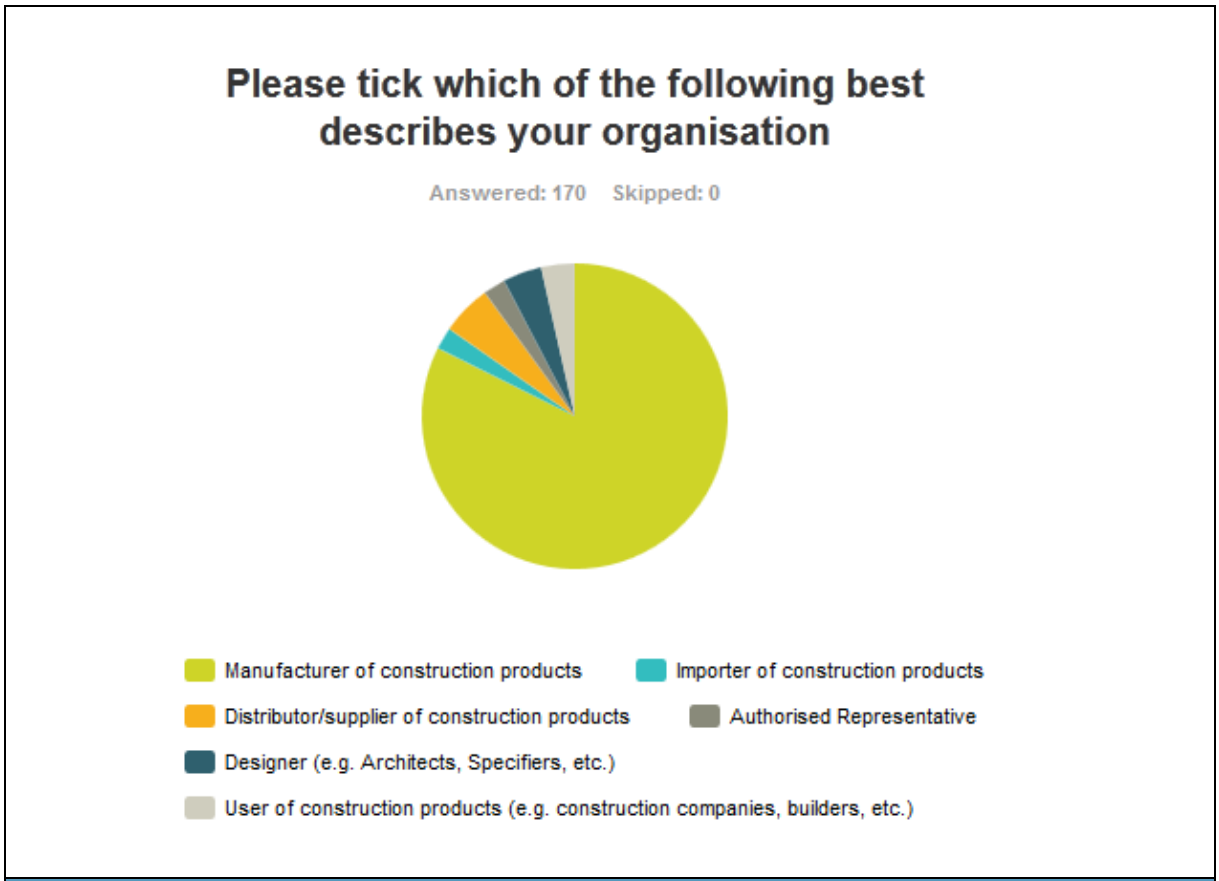

Figure 2-1: Types of companies responding to Questionnaire 1

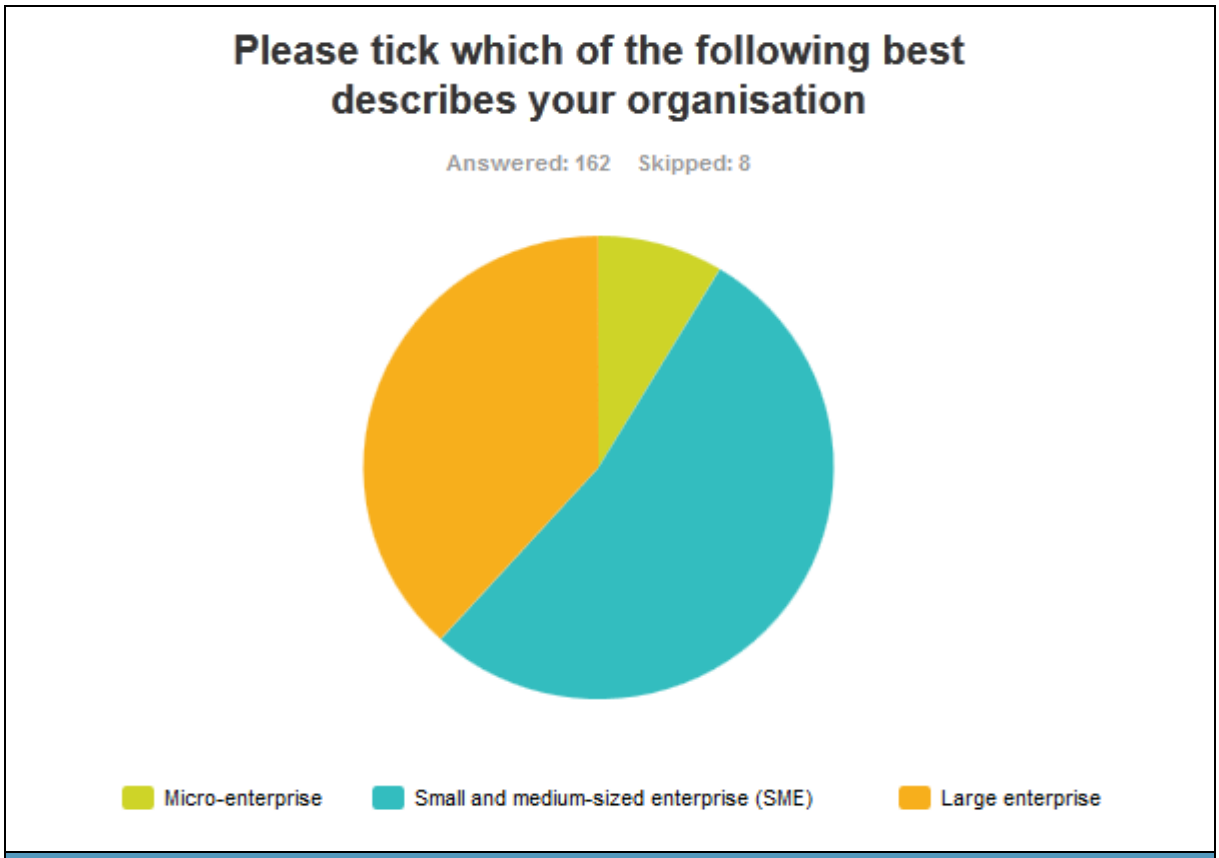

Figure 2-2: Size of companies responding to Questionnaire 1

Table 2-3 provides an indication of the countries where the organisations that have responded to the survey are operating. Overall, it shows a good spread across all European countries, with the higher number of responses coming from countries with a larger number of construction firms.

Table 2-3: Countries which organisations responding to online questionnaire are operating within	
Country	**Number of organisations operating in country**
United Kingdom	51
Germany	48
Netherlands	42
Belgium	40
France	38
Austria	32
Italy	32
Poland	30
Portugal	26
Switzerland	24
Denmark	23
Czech Republic	22
Norway	21
Spain	21
Sweden	21
Croatia	20
Finland	20
Ireland	20
Romania	19
Slovakia	18
Hungary	17
Latvia	16
Bulgaria	15
Estonia	15
Slovenia	15
Lithuania	12
Turkey	11
Greece	8
Luxembourg	8
Iceland	4
Liechtenstein	3
Malta	3
Cyprus	2
41 organisations indicated that they operate across the entire EEA/EU-28	

2.2.3 Questionnaire 2: Conformity assessment bodies

Questionnaire 2 was targeted at Notified Bodies (NBs), Technical Assessment Bodies (TABs), National Standardisation Bodies, National Accreditation Bodies and Notifying Authorities. For the purposes of this report, where necessary, the views of respondents to this questionnaire will be presented in aggregate as from "**organisations involved in conformity assessment**"[7]. A breakdown of respondents to Questionnaire 2 (as shown in Figure 2-3 below) shows that the vast majority of responses were from NBs. More specifically, the responses reflect a:

- 25% response rate from all NBs (129 responses);
- 55% response rate from all TABs (23 responses);
- 50% response rate from National Standardisation Bodies (16 responses)
- 35% response rate from National Accreditation Bodies (12 responses); and
- 15% response rate from Notifying Authorities (7 responses) (although this may not reflect that some of the organisations have more than one role).

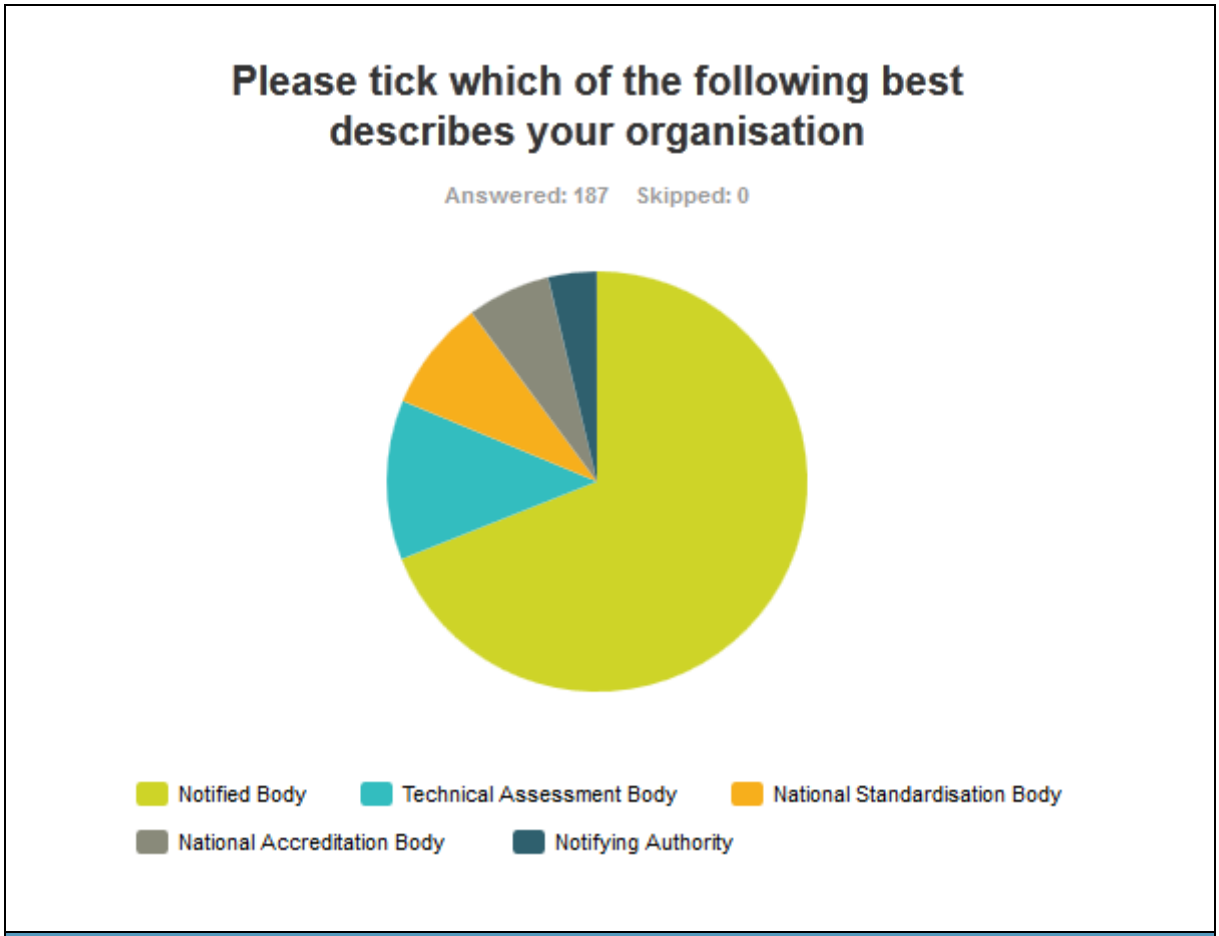

Figure 2-3: Types of organisations involved in conformity assessment responding to Questionnaire 2

[7] In this context, conformity assessment is considered to cover all activities used to demonstrate that products, processes, services, persons, systems and bodies meet specified requirements. These activities can include testing, inspection, evaluation, examination, auditing, assessment, declarations, certification, accreditation, verification, etc.

2.2.4 Questionnaire 3: Public authorities

The qualitative information in this report is based on information provided by stakeholders to the online survey, during telephone interviews, from published reports and reporting obligations to the Commission. In general, information has been obtained from all MS in developing the views below. Where quantitative information has been provided, this is based on a total of **65 responses from Public Authorities**, including national/regional public authorities, market surveillance authorities, inspectors/enforcement officers and product contact points. There were responses to the online survey from **27 national/regional public authorities covering 17 MS** and **28 MSAs,** although it should be noted that 40% of responses were from authorities in Poland (see Table 2-1). There were also responses from **3 inspectors/enforcement officers** and **7 PCPCs.** In practice, it is the case that for many countries, one organisation sometimes had more than one 'role' with at least 10 authorities being responsible for three or four 'roles' under the CPR as public authority, MSA, notifying authority, national standardisation body, PCPC, etc. It is therefore not possible to analyse too deeply or discount views from the online survey on the basis of the categorisation provided, although these statistics must be borne in mind in interpreting the findings. Also, for some of the authorities that did not respond to the online survey, telephone interviews were held with representatives covering the same key areas. Overall, considering the diverse sources of views presented here (and the range of experience which these organisations possess), for the purposes of this report and simplicity, the views of respondents to this questionnaire will be presented in aggregate as from "public authorities" – except where otherwise specified.

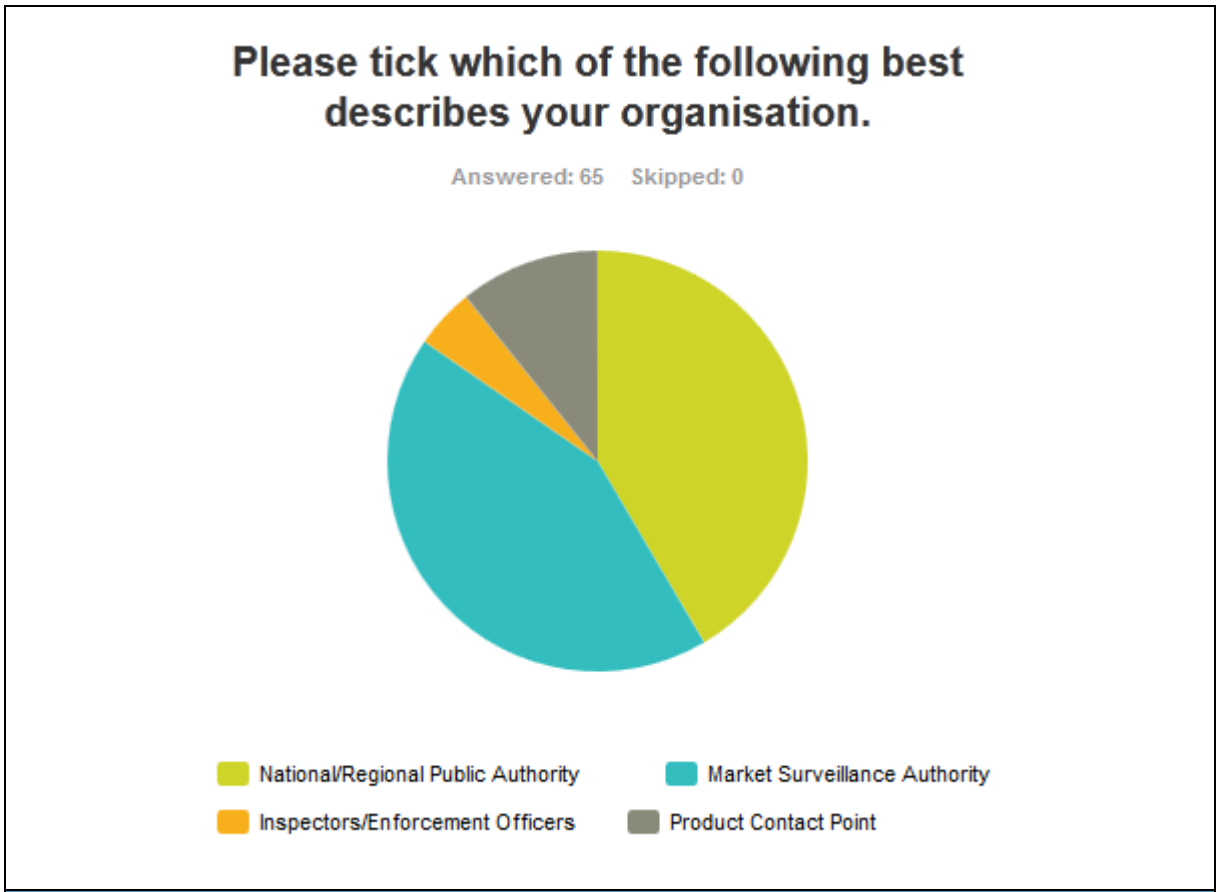

Figure 2-4: Types of public authorities responding to Questionnaire 3

2.2.5 Questionnaire 4: Associations and construction industry stakeholders

Questionnaire 4 was targeted at a wide range of stakeholders, including industry organisations, professional organisations, consumer organisations, environmental NGOs, tendering / contracting authorities, Chambers of Commerce, etc. As can be seen from Figure 2-5, the vast majority of responses came from industry associations and professional organisations, followed by 'other' where this includes research centres, non-profit organisations, consultants, quality assurance NGOs, etc. For the purposes of this report, where necessary, the views of respondents to this questionnaire will be presented in aggregate as from "**associations and construction industry stakeholders**".

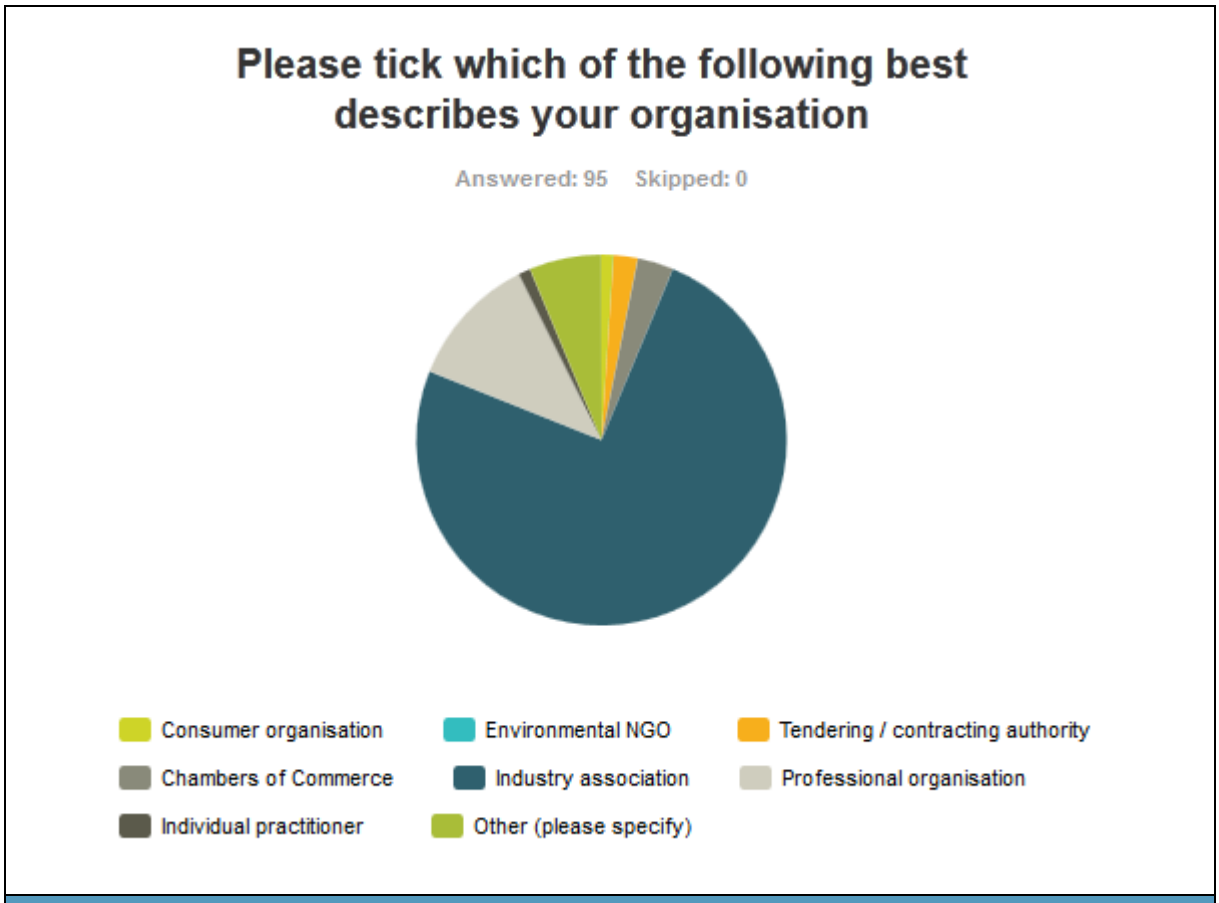

Figure 2-5: Types of associations and construction industry stakeholders responding to Questionnaire 4

2.3 Telephone interviews

Telephone interviews were held with organisations from across the EU. Table 2-4 shows the location of interviewees. Efforts were made to ensure that different stakeholder groups were interviewed from each MS, including:

1) A Notified Body OR Technical Assessment Body (TAB);
2) A Public Authority (responsible for/relevant to CPR), Notifying Authority OR a Product Contact Point (PCP);
3) A National Industry Association (in the construction sector);
4) A Manufacturer/Importer/Distributor (of construction products);
5) A User of construction products (e.g. Architects, Specifiers, etc.);
6) A SME in the construction sector; and
7) Other relevant individual or organisation to be determined taking account of stakeholders identified under Task 2b, responses to the online survey and discussions with the Commission (e.g. industry organisations, NGOs, consumer bodies, national construction experts, legal experts, insurers, technical or administrative experts, etc.).

Table 2-4: Summary of interviews held

Country	No. of telephone interviews
Austria	8
Belgium	6
Bulgaria	6
Croatia	6
Cyprus	2
Czech Republic	5
Denmark	8
Estonia	8
Finland	4
France	5
Germany	7
Greece	4
Hungary	6
Ireland	3
Italy	4
Latvia	8
Lithuania	8
Luxembourg	1
Malta	1
Netherlands	6
Poland	7
Portugal	7
Romania	9
Slovakia	8
Slovenia	7
Spain	6
Sweden	8
United Kingdom	8
Total	**166**

2.4 Workshop

A workshop was held in Brussels on 23 March 2015 and was attended by around 60 participants, including MS authorities, industry associations, companies, professional organisations and notified bodies. The aim of this workshop was to present some of the preliminary findings of the study, to obtain feedback from stakeholders on the preliminary findings and to verify and cross-check the findings of the topical reports.

Table 2-5 shows the number of participants at the workshop, by stakeholder type. As indicated in the table, the majority of attendees were public authorities and industry associations and construction industry stakeholders. Note that of the seven companies that attended the workshop, three were SMEs.

Table 2-5: Workshop participants

Stakeholder Group	Number of attendees
Companies	7*
NBs, TABs & Standards Bodies	4
Public Authorities	24
Associations, Organisations, Other	23
Total	58
**Seven companies, of which three were SMEs*	

As indicated in Figure 2-6, stakeholders at the workshop came from a wide range of EU countries. Given that the workshop was held in Brussels, it is unsurprising that the majority came from Belgium, Germany and the Netherlands.

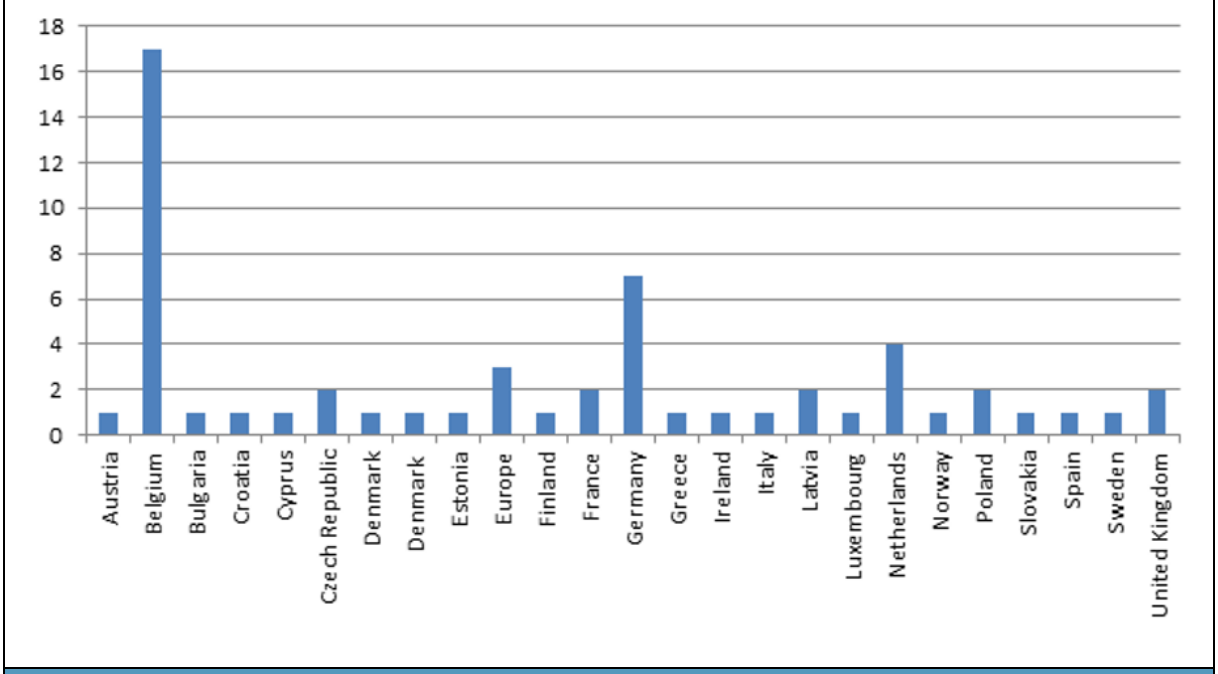

Figure 2-6: Geographical Distribution of Workshop Participants

3 CPR Implementation at National and EU level

3.1 Overview of the CPR

This Section focuses on aspects of the CPR which required specific actions (whether administrative, structural or technical) to be taken by MS authorities, industry or other stakeholders in order to implement the CPR. This section does not analyse the effectiveness of the actions taken (this is covered in Section 4), but focuses purely on establishing how certain key aspects of the CPR have been implemented in practice. Table 3-1 (overleaf) provides a summary of the key aspects covered in this Section.

The implementation of the CPR, as a legal text, necessitated MS to adapt their legal systems. The legislative acts that introduced the CPR within the MS are presented in **Section 3.2**. The CPR introduced simplified procedures (**Section 4.3.3 and Section 4.3.4**) and obligations for economic operators (discussed in **Section 4.2.3**).

CE marking (discussed in **Sections 3.4 and 4.2.4**) is one of the most important aspects of the CPR. Construction products which are covered by a harmonised standard must be CE marked in order to place them on the European Internal Market. Together with the Declaration of Performance (DoP) (discussed in **Section 3.3 and Section 4.3.2**), the CE marking information helps customers and final users to check the performance of a construction product and compare it with other products under the same technical approach.

Harmonised standards are now mandatory and MS are required to withdraw conflicting national standards (this is discussed in **Section 3.9 and Section 4.4.2)**. When a construction product is not covered by any harmonised standard, a manufacturer can still CE mark a product. For this, the manufacturer needs to check whether the product is covered by an existing European Assessment Document (EAD) or request a Technical Assessment Body (TAB) to develop a EAD (discussed in **Section 3.6 and Section 4.3.4**) and issue a ETA (**Section 3.7 and Section 4.3.4)**. Levels and classes that could be introduced via delegated acts in relation to essential characteristics are considered under **Section 3.11 and Section 4.3.5**.

Manufacturers are responsible for assessing product performance and putting in place factory production controls to check that product performance does not change over time (i.e. "assessment and verification of constancy of performance" (AVCP)). AVCP is discussed under **Section 3.10** while the TABs supporting the development of EADs are discussed in **Section 3.12.** Third party verifiers (notified bodies) who support organisations in AVCP are discussed in **Section 3.13**.

The designation of notifying authorities and PCPCs as part of the CPR is considered under **Section 3.14** and **Section 3.8** respectively.

As mentioned earlier, the CE marking indicates that the manufacturer has taken responsibility for the performance of the product, as stated in the DoP (as well as compliance with the CPR and EU legislative requirements) and can be the only marking that attests conformity of the product with the essential characteristics. The real added value of CE marking is that all EU-28 countries must allow the marketing of construction products bearing the CE mark on their national markets. This means that public authorities cannot ask for any additional marks or certificates or additional testing related to the essential characteristics. This aspect is discussed under **Section 3.5**.

Finally, market surveillance is considered under **Section 3.16** and the types of information campaigns carried out by the Commission and other stakeholders are outlined under **Section 3.15**.

Table 3-1: Implementation of the CPR – Topics covered in Section 3				
Section	**CPR aspect**	**Type of action**	**By who**	**Analysis to be Undertaken**
3.2	CPR as a whole	Adapt legislative system (i.e. repeal the CPD)	MS Authorities	Collation of information on implementing acts in MS
3.3	Declaration of Performance	Updates to existing processes and creation of procedures, databases, websites, etc.	Manufacturers across Europe	Analysis of extent to which manufacturers across Europe have switched to DoP and taken up electronic DoPs
3.4	CE marking	Product changes Additional product testing and audits	Manufacturers across Europe Industry in four countries	Analysis of implementation experience across EU in respect of updated label (drawing on Topical Report No. 1) Analysis of how mandatory CE marking was implemented in four countries
3.5	Quality marks	Continued withdrawal of quality marks (started under CPD)	MS Authorities, Industry	Collation of information on perceptions of stakeholders regarding the extent to which this aspect has been addressed to date (drawing on Topical Report No. 3)
3.6	European Assessment Document	Setting out EAD format and publishing EADs	EC & EOTA	Collation of information on EADs prepared and published, as well as other actions taken by key players to facilitate the uptake of EADs
3.7	European Technical Assessment	Setting out the format of the ETA	EC & EOTA	Information related to format of ETA and number of ETAs issued
3.8	Product Contact Point for Construction	Designation of PCPC (administrative & structural)	MS Authorities	Collation of information on PCPC that have been designated by MS, including analysis of how they were set up (e.g. whether from existing structure), their nature (e.g. only online presence) and nature of work undertaken to date
3.9	Harmonised European Standards	Withdrawal of conflicting standards	National Standards Bodies, MS Authorities	Collation of information provided by MS to show that they have withdrawn conflicting standards
3.10	Assessment and Verification of Constancy of Performance	Setting out AVCP	EC	Information on changes to AVCP (including the delegated regulation on annex V of the CPR)
3.11	Levels/classes	Defining levels and classes	EC	Information on future delegated acts to be adopted to establish levels/classes of performance
3.12	Technical Assessment Bodies	Designation of TABs	MS Authorities	Collation of information on TABs that have been designated by MS. Determine MS where the process for setting up TABs has started, but not yet been completed

Table 3-1: Implementation of the CPR – Topics covered in Section 3				
Section	**CPR aspect**	**Type of action**	**By who**	**Analysis to be Undertaken**
3.13	Notified Bodies	Designation of NBs and accreditation of NBs Managing NANDO database	MS Authorities, NBs EC	Collation of information on NBs that have been designated by MS. Determine where the process for designating NBs has started, but not yet been completed
3.14	Notifying Authorities	Designation Convening meetings	MS Authorities EC	Collation of information on notifying authorities that have been designated by MS
3.15	Information campaigns	Launch information campaigns to improve awareness of the CPR	EC, MS Authorities, Industry	Collation of information on types of information campaigns undertaken to date
3.16	Market surveillance	Articles 56 – 59 set out responsibilities and actions of authorities	MS Authorities	Collation of information on perceptions of stakeholders regarding the extent to which this aspect has been addressed to date (drawing on Topical Report No. 2)

3.2 Legislation implementing the CPR

The legislation implementing the CPR in each of the MS is presented in Table 3-2 below.

Table 3-2: Legislation implementing the CPR	
Member State	**National law implementing the CPR**
Austria	In order to implement the CPR an agreement '15a agreement on cooperation in the construction industry and the regulation of the availability and usability of construction products' came into force in May 2013. ['15a-Vereinbarung über die Zusammenarbeit im Bauwesen und über die Regelung der Verwendbarkeit von Bauprodukten']. All nine Federal States of Austria signed this agreement: http://www.landtag.steiermark.at/cms/dokumente/11404051_58064506/92115cc0/16_1287_1_Vereinbarung.pdf The list with the individual laws with which the CPR has been implemented can be found in the following report on page 36: https://www.wko.at/Content.Node/Service/Innovation-und-Technologie/CE-Kennzeichnung-und-Normen/Marktueberwachungsprogramm_2015_V1.0.pdf
Belgium	Law from 21 December 2013 implementing Regulation (EU) N° 305/2011 of the European Parliament and the European Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, and repealing various provisions [Loi du 21 décembre 2013 portant exécution du Règlement (UE) N°305/2011 du Parlement uropéen et du Conseil du 9 mars 2011 établissant des conditions harmonisées de commercialisation pour les produits de construction et abrogeant la Directive 89/106/CEE du Conseil, et abrogeant diverses dispositions] http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=2013122149%2FF&caller=list&row_id=1&numero=9&rech=21&cn=2013122149&table_name=LOI&nm=2014011012&la=F&ddfm=12&chercher=t&dt=LOI&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&sql=dt+contains++%27LOI%27+and+dd+between+date%272013-12-21%27+and+date%272013-1221%27+and+actif+%3D+%27Y%27&ddda=2013&tri=dd+AS+RANK+&trier=promulgation&ddfa=2013&dddj=21&dddm=12&ddfj=21&imgcn.x=53&imgcn.y=8 The royal decree of 21 July 2014 relative to the notification of notified bodies (MB 25/8/2014) The royal decree of 30 September 2014 relative to the designation of technical assessment bodies (MB 13/10/2014) The royal decree of 4 April 2014 relative to the Product Contact Point for Construction (MB 15/04/2014).
Bulgaria	National Regulation for Construction Works and Construction Products http://www.mrrb.government.bg/ http://kiip.bg/images/custom/File/motivi.pdf
Croatia	Construction Products law: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_76_1523.html
Cyprus	130(I)/2013 Law on construction products: http://www.moi.gov.cy/moi/moi.nsf/all/D3759DEAC8403DF3C2257D0000406940/$file/peri%20domikwn%20proiontwn.pdf?openelement
Czech Republic	Act No. 100/2013 Coll. and Act No. 22/1997 Coll. https://portal.gov.cz/

Table 3-2: Legislation implementing the CPR	
Member State	**National law implementing the CPR**
Denmark	Byggevareforordningen (305/2011/EF), Bygningsreglement 2010 BR10: http://www.ens.dk/byggeri/byggevarer
Estonia	Construction and Building Law: https://www.riigiteataja.ee/akt/129062014013
Finland	Rakennustuote-asetus 305/2011: http://eur-lex.europa.eu/legal-content/FI/TXT/?uri=uriserv:OJ.L_.2011.088.01.0005.01.FIN
France	Decree n° 2012-1489 from 27 December 2012 for the implementation of Regulation (EU) n° 305/2011 of the European Parliament and the European Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC [Décret n° 2012-1489 du 27 décembre 2012 pris pour l'exécution du règlement (UE) n° 305/2011 du Parlement européen et du Conseil du 9 mars 2011 établissant des conditions harmonisées de commercialisation pour les produits de construction et abrogeant la directive 89/106/CEE du Conseil] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026855793
Germany	Law on the adaptation of the Construction Products Act and other legislation to Regulation (EU) No. 305/2011 laying down harmonized conditions for the marketing of construction products [Gesetz zur Anpassung des Bauproduktengesetzes und weiterer Rechtsvorschriften an die Verordnung (EU) Nr. 305/2011 zur Festlegung harmonisierter Bedingungen für die Vermarktung von Bauprodukten] https://www.dibt.de/en/dibt/data/Auszug_Bundesgesetzblatt_2012_57_2449.pdf
Greece	No national law implementing the CPR
Hungary	Government Decree 275/2013. (VII. 16.) http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300275.KOR
Ireland	Statutory Instrument (S.I.) No. 225 of 2013 http://www.environ.ie/en/Legislation/DevelopmentandHousing/BuildingStandards/FileDownLoad,33645,en.pdf
Italy	Procedure di notifica ai sensi del Regolamento (UE) n.305/2012 http://ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=na.opendocpopup&odc_id=691&open=yes Circolare concernente le procedure di autorizzazione e notifica ai sensi del Regolamento (UE) n.305/2011 http://www.vigilfuoco.it/aspx/download_file.aspx?id=15883
Latvia	The Construction Law is the legal basis of the construction sector in the Republic of Latvia. http://likumi.lv/ta/id/258572-buvniecibas-likums 25 March 2014 the Cabinet of Ministers adopted Regulation No. 156 "Procedure for the Surveillance of the Market of Construction Products" http://likumi.lv/doc.php?id=265254&search=on 25 February 2014 the Cabinet of Ministers adopted Regulation No. 112"Regulations regarding European Technical Assessment" http://likumi.lv/ta/id/63836-par-atbilstibas-novertesanu
Lithuania	The CPR is the legal act of direct application. Adjustment of the national legal acts basis to the CPR requirements www.am.lt/VI/index.php#a/12476. Government order to designate the PCPC in Lithuania www.verslovartai.lt/lt/statybos-gaminiu-kontaktinis-centras/bendra-informacija-apie-centra/

Table 3-2: Legislation implementing the CPR	
Member State	**National law implementing the CPR**
Lithuania (cont.)	Construction technical regulation STR 1.03.03:2013 "Designation, notification of technical assessment bodies, monitoring of their competence and activities. National technical assessments" www.vtpsi.lt/node/1465
Luxembourg	ILNAS: UE 305/2011 – Produits de construction (CPR) http://www.portail-qualite.public.lu/fr/securite-sante/surveillance-marche/fiches-produits/directive/Factsheet-UE-305-2011.pdf
Malta	Construction Products (Implementation) Regulation (2011) http://www.doi-archived.gov.mt/en/legalnotices/2011/11/LN%20462.pdf
Netherlands	'Bouwbesluit' (Building Decree) par. 1.3 and 'Regeling Bouwbesluit' (Regulation Building Decree) par. 1.3 http://wetten.overheid.nl/BWBR0030461/geldigheidsdatum_31-01-2015 and: http://wetten.overheid.nl/BWBR0031022/geldigheidsdatum_31-01-2015
Poland	The Act of 16 April 2004 on construction products http://isap.sejm.gov.pl/DetailsServlet?id=WDU20040920881 The Act of 30 August 2002 on conformity assessment system http://isap.sejm.gov.pl/DetailsServlet?id=WDU20040920881 Act of 7 July 1994. - Construction Law. http://isap.sejm.gov.pl/DetailsServlet?id=WDU19940890414
Portugal	Decreto-Lei n° 130/2013. *https://dre.pt/application/dir/pdf1sdip/2013/09/17400/0566405668.pdf*
Romania	Government Decision No 1236/2012 regarding the institutional framework and measures for the application of the Regulation (EU) No 305/2011 http://www.mdrap.ro/userfiles/regulament305/HG1236_2012_en.doc
Slovakia	The Act No. 133/2013 Coll. http://www.zbierka.sk/sk/vyhladavanie?filter_sent=1&_filter_predpis_aspi_id=133%2F2013+Z.z.&q=
Slovenia	Law on Construction Products published in Official Journal of the RS, No. 82/2013. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1660 Decree No 162/2013 Coll., establishing a list of groups of construction products and systems for assessing the parameters thereof http://www.zbierka.sk/sk/vyhladavanie?filter_sent=1&_filter_predpis_aspi_id=162%2F2013&q=
Spain	Reglamento Europeo de Productos de Construcción (UE) Nº 305/2011 http://www.f2i2.net/legislacionseguridadindustrial/ReglamentoProductosConstruccion.aspx#DisposicionesDesarrolloNacional Further implementing acts can be found at: http://www.f2i2.net/legislacionseguridadindustrial/ReglamentoProductosConstruccion.aspx#DisposicionesDesarrolloNacional
Sweden	Plan-och byggförordningen (2011:338) http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Plan--och-byggforordning-2011_sfs-2011-338/?bet=2011:338
UK	2013 NO.1387 Statutory Instrument Building and Buildings The Construction Products Regulation http://www.legislation.gov.uk/uksi/2013/1387/pdfs/uksi_20131387_en.pdf

3.3 Declaration of Performance (Article 4 - 7)

3.3.1 Overview

A DoP must be drawn up for each construction product (for which European technical specifications have been determined) that is placed or made available on the market, and must be made available to all purchasers, whether they are distributors, construction companies or non-professional consumers (e.g. individuals performing amateur home improvement projects). The DoP describes important aspects of a construction product (e.g. level of fire resistance or mechanical strength). Through the DoP, the manufacturer is obliged to provide information about the essential characteristics of the product to the market. On the basis of this information, the user can choose to buy, amongst all the products available on the market, the product whose declared performances correspond to the requirements for the intended use in a particular MS. The DoP thus constitutes a key element in the functioning of the EU's Internal Market for construction products, by providing the transparency necessary for the flow of goods between EU countries. The CPR does not differ from the CPD in this respect, as the DoP essentially replaces the Declaration of Conformity (DoC). The manufacturer is now obliged to be more transparent by making the DoP available to all actors, whereas the former Declaration was kept in the technical file for access by authorities such as market surveillance.

3.3.2 Electronic DoP

Under the CPR, the ability to post the DoP online, rather than sending it for each product directly to the purchaser (either physically or via email), should result in a **simplification of the current process** and **gives options to manufacturers to provide flexibility and reduce costs**. When making a DoP available online, producers will need to ensure that the content of such a declaration is not altered after it has been posted online. Commission Delegated Regulation (EU) No 157/2014 of 30 October 2013 on the conditions for making a DoP on construction products available on a website[8] sets out the conditions governing the electronic processing of DoPs in order that they may be made available on a website, in accordance with Article 7(3) and Article 60(b) of the CPR.

A report examining possible legal obstacles to the electronic provision of DoPs concluded that there were few obstacles that would prevent the electronic supply of DoPs. Moreover, these obstacles were likely to progressively disappear as MS adapted their legal and administrative systems so as to facilitate the transmission of information electronically[9] [10].

Information from consultation suggests that electronic DoPs are supplied, or made available by manufacturers, in most of the EU-28 countries. As an indication as to how prevalent this practice has become, one Austrian body involved in conformity assessment estimated that a third of their customers now supply the DoP electronically. In the Czech Republic, one manufacturer (in the ceramics sector) commented that the supply of the DoP electronically has now become the industry standard. They noted that they put the DoP on their website and, although some of their customers

[8] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:052:0001:0002:EN:PDF

[9] Demolin-Brulard-Barthelemy (2013): Study on possible national legal obstacles to full recognition of electronic processing of performance information on construction products (under the Construction Products Regulation), notably within the regimes of civil liability and evidentiary value. Study for the European Commission, accessed at: http://ec.europa.eu/DocsRoom/documents/5316/attachments/1/translations/en/renditions/pdf

[10] Further information on this subject can be found in Annex 3.

have requested the DoP via e-mail (particularly French customers[11]), nobody has asked for a hard copy.

Nevertheless, the prevalence of electronic DoPs may vary by sector. For example, stakeholders noted that the cement sector is largely paperless and that the glass industry has been providing information electronically even before the CPR came into force (i.e. under the CPD). In addition, an EU importer noted that for products in smaller packets, such as screws, it is far more practical to supply the DoP electronically. On the other hand, an industry association representing the steel sector stated that its members do not make any use of this provision. This is because the general contractor has to collect the DoPs and, for big projects, they prefer the DoPs in paper form. For example, for a train station construction project, 30,000 DoPs had been supplied in paper, and this figure does not take into account the documentation files.

There were divergent opinions as to whether or not SMEs are more (or less) likely to supply the DoP electronically. One stakeholder suggested that SMEs may be less likely to supply a DoP in electronic format as they do not always actively use the internet for business purposes, perhaps only having a website to introduce their products. On the other hand, a Portuguese association noted that all of its members supply the DoP electronically, and 80% of their members are SMEs.

It is likely that the practice of supplying DoPs electronically will also vary by geographical location, although it has not been possible to determine this conclusively based on the information gathered for this study.

3.3.3 Transition to DoP

The CPR **clearly defines** the situations when the manufacturer shall draw up a DoP for its product. In these circumstances, the applicable hEN or ETA offers the manufacturer the opportunity to declare the essential characteristics of the product. The DoP must contain at least one of the essential characteristics of the construction product, relevant for the declared intended use or uses. This choice must take into consideration *inter alia* the relevant ETA, national provisions and existing classes or threshold levels.

In general, information from consultation appears to show that there is a **high level of awareness** of the system for drawing up the DoP. Indeed, more than 80% of companies indicated that they were aware of the system. More than half of companies also indicated that they have made changes to their internal systems in order comply with the new requirements (many being from Belgium, Germany, the Netherlands and the UK). These changes include updating IT systems, databases and websites, making changes to their testing regime and preparing and translating DoPs, as implied by the following responses:

> *"We have had to tighten our annual testing regime to ensure that all products continue to perform as advertised even if this is not reflected in DOPs annually. The gathering and posting of supplier DOPs has been a major effort and forced us to update our intranet and internet architecture. It has cost us significant effort & manpower".*
>
> *"Admin work creating new labels and product databases, website changes".*
>
> *"website = good, easy and fast access to documents for everybody 365 days a year, 24 hours a day, in the whole world".*

[11] The stakeholder noted that this may be because their website is not available in the French language.

"At least 1-2 persons have been occupied for making and translating the DoPs. Since all technical data for our products was published before the CPR anyway (we own more than 20 ETAs) the DoPs are just a waste of time. This time missing for the development of new products".

"Increase of administrative tasks and translation work".

"Lots of additional costs and work to have all tests performed, results screened and making of the DoPs themselves".

"Huge cost for drawing up the DoP's (3 fulltime employees for 1.5 years!) and online systems for administration and supply of the DoP's".

Note that many of the above responses indicate that there has been an increased workload and administrative burden as a result of this aspect of the CPR. This issue is explored further in Section 6.3.

In the Czech Republic, it was noted that companies make frequent use of the possibility to only include one characteristic in the DoP (Article 6(3)) as this allows them to comply with the CPR but keep costs to a minimum. In Germany, an organisation involved in conformity assessment noted that Article 6(3) is a good idea that has been badly implemented, specifically the part which notes "*where the manufacturer intends the product to be made available on the market.*" In the view of this stakeholder, the provision is unworkable in a free market where products are imported and distributed.

3.3.4 Article 5 derogation

Article 5 outlines the conditions under which a manufacturer may refrain from drawing up a DoP covered by a hEN. In general, it appears that there has been limited uptake of the Article 5 derogation across Europe. Indeed, consultation undertaken for this study has not identified a single case where Article 5 has actually been used, although this is not conclusive proof that it is not being applied. Nevertheless, there is some indication that Article 5(c) is more likely to be applied in some MS than others (e.g. in Greece it may be the case that Article 5(c) can be used for around one third of construction products[12]). Reasons why Article 5 has not been applied more widely are outlined in Section 6.3 of this report.

3.3.5 DoP language

Article 7(4) notes that the DoP should be supplied in the language or languages required by the MS where the product is made available. Table 3-3 presents information on the languages required for the DoP in each country.

[12] Zacharopoulou G (2013): Contingent derogation for small producers of traditional products on the Construction Products Regulation (CPR), Standardisation and related activities – A means of international and Balkan collaboration, available at: http://www.academia.edu/5914932/Contingent_derogation_for_small_producers_of_traditional_products_on_the_Construction_Products_Regulation_CPR_

Table 3-3: DoP languages			
Member State	**Language(s)**	**National Regulation**	**Comments**
Austria	German		
Belgium	Dutch French German	Code économique du 28 février 2013 (MB 29/3/2013)	Dutch for construction products delivered in the Flemish Region French for construction products delivered in the Walloon Region Dutch and French for construction products delivered in the Brussels Capital Region German for construction products delivered in the Eupen-Malmédy district
Bulgaria	Bulgarian	Art. 22 Technical Requirements to Products Act	
Croatia	Croatian	Article 12 of the Constitution of the Republic of Croatia Article 22 of the Construction Product Act (Official Gazette 76/13, 30/14)	
Cyprus	English Greek	Art. 5 Construction Products Law of 2013	
Czech Republic	Czech	Act No 100/2013 Coll. amending the Act No 22/1997 Coll., Art. 13c	
Denmark	Danish		
Estonia	Estonian	Regulation “Requirements to the building materials and construction products, and procedure for attestation of conformity“ Passed 26.07.2013 Annex 49	
Finland	Finnish Swedish	Language Act (423/2003) 34 §	Only Swedish for construction product delivered in Åland Islands
France	French	Loi n° 94-665 du 4 août 1994 relative à l'emploi de la langue française	
Germany	German	6 des Gesetzes zur Durchführung der Verordnung (EU) Nr. 305/2011 zur Festlegung harmonisierter Bedingungen für die Vermarktung von Bauprodukten und zur Umsetzung und Durchführung anderer Rechtsakte der Europäischen Union in Bezug auf Bauprodukte (Bauproduktengesetz)	
Greece	Greek		
Hungary	Hungarian	Article H. Fundamental Law of Hungary	

Table 3-3: DoP languages			
Member State	**Language(s)**	**National Regulation**	**Comments**
Ireland	English Irish	European Union (Construction Products) Regulations 2013 S.I. 225 of 2013	
Italy	Italian	Art.1 of Law 482/1999 "The official language of the Italian Republic is the Italian", with exceptions reported in the same Law 482/1999	
Latvia	Latvian		
Lithuania	Lithuanian	Article 18 of the Law on Construction of the Republic of Lithuania	
Luxembourg	French German Luxembourgish	Loi du 24 février 1984 sur le régime des langues	
Malta	English Maltese		
Netherlands	Dutch		
Poland	Polish	Art. 7a The Act on the Polish Language	
Portugal	Portuguese	Decree-Law n.º 130/2013, article 8 (10th September 2013)	
Romania	Romanian	Article 13 Constitution of Romania	
Slovakia	Czech Slovak	Article 2.4 Act No. 133/2013 Coll. on Construction products	
Slovenia	Slovene	Regarding the language of "instructions and safety information": Acc. to Art. 12 of the Law on Construction Products (published in Official Journal of the RS, No. 82/2013) instructions and safety information have to be available in Slovene language.	
Spain	Spanish Catalan Euskera Gallego	Article 3 Constitution of Spain Regional "Estatutos de autonomía"	Spanish valid in all the regions Catalan for construction products delivered in Cataluña and Islas Baleares Euskera for construction product delivered in Euskadi and Navarra Gallego for construction products delivered in Galicia
Sweden	Swedish	Planning and Building Act and Ordinance, and Boverkets statutes BFS 2013:7	

Table 3-3: DoP languages			
Member State	**Language(s)**	**National Regulation**	**Comments**
UK	English	Statutory Instrument 2013 No. 1387	The Construction Products Regulations 2013

In summary, this aspect of the CPR has been implemented, with industry successfully replacing the DoC with the DoP. There are also examples of industry (both large enterprises and SMEs) supplying the DoP electronically. To date, there has been limited uptake of the Article 5 derogation.

3.4 CE marking (Article 8 & 9)

The CE marking indicates that the manufacturer has taken responsibility for the performance of the product as stated in the DoP (as well as compliance with the CPR and EU legislative requirements) and can be the only marking that attests the conformity of the product. From 1 July 2013, construction products in conformity with a hEN must (except in the cases described in Article 5 of the CPR) have a CE marking affixed to the product or issued with the accompanying documentation. It is important to note that it is also possible to voluntarily affix the CE marking to products not covered, or not fully covered, by a hEN. This needs to be done if the product conforms to a ETA issued by a TAB.

In discussing the implementation of the revised concept of CE marking, there are four main aspects to consider:

- The first aspect relates to the clarification that **CE marking is now mandatory in all EU MS** for all construction products for which the manufacturer has drawn up a DoP, including products covered by a hEN or which conform to a ETA;

- The second aspect relates to the clarification of the **specific products which are exempt from CE marking**. According to Article 8(2), the CE marking is to be affixed to construction products for which the manufacturer has drawn up a DoP; however, if a DoP has not been drawn up, the CE marking must not be affixed;

- The third aspect relates to CE marking within the context of ensuring the **free movement of construction products**. CE marking of construction products was originally introduced in the CPD in order to enhance the free movement of construction products within the EU. In this context, it is important to note that performance requirements applicable to construction products are not harmonised across the EU and vary between MS. Therefore, although a product may have CE marking, it may not be suitable for particular applications or for use within some MS. Articles 8(4) and 8(5) of the CPR re-emphasise that MS have an obligation to ensure that construction products bearing the CE marking are not prohibited or impeded from being made available on the market or used, when the declared performances correspond to the requirements for such use in that MS; and

- The fourth aspect relates to the CPR clarifying the difference in the **meaning of the CE marking with respect to construction products**, when compared to CE marking for other products. In this context, it is worth noting that the CE marking only indicates the conformity of the construction product with the declared performance, which must relate to at least one of the essential characteristics of the construction product, relevant for the

intended use(s). For essential characteristics where no performance is declared, the letters 'NPD' must be entered.

In general, stakeholders have not identified any changes following the implementation of the **mandatory CE marking** aspect of the CPR, as indicated in Table 3-4.

Table 3-4: Comments on provisions related to CE marking

Country	Stakeholder	Comment
Austria	Public authority	Overall, there has been no change in Austria, neither new standards nor any particular impacts
Belgium	Manufacturer	No impact
Bulgaria	Industry association	The provisions of the CPR have not changed much
Czech Republic	Public authority	Questioned whether there would be any visible impacts
Estonia	Public authority	The CPR has had no impact
France	Industry association	No change under the CPR
Greece	MSA / PCPC	CE marking was mandatory and did not impact the market too much
Hungary	Industry association	No change under the CPR
Latvia	Manufacturer	No impact as have been CE marking for 10 years.
Lithuania	Manufacturer	Company has applied CE marking since 2009. Previously the CE marking was not 'in demand'.
Romania	Manufacturer	No change compared to the CPD

Under the CPD, mandatory CE marking was in place in all MS, with the exception of four countries (the UK, Ireland, Sweden and Finland)[13]. This can be seen from Table 3-5 which shows that there was a high level of knowledge about CE marking amongst companies responding to the online questionnaire.

It may be expected that the implementation of this aspect of the CPR would have a greater impact in the four MS where CE marking was not mandatory under the CPD, compared with MS where CE marking was already mandatory. However, in some of these 'new' countries (e.g. the UK), CE marking was already being carried out for some construction products, as it gave manufacturers the opportunity to export their products to the EU market. Some manufacturers may also have chosen to CE mark their products (even in cases where this was not mandatory) in order to ensure that their products could compete on their national market with CE marked construction products imported from other MS. Companies may have identified a risk that by not CE marking, industry would put itself at a disadvantage both overseas and on its own doorstep.

Table 3-5: Response from companies to the question - Please indicate your level of knowledge relating to the concept of CE marking under the CPR?

Objective	Never heard of this concept	Not sure what it means	Familiar/ knowledgeable	Good technical knowledge	Highly knowledgeable /expert
CE marking	1%	1%	13%	48%	37%

[13] Note that in Finland, it was typically only those products for fire prevention that needed CE marking mandatorily.

Additional information gathered as part of this study indicates that some manufacturers have invested considerable time and effort to comply with the CPR; however, generally there does not appear to have been significant issues for the majority of manufacturers. For instance, one UK company that operates in the pavement sector noted that it had spent significant time and more than £200,000 (approximately €270,000) in the process of CE marking their products (including comprehensive testing, the introduction of factory production controls and the production of a detailed DoP for each product, as well as redesigning and reprinting all packaging to reflect the test results)[14]. In terms of costs accrued by a large multi-national organisation, one Dutch enterprise commented that adopting the correct labelling has cost them around €1.5 million since 2014.

In Sweden, one manufacturer that applied the CE marking to around half of its products under the CPD began preparing for the CPR in 2012/13. They were required to make changes to their internal processes as well as adjusting their working methods. Similarly, the development of a new CE marking for a Czech manufacturer that had been applying the CE marking since 2005 took 1-2 years.

It should be noted that information related to the costs of implementing the CPR (e.g. the number of products manufactured by each of the companies) was not provided by stakeholders. Changes associated with the implementation of this aspect of the CPR appear to be isolated to either SMEs located in MS where CE marking was previously voluntary or manufacturers within the steel sector, as indicated by the following examples:

- **SMEs in countries where CE marking was not mandatory under CPD:** A public authority from Ireland noted that it is most likely that SMEs did not apply the CE marking to their products under the CPD because their products were aimed at an indigenous market. A Finnish public authority similarly commented that a large proportion of industry in Finland is made up of SMEs (around 80%). As such, they cater for local markets and had no need to apply the CE marking in Finland under the CPD.

- **Issues in particular sectors/related to specific hENs:** An Irish notified body commented that, prior to the CPR, no Irish steel company would have applied the CE marking. This is because around 90% of steel manufacturers in Ireland targeted the domestic market (it is not economically viable to export these products). The Irish notified body suggested that steel manufacturers will likely have incurred around €8,000 - €12,000 to introduce the necessary quality controls. Similarly, a Finnish notified body involved with EN1090-1 commented that relevant audits and external consultation associated with CE marking will cost in the region of €10,000 - €15,000, a cost which may be particularly burdensome for SMEs.

In summary, this aspect of the CPR seems to have been effectively implemented. Industry has undertaken the necessary steps to comply with the mandatory requirement to apply the CE marking, even in those instances where it has been perceived as burdensome (e.g. SMEs operating in limited markets).

[14] Natural paving, News – CE marking: Clearing the way for customer confidence, accessed at: http://www.naturalpaving.co.uk/news_article.php?p=news&n=ce-marking-clearing-the-way-for-customer-confidence&c=dow

3.5 Quality marks

The CPR builds upon the CPD and aims to further remove technical barriers to trade in construction products within the EEA (as such, its fundamental principles are the same as those of the CPD). The CPR stipulates that provided a construction product complies with the requirements contained within the CPR, it must be allowed free movement onto the market of all EU MS. This principle, which operated under the CPD, has been enshrined and made more explicit under the CPR, especially in Article 8(3).

Quality marks are permitted under the CPR[15], so long as they do not cover essential characteristics and fulfil a different function to the CE marking. MS are not permitted to stipulate that a construction product must attain additional national marks or approvals, over and above those required by the CPR, before it can be legally marketed within their territory.

Prior to the CPR, it was evident that trade in construction products across MS had been impeded in various countries, some of which had been referred to the ECJ. For instance, in 2008, the ECJ found that the practice of Belgian authorities[16] encouraging economic operators to obtain Belgian marks of conformity prior to the marketing of construction products that had been manufactured/marketed in accordance with the CPD in another MS, infringed the free movement of goods principle[17] (Article 34, Treaty on the Functioning of the European Union).

More recently, a case was brought against Germany where the ECJ ruled in favour of the Commission with regard to the application of the German Ü mark administered by the German Institute for Construction Technology (DIBt)[18]. It concerned additional specifications relating to health and the environment, which were deemed to be necessary by German authorities, but were not covered by a hEN. Consequently, manufacturers have been prevented from accessing the German market or have incurred additional administrative and compliance costs to market products in Germany. However, as noted above, the ECJ ruled (in the context of the CPD) that MS retain the right to set performance requirements for construction products, provided that the free movement of CE marked construction products is not impeded.

In the UK, in preparation for the CPR, many organisations wanted voluntary marks to remain as they performed different functions to CE marking. Some were of the view that some well-established voluntary schemes currently provide more credibility compared to the CE marking for construction products and would need to continue in the short term at least. On the other hand, one manufacturers' trade body (BEAMA) and the Trading Standards Institute advocated that CE marking

[15] It should be noted that other marks (such as voluntary quality marks, or voluntary standardisation marks) were already permitted under the CPD, provided they did not reduce the visibility or legibility of the CE marking, or deceive third parties as to the meaning and form of the CE marking (according to CPD Guidance Paper D).

[16] Judgment of 13 March 2008, C-227/06, Commission v Belgium

[17] European Commission, Brussels, SEC (2009): 1684/2, Accompanying document to the report from the Commission, 26th Annual Report on Monitoring the Application of Community Law (2008). Available at http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_26/en_sec_sectors_autre_document_travail_service_part1_v4clean.pdf

[18] Case C-100/13: Judgment of the Court (Tenth Chamber) of 16 October 2014 — European Commission v Federal Republic of Germany (Failure of a Member State to fulfil obligations — Free movement of goods — Rules of a Member State requiring that certain construction products bearing the 'CE' conformity marking conform to additional national standards — Lists of construction rules ('Bauregellisten')), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CA0100

should be the only marking allowed, so as to ensure consistency with the requirement to remove barriers to trade and prevent confusion. The UK Construction Products Association (CPA) noted that CE marking may reduce the differentiation between products and increase competition on price and, as such, manufacturers may wish to obtain a voluntary mark in order to differentiate their product and retain brand value (CPA, 2014).[19]

The EU level association Construction Product Europe (CPE) has noted that voluntary marks are still in use and remain de facto necessary to sell in countries:

- Where the AVCP system is perceived as inadequate;
- When imposed by controls on building site/insurances; and
- When linked to incentives (e.g. renovation).

The situation is exacerbated by the fact that there is no mutual recognition between these marks and, as has been noted above, the marks promote themselves as quality marks while conveying the message that the CE marking is a minimum conformity standard[20]. Where this practice exists, SMEs are hit hardest as larger companies are more able to rely on their reputation to sell their product[21].

Many quality marks for construction products are currently undergoing changes to ensure that they do not conflict with the CPR (e.g. Komo mark). Indeed, in Belgium, the Bénor-mark has now become completely voluntary, following an action undertaken by the EC (see above).

For further analysis on this topic, the reader is referred to Annex 3 and Topical Report No. 3.

In summary, industry across Europe is aware of the ECJ judgement concerning the application of the German Ü mark and acknowledges that the CE marking should be the only mark demonstrating conformity with applicable requirements relating to Union harmonisation legislation. However, issues with quality marks persist, preventing the complete implementation of this aspect of the CPR.

3.6 European Assessment Documents (Article 19 - 24)

According to Article 2(12) of the CPR, EADs are harmonised technical specifications that form the basis for the issuing of ETAs. The CPR sets out requirements for transparent and simplified procedures relating to the development of EADs. EADs have replaced the concept of European Technical Approval Guidelines (ETAGs) and the Common Understanding of Assessment Procedures (CUAPs) that existed under the CPD. However, ETAGs that were published before the CPR fully came into force may be used as EADs. This can continue until the EAD, developed on the basis of the ETAG, is cited in the OJEU in accordance with the rules outlined in Article 22 of the CPR (to date, nine EADs have been cited in the OJEU[22]) It is for EOTA to decide if, following a request from a

[19] Construction Products Association et al. (2014): Guidance note on the Construction Products Regulation.

[20] CPE (2014): The manufacturer's point of view. Available at: http://www.buildingtestexpo.com/assets/files/Proceedings2014/anne_minne.pdf.

[21] EFTA (2008): Certification and Marks in Europe. Available at: http://www.efta.int/sites/default/files/publications/study-certification-marks/full-report.pdf

[22] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.226.01.0100.01.ENG

manufacturer, a ETAG endorsed under the CPD can be used as a EAD. In 2013 and 2014, 35 ETAGs were used as EADs[23].

A time horizon for the development of EADs on the basis of ETAGs is provided in Table 3-6. Within this table, the areas of prioritisation have been identified, as determined by EOTA (following a survey amongst TABs in 2013 evaluating manufacturers' interest in the ETAGs and current technological developments). It is anticipated that the transition from ETAGs to EADs will not be completed before 2020.

Finance is a key issue for TABs and EOTA as these organisations bear most of the cost of developing EADs. Although, in 2014, EOTA received €360,000 from the Commission[24], it has been noted by EOTA (pers. comm., 2015) 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. During consultation, one organisation involved in conformity assessment also commented that the financing of EAD development is a problem. To overcome this, one stakeholder suggested that customers should be allowed to pay for EAD development (partly or totally) so that the problem of EADs being delayed, due to a lack of financing, is avoided. However, it is important to recognise that the EAD route was specifically provided to cater for products for which there are no standards, or which are not likely to be covered by a hEN in the future, e.g. innovative products. It is possible that SMEs that provide such innovation do not have the resources to pay for the development of EADs.

Table 3-6: Time horizon for the development of EADs on the basis of ETAGs

Product family	Reference of ETAG	Industry Interest / EOTA priority*	Indicative timetable for the development of the concerned EAD
Metal Anchors for Use in Concrete	ETAG 001	A	31.01.2016
Structural Sealant Glazing Systems	ETAG 002	B	15.12.2018
Internal Partition Kits for use as Non-Loadbearing Walls (Amended version April 2012)	ETAG 003	B**	15.12.2018
External Thermal Insulation Composite Systems with Rendering (Amended version February 2013)	ETAG 004	B**	15.12.2018
Liquid Applied Roof Waterproofing Kits	ETAG 005	C	15.12.2020
Systems of Mechanically Fastened Flexible Roof Waterproofing Membranes (Amended version November 2012)	ETAG 006	C	15.12.2020
Timber Building Kits (Amended version November 2012)	ETAG 007	C	15.12.2020
Prefabricated Stair Kits (January 2002); updated 2013 (progress file), but not endorsed under CPD	ETAG 008	A	31.01.2016
Non load-bearing permanent shuttering kits/systems based on hollow blocks or panels of insulating materials and sometimes concrete (June 2002)	ETAG 009	C	15.12.2020
Self-Supporting Translucent roof Kits (September 2002)	ETAG 010	C	15.12.2020
Light Composite Wood-based Beams and Columns	ETAG 011	C	31.01.2016

[23] EOTA, Pers. Comm. (2015)

[24] EOTA Report on the implementation of Regulation EU No 305/2011 including items to be reported according to Art 67(2) (2014)

Table 3-6: Time horizon for the development of EADs on the basis of ETAGs			
Product family	**Reference of ETAG**	**Industry Interest / EOTA priority***	**Indicative timetable for the development of the concerned EAD**
(January 2002)			
Post-Tensioning Kits for prestressing of Structures (June 2002), updated 2013 (progress file), but not endorsed under CPD	ETAG 013	A	15.12.2018
Plastic Anchors for ETICS (Amended February 2011)	ETAG 014	B	15.12.2020
Three Dimensional Nailing Plates (November 2012)	ETAG 015	C	15.12.2020
Self-supporting Composite Light Weight Panels	ETAG 016	C	15.12.2020
Veture Kits – Prefabricated Units for External Wall Insulation (November 2005)	ETAG 017	C	15.12.2020
Fire protective products	ETAG 018	A**	31.01.2016
Pre-fabricated wood-based loadbearing stressed skin panels (November 2004)	ETAG 019	C	15.12.2020
Plastic Anchors for multiple use in concrete and masonry for non-structural applications	ETAG 020	B	15.12.2018
Cold Storage Premises kits	ETAG 021	C	15.12.2020
Watertight covering kits for wet room floors and or walls	ETAG 022	C	15.12.2020
Prefabricated Building Units (August 2006	ETAG 023	C	15.12.2020
Concrete Frame Building Kits (January 2006)	ETAG 024	C	15.12.2020
Metal Frame Building Kits (May 2006)	ETAG 025	C	15.12.2020
Fire Stopping and Fire Sealing Products	ETAG 026	A**	31.01.2016
Falling Rock Protection Kits (Amended version April 2013)	ETAG 027	B	15.12.2018
Fire retardant products (June 2012)	ETAG 028	C	15.12.2020
Metal Anchors for Use in Masonry	ETAG 029	A	31.01.2016
Dowels for structural joints	ETAG 030	C	15.12.2020
Inverted Roofs Insulation Kits	ETAG 031	C	15.12.2020
Expansion joints for road bridges	ETAG 032	C	15.12.2020
Liquid applied bridge deck waterproofing kits (July 2010)	ETAG 033	C	15.12.2020
Cladding Kits	ETAG 034	C	15.12.2020
Ultra-Thin Layer Asphalt Concrete (May 2011)	ETAG 035	C	15.12.2020

* Priority is as follows: A = top priority, significant technological developments that may be expected; B = Medium priority, technological developments that are not expected to be so urgent for the application in the ongoing processes of issuing ETAs; C= Low priority.

** Depending on the outcome regarding transfer to a hEN, as whole or partially (Article 19(4))

Source: ETAGs used as EADs according to Regulation (EU) No 305/2011 and related development of EADs, accessed at http://www.apmcr.org/normative/2_5_1.pdf

The transition from ETAGs to EADs is an on-going process throughout which manufacturers have been requesting ETAs (considered below). The number of requests for ETAs and EADs that are currently being developed and are due to be published is presented in Table 3-7.

Table 3-7: ETAs requested that initiated procedure outlined under Article 21(1)(c) (data as reported at EOTA Technical Board Meeting in May 2015)				
ETA requests	**2nd Semester of 2013[1]**	**2014[2]**	**2015[3] (Jan – Apr)**	**Total**
New	18	56	9	-
Amendments of existing assessment methods and criteria	3	7	20	-
Based on Article 9(2) 89/106/EEC procedures	54*	86*	10	-
Cancelled	- 1	-3	-2	-6
Total per update	**74**	**146 (+17 until 31.12.2014)**	**39**	**276**
EOTA WG Consultations for EAD DP/WP open	53	45	27	-
Information to EC (Art 21(2) of the CPR)	13	179	57	-
Work Programmes sent to the EC	0	128	60	-
Draft EADs in development in EOTA	3	45	62	-
EADs adopted (Annex II.7 to the CPR)	0	42 (+7 until 31.12.2014)	25	-
EADs in editing process	-	-	66	
EADS final in 2nd batch to be sent to EC			4	
EADs final sent to EC (Annex II.8 to the CPR)		8**	4***	-
EADs published in OJEU (Art 22 CPR)	0	0	0	-

[1] As at 16 December 2013
[2] As at 24 November 2014
[3] As at 30 April 2015

*Regardless, if without or with technical amendment
**Before EC-EOTA March conclusions on EAD-format
***EOTA waiting for EC instructions on OJEU procedure/Art 27(4) procedure

Source: EOTA, Pers. Comm. (2015)

It can be seen that eight EADs were due to be sent to the Commission for citation in 2014. However, the citation was delayed because of discussions that concerned the format of EADs. The format was agreed between EOTA and the Commission services in March 2015 (this explains why 66 EADs are currently undergoing editing)[25]. Indeed, the first EADs were cited in the OJEU in July 2015.

The publication phase of a EAD occurs after the process of issuing ETAs. When the EAD enters the publication phase, this means that:

- An ETA has been issued by the TAB;
- Titles of the EAD have to be translated into all official languages of the European Union – by EOTA;
- In some cases a final EAD has to be elaborated, when adjustments of the adopted EAD are necessary, based on experiences gained – by the TABs acting jointly;
- A final editing will take place – by the TABs and EOTA; and

[25] EOTA (2015): EAD-format available, accessed at: http://www.eota.eu/en-GB/content/ead-format-available/37/269/

- The publication in the OJEU has to be prepared – by the European Commission and its Publication Office.

Figure 3-1 provides an overview of the geographical distribution of ETA requests. As shown in the figure, requests have been made to TABs located throughout Europe.

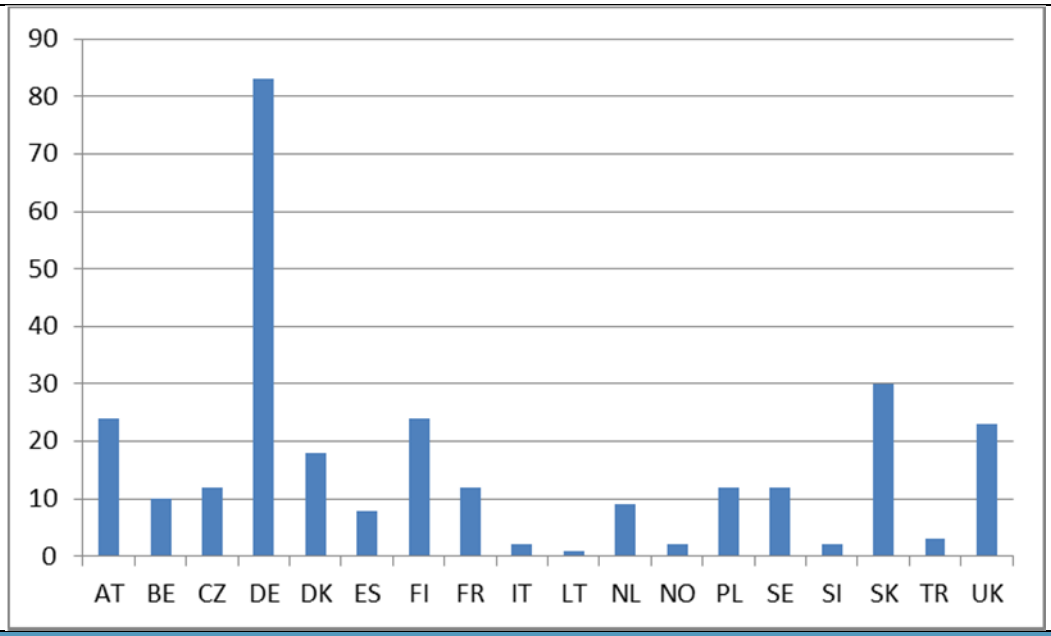

Figure 3-1: ETA requests according to Art 21(1)(c) per country from 1 July 2013
Source: EOTA, Pers. Comm. (2015)

This aspect of the CPR has only partially been implemented. At the time of writing, a large number of EADs have been prepared by EOTA (which has allowed TABs to issue the corresponding ETAs), however, only nine EADs have been finalised and cited in the OJEU.

3.7 European Technical Assessments (Article 26)

Under the CPR, **a manufacturer may benefit from an EU-recognised assessment and affix the CE marking on its products when these products are not covered (or not fully covered) by a hEN, by requesting a ETA**. The manufacturer is not obliged to request a ETA; the decision remains voluntary even after 1 July 2013. Products not covered by hENs can be subjected to requirements by MS authorities outside of the CPR structure but, in these cases, cannot be CE marked pursuant to the CPR.

Commission Implementing Regulation (EU) No 1062/2013 of 30 October 2013 on the format of the European Technical Assessment for construction products[26] provides the format for the ETA. According to the implementing act, the ETA must contain (among other details) the following information:

- General information on the manufacturer and the product type;
- Description of the product and its intended use;
- Performances of the product and references to the methods used for its assessment;
- Assessment and Verification of Constancy of Performance systems (AVCP) applied; and
- Technical details necessary for the implementation of the AVCP system.

ETAs are recognised throughout the EEA and Switzerland, and may also be recognised in countries where a mutual recognition agreement has been concluded with the European Community.

ETAs have a different objective and meaning under the CPR in comparison with the CPD regime. The main difference between the ETA (approval) under the CPD and a ETA (assessment) under the CPR is that, in the CPD context, the ETA (approval) was an approval to place the product on the market on the basis of an assessment of the *fitness for use* of the construction product. All relevant characteristics for the intended use of the product were assessed. In the CPR context, the ETA (assessment) is an assessment of the product performance concerning the essential characteristics relevant in those MS in which the manufacturer considered that the product will be made available on the market and relevant for the intended use. The ETA (assessment) is the documented assessment of the performance of a construction product, in relation to its essential characteristics for the foreseen intended use.

As of 1st of July 2013, ETAs (assessments) should be based on EADs. ETAs (approvals) which were issued up until the 30 June 2013 remain valid until the end of their validity period. ETA (assessments) that have been issued on the basis of ETAGs from the 1st of July 2013 onwards will be deemed to have been issued on the basis of EADs when the respective EAD is issued[27]. Information relating to ETA requests, where the product was fully covered by a EAD, is provided below. This demonstrates that this aspect of the CPR continues to function, despite some delays in the citation of some EADs in the OJEU[28].

[26] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:289:0042:0043:EN:PDF

[27] ETAGs used as EADs according to Regulation (EU) No 305/2011 and related development of EADs, accessed at: http://www.apmcr.org/normative/2_5_1.pdf

[28] As noted previously, it is possible for an ETA (assessment) to be issued on the basis of an unpublished EAD.

Table 3-8: ETA requests under Article 21(1)(b) of the CPR (data as reported at EOTA Technical Board Meeting in May 2015)				
ETA requests	**2nd semester 2013[1]**	**2014[2]**	**2015[3] (Jan-Apr)**	**Total (since CPR implemented)**
Total per update	123	901	606	1630
Information to EC (Article 21 (2) of the CPR)	123	901	606	1630
Draft ETA currently in circulation in EOTA for consistency check	34	224	242	-
Cancelled	0	- 6	No data collected	-
ETAs issued/delivered to EOTA for publication	19	478	No data collected	-
ETAs issued, based on ETAGs used as EADs	19	388	373	761
ETAs issued based on EADs	0	6 (+ 13 in draft stage)	14	14

Source: EOTA, Pers. Comm. (2015)

[1] As at 16 December 2013

[2] As at 24 November 2014

[3] As at 30 April 2015

Figure 3-2 shows the number of ETAs (assessments) issued by TABs from across Europe in 2015 (January to April).

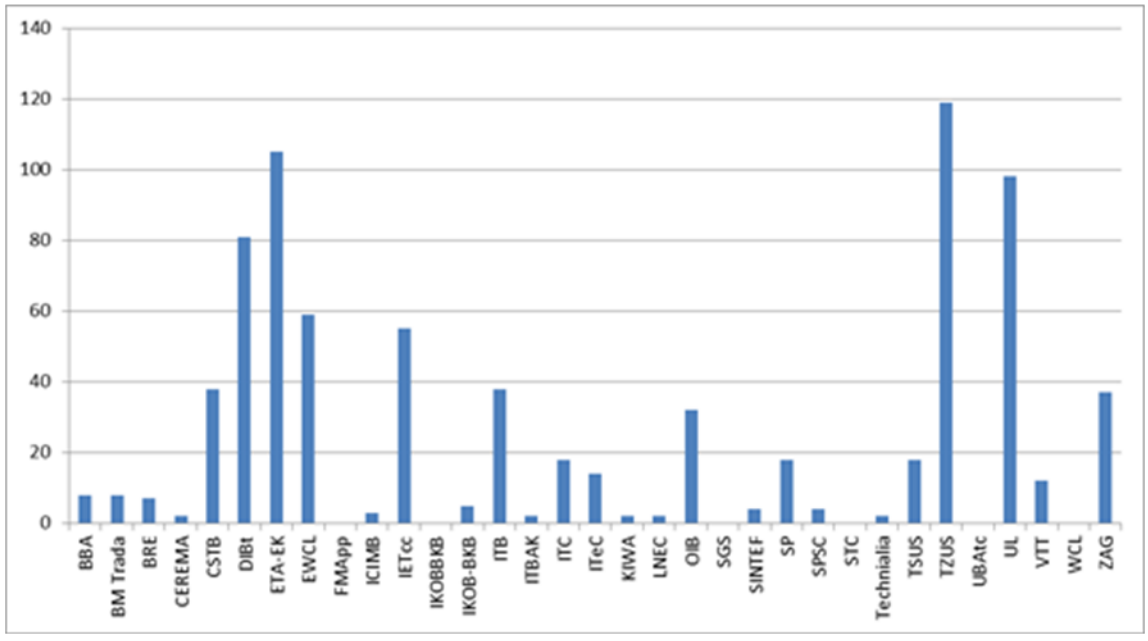

Figure 3-2: ETAs issued and sent to EOTA, per TAB in 2015 (January-April)

Source: EOTA, Pers. Comm. (2015)

In summary, the regulation establishing the format of the ETA has been implemented and ETAs have been published based on ETAGs and EADs.

3.8 Product Contact Points for Construction (Article 10)

Article 10(1) of the CPR requires MS to designate Product Contact Points for Construction (PCPC) pursuant to Article 9 of Regulation (EC) No 764/2008 of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC[29]. Note that PCPC did not exist under the CPD.

As is outlined under Article 10(3) of the CPR:

> *"With regard to the tasks defined in Article 10(1) of Regulation (EC) No 764/2008, each Member State 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, as provided for in Article 6(3)(e) of this Regulation".*

Under the CPR, MS are able to **entrust the role of the PCPC to existing contact points** established in accordance with other Union instruments, in order to "*prevent the unnecessary proliferation of contact points and to simplify administrative procedures*" (Recital 44 of the CPR). In this regard, around half the public authorities that responded to the consultation indicated that the PCPC in their country had been designated from an existing PCP (as shown in Table 3-9).

Table 3-9: Response to the question - The CPR requires Member States to designate Product Contact Points for construction (PCPC). It stipulates that these PCPC may be designated from existing product contact points. Is the PCPC in your country designated from an existing product contact point?

Response	Public Authorities
Yes	49%
No	37%
Don't know	14%

Seemingly in contrast to the view of stakeholders shown in Table 3-9 above, a recent mapping exercise of contact point websites (undertaken by the Commission) indicates that the possibility to entrust the role of PCPC to an existing point of contact has not been widely used. Only Lithuania has streamlined its PCPC, PCP and PSC into a single website[30] and Germany has created a single website for the PCP and PCPC[31]. It should be noted that PCPCs in nine countries (namely Estonia, Spain,

[29] Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to product lawfully marketed in another Member Stat e and repealing Decision No 3052/95/EC, accessed at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0764&from=EN

[30] Available in English: www.businessgateway.lt and Lithuanian: www.verslovartai.lt

[31] The website (http://www.pcp.bam.de/) provides two separate product contact points, one for food, agriculture, fish products and consumer products (www.ble.de) and one for construction products and all other products (www.pcp.bam.de).

Finland, Greece, Italy, Latvia, Luxembourg, Malta and Poland) were found not have a dedicated website, and that this may explain the discrepancy in the results.[32]

A **list of PCPC** established for the purposes of fulfilling the requirements of Article 10(1) of Regulation (EC) No 764/2008 is administered, made publically available on the internet and is regularly updated by the EC. Table 3-10 provides the PCPC in each of the MS.

Table 3-10: PCPC under CPR (April 2015)

Member State	PCPC
Austria	Österreichisches Institut für Bautechnik (OIB)
Belgium	FPS Economy, Department Quality & Safety, Unit Standardization & Competitiveness
Bulgaria	Ministry of Regional Development and Public Works Department "Technical Rules and Regulations" Unit "Attestation of Conformity"
Croatia	Ministry of Construction and Physical Planning
Cyprus	The Construction Products Sector, Technical Services, Ministry of Interior
Czech Republic	PCP Construction, Ministry of Industry and Trade
Denmark	Danish Standards Foundation
Estonia	Ministry of Economic Affairs and Communications
Finland	Ministry of the Employment and the Economy
France	Ministère du redressement productif Direction Générale de la compétitivité, de l'industrie et des services (DGCIS)
Germany	Bundesanstalt für Materialforschung und prüfung (BAM)
Greece	Ministry of Development and Competitiveness, General Secretariat for Industry, 2nd Directorate of Sectoral Industrial Policy
Hungary	Hungarian Trade Licensing Office
Ireland	Product Contact Point for Construction, c/o Department of the Environment, Community and Local Government, Architecture / Building Standards
Italy	Ministero dello Sviluppo economico Dipartimento Impresa e Internazionalizzazione Direzione Generale Mercato, Concorrenza, Consumatore Vigilanza e Normativa Tecnica Punto contatto prodotti (PCP)
Latvia	Ministry of Economics: Construction and Housing Policy Department
Lithuania	Enterprise Lithuania
Malta	Technical Regulations Division, Malta Competition and Consumer Affairs
Netherlands	Rijksoverheid.nl (website of the National Authorities, resp. Ministry of BZK)
Poland	General Office of Building Control
Portugal	Instituto Português da Qualidade, IPQ, I.P. Departamento de Assuntos Europeus e Sistema Português da Qualidade (DAESPQ)
Romania	Ministry of Regional Development and Public Administration – General Technical Directorate, Standards and Regulation
Slovakia	Ministry of Transport, Construction and Regional Development of the Slovak Republic
Slovenia	Slovenian Institute for Standardization (SIST)
Spain	Deputy Directorate for Foreign Trade, Inspection, Certification and Technical Assistance General Directorate for Foreign Trade and Investments

[32] Under the CPR, PCPC are required to provide information on request, but there is no obligation for PCPC to provide information at a distance and via electronic means. The Commission has noted that this might explain why some MS do not have a dedicated website for their PCPC.

Table 3-10: PCPC under CPR (April 2015)	
Member State	**PCPC**
	State Secretariat For Trade Ministry Of Economy And Competitiveness
Sweden	Boverket
United Kingdom	Department for Communities & Local Government, Building Regulations & Standards Division
Source: DG GROW (2015): National CPR Product Contact Points, accessed at http://ec.europa.eu/DocsRoom/documents/4170/attachments/1/translations/en/renditions/native	

In general, information from consultation appears to show that there is a relatively **low level of awareness** amongst companies regarding the existence of PCPCs, as shown in Table 3-11.

Table 3-11: Response to the question - The CPR stipulates that Member States shall designate Product Contact Points for construction (PCPC). Please tick all of the following statements which apply.	
Response	**Companies**
I am aware of the relevant PCPC in my country	43%
I am aware of the relevant PCPC in another EU country	18%
I am NOT aware of the relevant PCPC in my country or another EU country	57%

As a result of the low awareness, only 27 respondents provided information on the specific services used when they contacted a PCPC (15% of companies that responded to the online survey). 'Information on national technical rules' and 'Information on products subject to CE marking or covered by harmonised standards' were the two main types of information that companies requested, consulted on or received when they contacted a PCPC (as summarised in Table 3-12).

It is interesting to note the proportion of stakeholders that requested 'information on national technical rules' (59%) versus the proportion that requested 'information on the law in force in the MS where you intend to place or make available on the market your products' (22%). This may imply that stakeholders are requesting information on national technical rules in place in their own MS, or in a MS where they already make their products available on the market, as opposed to seeking information pertaining to new markets. For example, one UK public authority commented that although the intention of the PCPC may have been to facilitate the free movement of construction products between MS, it has also proved a valuable tool for informing UK economic operators about matters related to UK construction (e.g. building regulations).

It is also worth noting that around 20% of stakeholders had requested, consulted on, or received information on notified bodies. This is interesting considering that information on notified bodies is already in the public domain (e.g. EC NANDO database).

Seemingly in contrast to the information presented in Table 3-11 above, information received from public authorities via the consultation (presented in Table 3-13) indicates that some PCPC are frequently being contacted (e.g. the PCPC in the Netherlands). Table 3-14 gives an indication as to the types of information that PCPC have provided to the construction sector.

Table 3-12: Response to the question - If you have had cause to contact a PCPC, please indicate which of the following topics summarises the information you requested, consulted on or received? Tick all that apply.	
Response	**Companies**
Information on national technical rules	59%
Information on products subject to CE marking or covered by harmonised standards	52%
Information on rules applicable to the incorporation, assembling or installation of a specific type of construction product	33%
General information on the market for construction products in a Member State	22%
Information on the law in force in the Member State where you intend to place or make available on the market your products	22%
Information on Notified Bodies	19%
Information on Technical Assessment Bodies	15%
How to contact national authorities competent for surveillance or implementation of the CPR, including market surveillance and oversight of notified bodies	15%
Other	22%

Table 3-13: Requests received by PCPC in Member States (year given where provided)			
Country	**Requests received**		
	Domestic	**Other Member States**	**Third countries**
Austria	Approximately 200	80-100	10-20
Bulgaria	35	50	
Belgium	70	45	
Croatia	75 (2013) 103 (2014)	20 (2013) 47 (2014)	
Cyprus	8 (2013) 20 (2014) Nationally, PCPC - Market Surveillance Authority, receives 3-4 requests by telephone per day.		
France	67	33	
Ireland	16 (2013) 36 (2014)	13 (2013) 35 (2014)	
Lithuania	84	56	
Netherlands	7 questions a week (2013) 12 questions a week (2014)		
Norway	Approximately 500 requests per year, with around 150 originating from Norwegian economic operators wishing to import construction products from other MS.		
Slovakia	25	40	
Spain	25 (2014)	25 (2014)	
Sweden	30	30	

Table 3-14: Information provided by PCPC								
Country	**Explanation of CPR and CE marking**	**Links to CPR, CE marking, EC website**	**Info/Links to national PCP**	**FAQ**	**Links to other MS' PCPC**	**Links to EOTA, NANDO**	**Construction Product list subject to CE marking**	**Languages**
Austria	Yes	Yes	No	No	No	No	Yes, publication in OJEU	DE, EN
Belgium	Yes	Yes	No	Yes (not in EN or DE)	No	NANDO EOTA	No	NL, FR, DE, EN (very little info in EN and DE).
Croatia	CPR only	Yes, except CE marking	No	No, but links to EC's and EOTA's FAQs	Yes	NANDO EOTA	No	HR, EN
Cyprus	No	Only to EC website	No	No	Yes	No	No	GR, EN (though hardly any info in EN)
Czech Republic	Yes, but very brief.	Yes	No	No, but link to EC's FAQ	Yes	NANDO EOTA	No	CZ, EN
Denmark	Yes	Yes, except CE marking.	No	Yes, very well developed.	Yes	No	Yes, detailed product list on site	DK, EN
France	Info on CE marking (in general) but very little on CPR	Yes	Yes	Yes. Several questions about CE marking.	No, only for other MS' PCPs	NANDO	Link is given, while general product list is provided	FR, EN
Germany	Yes (EC website)	Yes	Yes	Yes	Yes	No	Yes (EC website)	DE, EN
Hungary	No	No	Yes	No	No, only for other MS' PCPs	No	No	HU, EN
Ireland	Yes, but limited for CE marking	Yes, except CE marking	No	No, but link to EC's FAQ	Yes	NANDO	No	IE, EN

Table 3-14: Information provided by PCPC								
Country	**Explanation of CPR and CE marking**	**Links to CPR, CE marking, EC website**	**Info/Links to national PCP**	**FAQ**	**Links to other MS' PCPC**	**Links to EOTA, NANDO**	**Construction Product list subject to CE marking**	**Languages**
Lithuania	Yes	Yes	Yes	Yes, but very brief	Yes, for PCPs and PCPCs	NANDO	List of regulated construction products is provided	LT, EN
Netherlands	Yes	Yes, many links for CE marking especially		Yes, FAQ is very long and informative	Yes	NANDO EOTA		NL
Portugal	Yes	Yes, except CE marking.	No	Yes, but few Qs on CE marking	No, only for other MS' PCPs	NANDO	General product list provided	PT
Romania	Yes, though very limited	Yes, except CE marking	No	No	Yes, but not to all MS	No	No	RO, EN
Slovakia	No	Only CPR	No	No	No	NANDO EOTA	No	SK, EN
Slovenia	No	Yes, except CE marking. CPR link is not working though	Yes	No, but link to EC's FAQ	No	No	No	SI, EN
Sweden	Yes, lots of info for CE marking (in SE)	Yes		Yes, FAQ is long and informative	Yes	NANDO EOTA		SE, EN (limited info in EN)
UK	Yes, though it is very brief.	Yes, except CE marking	Yes	FAQ on site but not pertaining to CPR or CE marking.	Yes	NANDO EOTA	No	EN
Source: European Commission assessment of the performance of MS' PCPC								

From the information presented in Table 3-14, it would seem that the Netherlands, Denmark and Sweden have made the greatest effort to inform the construction sector about the CPR. These three PCPCs provide the most extensive FAQs, particularly with regard to CE marking, with the Netherlands providing the most information in terms of volume. However, Sweden and Denmark should be commended for organising the FAQ by subject area, with the latter even arranging questions according to product area. On the other hand, these two PCPCs provide all of the key information in the native language, with the Swedish PCPC only providing limited information in English.

In summary, PCPCs have been established in the MS. They are functioning and have provided information on a range of topics related to the CPR. Therefore, this aspect of the CPR has been successfully implemented.

3.9 Harmonised standards (Article 17)

A hEN is a standard which has been adopted by one of the European standardisation bodies, with the involvement of stakeholders, and cited in the OJEU. HENs outline the methods and the criteria for assessing the performance of construction products in relation to their essential characteristics. They provide a common technical language - to be used by all actors in the construction sector - to declare the product's performance[33]. Under the CPR, it is mandatory for manufacturers to draw up a DoP and apply the CE marking to any of their products which are covered by a hEN (or ETA). There are currently over 400 hENs covering a broad range of construction products.

Overall, it appears that the CPR has not had a significant impact on the procedure for developing hENs (as explained in detail in Annex 3, Section 1.2.2), although there is now a *formal* requirement bestowed upon the Commission to assess that draft standards are in conformity with the relevant mandate (Article 17(5))

CEN currently reviews hENs every five years[34] which means that, following the entry into force of the CPR, a number of hENs may still need to be amended so as to include a new Annex ZA, as well as changes in the terminology to ensure the hEN is in line with the CPR[35]. A full list of the published hENs under the CPR can also be found on the website of DG GROW[36] [37].

It is anticipated that hENs will become the key documents containing the common technical language to be applied by:

[33] Harmonised European standards should not be confused with 'testing standards', which are used to validate the performance of characteristics. For further explanation, see the website of DG GROW: http://ec.europa.eu/growth/sectors/construction/product-regulation/harmonised-standards/index_en.htm

[34] CEN (2015): Developing a European Standard, available at: https://www.cen.eu/work/ENdev/how/Pages/default.aspx

[35] CEN (2014): General situation of European standardization under the Construction Products Regulation, available at ftp://ftp.cencenelec.eu/CEN/WhatWeDo/Fields/Construction/Products/CENreport.pdf

[36] European Commission website: Construction products (CPD/CPR). Available at http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/construction-products/index_en.htm

[37] 440 standards published (April 2015)

- Manufacturers when declaring the performance of their products;
- Authorities when specifying requirements for construction products in regulations, specifications, public procurement documents etc.; and
- Users of construction products (specifiers and designers such as architects, engineers, builders etc.) when choosing construction products most suitable for their intended use in construction works.

Note that under the CPD, intended use is assumed in hENs but is not explicitly declared, whereas under the CPR, declaring the intended use in the DoP is obligatory. Thus, the CPR will bring more clarity and transparency, whereas the CPD left it to the informed/professional user to make these decisions.

The majority of surveyed national standards bodies (69%) were not aware of any conflicting national standards or provisions that were withdrawn at the end of the coexistence period. Nevertheless, some stakeholders were able to identify examples of withdrawn standards (Table 3-15).

Table 3-15: National standards and provisions withdrawn at the end of the co-existence period - information provided by consultees

Country	Standards/provisions withdrawn
Austria	National standard for fire dampers
Cyprus	CYS 15:1979 Specification for terazzo tiles, CYS 283:1995 Specification for precast concrete flags, kerbs and channels, CYS 284: Part 1: 1995 Specification for precast concrete masonry units, CYS 287: 1995 Specification for precast concrete paving blocks.
Czech Republic	ČSN 73 1411:1998, ČSN 73 1495:2001, ČSN 73 2601:1988, ČSN 73 2602:1974 a ČSN 73 2611:1978 have been withdrawn in connection with the issuing of harmonized EN 1090-1 for steel structures.
Germany	DIN 1055-1:2002 - EN 1991 EN 1991-1-1:2010-12 DIN 18650:2010-06 EN 163612013-10 (yet to be harmonized)
Poland	PN-B-19707 changed/adapted following introduction of new types of special sulfate resistant cements in Harmonised Standard EN 197-1
Romania	SR EN 13043
Slovakia	Original Slovak national product standards have been mainly withdrawn after the end of the coexistence period of the "CPD hENs of the first generation".
Spain	Standard relating to fire extinguishing systems
Switzerland	ETAG027 vs. Swiss rockfall barrier protection guideline

The implementation of the CPR raised questions in relation to the preparation and **interpretation of European Standards**, which have largely been discussed in the Standing Committee on Construction (SCC) and the Advisory Group on Construction Products. These questions have therefore been, or are being, broadly addressed by the Commission.

It has been suggested that there is insufficient knowledge of the CPR and its implications for hENs (notably Annex ZA). This perhaps reflects the difference in application of hENs in the context of the CPR which is not the same as in other directives (for which hENs carry a presumption of conformity). To redress any problems, a seminar, attended by TC secretariats and experts participating in standardisation, was held in October 2014 ('*Live the transition from the CPD to the CPR. Learn how to prepare candidate hEN under the CPR*').

In summary, this aspect of the CPR has been fully implemented, with national standards bodies withdrawing conflicting national standards and provisions and MS amending legislation where appropriate. The CPR has not had a significant impact on the procedure for developing hENs.

3.10 Assessment and Verification of Constancy of Performance (Article 28)

The system of AVCP is the term applied to define the degree of involvement of third parties in assessing the conformity of the product according to the relevant technical specification(s). It replaces the Attestation of Conformity under the CPD. The main change is the removal of System 2, leaving five systems as set out in Table 3-16. As few standards were set at System 2, the impacts are expected to be minimal, other than the system being simplified by virtue of there being fewer systems[38].

Annex V of the CPR was revised and replaced in February 2014 by Commission Delegated Regulation (EU) No 568/2014 of 18 February 2014 amending Annex V to Regulation (EU) No 305/2011 of the European Parliament and of the Council as regards the assessment and verification of constancy of performance of construction products. The Delegated Regulation does not alter the distribution of tasks established by the CPR, rather the Delegated Regulation clarifies the legislation[39]. For example, the name of the certificates to be issued under systems 1+ and 1, are called 'certificates of constancy of performance of the products', the term 'factory' has been replace by 'manufacturing plant' and 'continuous surveillance' is now 'continuing surveillance'. The different bodies in charge of product certification, factory production control certification and laboratories are now clearly defined and, for acoustics, the essential characteristics are redefined by replacing noise absorption in Section 3 of Annex V by acoustic performance. In order to ensure a smooth transition for manufacturers, Recital 9 of the Delegated Regulation provides that manufacturers may continue using certificates and other documents that were issued by notified bodies in accordance with Annex V of the CPR before the entry into force of the Delegated Regulation.

Article 28(2) of the CPR provides that the Commission, by means of delegated acts (in accordance with Article 60 of the CPR), shall:

> *"…establish and may revise, taking into account in particular the effect on the health and safety of people, and on the environment, which system or systems are applicable to a given construction product or family of construction products or a given essential characteristic. In doing so, the Commission shall also take into account the documented experiences forwarded by national authorities with regard to market surveillance."*

The European Commission, with input from the MS, decides which system(s) are applicable to a given construction product, family of construction products, or a given essential characteristic, based on the implications of the product on health and safety and on the environment. The Commission is,

[38] TRADA (2012): The European construction products regulation (CPR) – An overview and comparison with the construction products directive (Version 2). Available at http://www.trada.co.uk/publications/download/?id=2C169832-2AC4-4344-B2A9-4CEB9439FD93

[39] CPE (2014): Delegated Act: annex V, available at: http://constructionproductsblog.eu/delegated-act-annex-v/

however, required to choose the least onerous system (or systems) consistent with the fulfilment of all basic requirements for construction works (Article 28(2)).

The following delegated acts should also be in force soon:

- **Delegated act on the AVCP systems for ventilation ducts and pipes**: Adoption by the Commission took place on 8 July 2015 and the scrutiny period of the European Parliament and the Council expires on 8 October 2015.
- **Delegated act on the AVCP systems for geotextiles**. Adoption by the Commission took place on 1 July 2015 and the scrutiny period of the European Parliament and the Council expires on 1 October 2015.
- **Delegated act on the AVCP systems for wastewater engineering products.** Adoption by the Commission took place on 1 July 2015 and the scrutiny period of the European Parliament and the Council expires on 1 October.

Table 3-16: Assessment of conformity tasks (according to Commission Delegated Regulation (EU) No 568/2014)

System type	Responsibility	Type of notified body	Tasks
System 1+	Notified body	Product certification body	• Assessment of the performance of the construction product • Initial inspection of the manufacturing plant and FPC • Continuing surveillance, assessment and evaluation of FPC • Audit testing
	Manufacturer	-	• FPC and further testing of samples
System 1	Notified body	Product certification body	• Assessment of the performance of the construction product • Initial inspection of the manufacturing plant and FPC • Continuing surveillance, assessment and evaluation of FPC
	Manufacturer	-	• FPC and further testing of samples
System 2+	Notified body	FPC certification body	• Initial inspection of the manufacturing plant and FPC • Continuing surveillance, assessment and evaluation of FPC
	Manufacturer	-	• Assessment of the performance of the construction product • FPC • Testing of samples
System 3	Notified body	Test laboratory	• Assessment of the performance of the construction product
	Manufacturer	-	• FPC
System 4	Manufacturer	No independent involvement	• Assessment of the performance of the construction product • FPC

In summary, the change to AVCP has been implemented by the Commission. Delegated acts on the system of AVCP applicable to some construction products are under discussion.

3.11 Levels and classes of performance (Article 27, Article 60)

As noted under Article 27(1), the Commission may adopt delegated acts to establish classes of performance in relation to the essential characteristics of construction products. This could have a number of impacts, including:

- Removing/avoiding restrictions on making construction products available on the market (thereby helping the free movement of products);
- Restricting market access for products not reaching the said threshold levels of performance;
- Imposing costs on manufacturers in order to achieve improved product performance;
- Encouraging an overall improvement in the technical properties and performance of products on the market; and
- Making it mandatory for manufacturers to inform end-users about the performance levels reached by their products etc.

The first delegated act under Article 27(1) of the CPR was adopted on the 1 July 2015 on the classification of the reaction to fire performance of construction products[40]. Information from CPE[41] indicates that the EC are also working on a delegated act on the classification of performance of construction products in relation to the following:

- EN 1304:2013, Clay roofing tiles and fittings (Frost resistance);
- EN 1790:2012, Road marking materials - Preformed road markings (Luminance factor ß in dry conditions; UV resistance);
- EN 15101-1:2013, Thermal insulation products for buildings – In-situ formed loose fill cellulose (LFCI) products (Settlement for horizontal applications, lofts and floors; Short-term water absorption);
- EN 16025-1:2013, Thermal and/or sound insulating products in building construction - Bound EPS ballastings - Part 1: Requirements for factory premixed EPS dry plaster (Levels of compressibility; Levels of dynamic stiffness; Compressive stress at 2% deformation; Compressive stress at 10% deformation); and
- EN 16240:2013, Light transmitting flat solid polycarbonate sheets for internal and external use in roofs, walls and ceilings (Artificial ageing classification).

Article 27(5) of the CPR specifies that the Commission may adopt delegated acts to establish the conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing. This provision is clearly aimed at reducing the burden on economic operators (i.e. simplifying the regime).

To date, three delegated acts on classification without testing have been adopted by the Commission, namely:

[40] Commission Delegated Regulation of 1.7.2015 on the classification of the reaction to fire performance of construction products pursuant to Regulation (EU) No 305/2011 of the European parliament and of the Council was adopted on 1 July 2015, C(2015) 4394 Final, available at: http://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-4394-EN-F1-1.PDF

[41] CPE website, First delegated acts 2015, accessed at http://www.construction-products.eu/news-events/latest-news/first-delegated-acts-2015.aspx

- Regulation on conditions for Classification Without Testing (CWT) of wood based panels concerning resistance to fire;
- Regulation on conditions for Classification Without Testing (CWT) of wood floorings concerning reaction to fire; and
- Regulation on conditions for Classification Without Testing (CWT) of gypsum accessories concerning reaction to fire.

These were published in the OJEU and entered into force in December 2014.

A further two delegated acts on classification without testing are under internal EC consultation – one for glued laminated timber (covered by hEN EN14080) and one for structural finger jointed solid timber (covered by hEN EN15497). Adoption for these two delegated acts is foreseen for the second half of 2015. The Commission has also verified the classes and threshold levels included in hENs and draft EADs and has initiated the necessary procedures established under the CPR for deciding on them.

As work is still being undertaken with regard to this aspect of the CPR, it is likely that the work of the conformity assessment bodies has not changed greatly (as implied by the data shown in Table 3-17).

Table 3-17: Response to question - The CPR outlines the conditions under which the Commission, European standardisation bodies or TABs may establish classes of performance and threshold levels in relation to the essential characteristics of construction products. Have the new requirements resulted in changes in your work, compared with the situation under the old CPD?

Response	NBs, TABs, SBs
Yes	20%
No	80%

In summary, this provision has been implemented in practice with delegated acts adopted under Articles 27(1) and 27(5) of the CPR. Additional delegated acts are also in the pipeline. The Commission has also followed the procedures described in the CPR for classes and threshold levels included in hENs and EADs.

3.12Technical Assessment Bodies (Chapter V)

TABs are responsible for the establishment of draft EADs and the issuing of ETAs in the product areas (listed in Annex IV, Table 1 of the CPR) for which they have been designated.

Article 29(1) of the CPR allows MS to designate TABs within their territory, according to their national procedures for the designation of TABs.

Article 29(3) stipulates that TABs must meet strict requirements, as outlined in Article 30 and Annex IV (Table 2) of the CPR:

> *"Member States shall monitor the activities and competence of the TABs they have designated, and evaluate them in relation to the respective requirements set out in Table 2 of Annex IV."*

The number of TABs designated under the CPR has changed compared to the CPD, as shown in Table 3-18 below. More specifically, 50 were designated under the CPD in 2013, with this declining to 35 under the CPR (April 2014), when the implementation was under way. The number of TABs under the CPR subsequently increased, reaching 47 in July 2015.

Table 3-18: Number of TABs under CPD and CPR

Country	CPD	CPR (April 2014)	CPR (July 2015)
Austria	1	1	1
Belgium	1	1	1
Bulgaria	0	0	0
Croatia	-	1	1
Cyprus	1	0	0
Czech Republic	2	2	2
Denmark	1	1	1
Estonia	0	0	0
Finland	1	1	1
France	2	2	2
Germany	1	1	1
Greece	1	0	0
Hungary	1	1	3
Iceland	1	0	0
Ireland	1	1	1
Italy	3	1	2
Latvia	1	0	0
Liechtenstein	0	0	0
Lithuania	1	1	1
Luxembourg	1	0	0
Malta	0	0	0
Netherlands	8	3	3
Norway	1	0	1
Poland	1	2	5
Portugal	1	2	2
Romania	3	0	3
Slovakia	1	1	1
Slovenia	1	1	1
Spain	3	3	3
Sweden	1	1	1
Switzerland	1	0	1
Turkey	2	0	1
United Kingdom	7	8	8
Total	**50**	**35**	**47**

[1] European Commission (2013): List of Bodies Notified under Directive: 89/106/EEC Construction products, available at: http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=directive.pdf&refe_cd=89%2F106%2FEEC&requesttimeout=900

[2] NANDO database, available at: http://ec.europa.eu/growth/tools-databases/nando/

When looking at whether MS have designated a TAB under the CPR, consideration must be given to whether a similar Approval Body (responsible for issuing European Technical Approvals) existed under the CPD (see Table 3-19 below).

Table 3-19: Approval Body under CPD and TABs under CPR

No Approval Body or TAB under CPD or CPR	Approval Body under CPD, No TAB under CPR	Approval Body under CPD, fewer TABs under CPR	Same number of Approval Bodies under CPD and TABs under CPR		Approval Body under CPD, more TABs under CPR
Bulgaria	Cyprus	Italy*	Austria	Ireland	Hungary*
Estonia	Greece	Netherlands*	Belgium	Lithuania	Poland
Liechtenstein	Iceland	Turkey*	Croatia	Norway*	Portugal
Malta	Latvia		Czech Republic	Romania*	UK
	Luxembourg		Denmark	Slovakia	
			Finland	Slovenia	
			France	Spain	
			Germany	Sweden	
				Switzerland*	

** Designated an additional TAB after April 2014*

- **No Approval Body or TAB:** As is evident from the table, four countries have not yet designated a TAB under the CPR, nor did they designate a similar body under the CPD. It is likely that these countries elected not to designate a TAB and that the CPR did not influence this decision. For example, one public authority commented in consultation that the size of the Maltese construction market dictates that a TAB is not feasible. Similarly, a report from EOTA indicates that Bulgaria and Estonia have not contacted EOTA and it has been assumed that these MS are not eager to designate a TAB.

- **Approval Bodies under CPD, No TAB under CPR:** Five countries that had an Approval Body under the CPD have not designated a TAB under CPR. Of these, a report from EOTA indicates that Cyprus and Luxembourg have not contacted EOTA, with it implied that they have little interest in designating a TAB. On the other hand, the report also indicates that Latvia has not contacted them but a consultation response from industry indicates that two institutions in Latvia have recently applied to become TABs. Clearly it is important to be aware that the situation with regard to designating TABs is fluid and some countries may be carefully considering their options. With regard to Greece, one public authority explained during consultation that Greece gained little experience with an Approval body under the CPD, which may explain why Greece has yet to designate a TAB for the CPR.

- **Fewer TABs under CPR than Approval Bodies under CPD**: In some countries, there are fewer TABs under the CPR compared to the situation that existed under the CPD. The biggest reduction has occurred in the Netherlands, with the number of assessment bodies dropping from eight to three. One reason for the reduction in numbers, as noted by a public authority, could be the lack of funding for TABs that must check the content of EADs, with the development costs carried by the TABs themselves. In terms of time taken to designate TABs, Italy and Turkey have been slower and it is possible that over time, there will be parity with regard to the number of TABs that are designated in these countries.

- **Same number of Approval Bodies under CPD and TABs under CPR:** For most countries (17), there has been no change in the number of TABs designated under the CPR compared to the situation that existed under the CPD. Three of these countries (Norway, Romania and Switzerland) were slower to designate TABs under the CPR. However, one public authority from one of the 17 countries commented that it is difficult for TABs to comply with the stringent requirements, but it is a good thing that the rules are so stringent. Interestingly, a stakeholder from the Czech Republic commented that there may be a limited number of experts and the rules may be too stringent in smaller countries such as the Czech Republic (although it should be noted that the Czech Republic did not appear to have experienced any problems).

- **More TABs under CPR than Approval Bodies under CPD:** In four countries, there has been an increase in the number of TABs under the CPR compared to the CPD. In Poland, the number of TABs has doubled, despite the fact that it has been acknowledged by a Polish stakeholder involved in conformity assessment that the CPR has resulted in higher administrative costs for TABs

Around half of public authorities and a third of organisations involved in conformity assessment indicated that the strict requirements for TABs have not resulted in **changes in the work** of their organisations. One TAB responding to consultation commented that:

> *"The content and procedures of the technical work is the same, and the process for ensuring competence is unchanged. However, the administrative burden has increased considerably…."*

However, others have remarked that there is an "*increased burden in demonstrating impartiality and competence*" and "*internal regulations were amended to be in conformity with CPR*."

In summary, this aspect of the CPR has been effectively implemented as those MS that wish to designate a TAB have done so.

3.13 Notified Bodies (Chapter VII)

Notified bodies are certification and/or testing bodies designated by the Notifying Authority of a MS to perform third party tasks in relation to the AVCP for construction products, in accordance with Annex V of the CPR. The different requirements that notified bodies were required to fulfil under the CPD and CPR are presented in Table 3-20.

MS may require that notified bodies are accredited as part of the notification procedure under Article 48. Participation of the notified bodies in the Group of Notified Bodies is mandatory by virtue of Article 55[42].

[42] The Group of Notified Bodies aims to ensure coordination and cooperation between NBs pursuant to Article 39 of the CPR.

Table 3-20: Requirements under CPD and CPR for Notified Bodies		
Objective	**Annex IV CPD**	**Article 43, CPR**
Credibility, Accountability		…established under national law and have a legal personality
Impartiality		…third-party body, independent from the organisation/construction product it assesses
		…it shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the construction products it assesses, nor the authorised representative
Impartiality, Technical competence		…it shall carry out third party tasks in the process of AVCP with the highest degree of professional integrity and requisite technical competence and must be free from all pressures and inducements
Impartiality	…impartiality in carrying out the tests, preparing the reports, issuing the certificates and performing the surveillance provided for in the Directive, of	…impartiality of the NB must be guaranteed
Technical competence		…be capable of carrying out all the third party tasks in the process of AVCP assigned to it for which it has been notified
	…technical competence and professional integrity of personnel	…ensure personnel carrying out activities have sufficient training, knowledge and experience
Accountability	…subscription of civil liability insurance unless that liability is covered by the State	…have liability insurance, unless liability assumed by Member States
Confidentiality	…maintenance of professional secrecy by personnel	…observe professional secrecy
Technical competence		…participate, or be informed of, the relevant standardisation activities and activities of the notified body coordination group

A list of all officially designated notified bodies under the CPR is available on the European Commission's NANDO website. Table 3-21 shows the number of notified bodies that were notified on the NANDO website for the CPD, followed by the number of notified bodies listed for the CPR in April 2014, and July 2015. Overall, there has **been a 17% reduction in the number of notified bodies listed** for the CPR on the NANDO website in July 2015 compared to the situation that existed under the CPD.

Table 3-21: Notified bodies listed under CPD and CPR			
Country	**CPD[1]**	**CPR (April 2014)[2]**	**CPR (July 2015)[2]**
Austria	32	21	25
Belgium	21	18	19
Bulgaria	21	19	20
Croatia	0	11	11
Cyprus	1	1	2
Czech Republic	22	24	26
Denmark	8	10	10
Estonia	6	6	6
Finland	8	6	8
France	30	31	31
Germany	235	101	119
Greece	9	8	10
Hungary	12	8	10
Iceland	1	0	0
Ireland	1	1	1
Italy	62	56	67
Latvia	7	8	7
Liechtenstein	0	0	1
Lithuania	8	8	9
Luxembourg	1	1	1
Malta	0	0	0
Netherlands	34	12	17
Norway	6	4	8
Poland	25	25	29
Portugal	10	9	10
Romania	17	15	17
Slovakia	12	12	12
Slovenia	10	10	10
Spain	45	38	41
Sweden	9	6	6
Switzerland	14	7	10
Turkey	15	16	17
United Kingdom	47	39	43
Total	**729**	**531**	**603**

Sources:

[1] European Commission (2013): List of Bodies Notified under Directive: 89/106/EEC Construction products, available at: http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=directive.pdf&refe_cd=89%2F106%2FEEC&requesttimeout=900

[2] NANDO database, available at: http://ec.europa.eu/growth/tools-databases/nando/

The largest reductions in terms of percentage change from the situation under the CPD to the CPR (July 2015) have occurred in Austria, Germany, Iceland, the Netherlands, Sweden and Switzerland (as shown in Table 3-22). With the exception of the EFTA countries (Iceland and Switzerland), these countries represent the older MS which would have had the opportunity to designate notified

bodies over a number of years under the CPD. It is also notable that Spain and the UK have four fewer notified bodies, although this does not represent a significant percentage change. For the remaining countries that now have fewer notified bodies, the change was modest.

Table 3-22: Notified bodies listed under CPD and CPR		
Country	**Difference in the number of NBs from CPD to CPR (July 2015)**	**% change**
Austria	-7	-22%
Belgium	-2	-10%
Bulgaria	-1	-5%
Croatia	11	-
Cyprus	1	100%
Czech Republic	4	18%
Denmark	2	25%
Estonia	0	0%
Finland	0	0%
France	1	3%
Germany	-116	-49%
Greece	1	11%
Hungary	-2	-17%
Iceland	-1	-100%
Ireland	0	0%
Italy	5	8%
Latvia	0	0%
Liechtenstein	1	-
Lithuania	1	13%
Luxembourg	0	0%
Malta	0	-
Netherlands	-17	-50%
Norway	2	33%
Poland	4	16%
Portugal	0	0%
Romania	0	0%
Slovakia	0	0%
Slovenia	0	0%
Spain	-4	-9%
Sweden	-3	-33%
Switzerland	-4	-29%
Turkey	2	13%
United Kingdom	-4	-9%
Total	**-126**	**- 17%**

It may be the case that a number of these notified bodies are no longer active within the construction sector and have chosen not to apply for notification under the CPR. In other words, the NANDO website for construction products now better reflects the market. Indeed, if a notified body was not committed to working within the sector, they would be unwilling to absorb and undertake what stakeholders generally perceive as an expensive and time consuming process of accreditation

and notification. Comments from a stakeholder in Germany suggest that this may in part account for the reduction in Germany.

The decline in the number of notified bodies in the Netherlands could be explained by the fact that the accreditation assessment is now necessary per product group, while in the past it was possible to assess it on the basis of another (equivalent) product group. As part of this, when a notified body is starting in a certain product area, they need to have a client prior to a visit from the Council of Accreditation. However, an applicant is unable to get a client if it is not already notified. This could create a chicken and egg situation and may be one of the contributory factors to the low designation of notified bodies in the Netherlands. In Germany, one industry association noted that it is very costly to acquire accreditation.

In contrast to the above, it would seem that the newer members of the EU-28 and EFTA have listed additional notified bodies under the CPR compared to the CPD (Cyprus, Czech Republic, Denmark, Lithuania, Norway, Poland, and Turkey). It should be noted that Croatia is not considered to have increased its number of notified bodies, as it joined the EU when the CPR entered into force.

While the codification of criteria related to accreditation was welcomed by some MS for helping to ensure that notified bodies in all countries reach the same standard, it may be the case that it might prove difficult for a body within a small MS to fulfil all requirements. This was specifically cited as a reason by one stakeholder for there being no notified bodies in Iceland. On the other hand, it should be pointed out that in other small countries (e.g. Cyprus) there has been an increase in the number of notified bodies under the CPR compared to the CPD. This may suggest that, in some instances, the fluctuation in the number of notified bodies across countries reflects local market demand rather than impacts that arose as a result of the CPR.

Although fewer notified bodies are listed under the CPR compared to the situation that existed under the CPD, it is interesting to note that the number of notified bodies listed on the NANDO website continues to increase (as shown in Table 3-23). The majority of MS have more designated notified bodies in July 2015 compared to April 2014, and during this period an additional 72 bodies have been added to the list. Only one MS designated fewer notified bodies (Latvia). .

The recent increase in the number of notified bodies could perhaps be explained by what stakeholders cited as the slow and bureaucratic nature of notification, which delayed the notification of a number of bodies under the CPR.

Table 3-23: Notified bodies under the CPR (April 2014) vs. (July 2015)

Country	Difference between CPR (April 2014) and CPR (July 2015)	% change
Austria	4	19%
Belgium	1	6%
Bulgaria	1	5%
Croatia	0	0%
Cyprus	1	100%
Czech Republic	2	8%
Denmark	0	0%
Estonia	0	0%
Finland	2	33%
France	0	0%
Germany	18	18%
Greece	2	25%

Table 3-23: Notified bodies under the CPR (April 2014) vs. (July 2015)		
Country	**Difference between CPR (April 2014) and CPR (July 2015)**	**% change**
Hungary	2	25%
Iceland	0	0%
Ireland	0	0%
Italy	11	20%
Latvia	-1	-13%
Liechtenstein	1	0%
Lithuania	1	13%
Luxembourg	0	0%
Malta	0	0%
Netherlands	5	42%
Norway	4	100%
Poland	4	16%
Portugal	1	11%
Romania	2	13%
Slovakia	0	0%
Slovenia	0	0%
Spain	3	8%
Sweden	0	0%
Switzerland	3	43%
Turkey	1	6%
United Kingdom	4	10%
Total	**72**	**14%**

In summary, the information gathered indicates that notified bodies have been notified and accredited for the CPR in countries across Europe. Therefore, this aspect of the CPR has been successfully implemented.

3.14 Notifying Authorities (Chapter VII)

Notifying authorities are responsible for setting up and carrying out the necessary procedures for the assessment and notification of the bodies to be authorised to carry out third-party tasks in the process AVCP. A list of notifying authorities under the CPR is available on the European Commission's NANDO website[43], this information has been collated in Table 3-24.

Table 3-24: Notifying Authorities in the Member States	
Country	**Notifying authority**
Austria	Federal Ministry for Science, Research and Economics
Belgium	Federal Public Services Economy
Bulgaria	Ministry of Regional Development and Public Works
Croatia	Ministry of Construction and Physical Planning

[43] available at: http://ec.europa.eu/growth/tools-databases/nando/

Table 3-24: Notifying Authorities in the Member States	
Country	**Notifying authority**
Cyprus	Ministry of Interior
Czech Republic	Czech Office for Standards, Meteorology and Testing
Denmark	The Danish Accreditation and Metrology Fund Danish Energy Agency
Estonia	Internal Market Department Ministry of Economic Affairs and Communications of Estonia
Finland	Ministry of Employment and the Economy Ministry of the Environment
France	Ministry of Ecology, Sustainable Development and Energy, Directorate General for Housing and Nature Ministry of Ecology, Sustainable Development and Energy, Directorate General for Infrastructure, Transport and Sea Ministry of the interior, Safety Management and Road Traffic
Germany	Deutsches Institut für Bautechnik (DIBt)
Greece	Ministry of Reconstruction of Production, Environment and Energy - General Secretariat for Industry - Quality Policy Directorate
Hungary	Hungarian Trade Licensing Office
Ireland	Department of the Environment, Community and Local Government
Italy	Ministry of Economic Development - Directorate General for Market Competition, the Consumer, the Supervisory Board and the Technical Regulations
Latvia	Ministry of Economics - Internal Market Department
Lithuania	Ministry of Economy - Internal Market Co-ordination Department
Luxembourg	Ministry of Economy and Foreign Trade (ILNAS / Service OLAS)
Malta	Malta Competition and Consumer Affairs Authority - Technical Regulations Division
Netherlands	Ministry of the Interior and Kingdom Relations/DG Housing and Building (BZK/DGWB)
Poland	Ministry of Economy - Innovation and Industrial Department
Portugal	Portuguese Institute for Quality (IPQ)
Romania	Ministry of Regional Development and Public Administration
Slovakia	Ministry of Transport, Construction and Regional Development of the Slovak Republic
Slovenia	Ministry of Economy
Spain	Quality and Safety Ministry of Industry, Energy and Tourism
Sweden	Swedish Board for Accreditation and Conformity Assessment (SWEDAC)
UK	Department for Communities and Local Government
Turkey	Ministry of Environment and Urbanism of Turkey - General Directorate of Occupational Services
Source: *European Commission, Notifying authority, CPR, accessed at:* http://ec.europa.eu/growth/tools-databases/nando/	

Three meetings of notifying authorities were convened by the Commission, in 2012, 2013 and 2015.

In summary, this aspect of the CPR has been effectively implemented, with many Member States simply re-notifying bodies that previously existed under the CPD.

3.15 Information campaigns

Recital 54 of the CPR states that the Commission and the MS should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users of construction products, of the:

- Establishment of a common technical language;
- Distribution of responsibilities between individual economic operators and users;
- Affixing of the CE marking on construction products;
- Revision of the basic requirements for construction works; and the
- Systems of assessment and verification of constancy of performance.

Between 2010 (first quarter) and March 2012, the EC carried out an information campaign on CE marking, primarily aimed at economic operators (with a focus on SMEs) but also to public authorities and consumers. The information campaign provided the following outputs (European Commission, 2013)[44]:

- A dedicated website in all EU/EFTA languages that serves as a one-stop-shop for information on CE marking;
- A stand at a series of commercial fairs and educational seminars in all EU/EFTA MS (for Switzerland and Lichtenstein there was one joint seminar);
- Leaflets and brochures in all EU/EFTA languages for professionals and consumers;
- The production of two videos and promotional material; and
- The production of factsheets describing the situation regarding CE marking in various sectors in all EU/EFTA languages and various articles in the specialised press.

On the 25th June 2012, the Commission held a one-day promotional conference on the CPR. This one-day conference, attended by over 500 industry stakeholders and national regulators, provided "*the perfect forum*" for the exchange of opinions and information on preparations for the full implementation of the CPR[45].

The conference focused on the new legislative provisions of the CPR and its aims to clarify, simplify and increase the credibility of the legislative framework, namely:

- **Clarification:** DoP, CE marking, hENs, roles and responsibilities of actors;
- **Simplification:** Simplified procedures, (new) EOTA; and
- **Credibility:** CE marking - national marks, requirements and competences of notified bodies, TABs, MSAs.

Practical instruments (PCPC, hENs, DoP, EADs) and coordination and cooperation (lessons to be learned on the way towards uniform application of the CPR) were also a focus of discussions.

[44] European Commission (2013): COM(2013) 77 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0077:FIN:ES:PDF

[45] BBS (2012): Construction Products Regulation Conference, Brussels, available at: http://www.bbsbarriers.com/announcements/ce-marking-mandatory-from-1st-july-2013-for-construction-products

Commission Decision C (2014)280[46] sets out the Commission's financing decision regarding the implementation of an information and communication campaign on the CPR, among other expenditures. The Decision states that the aim of this information and communication campaign will be to improve awareness of the CPR in the construction sector, particularly among economic operators and construction product users, in order to facilitate its implementation.

In 2014, DG GROW released a video on CE marking for construction products entitled "*Building trust in the construction sector*".[47] This video explains the meaning of the CE marking for construction products, i.e. that products bearing this the CE marking "*have been tested using European standards*" and that the CE mark creates a "*common language*" for giving "*clear and reliable information about product performance and quality*". It is noted that the aim of the CE marking is to create "*trust throughout the entire construction value chain*" and to enable products to move freely across EU borders.

The EC is also currently in the process of preparing a CE marking brochure for construction products.

Many public authorities have also undertaken information campaigns, in different forms, including:

- **Seminars**: The Lithuanian Inspectorate held free seminars for all interested groups. The Inspectorate together with CPCP, SOLVIT, Vilnius Chamber of Commerce, Industry and Crafts and Ministry of Environment (responsible for construction) carried out information campaigns for economic operators, construction supervisors and consultancy companies;

- **Information Papers**: In early 2012, the Irish authorities prepared an information paper setting out the implications, arising from the introduction of the CPR, for manufacturers, importers and distributors in relation to placing construction products on the market. This information paper was widely circulated to stakeholders throughout the construction sector in an electronic format. In July 2013, this information paper was updated, published in hard copy and was again widely circulated through the local government system. The Irish authorities have also promoted awareness of the CPR at key industry conferences and workshops;

- **Combined approaches**: The MSA in Bulgaria organised an informative seminar for stakeholders prior to the implementation of the CPR and issued an information leaflet concerning the requirements of the CPR. Information was also provided on the websites of the Ministry of Investments Planning and the Ministry of Regional Development and Public Works. The MSA in Bulgaria has also organised training and conferences with economic operators and users of construction products;

- **SME-focused campaigns**: The CPR made CE marking mandatory in Sweden - a big change, which required an information campaign that would reach different economic operators, including SMEs. Authorities have disseminated information through a variety of methods including websites, brochures, short films, seminars and articles. Wherever possible, information was also channelled through industry associations, who have also provided their own information material on the CPR. Much of the information was provided in Swedish, with some material also translated into English; and

[46] European Commission (2014) 280 of the 27 January 2014, accessed at http://ec.europa.eu/DocsRoom/documents/4864/attachments/1/translations/en/renditions/native

[47] Available at: https://www.youtube.com/watch?v=_zMs_K23ZaI&list=UUvhco_i3akl_yhKLgsjEcNA

- **Industry collaboration**: One authority noted that a communication platform was established by stakeholders and facilitated by a ministry and that an annual meeting is held with stakeholders. Similarly, in Finland, many campaigns were organised by the Ministry of the Environment as well as the Confederation of Finnish Construction Industries. CPE has prepared a document explaining the steps for CE marking of construction products[48] and the Enterprise Europe Network has also produced a brochure on CE marking under the CPR[49].

An overview of the types of information campaigns carried out by MSAs in some MS is provided in Table 3-25 below.

Table 3-25: Information campaigns undertaken by MSAs

Member State	Activity undertaken
Austria	There have been numerous presentations and seminars on the CE marking of construction products' and the CPR more generally. These presentations and training events generally took place in connection with trade associations and professionally relevant institutions. They were held in connection with trade associations rather than at individual economic operators, for reasons of capacity. In particular, the coming into force of the CPR was accompanied by a very intensive campaign of information and advice. As well as the presentations and training events, hundreds of queries from economic operators, planners, authorities and other bodies were answered in writing, by phone or in person, with guidance being provided on the subject of the new legal requirements. However, the support given to the economic operators was limited to the provision of general information.
Belgium	Preparation and publication of brochure (in FR and NL) on the new requirements. Several targeted information meetings were also held.
Bulgaria	DG for market surveillance was in close contact with relevant industry associations, which consisted of joint training sessions, seminars and checks of thematic products, including sampling and testing. Seminars were also jointly organised by the Bulgarian Standardisation Institute and Ministry of Regional Development and Public works. A series of inspections on construction products was also carried out, with the results available to the public via the mass media.
Denmark	The Danish MSA maintains a website that provides information about the rules for the CE marking of construction products and a question-and-answer service. An English version of this website was also launched in 2012. Along with the Danish Technological Institute, they have also been responsible for holding 'go-home' meetings and running information campaigns on the CE marking of construction products, including the 'CE for Yourself' campaign, which ran in 2012, and 'From CPD to CPR', which ran in 2013. The Agency also has a contract with Danish Standards to ensure continuously that information initiatives are taking place in the area of rules on CE marking of construction products for this sector.
Greece	Activities have included a list of FAQ relating to the CPR, the issue of circulars to the Greek customs authorities relating to construction products bearing the CE marking, in order to increase the effectiveness of inspections when such products enter the country, provided information to economic operators either at their request or during the on-the-spot checks carried out in the context of market surveillance, training seminars, events/workshops on the implementation of the CPR.

[48] CPE (2014): Implementation of the Construction Products Regulation – Manufacturers' Report, available at: http://www.construction-products.eu/publication.aspx?doc=277

[49] Enterprise Europe Network (no date): Le marquage CE des produits de construction, Règlement 305/2011/UE, available at: http://www.bourgogne.cci.fr/sites/default/files/documents/Europe/guide_rpc.pdf

Table 3-25: Information campaigns undertaken by MSAs	
Member State	**Activity undertaken**
Sweden	A massive information campaign was conducted prior to the entry into force of the CPR on 1 July 2013. It was aimed primarily at manufacturers, but also importers, distributors and users of construction products. All proactive projects involve targeted information to operators in specific product areas.

Responses from consultation (Table 3-26) indicate that a number of stakeholders have attended conferences and workshops.

Table 3-26: Response to the question - Provide additional details on the type of information campaign and who was responsible for organising this campaign?	
Type of Campaign	**Percentage of total respondents**
Conference/workshop	26%
Website/online campaign	15%
Email/postal campaign	8%
Telephone campaign	2%
Other	4%
Nota bene: 70% of respondents skipped this question	

As part of consultation, companies were also asked whether they were **aware of any relevant information campaigns** in their country in the last two years that have provided information to the construction sector about the changes introduced under the CPR. The responses were evenly split, with around 52% of companies stating that they were aware of such information campaigns (see Section 4.2.6).

In summary, there is evidence that the Commission and public authorities have undertaken a range of information campaigns as required by Recital 54 of the CPR.

3.16 Market surveillance (Article 56-59)

3.16.1 Regulatory Provisions

Articles 56 to 59 of the CPR set out the procedures relating to market surveillance of construction products:

- Article 56 sets out the **national level procedures** to deal with construction products presenting a risk;
- Article 57 sets out the **Union safeguard procedure**, for ensuring the compatibility of national measures with EU legislation;
- Article 58 sets out provisions relating to **compliant construction products which nevertheless present a risk** to health and safety; and
- Article 59 sets out provisions dealing with **formal non-compliance** with the CPR.

These provisions draw on and complement Regulation (EC) No 765/2008[50], which provides a horizontal legal framework for the marketing of products. Concerning market surveillance, Regulation (EC) No 765/2008:

- Sets out clear obligations for EU countries to set up national market surveillance infrastructures and programmes, to carry out market surveillance programmes and to prohibit or restrict the marketing of dangerous or non-compliant products;
- Provides MSAs the powers to obtain all necessary documentation from manufacturers to evaluate product conformity, to enter manufacturers' premises and take samples for testing, and, in extreme cases, to destroy products; and
- Includes clear obligations for EU countries to ensure cooperation at a national and international level.

The General Product Safety Directive 2001/95/EC[51] contains additional market surveillance provisions applicable to non-harmonised consumer products and is thus applicable to some construction products designed for use by consumers.

As required under Regulation (EC) No 765/2008, national market surveillance programmes are established, implemented, and periodically updated[52]. The functioning of surveillance activities is also reviewed and assessed on a regular basis by MS[53].

Information exchange and cooperation between MSAs in different EU countries is also taking place based on the following:

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

[51] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on General Product Safety (OJ No L 11 of 15 January 2002, p. 4).

[52] These programmes can be found on the EC website. See http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm

[53] National reviews and assessments of the functioning of market surveillance activities are available to download from the website of the European Commission, DG GROW: http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm

1. Rapid Information System (RAPEX) - an alert system that facilitates the rapid exchange of information among EU countries and the European Commission;

2. General information support system – the ICSMS system[54] for information exchange will include best practices, results of joint actions, details of non-compliant products, and information on national market surveillance programmes;

3. Administrative Co-operation Groups (AdCos), including one for the CPR - the Commission facilitates (including by financial means) discussions within AdCos composed of market surveillance experts. The purpose is to share information and cooperate on practical matters related to the implementation of EU laws; and

4. Financing of joint actions – the Commission finances market surveillance activities jointly carried out by national authorities.

In 2013, the Commission adopted a proposal for new rules improving the safety of consumer products and market surveillance for all non-food products[55]. The proposal should enhance consumer product safety and strengthen market surveillance over products in the EU. This proposal, which includes the amendment of the CPR market surveillance provisions, is still under discussion by the European Parliament and the Council.

The following sections look at the implementation experience to date, specifically:

- The actions and reporting by MS authorities on market surveillance actions undertaken for construction products; and
- The perceptions of stakeholders on the extent of market surveillance actions currently being undertaken.

3.16.2 Actions and reporting by Member State authorities on market surveillance actions

The CPR does not aim to certify construction products which are put on the market as "*safe and without adverse health impacts*". However, the CPR provides the necessary tools for achieving this, mainly via:

1. The basic requirements for construction works included in Annex I, which cover health and safety from different angles and constitutes the basis for the preparation of standardisation mandates and harmonised technical specifications;
2. The information contained in and accompanying the DoP; and
3. The obligations put on economic operators and on MS authorities.

It is also important to understand that health and safety of construction products cannot be related to the product itself in isolation (for example, as regards its toxic components) but is frequently related to its incorporation in a construction work (for example, as regards the mechanical resistance and stability).

[54] Information from Bulgaria indicates that market surveillance has withdrawn from the national market about 10 construction products and information for these cases has been presented by ICSMS system.

[55] European Commission (2013): Safer products and a level playing field in the Internal Market, available at: http://europa.eu/rapid/press-release_IP-13-111_en.htm

As far as the **use of the CPR market surveillance provisions** is concerned, the Commission has not been informed of any formal procedures initiated by MS under Articles 56, 57 or 58. As Article 59 is seen as the primary tool used to police the market, as indicated by the Finnish authorities, it is possible that no cases have emerged under Article 56. It is also possible that economic operators have voluntarily complied with requests for corrective action (see Table 3-27) and actions taken at national level did not require the escalation of the issue to the Commission or to other MS. For further information the reader is referred to Topical Report No. 2 on Market Surveillance.

In general, MSAs have undertaken market surveillance activities on a proactive and reactive basis, with corrective action where necessary. Data concerning the inspection of construction products from 2010 to 2013 for selected MS are shown in Table 3-27. It should be noted that this information is not available for all MS, and is thus a snapshot of market surveillance activities in selected MS. This snapshot indicates that the number and type of inspections carried out on construction products varies from MS to MS. It is likely that this is linked to the resources for each MSA, see Tables 3-28 to 3-30 for further details. As there are only data for selected MS, it is not possible to draw conclusions that are applicable to the EU more generally.

It is interesting to note that very little activity was undertaken in Belgium between 2010 and 2013. Belgium's Review and Assessment of the Functioning of Market Surveillance Activities explains that this is because there was legislative uncertainty (e.g. waiting for rules related to electronic DoP) during the transition between the CPD and the CPR. As a result of this, Belgium claims that effective market surveillance was not possible[56].

Table 3-27: Inspection of construction products

Country	Type of inspection	2010	2011	2012	2013
Austria	**Total**	**7**	**21**	**91**	**109**
	Reactive	7	21	18	17
	Proactive	0	0	73	92
	Prompted by customs	0	0	1	0
	Number of inspections based on:				
	Tests performed in laboratories	0	0	0	96
	Physical checks of products	0	1	1	18
	No. inspections resulting in:				
	A finding of non-compliance	4	16	48	54
	Corrective action by economic operators	3	7	39	45
	Restrictive measures by the MSA	0	0	9	8
	Application of sanctions/penalties	0	2	1	0
	Number of inspections where other Member States were invited to collaborate	4	8	5	2
	Number of substantiated complaints by industry concerning unfair competition	11	17	20	27

[56] Review and Assessment of the Functioning of Market Surveillance Activities pursuant to Article 18 (6) of Regulation (EC) No 765/2008, Belgium 2010 – 2013, accessed at http://ec.europa.eu/DocsRoom/documents/7883/attachments/2/translations/en/renditions/native

Table 3-27: Inspection of construction products					
Country	**Type of inspection**	**2010**	**2011**	**2012**	**2013**
Belgium	**Total**	-	-	-	-
	Reactive	-	-	-	-
	Proactive	-	-	-	-
	Prompted by customs	-	-	-	-
	Number of inspections based on:				
	Tests performed in laboratories	-	-	-	-
	Physical checks of products	-	-	-	-
	No. inspections resulting in:				
	A finding of non-compliance	2	4	1	-
	Corrective action by economic operators	1	4	-	4
	Restrictive measures by the MSA	-	-	-	-
	Application of sanctions/penalties	1	-	-	-
	Number of inspections where other Member States were invited to collaborate	-	-	-	1
	Number of substantiated complaints by industry concerning unfair competition	3	4	3	3
Bulgaria	**Total**	**788**	**586**	**902**	**946**
	Reactive	236	180	173	16
	Proactive	552	406	729	930
	Prompted by customs	141	122	114	110
	Number of inspections based on:				
	Tests performed in laboratories	3	3	1	1
	Physical checks of products	788	586	902	946
	No. inspections resulting in:				
	A finding of non-compliance	204	255	411	463
	Corrective action by economic operators	199	252	406	460
	Restrictive measures by the MSA	8	6	22	6
	Application of sanctions/penalties	56	76	93	80
	Number of inspections where other Member States were invited to collaborate	-	-	-	-
	Number of substantiated complaints by industry concerning unfair competition	30	3	2	5
Czech Republic	**Total**	**538**	**315**	**268**	**275**
	Reactive	34	16	29	33
	Proactive	504	299	239	242
	Prompted by customs	-	-	-	-
	Number of inspections based on:				
	Tests performed in laboratories	-	-	-	-
	Physical checks of products	538	315	266	273
	No. inspections resulting in:				
	A finding of non-compliance	191	128	97	119
	Corrective action by economic operators	-	-	-	-

Table 3-27: Inspection of construction products					
Country	**Type of inspection**	**2010**	**2011**	**2012**	**2013**
	Restrictive measures by the MSA	-	-	-	-
	Application of sanctions/penalties	155	98	61	73
	Number of inspections where other Member States were invited to collaborate	-	3	1	3
	Number of substantiated complaints by industry concerning unfair competition	-	-	*12*	4
Finland*	**Total**	**450**	**229**	**212**	**399**
	Reactive	2	44	4	29
	Proactive	?	185	208	370
	Prompted by customs	0	0	1	2
	Number of inspections based on:				
	Tests performed in laboratories	2	0	0	0
	Physical checks of products	Hundreds	Hundreds	Hundreds	Hundreds
	No. inspections resulting in:				
	A finding of non-compliance	1	Errors in the documents of CE marked products (90% of construction products)		
	Corrective action by economic operators		All construction products		
	Restrictive measures by the MSA	1	0	0	0
	Application of sanctions/penalties	Sales ban with CE marking	Sales ban cancelled after corrective actions proved to be made		
	Number of inspections where other Member States were invited to collaborate	0	0	0	0
	Number of substantiated complaints by industry concerning unfair competition	0	0	0	0
France	**Total**	**860**	**948**	**1077**	**810**
	Reactive	140	98	139	98
	Proactive	720	850	938	712
	Prompted by customs	-	-	-	-
	No. inspections resulting in:				
	A finding of non-compliance	209	272	258	206
	Corrective action by economic operators	-	-	-	-
	Restrictive measures by the MSA	29	22	25	34
	Application of sanctions/penalties	65	57	80	53
	Number of inspections where other Member States were invited to collaborate	-	-	-	-
	Number of substantiated complaints by industry concerning unfair competition	-	-	-	-

Table 3-27: Inspection of construction products					
Country	**Type of inspection**	**2010**	**2011**	**2012**	**2013**
Greece	**Total**	**77**	**125**	**76**	**45**
	Reactive	6	8	13	21
	Proactive	27	33	46	22
	Prompted by customs	44	84	17	2
	No. inspections resulting in:				
	A finding of non-compliance	43	54	61	43
	Corrective action by economic operators	-	-	-	-
	Restrictive measures by the MSA	-	-	1	-
	Application of sanctions/penalties	-	-	7	1
Poland	**Total**	**1623**	**1612**	**1606**	**1452**
	Reactive	124	108	103	46
	Proactive	1499	1504	1503	1406
	Prompted by customs	65	79	90	97
	No. inspections resulting in:				
	A finding of non-compliance	615	631	662	562
	Corrective action by economic operators	128	154	137	88
	Restrictive measures by the MSA	18	23	29	18
	Application of sanctions/penalties	0	0	0	0
Portugal	**Total**	**159**	**1**	**34**	**1**
	Reactive	5	1	3	1
	Proactive	154	0	31	0
	Prompted by customs	-	-	-	-
	No. inspections resulting in:				
	A finding of non-compliance	25	0	0	0
	Corrective action by economic operators	-	-	-	-
	Restrictive measures by the MSA	0	0	0	0
	Application of sanctions/penalties	17	0	0	0
Sweden	**Total**	**118**	**20**	**26**	**75**
	Reactive	7	10	12	17
	Proactive	111	10	14	58
	Prompted by customs	-	-	-	-
	No. inspections resulting in:				
	A finding of non-compliance	0	0	0	0
	Corrective action by economic operators	0	1	0	2
	Restrictive measures by the MSA	0	0	0	0
	Application of sanctions/penalties	0	0	1	5

**Construction products and rescue service equipment*

Source: Reviews & assessments of MSA, accessed at: http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm

While Table 3-27 provides an overview of some of the activities carried out by MSAs, Tables 3-28 to 3-30 give examples of the budget and staff that are available to various MSAs.

Table 3-28: Budget available to MSA in nominal terms				
Country	**2010**	**2011**	**2012**	**2013**
Cyprus	€100 000	€150 000	€150 000	€115 000
Denmark	€400 000	€400 000	€400 000	€400 000
Finland*	€620 000	€610 000	€650 000	€710 000
France	€460 000	€570 000	€630 000	€400 000
Hungary	€63 508	€104 561	€92 982	€91 9129
Sweden	€1 700 000	€300 000	€500 000	€715 000
* Construction products and rescue service equipment *Source: Reviews & assessments of MSA, accessed at: http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm*				

Table 3-29: Staff available to MSA (full-time equivalent units)				
Country	**2010**	**2011**	**2012**	**2013**
Belgium	1	1.5	1.5	1.5
Cyprus	8 (including inspectors)			
Czech Republic*	38	36	35	36
Denmark	5	5	5	5
Finland**	5.6	5.3	5.7	5.4
France	6.5	7.5	10	6.5
Greece	3	3	4	4
Hungary	6	7	6	7
Sweden	2	2	3.5	4.5
* CTIA and rail authority ** Construction products and rescue service equipment *Source: Reviews & assessments of MSA accessed at: http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm*				

Table 3-30: Number of inspectors available to MSA (full-time equivalent units)				
Country	**2010**	**2011**	**2012**	**2013**
Belgium	0.5	0.5	0.5	0.5
Czech Republic*	17	15	15	15
Finland**	4.4	4.4	4.7	4.4
France	5.5	6.5	9	5.5
Greece	3	3	4	4
Hungary	4	4	4	4
Slovakia	25	25	25	25
* CTIA and rail authority ** Construction products and rescue service equipment *Source: Reviews & assessments of MSA accessed at: http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm*				

3.16.3 Perceptions of stakeholders on the extent of market surveillance

Based on the feedback from consultation (i.e. online survey, interviews and discussions with industry associations), there is a view from some industry stakeholders that there is currently very limited market surveillance of construction products being carried out on national markets. As can be seen from the following table (Table 3-31), around **a third of companies would describe market surveillance as 'non-existent' in their country**.

Table 3-31: Response to the question - How would you rate the market surveillance activities carried out by the authorities responsible for construction products in your country?

Response	Companies
Not sure	13%
Non-existent	30%
Poor/Fair	42%
Good	16%
Very Good	0%

Also, as shown in Figure 3-3, most companies are of the view **that appropriate enforcement actions are currently not being taken with regard to restricting or prohibiting the movement of non-compliant construction products from entering the EU market.**

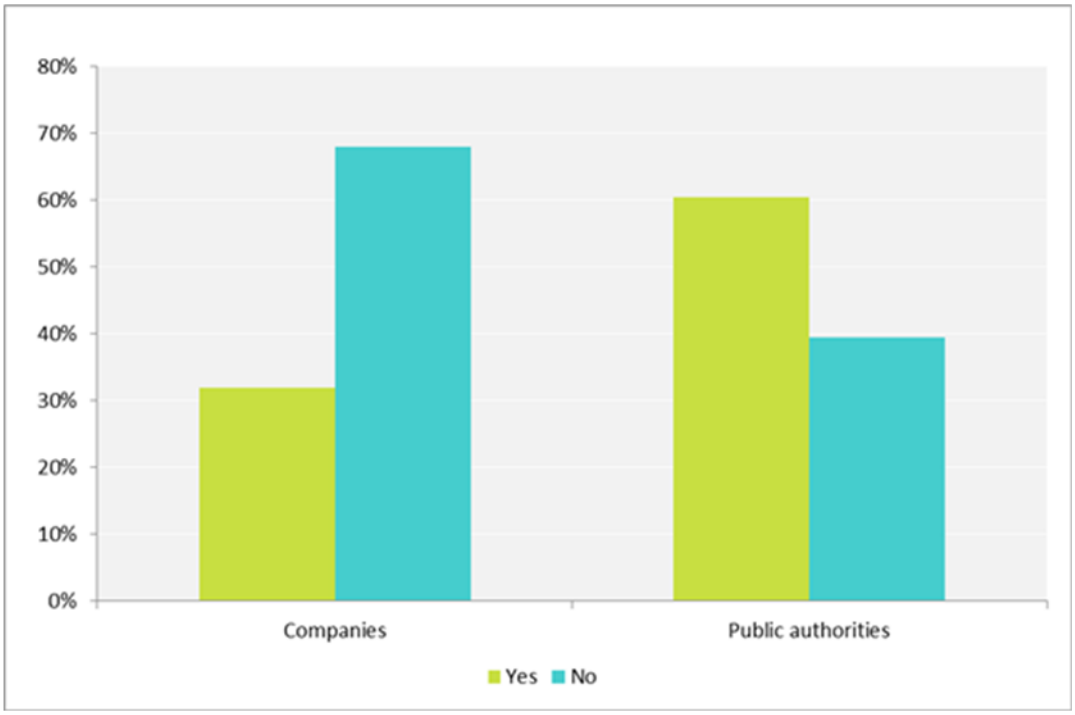

Figure 3-3: Response to the question - In your opinion, are appropriate enforcement measures being taken with regard to restricting or prohibiting the movement of non-compliant construction products from entering the EU market?

As shown in Figure 3-4, the vast majority (~80%) of companies and organisations involved in conformity assessment are not aware of instances where an economic operator has been required

to take corrective action, or withdraw or recall construction products from the market due to non-compliance with the CPR.

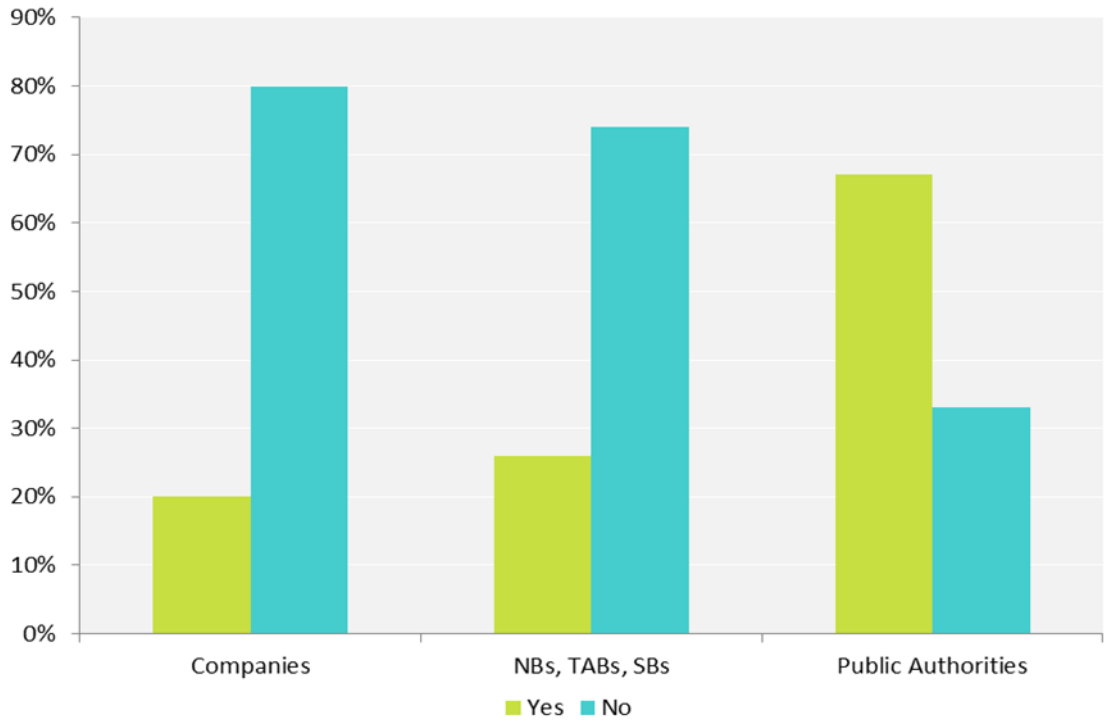

Figure 3-4: Response to the question - Are you aware of cases where an economic operator has been required to take corrective action, or withdraw or recall construction products from the market due to non-compliance with the CPR?

At best, **this indicates a lack of visible enforcement action (which has a deterrent benefit)** and, at worst, suggests that insufficient action is currently being taken in terms of market surveillance at the national level in some MS. Clearly, a lack of visible enforcement action may send the wrong message to those who produce compliant products and perform rigorous due diligence and may make them question why they are investing valuable resources when others are marketing non-compliant products. While the exact **situation will vary from MS to MS**, it is clear there are examples of MSAs performing their duties rigorously, as reported by companies responding to the consultation. For instance, one stakeholder from industry noted that a MSA discovered a 'typo' in their DoP, while a distributor of steel tubes was required to take corrective action because they failed to supply the DoP in the applicable national language.

For further information on market surveillance and enforcement, the reader is referred to Topical Report No. 2.

In summary, there is evidence that market surveillance is being undertaken by authorities across Europe. However, there is a disparity between the level of enforcement that MSAs undertake and the level of enforcement that companies perceive is being taken.

3.17 Summary

Overall, most of the CPR has been effectively implemented by the MS. For example, bodies involved in conformity assessment have been designated across Europe and industry has successfully transitioned from the DoC to the DoP; industry has undertaken the necessary steps to comply with the mandatory requirement to apply the CE marking; PCPC have been designated in the MS and are providing information to stakeholders on a range of issues; and the Commission and MS authorities have undertaken a range of information campaigns in line with Recital 54 of the CPR.

Some issues remain however. For example, only nine EADs have been published (although more are expected in the near future) and issues with quality marks still persist, preventing the free movement of construction products. There also appears to be a disparity between the level of enforcement action undertaken by authorities across Europe and the level of enforcement action that companies perceive is being undertaken.

4 Analysis of Intended Results and Effectiveness of the CPR

4.1 Overview

This Section provides an **analysis of the intended results and effects** of the CPR in terms of clarification, simplification, credibility and free movement of products. In particular, this section assesses the "effectiveness" criterion of the evaluation by assessing **the extent to which the legislation's anticipated benefits have been achieved**. Note that the factors that are hindering the realisation of the anticipated benefits, the scope for improvement and the extent to which these anticipated benefits are expected to be achieved in the future are not addressed in this section. These can be found under the 'effectiveness' analysis in Section 6.3.

4.2 Clarification of the legislation

4.2.1 Overview

Section 4.2 focuses on the extent to which the CPR has clarified the previous legislation, in particular, relating to:

- Definitions under the CPR, as set out in Article 2;
- Obligations of economic operators, as set out in Chapter III;
- CE marking obligations, as set out in Articles 8 and 9;
- AVCP, as set out in Article 28 and Annex V; and
- Information campaigns, as set out in Recital 54.

Note that these are not the only provisions of the CPR that have been put in place to provide clarification (e.g. provisions pertaining to the DoP and hENs have also been put in place to provide clarification) and, indeed, some of the provisions discussed in this section also contribute to the CPR's other main objectives (e.g. CE marking contributes to the objective of clarification but also to the free movement of construction products).

4.2.2 Definitions (Article 2)

CPR provision

Article 2 of the CPR sets out a number of key definitions. Of particular relevance, the CPR updates the definition of a construction product, compared to the definition that was in the CPD[57].

Anticipated benefits

Article 2 of the CPR was introduced in order to:

- Reduce ambiguity and enhance legal clarity; and
- Increase ease of compliance and enforcement.

[57] Note that the CPD only defined a construction product, while the CPR contains many more definitions.

Actual Benefits

A range of stakeholders were interviewed and asked about the definitions contained in Article 2. Close to 90% of companies and around two thirds of public authorities and organisations involved in conformity assessment were of the view that Article 2 had either had no impact or had **clarified the legal framework** (although it should be noted that this figure excludes stakeholders that commented on the content of the 'Specific Technical Documentation' mentioned in Articles 37 and 38 of the CPR; this aspect is discussed below). It was noted by some companies that the terms under the CPR were unambiguous and provided further clarification compared to the situation under the CPD. A Dutch public authority stated that the CPR contains more definitions, which is certainly an improvement compared to the situation that existed under the CPD. Organisations involved in conformity assessment highlighted that the definition of 'kits' and 'manufacturer' were particularly beneficial. A public authority from the Czech Republic commented that, in their experience of responding to queries from industry, there have been few problems with the definitions under Article 2. They have received some queries from companies about the term 'economic operators', but usually these companies only want to check that they have understood the term correctly - which most do. One public authority commented that the CPR is "*a tidy up*" and, as such, it is not surprising that some companies did not experience any problems, or reap any benefits, as a result of these definitions. Nevertheless, some stakeholders noted that some terms require further clarification. This view is discussed further in Section 6.3.

During consultation, stakeholders indicated that the introduction of definitions for an 'economic operator', 'manufacturer', 'distributor', 'importer' and 'authorised representative' were beneficial in terms of **making compliance with the CPR easier for companies and making enforcement of the legislation easier for authorities** (considered in further detail in section 4.2.3). However, stakeholders did not imply that the other definitions under Article 2 have had an effect in this regard.

In conclusion, the definitions provided in Article 2 of the CPR have been effective in terms of reducing ambiguity and enhancing legal clarity and increasing ease of compliance and enforcement. There are nevertheless some terms and concepts referred to in the CPR that would benefit from further clarification. These are discussed in Section 6.3.

4.2.3 Obligations of economic operators (Chapter III)

CPR provision

Chapter III of the CPR clarifies the legal obligations of economic operators, which includes manufacturers, authorised representatives, importers and distributors that deal with construction products.

Under the CPD, it was assumed that manufacturers market their products to the end-user; whereas, in practice, a manufacturer may not know the product's destination or end-use. Hence, unlike the CPD, the CPR defines obligations not only for the manufacturers, but also for other key economic operators, in particular importers and distributors. Under the CPR, importers and distributors must *inter alia* assure themselves that the construction products to be placed on the market are compliant with the applicable requirements of the CPR.

Anticipated benefits

The main anticipated benefits of clarifying the obligations of economic operators in the CPR are:

- Increased legal certainty and transparency regarding the rules;
- Increased ease of compliance and enforcement; and
- Increased respect of legal obligations by economic operators.

Actual benefits

Over two thirds of public authorities and organisations involved in conformity assessment and half of companies were of the view that the obligations for economic operators have had a positive effect in terms of **increasing legal certainty and transparency regarding the rules** (Table 4-1). Indeed, more than half of public authorities indicated that there had been a large positive impact, with one authority noting:

> *"The obligations for economic operators are clear and comparable."*

Organisations involved in conformity assessment noted that:

> *"A clarification of the roles of economic operators is always positive."*
>
> *"The improved legal certainty is a major benefit."*

Nevertheless, almost half the companies that participated in the online survey indicated that clarifying the obligations of economic operators has had no effect in terms of increasing legal certainty and transparency regarding the rules. Possible reasons for this are explored in Section 6.

Around two thirds of public authorities and organisations involved in conformity assessment were of the view that the obligations for economic operators have had a positive effect in terms of **increasing the ease of compliance with the CPR for companies and enforcement of the legislation for MSAs.** As noted by one organisation involved in conformity assessment "*This will help economic operators to understand their responsibilities related to the correct placing on the market*". Around a third of the companies agreed that there have been positive effects in this regard. Interestingly, one company noted that: "*The clarification of obligations for parties outside EU or EEA area gives clear guidelines how to manage certification issues at entering products into market*."

Public authorities noted that:

> *"[The CPR] provides an explicit description of the stakeholders' obligations which benefits both stakeholders and market surveillance authorities."*
>
> *"These clarifications are much welcomed. They are the basis for well-functioning market surveillance..."*

Slightly more than half of organisations involved in conformity assessment were of the view that the clarification of the obligations for economic operators has had a positive effect in terms of **increased respect of legal obligations by economic operators**. Two thirds of public authorities and one third of companies agreed with this view. An organisation involved in conformity assessment noted that *"[the] responsibilities of economic operators' are clarified. So that, there will be less legal matters about construction products in the market".* It is worth noting that a large proportion of companies have indicated 'neutral/no change'. One of the reasons for this is likely to be the fact that these obligations were already clarified during the implementation of the CPD, albeit not in the original

legal text. Those following the developments in the CPD would, therefore, be familiar with the obligations which are now incorporated into the CPR.

Table 4-1: Response to the question - Overall, please indicate whether, in your view, there have been positive or negative impacts from the clarification of the obligations of economic operators (based on the anticipated benefits below).					
Response	**Large positive impact**	**Low positive impact**	**Neutral/no change**	**Low negative impact**	**Large negative impact**
Increased legal certainty and transparency regarding the rules					
Companies	15%	31%	45%	6%	3%
NBs, TABs, SBs	31%	43%	17%	6%	3%
Public Authorities	54%	23%	17%	4%	2%
Increased ease of compliance and enforcement					
Companies	11%	23%	55%	4%	7%
NBs, TABs, SBs	17%	46%	27%	10%	1%
Public Authorities	38%	33%	25%	2%	2%
Increased respect of legal obligations by economic operators					
Companies	13%	23%	52%	5%	6%
NBs, TABs, SBs	21%	37%	37%	4%	1%
Public Authorities	27%	41%	25%	4%	2%

In conclusion, clarifying the obligations of economic operators under the CPR has achieved all of the anticipated benefits, namely:

- **Increased legal certainty and transparency regarding the rules;**
- **Increased ease of compliance and enforcement; and**
- **Increased respect of legal obligations by economic operators.**

4.2.4 CE marking (Article 8 & 9)

CPR provision

Article 8 of the CPR concerns the general principles and use of CE marking. According to Article 8(2) of the CPR, by affixing the CE marking on a product, the manufacturer takes full responsibility for:

- The conformity of the construction product with the declared performance;
- Compliance with all applicable requirements laid down in the CPR; and
- Compliance with applicable requirements in other relevant Union harmonisation legislation providing for its affixing.

Articles 8(4) and 8(5) of the CPR re-emphasise that MS have an obligation to ensure that construction products bearing the CE marking are not prohibited or impeded from being made available on the market or used, when the declared performances correspond to the requirements for such use in that MS.

Article 9 of the CPR specifies that the CE marking shall:

- Be affixed visibly, legibly and indelibly to the construction product or to a label attached to it or, where this is not possible, to the packaging or to the accompanying documents;

- Be followed by the two last digits of the year in which it was first affixed , the name and the registered address of the manufacturer (or an identification mark to that effect), the unique identification code of the product-type, the reference number of the DoP, 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; and
- Be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark notably indicating a special risk or use.

Recital 30 of the CPR states that:

> *"Due to the difference in the meaning of the CE marking for construction products, when compared to the general principles set out in Regulation (EC) No 765/2008, specific provisions should be put in place to ensure the* ***clarity of the obligation to affix the CE marking to construction products*** *and the consequences thereof".*

Anticipated benefits

With the above in mind, some of the anticipated benefits of clarifying the CE marking aspect of the CPR include:

- Increased legal certainty and transparency regarding the rules;
- Increased ease of compliance and enforcement; and
- Enhanced free movement of construction products across the EU.

Actual benefits

Over half of companies, public authorities and organisations involved in conformity assessment were of the view that the CE marking provisions have had a positive effect in terms of **increasing legal certainty and transparency regarding the rules** (Table 4-2)**.** Indeed, one company noted that *"As regards with the legal meaning of the CE marking we feel that now it is clearer"*. A public authority made a comment of the same vein: "*The positive aspect is that the Regulation ensure legal certainty and transparency regarding requirements. The conditions of use of the CE mark are clearly identified…".* An industry association noted that it strongly supports the CPR as it is a major improvement compared with the CPD, in particular, because it clarifies the CE marking. Interestingly, a third of companies indicated that there had been no effect in this regard.

It would appear that this aspect of the CPR has also had a positive effect on the credibility of the CPR, with over half of companies, public authorities and organisations involved in conformity assessment of the view that the CE marking provisions have increased the **credibility of the CPR**. While stakeholders have not indicated exactly how the provisions on CE marking have enhanced the credibility of the CPR, it is possible to speculate that by enhancing legal certainty and transparency regarding the rules, the credibility of the CPR has, indirectly, been enhanced. This outcome may also reflect a perception that the CE marking itself is more credible under the CPR than was the case under the CPD.

Over half of public authorities and organisations involved in conformity assessment were of the view that the CE marking provisions have had a positive effect in terms of **making compliance with the CPR easier for companies and enforcement of the legislation easier for authorities**. Around a third of companies agreed with this assessment, with more than two thirds of these being from MS where CE marking was mandatory under the CPD. Companies from countries where CE marking was voluntary under the CPD were less positive about this aspect of the CPR, which indicates that

achieving compliance under the CPR is more difficult compared to the CPD as they have to go through the process of CE marking their products. Of those companies indicating a positive effect, more than half were micro-enterprises or SMEs. In terms of enforcement, one public authority noted that "*From a market surveillance perspective, the requirements under the CPR in respect of CE marking increase the ease of compliance and enforcement*". An industry association in Ireland noted that it will be easier for MSAs to identify international competitors that export products into the EU-28 without complying with the CPR. This was reiterated by an Irish public authority who noted that the mandatory use of CE marking on construction products covered by a hEN has been beneficial for MSAs, as it is now clear which products must be CE marked. Similar views were also echoed by a Danish public authority.

Around half of companies and organisations involved in conformity assessment were of the view that the CE marking provisions have had no effect in terms of **enhancing the free movement of construction products across the EU**. Around 40% of public authorities agreed with this assessment. That said, over a third of all respondents indicated that the CE marking provisions have had a positive impact in terms of enhancing the free movement of construction products. For manufacturers based within MS where CE marking was already mandatory under the CPD, the requirement for mandatory CE marking in all MS introduced by the CPR is perceived positively and considered beneficial for competition. Indeed, a Danish industry association noted that it is good that CE marking is now mandatory in Sweden as construction products can now be traded more freely across borders. A Belgian industry association commented that clarifying the concept of the CE marking is beneficial for their members, because 70% of them export to other EU MS. Indeed, it was noted by a Finnish notified body that mandatory CE marking could be beneficial for European companies, as MSA can better prevent the flow of third country imports (e.g. from USA, Canada and China), as these countries are unable to meet the EU standards and attain the CE marking.

On the whole, there seems to be a general view that, while there may have been a slight improvement, the actual benefits of the CPR in this area have been "*much less than expected*". In part, this may be explained by the short period of time that has elapsed since the full applicability of the CPR and also the issue of quality marks. The issue of quality marks and free movement of construction products are discussed in Section 4.5. The factors hindering the realisation of this anticipated benefit are discussed further in Section 6.

Table 4-2: Response to the question - Overall, please indicate whether, in your view, there have been positive or negative impacts from the clarification of the concept and use of CE marking (based on the anticipated benefits below).

Response	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
Increased legal certainty and transparency regarding the rules					
Companies	23%	29%	35%	6%	7%
NBs, TABs, SBs	33%	36%	26%	3%	2%
Public Authorities	53%	27%	13%	4%	4%
Increased ease of compliance and enforcement					
Companies	11%	29%	45%	8%	6%
NBs, TABs, SBs	19%	32%	39%	8%	2%
Public Authorities	39%	35%	19%	6%	2%

Table 4-2: Response to the question - Overall, please indicate whether, in your view, there have been positive or negative impacts from the clarification of the concept and use of CE marking (based on the anticipated benefits below).					
Enhanced free movement of construction products across the EU					
Companies	13%	24%	54%	4%	5%
NBs, TABs, SBs	18%	26%	48%	6%	2%
Public Authorities	23%	35%	40%	2%	0%
Increased credibility of the CPR					
Companies	12%	37%	38%	6%	7%
NBs, TABs, SBs	18%	39%	34%	8%	1%
Public Authorities	26%	36%	28%	6%	4%

In conclusion, the clarified concept and use of CE marking under the CPR has achieved two of the three anticipated benefits, namely:

- **Increased legal certainty and transparency regarding the rules;**
- **Increased ease of compliance and enforcement.**

Enhanced free movement of construction products has not been fully achieved. As CE marking was mandatory in all but four MS under the CPD, it is possible that many stakeholders will not have experienced any changes. The relatively short time period since the CPR came into effect could also be a contributory factor (discussed further in Section 6.3). It appears that this aspect of the CPR has also had the additional benefit of enhancing the credibility of CPR; although the exact mechanism behind the realisation of this benefit remains uncertain.

4.2.5 Assessment and Verification of Constancy of Performance (Article 28, Annex V)

CPR provision

As explained in Section 3.10, the CPR (Annex V) sets out five different systems for the AVCP. Annex V of the CPR was revised and replaced in February 2014 by Commission Delegated Regulation (EU) No 568/2014 of 18 February 2014 amending Annex V to Regulation (EU) No 305/2011 of the European Parliament and of the Council as regards the assessment and verification of constancy of performance of construction products. This delegated regulation was developed to achieve three main objectives[58]:

1. To prescribe the particular treatment of products for which ETA are issued;
2. To simplify and bring clarity to the distribution and description of tasks contained in Annex V, notably by means of increased consistency with the concepts used and approaches defined in the CPR; and

[58] DG ENTR (no date): Frequently Asked Questions on Delegated Regulation (EU) No 568/2014 of 18 February 2014 amending Annex V to Regulation (EU) No 305/2011 as regards the assessment and verification of constancy of performance of construction product, available at http://ec.europa.eu/DocsRoom/documents/5405/attachments/1/translations/en/renditions/native

3. To better reflect the current application practices of the systems of AVCP, taking into account the first practical experiences gathered and reported by notified bodies, MS and industry.

As explained in Section 3.10, the Delegated Regulation does not alter the distribution of tasks established by the CPR, rather it sought to clarify the legislation[59].

Recital 28 of the CPR states that *"in order to **ensure that the declaration of performance is accurate and reliable**, the performance of the construction product should be assessed and the production in the factory should be controlled in accordance with an appropriate system of assessment and verification of constancy of performance of the construction product."*

Anticipated benefits

The anticipated benefits of this aspect of the CPR are set out below:

- Improved legal certainty; and
- Increased credibility of the CPR.

Actual benefits

Around a third of organisations involved in conformity assessment were of the view that the new systems for the AVCP had a positive effect on their organisation in terms of **improving legal certainty** (Table 4-3). In Bulgaria, for example, one public authority stated that they felt the functions and tasks of all participants are laid out more clearly under the CPR. On the other hand, two thirds of stakeholders indicated no effect. The amendment under the CPR involved the removal of System 2, which was rarely utilised under the CPD. Another organisation involved in conformity assessment in the UK explained that the clarification of AVCP System 1, 2 and 3 has created a better understanding of the legislative framework under the CPR, compared to the situation under the CPD. In contrast, a construction industry stakeholder from Belgium noted that the description of the AVCP process was clearer under the CPD and that no benefits have arisen as a result of the removal of AVCP System 2.

Table 4-3: Response to the question - In your view, what has been the impact of the new systems of Assessment and Verification of Constancy of Performance (AVCP) on your organisation?

Impact	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
NBs, TABs, SBs.					
Improved legal certainty	9%	24%	65%	2%	1%

A number of stakeholders from different MS (including Austria, Cyprus, Romania and Slovenia) have reported **increased credibility of the CPR** as a result of the new systems for the AVCP. According to a public authority in Estonia, the new system is clearer under the CPR compared to the CPD. The stakeholder added that the individual systems are more clearly described and that the responsibilities of each party are clear, which has improved the credibility of the legislation. Stakeholders from public authorities in Lithuania noted that the clarification given for Annex V on the 18 February 2014 (EU Nr. 568/2014) has had a positive impact on the credibility and clarity of

[59] CPE (2014): Delegated Act: annex V, available at: http://constructionproductsblog.eu/delegated-act-annex-v/

the legislation. A public authority in Slovenia noted that there are no significant changes to the system under the CPR; however the credibility has increased as it is now clearer what has to be declared and what is being assessed. In the view of this stakeholder, the system is now focused on the properties of the essential characteristics of the products, it is clearer for users and producers.

On the other hand a French public authority stated that neither the clarity nor credibility of the legislation has changed under the CPR. The amendment under the CPR is largely perceived as a streamlining exercise and, as such, has had a minor positive impact on the credibility of the legal framework.

In conclusion, the new systems of AVCP have had some success in achieving the anticipated benefits, namely:

- **Improved legal certainty; and**
- **Increasing credibility of the CPR.**

Nevertheless, the amendment under the CPR is largely perceived as a streamlining exercise and so the actual benefits achieved have been minimal.

4.2.6 Information campaigns

CPR provision

Recital 54 of the CPR states that the Commission and the MS should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users of construction products, of the changes introduced by the CPR.

Anticipated benefits

The aim of these campaigns was to **improve awareness of the CPR** in the construction sector.

Actual benefits

There appears to be a strong perception amongst some industry associations that their members lack awareness of the CPR and its concepts. Results from consultation for this study, however, indicate that most companies (95%) are aware that the CPD was replaced by the CPR in June 2013 and that companies generally believe that they have a good/high technical knowledge of the main aspects of the CPR (CE marking, DoP and hENs). The majority of companies also indicated familiarity (as opposed to technical knowledge) with EADs and ETAs. In contrast, around 50% of companies had either never heard of PCPCs or were not sure about what it meant. Similarly, around 30% had either never heard of 'AVCP' or were not sure what it meant, although it is worth noting that these stakeholders may have been aware of the concept of Attestation of Conformity under CPD and were simply unaware of the change in terminology.

It is not necessary for companies to have good technical knowledge or indeed expert level knowledge of some concepts under the CPR, such as EADs, ETAs and AVCP as these are completed by notified bodies and TABs. However, companies' lack of awareness of PCPCs is an area which does need to be improved considering the important role of PCPCs and the benefits they are intended to provide to companies within the context of the CPR.

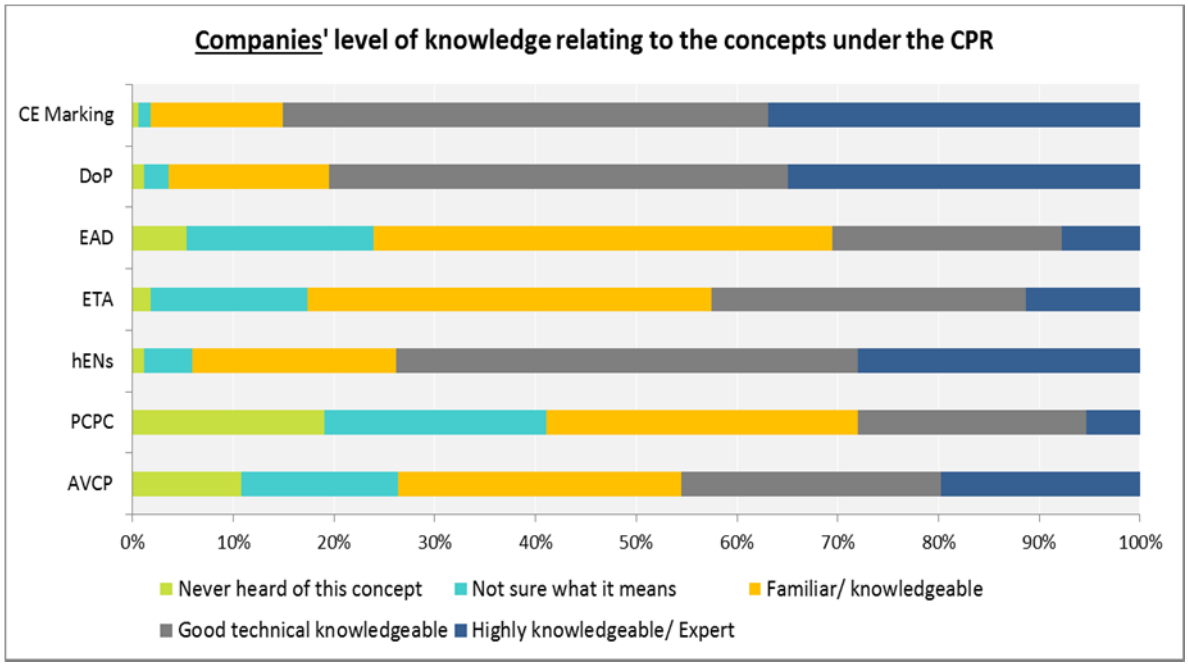

Figure 4-1: Response to the question - Please indicate your level of knowledge relating to the following concepts under the CPR

During consultation, companies were asked whether they were **aware of any relevant information campaigns** in their country in the last two years that have provided information to the construction sector about the changes introduced under the CPR. The responses were evenly split, with 52% of companies indicating that they are aware of information campaigns. Of those respondents that were not aware, around 70% were micro-enterprises or SMEs, which correlates with the view of one public authority, which noted that these stakeholders are often the hardest to reach.

The degree of awareness of information campaigns in different MS is shown in the Table 4-4. It is evident that there is at least some degree of awareness in 14 of the MS[60].

Table 4-4: Are you aware of any relevant information campaigns in your country in the last two years providing information to the construction sector about changes under the CPR?

Country	% of total respondents answering 'Yes'
Poland	60%
Germany	58%
Romania	50%
Finland	50%
United Kingdom	46%
Belgium	43%
Spain	33%
Switzerland	25%
Netherlands	23%
Austria	20%

[60] Only those countries with at least four responses (companies) have been included

Table 4-4: Are you aware of any relevant information campaigns in your country in the last two years providing information to the construction sector about changes under the CPR?	
Country	**% of total respondents answering 'Yes'**
Ireland	20%
Italy	14%
Croatia	13%
Portugal	7%

As shown in Table 4-5, companies' perceived **usefulness of information campaigns** varies between countries. As a general comment, companies felt that campaigns run by industry were most useful, with no stakeholders considering them to be poor. To some extent, this is to be expected, as information campaigns run by public authorities would provide general information about the CPR that would be applicable to all sectors and enterprises of all sizes. Whereas, information campaigns provided by industry associations will be more targeted, possibly citing examples and providing practical advice related to their harmonised standards and products. For instance, one manufacturer commented that the Spanish Coating Association helped to inform and prepare manufacturers for the CPR.

Of course, this is not always the case. An end-user in Denmark noted that they had received some written information, both from the CEN-committee and from The Danish Asphalt Industry. However, the legislative language used in the latter was far removed from the technical reality that they face every day and was therefore less useful.

Table 4-5: Companies' rating of information campaigns			
Country	**Public authority**	**Industry Campaigns**	**Consumer/ NGO/ other**
Austria	Good	Good	-
Belgium	Mixed views	Good	Poor
Croatia	Good	Fair	Fair
Finland	Very good	Very good	Very good
Germany	Fair	Good	Fair
Ireland	-	Fair	-
Italy	Poor	Good	Poor
Netherlands	Mixed views	Fair	Mixed views
Poland	Mixed views	Good	Poor
Portugal	Poor	Fair	Fair
Romania	Good	Good	Poor
Spain	Poor	Good	Poor
Switzerland	Poor	Good	Fair
United Kingdom	Poor	Good	Poor

Information campaigns run by public authorities across Europe received mixed reviews, with some companies considering them to be very good and others noting that they were poor, e.g. campaigns run by the Belgian national authority. However, during the interviews, a Belgian industry association commented that the Belgian national authority had performed an outstanding job of explaining the differences between the CPD and the CPR, and the steps that manufacturers would need to take to comply with the CPR.

On the matter of information campaigns in Sweden, an end-user commented that Boverket, the National Product Contact Point and MSA, launched a series of information campaigns in March 2012. These were considered to be helpful, despite the fact that information was lacking at times. However, a Swedish organisation involved in conformity assessment noted that information campaigns ceased at the beginning of 2015, despite the fact that there are aspects which need to be addressed and explained, as some manufacturers are not fully informed.

With regard to campaigns run by the Commission, it has been noted that these appear to have fulfilled their goals, as supported by feedback from the seminars and fairs, the high demand for informational material and the strong interest of print and online media. Furthermore, the Commission has noted that there is evidence that stakeholders are now more familiar and knowledgeable about the meaning of the CE marking and that they are more aware of their rights and obligations.

In conclusion, roughly half of companies were aware of information campaigns in the last two years which provided information about the changes introduced under the CPR. It would appear that SMEs are particularly difficult to reach and would benefit from further targeted information campaigns.

In terms of topics, consultation has indicated that there is low awareness of PCPCs. Similarly, there is low awareness of the simplified procedures under Articles 37 & 38. Both areas could benefit from further targeted information campaigns.

Companies in Poland, Germany, Romania and Finland were the most aware of information campaigns. Information campaigns by industry associations are generally well received and useful. Campaigns by public authorities are perceived as less useful.

4.3 Simplification of the legislation

4.3.1 Overview

The CPR aims to simplify the existing framework (i.e. the CPD) for the placing and making available construction products on the market in the EU by providing simplified **concepts, procedures and obligations**. In particular, the CPR sets out:

- Simplified procedures for drawing up DoPs;
- Simplified testing procedures for construction products covered by harmonised technical specifications;
- Simplified procedures for products not (fully) covered by a harmonised standard;
- Levels and classes of performance; and
- Requirements for PCPCs.

Note that these are not the only provisions of the CPR that have been put in place to simplify the legislative framework pertaining to construction products and that some of the provisions discussed in this section also contribute to the CPR's other main objectives (e.g. PCPC aim to simplify the situation for economic operators but also seek to enhance the free movement of construction products in Europe).

4.3.2 Declaration of performance (Article 4 – 7)

CPR provision

Article 4(1) of the CPR states that:

> *"When a construction product is covered by a harmonised standard or conforms to a European Technical Assessment which has been issued for it, the manufacturer shall draw up a declaration of performance when such a product is placed on the market."*

Article 5 sets out a number of exceptions (or 'derogations') to the requirement to draw up a DoP when placing a construction product on the market:

> *"By way of a derogation from Article 4(1) and in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used, a manufacturer may refrain from drawing up a declaration of performance when placing a construction product covered by a harmonised standard in the market where:*
>
> *(a) the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work…*
>
> *(b) the construction product is manufactured on the construction site for its incorporation in the respective construction works… ; or*
>
> *(c) the construction product is manufactured in a traditional manner or in a manner appropriate to heritage conservation and in a non-industrial process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit..."*

These derogations can only be applied in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used.

Article 7 of the CPR concerns the supply of the DoP. It clarifies that the DoP may be supplied in either paper form or by electronic means (Article 7(1)); although a paper copy of the DoP must be supplied if the recipient requests it (Article 7(2)). By way of derogation from Article 7(1) and Article 7(2) of the CPR, Article 7(3) of the CPR states that the DoP may be made available on a website, in accordance with the conditions established by the Commission by means of delegated acts. The delegated act published in May 2014 allows manufacturers to include the reference to the website where the DoP is available. In this case, the DoP must remain available for at least the period referred to in Article 11(2) (i.e. 10 years, unless amended by the Commission by means of delegated acts). Article 7(4) of the CPR states that the DoP *"shall be supplied in the language or the languages required by the Member State where the product is made available."*

Within the context of Article 5 specifically, Recital 27 states that it is necessary to provide for simplified procedures for the drawing up of DoPs in order to alleviate the financial burden of enterprises, in particular SMEs.

In late May 2014, the delegated act to modify Annex III of the CPR was published in the OJEU. Annex III provides a flexible format for manufacturers to follow when drawing up a DoP for their construction products.

Anticipated benefits

As regards the DoP in general, the anticipated benefits include:

- Increased legal certainty and transparency regarding the rules; and
- Increased ease of compliance and enforcement.

As regards Article 5 specifically, the main anticipated benefit was to:

- Alleviate the financial burden on enterprises (particularly SMEs).

Actual benefits

More than three quarters of public authorities and half of companies were of the view that the new requirements for the DoP have had a positive effect in terms of **increasing legal certainty and transparency regarding the rules** (Table 4-6). In this respect, stakeholders commented that "*…Annex III is very clear*" and *"…We are happy to be legal with a web solution for providing DoPs … We can now ensure that DoPs are always sorted, traceable and available, independent of media type or customer/working situation"*. However, close to half of companies indicated that there has been no change in this regard. Under the CPD, all construction products covered by a hEN had to be accompanied by a Declaration of Conformity, which included similar (albeit less detailed) information to the DoP. This requirement was not open to interpretation. As such, it is possible that some companies will not have perceived any changes in terms of increased legal certainty and transparency regarding the rules.

More than three quarters of public authorities and about one third of companies were of the view that the new requirements for the DoP had a positive effect in terms of **making compliance with the CPR easier for companies and enforcement of the legislation easier for authorities.** In this regard, the allowance for electronic DoPs under the CPR is highlighted as a major advantage, as indicated by the following views:

> *"The procedure in Croatia is simplified because we are no longer required to submit printed copies of our DoPs to the competent Ministry".*
>
> *"Providing DoPs through a website is the adequate way to handle the way from manufacturer to the consumer of the product".*

On the other hand, more than half of companies indicated there had been no change in terms of ease of compliance and enforcement. Indeed, a number of companies have highlighted an additional administrative burden as a result of the new requirements. This issue is explored further in Section 6.

Table 4-6: Response to the question - Please indicate to what extent there have been positive or negative impacts from the new requirements for DoP. Please tick which of the impacts are applicable to your organisation from the list of anticipated benefits set out below.					
Response	**Large positive impact**	**Low positive impact**	**Neutral/no change**	**Low negative impact**	**Large negative impact**
Increased legal certainty and transparency regarding the rules					
Companies	9%	41%	40%	3%	6%
Public Authorities	57%	25%	11%	6%	2%
Increased ease of compliance and enforcement					
Companies	7%	26%	55%	4%	8%
Public Authorities	42%	40%	11%	8%	0%

Article 5 sets out a number of exceptions (or 'derogations') to the requirement that a DoP is drawn up for each construction product that conforms to a hEN or ETA. The intended benefit being **the alleviation of the financial burden on enterprises, in particular SMEs**. In practice, however, it appears that there are only isolated examples of manufacturers actually applying the Article 5 derogation; indeed, no examples have been identified during the consultation undertaken for this study. Consequently, there is no evidence that the anticipated benefit of this provision (i.e. reduced administrative burden) have, or have not, been achieved.

In conclusion, the new requirements for the DoP under the CPR have achieved two of the three anticipated benefits:

- **Increased legal certainty and transparency regarding the rules; and**
- **Increased ease of compliance and enforcement.**

A reduced financial burden on enterprises, particularly SMEs, has not been achieved, the main reason for this being the limited uptake of this provision. Reasons why the Article 5 derogation is not being used more widely are discussed in Section 6.3.

4.3.3 Simplified testing procedures for products covered by harmonised technical specifications (Chapter VI)

CPR provision

Chapter VI of the CPR lays out simplified procedures for construction products, specifically:

- Article 36 enables any manufacturer to replace the type-testing or type-calculation stage of the assessment process with Appropriate Technical Documentation, under certain conditions;
- Article 37 of the CPR provides micro-enterprises[61] with the option to use simplified procedures when carrying out the AVCP; and
- Article 38 provides that Specific Technical Documentation may be used in place of the performance assessment part of the applicable system (as set out in Annex V of the CPR) for all construction products which are individually manufactured or custom-made in a non-

[61] Defined in Article 2(27) of the CPR: "'*micro-enterprise' means a micro-enterprise as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises*" (OJ L 124, 20.5.2003, p. 36)

series process in response to a specific order, and which are installed in a single identified construction work.

Recital 34 of the CPR states that:

> *"To avoid the unnecessary testing of construction products for which performance has already been sufficiently demonstrated…"*

Recital 35 of the CPR states that:

> *"To avoid duplicating tests already carried out, a manufacturer of a construction product should be allowed to use the test results obtained by a third party".*

Recital 38 of the CPR states that:

> *"To further decrease the cost to micro-enterprises of placing construction products, which they have manufactured, on the market, it is necessary to provide for simplified procedures for the assessment of performance when the products in question do not imply significant safety concerns while complying with the applicable requirements, whatever the origin of those requirements".*

Recital 39 of the CPR states that:

> *"For an individually designed and manufactured construction product, the manufacturer should be allowed to use simplified procedures for the assessment of performance, where it can be demonstrated that the product laced on the market complies with the applicable requirements".*

Anticipated benefits

From the above recitals, the following anticipated benefits can be drawn:

- Increased legal certainty and transparency regarding the rules;
- Increased ease of compliance;
- Reduced costs for SMEs and micro-enterprises;
- Enhanced potential for innovation; and
- Enhanced competitiveness of EU manufacturers.

Actual benefits

In general, information from consultation appears to show that there is a **low level of awareness** of the use of the simplified testing procedures. Around 20% of stakeholders (companies, organisations involved in conformity assessment and public authorities) indicated that they were aware of organisations that have used these provisions.

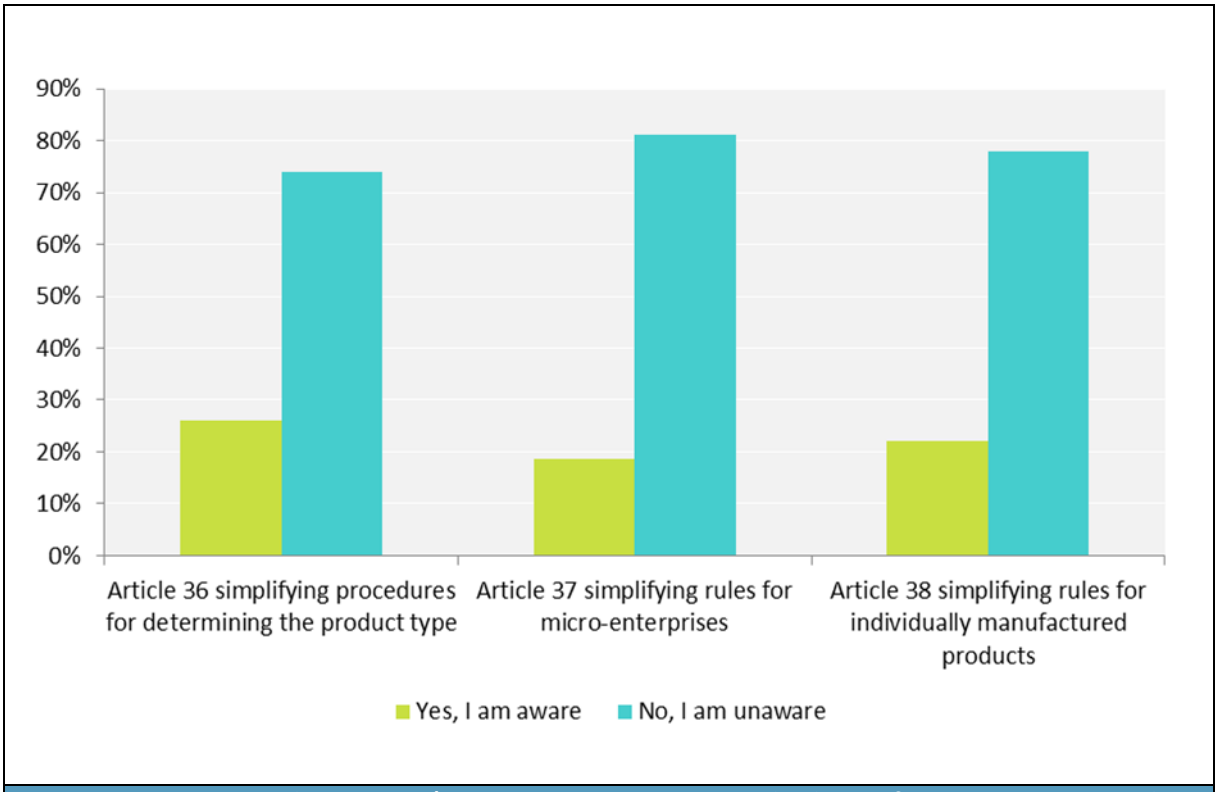

Figure 4-2: Response to the question (companies, organisations involved in conformity assessment and public authorities) - Are you aware of organisations that have used these simplified provisions?

Around two thirds of companies and a third of public authorities were of the view that the simplified procedures had no effect in terms of **increasing legal certainty and transparency regarding the rules**. Article 36 has successfully transposed CPD Guidance Paper M (dealing with conformity assessment with regards to factory production control and initial type testing) into legislation. This procedure is well understood by industry across Europe and in some sectors, such as windows and doors, it may even be common practice. In contrast, there are only isolated examples of Articles 37 and 38 being applied.

As noted by one (pan-EU) construction industry stakeholder:

> *"Among the three articles related to simplified procedures, article 36 is the one that has brought the most tangible and effective consequences. This is mainly due to the positive experience, under the CPD, of the application of Guidance Paper M on the conformity assessment for initial type testing. With the new Regulation, the effects related to sharing and cascading practices are still positively appreciated by SMEs."*

An engineer in Germany noted that Article 36(1)(a) is commonly used for "*reaction to fire*" for wood-based panels according to EN 13964, plasterboard according to EN 520 and glued laminated timber according to EN 14080. EN 14081 "*structural timber with rectangular cross section*" may also use this provision. A company in Poland and another European manufacturer also noted that this provision (and Article 38) has been used for ceramic roof tiles and fittings, lintels and beams for floor systems, ceramic blocks for walls and ceramic fillers for floor systems and ceramic facing bricks.

Around two thirds of companies and a third of public authorities were of the view that the simplified procedures had no effect in terms of **increasing ease of compliance**. The simplified procedures under Articles 37 and 38 are intended to make compliance for SMEs easier. However, as explained above, the procedures have not been widely applied. On the other hand, more than half of public

authorities were of the view that the simplified procedures had a positive effect. Whilst there is little evidence of the simplified procedures under Articles 37 and 38 being applied in practice, the positive effect indicated by authorities could be linked to theoretical benefits from applying the procedures rather than actual benefits.

Around two thirds of companies and a third of public authorities were of the view that the simplified procedures had no effect in terms of **reducing the costs for SMEs and micro-enterprises**. Indeed, a number of stakeholders have explained that demonstrating equivalence of testing procedures to those set out in the harmonised standard may be just as costly or burdensome as fulfilling the requirements of the standard (this is discussed further in Section 6). Interestingly, more than half of public authorities were of the view that the simplified procedures had a positive effect. Again, this is likely to be based on theoretical benefits rather than actual benefits.

More than two thirds of companies and public authorities were of the view that the simplified procedures had no effect in terms of **enhancing the potential for innovation**. Given that these simplified procedures have not (yet) been effective in terms of reducing the administrative burden on micro-enterprises and SMEs, it is unsurprising that there has been no tangible impact in terms of innovation.

More than two thirds of companies and around half of public authorities were of the view that the simplified procedures have had no effect in terms of **enhancing the competitiveness of EU manufacturers**. With the exception of Article 36, the simplified procedures have not been widely applied; therefore the possibility of enhancing the competiveness of manufacturers is limited.

Table 4-7: Response to the question - Please indicate the extent to which there have been positive or negative impacts from the simplification of the rules relating to procedures for assessing and determining the performance of products from the list of anticipated benefits set out below.					
Response	**Large positive impact**	**Low positive impact**	**Neutral/no change**	**Low negative impact**	**Large negative impact**
Increased legal certainty and transparency regarding the rules					
Companies	6%	17%	71%	6%	0%
Public Authorities	16%	28%	40%	14%	2%
Increased ease of compliance					
Companies	8%	20%	65%	4%	2%
Public Authorities	18%	36%	32%	9%	5%
Reduced costs for SMEs and micro-enterprises					
Companies	10%	19%	65%	2%	4%
Public Authorities	28%	28%	40%	5%	0%
Enhanced potential for innovation					
Companies	7%	15%	70%	4%	4%
Public Authorities	5%	24%	71%	0%	0%
Enhanced competitiveness of EU manufacturers					
Companies	8%	14%	73%	2%	2%
Public Authorities	15%	27%	54%	2%	2%

In conclusion, the simplification of the rules relating to procedures for assessing and determining the performance of products under the CPR has not achieved any of the anticipated benefits.

Article 36 has successfully transposed Guidance Paper M into legislation and is commonly applied in some sectors (e.g. windows and doors), where it is reportedly working well.

However, the simplified procedures under Articles 37 and 38 are not widely applied. Factors hindering the uptake of these provisions and the achievement of anticipated benefits are discussed further in Section 6.3.

4.3.4 Simplified procedures for products not (fully) covered by a harmonised standard – EADs and ETAs (Article 19-24, 26)

CPR provision

A European Assessment Document (EAD), according to Article 2(12) of the CPR is defined as:

> *"…a document adopted by the organisation of TABs for the purposes of issuing of ETAs".*

According to Article 24 of the CPR, EADs shall contain at least:

- A general description of the construction product;
- The list of essential characteristics, relevant for the intended use of the product as foreseen by the manufacturer and agreed between the manufacturer and the organisation of TABs;

- The methods and criteria for assessing the performance of the product in relation to those essential characteristics; and
- Principles for the applicable factory production control to be applied.

A European Technical Assessment (ETA), according to Article 2(13) of the CPR is defined as follows:

> *"…the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document."*

According to Article 26(2) of the CPR, the ETA shall include:

> *"…the performance to be declared, by levels or classes, or in a description, of those essential characteristics agreed by the manufacturer and the TAB receiving the request for the European Technical Assessment for the declared intended use, and technical details necessary for the implementation of the system of assessment and verification of constancy of performance."*

Article 19(1) of the CPR states:

> *"Following a request for a European Technical Assessment by a manufacturer, a European Assessment Document shall be drawn up and adopted by the organisation of TABs for any construction product not covered or not fully covered by a harmonised standard, for which the performance in relation to its essential characteristics cannot be entirely assessed according to an existing harmonised standard, because, inter alia:*
>
> *(a) the product does not fall within the scope of any existing harmonised standard;*
>
> *(b) for at least one essential characteristic of that product, the assessment method provided for in the harmonised standard is not appropriate; or*
>
> *(c) the harmonised standard does not provide for any assessment method in relation to at least one essential characteristic of that product."*

Recital 19 of the CPR provides that:

> *"The procedures under Directive 89/106/EEC for assessing performance in relation to the essential characteristics of construction products not covered by a harmonised standard should be simplified* ***in order to make them more transparent and to reduce costs to manufacturers of construction products****."*

Article 26(3) of the CPR provides that the Commission shall adopt implementing acts to establish the format of the ETA, to ensure the uniform implementation of Article 26(2) of the CPR. To this end, an implementing act (Regulation (EU) No 1062/2013) was implemented on 30 October 2013.

The simplified procedures for products not (fully) covered by a harmonised standard are intended to provide a faster route to CE marking for innovative products, with clearly define timescales which assessment bodies need to meet. Annex II sets out a detailed procedure for adopting a EAD, which includes strict timescales for taking decisions.

Anticipated benefits

The anticipated benefits of these procedures include:

- Increased legal certainty and transparency regarding the rules - in particular for the manufacturer concerned;
- Increased ease of compliance;
- Reduced costs for manufacturers;
- Enhanced competitiveness of EU manufacturers; and
- Reduced time spent on developing EADs/ETAs under the CPR, compared with the situation under the CPD.

According to EOTA, EADs also contribute to the appropriate assessment of construction products, enable manufacturers to comply with European legislation, facilitate the uptake of innovation, research and technical development, and promote the interoperability of products and sustainability.

Actual benefits

As explained in Section 3.6, only nine EADs have been cited in the OJEU and this occurred in July 2015 Thus, the basis of the new regime has not yet been fully implemented (although dozens of ETAs have been issued, as shown in Section 3.7). This may, in part, explain why:

- Around half of companies and public authorities indicated that the EAD/ETA regime had no effect in terms of increasing legal certainty and transparency regarding the rules and increasing ease of compliance for companies;
- Around two thirds of companies and public authorities were of the view that the EAD/ETA regime had no effect in terms of reducing costs for manufacturers and enhancing the competitiveness of EU manufacturers; and
- Over half of public authorities and organisations involved in conformity assessment were of the view that the new regime for ETAs had no effect in terms of reducing time spent developing EADs/ETAs.

Nevertheless, a number of stakeholders have indicated a positive effect associated with this aspect of the CPR. It is likely that any positive effects are based on the procedures that underpin the development of the EADs compared to the situation that existed under the CPD. Some organisations involved in conformity assessment identified potential benefits:

> *"The process has been made clear and more transparent now".*
>
> *"Facilitates the marketing of innovative products".*
>
> *"The old system with CUAPs and ETAGS was quite unclear".*
>
> *"Manufacturers have more input in their drafting".*

Table 4-8: Response to the question - In your opinion, to what extent has this simplification for products not (fully) covered by a harmonised European standard (e.g. moving from the system under CPD of ETAG/CUAP/ETA to the system under the CPR (EAD/ETA)) resulted in positive or negative impacts against the anticipated benefits listed below.					
Response	**Large positive impact**	**Low positive impact**	**Neutral/no change**	**Low negative impact**	**Large negative impact**
Increased legal certainty and transparency regarding the rules					
NBs, TABs, SBs	9%	22%	56%	5%	9%
Public Authorities	5%	36%	52%	2%	5%
Increased ease of compliance					
NBs, TABs, SBs	6%	22%	62%	4%	6%
Public Authorities	2%	40%	49%	7%	2%
Reduced costs for manufacturers					
NBs, TABs, SBs	4%	11%	67%	5%	13%
Public Authorities	0%	24%	71%	2%	2%
Enhanced competitiveness of EU manufacturers					
NBs, TABs, SBs	5%	14%	66%	5%	10%
Public Authorities	2%	27%	66%	2%	2%
Reduced time spent on developing EADs					
NBs, TABs, SBs	7%	16%	56%	15%	6%
Public Authorities	10%	10%	71%	3%	6%

In conclusion, the anticipated benefits of this aspect of the CPR have not yet been fully realised, in part because only nine EADs have been cited in the OJEU. It has been suggested that the procedures underpinning the development of EADs under the CPR may be better than those under the CPD. Future studies should consider whether this anticipated benefit has actually been realised.

4.3.5 Levels and classes of performance (Article 27, Article 60)

CPR provision

Recital 13 of the CPR states that: *"Where appropriate, classes of performance in relation to the essential characteristics of construction products should be encouraged to be used in harmonised standards, so as to take account of different levels of basic requirements for construction works for certain construction works as well as of the differences in climate, geology and geography and other different conditions prevailing in the Member States…"*.

This implies that one of the reasons for providing for levels and classes of performance in relation to the essential characteristics of construction products in the CPR was to provide a degree of flexibility in the legislative framework.

The CPR allows the Commission to introduce delegated acts with the aim to, *inter alia*:

- Determine those essential characteristics[62] or threshold levels for specific families of construction products, for which a manufacturer of construction products must declare the performance when the product is placed on the market (Article 3(3));
- Establish classes of performance in relation to the essential characteristics of construction products (in response to technical progress) (Article 27(1)); and
- Establish conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing (Article 27(5)).

Anticipated benefits

The above could result in the following anticipated benefits:

- Reduced costs for manufacturers;
- Increased legal certainty and transparency regarding the rules; and
- Enhanced free movement of products within the EU.

Actual benefits

As shown in Table 4-9, almost two thirds of organisations involved in conformity assessment indicated that there has been no change (on their organisation) from the new conditions under which the Commission, European standardisation bodies or TABs may establish classes of performance and threshold levels in relation to the essential characteristics of construction products.

Table 4-9: Response to the question - In your view, what has been the impact of the new conditions under which the Commission, European standardisation bodies or TABs may establish classes of performance and threshold levels in relation to the essential characteristics of construction products on your organisation?

Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
NBs, TABs, SBs				
6%	16%	64%	9%	5%

The CPR intends to **reduce costs for manufacturers** by establishing conditions, via a delegated act, under which a construction product will satisfy a given level or class of performance without testing or further testing (i.e. it simplifies the legislative framework). At present, only a few delegated acts have been adopted and, those that have, have not been in effect for very long. Hence, there has been no discernible effect in terms of reduced costs. Nevertheless, a large manufacturer in Denmark noted that levels and classes of performance have the potential to benefit some organisations financially, although there has been no impact on their company to date.

With regards to **increased legal certainty and transparency regarding the rules**, stakeholders had mixed views. While some stakeholders indicated that the new regime for levels and classes has caused confusion and is more onerous than the situation under the CPD, others indicated that the new regime is clearer. An industry association in Estonia stated that the new regime for setting out levels and classes of performance is beneficial for smaller countries, such as Estonia, because they do not have their own systems and can now rely on European legislation.

[62] Nota bene: 'essential characteristics' are those characteristics of the construction product which relate to the basic requirements for construction works (as stated in Article 2(4) of the CPR).

A number of stakeholders have noted that the new regime for setting levels and classes of performance has the potential to **enhance the free movement of construction products within the EU**. Indeed, organisations involved with conformity assessment in Croatia and Denmark both noted that levels and classes of performance are a sound approach and have the potential to result in positive impacts on the free movement of construction products. Stakeholders in Austria and Romania, however, were sceptical as to the impacts that this provision would have, noting that a delegated act introducing levels and classes would not help to solve the problem of barriers to trade at a MS level. This issue is explored further in Section 6.

In conclusion, the new regime for setting levels and classes of performance has not (yet) been effective in terms of reducing costs for manufacturers, increasing legal certainty and transparency regarding the rules or enhancing the free movement of products within the EU. Factors hindering the realisation of these benefits are discussed in Section 6.3.

4.3.6 Product Contact Points for Construction (Article 10)

CPR provision

Article 10(1) of the CPR requires MS to designate PCPC pursuant to Article 9 of Regulation (EC) No 764/2008 of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC[63].

Recital 42 of the CPR outlines the objective behind the designation of PCPC:

> *"It is important to ensure the **accessibility of national technical rules** so that enterprises, and in particular SMEs, can gather reliable and precise information about the law in force in the Member State where they intend to place or make available on the market their products."*

Recital 44 of the CPR also states that:

> *"…Member States should be able to entrust the role of Product Contact Points for Construction to existing contact points established in accordance with other Union instruments, in order to prevent the unnecessary proliferation of contact points and to simplify the administrative procedures. In order **not to increase administrative costs** for enterprises and competent authorities, Member States should also be to entrust the role of Product contact Points for Constriction not only to existing services within the public administration, but also to national SOLVIT centres, chambers of commerce, professional organisations and private bodies "*

Anticipated benefits

Hence, the anticipated benefits from this aspect of the CPR are:

- Increased legal certainty and transparency regarding the rules;
- Enhanced free movement of construction products within the EU;
- Increased ease of compliance; and
- Increased ease of identifying the relevant Product Contact Point to contact.

[63] OJ L 321 of 30.12.1995

Actual benefits

Stakeholders had mixed views concerning the ability of PCPCs to **increase legal certainty and transparency regarding the rules**. A Slovenian manufacturer commented that they consider PCPCs to be one of the main advantages of the CPR. In this regard, a Lithuanian manufacturer also stated that PCPCs are perceived positively and that they offer easy access to useful information. One construction industry stakeholder in Poland noted that PCPC have resulted in benefits and will continue to be useful for the next 10 years. On the other hand, several stakeholders have commented that PCPCs can be slow to respond to requests for information and that the information they provide is often poor. In the view of one Danish manufacturer, the notion of PCPC is a brilliant idea, but in practice it has not been successful. Factors hindering the realisation of anticipated benefits from PCPC are explored further in Section 6. As shown in Table 3-12, 'national technical rules' and 'products subject to CE marking or covered by a harmonised standard' were the most common types of information that companies requested, consulted on or received from PCPCs. It should be noted, however, that approximately 85% of respondents did not answer this question, which is consistent with a lack of awareness of PCPCs.

Stakeholders expressed positive views regarding the ability for the network of national PCPCs to **enhance the free movement of construction products within the EU**. A construction industry stakeholder in the UK explained that PCPCs are useful for manufacturers of construction products that want to export their products to other MS. However, in the view of this stakeholder, at a domestic level they are less useful. An industry association in Bulgaria stated that there is a benefit from PCPCs in each MS as they can provide information on national requirements which facilitates the export of construction products. A Finnish manufacturer explained that the PCPCs are a good idea, especially for manufacturers that are not knowledgeable about the requirements in other countries. While PCPCs may, in some instances, have assisted economic operators to obtain information on the rules in place in other MS, there is no evidence that national PCPCs have led to any tangible increase in the free movement of construction products within Europe.

Stakeholders had mixed views regarding the extent to which PCPCs have increased the **ease of compliance for companies**. One public authority from the UK commented that, although the intention of PCPCs may have been to facilitate the free movement of construction products between MS, the PCPC in the UK has also proved a valuable tool for informing UK economic operators about matters related to UK construction (e.g. building regulations). According to an industry association in Denmark that covers the construction sector generally, PCPCs in each country are very helpful. It is much easier to get access to relevant documentation for a product than before and any queries are answered within 24 hours. An industry association in Slovenia viewed PCPCs as beneficial and stated they are functioning well, are very well informed and that an answer is usually received within two days. According to an industry association in Austria PCPCs are a good thing, allowing manufacturers to get an overview of regulations and provisions within each of the respective national markets. On the other hand, many stakeholders have questioned the usefulness of the information provided by PCPCs (this is discussed in Section 6) and clearly, stakeholders' limited awareness of PCPCs will have restricted the ability of PCPCs to have any appreciable benefit in terms of increasing the ease of compliance for companies.

As shown in Table 3-11, approximately 40% of companies were aware of the PCPC in their own country and only around 20% of companies were aware of the PCPC in another EU country. More than half of companies indicated that they were not aware of the PCPC in either their own or another EU country. Generally there is a low awareness of PCPCs and half of public authorities indicated that there has been no change in terms of **increasing the ease of identifying the relevant Product Contact Point** (Table 4-10). A Romanian industry association noted that many of its members have contacted the PCPC within their MS but are generally unaware of the network of

PCPs. In response, the association has e-mailed the addresses of national PCPs to its members and also published the links on its website.

Table 4-10: Response to the question - In your opinion, to what extent did allowing PCPCs to be designated from existing contact points result in the impacts identified below.

Response	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
Public Authorities					
Made it easier to identify the relevant Product Contact Point to contact	25%	25%	50%	0%	0%

In conclusion, the requirement for MS to designate a PCPC under the CPR has gone some way to achieving the following anticipated benefits:

- **Increased legal certainty and transparency regarding the rules;**
- **Enhanced free movement of construction products within the EU; and**
- **Increased ease of compliance**

However, the full benefits of this aspect of the CPR have not (yet) been fully realised.

The low awareness of PCPCs, particularly in other MS, indicates that it is not easier for economic operators to identify the relevant Product Contact Point and the benefits of free movement in the Internal Market have not been fully realised yet.

4.4 Improving the credibility of the legal framework

4.4.1 Overview

The CPR aims to ensure that when construction products are placed on the European market, reliable information on the performance of such products is made available. This is achieved by providing a common technical language (e.g. in harmonised European standards), uniform assessment methods for determining the performance of construction products (AVCP) and by regulating TABs and notified bodies. To enhance the credibility of the legislative framework for construction products, the CPR also sets out a system of market surveillance for construction products.

4.4.2 Harmonised standards (Article 17)

CPR provision

Articles 17 and 18 of the CPR provide the process and criteria for the development and mandatory requirements of hENs.

Article 17(5) provides, inter alia, that the Commission shall assess the conformity of hENs established by the European standardisation bodies with relevant mandates and shall publish in the OJEU the list of references of hENs which are in conformity with the relevant mandates.

Anticipated benefits

As noted previously, hENs were introduced with the aim of supporting European Community harmonisation legislation[64] by removing barriers to trade within the EU, so that the MS could trade freely with one another. Therefore, it is anticipated that the CPR should continue to enhance the free movement of construction products in the EU.

The requirement to assess whether the draft standard is in conformity with the relevant mandate is now bestowed upon the Commission (Article 17(5)) is anticipated to improve the quality of hENs and thus the credibility of the system.

The anticipated benefits of this aspect of the CPR are set out below:

- Improved legal certainty
- Enhanced free movement of products within the EU
- Increased credibility of the CPR

Actual benefits

Around half of public authorities and organisations involved in conformity assessment were of the view that the mandatory nature of hENs had a positive effect in terms of **improving legal certainty** (Table 4-11). One organisation involved in conformity assessment noted that "*The CPR provides for clarification with regard to its obligatory character in case of a hEN fully covering the related product*". A Polish industry association noted that the existence of a hEN obliges a manufacturer to carry out the assessment and apply the CE marking to a product covered by this standard. Under the CPD, this was not clear, even formally in national legislation. However, a third of public authorities and close to half of organisations involved in conformity assessment indicated that there had been no effect in terms of improving legal certainty. Reasons for this, as highlighted by stakeholders, are covered in Section 6.

Regarding the effect of mandatory harmonised standards on **enhancing the free movement of construction products within the EU**, more than half of organisations involved in conformity assessment and around a third of public authorities were of the view that there had been no effect. During consultation, stakeholders explained that a number of manufacturers were already applying hENs under the CPD and, as a result, no changes can be observed. However, one Croatian manufacturer noted that the hENs are beneficial for manufacturers in Croatia because comparable products with the same CE marking are more expensive in Austria and Germany. The CPR has thus fostered a situation whereby Croatian manufacturers can favourably compete with companies in other MS. One public authority noted that hENs facilitate *"Consistency of approach across the European Union from the perspective of the marketing of construction products"*. In a similar vein, another public authority noted that "*Harmonised product standards create a common technical language that can be understood throughout Europe. The ZA annex clarifies the relation between the CPR and the harmonised standards...*"

Several stakeholders noted that the process by which standards are being assessed before they are published in the OJEU has helped to **increase the credibility of the CPR**. A Greek organisation

[64] Decision 768/2008/EC

involved in conformity assessment explained that the credibility of the legislative framework has improved as a result of the mandating assessment procedure of the harmonised standards. A public authority noted that *"The harmonized standards are mandatory and will strengthen CPR value".* However, a number of factors related to hENs may be negatively affecting the credibility of CPR. These include the view that many hENs are outdated, inadequate or incomplete; and the perception that the views of certain stakeholders (e.g. SMEs) are not adequately taken into account in the harmonisation process. These issues are discussed at length in Section 6.

Further information on the procedures for the development and publication of standards under the CPR can be found in **Annex 3.**

Table 4-11: Response to the question - In your view, what has been the impact of the new regime for harmonised standards on your organisation?

Response	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
Improved legal certainty					
NBs, TABs, SBs	17%	32%	46%	4%	1%
Public Authorities	22%	38%	32%	3%	5%
Enhanced the free movement of products within the EU					
NBs, TABs, SBs	12%	23%	60%	5%	0%
Public Authorities	16%	42%	39%	0%	3%

In conclusion, the mandatory nature of hENs under the CPR has had some success in terms of improving legal certainty. However, there has been less success in terms of enhancing the free movement of construction products within the EU (because hENs were already widely applied under the CPD) and enhancing the credibility of the CPR (because many hENs still need to be updated).

4.4.3 Technical Assessment Bodies (Chapter V)

CPR provision

Article 29(1) of the CPR allows MS to designate TABs within their territory, according to their national procedures for the designation of TABs. However, TABs must meet strict requirements, as outlined in Article 30 and Annex IV (Table 2) of the CPR.

Setting out the requirements for the designation of TABs at the EU level can be considered to be aimed at increasing the credibility of the CPR, as implied by Recital 22:

> *"The establishment of draft European Assessment Documents and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (hereinafter referred to as 'TABs') designated by Member States. In order to ensure that TABs have the* ***necessary competence for carrying out those tasks****, the requirements for their designation should be set out at Union level."*

Anticipated benefits

The anticipated benefits of this aspect of the CPR are set out below:

- Increased credibility of the CPR;

- Increased legal certainty and transparency regarding the rules; and
- Ensured TABs have the necessary competence (technical and personnel) for carrying out their tasks.

Actual benefits

The requirements for TABs are now set out within the CPR, which differs from the situation under the CPD, where these requirements were contained in national legislation. In theory, this should help to ensure that all TABs meet the same criteria, which should in turn increase the credibility of the CPR.

As indicated in Table 4-12, around half of public authorities and organisations involved in conformity assessment indicated that the **credibility of TABs** had not changed compared to the situation under the CPD. The requirements that TABs must satisfy under the CPR and CPD are broadly similar and could explain this outcome. Nevertheless, over a third of stakeholders were of the view that the credibility of TABs had increased.

Table 4-12: Response to the question - Overall, would you say that the CPR has resulted in an increase or decrease in the credibility of TABs, compared with the situation under the old CPD?

Response	NBs, TABs, SBs	Public Authorities
Large increase	8%	11%
Small increase	29%	34%
No change	59%	50%
Small decrease	4%	2%
Large decrease	0%	2%

Half of public authorities and around a third of companies and organisations involved in conformity assessment were of the view that the new requirements for TABs had a positive effect in terms of **increasing the credibility of the CPR** and **increasing legal certainty and transparency regarding the rules** (as shown in Table 4-13). Some stakeholders were of the view that the CPR has helped to clarify the role and responsibilities of the respective bodies; indeed, one organisation involved in conformity assessment commented that "*The requirements and role of TABs have been clarified which helps consistent application of accreditation*". A public authority has also reported that "*there have been more clearly defined tasks and status of these agencies and their activities, particularly in relation to the tasks of AVCP*". On the other hand, more than half of companies and organisations involved in conformity assessment indicated that this aspect of the CPR has had no effect in terms of increasing legal certainty and transparency regarding the rules.

More than half of companies, public authorities and organisations involved in conformity assessment were of the view that the new requirements for TABs had no effect in terms of **ensuring TABs have the necessary competence for carrying out their tasks**. This is as expected given that the requirements for TABs did not fundamentally change under the CPR (indeed, many TABs satisfied similar criteria under the CPD). The CPR is, however, more explicit about the necessary competence of TABs in comparison to the CPD, which largely left it up to the Member States' to ensure. This may explain why public authorities in particular noted that this aspect of the CPR has enhanced legal certainty and transparency regarding the rules**.**

Factors hindering the realisation of anticipated benefits are outlined in Section 6.

Table 4-13: Response to the question - The CPR sets out the requirements for Technical Assessment Bodies (TABs). Please indicate the extent to which there have been positive or negative impacts (since July 2013) from specifying the requirements for TABs against the anticipated benefits identified below.					
Response	**Large positive impact**	**Low positive impact**	**Neutral/no change**	**Low negative impact**	**Large negative impact**
Increased credibility of the CPR					
Companies	10%	20%	61%	4%	5%
NBs, TABs, SBs	12%	25%	56%	7%	0%
Public Authorities	12%	38%	48%	2%	0%
Increased legal certainty and transparency regarding the rules					
Companies	11%	22%	55%	6%	6%
NBs, TABs, SBs	14%	29%	54%	2%	1%
Public Authorities	12%	40%	49%	0%	0%
Ensured that TABs have the necessary competence (technical and personnel) for carrying out their tasks					
Companies	6%	24%	58%	6%	6%
NBs, TABs, SBs	12%	28%	59%	2%	0%
Public Authorities	14%	26%	58%	0%	0%

In conclusion, this aspect of the CPR has not yet been effective in terms of achieving the following anticipated benefits:

- **Increased credibility of the CPR;**
- **Increased legal certainty and transparency regarding the rules; and**
- **Ensuring that TABs have the necessary competence (technical and personnel) for carrying out their tasks.**

4.4.4 Notified Bodies (Chapter VII)

CPR provision

Article 43(2-11) of the CPR sets out the detailed requirements for notified bodies.

Setting out the requirements for the designation of notified bodies at the EU level can be considered to be aimed at increasing the credibility of the CPR, as implied by Recital 48:

> *"Since it is necessary to ensure throughout the Union a **uniform level of performance of bodies** carrying out the assessment and verification of constancy of performance of construction products, and since **all such bodies should perform their functions to the same level and under conditions of fair competition**, requirements should be set for those bodies seeking to be notified for the purposes of this Regulation. Provision should also be made for the availability of adequate information about such bodies and for their monitoring."*

Anticipated benefits

The anticipated benefits of this aspect of the CPR are set out below:

- Increased credibility of the CPR;
- Increased legal certainty and transparency regarding the rules;
- Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks; and
- Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest.

Actual benefits

More than half of public authorities and organisations involved in conformity assessment were of the view that the **credibility of notified bodies** has increased as a result of the strict requirements in the CPR. The criteria for notified bodies are now transparent and clearly outlined under the CPR. Interestingly, more than half of companies indicated that there had been no change in terms of the credibility of notified bodies. As the functions and outcomes of notified bodies with respect to enterprises have not changed under the CPR, it appears that some companies have not perceived any change in their credibility.

Table 4-14: Response to the question - Overall, would you say that the CPR has resulted in an increase or decrease in the credibility of NBs, compared with the situation under the old CPD?

Response	Companies	NBs, TABs, SBs	Public Authorities
Large increase	7%	17%	17%
Small increase	29%	39%	44%
No change	55%	41%	39%
Small decrease	5%	2%	0%
Large decrease	5%	0%	0%

More than half of public authorities and organisations involved in conformity assessment indicated that the strict requirements for notified bodies had a positive effect in terms of **increasing the credibility of the CPR** and **increasing legal certainty and transparency regarding the rules**. The criteria for notified bodies are clearly outlined under the CPR, enhancing the credibility of the legislative framework and ensuring that all notified body are of a comparable standard. The transition from the CPD to the CPR was generally smooth and the reduction in the number of notified bodies in some countries results from organisations no longer being active in the sector, or a saturated market. However, around half of companies indicated that there has been no effect in terms of increasing the credibility of the CPR and increasing legal certainty and transparency regarding the rules. This is possibly a result of there being no changes to the functions of notified bodies from their perspective or low awareness of the requirements under the CPR. The CPR sought to make the legal framework more credible by ensuring that all notified bodies are of a comparable standard. However, some stakeholders have questioned whether there is indeed harmonisation across Europe, particularly with regard to both the rigour with which accreditation bodies perform their role and the methods used to assess notified bodies (i.e. which ISO/IEC standard). This issue is explored further in Section 6.

Approximately two thirds of organisations involved in conformity assessment, half of public authorities and a third of companies indicated that the strict requirements for notified bodies had a positive effect in terms of **ensuring that** notified bodies **have the necessary competence for carrying out their tasks**. The CPR contains provisions which are aimed at ensuring the competence of notified bodies, transparency and also that all notified bodies work to the same requirements. Article 43(6) of the CPR sets out the capabilities for notified bodies in relation to each system of AVCP and for each kind or category of construction products, essential characteristics and tasks in relation to which it has been notified. In addition, Article 43(7) clearly sets out the requirements for

personnel carrying out activities in relation to which the body has been notified. Notifying authorities are tasked with monitoring notified bodies, including their compliance with Article 43. An organisation involved in conformity assessment in the Netherlands noted that they are assessed more frequently and severely than was the case under the CPD. While the increased scrutiny of notified bodies might be perceived negatively (i.e. as an increased burden), many stakeholders accepted such measures as they ensure a level playing field across Europe and ensure that all notified bodies have the necessary competence for carrying out their tasks. It should be noted that around half of companies and public authorities were of the view that the CPR has had no effect in terms of ensuring that notified bodies have the necessary competence for carrying out their tasks. As the majority of notified bodies will have had the necessary competences under the CPD, it is expected that a number of stakeholders will have perceived no change.

Approximately two thirds of organisations involved in conformity assessment, half of public authorities and a third of companies indicated that the strict requirements for notified bodies had a positive effect in terms of **ensuring the impartiality of** notified bodies **and addressing issues relating to conflicts of interest**. A number of provisions in the CPR relate to the impartiality of notified bodies. Indeed, independence and the absence of conflicts of interest must be demonstrated where this is considered necessary. Article 43(5) states that a notified body and its personnel "*…must be free from all pressures and inducements, particularly financial, which might influence their judgement…".* Article 43(10) states that *"The personnel of the notified body shall be bound to observe professional secrecy with regard to all information gained in carrying out its tasks under Annex V".* Interestingly, around half of companies and public authorities were of the view that this aspect of the CPR has had no effect in terms of ensuring the impartiality of notified bodies and addressing issues relating to conflicts of interest. The majority of notified bodies will already have been impartial and operating without any conflicts of interest under the CPD, therefore it is expected that a number of stakeholders will have perceived no change.

Table 4-15: Response to the question - The CPR sets strict requirements for notified bodies. Please indicate the extent to which there have been positive or negative impacts (since July 2013) from specifying the requirements for notified bodies against the anticipated benefits identified below.

Response	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
Increased credibility of the CPR					
Companies	14%	29%	48%	3%	6%
NBs, TABs, SBs	26%	34%	35%	3%	1%
Public Authorities	21%	36%	40%	2%	0%
Increased legal certainty and transparency regarding the rules					
Companies	15%	24%	51%	7%	4%
NBs, TABs, SBs	24%	43%	27%	4%	1%
Public Authorities	21%	35%	42%	2%	0%
Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks					
Companies	15%	24%	53%	2%	6%
NBs, TABs, SBs	35%	27%	35%	3%	0%
Public Authorities	23%	26%	49%	2%	0%
Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest					
Companies	11%	22%	58%	5%	5%
NBs, TABs, SBs	26%	35%	37%	0%	2%
Public Authorities	11%	36%	51%	2%	0%

In conclusion, the strict requirements for notified bodies under the CPR have achieved all four anticipated benefits, namely:

- **Increased credibility of the CPR;**
- **Increased legal certainty and transparency regarding the rules;**
- **Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks; and**
- **Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest.**

4.4.5 Notifying Authorities (Chapter VII)

CPR provision

Article 40(1) of the CPR requires MS to designate a notifying authority. Notifying authorities are responsible for setting up and carrying out the necessary procedures for the assessment and notification of notified bodies and for the monitoring of notified bodies, including their compliance with Article 43. Article 41 sets out the requirements relating to notifying authorities.

> *Recital 49 of the CPR states: "In order to ensure a **coherent level of quality** in the assessment and verification of constancy of performance of construction products, it is also necessary to establish requirements applicable to the authorities responsible for notifying the bodies carrying out those tasks to the Commission and the other Member States."*

Anticipated benefits

The anticipated benefits of this aspect of the CPR are set out below:

- Increased legal certainty and transparency regarding the rules;
- Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks;
- Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest. and
- Increased credibility of the CPR.

Actual benefits

More than half of public authorities and organisations involved in conformity assessment were of the view that the designation of notifying authorities has had a positive effect in terms of **increasing the credibility of the CPR** and **increasing legal certainty and transparency regarding the rules**. Establishing a visible and easily identifiable independent body to oversee notified bodies has enhanced the credibility of the legislative framework. However, it could be argued that the positive effect will only be marginal as; in many cases MS simply re-notified an existing body.

Around half of public authorities and organisations involved in conformity assessment were of the view that the designation of notifying authorities has had a positive effect in terms of **ensuring that** notified bodies **have the necessary competence for carrying out their tasks**. As reported in section 4.4.6, the CPR has a number of provisions which are intended to ensure the competence of notified bodies. Notifying authorities are crucial for ensuring the effectiveness of these provisions by ensuring the compliance of notified bodies.

Approximately half of public authorities and organisations involved in conformity assessment were of the view that the designation of notifying authorities has had a positive effect in terms of **ensuring the impartiality of** notified bodies **and addressing issues relating to conflicts of interest**. As reported in section 4.4.6, the CPR has a number of provisions which are intended to ensure the impartiality of notified bodies and address conflicts of interest (although such requirements already existed under the CPD). Again, notifying authorities are crucial in ensuring the effectiveness of these provisions by making sure that notified bodies are in compliance.

Table 4-16: Response to the question - The CPR requires Member States to designate a notifying authority that is responsible for assessing and notifying those independent bodies that will carry out third party tasks for the purposes of the CPR. In your view, have there been positive or negative impacts (based on the anticipated benefits) from the designation of notifying authorities?

Response	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
Increased credibility of the CPR					
NBs, TABs, SBs	18%	33%	45%	4%	0%
Public Authorities	24%	36%	38%	2%	0%
Increased legal certainty and transparency regarding the rules					
NBs, TABs, SBs	18%	34%	43%	5%	1%
Public Authorities	24%	30%	43%	2%	0%
Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks					
NBs, TABs, SBs	22%	31%	46%	1%	0%
Public Authorities	18%	36%	44%	2%	0%
Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest					
NBs, TABs, SBs	19%	35%	45%	1%	0%
Public Authorities	13%	40%	47%	0%	0%

In conclusion, setting up the requirements for the designation of notifying authorities under the CPR has achieved all four anticipated benefits, namely:

- **Increased credibility of the CPR**
- **Increased legal certainty and transparency regarding the rules**
- **Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks**
- **Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest**

4.4.6 Market surveillance

CPR provisions

Articles 56-59 of the CPR set out the procedures relating to the market surveillance of construction products:

- Article 56 sets out the national level procedures to deal with construction products presenting a risk;

- Article 57 sets out the Union safeguard procedure, for ensuring the compatibility of national measures with EU legislation;
- Article 58 sets out provisions relating to compliant construction products which nevertheless present a risk to health and safety; and
- Article 59 sets out provisions dealing with formal non-compliance with the CPR.

Further details on market surveillance can be found in Section 3.16.

The intention of market surveillance at a Union level is to create a fair and level playing field for economic operators. Indeed, Recital 46 of the CPR states that:

> *"For the purposes of ensuring an equivalent and consistent enforcement of Union harmonisation legislation, effective market surveillance should be operated by the Member States…"*

Anticipated benefits

The anticipated benefits of market surveillance of construction products are as follows:

- Increased compliance with CPR;
- Reduction in construction products posing a risk to health and safety (whether compliant or not) on the EU market;
- Increased credibility of the CPR; and
- Improved competitiveness for EU economic operators (i.e. the creation of a more level playing field).

Actual benefits

Discussions with key industry stakeholders suggest that there are concerns that a lack of market surveillance has resulted in some non-compliant construction products being placed on the EU market. Full details of the proportion of respondents answering these questions can be found in Annex 4; for Companies see questions 18 to 23, for NBs, TABs, SBs see questions 17 to 19, for public authorities see questions 17 to 22 and for industry associations see questions 10 to 15.

In general, feedback from consultation suggests that the main concern is **formal non-compliance with the CPR**. Stakeholders were asked to indicate, in their view, how serious the issue of formal non-compliance with the CPR is. As can be seen from Figures 4-3 and 4-4, more than half of respondents, across all stakeholder groups, indicated that formal non-compliance with the CPR is either a 'serious' or a 'highly serious' problem. Indeed, public authorities believe that over a quarter of economic operators placing construction products on the market are not complying with the CPR. Anecdotal evidence from consultation also supports the notion that formal non-compliance is a problem. As to the nature of the non-compliance, one stakeholder noted that most cases of non-compliance will be linked to an incorrect DoP and lack of CE marking. One notified body suggested that, within the windows and doors sector, 80% of manufacturers are not in compliance with the CPR, with around 50% not even attempting to draw up a DoP. Stakeholders indicated that they were aware of non-compliant construction products that had been placed on the EU market. Indeed, it would appear that many instances are brought to light by competitors testing each other's products. For instance, companies noted that:

> *"We test competitors' products and they fail to meet the requirements."*

> *"We have some evidences of competitor products which are not supported by CE marking or DoP and do not comply with the CPR."*

It was noted by a TAB that "*we are faced with anecdotal evidence that economic operators do not behave correctly, but one cannot demonstrate that this increased or decreased since the transition from CPD to CPR".* Another organisation involved in conformity assessment commented that *"our customers have complained of counterfeit products with their brands, mostly imported from China".*

A market surveillance authority noted that:

> *"Within 9 months, 451 construction product types were checked (administrative checks). It is concluded that 202 models do not meet the requirements of CPR. 7 of 17 tested models real performances do not meet the declared ones."*

When asked about their experiences in terms of market surveillance, one public authority in the Netherland explained that:

> *"…in Netherlands testing of the construction products is not standard. As a result, we have mainly to do with formal non-compliance. We see many violations. That can vary from the whole lack of CE marking and/or declaration of performance while the product is covered by a harmonised standard to errors in the CPR-documentation. In the European project of joint surveillance project of smoke alarms we have tested the smoke alarms. It has been found that 66% of the tested detectors are inadequate and presenting a high risk."*

One company operating in the UK indicated that complying with the CPR has a negative effect on competitiveness, as those that do not comply are not punished:

> *"…Our trade organisation… have spoken to the government department that control the trading standards that are meant to be policing the implementation of the legislation, but they have simply said that they are too busy to be able to police this legislation. So far the companies complying with this legislation have just made themselves uncompetitive and are therefore losing contracts to the companies that have ignored it."*

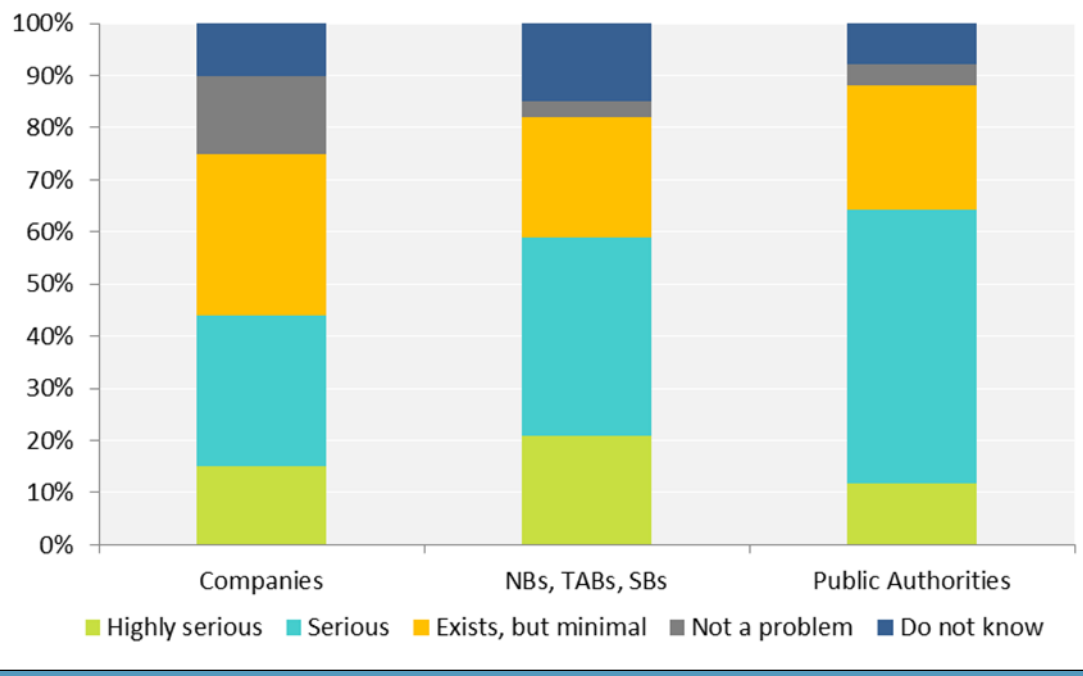

Figure 4-3: Response to the question - In your opinion, how serious is the issue of formal non-compliance of economic operators with the CPR?

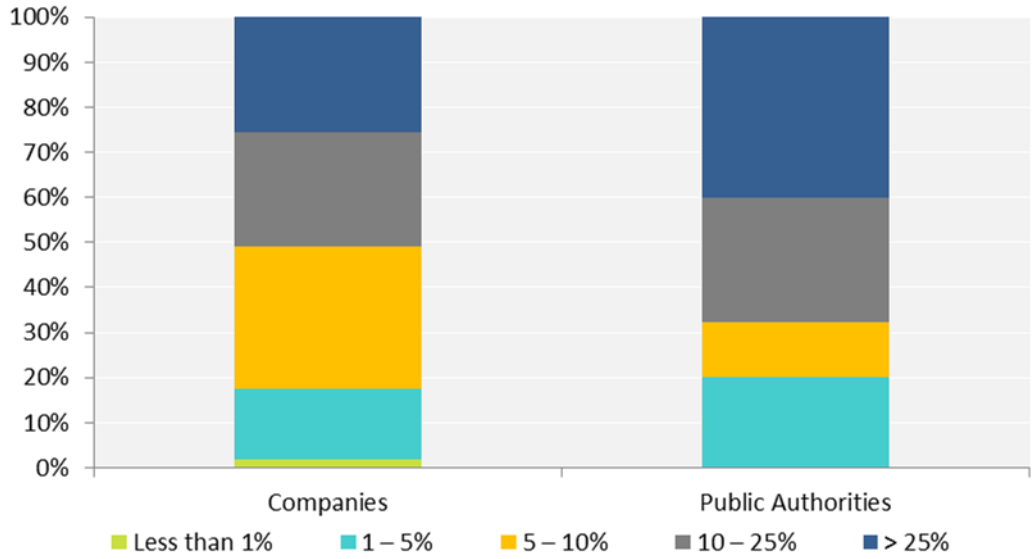

Figure 4-4: Response to the question - If "highly serious" or "serious", what proportion of economic operators placing construction products on the market are currently not complying with the CPR? ***Nota bene: Around 40% of respondents indicated "they do not know"***

For **construction products which present a risk to health and safety, whether compliant with the CPR or not**, again stakeholders were asked to indicate, in their view, the extent of the issue. As can be seen from Figures 4-5 and 4-6, around 50% of organisations involved in conformity assessment were of the view that this is a 'serious' or 'highly serious' problem [65]. The majority of companies and public authorities acknowledged that there is a problem, although there was an almost even split between those that think it is a 'minimal problem' as opposed to a 'serious/highly serious' problem. In trying to estimate the scale of the problem, most respondents estimated that between 1% and 5% of construction products currently on the market present a risk to health and safety.

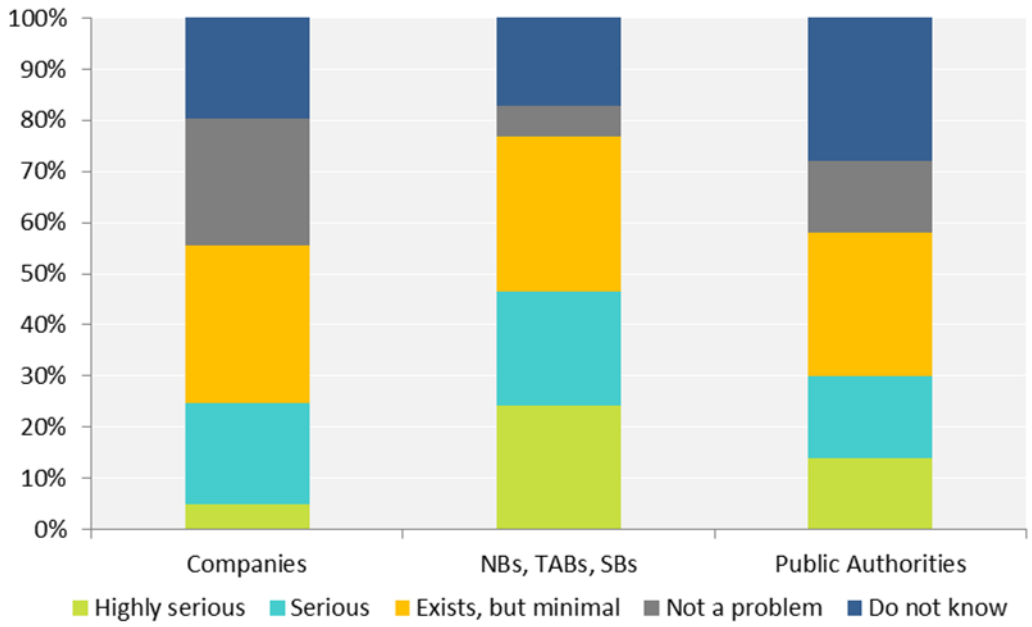

Figure 4-5: Response to the question - In your opinion, how serious is the issue of construction products on the market that present a risk to health and safety (even if they comply with the CPR)?

[65] It must be recognised that what constitutes a "serious" or "highly serious" problem is a subjective assessment.

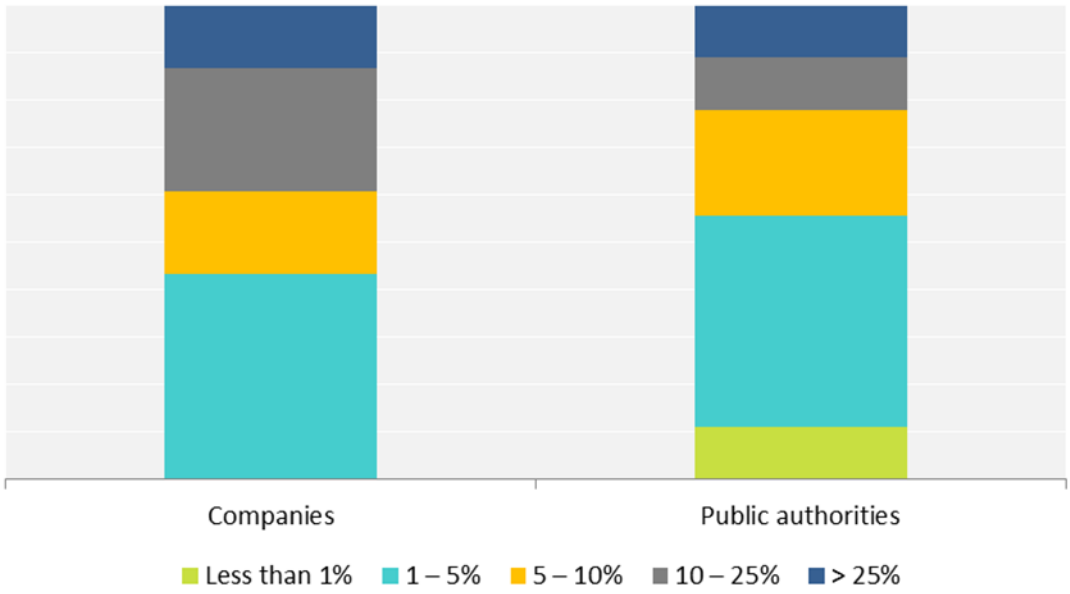

Figure 4-6: Response to the question - If "highly serious" or "serious", what is the percentage of these construction products which are currently on the market?

Nota bene: Around 65% of respondents indicated "they do not know"

For **counterfeit construction products on the EU market**, around half of organisations involved in conformity assessment were of the view that this is a 'serious' or 'highly serious' problem (Figure 4-7). The majority of companies acknowledge that it is a problem, with an almost even split between those that think it is a 'minimal problem' as opposed to a 'serious/highly serious' problem.

Of those that estimated the percentage of counterfeit products that are currently on the EU market, most companies estimated that 5-10% of products on the market are counterfeit, although the small sample size makes it difficult to draw any clear conclusions. The more critical issue is the impact of these views (i.e. those that believe there is a highly serious or serious issue) on stakeholders' perception of the credibility of the CPR and market surveillance.

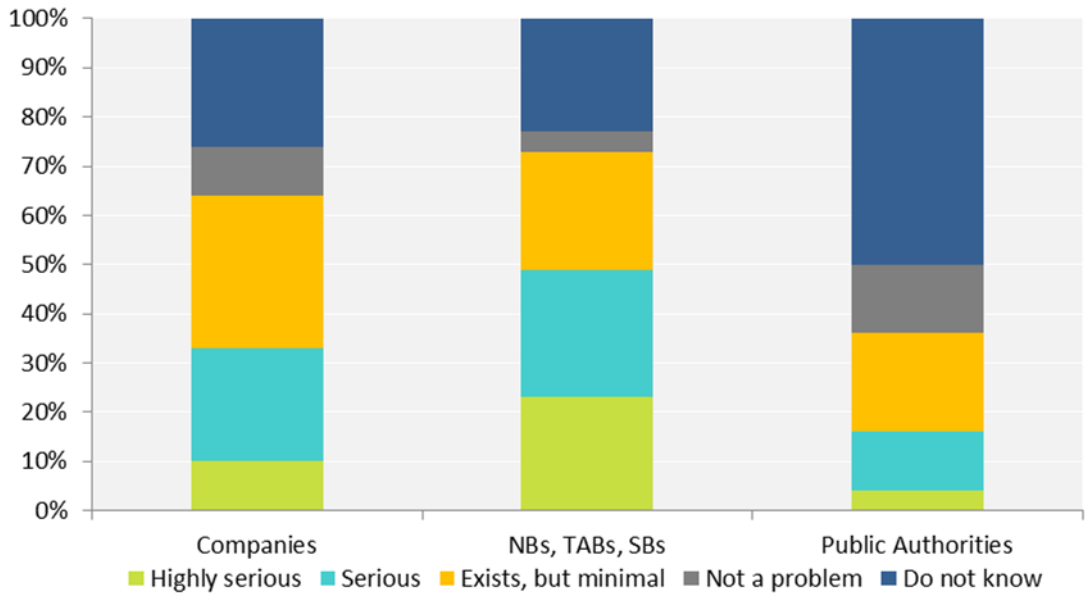

Figure 4-7: Response to the question - In your opinion, how serious is the issue of counterfeit products on the EU market (e.g. imitation products)?

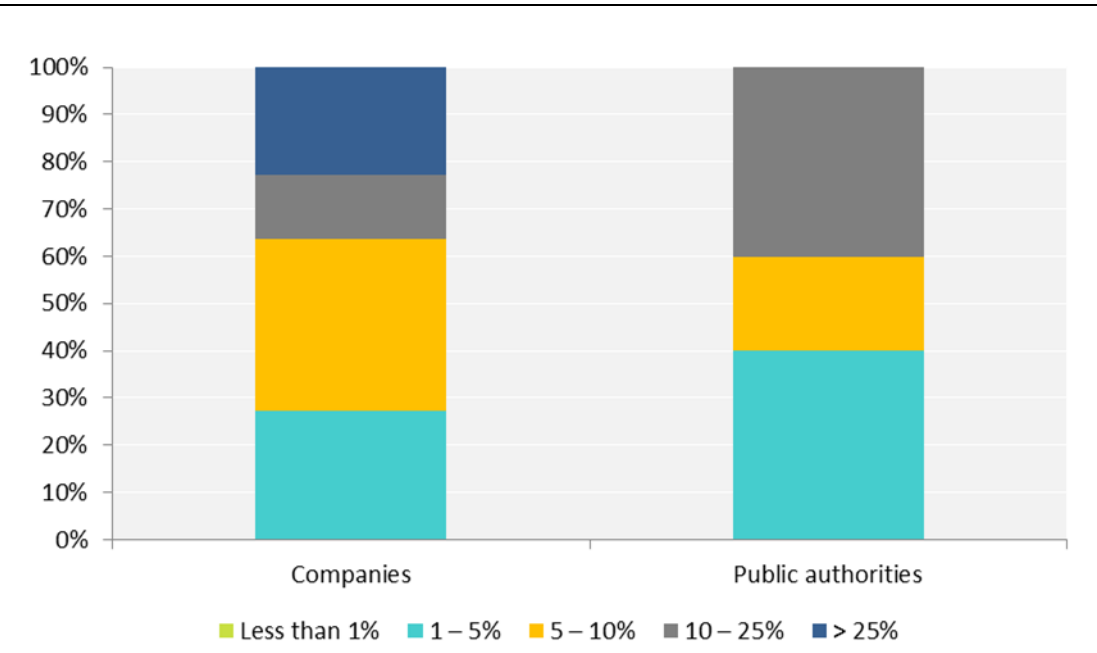

Figure 4-8: Response to the question - If "highly serious" or "serious", what is the percentage of counterfeit construction products currently on the market?

Nota bene: Around 70% of respondents indicated "they do not know"

In terms of **improving the competitiveness of EU economic operators**, stakeholders did not provide any information to demonstrate that this has been achieved. A stakeholder from Austria noted the importance market surveillance and creating a level playing field:

> *…Although our members have not identified specific products which would need specific market surveillance, it is often reported that industry has no means to fight against unfair competition and non-compliant products. It is up to market surveillance authorities to intensify their activities.*

Similarly, a construction industry stakeholder from Spain noted that:

> *In order to guarantee competitiveness, it is necessary to allow only the free movement of compliant construction products.*

It is difficult to objectively determine whether market surveillance actions are effective. As shown by Figure 3-3, around two thirds of companies are of the view that appropriate enforcement measures are not being taken with regard to restricting or prohibiting the movement of non-compliant construction products from entering the EU market. Interestingly, more than half of public authorities indicated that enforcement measures were appropriate. Such a disparity could be explained by a perceived lack of market surveillance actions on the ground. As such, it can be concluded that the provisions for markets surveillance have not **increased the credibility of the CPR**.

In conclusion, based on stakeholders' perceptions, the anticipated benefits from market surveillance of construction products on the EU market have not been achieved. Non-compliance with the CPR is perceived to be the most 'serious' problem with more than half of stakeholders indicating it to be a 'serious' or 'highly serious' problem. Overall, stakeholders have not indicated that the credibility of the CPR has increased.

It has not been possible to determine whether the competitiveness of EU operators has increased under the CPR as a result of market surveillance actions. However, the perceived absence of appropriate enforcement measures provides the impression that companies have not experienced improved competitiveness.

4.5 Free movement of construction products

4.5.1 Overview

Free movement of goods is a cornerstone of the Single Market and the mechanisms in place to achieve this aim are based on **mutual recognition, technical harmonisation** and **the prevention of new barriers to trade**. The CPD aimed to overcome the technical barriers to trade which arise where different countries in Europe have different standards, testing and labelling approaches for the same construction products. The CPR maintains these general objectives and, indeed, uses the same instruments developed under the CPD to achieve its purpose of breaking down barriers by setting out:

- A system of harmonised technical specifications;
- An agreed system of assessment of conformity and verification for each product family;
- A framework for notified bodies and TABs; and
- The mandatory CE marking of products.

The main changes under the CPR are intended to clarify, simplify and improve the credibility of the system by, inter alia, introducing stricter and more transparent procedures and amending some of the terminology to be more precise. However, there are aspects in which the CPR aims to specifically further facilitate the free movement of construction products in the EU. This Section

focuses on the extent to which the CPR has enhanced the free movement of construction products, in particular, relating to **quality marks** and **recognition of technical certificates**. This takes into account some of the other relevant aspects (e.g. relating to harmonisation measures) which have been covered in previous sections.

In discussing harmonisation aspects, it is important to note that the CPR is not intended to harmonise MS' building regulations, rather it harmonises the methods of testing, declaration of product performance and AVCP. It also further clarifies the powers of MS to set national rules and requires the provision of information by PCPC in each MS (as noted earlier). It is also important to note that, under the CPR, MS retain their competence to set technical requirements for the performance of building works and, by virtue of the same, construction products, in particular for specific uses of the products in a building or civil engineering work (e.g. fire safety requirements for escape routes)[66]. The choice of required performance values for specific intended uses to which construction products are put rests with each MS.

The recent ECJ judgement against Germany[67] has clarified (in the context of the CPD/CPR and a number of construction products[68]) that MS have the right to set performance requirements for construction products, provided that the free movement of products with the CE marking is not impeded, which is ensured by hENs. It is these (hENs) that contain the 'common technical language' for expressing and defining the performance of construction products. To interpret the legislation in any other way would grant MS the discretion to impose additional measures that would restrict the free movement of construction products covered by a hEN, thus calling into question the effectiveness of the legislation. Thus, reference to health and safety of persons, domestic animals and property does not grant MS the competence to undermine the hEN. The ECJ notes that, when the field has been the subject of harmonisation at EU level, any national measures relating to the products must be assessed with reference to the CPR and hENs.

4.5.2 CPR provision

Article 8(3) specifies that, for any construction product covered by a hEN, or for which a ETA has been issued, the CE marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics, covered by that hEN or by the ETA. MS are not to introduce any references - or should withdraw any references in national measures - to a marking attesting conformity with the declared performance in relation to the essential characteristics covered by a hEN other than the CE marking.

Article 8(4) states that a MS shall not prohibit or impede, within its territory or under its responsibility, the making available on the market or the use of construction products bearing the CE marking, when the declared performances correspond to the requirements for such use in that MS. Products bearing the CE marking shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate, when the declared performances correspond to the requirements for such use in that MS (Article 8(5)).

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[66] European Commission (2014): Daily news, MEX 14 / 16.10. Available at http://europa.eu/rapid/press-release_MEX-14-1016_en.htm

[67] Judgement of the Court (Tenth Chamber) of 16 October 2014, European Commission v Federal Republic of Germany Case C-100/13, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CA0100

[68] Pipe joint seals made of thermoplastic elastomer, insulating materials made of mineral wool and gates, windows and exterior doors

Under the CPR, a manufacturer may choose any notified body, established in any EU MS, to carry out notifiable tasks[69], so long as the notified body is permitted to examine the particular product-type that the manufacturer intends to place on the market and has the technical competence to provide the service(s) required[70] [71].

4.5.3 Anticipated benefits

The CPR has re-emphasised the requirements concerning quality marks with the aim of **preventing new barriers to trade** and **enhancing the free movement of construction products within the EU**.

The recognition of the CE marking and of technical certificates from one MS to another is integral to the proper functioning of the Internal Market. Through increasing the credibility of notified bodies and the value of CE marking, the CPR is anticipated to **enhance the free movement of construction products within the EU**.

The anticipated benefits of this aspect of the CPR are set out below:

- Harmonising legislation across all MS;
- Addressing issues relating to quality marks; and
- Addressing issues relating to non-recognition of technical certificates.

4.5.4 Actual benefits

More than two thirds of public authorities and organisations involved in conformity assessment and close to half of companies indicated that they were not aware of any **quality marks** in MS which interfered with the free movement of construction products (Table 4-17). However, almost half of companies indicated that they were aware of such quality marks. As companies are actively marketing their products it is more likely that they will encounter quality marks that are hindering free movement. Companies indicated that these marks are mostly found in Germany, France, Belgium and the Netherlands.

Table 4-17: Response to the question - Are you aware of quality marks which are currently in place in Member States and which, in your opinion, interfere with the free movement of CE marked construction products within the EU?

Response	Companies	NBs, TABs, SBs	Public Authorities
Yes	49%	23%	21%
No	51%	77%	79%

Although more than half of public authorities and 40% of companies were of the view that the actions introduced by the CPR have had a positive effect in terms of **addressing the issues relating to quality marks**, almost half the companies that responded to the survey, and a third of public authorities, indicated that the CPR has had no effect in this regard. Article 8(3) makes it clear that CE

[69] As outlined in Annex V of the CPR, the range of possible notifiable tasks are as follows: product certification; factory production control certification; and determination of the product-type on the basis of type testing.

[70] HSE (no date): Notified bodies, available at: http://www.hse.gov.uk/work-equipment-machinery/notified-bodies.htm

[71] CEMarking.net (no date): Notified bodies explained, available at: https://cemarking.net/notified-bodies-explained/

marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics. The recent ECJ judgement notes that, when the field has been the subject of harmonisation at EU level, any national measures relating to the products must be assessed with reference to the CPR and hENs.

More than two thirds of companies were unaware of any cases of **non-recognition of technical certificates** from one country to another (Table 4-18). A higher proportion, around 90% of public authorities and organisation involved in conformity assessment, were unaware of any such cases. Stakeholders indicated that these issues appear to be dominant in Germany and France, with Poland and the UK also identified.

Table 4-18: Response to the question - Are you aware of cases of non-recognition of technical certificates from one country to another?

Response	Companies	NBs, TABs, SBs	Public Authorities
Yes	26%	13%	9%
No	74%	87%	91%

More than half of public authorities and 40% of companies were of the view that the actions introduced by the CPR have had a positive effect in terms of **addressing the issues relating to the non-recognition of technical certificates** (Table 4-19). However, almost half of companies indicated that there has been no effect in this regard. The vast majority of stakeholders (Table 4-18) indicated that they were unaware of cases where technical certificates were not recognised in other countries. This suggests that this is not a significant issue and therefore many stakeholders have not perceived any changes.

Table 4-19: Response to the question - Please indicate whether the actions introduced by the CPR to enhance the free movement of construction products within the EU have resulted in positive or negative impacts.

Response	Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
Harmonising legislation across all Member States					
Companies	21%	22%	48%	7%	2%
Public Authorities	45%	34%	13%	5%	3%
Addressing issues relating to quality marks					
Companies	9%	31%	48%	6%	6%
Public Authorities	24%	34%	32%	5%	5%
Addressing issues relating to non-recognition of technical certificates					
Companies	7%	34%	55%	2%	2%
Public Authorities	18%	37%	37%	5%	3%

In conclusion, the actions introduced by the CPR to enhance the free movement of construction products appear to have gone some way to achieving their anticipated benefits; namely:

- **Harmonising legislation across all Member States;**
- **Addressing issues relating to quality marks; and**
- **Addressing issues relating to non-recognition of technical certificates.**

Nevertheless, it is evident that the free movement of construction products within Europe has not yet been fully achieved, in part because many stakeholders still feel there is a need for quality marks at a national/local level (this is discussed further in Section 6.3, Annex 3 and Topical Report No. 3).

5 Competitiveness, Innovation and Sustainability

5.1 Overview

This section provides an **analysis of the extent to which the implementation of the CPR has contributed towards the fulfilment of the Commission's policy goals of competitiveness, innovation and sustainability**. In particular, this section provides information of relevance to the 'coherence' part of the evaluation, by analysing the extent to which the CPR is **consistent** with the Commission's competition, innovation and sustainability objectives. Note that the consistency of the CPR with other policies and strategies outside of the areas of competitiveness, innovation and sustainability are not addressed in this Section. These can be found under the Coherence Analysis in Section 6.5. This section also provides information for the 'relevance' part of the evaluation by analysing the extent to which the CPR is able to respond to future technological change.

In undertaking this task, the following activities have been carried out:

- Firstly, a screening exercise has been carried out to identify policies of relevance to competitiveness, innovation and sustainability (Section 5.2);
- Secondly, the specific provisions of the CPR which are of relevance to competitiveness, innovation and sustainability have been identified. In addition, consideration has also been given to how the CPR more generally contributes to the Commission's three policy goals (Section 5.3); and
- Finally, an assessment has been carried out of the extent to which the CPR has fulfilled the three key objectives of the Commission's policy (i.e. competitiveness, innovation and sustainability), based on information gathered from literature review and consultation (Section 5.3).

5.2 Policy objectives

5.2.1 Overarching policies

The Commission's policy objectives of competition, innovation and sustainability have been consistently expressed in a number of overarching policies such as Europe 2020, Construction 2020 and, more recently, in the agenda of the President of the EC - Jean-Claude Juncker. The broad nature of these programmes means that multiple policy objectives are often captured within their framework. This, in part, reflects the fact that these policy goals are closely interlinked and fulfilling one policy objective will also positively contribute to the fulfilment of another (e.g. innovation and sustainability policies may enhance the competitiveness of industry).

Europe 2020 is the EU's ten year growth strategy to create conditions for smart, sustainable and inclusive growth in the EU. Fulfilling the goals of Europe 2020 should ensure that the EU and the MS deliver high levels of employment, productivity and social cohesion. Table 5-1 provides an overview of Europe 2020.

Table 5-1: Overview of Europe 2020		
Smart growth	Digital agenda for Europe	Aims to better exploit the potential of ICTs in order to foster innovation, economic growth and progress.
	Innovation Union (IU)	The main economic driver of economic growth in the EU is innovation. Innovation here referring to, amongst other things, the creation of new or significantly improved products and marketing that adds value to market, governments and society. Benefits associated with the IU include: • Finding solutions to help us live longer and healthier lives; • A greener Europe; • Innovation friendly rules and regulations; and • Accelerated standard-setting.
	Youth on the move	This is a comprehensive package of policy initiatives on education and employment for young people in Europe.
Sustainable growth	Resource efficient Europe	Aims to create a framework for policies to support a shift towards a resource-efficient and low carbon economy which will help us to: • Boost economic performance while reducing resource use; • Identify and create new opportunities for economic growth and greater innovation and boost the EU's competitiveness; • Ensure security of supply of essential resources; and • Fight against climate change and limit the environmental impacts of resource use.
	An industrial policy for the globalisation era	Industry is recognised a driver of innovation and provider of solutions to the challenges our societies face. It is thus essential to increase productivity in manufacturing so as to ensure the recovery of growth and jobs and restore health and sustainability to the EU economy. Indeed, the financial crisis has refocused attention on the importance of a strong, competitive and diversified manufacturing value chain. The importance of SMEs is also acknowledged, with it noted that they make up 2/3 of industry's employment and comprise a large part of the EU industry's growth and jobs potential. Fostering an environment for the creation and growth of such enterprises is thus at the centre of the new EU integrated policy. To reverse the declining role of industry in Europe, attention must be given to innovation, which is to be achieved by promoting measures related to the Single Market, trade policy, SME policy and competition policy. Six priority action lines for immediate action were also identified, including: • Markets for advanced manufacturing technologies for clean production (e.g. 3d printing); • Bio-based product markets; • Sustainable industrial policy, construction and raw materials.
Inclusive growth	An agenda for new skills and jobs	Aims to ensure that 75% of the working age population are in work, get the early school leaving rate below 10% and more young people are in higher education or equivalent vocational education.
	European platform against poverty	**S**eeks to help EU countries lift 20 million people out of poverty and social exclusion.
Source: Europe 2020, accessed at: *http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/flagship-initiatives/index_en.htm*		

As part of a new approach, the EC will focus on, amongst other things, boosting jobs, growth and investment. It has been suggested that these key indices will only return if the EU creates the right regulatory environment and promotes a climate of entrepreneurship and job creation. In his opening statement in the 2014 European Parliament Plenary Session[72], Jean-Claude Junker outlined the policy areas of interest. Of pertinence for this study is the following:

- **New boost for jobs, growth and investment:** It has been recognised that Europe must not stifle innovation and competitiveness with too prescriptive and detailed regulations, notably when it comes to SMEs. SMEs are the backbone of the European economy, accounting for 85% of new jobs. They should be freed from burdensome regulation; and

- **Enhance the energy efficiency of buildings:** Energy efficient buildings will help the EU lead the fight against global warming.

Through the new general **Union Environment Action Programme to 2020[73]**, the seventh of its kind, Europe has set out to:

- Protect, conserve and enhance the Union's natural capital;
- Turn the Union into a resource-efficient, green, and competitive low-carbon economy; and
- Safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing.

Building upon the general policy objectives of the EU, the EC's '**Strategy for the sustainable competitiveness of the construction sector and its enterprises**' (Commission Communication (2012) 433)[74] acknowledges the importance of the construction sector for the EU's GDP and employment, as well as the contribution it makes towards other environmental objectives. For this reason, the competitiveness of the construction sector is a permanent political priority.

The energy performance of buildings and resource efficiency in the manufacture, transport and use of construction products has an important impact on energy, climate change and the environment. Moreover, the products used and overall quality of the construction works will directly impact on the health of those who reside and work within such buildings. For this reason, the competitiveness of enterprises within the construction sector is considered to be important for sustainability.

The Communication also recognises the need for further spending on research and innovation. Indeed, future investments are likely to be directed towards developing materials that are easy to collect and re-use or 'building solutions' that facilitate the 'deconstruction' of works and the re-use of materials. This is because the new BWR is concerned with the sustainable use of natural resources.

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[72] European Commission (2014): A New Start for Europe: My Agenda for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission, accessed at http://ec.europa.eu/priorities/docs/pg_en.pdf

[73] European Commission (2014): Living well, within the limits of our planet, 7th EAP – The new general Union Environment Action Programme to 2020, available at: http://ec.europa.eu/environment/pubs/pdf/factsheets/7eap/en.pdf

[74] European Commission (2012): Strategy for the sustainable competitiveness of the construction sector and its enterprises, COM(2012) 433 final, available at: http://eur-lex.europa.eu/procedure/EN/201859

To tackle the above challenges, the Construction 2020 Action Plan was formulated. Wide ranging, it comprises five measures to foster sustainable competitiveness in the short, medium and long term. It is facilitated via a governance structure that is made up of a High Level Strategic Forum and a Thematic Group for each of the five key strategic objectives, which are:

- Stimulate investment in building renovation, infrastructure and innovation;
- Skills and Qualifications;
- Sustainable use of natural resources;
- Internal Market; and
- International competitiveness.

5.2.2 Competitiveness

Reflecting the Commission's commitment to SMEs, the **Small Business Act** for Europe seeks to embed the 'Think Small First' principle across all EU policy. As part of this, the Commission will seek wherever possible to exempt micro-enterprises from EU legislation or to introduce special regimes so as to minimise the regulatory burden on them[75].

The 2014 EC communication '**A Vision for the Internal Market for Industrial Products**' (EC COM(2014) 25)[76] outlines recommendations for the legislation on the Internal Market for industrial products and the broader vision for legislation over the next decade. It notes that legislation for industrial products in the form of regulatory convergence supported by voluntary technical standards has promoted access to new markets within the Internal Market, fairer competition and a level playing field among economic operators. Competitiveness is also heightened in other ways (e.g. greater economies of scale for manufacturing firms who are capable of operating in markets across Europe).

The approach adopted by the Union for harmonised product legislation since 1985 is to specify essential requirements in respect of safety, health and other public interests that businesses must comply with when placing products on the Union market. The underlying principle of this 'new approach' to legislation is that compliance with the essential requirements set out in Union harmonisation legislation, with the option to demonstrate this by complying with harmonised standards, allows products to be sold anywhere on the Internal Market. This approach has made it easier for businesses to trade across Europe, which has brought about economic and employment benefits.

However, as technology changes and global supply chains become ever more integrated, the Commission has recognised that efforts must be made to minimise regulatory burdens, particularly for SMEs. With this in mind, the Commission has identified that it needs to focus on (EC COM(2014) 25):

- **Strong enforcement mechanisms:** Ensuring that effective market surveillance is undertaken to safeguard public interests such as health and safety, the protection of the environment and security, and the protection of consumers. Enforcement mechanisms also help to eliminate unfair competition and create a level playing field for economic operators.

[75] DG Enterprise and Industry, Small Business Act for Europe (archived on 02/02/2015), accessed at http://ec.europa.eu/enterprise/policies/sme/small-business-act/index_en.htm

[76] DG Enterprise and Industry, European Commission Communication (2014) A vision for the Internal Market for industrial products (EC COM(2014) 25), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0025:FIN:EN:PDF

Fundamental to this will be coordination and cooperation between enforcement authorities across the Internal Market;

- **Horizontal legislation on products:** Union harmonisation legislation for the marketing of industrial products should be streamlined and any overlapping or conflicting requirements across product sectors removed.

- **Innovation and the digital future:** Union legislation must not present a barrier to innovation and the take up of new technologies (e.g. 3D printing) if Europe is to remain competitive. These products must be allowed rapid access to the European market, while at the same time ensuring that novel hazards that these products may present are taken into account and regulated.

- **More regulations, less directives:** Although Directives are binding on the results achieved, MS have a degree of discretion as to how they are implemented. Where vague language is used or the provisions are imprecise, this can lead to disparities across MS. Consequently, enterprises may need to seek out information in different languages on how to comply with the Directive in different MS. This in itself, as well as ensuring compliance with any regulatory differences, can constitute a significant barrier to trade, particularly for SMEs. By switching from a Directive to a Regulation, there will be less red tape and more certainty for businesses.

- **Business friendly approach to product rules:** Simplification and clarification of the product rules is at the heart of the Commission's priorities. The Commission should, where possible, try to avoid the situation where a product group must comply with multiple Directives that pursue the same aim. Major regulatory changes should be a medium to long term objective because of the impacts that it has on industry. Indeed, industry has a preference for regulatory stability with incremental changes.

- **Global market:** The EU should look to engage with key third countries and build upon existing mutual agreements with a view to establishing regulatory convergence beyond the Internal Market. The legal certainty that regulatory convergence would bring would allow industry to prepare for marketing products into these key emerging markets, where there is high economic growth and demand. Consequently, when assessing legislation, the Commission should focus on the impact it has on the international competitiveness of EU business.

5.2.3 Innovation

The European Commission's Digital Agenda forms one of the seven pillars of the Europe 2020 Strategy. The Digital Agenda's objectives include developing a digital single market and better exploiting the potential of Information and Communication Technologies (ICTs) in order to foster innovation, economic growth and progress. In May 2015, the Commission published its Communication on 'A Digital Single Market Strategy for Europe' (COM (2015) 192).[77] The Digital Single Market Strategy is made up of three main pillars (or policy areas); namely:

[77] European Commission (2015): A Digital Single Market Strategy for Europe. (Com(2015) 192), available at: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

- **Better online access to digital goods and services**: Helping to make the EU's digital world a seamless and level marketplace to buy and sell;
- **An environment where digital networks and services can prosper**: Designing rules which match the pace of technology and support infrastructure development; and
- **Digital as a driver for growth**: Ensuring that Europe's economy, industry and employment take full advantage of what digitalisation offers.

Related to the EU's Digital Agenda, the EU's Connect & Construct framework[78] aims to increase the competitiveness of SMEs in the construction industry through the smart use of ICT.

Europe first sought to boost eco-innovation with the Environmental Technologies Action Plan (ETAP). Adopted in 2004, it aimed to promote the growth and uptake of green technology on the European market. The Eco-innovation Action Plan (EcoAP) is the successor to ETAP that represents a step forward for eco-innovation, taking the EU beyond green technologies and fostering a comprehensive range of eco-innovative processes, products and services. The Plan also strives to develop eco-innovation actions that can be implemented both within and beyond Europe.

The EcoAP builds upon the Innovation Union flagship initiative[79] of Europe 2020[80], in three ways:

- Firstly, by expanding the focus of innovation policies towards green technology;
- Secondly, by targeting specific eco-innovation barriers and opportunities; and
- Thirdly, by highlighting the role of environmental policy as a factor for economic growth[81].

5.2.4 Sustainability

The goal of sustainable construction can only be achieved by adopting a multifaceted approach, as is evident from the range of policies that contribute to this objective. Relevant sustainability policies have been organised into the following three groups:

- Human health and the environment;
- Energy efficiency; and
- Resource efficiency / waste.

Human health and the environment

The EU's Strategy for Sustainable Development[82] provides an EU-wide policy framework to deliver sustainable development. It rests on four separate pillars – economic, social, environmental and

[78] See: http://www.connectandconstruct.eu

[79] 'Innovation Union' forms part of the Europe 2020 strategy that aims to create smart, sustainable and inclusive growth. It states that, if European companies are to remain competitive, EU public policies should focus on creating an environment that promotes innovation.

[80] European Commission (2013): Innovation Union, A pocket guide on a Europe 2020 initiative, accessed at http://bookshop.europa.eu/en/innovation-union-pbKI3213062/downloads/KI-32-13-062-EN-C/KI3213062ENC_002.pdf?FileName=KI3213062ENC_002.pdf&SKU=KI3213062ENC_PDF&CatalogueNumber=KI-32-13-062-EN-C

[81] DG Environment, Eco-innovation Action Plan, accessed at: http://ec.europa.eu/environment/ecoap/about-action-plan/objectives-methodology/index_en.htm

[82] European Commission (2001): Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development (Commission's proposal to the Gothenburg European Council), (COM (2001) 0264), available at: http://eur-lex.europa.eu/legal-

global governance – which need to reinforce one another. The strategy identifies several objectives that are of relevance to BWR 3 and BWR 7 of the CPR, where these include:

- Limiting major threats to public health;
- Promoting more sustainable modes of production and consumption; and
- Limiting climate change.

The EU has put in place several pieces of legislation that aim to protect human health and the environment (in line with BWR 3). In particular, Recital 25 of the CPR outlines several pieces of Union legislation that are applicable to hazardous substances in construction products. These include:

- The Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (Regulation (EC) No 1907/2006) (hereafter REACH).[83] REACH is the EU's regulatory system for chemicals. It aims to:

    - Ensure a high level of protection of human health and the environment from the risks that can be posed by chemicals;
    - Promote of alternative test methods;
    - Ensure the free circulation of substances on the Internal Market; and
    - Enhance competitiveness and innovation.

- Regulation (EU) No 528/2012 of the European Union and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (hereafter the Biocidal Product Regulation). The Biocidal Product Regulation concerns the placing on the market and use of biocidal products, which are used to protect humans, animals, materials or articles against harmful organisms, like pests or bacteria; and

- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (hereafter the Water Framework Directive). The Water Framework Directive establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater. It aims to ensure that all aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands meet 'good status' by 2015.

Energy efficiency

Under the flagship initiative of 'resource-efficiency' that forms part of Europe 2020, the Commission outlined the EU's climate action that would help the EU to become a competitive low carbon economy by 2050. As part of **Horizon 2050**, a roadmap is presented which outlines possible action up to 2050 which could enable the EU to deliver greenhouse gas reductions in line with the 80% to

content/EN/ALL/?uri=CELEX:52001DC0264 **and** European Commission (2005): Communication from the Commission to the Council and the European Parliament on the review of the Sustainable Development Strategy - A platform for action, (COM (2005) 0658), available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52005DC0658

[83] Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (Regulation (EC) No 1907/2006), accessed at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006R1907-20140822

95% target agreed[84]. It is estimated that within the built environment, emissions could be reduced in this area by around 90% by 2050, underlining the importance of fulfilling the Directive on the energy performance of buildings (see below). New buildings should be designed as intelligent low- or zero-energy buildings.

The **Energy Performance of Buildings Directive**[85] aims to strengthen the energy performance of buildings and building units to reduce EU energy consumption. The Directive achieves this by requiring countries to enhance their building regulations and to introduce energy certification schemes for buildings. As part of this, MS must strive towards ensuring that new and retrofitted buildings are nearly-zero energy buildings by 2020 (2018 for public buildings) and apply a cost-optimal methodology for setting minimum performance requirements.

The **Ecodesign Directive** outlines EU-wide rules for improving the environmental performance of energy related products[86]. Requirements are established via implementing measures for each product group.

Resource efficiency/waste

The general objective of the **Resource Efficiency Opportunities in the Building Sector** initiative[87] is to **reduce the environmental impact** of buildings by improving their overall **resource efficiency** and, as a consequence, improve the related competitiveness of construction businesses. Specifically, the Communication focuses on increasing the use of **recycled materials** in the construction of buildings, by fostering a **better functioning market** for recycled construction and demolition waste.

The Communication '**Towards a circular economy: a zero waste programme for Europe**'[88] seeks to deliver resource efficiency by keeping the added value in products for as long as possible and eliminating waste. This ensures that resources are kept within the economy when products reach the end of their life, so that they can be productively used again and again and thus create further value.

The '**Green Action Plan for SMEs'**[89] proposes to exploit the business opportunities that the transition to a green economy offers, by improving productivity and driving down costs to European SMEs through resource efficiency, by supporting green entrepreneurship and by exploiting and developing Europe's leadership in green processes and technologies.

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[84] European Commission, Roadmap for moving to a low-carbon economy in 2050, accessed at http://ec.europa.eu/clima/policies/roadmap/index_en.htm

[85] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, accessed at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0031&from=EN

[86] Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products, accessed at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0125:EN:NOT

[87] Communication "Resource efficiency opportunities in the building sector", available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0445&from=EN

[88] Communication "Towards a circular economy: a zero waste programme for Europe", available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0398

[89] Communication "Green Action Plan for SMEs", available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0440&from=EN

The 2011 PRC report has suggested that the Commission should introduce an **interdisciplinary or holistic approach** with respect to the various initiatives and policies at the various levels of the Commission in many areas of sustainability, with regard to green public procurement, eco-labelling, ecodesign, recycling, waste management and 'green taxes' and subsidies[90].

5.3 Consistency and fulfilment of policy objectives

5.3.1 Overall views

During consultation, stakeholders were asked whether (in their view) the CPR is consistent with other EU policies and strategies in the area of competitiveness, innovation and sustainability (Table 5-2). More than half of public authorities and organisations involved in conformity assessment indicated that the CPR is indeed consistent in these policy areas. However, a smaller proportion of companies (28%) thought this to be the case, with the majority (54%) unsure.

Table 5-2: Response to the question - In your view, is the CPR consistent with other EU policies or strategies in the areas of competitiveness, innovation and sustainability? If NO, please explain your answer

Response	Companies	NBs, TABs, SBs	Public Authorities
Yes	28%	61%	55%
No	18%	10%	15%
Don't know	54%	28%	30%

Stakeholders noted that:

> *"The CPR is the only European regulation or directive that is completely different from all others; therefore not consistent at all".*

> *"There are multiple legislation applying to construction products, without proper guidelines for the manufacturer. The system is complicated to understand, putting the brakes for competitiveness and innovation, because all this has a cost for the manufacturers. There is too little coordination between the different DGs from the Commission. All this lead to inconsistency with the CPRs goal and the other strategies of the Commission".*

In the UK, one stakeholder noted that overlaps between different pieces of legislation are unavoidable to some extent, but do not necessarily imply a lack of consistency. For instance, it is possible that a construction product may need to fulfil criteria outlined under both the CPR and the Eco-design Directive (which is of relevance to the Commission's overarching objective of sustainability). The approach of the respective pieces of legislation is different, with the CPR focusing on individual products and the Eco-design Directive adopting a sectoral approach. This gives policy makers a choice of tools and the ability to tailor their approach depending on the intended goal. For example, if the goal is to improve the smoke emissions of all solid fuel appliances, an amendment to the Eco-design Directive would have a wide application and set requirements which all solid fuel appliances would need to comply with. Of course, while this may be beneficial for

[90] PRC (2011): The Lead Market Initiative and Sustainable construction: Lot 1, Screening of national building regulations. Available at: http://ec.europa.eu/DocsRoom/documents/5082/attachments/1/translations/en/renditions/native

policy makers, it was acknowledged that it means that manufacturers will need to keep abreast of multiple pieces of legislation, which may constitute a burden, particularly for SMEs.

5.3.2 Competitiveness

Consistency between the CPR and the objective of competitiveness

Several of the provisions put in place in the CPR are aimed to be consistent with the Commission's policies and strategies in the area of competiveness; for example:

- The derogation from drawing up a DoP (Article 5) aims to reduce the administrative burden on enterprises that are producing custom-made construction products or products for use in heritage conservation. Given that such enterprises are likely to be SMEs, the CPR can be considered to be consistent with the EC's **Small Business Act**, which aims to simplify the regulatory and policy environment for SMEs[91].

- The simplified procedures set out in Chapter VI (Articles 36, 37 and 38) of the CPR aim to allow enterprises, under certain conditions, to comply with the CPR in a manner that is less costly than the conventional route. In this regard, the CPR is consistent with the **EU flagship initiative for 'an integrated industrial policy for the globalisation era'** (part of the Europe 2020 strategy[92]). The simplified procedures for micro-enterprises put in place in Article 37 of the CPR aim to reduce the administrative burden on SMEs when complying with the CPR. On this basis, the CPR can be said to be consistent with the EC's **Small Business Act** which, where possible, seeks to exempt micro-enterprises from EU legislation or to introduce special regimes so as to minimise the regulatory burden on them.

- One of the five key objectives of the **Construction 2020 Action Plan**[93] is to strengthen the Internal Market for construction through *inter alia* developing a network of national contact points for construction products and services. The CPR directly conforms to the Construction 2020 Action plan by requiring MS to designate PCPCs (Article 10).

- HENs, CE marking and requirements for notified bodies and TABs were introduced with the aim of removing barriers to trade (such as quality marks) within the EU, so that the MS could trade freely with one another. Market surveillance and TABs also aim to level the playing field for EU businesses. On this basis, the CPR is consistent with the EC's '**Vision for the Internal Market for Industrial Products**'[94].

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[91] DG Enterprise and Industry, Small Business Act for Europe, accessed at: http://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/index_en.htm

[92] European Commission website, Europe 2020, accessed at: http://ec.europa.eu/europe2020/index_en.htm

[93] European Commission (2012) Strategy for the sustainable competitiveness of the construction sector and its enterprises, accessed at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0025:FIN:EN:PDF

[94] European Commission (2014): Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: A vision for the Internal Market for industrial products, (COM(2014) 25), accessed at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0025:FIN:EN:PDF

- The delegated act on classification without testing or further testing (Article 27(5)) and the delegated act on Annex III (which enables the electronic provision of the DoP), aim to simplify to legislative framework pertaining to construction products and thus enhance the competitiveness of the EU construction sector. These aspects of the CPR are thus in line with the **EU flagship initiative for 'an integrated industrial policy for the globalisation era'**.

Extent to which the CPR has fulfilled the objective of competitiveness

During consultation, companies were asked whether, in their view, the CPR helped to improve the competitiveness of their organisation in relation to non-EU competitors (Table 5-3). While about a quarter of those that responded to this question indicated that the CPR had improved the competitiveness of their organisation, the vast majority (~80%) indicated that it had not[95].

Table 5-3: Response to the question - In your view, has the CPR helped to improve the competitiveness of your organisation (or similar organisations) in relation to non-EU competitors? Please tick all the answers you agree with in the box below.

Response	Companies
YES, by simplifying the administrative requirements on our organisation	7%
YES, by reducing the financial burden on our organisation	3%
YES, by creating more business opportunities	6%
YES, by creating a more level playing field	10%
NO, the CPR has not improved our competitiveness	79%
Other (specify)	3%

When asked whether SMEs face specific problems and challenges in complying with the requirements of the CPR, around 40% of SMEs and public authorities indicated that this is the case (as shown in Table 5-4).

Table 5-4: Response to the question: Are small and medium-sized enterprises (SMEs) faced with any specific problems and challenges in complying with the requirements of the CPR?

Response	Companies		Public Authorities
	SMEs	Large enterprises	
Yes	41%	14%	42%
No	16%	16%	21%
Do not know	43%	70%	37%
Note: SMEs (n=61), Large enterprises (n=37)			

The following sections outline the extent to which specific provisions of the CPR have helped fulfil the Commission's policy objective of competitiveness, based on information received during consultation.

[95] Note that companies were able to select more than one answer to this question; hence the total is greater than 100%.

Derogations from drawing up a DoP (Article 5)

The purpose of Article 5 was to alleviate the financial burden on enterprises (particularly SMEs). However, as outlined in Section 4.3.3., there is no evidence that stakeholders are currently applying the Article 5 derogation. This could be partially due to a lack of legal certainty with regards to its application (this is discussed further in Section 6.3). This aspect of the CPR is, therefore, unlikely to have contributed to enhancing the competitiveness of the EU's SMEs.

Electronic provision of DoP

The CPR permits the DoP to be supplied either in paper form or by electronic means, ensuring that compliance with the CPR is achieved at the lowest possible cost. Whether a manufacturer switches to electronic DoP will vary *inter alia* depending on the product sector and size of the enterprise. For instance, although some stakeholders have commented that supplying the DoP electronically has reduced their administrative burden, a manufacturer is unlikely to make the transition to electronic DoP if their customers always request the DoP in paper format. The option of providing the DoP electronically thus ensures that each enterprise complies with the CPR in the most cost-effective manner, which in turn enhances the competitiveness of the EU market.

Simplified procedures under Chapter VI (Articles 36, 37 and 38)

As explained previously, Article 36 of the CPR aimed to avoid the unnecessary testing of construction products for which performance has already been demonstrated. As noted in Section 4.3.3, Article 36 is commonly applied in some sectors (e.g. windows and doors), where it is successfully helping manufacturers to reduce the costs of complying with the CPR. One public authority noted that Article 36 has been used by timber mills to share costs by coming together to undertake shared testing.

Article 37 enables micro-enterprises (under certain conditions) to forgo unnecessary testing. However, stakeholders have indicated that demonstrating equivalence of testing procedures to those set out in the harmonised standard may be just as costly or burdensome as fulfilling the requirements of the standard. Specification writers for hENs are already using low-cost procedures to determine performance, so there is very little financial benefit in applying these simplified procedures. For example, one notified body in the windows and doors sector noted that, per window or door product line, the hEN route compared to the Article 37 route is only €250 - €700 more expensive.

Public authorities noted that the distinction between a micro-enterprise and a small company may be marginal and that the application of Article 37 could raise competition issues. Likewise, some companies also noted that the procedures and technical requirements for a product should be the same for all enterprises, irrespective of their size. It has been suggested that the application of this simplified procedure could lead to a distortion of the market, and unfair competition.

As described in Section 4.3.3, stakeholders have indicated that the use of Article 37 has been limited to date. Thus, Article 37 is unlikely to have made a significant (positive or negative) contribution to the competitiveness of EU enterprises. Factors hindering the uptake of this provision are discussed in Section 6.3.

It was anticipated that manufacturers of individually designed construction products would, as a result of Article 38, be able to reduce the costs they incur when complying with the CPR. The issues identified by stakeholders with regard to Article 38 are broadly similar to those for Article 37. Industry stakeholders commented that the distinction between 'individually manufactured' and 'not individually manufactured' is completely unclear, which could lead to some manufacturers exploiting

this simplification and gaining an unfair competitive advantage (this is particularly relevant for doors, windows and metal ceilings)[96].

As discussed in Section 4.3.3, few stakeholders have made use of this provision. Article 38 is therefore unlikely to have made a significant contribution (positive or negative) to enhancing the competitiveness of EU enterprises to date. Barriers to the uptake of this provision are discussed in Section 6.3.

Product Contact Points for Construction

It was anticipated that PCPCs would help to ensure that enterprises, particularly SMEs, can gather reliable and precise information about the legislation in a particular MS where they intend to place or make available their products on the market.

Responses from consultation indicate that there has been some limited success with regard to PCPCs disseminating information to manufacturers upon request. However, many stakeholders remain unaware of the existence and role of PCPCs and, in addition, it has been noted that PCPCs can be slow to respond to requests for information and that the information they provide is often poor (these issues are discussed further in Section 6.3). As a result, PCPCs have not yet made a significant contribution to strengthen the Internal Market for construction products.

Market surveillance and safeguard procedures (Articles 56, 57, 58 and 59)

Chapter VIII of the CPR sought to ensure an equivalent and consistent enforcement of the CPR, thus creating a level playing field on which enterprises can compete across Europe.

There is a perception amongst stakeholders that there is inadequate market surveillance to ensure a level playing field across the European construction products' sector. Indeed, the majority of stakeholders who responded to the online survey indicated that formal non-compliance with the CPR is a 'serious' or 'highly serious' problem (although it should be noted that this is subjective). Given the resources that some enterprises have invested to ensure that the products they manufacture comply with the provisions of the CPR, this potentially represents a serious issue with regards to fair competition.

Harmonised standards

It has been asserted that, in the process of developing hENs, CEN committees often rely on expertise from a small number (e.g. three or four) of the leading European companies, which may result in their being too much input from too few people. It has been suggested that they will often advocate that hENs should adopt a 'systems approach' rather than a 'component approach', which favours the larger companies and potentially excludes SMEs (who are often component manufacturers). This clearly has the potential to undermine the competitiveness of the EU construction products' industry. Of course, to some extent, it is inevitable that the larger companies will be able to provide specialists to provide input to develop hENs. However, it was felt that trade associations should try to become more active to ensure that all manufacturers (including SMEs and micro-enterprises) are better considered when developing such standards. The EC is providing financial support for increasing the participation of SMEs in standardisation.

[96] The case of window makers constructing windows of different dimensions for each client was put forward - could this be interpreted as "individually manufactured" and "custom made"?

An Austrian industry association commented that the CPR may undermine the competitiveness of the EU as it encourages a modulated, standard approach to manufacturing (i.e. compliance with a harmonised standard) which favours bigger companies rather than SMEs which produce bespoke construction products.

One problem (identified in Finland) was the lack of free translated hENs. SMEs are not always able to understand hENs that have not been translated (e.g. into Finnish or Swedish) and object to the idea that they have to pay for them, even though the CE marking is mandatory.

Although there would appear to be some concerns with regard to the development and availability of hENs, it must be recognised that, generally speaking, hENs work well and facilitate the free movement of construction products across Europe (thereby enhancing competition). For instance, one Polish company recognised the positive contribution that hENs make to competition, noting that all products are required to meet the standard for a particular group of products, and as such have equal chances in the European market.

CE marking and quality marks

A German industry stakeholder commented that the CE marking has improved the competitiveness of non-EU competitors, with CE marking in particular being favourable to Chinese exporters. This is presumably on the basis put forward by some companies that CE marking provides for a minimum standard to be achieved based on harmonised standards. As such,

> *"Harmonisation [effectively] meets a lot of people at a low/minimum level. It only helps cheap Asian/China products to penetrate EU markets. It does not help us to penetrate their markets. That is a "one way direction of products flow" on the lowest level of safety."*

Conversely, other stakeholders such as a Finnish manufacturer recognised that mandatory CE marking under the CPR was beneficial and "*facilitates international trade".*

A Belgian industry association commented that the level of competitiveness has improved due to the tackling of national labels, which has been a great help for SMEs. A public authority in Cyprus indicated that the CPR has had a positive impact on competitiveness, as a result of compulsory implementation and progress on quality marks; as such a more level playing field has been created.

Other

One German stakeholder noted that the costs for SMEs to comply with the CPR and fulfil the testing requirements are too high. More specifically, a stakeholder mentioned that SME manufacturers of windows and doors are specifically disadvantaged due to the provisions of the CPR (e.g. they are not staffed to deal with all the requirements of the wide variety of associated standards). The stakeholder explained that there is a possibility that some of these SME manufacturers will cease to produce windows and doors and instead purchase these products from major manufacturers and simply trade them and mount them.

A German industry association also noted that:

> *"the CPR forces SMEs to draw up DoPs and to make them available for years. This is a new requirement, causing additional efforts".*

One Czech public authority commented that:

"SME usually don´t have enough qualified employees who can perform this task, compared to large enterprises. So they are often dependent on free information obtained through Contact points or other relevant sources."

A Dutch industry stakeholder commented that:

"CPR feels like legal overkill, too much administration for hardly any gain. A system too much based just to keep officials, notified bodies, test institutes at work thus increasing production costs which will hurt SME's more than big companies".

5.3.3 Innovation

Consistency between the CPR and the objective of innovation

'Innovation Union' forms part of the Europe 2020 strategy that aims to create smart, sustainable and inclusive growth and states that, if European companies are to remain competitive, EU public policies should focus on creating an environment that promotes innovation. The CPR, through EADs/ETAs, aims to provide a route to compliance (and CE marking) for innovative products. In this regard, several stakeholders identified during consultation that the introduction of EADs/ETAs under the CPR is consistent with the Commission's objectives in terms of innovation.

The CPR provides that the DoP may be provided electronically. Thus the CPR is consistent with The Digital Agenda for Europe, which aims to better exploit the potential of ICT in order to foster innovation, economic growth and progress.

Extent to which the CPR has fulfilled the objective of innovation

There is evidence that Internal Market legislation has, in some cases, acted as a catalyst for promoting innovation. This is because the development of hENs and functioning of the Internal Market has enabled some manufacturers to enjoy economies of scale in production, which allows them to invest more in research and development. By exploiting economies of scale, manufacturers can divert more resources towards extensive research and development centres (e.g. Rockwool thermal insulation products). On the other hand, one Slovenian public authority was of the view that the mandatory nature of hENs can be rigid and may create a disincentive for innovation.

As part of consultation, companies were asked to indicate the extent to which the CPR had encouraged innovation in their organisation or similar organisations (Table 5-5). Two thirds of companies indicated that the CPR had no impact on innovation.

Table 5-5: Response to the question - In your view, to what extent has the CPR encouraged innovation in your company or in other similar organisations?

Large positive impact	Low positive impact	Neutral/no change	Low negative impact	Large negative impact
3%	9%	67%	9%	13%

Stakeholders were also asked whether the CPR acts as an adequate ICT system (Table 5-6). In this regard, half of organisations involved in conformity assessment noted that it does; while the majority of companies and industry associations noted that it does not.

Table 5-6: Response to the question: Do you think that the CPR acts as an adequate information communication technology system (i.e. a structure for creating, communicating, disseminating and storing information)?			
Response	**Companies**	**NBs, TABs, SBs etc.**	**Industry associations**
Yes	31%	51%	26%
No	47%	30%	59%
Not applicable	23%	19%	15%

It was anticipated that the issuing of ETAs would continue to positively contribute to the lowering of market barriers for products not covered by hENs (usually innovative construction products), by allowing manufacturers to draw up a DoP and apply a CE marking to such products. As noted by one organisation involved in conformity assessment from Denmark, the EAD/ETA process paves the way for the marketing of innovative products. Several stakeholders similarly noted that the CPR provides a means for innovative construction products to enter the market in the absence of hENs, through ETAs.

A Slovenian organisation involved in conformity assessment noted that it was too soon to say whether the system for ETAs under the CPR works in practice. It was stated that innovative cases are, by definition, unknown and unpredictable, so the system (as it is set up) is well designed to cope with that. In contrast, however, a Belgian company commented that the ETA process is too rigid to allow innovation as the process is particularly difficult for SMEs owing to the complexities and costs.

A French public authority commented that one positive aspect of the CPR is that it is now possible to appoint a TAB for a single product family and that this should facilitate innovation. However, it was also stated that there is a need for smaller, more specialised TABs which are able to respond quickly to demands for innovative products.

Ability of the CPR to respond to future technological developments

A characteristic of the New Approach to Union harmonisation legislation (like the CPR) is that it is designed to be technology-neutral. This is because the legislation only sets out the essential requirements; manufacturers are allowed to determine for themselves how best to meet these essential requirements. It therefore does not matter, from a legal point of view, whether traditional or advanced manufacturing processes are used, since the same legal framework applies to all products. The fact that the CPR is non-prescriptive regarding the technical specifications that should be adopted (by leaving detailed implementation to technical standards) means that the regulatory framework should, in theory, be sufficiently flexible.

During consultation, around 40% of stakeholders[97] indicated that the CPR is not suited to dealing with upcoming technological developments in the construction sector. There were, however, differences in the views of stakeholder groups. Around half of organisations involved in conformity assessment were of the view that the CPR is suited to dealing with upcoming technological developments. However, approximately half of companies and other industry stakeholders indicated that the CPR is not suited in this regard. Nevertheless, in Denmark, one industry association noted that the CPR forms a strong foundation for upcoming technological developments.

Where technical standards do not keep pace with technological innovations, manufacturers of innovative products may use the ETA-route to CE marking. If the ETA-route to CE marking is more expensive than the hEN route then this may pose a barrier to market for innovative products (see

[97] Companies, NBs, TABs, SBs and industry associations

Annex 3; section 1.2.4). During consultation, one Finnish manufacturer commented that standards could potentially facilitate innovation, as long as they are kept up to date and take into account new technological developments. Similarly, a Polish enterprise noted that if hENs are adapted to emerging solutions, the CPR will respond to technological challenges. Nevertheless, several stakeholders noted that some procedures, mandates and standards may need to be modified. German stakeholders explained that the standardisation process is very long, which means that it is inevitable that there will be a lag between the development of new innovative construction products and the development of new standards.

Questions remain as to whether the CPR is sufficiently equipped to regulate products that are manufactured by 3D printing that pose a risk across the full risk profile spectrum of health and safety. A further issue raised through the increased use of 3D printers is who is legally responsible for the products produced by 3D printing. During consultation, stakeholders also noted that there is a debate concerning whether 3D printed buildings should be considered a "kit", an individual "construction product" or a "construction work".

A Slovenian SME similarly noted that with new nanotechnologies being developed we will have materials that have completely different properties and that it is in the public's interest to ensure that these materials are not used right away. In the view of this stakeholder, procedures need to remain strict and slow to ensure consumer safety.

Note that further information on regulatory barriers to the development and free movement of innovative construction products can be found in Annex 3.

5.3.4 Sustainability

Consistency between the CPR and the objective of sustainability

The CPR contains seven BRCW which replace the original six Essential Requirements of the CPD. Two of these BRCW are clearly related to the Commission's overarching objective of sustainability; namely:

- **BWR 3 on hygiene, health and the environment**, which states that construction works must be designed and built in such a way that they will, throughout their life cycle, not be a threat to the hygiene or health and safety of workers, occupants or neighbours, nor have an exceedingly high impact, over their entire lifecycle, on the environmental quality or on the climate during their construction, use and demolition, as a result of:

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

- **BWR 7 on the sustainable use of natural resources**, which states that construction works must be designed built and demolished in such a way that the use of natural resources is sustainable and in particular ensure the following:

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

In addition to BWR 3 and BWR 7, some of the recitals of the CPR also mention, or are of relevance to, sustainability. For example, Recital 25 which concerns the relationship between the CPR and Union law applicable to hazardous substances.

Some examples of how the CPR is consistent with the Commission policies and strategies in the area of sustainability are given in the bullet points below:

- Resource efficiency is a key objective of both the **Resource-efficient Europe initiative**[98] and the **Initiative on an industrial policy for the globalisation era**[99]. BWR 7 aims to make the use of natural resources more sustainable in the construction products sector and is thus consistent with both of these initiatives under Europe 2020.

- **The Eco-Innovation Action Plan (ECO-IAP)** is a broad policy framework that aims to improve the market's uptake of eco-innovation. EADs provide a route to CE marking for innovative products. As such, EADs provide a route to market for eco-innovation, in line with ECO-IAP.

- **The 7th EAP - General Union Environment Action Programme to 2020**[100] aims to protect, conserve and enhance the Union's natural capital; to turn the Union into a resource-efficient, green, and competitive low-carbon economy; and to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing. Recital 25 and BWR 3 of the CPR align with the 7th EAP objective to safeguard the Union's citizens from environment-related risks to health and wellbeing. Recital 55 and BWR 7 align with the 7th EAP objectives to protect, conserve and enhance the Union's natural capital and to turn the union into a resource-efficient, green and competitive low-carbon economy.

- Recital 25 of the CPR notes that, where applicable, the DoP should be accompanied by information on the content of hazardous substances in the construction product. It also clarifies that the CPR does not prejudice the **REACH Regulation, water policy or waste policy**.

[98] European Commission (2011): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A resource-efficient Europe – Flagship initiative under the Europe 2020 Strategy, COM(2011) 21, available at: http://ec.europa.eu/resource-efficient-europe/pdf/resource_efficient_europe_en.pdf

[99] European Commission (2010): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An Integrated Industrial Policy for the Globalisation Era, Putting Competitiveness and Sustainability at Centre Stage, (COM(2010) 614), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:et0005

[100] European Commission (2014): Living well, within the limits of our planet, 7th EAP – The new general Union Environment Action Programme to 2020, available at: http://ec.europa.eu/environment/pubs/pdf/factsheets/7eap/en.pdf

It is important to recognise, however, that although the CPR mentions sustainability and puts in place a framework (through the BRCW and recitals) for future action in this area, the CPR does not – for the time being at least - put in place any specific requirements on sustainability that would require action on the part of MS authorities or the construction sector. This may explain why, when asked about the consistency between the CPR and the Commission's policies on sustainability, one company noted that *"Sustainability [is] missing"*. Many stakeholders, however, identified that BWR 7 is aiming to be consistent with the Commission's sustainability objective.

It should be noted that the question has been raised whether the CPR applies to re-used construction products (e.g. do re-used bricks need to comply with the applicable requirements, e.g. DoP and CE marking?). It is unclear how the CPR should be understood regarding re-used construction products and whether MS may require reused products to be assessed on the basis of Eurocodes or hENs.

Extent to which the CPR has fulfilled the objective of sustainability

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 to an actual improvement in terms of sustainability because the processes and procedures needed to implement BWR 7 have not yet been established.

Respondents from all stakeholder groups commented that not one hEN has taken into account BWR 7. Indeed, one organisation involved in conformity assessment in Slovenia did not foresee any changes in this area for another five years. Stakeholders noted that it is therefore possible for MS to develop national requirements and procedures on sustainability. For example, a French public authority stated that it is usually down to national legislation to ensure sustainable conduct, and that national legislation in certain MS (including France, Holland and Belgium) is ahead of EU regulation whose requirements are only voluntary and not obligatory. It was also noted that due to national legislation within France, the life cycle of a product has to be taken into account. The situation being as it is perhaps explains why one Danish organisation involved in conformity assessment did not view the CPR as a key contributor to sustainability. Rather, the stakeholder thought that the sustainability goal would be driven by political agendas and the general economic climate.

Although the CPR does not require any action on the part of MS in relation to sustainability, it would appear that some stakeholders perceive that the CPR has had unintended benefits. For example, in Estonia, one user of construction products stated that the CPR has, to some extent, fulfilled the Commission's objectives regarding sustainability, as designers have begun to use more environmentally friendly materials in their designs. It was also stated that users are better informed about sustainability, so they are able to request the use of environmentally friendly materials. A Cypriot stakeholder similarly commented that BWR 7 has put in place a framework for sustainability, which will drive the development of sustainable construction products. However, a Belgian construction industry stakeholder noted that the impact of the CPR (in terms of sustainability) is limited because the CPR does not adequately consider how products are installed in the works, or the performance of the building as a whole. In the view of this stakeholder, the CPR should nevertheless be commended for the way in which it links works and essential requirements. The stakeholder noted that environmental criteria should be further incorporated into the CPR and brought within the scope of CE marking. Similarly, a Danish organisation involved in conformity assessment noted that the CPR has the potential to focus on sustainability in the future, in particular with regard to CE marking.

5.4 Conclusions

5.4.1 Competitiveness

The CPR is consistent with the Commission's policy on competition insofar as it outlines provisions that make it less costly for SMEs to comply with the CPR (simplified procedures and the Article 5 derogation). PCPCs have been introduced with a view to facilitating the free movement of construction products and procedures have been outlined for MSAs to ensure there is a fair and level playing field. The CPR also aims to tackle national quality marks that present a barrier to trade.

Although the CPR accords with the Commission's policy on competition, further improvements are required to ensure that the CPR makes a tangible (and positive) contribution in terms of competition. For example:

- Articles 37, 38 and 5 are not well understood by industry and there is a lack of awareness as to their existence. Consequently, they have not been widely applied.
- PCPC, in some instances, need to go beyond fulfilling the minimum obligations outlined in the CPR to make a positive contribution in terms of enhancing competition.
- Industry is of the view that market surveillance is inadequate and that greater efforts will be required by the Commission to tackle quality marks.

On the other hand, Article 36 is successfully being used in some sectors and contributing to the Commission's policy on competitiveness.

5.4.2 Innovation

The CPR enables innovation within the construction sector by providing a means (EAD/ETA) for manufacturers to apply the CE marking to innovative products that are not covered by a hEN. The CPR also allows manufacturers to make the DoP available electronically, which is in line with the Commission's Digital Agenda.

At the time of writing, only nine EADs have been published and an analysis of their innovative nature has not been undertaken on this study. Therefore, it is too early to say whether the new system will successfully fulfil the Commission's policy for products regarding innovation. The majority of companies responding to the consultation indicated that the CPR has not yet encouraged innovation in their organisation or other similar organisations.

5.4.3 Sustainability

The legal framework governing construction products is now more consistent with the Commission's policy on sustainability, in that it provides a framework for sustainable construction products, particularly with BWR 7. However, this represents a first step and thus the contribution of this provision has been limited to date.

6 CPR Evaluation

6.1 Introduction and methodological approach

In order to assess the extent to which the CPR has produced its intended results, a systematic assessment of the CPR has been carried out, drawing on the general approach for undertaking evaluations, as set out in various Commission documents[101]. While this aspect of the study does not constitute an official evaluation of the CPR, using an approach that is consistent with EC evaluation guidance will allow the results of this study to be taken forward in the future, if such an evaluation is required.

The CPR was introduced in order to simplify and clarify the legislation pertaining to construction products in Europe, to increase the credibility of the legislative framework and to facilitate the free movement of construction products within the Internal Market. While the recitals of the CPR give some indication of the logic behind its introduction, the specific problems the CPR was intended to address, the rationale for action, the specific objectives pursued and anticipated benefits have not been explicitly articulated. Hence, the first stage in undertaking this preliminary evaluation has been to establish a logic framework for the CPR (**Section 6.2**).

Four evaluation criteria are considered to be relevant for this analysis: **effectiveness, relevance, coherence and added value**[102]. **Sections 6.3 to 6.6** assess the specific impacts of the CPR in relation to the selected evaluation criteria, based on the results of the consultation (online survey, telephone interviews and workshop) and literature review.

6.2 Logic framework

To assist with the evaluation, an assessment has been carried out of the case for intervention (or 'needs'), behind the CPR. The resulting logic framework is provided in Table 6-1 overleaf. Based on a systematic review of the key provisions of the CPR, the intervention logic provides a 'big picture' view of the CPR, its main objectives and anticipated benefits.

[101] European Commission (2015): Evaluation, available at: http://ec.europa.eu/dgs/secretariat_general/evaluation/documents_en.htm

[102] While the efficiency of the CPR's implementation is also considered relevant, insufficient data are available to assess this criterion.

Table 6-1: Logic framework				
Aspect	**Problem Definition and Identification of Needs**	**Objective**	**CPR Provision**	**Anticipated benefits**
Definitions	The only definition provided in the CPD was that of a 'construction product', which itself was defined quite loosely. This gave rise to the potential for different interpretations of some terms and concepts. While, for example, Guidance Paper C[103] aimed to clarify the difference between the concepts of a "kit" and a "system" under the CPD, such guidance documents were not legally binding. Hence, the CPR sought to clarify the most pertinent terms and concepts relating to the legislative framework for construction products.	Clarification	Article 2	• Reduced ambiguity and enhanced legal clarity • Increased ease of compliance and enforcement
Obligations of economic operators	Under the CPD, it was assumed that manufacturers sell their products directly to the end-user and so the majority of obligations were targeted at manufacturers. In practice, however, many products sold by manufactures enter the supply chain and pass through (several) importers and/or distributors before reaching the end-user. Hence, the CPR sought to allocate legal responsibility to economic operators throughout the supply chain.	Clarification	Chapter III	• Increased legal certainty and transparency regarding the rules • Increased ease of compliance and enforcement • Facilitation of market surveillance by authorities • Increased respect of legal obligations by economic operators
Declaration of performance	The DoP essentially replaces the DoC which existed under the CPD. Under the CPD, it was felt that there was an administrative (and financial) burden on enterprises, particularly SMEs, from the DoC requirements. Hence, the CPR sought to simplify the process for providing the DoP and alleviate the financial burden on enterprises (particularly SMEs), where this includes allowing the provision of the DoP by electronic means and on a website. In late May 2014, the delegated act to modify Annex III of the CPR was published in the OJEU. Annex III provides a flexible format for manufacturers to follow when drawing up a DoP for their construction products.	Simplification Clarification	Articles 4-7	• Increased legal certainty and transparency regarding the rules • Increased ease of compliance and enforcement • Reduced financial burden on enterprises (particularly SMEs)

[103] European Commission (2002): Guidance Paper C (concerning the Construction Products Directive 89/106/EC) on the Treatment of Kits and Systems under the Construction Products Directive, available at: http://eurocodes.jrc.ec.europa.eu/doc/gpc.pdf

Table 6-1: Logic framework				
Aspect	**Problem Definition and Identification of Needs**	**Objective**	**CPR Provision**	**Anticipated benefits**
CE marking & quality marks	Under the CPD, CE marking was voluntary in a number of countries, which led to some uncertainty concerning which products needed to be CE marked. In order to create a level playing field throughout Europe and to enhance the free movement of construction products, the CPR has made CE marking mandatory in all MS. It also sought to clarify the specific products which are exempt from CE marking. Prior to the CPR, it was evident that trade in construction products across MS had been impeded in various countries as a result of quality marks. In order to prevent new barriers to trade and enhance the free movement of construction products, the CPR thus sought to ensure that CE marking is the only marking of conformity of the construction product with the declared performance and compliance with applicable requirements relating to Union harmonisation legislation. Under the CPD, there was some confusion regarding the fact that CE marking for construction products is different when compared to the general principles set out in Regulation EC No 765/2008. Hence the CPR also sought to clarify this aspect.	Clarification Simplification Free movement	Articles 8-9	• Increased legal certainty and transparency regarding the rules • Increased ease of compliance and enforcement • Prevented new barriers to trade and enhanced the free movement of construction products across the EU

Table 6-1: Logic framework				
Aspect	**Problem Definition and Identification of Needs**	**Objective**	**CPR Provision**	**Anticipated benefits**
Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)	Under the CPD, the procedures for assessing performance in relation to the essential characteristics of construction products not covered by a hEN were not sufficiently clear (for example, no time scales for drawing up a ETAG were outlined under the CPD), cumbersome and expensive for manufacturers. Hence the CPR sought to simplify the procedures for products not (fully) covered by a hEN in order to make them more transparent and reduce costs for manufactures of construction products.	Simplification Clarification Credibility	Articles 19-24 and 26	• Increased legal certainty and transparency regarding the rules (in particular for the manufacturer concerned) • Increased ease of compliance • Reduced costs for manufacturers • Enhanced competitiveness of EU manufacturers • Reduced time spent on developing EADs/ETAs under the CPR (compared with the situation under the CPD)
PCPC	Under the CPD it was difficult for companies (and, in particular, SMEs) to access reliable and precise information on national technical rules applicable to their products, which posed a potential barrier to the consolidation of the Internal Market for construction products. Hence, the CPR provided for the designation of national PCPCs. In order to prevent a proliferation of contact points and to simplify administrative procedures, the CPR enabled MS to entrust the role of PCPC to existing contact points. Furthermore, in order not to increase administrative costs for enterprises and competent authorities, the CPR enabled MS to entrust the role of PCPC not only to existing services within the public administration, but also to national SOLVIT centres, chambers of commerce, professional organisations and private bodies.	Simplification Free movement	Article 10	• Increased legal certainty and transparency regarding the national and EU rules • Enhanced free movement of products within the EU • Increased ease of compliance • Prevention of the unnecessary proliferation of Product Contact Points • Increased ease of identifying the relevant Product Contact Point to contact
hENs	Under the CPD, the proper functioning of the Internal Market was hindered by technical barriers to trade. It was felt that the removal of such technical barriers in the field of construction might only be achieved by the establishment of harmonised technical specifications [harmonised standards and EADs] for the purposes of assessing the performance of construction products. Under the CPR, it is mandatory for manufacturers to draw up a DoP and apply the	Clarification Credibility Free movement	Article 17	• Improved legal certainty • Enhanced free movement of products within the EU • Increased credibility of the CPR

Table 6-1: Logic framework				
Aspect	**Problem Definition and Identification of Needs**	**Objective**	**CPR Provision**	**Anticipated benefits**
	CE marking to any of their products which are covered by a hEN (or ETA). In order to ensure the credibility of the CPR, Article 17(2) of the CPR provides that the European standardisation bodies shall ensure that the various categories of stakeholders are represented in a fair and equitable manner in the process of developing harmonised standards.			
AVCP	The system of attestation of conformity set out by the CPD was considered too imprecise and it was widely recognised that there was a need for clarification. Furthermore, the procedures for conformity assessment provided for in Decision No 768/2008/EC, and the modules set out therein, were not appropriate given the specificity of construction products and the particular focus of the system for their assessment. In order to address these issues, the CPR thus introduced the new concept of AVCP systems. In order to better reflect the current application practices of the systems of AVCP, the CPR removed System 2, which was very rarely used under the CPD.	Clarification Credibility	Article 28	• Improved legal certainty • Increased credibility of the CPR
Levels and classes of performance	In order to introduce a degree of flexibility in the legislative framework and to take account of different levels of basic requirements and the differences in climate, geology and geography and other different conditions prevailing in the MS, the CPR sought to encourage (where appropriate) classes of performance of construction products to be used in hENs.	Free movement	Articles 27 & 60	• Reduced costs for manufacturers • Increased legal certainty and transparency regarding the rules • Enhanced the free movement of products within the EU
TABs	Under the CPD, there were concerns about the competency of Approval Bodies that were responsible for developing European Technical Approvals. In some cases, some Approval Bodies did not recognise the experience of other Approval Bodies and thus their ability to develop a European Technical Approval. This resulted in delays in the development of European Technical Approvals and increased costs for manufacturers wanting to undertake intra-EU trade. The CPR thus sought to ensure that TABs have the necessary competence for carrying out their tasks (i.e. establishing draft EADs and issuing ETAs).	Credibility	Article 29-30	• Increased the credibility of the CPR • Increased legal certainty and transparency regarding the rules • Ensured that TABs have the necessary competence (technical and personnel) for carrying out their tasks

Table 6-1: Logic framework				
Aspect	**Problem Definition and Identification of Needs**	**Objective**	**CPR Provision**	**Anticipated benefits**
Notified bodies	Under the CPD there were concerns about the competency of NBs, which resulted in mistrust in the reliability of CE marking. Furthermore, NBs were not always recognised across borders, which meant that manufacturers had to go to NBs in each country where they wanted to sell (generating additional costs for manufacturers). The CPR thus sought to ensure that all NBs perform their functions to the same level and under conditions of fair competition throughout the Union.	Credibility	Articles 43-47	• Increased legal certainty and transparency regarding the rules • Ensured that NBs have the necessary competence (technical and personnel) for carrying out their tasks • Ensured the impartiality of NBs and addressed issues relating to conflicts of interest • Increased credibility of the CPR •
Notifying authorities	Under the CPD there were concerns about the competency of NBs. In order to ensure a coherent level of quality in the AVCP of construction products, the CPR thus established requirements applicable to the authorities responsible for notifying and overseeing the NBs.	Credibility	Article 40-41	• Increased legal certainty and transparency regarding the rules • Ensured that NBs have the necessary competence (technical and personnel) for carrying out their tasks • Ensured the impartiality of NBs and addressed issues relating to conflicts of interest • Increased the credibility of the CPR
Simplified testing procedures	The simplified procedures provided for in Chapter VI of the CPR did not exist under the CPD. While guidance papers outlining some of these procedures were available under the CPD (e.g. Guidance Paper M was widely used for windows), these documents were not legally binding. As a result, some economic operators may not have made use of these provisions, or these procedures may not have been applied uniformly by all economic operators and in all MS. In accordance with the Smart Regulation agenda, the EC will seek wherever possible to exempt micro-enterprises from EU legislation or introduce special regimes so as to minimise the regulatory burden on them. Recognising that testing of products can raise cost issues for small manufacturers, the CPR sought to reduce the cost to micro-enterprises of placing construction products, which they have manufactured, on the market.	Simplification	Chapter VI	• Increased legal certainty and transparency regarding the rules • Increased ease of compliance • Reduced costs for SMEs and micro-enterprises • Enhanced potential for innovation • Enhanced competitiveness of EU manufacturers

Table 6-1: Logic framework				
Aspect	**Problem Definition and Identification of Needs**	**Objective**	**CPR Provision**	**Anticipated benefits**
Information campaigns	Under the CPD, it was evident that stakeholders in the construction sector suffered from an information deficit. In order to inform the construction sector, particularly economic operators and users of construction products, of the establishment of a common technical language, the distribution of responsibilities between individual economic operators and users, the affixing of the CE marking on construction products, the revision of the basic requirements for construction works and the systems of assessment and verification of constancy of performance, the CPR provided that the Commission and the MS should, in collaboration with stakeholders, launch information campaigns.	Clarification	Although not a mandatory provision, this aspect is mentioned in Recital 54 of the CPR.	• Improved awareness of the CPR in the construction sector
Market surveillance	Under the CPD, market surveillance and enforcement were practically absent. In some cases, this may have led to abuses of the system (e.g. products falsely CE marked entering the EU market).	Credibility	Articles 56-59	• Increased compliance with CPR • Increased credibility of the CPR • Improved competitiveness for EU economic operators
Views on CPD derived from, inter alia, RPA (2007): The Policy Options for Revision of Council Directive 89/106/EEC, report prepared for the European Commission (http://rpaltd.co.uk/projects/cpd-ia)				

6.3 Effectiveness

6.3.1 Matters to be addressed

This criterion concerns the extent to which the CPR's objectives (in terms of simplification, clarification, credibility and free movement) and anticipated benefits have been achieved or are expected to be achieved in the future. It also concerns the factors that hinder or facilitate their realisation, taking into account their relative importance.

Table 6-2 shows the questions and judgement criteria relevant to the evaluation criterion of effectiveness.

Table 6-2: Questions and judgement criteria - Effectiveness

Questions	Judgement criteria	Comment
Have the objectives and anticipated benefits of the CPR been achieved in practice?	Whether stakeholders consider that the CPR has achieved its objectives and anticipated benefits	Analysis provided in Section 4
What factors (if any) are hindering the realisation of objectives and anticipated benefits?	Whether stakeholders have identified any factors that are hindering the realisation of objectives and anticipated benefits (e.g. barriers to the effective implementation and/or application of the CPR)	Analysis provided in Section 6.3
To what extent are the objectives and anticipated benefits of the CPR expected to be achieved in the future?	The extent to which factors hindering the realisation of objectives and anticipated benefits can be addressed	Analysis provided in Section 6.3
Are there any aspects that could be improved?	Whether stakeholders have identified any areas for improvement	Analysis provided in Section 6.3. Note that detailed recommendations are provided in Section 8.

6.3.2 Outcome of the analysis

Definitions

As noted in Section 4, this aspect of the CPR has been effective in terms of **reducing ambiguity and enhancing legal clarity** and **increasing ease of compliance and enforcement**. Nevertheless, stakeholders have indicated there are some terms and concepts referred to in the CPR that would benefit from further clarification, or new definitions.

For instance, it has been indicated that the definition of a construction product provided in the CPR leaves **too much room for interpretation**, and **potentially excludes important products**. For example, several organisations involved in conformity assessment highlighted difficulties with the definition of a 'construction product' and in determining the difference between this and 'construction works'. A Finnish public authority noted that the Commission had provided contradictory guidance. For example, railings for roads were considered to be construction works, but (as a result of the Commission's FAQs) these have since become construction products. A German public authority made a similar comment, citing the case of in-situ concrete barriers. This has, to some extent, created confusion within industry.

Stakeholders have indicated that the following terms would also benefit from further clarification, or **new definitions**:

- Non-series production process
- Construction works
- Identification code
- Single user/customer
- Individually manufactured.

Some stakeholders, including an organisation involved in conformity assessment in Austria and public authorities in Germany and the Netherlands noted that there has been some confusion concerning the terms 'making available on the market' and 'placing on the market'. In general terms, the distinction between 'making available' and 'placing on the market' is supposed to reflect the different roles that economic operators may undertake and the need for compliance throughout the distribution chain (as indicated in "*The Blue Guide on the Implementation of EU Product Rules*")[104]. However, information from consultation suggests that this distinction is not well understood. It was also noted that the CPR is missing the definition (and obligations) of an end-user.

Finally, it should be noted that many stakeholders have indicated difficulties with the term 'Specific Technical Documentation' and what exactly this should comprise. This issue is discussed at length in the section on '*simplified procedures for products covered by hENs*' below.

Additional and/or more detailed definitions, either in the CPR itself, or provided through other means (e.g. Guidance documents, Commission FAQs, etc.), may enable the full benefits of this aspect of the CPR (in terms of 'reduced ambiguity and enhanced legal clarity' and 'increased ease of compliance and enforcement') to be fully achieved in the future.

Obligations of economic operators

As outlined in Section 4, this aspect of the CPR has been effective in terms of achieving the following intended benefits:

- Increased legal certainty and transparency regarding the rules
- Increased ease of compliance and enforcement
- Facilitation of market surveillance by authorities
- Increased respect of legal obligations by economic operators.

Nevertheless, several stakeholders have indicated that there has been an increase in the administrative burden on economic operators as a result of this aspect of the CPR. As noted in Section 4, more than half of companies indicated that this aspect of the CPR has not had any effect in terms of **making compliance with the legislation easier**. Indeed, many stakeholders indicated that the administrative burden on economic operators had increased as a result of clarifying their obligations (in particular due to the DoP requirements). For example:

> *"Experience and feedback from the concerned stakeholders reflects that the administrative burdens for the manufacturers, importers and distributors has increased significantly".*

[104] European Commission (2014): Blue Guide on the Implementation of EU Product Rules, available at: http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_type=254&lang=en&item_id=7326

"Very onerous on small to medium companies having to produce individual CE / DOP certificates on all products produced and to each different standard even though it could be the same product meeting several different standards…"

"Higher administrative effort, translation costs, legal uncertainty regarding the DoP content, unsettledness in the distribution chain."

"IT adjustments and increase in capacity was required to create the declaration of performance, archive and can maintain."

"…The gathering and posting of supplier DOPs has been a major effort and forced us to update our intranet and internet architecture. It has cost us significant effort & manpower."

"Much, much more bureaucracy, more paperwork, more irritation on the market about what the DoPs stand for or are necessary for etc."

"At least 1-2 persons have been occupied for making and translating the DoPs. Since all technical data for our products was published before the CPR anyway (we own more than 20 ETAs) the DoPs are just a waste of time. This time missing for the development of new products."

"Significant resource transferred from innovation to administration to prepare DoPs"

It should be noted that some of the costs identified by stakeholders may be one-off costs associated with the transition to the CPR (e.g. IT adjustments), while others will be ongoing costs (e.g. preparation of DoPs). It is possible that by addressing the issue of increased administrative burdens, the full benefits of the CPR may be realised in the future.

In relation to the obligations for economic operators, some areas for improvement have also been identified. Firstly, it has been indicated that **some economic operators are still ignorant about their responsibilities under the CPR**. During consultation, around 80% of companies (mostly manufacturers) claimed to have a good technical knowledge, or were highly knowledgeable about CE marking, DoPs and hEN**s.** Stakeholders have, however, highlighted that **importers and distributors are not always aware of their obligations under the CPR**. For example, one company noted that *"most importers are not aware that they can also be manufacturers and what are the duties and chances [responsibilities] of the position of manufacturers".* An organisation involved in conformity assessment also noted that *"DIY stores are not sure how to handle the provision of DoPs and often don't know that this might be an issue for them".* Stakeholders also indicated that there is uncertainty regarding what to do with documentation. As noted by one company *"wholesalers etc. [are] just collecting documents (DoP). They don't use them".*

Table 6-3 presents companies' responses to the question "*Please indicate your level of knowledge relating to the following concepts under the CPR*". From this data it appears that importers and distributors are slightly (albeit only marginally) less familiar than manufacturers with the key concepts of the CPR (specifically CE marking, EADs, ETAs, hENs and AVCP). Interestingly, importers/distributors are more aware than manufacturers about PCPC. This is expected given that importers/distributors are more likely to be trading between MS. Caution should be exercised in drawing concrete conclusions from the data presented in the table. This is because there is a significant difference in the actual number of manufactures (140 in total) versus importers/distributors (only 13 in total) that responded to this question.

Table 6-3: Companies response to the question - Please indicate your level of knowledge relating to the following concepts under the CPR			
Stakeholder	**Never heard of/not sure**	**Familiar/knowledgeable**	**Good technical knowledge/expert**
CE marking			
Manufacturers	2%	9%	88%
Importers/distributors	0%	17%	83%
DoP			
Manufacturers	2%	14%	84%
Importers/distributors	0%	17%	83%
EADs			
Manufacturers	29%	35%	36%
Importers/distributors	50%	25%	25%
ETAs			
Manufacturers	16%	43%	41%
Importers/distributors	38%	31%	31%
hENs			
Manufacturers	4%	20%	76%
Importers/distributors	15%	15%	69%
PCPC			
Manufacturers	42%	33%	24%
Importers/distributors	50%	0%	50%
AVCP			
Manufacturers	25%	28%	46%
Importers/distributors	42%	17%	42%
Nota bene: manufacturers (n=140), importers/distributors (n=13)			

There are concerns from some stakeholders that the **practical implementation of the obligations still varies**. In some instances this appears to be because economic operators are not fully meeting their obligations under the CPR. For instance, the German authorities have noted that incorrectly or incompletely marked construction products can pass through several hands (e.g. from manufacturer to distributor, intermediaries or importer) without anyone noticing the inadequate or incorrect marking of these product (Germany CPR Report, 2014). A manufacturer noted that distributors are drawing up commercial contracts which shift the responsibility back to the manufacturer. In other cases this appears to be due to a difference in interpretation. For example, in France, a company noted that "*there are still some differences in interpretation regarding the way CE marking is affixed on the product*". Various stakeholders have also noted the absence of any obligations for the end-user in the CPR and noted that it would be beneficial if these were defined.

Declaration of performance

As noted in Section 4, the provisions for DoP under the CPR have been effective in terms of achieving the following intended benefits:

- Increased legal certainty and transparency regarding the rules
- Increased ease of compliance and enforcement.

It should be noted that some stakeholders reported that they have experienced **an increased workload and administrative burden as a result of the provisions under Article 4 of the CPR**, more specifically in relation to the duplication with CE marking information, translating DoPs and testing.

Furthermore, some stakeholders noted that, in some cases, meeting the requirements of the CPR have resulted in the transfer of resources from the development of new products.

Article 5 derogation

While it was anticipated that Article 5 of the CPR would alleviate the financial burden on enterprises, particularly SMEs, it would appear that this benefit has not been achieved in practice; the main reason for this being the limited uptake of this provision[105]. The following reasons have been put forward by stakeholders to explain why this provision is not being used more widely:

- Firstly, **the caveat "*in the absence of Union or national provisions*" has created a lack of legal certainty because it is unclear what constitutes a "Union" and "*national*" provision**. It was indicated that by including the term "*Union*", the provision is made more difficult to apply, presumably as it becomes so all-encompassing and deters companies away from taking advantage of the provision (as there is a higher risk of non-compliance with some unknown "*Union*" rule). It has been indicated that there may be harmonisation issues implicit in the provision, specifically the "*national provisions*" aspect. As one notified body indicated, what is traditional in one MS may not be traditional in another and this needs to be made clearer or more specific, if harmonisation of the Internal Market is to be ensured. A public authority noted that it is unclear what constitutes a relevant national provision (e.g. national standards, national marks, building regulations, etc.). It has also been suggested that the caveat "*in the absence of Union or national provisions"* tends to be used in tandem or to justify the non-application of Article 5(c), leading to some stakeholders questioning how Article 5(c) should be interpreted and applied. Indeed, there is a view that the scope of Article 5 was intentionally defined so strictly that it is relevant to only a handful of situations/companies. It is the view of some stakeholders that once the caveat under Article 5 (i.e. "*in the absence of Union or national provisions*") is combined with the other requirements under Articles 5(a), (b) and (c), only very few situations would qualify for a derogation. For example, it has been suggested that some authorities do not have any desire/intention to see construction products which are used in 'heritage conservation', or in buildings of 'architectural or historic merit', subject to derogations. In such cases, these authorities tend to invoke the initial clause in Article 5 "*where there is an absence of Union or national provisions*" in justifying the case that the derogations are not applicable.

- **There are concerns relating to the issue of liability and the extent to which a manufacturer will (or will not) be covered as a result of taking advantage of the provisions under Article 5**. Some of these concerns are driven by the testing bodies that have an incentive (or conflict of interest) to encourage manufacturers to test their products (rather than take up the derogation). As noted by one notified body, using the example of windows, performance requirements such as those related to safety devices associated with windows are critical to the health and safety of a user. Indeed, if a safety device were to fail, an individual could fall out of the window with potentially fatal results. Under such circumstances, a court may determine that the manufacturer should have drawn up a DoP and provided CE marking on the product, rather than relying on Article 5. As noted on one notified body's website, "*how would a court view a company looking for positive ways to become exempt rather than compliant to the law, especially when costs involved in CE*

[105] Consultation undertaken for this study has not identified a single case where Article 5 has actually been used, although this is not conclusive proof that it is not being applied.

marking are minimal?".[106] Given the potential penalties (fines or imprisonment), they advocate that manufactures should incur the minimal costs associated with CE marking, which translates to fewer companies taking advantage of Article 5.

- With regard to Article 5(a), **there is legal uncertainty as to how industry should interpret and apply the terms 'individually manufactured' and 'custom made in a non-series process in response to a specific order…**'. It was highlighted that some manufacturers are, therefore, choosing not to take advantage of the derogation, for fear of penalties if they are later found to be non-compliant as a result of misinterpreting the provisions. However, some stakeholders have reported that some manufacturers are taking advantage of the lack of legal certainty and interpreting the provisions in a manner that benefits their organisation (and perhaps, reflects their perception of the chances of detection during market surveillance and/or action being taken by an authority). An industry stakeholder suggested that some manufacturers of doors and windows may be interpreting the term '*individually manufactured*' widely and exploiting the ambiguity of the term so as to avoid the obligation of drawing up a DoP and affixing the CE marking. In such cases, it appears that some manufacturers have failed to take into account all of the requirements of Article 5(a), in particular, that it requires 'a manufacturer' to install the construction product. A few stakeholders recognised that some explanatory guidance[107] has been prepared by the Commission; however, they questioned the method employed to clarify matters (i.e. the legal status of the explanatory document published on the Commission's website) as well as the validity of the interpretation provided by the Commission.

- **There is some confusion as to when Article 5(b) is applicable**. Information from consultation shows that there is some ambiguity as to when a construction product can be considered to be "*manufactured on the construction site for its incorporation in the respective construction works*" and that the lack of legal certainty relating to Article 5(b) means that organisations are not taking advantage of the derogations (and associated benefits), even where they are entitled to. Some uncertainty may relate to contradictory views from other authorities regarding what should be taken into consideration under Article 5(b). Indeed, one public authority questioned whether the volume or type of construction products being manufactured on site should be taken into consideration when deciding whether/how to apply Article 5(b).

It would appear that there is some interest amongst stakeholders in the uptake of the Article 5 derogation and addressing the above issues may enable the anticipated benefits of this provision of the CPR to be effectively achieved in the future.

E-supply of DoP

With regard to the delegated act on the e-supply of the DoP, it has been mentioned that archiving obligations are not sufficiently regulated. When making a DoP available online, producers will need to ensure that the content of such a declaration is not altered after it has been posted online. If the product changes, e.g. due to variation of materials used in its manufacture, the DoP information of

[106] Buildcheck website, Is the heritage sector exempt from CE Marking? Accessed at http://buildcheck.co.uk/triple-glazing-affect-ce-marking/

[107] European Commission, Explanations on Art 5(a) of the CPR, CPR 07/07/1. See: http://www.kwaliteitbouwprodukten.nl/wp-content/uploads/2014/04/CPR-07-07-1-Individual-and-non-series.pdf

the current product must be made available. However, there is a question of what happens to the DoP of the discontinued/superseded product (i.e. should this information be archived? If both DoPs are available simultaneously, then this could lead to confusion). In the view of the German authorities (Germany CPR Report, 2014):

> *"Uniform (European-wide) requirements for data security, obligations to archive and* update and unlimited access must be ensured".

Similarly, an Austrian conformity assessment body commented:

> *"It is notable that many companies post the DoP online but forget to update it. They essentially upload it and then forget about their future DoP obligations with regard to future products".*

Specific recommendations on CPR derogations and simplified procedures are provided in Section 8. For further information, the reader is referred to Topical Report No. 4 on CPR derogations and simplified procedures.

CE marking

As noted in Section 4, the provisions for CE marking under the CPR have been effective in achieving two of the three anticipated benefits:

- Increased legal certainty and transparency regarding the rules
- Increased ease of compliance and enforcement.

Enhanced free movement of construction products has not been achieved to the extent expected, in part due to quality marks at a national or local level and also the relatively short time period since the CPR came into effect. Some stakeholders also indicated that it is not economically viable for manufacturers to export their products to other MS (e.g. It is not economically viable for Ireland to export steel).

One construction industry stakeholder reflected that:

> *"[The] CPR has slightly enhanced the free movement of construction products as unlike with the CPD, CE marking is applicable to all European countries. But the principles that allow for the free movement of construction products were already laid down in the CPD. Besides that, it should be emphasised that the main obstacles to the free movement of construction products are the national marks and national requirements."*

Specific issues in relation to quality marks are identified in the box below.

Quality marks

For the purposes of this study, the **quality marks have been grouped into three categories (standards-related marks, de facto mandatory marks and market-driven quality marks) to reflect how these marks are typically perceived by companies.** These are not legal categories, but simply reflect the fact that quality marks possess certain common properties which pose common challenges to manufacturers[108].

[108] In this context, it should be noted that national/quality marks do not necessarily/always fit perfectly into the categories identified (e.g. a mark could be de facto mandatory and also market driven); however, this grouping allows for some consideration of the problems posed and possible solutions.

Standards-related marks[109] are used, in this context, to refer to quality marks which are directly or indirectly supported by, related to, linked to, or measured against standards which are of relevance to the CPR. According to the CPR, MS are not to introduce any references, or should withdraw any references, in national measures to a marking attesting conformity with the declared performance in relation to the essential characteristics covered by a harmonised standard other than the CE marking. Put simply, quality marks are permitted under the CPR, so long as they do not cover essential characteristics and fulfil a different function to the CE marking. Only the CE mark can be used to demonstrate compliance with the CPR. **The main problem with standards-related quality marks is that it is not always clear to manufacturers whether or not they fulfil a different/complementary function to the CPR, safety assessments, CE marking (e.g. in terms of covering essential characteristics) and/or whether, overall, they potentially confuse third parties as to the meaning of the CE marking**.

De facto mandatory marks[110], are used in this context to refer to quality marks which claim to be "voluntary"; however, **they are effectively (de facto) mandatory for manufacturers as they will be unable to sell their products on certain markets, or in certain sectors, without them**. These include cases where quality marks are (compulsory) requirements imposed under public procurement rules or by insurers (without which insurance cannot be obtained). Indeed, Construction Products Europe (CPE)[111] recognises that voluntary marks remain de facto necessary to sell in countries where the AVCP system is perceived as inadequate; when imposed by controls on building site/insurances; and when linked to incentives (e.g. renovation). Some stakeholders had a very strong view that more needs to be done in this area by the Commission to address public bodies, or private bodies acting as a public undertaking, that seem to be imposing additional national requirements/standards that impede the free movement of CE marked construction products and contradict EU Treaty level provisions. In this context, some manufacturers have argued that Article 8(5) is vague and MS have used Recital 33 (which notes that other markings may be used, provided that they help to improve the protection of users of construction products) as justification for these marks.

Market-driven quality marks[112], in this context, refer to those quality marks which are recognised and highly rated by customers and consumers. In many cases, they do not clash with the CE marking and, technically, do not impede the free movement of construction products.[113] However, they occupy a very strong position in the market and, as such, effectively become barriers to trade as manufacturers are unable to trade their products without these. Or put another way, customers (consumers) will not buy products which do not have these quality marks. For these marks, **the main problem is that that there is no mutual recognition between these marks (or cross-border benefit) which reinforces their importance at the national level**. Where this practice exists, it is **SMEs who are hit hardest,** as larger companies can rely on their good reputation and resources to gain more accreditation.

For further information, the reader is referred to Topical Report No. 3

[109] Stakeholders have identified various national certifications/quality marks which may qualify under this category, including the BBA certificate and Kitemark in the UK, NF228 standard in France, and the "Bauregelliste" in Germany.

[110] Examples of such marks identified by stakeholders include the HAPAS (Highways Authorities Product Approval Scheme) in the UK and CEKAL certification and CSTB certificate (Document Technique d'Application (DTA) approval) in France.

[111] CPE (2014): The manufacturer's point of view by Construction Products Europe (CPE), available at http://www.buildingtestexpo.com/assets/files/Proceedings2014/anne_minne.pdf

[112] Examples of such marks identified by stakeholders include Benor (Belgium) and Komo (Netherlands).

[113] For example, KOMO in the Netherlands has set out the differences between KOMO and CE marking to justify that they are incomparable. See http://en.komo.nl/files/84_engelstalige-leaflet.pdf

In relation to CE marking, the following areas for improvement have been identified:

- Firstly, **there is a duplication of information, which is already provided in the DoP, in the CE marking information**. 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 accompanying packaging) and costs to industry. **Looking to the future, it may be necessary to address the duplication issue in order to increase the ease of compliance for economic operators**.

- Some stakeholders indicated that **it is not always possible for manufacturers to supply all of the required information on the CE marking label in an understandable way for some construction products**. For instance, for small construction products there are difficulties associated with physically including a large amount of information in the CE marking. The cost of printing CE marking labels is also an important consideration for low-cost construction products. For larger construction products (particularly those sold in bulk form), difficulties have arisen in affixing the CE marking label to the construction product. In this case, the CE marking is typically provided with the accompanying packaging or documents; however, providing a paper copy of the CE marking with the product is not only burdensome (in terms of human resources and financial costs) but also results in additional environmental impacts. It has also been indicated that the CE marking of kits that are put together on the construction site is not practically possible and that information is lost when the CE marking labels on construction products with aesthetic purposes are removed (with no value gained in terms of the resources and effort put in).

- Some stakeholders have also indicated that **the information included in the CE marking itself could be simplified**. For instance, a company and public authority questioned the usefulness of the two last digits of the year in which the CE mark was first affixed, with the latter commenting …"*Most of the information required to the CE marking is just meaning unnecessary extra cost to the manufacturers without any added value. Especially 'the two last digits' and 'the level and class of the performance declared' are to be deleted*."

- **There is a misunderstanding on the market as regards the meaning of the CE marking within the context of the CPR**. In this context, some large enterprises have been accused of marketing the CE marking as a 'quality' label, with the market then perceiving the CE marking as the gold standard that must always be followed. Other stakeholders perceive the CE marking as a 'safety' label and incorrectly believe that it indicates the product is 'safe' for installation. According to some manufacturers, some purchasers/end-users believe that all construction products should carry the CE marking. Consequently, they demand that manufacturers apply the CE marking even when it may not be within the scope of a hEN. Thus the voluntary option of applying for a EAD/ETA has, for some operators, become de facto mandatory as a result of the market operating under the mistaken belief that all construction products must carry the CE marking. It would appear that some purchasers and end-users are demanding that products carry the CE marking even where there is no hEN (e.g. for fear of not complying with the CPR) and that, in some cases, manufacturers are applying hENs to products that are not strictly covered by a particular hEN. It has also been reported that parts of industry do not understand that the CE marking indicates that the product conforms to declared performance for a specific intended use (as opposed to the performance of the product for all potential uses) and that the CE marking gives an indication as to the performance of a product and does not indicate whether the product is

'safe'[114]. In addition, some stakeholders indicated a lack of clarity as to the language that the CE marking label itself should be in. Further benefits may accrue in future if these issues are addressed. In particular, **clarifying the meaning of the CE marking within the context of the CPR should bring additional benefits, notably in terms of increased legal certainty and transparency regarding the rules and increased ease of compliance and enforcement.**

Specific recommendations on CE marking and quality marks are elaborated in Section 8. For further information, the reader is referred to Topical Report No. 1 on CE marking and Topical Report No. 3 on Quality Marks.

Simplified procedures for products not (fully) covered by a hEN (EADs and ETAs)

As noted in Section 4, only nine EADs have been published. Hence, the anticipated benefits of this aspect of the CPR have not (yet) been fully realised.

It would appear that **the delayed publication of EADs has led to confusion among stakeholders** (the nine EADs were not cited in the OJEU until July 2015). An Austrian stakeholder, for example, questioned whether they should certify products according to ETAGs or wait for a EAD to be developed. Stakeholders from Hungary reported that the existing ETAGs are problematic for use under the CPR, which is a serious hindrance to business activities. Problems have also been reported for notified bodies, for example, a public authority in Croatia noted that using ETAGs as EADs has resulted in issues for the notification of notified bodies. It has been noted that "*As long as no new EAD is published all the other manufacturers applying for an ETA on the same basis are blocked (very large negative impact)*". Similarly, it has been noted that:

> *"Procedure for EAD elaboration has been under development for more than a year and still there are points to correct .... This uncertainty has discouraged manufacturers to follow this path during 2013 and the first month of 2014."*

In order to **enhance the credibility of the CPR**, it is important that the EAD/ETA system is understood and employed by industry. As noted previously, this route to the CE mark is voluntary and if industry perceives it as inadequate or complex, they may elect to certify innovative products with voluntary or national marks/requirements - which may act as a barrier to the free movement of goods.

According to EOTA, ETA currently only covers those characteristics that have been agreed upon between the manufacturer and the TAB. With regard to the information that must be contained within the DoP, Article 6(3)(g) refers to the ETA, while the CE marking is based on the essential characteristics in the DoP. More specifically, Article 6(3)(g) requires the DoP to contain all essential characteristics within the corresponding ETA (using NPD, where applicable), while Article 26(2) and Article 9(2) mean that the CE mark will cover only those characteristics agreed upon between the manufacturer and the TAB, with no use of the NPD option. Consequently, **it is possible for manufacturers to use voluntary markings for essential characteristics that may be listed within the EAD but have not been included in the ETA**, with these voluntary marks linked to the ETA rather than the DoP. As noted under Article 8(3) – the CE marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics covered by…the ETA. EOTA have noted that this is a situation that they want to avoid. EOTA have suggested that to improve the consistency of the ETA system, any future revision

[114] Although it should be noted that the Commission and some national PCPC have tried to clarify this misunderstanding on the meaning of CE marking under the CPR (e.g. see FAQ 33, available at: http://ec.europa.eu/growth/sectors/construction/product-regulation/faq/index_en.htm)

of the CPR should address this issue and ensure that Article 8(3) refers to the relevant DoP rather than the ETA, or that the ETA should include all essential characteristics (employing the NPD where appropriate) as noted in the EAD.

According to EOTA, a manufacturer should be able to draw up the DoP, and CE mark the product, based on a ETA for a period of at least five years, so as to recoup any investment in the ETA process. It is possible that a product will subsequently fall within the scope of a hEN (i.e. CEN modifies the assessment methods in a hEN or where a hEN and EAD have been developed in parallel). According to Article 17(5), the manufacturer should rely on the hEN at the end of the co-existence period. This being the case, it is possible that prior to applying for a ETA, if a manufacturer believed that a hEN could be modified, or a new hEN would be introduced in the near future, they may be reluctant to apply for a ETA and invest resources without the guarantee that they could CE mark according to that ETA process for a fixed period of time. It is possible that this uncertainty may negatively affect the competitiveness of innovative products and their manufacturers.

Some stakeholders have raised issues in relation to the confidentiality of the EAD process, suggesting that when a manufacturer submits an application for a ETA, other manufacturers of similar products are hampered until the EAD is published. As the evolution of the EAD is confidential, other companies do not have any information on the specific requirements for their products nor do they have the opportunity to influence the content of the EAD. This can lead to a situation whereby other producers' notice, after citation of the adopted EAD in the OJEU, that specific features of their products are not sufficiently taken into account, which in turn leads to a revision of the EAD, combined with uncertainty in the market and for the manufacturer. In particular, SMEs (with limited human resources) could, up to now, be represented by their associations in the creation and development of ETAGs. This is no longer possible in the creation and development of EADs. SMEs would, therefore, need to invest more resources in order to introduce their innovative products to the market.

Several stakeholders have also noted **that there is a lack of notified bodies that are able (or willing) to carry out assessments**. For example, one public authority in Bulgaria noted that the EAD system lacks a sufficient number of notified bodies to assess the compliance of products. In the Netherlands, one company explained that:

> *"The current procedure is by far not clear enough on certain aspects. One of the biggest issues we currently encounter is that when an EAD is drafted, the bodies responsible for conformity assessment, cannot or will not (due to economic reasons) get a notification for that particular EAD. This provides a paradox as there is an EAD, but no one who is willing to carry out the assessment tasks therein. This problem should be addressed to ensure that the manufacturer can sell his product within the EU."*

Responses from consultation also suggest that **it is more difficult for manufacturers to obtain a ETA if they are located within a country that does not have a designated TAB** (as indicated in Section 3, Malta, Lichtenstein, Bulgaria and Estonia do not have a designated TAB).

Clearly, the perception that the EAD/ETA system is time consuming and expensive, or that there is a lack of notified bodies or TABs, may hinder the uptake of these simplified procedures, and the realisation of the anticipated benefits.

Several public authorities and organisations involved in conformity assessment also noted that there is a **lack of funding for TABs and that contributions from MS for drawing up of EADs varies from country-to-country, which results in unfair competition**. Authorities in France, for example, have noted that insufficient funding from the EU will inevitably lead TABs to shift the costs for developing

EADs onto the manufacturers requesting ETAs, which risks leading to the development of customised documents thus departing from the spirit of a harmonised technical specification.

Several stakeholders noted that the **ETA only indicates the performance values from tests and does not contain information on the conditions and assumptions under which the product's performance was determined**. An engineer in Germany, for example suggested that the ETA should also contain the conditions underpinning the tests to better ensure that when construction products are assembled into works, they all meet their declared performances. A public authority in Germany has similarly noted that it is important to know the conditions and assumptions under which a product's performance has been determined and that Article 26 of the CPR should be supplemented accordingly (Germany CPR Report, 2014). The French authorities have suggested that the ETA should be provided in an annex to the DoP, which would provide more accurate information (France CPR Report, 2014).

PCPC

As noted in Section 4, the anticipated benefits from PCPCs have not (yet) been fully realised. Two main factors appear to be hindering the full realisation of anticipated benefits from PCPC:

- Firstly, **many stakeholders are not aware of the existence and role of the PCPC**. As indicated in Section 4, around 40% of companies are aware of the PCPC in their own country, but only around 20% are aware of the PCPC in another EU country. As remarked by one stakeholder from Germany *"PCPCs are not known - knowledge / information about these contact points should be published!"* ; and

- Secondly, **PCPC can be slow to respond to requests for information and the information they provide is often poor**. As noted by one company in the Netherlands *"…all the information provided is very carefully formulated and most of the time does not provide answers/solutions. In one particular case we have been told that explaining the CPR is not 'in the scope' of the PCPC*." In Slovenia, one SME stated that they felt practical information which is easy to implement is lacking from the PCPC; answers are provided in legal language which is difficult to comprehend. A construction industry stakeholder from Germany noted that even simple queries (e.g. how does a company determine whether its products are construction products or if there is a standard available for a certain product) are not sufficiently answered. The stakeholder explained that he would expect clear answers to such queries, possibly together with an A4 list of the relevant standards, but the PCPC is not capable of supplying this. The stakeholder explained that part of the problem is the fact that these answers need to reflect both harmonised requirements, as well as national building regulations. Stakeholders have also complained that information is provided without being translated; for example, one stakeholder commented that "*In most of the cases the given answer is limited to quoting of CPR. In some cases other regulations are showed. The biggest problem is the language barrier, but on the other hand you could not demand to translate the national construction regulation to every EU language. But maybe, it would be possible to implement translation into English, the official language of EN standards".*

The authorities in Germany report that they conducted a field test of PCPC at the beginning of 2014 (Germany CPR Report, 2014). In this test, the Commission's list of PCPC was found not to include addresses for the contact points of Greece, Latvia or Luxembourg. Of the 26 remaining PCPC, 21 responded to a query within a few weeks and provided the information requested. Five PCPC did not reply to an email enquiry. Systematic enquiries from a company in the field of fire detection technology also had rather unconvincing results. Authorities in France have reported that it is

difficult, given a subject such as construction, to provide a clear, legally sound, comprehensive response within 15 working days (France CPR Report, 2014). It is also worth noting that the German authorities have reported that **PCPCs would be overburdened if construction companies and consumers actually contacted the PCPC** to find out what requirements certain products need to fulfil for specific uses.

The French authorities have suggested that the role of PCPC should be clarified and that harmonised guidelines should be drawn up concerning the operation of PCPC and the nature of the information to be provided (France CPR Report, 2014). In this regard, one company noted that the role of the PCPC may become more important in the future when declaring performances related to environmental objectives, as these objectives vary greatly from country to country.

It was frequently stated that PCPCs are unable to provide legally binding advice for practical implementation of the CPR. It was suggested this could be improved by establishing a European helpdesk within the Commission that could provide legally binding practicable answers to questions. The Finnish authorities have suggested that authorised call centres are needed to solve practical problems faced by manufacturers and other parties (Finland CPR Report, 2014).

One public authority noted that the key problem is that when companies approach the different authorities responsible for providing advice on construction products, they are sometimes given slightly different answers to the same question, and then choose the one which is most advantageous to them. For this reason, public authorities in the Czech Republic are currently trying to develop a coordinating mechanism which would allow them to direct queries to the most appropriate person and avoid providing conflicting information.

Harmonised standards

As noted in Section 4, information from consultation indicates that the mandatory nature of hENs under the CPR has had some success in terms of achieving one of the four anticipated benefits, namely **improving legal certainty**. However, this aspect of the CPR has been less effective in terms of **enhancing the free movement of construction products** within the EU (as harmonised standards were already widely applied under the CPD) and enhancing the credibility of the CPR.

Around half of public authorities and organisations involved in conformity assessment were of the view that the mandatory nature of hENs under the CPR has had a positive effect in terms of **improving legal certainty**. However, a third of public authorities and close to half of organisations involved in conformity assessment indicated that this aspect of the CPR has had no effect in this regard. **There is a view that many hENs are outdated, inadequate, or incomplete.** This is problematic because **the CPR obligates manufacturers to apply a hEN even when deficiencies are known**[115]. For example, the German authorities have noted that "*at this point of time harmonised standards are in some cases incomplete and insufficient in terms of safety".* An organisation involved in conformity assessment identified that "*many standards need to be adapted to the requirements of the new regulation (CPR), especially in the part of the declaration of performance and CE marking (annex ZA*)"[116]. Concerns have also been raised about the extent to which existing hENs take into account national requirements and circumstances. In this regard, one company noted that the standardisation process often leads to bad compromises and standards that are riddled with loopholes, which is the main reason why Germany felt it was necessary to have the Ü-mark.

[115] This is emphasised by the statement in OJEU (2015/C 054/02) which carries the sentence: "*The provisions of Regulation (EU) No 305/2011 prevail over any conflicting provisions in the harmonised standard*s".

[116] Note that the Commission has recently agreed with CEN a revised version of Annex ZA, which should bring it more in line with the CPR.

It has been noted that linking the legal obligations of the CPR to hENs is problematic with regard to standards that contain deficiencies and shortfalls. According to CEN "*To ensure that a European Standard is still current, it is reviewed at least within five years from its publication. This review results in the confirmation, modification, revision or withdrawal of the EN*"[117]. However, as identified by the German authorities (Germany CPR Report, 2014)[118]: "***the most important tool for controlling a hEN in construction products law is not available, i.e. the possibility to repeal a hEN after publication**, as repealing a hEN would also eliminate the option of CE marking. This would shake the confidence of the markets and devalue the investments of manufacturers in CE markings. It would also mean that it was up to member state law to ensure the safety of construction works despite deficiencies and shortfalls in a hEN. The ensuing lack of transparency would be detrimental for the internal market*".

Linked to the above, there is a view that **the process which exists under the CPR for mandating and assessing standards before their citation in the OJEU is obstructive, convoluted and slow and as a result, new standards have not been adopted**. As noted by one stakeholder in the UK: "*The processes relating to the development of harmonised standards continues to be excessively slow*". Similarly, a German stakeholder commented that the procedure for citing hENs in the OJEU seems to take longer than before. CPE has commented that the publication of standards may be obstructed by the process and the voting rules of CEN. Furthermore, once the standard has been adopted by CEN, the official citation in the OJEU may delay standards being applied in full by manufacturers, particularly for those whose products for which CE marking is a new requirement. It was suggested that any means of making clearer and giving a provisional timetable for the publication of standards and their coexistence period, will allow market stakeholders to organise themselves better.

Some stakeholders also pointed out that **the position and needs of SMEs are not taken adequately into account in the harmonisation process**. This may be **negatively impacting the credibility of the CPR**. As noted by one public authority, SMEs in particular find it difficult to cover the costs of implementing harmonised standards and it is, therefore, important that their views are taken into account. The German authorities have reported that **groups such as planners, construction supervision authorities, construction companies and consumers increasingly feel they are no longer in a position to participate in the European standardisation bodies on a voluntary basis**. A company from the UK has similarly explained that, although the new process for hENs has helped to increase the credibility of the CPR, there are concerns about trade associations' input. More specifically, it was stated that **CEN committees often rely on expertise from a small number (e.g. three or four) of the leading European companies, which may result in their being too much input from too few people**. It was felt that the trade associations should try to become more active to ensure that all manufacturers (i.e. SMEs) are better considered when developing hENs. On the other hand, a public authority from Slovakia remarked that because a greater number of stakeholders are involved in the procedure of developing hENs under the CPR (than was the case under the CPD), it is more difficult to reach a consensus and, as a result, the process takes longer. The German authorities have noted that (Germany CPR Report, 2014):

> *"The requirement laid down in Article 17(2) concerning the involvement of all relevant stakeholders in the process of standardization is essential, but the CPR does not provide any further instructions on how this requirement has to be achieved or on who is controlling the implementation. The interaction of EU Commission, SCC,*

[117] CEN (2015): Developing a European Standard, available at: https://www.cen.eu/work/ENdev/how/Pages/default.aspx

[118] Germany CPR Report (2014): National Report on the implementation of the Construction Products Regulation for the purposes of Article 67(2).

CEN consultants, CEN/Bureau Technique/TC/WG and MS within the scope of developing mandates and standards should be improved by transparent, clear and obligatory rules" (Germany CPR Report, 2014)."

Several stakeholders pointed out that companies, particularly those introducing new products, may find it **difficult to identify the correct standard to follow**. One organisation involved in conformity assessment (Sweden) suggested that having to individually communicate each hEN, as well as any modifications to that standard, is time consuming and creates a heavy workload. It was suggested that a more horizontal, fluid system for communicating and disseminating this data would enhance the credibility of the system. Linked to this, a number of stakeholders also expressed frustration that hENs are only published in English, French and German. Consequently, industry in countries where none of the aforementioned languages are the official language often need to pay for translations, which may be particularly onerous for SMEs.

Looking to the future, it will be important to address these issues in order to provide greater legal certainty and increase the credibility of the CPR.

AVCP

As noted in Section 4, this aspect of the CPR has had some success with regards to improving legal certainty and increasing credibility of the CPR. However, the amendment under the CPR is largely perceived as a streamlining exercise and has not had a noticeable impact for the majority of stakeholders.

In terms of scope for improvement, one Estonian industry association was of the view that 5 AVCP systems is still too many and that the process remains complicated. In their view:

"…If we have 2 main questions regarding production (FCP and ITT) and 2 main organisations (producer and notified body), the best and simplest solution is 4 systems. Generally, yes, producers and notified bodies are familiar with system and requirements, but they are "insiders". The system is still very complicated for customers, constructors, construction surveillance, and designers. And there is now time to keep system steady - there are new and new aspects coming (dangerous substances, environmental aspects, sustainability), this makes system more and more complicated and it does not help."

Interestingly, an Estonian public authority also commented that the AVCP system is too complicated and should be simplified. It was suggested that system 1+ should be eliminated or combined with system 1 because it is used only for a very small number of products and these products could be assessed under system 1 if necessary. It was suggested that a simplified AVCP system would be beneficial for market surveillance bodies.

Levels and classes of performance

As noted in Section 4, **the anticipated benefits of this aspect of the CPR have not yet been fully realised. It appears that this is largely due to only a few delegated acts on levels and classes of performance being issued** by the Commission to date and the **relatively short time period that has elapsed since the first delegated acts were published**. The German authorities have noted that levels and classes aim to take account of the range of the BWR and other differences in MS and that insufficient use is made of this instrument in practice. For this reason, the Commission must cooperate with the MS to develop and put into practice a strategy for implementing the system of levels and classes envisaged in the CPR (Germany CPR Report, 2014).

It would appear that, **in some cases, the new regime has resulted in confusion for stakeholders** (i.e. it has not been fully effective in terms of providing greater clarification or enhancing legal certainty and transparency regarding the rules). For example, a public authority in Bulgaria reported that there is some confusion regarding the status of application (binding or not) of the classes and threshold levels already defined in the published hENs and those which have yet to be established in accordance with Article 3 (Bulgaria CPR Report, 2014). A manufacturer in Lithuania also reported that the new regime for levels and classes has caused some confusion. Nevertheless, as noted in Section 4, **some stakeholders did indicate that the new regime is clearer**.

One construction industry stakeholder explained that while, in theory, it makes sense to set out levels and classes of performance, **in practice when classes are introduced, the intervals lead to an illogical situation whereby a product in a given class may differ by more units than products near the border of two different classes**. For instance, if a class has intervals of 50 units (A to 50, B to 100, C to 150 etc.), there may be products with the following parameters: 97 - class "B", 102 – class "C", 140 – class "C". While the first two products are almost identical, they would be put in different classes. Clearly, **this may have a detrimental impact on the credibility of the CPR**.

Several stakeholders noted that **this aspect of the CPR is more time consuming and onerous than the old regime** (i.e. under the CPD) and that **this may have a detrimental impact on the credibility of the CPR**. For example, one organisation involved in conformity assessment noted that the process for organising levels and classes of performance was more efficient under the CPD and 18 months after the CPR has been implemented, no decisions have successfully been put through. In Belgium, an organisation involved in conformity assessment noted that delegated acts merely delay the whole process. Similar views expressed by stakeholders include:

> *"Much more administrative Work. No added value for the stakeholders"*
>
> *"The process now required (EC services must approve new classes/levels) significantly slows down the standardization process".*

An industry association in Ireland explained that, to some extent, Article 27 **undermines the credibility of the CPR** as it has transformed the process from industry adapting a technical standard for the better, to a political process that can be slow. According to a manufacturer in Estonia the new regime for setting out levels and classes of performance has not, and is not likely to, result in many benefits, as it will be much more difficult for technical experts in technical committees to formulate workable classification standards to be referred to from harmonised standards. It was stated that, not only is the process now longer but it can also result in products which are less safe, as technical committees no longer have the possibility to state that there is a minimum level to which a product has to conform to enter the market. Such levels are normally based on technical experience and investigations of previous cases of accidents. Similarly, one organisation involved in conformity assessment suggested that levels and classes should not be introduced via a delegated act by the Commission. Rather, the performance levels should be set out in the harmonised standard and amended via the traditional CEN route.

A number of stakeholders have noted that the new regime for setting levels and classes of performance has the potential to **enhance the free movement of construction products within the EU**. Indeed, organisations involved with conformity assessment in Croatia and Denmark both noted that levels and classes of performance are a sound approach and have the potential to result in positive impacts on the free movement of construction products. Stakeholders in Austria, however, were sceptical as to the impacts that this provision would have, with an industry association noting that the potential for introducing levels and classes via a delegated act will not help to solve the problem of barriers to trade at a MS level. This point was also iterated by a manufacturer in Romania who commented that the free movement of products will not benefit from the setting of

new levels and classes of performance because of the national building requirements that take into account the local specific building design conditions.

Technical Assessment Bodies

As noted in Section 4, the new requirements for TABs under the CPR have not yet been effective in terms of achieving the following anticipated benefits:

- Increased legal certainty and transparency regarding the rules
- Ensured that TABs have the necessary competence (technical and personnel) for carrying out their tasks
- Increased credibility of the CPR

It has been noted that the requirements for TABs did not fundamentally change under the CPR and that many TABs already satisfied similar criteria under the CPD. Whilst this facilitated a smooth transition from the CPD to the CPR, it has also meant that **there has been no perceived benefit in terms of ensuring that TABs have the necessary competence for carrying out their tasks.** One construction industry stakeholder (from Germany) noted that individual MS designate TABs for all product categories listed in Annex I, even if they are not competent for all of them. In the view of this stakeholder, there is a lack of detailed requirements and control mechanisms to ensure that the expertise of a TAB is considered.

A number of stakeholders noted that **further work needs to be undertaken with regard to harmonising the accreditation process for TABs**. For example, the process of accreditation in Slovenia takes 2 years, while in Denmark it reportedly takes 1 week. Similarly, a Dutch stakeholder noted that there is an absence of a level playing field within Europe on the matter of notification and accreditation, as in their view, the Dutch Council for Accreditation applies the criteria strictly and this is not the case in other countries. **By addressing this issue in the future, further benefits may accrue in terms of enhancing the credibility of the CPR**.

As explained in Section 4, several organisations involved in conformity assessment noted that **the administrative burden on TABs has increased** as a result of this aspect of the CPR. Reasons for this increase in administrative burden, as noted by stakeholders, include:

> *"More administrative handling of files, competences and meetings…".*
>
> *"…increased burden in demonstrating impartiality and competence".*
>
> *"The content and procedures of the technical work is the same, and the process for ensuring competence is unchanged. However, the administrative burden has increased considerably. Also, even if we had a quality management system before, the accreditation process has increased the cost for maintaining the notification".*

Given that TABs charge manufacturers for their service, **this aspect of the CPR is unlikely to have been effective in terms of reducing the cost for economic operators**. The pass-through of costs is implied, in relation to Article 29(4), by one authority in the Czech Republic (Czech Republic CPR Report, 2014):

> *"In connection with a discussion on evaluation of TABs which was opened at the level of SCC-CPR, we are of the opinion that [the] "peer review" procedure is not suitable due to its high costs for TABs and consequently for manufacturers. Also the execution itself will be difficult, e.g. because of documentation kept in national languages."*

Notified Bodies

As noted in Section 4, the strict requirements for notified bodies under the CPR have achieved all four anticipated benefits, namely:

- Increased legal certainty and transparency regarding the rules;
- Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks; and
- Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest; and
- Increased credibility of the CPR.

Several organisations involved in conformity assessment noted that the administrative burden on notified bodies has increased as a result of the CPR. It would appear that this increase is, at least in part, related to the need to gain accreditation in some countries. For example, in the UK, stakeholders noted that following the transition from the CPD to the CPR gaining accreditation was slow, bureaucratic and expensive. One notified body explained that they had spent more than one month without accreditation while another stakeholder commented that UKAS has a monopoly on accreditation and that the fees they charge are relatively high. For example, a full audit of a notified body (including laboratory checks) can cost in the region of £15,000 (approximately €20,000). In the Czech Republic, one notified body estimated the cost of accreditation at hundreds of thousands of CZK. In Germany, one construction industry stakeholder noted that the costs associated with acquiring accreditation have (at least in part) contributed to around 50% of notified bodies ceasing to operate as notified bodies.

In terms of scope for improvement:

- **There is a view that the practices of notified bodies can differ greatly between MS[119].** The French authorities, for example, have reported that they are regularly alerted to divergent practices between certification bodies of different MS (France CPR Report, 2014). It is alleged that some bodies award certification more easily, with the effect of distorting competition. One organisation involved in conformity assessment noted that Article 46 is not sufficiently precise in its wording, and that consequently practices can differ greatly. The stakeholder also noted the quality of audits can vary as a result of the vague wording of Article 52(2). It was further noted that some audits are being carried out over the phone. It has also been indicated that in some MS (e.g. Finland), notifying authorities are not adequately policing notified bodies, which may be leading to divergent practices. Clearly, if it is true that the practices of notified bodies differ between MS, this has important implications in terms of competition. In addition, the perception that not all notified bodies are alike could **reduce the credibility of the CE marking and the CPR.**

- The German authorities have noted that, **when the competence of notified bodies is challenged** (Article 51), **it can take so long for the Commission to review such cases that the notified body concerned can expect virtually no consequences**, even in the case of serious infringements (Germany CPR Report, 2014). It should, however, be noted that the Article 51 procedure has not been used to date and that it is notifying authorities that are primarily responsible for taking appropriate actions to ensure the competence of notified bodies. The German authorities have suggested that the Commission needs to establish a

[119] It should be noted that the Group of Notified Bodies was set up to ensure consistency between notified bodies and the uniform application of procedures.

faster and more efficient procedure in order to guarantee the same conditions for all stakeholders and ensure that credibility is not jeopardised.

- Finally, **concerns have been raised about the confidentiality clause in Article 53(2) of the CPR**. In Poland, the authorities have noted that (Poland CPR Report, 2014): *"The current form of the rule included in art. 53(2), whereby the notified body is obliged to deliver some information concerning negative results of evaluation or verification of performance constancy to other entities, [this] is doubtful. Such information may be considered to be confidential and shall not be disseminated in such a way."* Similarly, the German authorities have noted that (Germany CPR Report, 2014): *"Article 53(2) obligates notified bodies to provide relevant information on negative, and, on request, positive results of assessments to other notified bodies carrying out similar tasks. Providing this information is very problematic. All notified bodies must maintain confidentiality. This is one of the requirements of accreditation. Implementing the obligation under Article 53(2) and maintaining confidentiality contradict each other and can hardly be reconciled. This provision should therefore be deleted or amended to allow confidential data to be treated as confidential by the NB."* It has also been reported that **the surveillance of notified bodies by MS is difficult when, in the accreditation procedure, there is a clause for the secrecy of information collected by the Accreditation Council when doing audits of the notified bodies** (in the case of accreditation).

Notifying authorities

As noted in Section 4, the designation of notifying authorities under the CPR has achieved four of the five anticipated benefits; namely:

- Increased legal certainty and transparency regarding the rules;
- Ensured that notified bodies have the necessary competence (technical and personnel) for carrying out their tasks;
- Ensured the impartiality of notified bodies and addressed issues relating to conflicts of interest; and
- Increased credibility of the CPR

In theory, the rigour with which accreditation bodies perform their role and the methods used to assess notified bodies should be very similar, considering accreditation bodies are members of European Accreditation[120] and peer evaluation should ensure consistency in their individual approach. Nevertheless, information from consultation 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[121] are not yet operational.** As noted by one stakeholder "*In practice there have been large differences in this assessment in the different countries. The criteria were applied very differently and with a different weight*". It is alleged that some bodies award certification more easily, with the effect of distorting competition. In France, one public authority noted that the process for accrediting notified bodies is not clear in the CPR. The stakeholder explained that there is doubt with regard to the ISO standard to be used to assess bodies which carry out tasks within System 2+. In France, the stakeholder was of the belief that ISO/IEC 17065 should be used, but elsewhere the stakeholder has noticed that for the same task within System 2+, ISO/IEC 17020 is used. Public authorities in both Germany and

[120] Available at : http://www.european-accreditation.org/

[121] EC Regulation 765/2008; recital 25 and Article 13

France have suggested that the criteria and procedures for the accreditation of notified bodies should be harmonised across Europe. This is foreseen in Regulation 765/2008, Article 13, which expects EA to "*lay down evaluation criteria and procedures for peer evaluation and to develop sectoral accreditation schemes*". Another stakeholder noted that "*It would be useful to be specified the criteria and procedures for accreditation of notified bodies taking in mind the different product standards, different accreditation standards and different systems of assessment and verification of constancy of performance. It is very important to be unified the rules for accreditation in the field of CPR*".

Information from consultation also suggests that **the accreditation process itself could be improved**. For example, in the UK, stakeholders noted that the process for gaining accreditation is slow, bureaucratic and expensive. One organisation involved in conformity assessment in Greece explained that the length of time it takes to gain accreditation could result in notified bodies losing market share. A public authority in Germany has also noted that there is a need for a uniform approach for setting up notifying authorities. It should, however, be noted that accreditation is not mandated by the CPR.

Simplified testing procedures for products covered by hENs

As outlined in Section 4, information from consultation indicates that there has been a relatively low uptake of the simplified procedures set out under Articles 37 and 38 to date. Hence, the anticipated benefits of this aspect of the CPR have not (yet) been fully realised. Three main factors can be considered to be relevant in this regard:

- Firstly, **there is a lack of awareness and understanding of these provisions by industry stakeholders, particularly SMEs**: As explained in Section 4, there is generally a low level of awareness amongst industry stakeholders regarding the simplified procedures listed under Articles 37 and 38. In relation to Article 38, industry stakeholders commented that the distinction between 'individually manufactured' and 'not individually manufactured' is completely unclear, which could lead to some manufacturers exploiting this simplification and gaining an unfair competitive advantage (this is particularly relevant for doors, windows and metal ceilings)[122]. A notified body highlighted that the term 'individually manufactured' is interpreted differently in various MS and that the 'alternative procedures' that must be as good as those cited in the harmonised procedures are "*scarce and difficult to prove*". A public authority stated that the double reference to 'individually manufactured products' in Article 5 and Article 38 of the CPR creates confusion, particularly because a clear and precise definition of the term 'individually manufactured products' is missing in the CPR.

- Secondly, stakeholders identified that **there are difficulties in demonstrating 'equivalence' and/or providing specific technical documentation**. There is a lack of clarification of what may be considered Specific Technical Documentation which leaves it open to interpretation by different authorities (which may not always result in 'simplification'). As identified by one notified body, it is unclear what this documentation entails and certifying bodies are afraid to be the first one to make a decision on this matter. One public authority also noted that it is not clear how MSAs will evaluate whether the technical documentation that replaces the laboratory testing is appropriate. Some notified bodies/TABs made the point that microenterprises are structurally unable to apply the simplification procedure as, by definition, demonstrating equivalence is generally more complicated than applying the rule.

[122] The case of window makers constructing windows of different dimensions for each client was put forward - could this be interpreted as "individually manufactured" and "custom made"?

Industry stakeholders also indicated that a possible reason for the lack of uptake of Article 37 is that microenterprises typically want to demonstrate that their products are as good as those manufactured by large manufacturers. As a result, there may be a natural reluctance to use procedures which may be perceived as less rigorous.

- Thirdly, **there are doubts over the actual extent of financial savings applicable:** A number of stakeholders have explained that demonstrating equivalence of testing procedures to those set out in the hEN may be just as costly or burdensome as fulfilling the requirements of the standard. Companies provided estimates of the scale of cost savings from the simplified procedures, with the majority indicating savings would be less than 10%. Some respondents considered the cost reduction to be between 10% and 25%, although this may reflect the number/value (€) of products which are able to take advantage of the simplified procedures. One stakeholder noted that the extent of any cost savings as a result of the simplified procedures will be variable and very product and sector specific. For example, a German engineer noted that thousands of small metalworkers or cabinetmakers producing alloy windows or wooden windows could save a lot of money (and possibly also time) if they have used cascading ITT because the hENs for windows and façades are very complex and SMEs cannot afford such testing and development. In contrast, a few industry stakeholders indicated that when they have applied or inquired as to the application of Article 36, the process has been complex and costly, with one company noting that they were required to present the individual type testing data for every individual product (presumably as 'Appropriate Technical Documentation'). Indeed, a stakeholder in the glass industry indicated that it is difficult to find a less onerous method which is 'equivalent' and as reliable as that outlined in the harmonised standard. Wherever possible, specification writers are already using simplified or low-cost procedures to determine the performance, so there is very little financial benefit in applying the simplified procedure.

It is possible that by addressing these issues, there may be greater uptake of these simplified procedures, which may enable the anticipated benefits of this aspect of the CPR to be fully realised in the future.

Finally, it must be noted that some stakeholders disagreed with the Article 37 procedures in principle. Some public authorities and companies noted that the distinction between a microenterprise and small company may be marginal and that **the application of Article 37 could raise competition issues and lead to a distortion of the market**. It has been noted that technical requirements for a product should be the same, irrespective of the size of the enterprise, and so the assessment and determination must also be the same. Furthermore, it is possible that different requirements may undermine the confidence in the CE marking and hence, these procedures should also be extended to larger companies. It has also been noted that **there is a conflict of interest when it comes to a notified body having to advise a microenterprise to take advantage of simplified procedures** (or to apply system 4 instead of system 3), as this recommendation will result in lost revenue for the notified body.

Information campaigns

Generally, information obtained from consultation suggests that **the CPR is not easy for some economic operators to understand, with many requesting clear information** (e.g. in the form of guidance documents, seminars and/or webinars) **on how to fulfil its requirements**. Some stakeholders also pointed to the **need to raise awareness amongst non-professional users of construction products**, for example on the value and meaning of the CE marking, and on what they need to look for in the DoP.

There was some recognition of the help provided by the FAQs on the Commission's website in addressing these concerns, although these do not fully address the issue of simplicity of language/syntax. While one public authority noted that the **Commission's construction products webpage** is useful, it was also noted that it **needs to be updated more regularly and that it would be helpful if all content could be translated into all EU languages**.

An industry association in Slovenia reported that there were **not enough information sessions and workshops** for the implementation of the CPR and that **a lack of funding means that economic operators have had to pay to participate**.

Looking to the future, it would appear that there is scope for additional steps to be taken in all countries to inform and raise awareness amongst stakeholders regarding the provisions of the CPR. Such efforts should target those stakeholders that are traditionally hardest to reach (micro-enterprises and SMEs). Now that the CPR has been in force and all relevant actors are complying with the core aspects of the CPR, such campaigns could perhaps focus on promoting the simplified procedures that seek to alleviate the burdens of complying with the CPR.

Market surveillance

As noted in Section 4, it would appear, based on stakeholders' perceptions, that the anticipated benefits from market surveillance of construction products on the EU market have not been achieved.

Many stakeholders noted that **market surveillance bodies have limited resources and personnel and that these are currently insufficient for a pro-active approach to market surveillance**. Stakeholders explained that this means that market surveillance is only likely to be triggered following a complaint (e.g. from the public, public bodies, contractors, designers, customs, police or other MSAs). In the UK, one company noted that:

> *"UK Government austerity programmes have seen a 70% cut in funding for local authority trading standards offices and hence a proportionate reduction in the number of enforcement officers. These were small operations previously and now their reduced scope of cover means they tend to place CPR non-compliance issues as very low priority relative to their overall responsibilities to ensure trading standards compliance."*

In Malta, a public authority explained that there are no dedicated market surveillance officers for the CPR and that market surveillance officers cover all products falling under harmonised legislation and under the GPSD. In Poland, it was mentioned that more funds are needed for laboratory testing of construction product samples that are taken during inspections.

Construction industry stakeholders in the UK noted that:

> *"Enforcement is non-existent because the subject is too complex for customs officers. The industry has to do this itself. It would be helpful to know who could help with enforcement in each country."*

> *"Through membership and participation with European Construction associations we understand that there is little market surveillance in the majority of other countries due to the lack of resourcing."*

Some stakeholders were of the view that **MSAs take a selective approach to case investigations**. For example, one notified body suggested that many MSAs will only pursue a case if they are confident

they can get a conviction and this obviously impacts on the products they investigate (and how complaints are perceived).

A number of companies noted that compliance checking is more typically undertaken when a competitor tests other products on the market. For instance, one industry association stated that MSAs are not actively pursuing importers of windows and doors who are not compliant with the CPR. This undermines the efforts (i.e. human and financial resources) of manufacturers who comply with harmonised standards and gives those who do not comply with such standards a competitive advantage.

In stating this, it is important to note that it may not necessarily be the case that these complaints have not been followed up. In practice, authorities do not have an obligation to report back to a company that, for instance, has complained about competitors' products. Hence, there might be an issue of perception of action taken versus actual action taken in this instance.

Some differences can also be observed due to national strategic/policy differences. For instance, one organisation involved in conformity assessment noted that, in their experience, the UK authorities are more involved in proactively informing the economic operators, while the Dutch authorities are stricter with enforcement. One industry association noted that market surveillance should cover all economic operators, yet the main action taken is manufacturer audits.

Although it is acknowledged that MSAs are addressing a serious issue in the form of formal noncompliance, stakeholders believe that tackling this problem alone is not enough to fulfil the objectives of market surveillance. For example, one industry stakeholder noted that 'formal compliance audits are necessary but by far not sufficient to foster or establish trust in the system or to ensure a level playing field'. Formal non-compliance must be supplemented by product testing undertaken by MSAs. Indeed, one stakeholder from industry noted that the market surveillance and control of foreign products in retail construction product chains (BAU centres) is weak because only the packaging is checked and no sample tests are undertaken.

However, product testing may be complex and expensive and would again, require additional resources or a new approach. Indeed, the cost of such testing may prevent the market from effective (self) regulation. For example, one industry stakeholder noted that they suspected that a competitor was not in compliance with the CPR, but were discouraged from proving that this was the case because of the complicated laboratory reports that would need to be drawn up.

Stakeholders have noted that **different MS have different approaches to market surveillance and how cases of non-conformity are dealt with**. For example, one construction industry stakeholder in Italy noted that:

> *"I have the reports of all members of my organisation, and I can see a huge difference of levels in member states. E.g.: the Danish member has been already contacted by the national market surveillance. The Italian members can't even find which is the national organisation carrying out market surveillance, and never experienced any control."*

In Germany, construction industry stakeholders noted that:

> *"The quality of market surveillance is very different in the member states - ranging from "non-existent" up to "regular controls". For European producers the differences are often confusing and not always comprehensible but add to bureaucratic burden. There is a need for harmonizing the rules of the market surveillance."*

"There are differences between the EU countries which complicate transnational actions for enterprises."

"Market surveillance is carried out differently in Member States. Some countries seem to be experienced in carrying out such surveillance. Tasks and regulation seem to be different in Member States. It would be beneficial if information would be available at European level how market surveillance works in each Member State."

Several stakeholders noted that **there is a need for greater coordination of market surveillance between countries and at different levels**. In Sweden, for example, a public authority noted that:

"Different Member States work in different ways due to budget and experience. AdCo cooperation opens up possibilities for discussion and streamlining procedures."

Several stakeholders noted that **it is unclear which organisations are responsible for market surveillance and enforcement and that there is a lack of reporting mechanisms.**[123] As explained by one company in the UK "…*We don't know how to find out who undertakes market surveillance in other EU countries?".* Some companies noted that they are aware of importers, smaller suppliers and competitors flouting the CE marking requirements, but that the process of reporting these is unclear. As noted by one company: "*We are seeing economic operators applying the closest standard to CE mark against when there is no directly relevant harmonised standard just to enable them to claim a CE mark for their product*".

Specific recommendations on market surveillance are elaborated in Section 8. *For further information, please refer to the Topical Report on Market Surveillance.*

6.3.3 Summary of findings

The findings of the above discussion (Section 4 and Section 6.3) have been summarised in Table 6-4. From this, it is evident that that the CPR has **successfully improved the clarity of the legal framework** related to construction products. The obligations of economic operators are clearer, the DoP format is transparent, the concept and application of the CE marking has been clearly defined, it is understood that hENs are mandatory and information campaigns run by various stakeholders have been largely successful in clarifying the CPR.

The CPR has successfully **enhanced the credibility of the legal framework**, by streamlining the AVCP process (so as to remove a system which was rarely used), by further defining and harmonising the criteria that notified bodies and TABs must meet, and by requiring MS to designate notifying authorities. Stakeholders have identified that clarifying the concept and use of the CE marking has also increased the credibility of the CPR, although the exact mechanism behind the realisation of this benefit remains uncertain. In contrast, the delay in the citation of EADs, the process by which hENs are drawn up and the length of time it has taken to introduce levels and classes of performance into hENs are perceived as reducing the credibility of the legal framework. Ongoing issues with market surveillance are also serving to undermine the credibility of the CPR.

According to stakeholders the CPR has **not enhanced the free movement of construction products to any great extent**. However, it is important to note that the CPD set the framework and paved the way in terms of enhancing the free movement of construction products. Stakeholders believe that,

[123] This is despite there being reporting mechanisms in place (in line with Article 18(6) of Regulation 765/2008), and information on MSA in the MS provided by the Commission at: http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm

irrespective of the ECJ judgement (case C-100/13), quality marks are likely to continue to prevent the free movement of construction products. Of course, this is a perception and it will be for the Commission to investigate and enforce all potential infringements of the CPR and prevent this from occurring. In terms of increasing free movement of construction products, those changes related to hENs have had little impact (as hENs were already widely applied by industry under the CPD). Although PCPC have been established, their existence could be better publicised to industry and the speed with which they respond to requests and the quality of information they provide could be improved.

With regards to the **simplification of the legal framework**, the possibility to supply the DoP electronically has been welcomed by stakeholders. Article 36 is commonly applied in some sectors, where it is seen to be working well. In contrast, many issues appear to be hindering the full realisation of anticipated benefits from Articles 5, 37 and 38. Many stakeholders have also identified that EADs and hENs are not (yet) contributing positively to the simplification of the legal framework.

In summary, it is clear that **most aspects of the CPR have been effectively implemented** and that **many stakeholders are already benefiting from its provisions**. At the time of writing, nine EADs have been cited in the OJEU and the process of updating hENs is on-going. The Commission is also aware of the issues associated with the simplified procedures/Article 5 and is working closely with all stakeholders to redress any outstanding issues. With this in mind, it may be the case that had this study been undertaken in a year or two, all aspects of the CPR would have been successfully implemented, all of the stated objectives would have been achieved and industry would be reaping all of the intended benefits of the CPR.

Table 6-4: Summary of findings							
Aspect	Objectives achieved[1]				Benefits achieved	Benefits not achieved & reasons why	Key areas for improvement
	Simplification	Clarification	Credibility	Free movement			
Definitions		✓			• Reduced ambiguity and enhanced legal clarity • Increased ease of compliance and enforcement	The anticipated benefits of this aspect of the CPR have been achieved	• There are some terms and concepts referred to in the CPR that would benefit from further clarification, or new definitions
Obligations of economic operators		✓			• Increased legal certainty and transparency regarding the rules • Increased ease of compliance and enforcement • Increased respect of legal obligations by economic operators	The anticipated benefits of this aspect of the CPR have been achieved	• Some economic operators still lack awareness of their obligations under the CPR • In some cases, practical implementation of the obligations still varies
Declaration of performance	✓X	✓			• Increased legal certainty and transparency regarding the rules • Increased ease of compliance and enforcement	• Alleviated financial burden on enterprises (particularly SMEs) has not been achieved due to the limited uptake of the Article 5 derogation	• There is uncertainty as to how and when the Article 5 derogation can be applied
CE marking	✓X	✓	✓	X	• Increased legal certainty and transparency regarding the rules • Increased ease of compliance and enforcement • Increased credibility of the CPR	• Enhanced free movement of construction products has not been achieved in part due to quality marks at a national or local level and the relatively short period of time that has elapsed since the CPR came into effect.	• There is a duplication of information, which is already provided in the DoP, in the CE marking information • Some stakeholders do not understand the meaning of the CE marking in the context of the CPR
Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)	X	X	X		The anticipated benefits of this aspect of the CPR have not (yet) been fully realised	The following anticipated benefits have not (yet) been fully achieved because only nine EADs have been published: • Increased legal certainty and transparency regarding the rules (in particular, for manufacturer concerned) • Increased ease of compliance • Reduced costs for manufacturers • Enhanced competitiveness of EU	• There is a need for more EADs to be published • Under the CPR it is possible for manufacturers to use voluntary markings for essential characteristics that may be listed within the EAD but have not been included in the ETA, with these voluntary marks linked to the ETA rather than the DoP

Table 6-4: Summary of findings							
Aspect	Objectives achieved[1]				Benefits achieved	Benefits not achieved & reasons why	Key areas for improvement
	Simplification	Clarification	Credibility	Free movement			
						manufacturers • Reduced time spent on developing EADs/ETAs under the CPR (compared with the situation under the CPD)	• The ETA only indicates the performance values from tests and does not contain valuable information on the conditions and assumptions under which the product's performance was determined
PCPC	X			X	The anticipated benefits of this aspect of the CPR have not (yet) been fully realised	The following benefits have not been achieved: • Increased legal certainty and transparency regarding the rules • Enhanced free movement of construction products • Increased ease of compliance for companies • Increased ease of identifying the relevant PCPC Reasons include (i) the fact that many stakeholders are not aware of the existence and role of the PCPC; and (ii) the perception that PCPC can be slow to respond to requests for information and that the information they provide is often poor.	• There is a need to increase stakeholders' awareness of PCPC • The response times and quality of information provided by PCPC need to be improved
hENs		✓	X	X	• Improved legal certainty	• Enhanced free movement of products within the EU. In part, this is because hENs already existed under the CPD. • Increased credibility of the CPR. Main reasons for this include the perception that many hENs are outdated, inadequate or incomplete, that there is too much input from too few people in the standardisation process.	• There is a perception that many hENs are inadequate, incomplete or need to be updated following the implementation of the CPR • The position and needs of all stakeholders (particularly SMEs) are not always taken into account during the harmonisation process

Table 6-4: Summary of findings							
Aspect	Objectives achieved[1]				Benefits achieved	Benefits not achieved & reasons why	Key areas for improvement
	Simplification	Clarification	Credibility	Free movement			
AVCP		✓X	✓X		The anticipated benefits of this aspect of the CPR have not (yet) been fully realised.	Overall, this aspect of the CPR has not had any tangible impact for the majority of stakeholders in terms of: • Improved legal certainty • Increased credibility of the CPR	• Stakeholders have indicated that the systems of AVCP could be further streamlined
Levels and classes of performance	X			X	The anticipated benefits of this aspect of the CPR have not (yet) been fully realised	• Reduced costs for manufacturers • Increased legal certainty and transparency regarding the rules Enhanced the free movement of products within the EU	• There is a perception that the process for setting levels and classes could be faster
TABs			✓X		The anticipated benefits of this aspect of the CPR have not (yet) been fully realised.	• Increased legal certainty and transparency regarding the rules • Ensured that TABs have the necessary competence (technical and personnel) for carrying out their tasks • Increased the credibility of the CPR There is no information to suggest that anything has improved compared to the CPD (i.e. these aspects of the CPD functioned well)	• There is not yet a level playing field for the accreditation of TABs in Europe
Notified bodies			✓		• Increased legal certainty and transparency regarding the rules • Ensured that NBs have the necessary competence (technical and personnel) for carrying out their tasks • Ensured the impartiality of NBs and addressed issues relating to conflicts of interest	The anticipated benefits of this aspect of the CPR have been achieved	• There is a view that the practices of NBs can differ greatly between MS • It is not currently possible for NBs to implement the obligation under Article 53(2) and maintain confidentiality

Table 6-4: Summary of findings							
Aspect	Objectives achieved[1]				Benefits achieved	Benefits not achieved & reasons why	Key areas for improvement
	Simplification	Clarification	Credibility	Free movement			
					• Increased the credibility of the CPR		
Notifying authorities			✓		• Increased credibility of the CPR • Increased legal certainty and transparency regarding the rules • Ensured that NBs have the necessary competence (technical and personnel) for carrying out their tasks • Ensured the impartiality of NBs and addressed issues relating to conflicts of interest	The anticipated benefits of this aspect of the CPR have been achieved	• There is not yet a level playing field for the designation and monitoring of NBs in Europe
Simplified testing procedures	✓ X				Article 36 has successfully transposed Guidance Paper M into legislation and is commonly applied in some sectors e.g. windows and doors, where it is reportedly working well. The anticipated benefits of this aspect of the CPR have not (yet) been fully realised	The following benefits have not been achieved due to limited awareness of the simplified testing procedures of Article 37 and 38 for products covered by hENs: • Increased legal certainty and transparency regarding the rules • Increased ease of compliance • Reduced costs for SMEs and micro-enterprises • Enhanced potential for innovation • Enhanced competitiveness of EU manufacturers	• There is a lack of awareness and understanding of these provisions by industry stakeholders, particularly SMEs • There are difficulties in demonstrating 'equivalence' and/or providing specific technical documentation • There are doubts over the actual extent of financial savings that could be achieved
Information campaigns		✓			• Information campaigns have been undertaken and much of industry was made aware of the changes introduced as a result of the CPR	The anticipated benefits of this aspect of the CPR have been achieved	• Information obtain from consultation suggests that the CPR is not easy for some economic operators to understand. In particular, there is a need to raise awareness amongst non-professional users of construction products, for

Table 6-4: Summary of findings							
Aspect	Objectives achieved[1]				Benefits achieved	Benefits not achieved & reasons why	Key areas for improvement
	Simplification	Clarification	Credibility	Free movement			
							example on the value and meaning of the CE marking, and on what they need to look for in the DoP. There is currently a low awareness of PCPCs and the simplified procedures listed under Article 37 and 38
Market surveillance			X		The anticipated benefits of this aspect of the CPR have not (yet) been fully realised	Despite the actions taken by the MS and EC, stakeholders perceive that market surveillance is not sufficient and thus the CPR has not: • Increased compliance with the legal framework • Increased credibility of the legal framework • Improved competitiveness for EU economic operators There is no information to suggest that anything has changed compared to the CPD	• MSAs have limited resources and personnel and these are currently insufficient for a pro-active approach to market surveillance • There is a need for greater coordination of market surveillance between countries and at different levels. • Stakeholders lack awareness of the activities of MSAs

[1] **Key:**

✓	Objective achieved
✓ X	Objective partly achieved
X	Objective not achieved
	Not applicable

6.4 Relevance

6.4.1 Matters to be addressed

This criterion concerns the extent to which the objectives (including the scope) of the legislation address the needs of stakeholders and whether the objectives of the legislation are still appropriate given changed circumstances. Table 6-5 shows the questions and judgement criteria relevant to the evaluation criterion of relevance.

Table 6-5: Questions and judgement criteria - Relevance

Questions	Judgement criteria	Comment
Do the objectives of the CPR correspond to the needs and problems in the MS?	Extent to which stakeholders in different MS consider that the CPR is still valid and relevant for dealing with the current situation in the market and for the construction sector.	Analysis provided in Section 6.4
To what extent do the objectives of the CPR match the priorities and policies of the key stakeholders?	Extent to which different stakeholder groups consider that the CPR is still valid and relevant for dealing with the current situation in the market and for the construction sector.	Analysis provided in Section 6.4
How might the situation change in the future?	Whether stakeholders consider that the CPR is suited to dealing with upcoming technological developments in the construction sector.	Analysis provided in Section 5

6.4.2 Outcome of the analysis

Relevance of the objectives of the CPR in the MS

As noted previously, the overarching objectives of the CPR were to **simplify** and **clarify** the legislation pertaining to construction products in Europe, to increase the **credibility** of the legislative framework and to facilitate the **free movement** of construction products within the Internal Market.

Around 80% of stakeholders indicated that the objectives of the CPR are valid and relevant for dealing with the current situation in the market and for the construction sector. As shown in the Figure 6-1, the view of stakeholders differs between MS. Denmark (15%), Estonia (13%), Finland (17%) and the Netherlands (13%) are among those MS where more stakeholders were of the view that the CPR objectives are no longer relevant, compared to the average (8%). It is also notable that almost one third of respondents in France indicated that the CPR objectives are no longer valid and relevant.

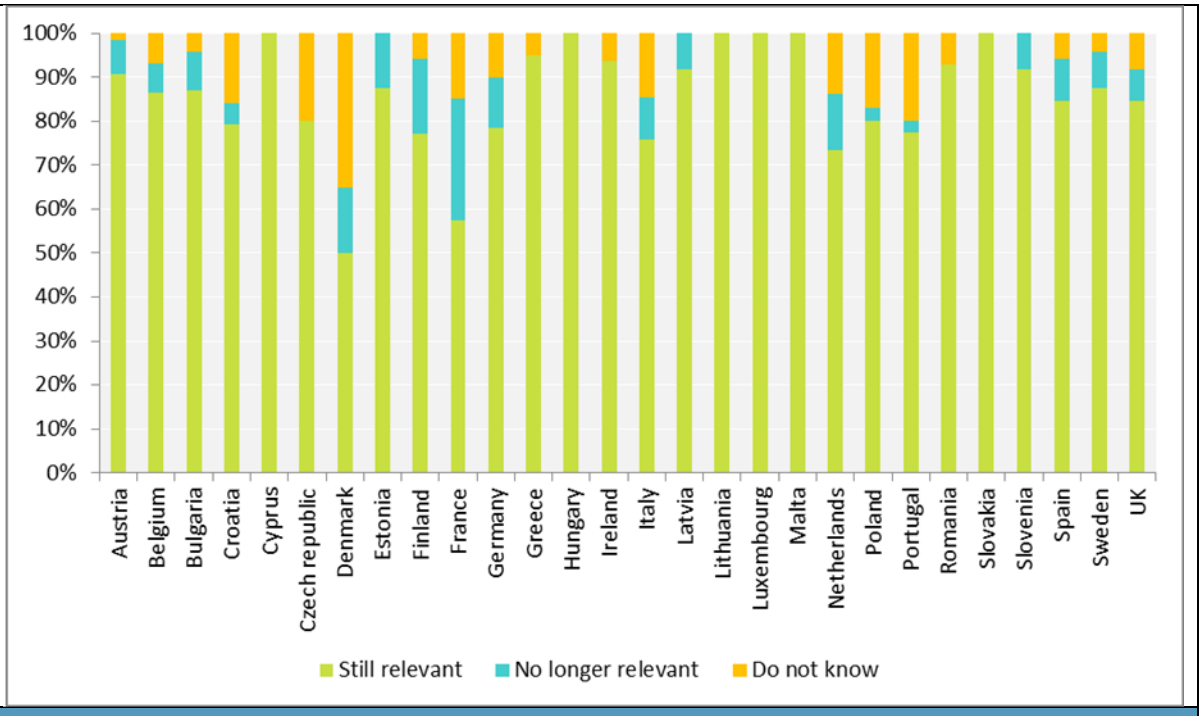

Figure 6-1: Reponses by MS to the question: Do you think that the objectives of the CPR are valid and relevant for dealing with the current situation in the market and for the construction sector?

Relevance of the objectives of the CPR for stakeholders

There are also differences between stakeholder groups (Figure 6-2). Again, the majority of respondents within each stakeholder group indicated that the objectives of the CPR are still valid and relevant; this was highest for organisations involved in conformity assessment (88%). A higher proportion of companies (12%) and industry associations (11%) were of the view that the objectives are no longer valid and relevant, compared to the other stakeholder groups.

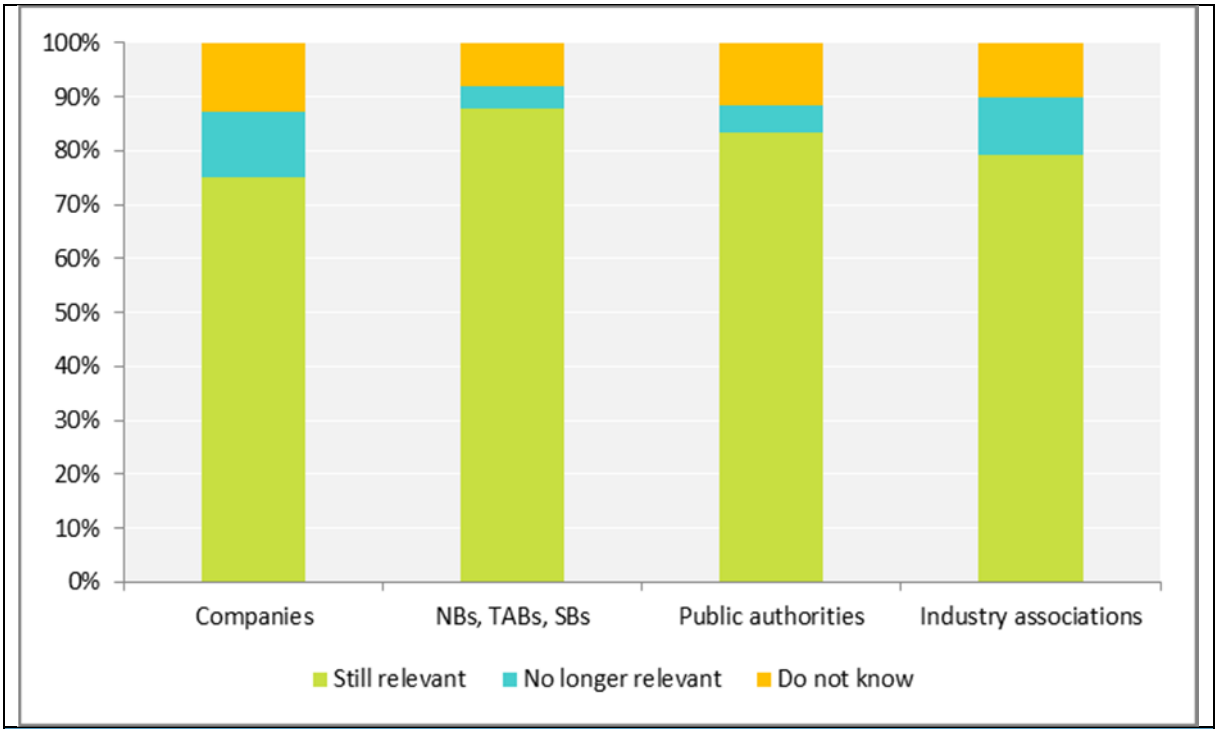

Figure 6-2: Response to the question: Do you think that the objectives of the CPR are valid and relevant for dealing with the current situation in the market and for the construction sector?

6.4.3 Summary of findings

The majority of stakeholders indicated that the objectives of the CPR are valid and relevant for dealing with the current situation in the market and for the construction sector. A higher proportion of stakeholders in France, Denmark, Estonia, Finland and the Netherlands were of the view that the objectives of the CPR are no longer valid or relevant, compared to the average across all MS. There was also some variation between stakeholder groups, with more companies and industry associations indicating that the CPR objectives were not valid or relevant compared to other stakeholders.

As identified in Section 5, on average, around 40% of stakeholders indicated that the CPR is not suited for dealing with upcoming technological developments in the construction sector. However, close to 50% of organisations involved in conformity assessment thought that the CPR was adequate in this regard. Several stakeholders noted the CPR provides a route to CE mark innovative products through the EAD/ETA process.

6.5 Coherence

6.5.1 Matters to be addressed

This subsection focuses on the evaluation criterion of coherence, which concerns the extent to which activities undertaken allow the EC to achieve its policy objectives without internal contradiction or without contradiction with other EU policies. That is, the results and impacts of EU legislation should contribute to and/or mutually reinforce each other, rather than duplicate or

conflict with one another. Table 6-6 sets out questions and judgement criteria relevant to the evaluation criterion of coherence.

Table 6-6: Questions and judgement criteria - Coherence		
Questions	**Judgement criteria**	**Comment**
Is the CPR internally coherent, clear and predictable?	The extent to which stakeholders perceive that there is consistency between the objectives and provisions of the CPR. Whether stakeholders have identified any inconsistencies, contradictions or gaps in the CPR.	Covered in Section 6.5
Is there convergence between the objectives of the CPR and those of the other Community policies?	The proportion of stakeholders that perceive the CPR to be consistent with Commission policies and strategies, in particular, in the areas of competitiveness, innovation and sustainability. Whether stakeholders have identified any potential conflicts in objectives.	Covered in Section 5 (competitiveness, innovation and sustainability) and Section 6.5 (other policy areas)
Is there coherence in terms of the way the CPR has been implemented in different MS?	Whether stakeholders have identified any inconsistencies and problems in the functioning of the CPR between MS.	Covered in Section 6.5

6.5.2 Outcome of the analysis

Internal coherence

While the vast majority of stakeholders that participated in the consultation did not identify any issues in terms of the internal coherence of the CPR, a few respondents did identify a lack of consistency, highlighting that:

- **There is a duplication of information in the DoP and CE marking**. For example, one company noted that "*The relationship between CE marking and DoP has to be clarified to avoid that performance data which are already stated in the DoP have to be repeated in the CE mark*".

- **Article 27** does not specify that the thresholds will be determined on the basis of delegated acts, yet **Article 60** indicates that the delegated act can be used to determine classes as thresholds (France CPR Report, 2014). As such **there is a problem of consistency between these two articles**.

- **Article 53(2) of the CPR contravenes notified bodies' obligation to maintain confidentiality**, which is necessary in order to obtain accreditation in some countries. As noted by the German public authorities (Germany CPR Report, 2014): "*Article 53(2) obligates notified bodies to provide relevant information on negative, and, on request, positive results of assessments to other notified bodies carrying out similar tasks. Providing this information is very problematic. All notified bodies must maintain confidentiality. This is one of the requirements of accreditation. Implementing the obligation under Article 53(2) and maintaining confidentiality contradict each other and can hardly be reconciled. This provision should therefore be deleted or amended to allow confidential data to be treated as confidential by the NB*".

- **It is currently possible for manufacturers to use voluntary markings for essential characteristics that may be listed within the EAD but have not been included in the ETA, with these voluntary markings linked to the ETA rather than the DoP.** To improve the consistency of the ETA system, EOTA proposes that Article 8(3) of the CPR should refer to the relevant DoP, rather than the ETA, or that the ETA should include all essential characteristics (employing the NPD option where appropriate) as noted in the EAD.

Stakeholders have also identified a number of important omissions or gaps in the CPR:

- **Some key definitions have been omitted from Article 2 of the CPR.** As outlined in Section 6.3, these include the terms: non-series production process, construction works, identification code, specific technical documentation, individually manufactured and single user/customer. The caveat "*in the absence of Union and national provisions*" (Article 5) has also been identified as problematic because it is unclear what constitutes a "*Union*" and "*national*" provision.

- **The CPR (Chapter III) lacks any clear obligations for the end-user**. Companies made the following comments: "*The Main economic operator, the constructor, that uses the construction products to create a building, is missing completely in the CPR...*" and "*Economic operators = manufacturer or importer/distributor. CPR does not cover any interests of the end users of products!!!*"

- **The ETA indicates only the performance values from tests and does not contain information on the conditions and assumptions under which the product's performance was determined**. In the view of a German public authority, Article 26 should be supplemented accordingly.

These points are discussed in more detail in Section 6.3.

Coherence with other Community policies

An analysis of the extent to which the CPR is consistent with Commission policies in the areas of competitiveness, innovation and sustainability is provided in Section 5. This section focuses on the CPR's coherence with all other policy areas.

Stakeholders participating in the consultation have identified a number of other areas where the CPR appears to be inconsistent with Commission policies and strategies:

- **New Legislative Framework (New Approach):** Organisations involved in conformity assessment noted that "*regulations classes and threshold values, which were previously regarded as "technical" and not subject to authorization of the Commission, is contrary to the New Approach*" and *"[the] CPR is in conflict with the New Approach principle. Standards in CPR are not voluntary, they are mandatory and they have the status of a legal document."* A public authority in France noted that the mandatory nature of harmonised standards under the CPR is in conflict with the European Standardisation Regulation that states that a standard is not mandatory in its application (this difference was introduced on purpose by the Commission).

- **Other CE marking legislation**: It was noted by a public authority that "*as the CE marking has a different meaning in the CPR than in other harmonised provisions, there might be problems*

with interpretation and misunderstandings, especially for construction products which are also subject to other harmonisation legislation". Indeed, a company commented "*Why is there no harmonisation across the different CE marking regulations for affixing the CE mark?"* An organisations involved in conformity assessment made a similar observation, noting that *"[the] Meaning of the CE marking is different from the other directives. It may be problematic for the users to understand the difference*".

- **REACH:** An organisation involved in conformity assessment remarked that *"[there is an] overlap/Interface with other legal acts, e.g. REACH, Ecodesign, [this is] not clear/precise*." According to a public authority "*…It [CPR] also requires coordination with other policies and their incorporation into the Regulation (e.g. policies to reduce the use of substances dangerous to man and the environment of chemicals - regulation REACH)*".

- **Public Procurement Directives**: The French authorities (France CPR Report, 2014) noted that the European Directive on Public Procurement seems to contradict the CPR with regard to the hierarchy of the technical specifications. They note that the Directive indicates the hierarchy of documents that need to be referred to for public procurement (European standards, European technical assessments, etc.). Nevertheless, this hierarchy does not appear to be clear. They note that the hierarchy should be: the harmonised European standards, the European technical assessments, the European standards, etc., and that the European technical assessment is more valuable than a non-harmonised European standard.

Finally, it has been noted that, pursuant to the Treaty on the Functioning of the European Union, all essential provisions must be laid down in the legal act itself and the scope must be clearly and unambiguously defined. Whether the essential provisions of the CPR apply, however, is currently determined by whether or not a relevant hEN exists. Generally, construction products can be subject to various European legislative acts. The CPR contains no distinguishing provisions. The German authorities have explained that this can give rise to different problems and questions, as illustrated using the example of electric cables, as shown below (Germany CPR Report, 2014).

Table 6-7: Electric cables

Electric cables are construction products within the meaning of the CPR, but also qualify as electrical equipment within the meaning of the Low Voltage Directive 2006/95/EC (LVD). Since there is a hEN for electric cables (EN 50525-1/2011), electric cables require a DoP pursuant to the CPR as well as a declaration of conformity pursuant to the LVD. The German authorities (Germany CPR Report, 2014) have explained that this results in significant effort as both the LVD and the CPR require different systems for assessing conformity. The CPR uses a different terminology (Annex V) than the other directives governing the Internal Market (modules set out in Decision 768/2008/EC) which, in the view of the German authorities, is confusing. Pursuant to the LVD, electric cables would require module A. Under the CPR, the Commission would need to determine a system pursuant to Article 28. This could lead to the unsatisfactory situation of two entirely different systems for conformity assessment for the same product.

Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009, establishing a framework for the setting of ecodesign requirements for energy-related products (hereafter the Eco-Design Directive), outlines EU-wide rules for improving the environmental performance of energy related products. Several stakeholders participating in the consultation noted that there is potentially an overlap between the CPR and the Eco-Design Directive. Such an overlap may be unnecessary, create a cumulative burden and contravene the principle of 'better regulation'. A pubic authority in Finland, for example, noted that the relationship between the CPR and the Eco-design Directive is questionable. In the view of this stakeholder, it should be the case that when you comply with requirements of legislation, you do not need to repeat tests under different legislation. Another public authority noted that:

"There should be no doubling of procedures, requirements, standards and obligations for economic operators in horizontal legislation, like ECO-design."

Organisations involved in conformity assessment also noted that there is an overlap (and thus inconsistency with the 'better regulation' policy) between the CPR and the Eco-Design Directive. It has been noted that:

"Further clarification [is needed] on the relations between CPR and ECODESIGN Directive - ECOLABEL Regulation and PEF initiative, especially as regards EPDs as preferred tools for verification of BRCW 7 (see Recital 56 of the CPR for reference).

"…There should be better coordination between different EC policies and initiatives. There is a significant confusion with regards to interferences of the Eco-labels, Eco-design, PEF" and "[the] Ecodesign directive, energy labeling should be linked to CPR, and at the moment they aren´t."

CPE (2014)[124] has concerns that the implementation of both the CPR and Eco-design Directive could lead to two parallel routes to CE marking. They note that this needs to be avoided so that the CE marking on construction products is not weakened and the illegal placement of products on the market is avoided. CPE (2014) has stated that:

"The upcoming development of the declaration of essential characteristics under the Basic Requirement 3 'Hygiene, health and the environment'(4) and 7 'Sustainable use of natural resources'(5) of the CPR, is meant to provide the same environmental information as the Ecodesign Directive. To ensure policy coherence, we strongly recommend that the well-established CPD/CPR route be used to declare environmental performance parameters and set threshold levels according to the CPR article 3.3(6) unless there is clear evidence that Ecodesign route is required to improve the sustainability of the built environment. In the latter case, legislative processes must be consistent and coordinated."

Coherence in terms of implementation

An overview of the implementation of the CPR in MS has been provided in Section 3, which demonstrates that MS have successfully implemented all of the necessary provisions of the CPR. Nevertheless, stakeholders have highlighted some potential inconsistencies in the way in which the CPR has been implemented in the MS.

The main area where stakeholders have identified inconsistencies in terms of implementation is in relation to **the level of market surveillance in MS**. As remarked by one company:

"The market surveillance is different in each Member State. Resources and expertise of market surveillance authorities varies a lot".

Further details on market surveillance can be found in Sections 3 and 4 and also the topical report on market surveillance.

In addition to market surveillance, stakeholders have also indicated that **there is not always a level playing field for notified bodies as the accreditation process is not obligatory in all MS**. For instance, stakeholders have noted that:

[124] CPE (2014): Ecodesign Position Paper, available at: http://www.construction-products.eu/publication.aspx?doc=210

"In practice there have been large differences in this assessment in the different countries. The criteria were applied very differently and with a different weight."

"…harmonization in the construction sector is still required and also in requirements for accreditation of notified bodies."

In the view of some stakeholders, the CPR should include an obligation for MS to accredit all notified bodies, based on standardised specifications for accreditation.

6.5.3 Summary of findings

Overall, the majority of stakeholders were of the view that the CPR is consistent with the EU's policies and strategies in the areas of competitiveness, innovation and sustainability. Furthermore, stakeholders have indicated that the CPR has, on the whole, been implemented consistently across the MS.

Stakeholders have, however, identified a number of issues in terms of the internal coherence of the CPR. The most frequently cited of these was the duplication of information in the DoP and the CE mark, which is perceived to be unnecessary and burdensome and, as such, contradictory to the aim of simplifying the legislative framework. Stakeholders have also identified a number of omissions or gaps in the CPR, including specific definitions that should be included in Article 2 and obligations for the end-user.

Although most stakeholders were of the view that the CPR is consistent with the EU's policies and strategies in the areas of competitiveness, innovation and sustainability; the majority of stakeholders did not think that the CPR has made any significant improvement in terms of enhancing companies' competitiveness, increasing innovation, or improving the sustainability of the sector. Some stakeholders have also identified legislation which appears to overlap with the CPR, (i.e. the Eco-design Directive, Energy Labelling Directive and REACH) and which needs to be assessed in light of the EC's better regulation policy.

While it appears that the CPR has, on the whole, been implemented consistently across the MS, stakeholders have flagged that the level of market surveillance activities may not be consistent (indeed, market surveillance is perceived as being more effective in North Eastern MS, e.g. Germany and the Netherlands, and less so in southern MS), and that there is not always a level playing field for notified bodies, as accreditation is not mandatory in all MS.

6.6 Value added

6.6.1 Introduction

This subsection focuses on the evaluation questions related to added value, which concerns the extent to which the CPR results in additional benefits to what would have resulted from MS' actions alone or by industry voluntary agreements. Table 6-8 sets out questions and judgement criteria relevant to the evaluation criterion of added value.

Table 6-8: Questions and judgement criteria – Value added	
Questions	**Judgement criteria**
Can (or could) similar changes have been achieved without EU action, or did EU action make a difference?	Whether stakeholders have identified that similar changes could have been achieved without EU action.

6.6.2 Outcome of the analysis

There are three main areas where the CPR aims to provide added value:

- Firstly, the CPR aims to **remove barriers to trade and enhance the free movement of construction products across Europe**;
- Secondly, the CPR aims to **level the playing field for economic operators** across Europe and **thereby stimulate competition**; and
- Thirdly, the CPR aims to **deliver efficiency savings for MSAs** that would not be possible if MS acted on their own.

Free movement of construction products

The CPR puts in place several mechanisms to facilitate the free movement of construction products within Europe. In terms of added value, the most important of these are:

- **CE marking**: Under the CPR, MS must ensure that products bearing the CE marking are not prohibited or impeded from being made available on the market or used, when the declared performances correspond to the requirements for such use in that MS. **The CPR thus sought to deliver added value by ensuring the proper functioning of the Single Market**. In Belgium, one construction industry stakeholder noted that CE marking (of construction products) benefited the free trade of goods within the EU market. In the view of this stakeholder, the strict implementation of one common label (CE marking) has been useful in removing barriers to trade. Another organisation noted, "*now that CE marking is obligatory for everyone, it is easier to export products*". Overall, however, information from consultation indicates that **CE marking has had a negligible impact in terms of enhancing the free movement of construction products.** In part, this is due to the persistence of quality marks at a national or local level (see next bullet point) and the relatively short period of time that has elapsed since the CPR came into effect.

- **Quality marks:** Prior to the CPR, trade in construction products across MS had been impeded in various countries as a result of quality marks. In order to prevent new barriers to trade and enhance the free movement of construction products, the CPR requires that CE marking is the only marking of conformity of the construction product with the declared performance and compliance with applicable requirements relating to Union harmonisation legislation. **The CPR thus sought to deliver added value by removing barriers to trade at a MS (or local) level that might prevent economic operators from selling their products in certain MS**.

  Information from consultation indicates that **this aspect of the CPR has not (yet) been effective in terms of delivering its anticipated added-value benefits**. As noted by one industry stakeholder: "CPR has slightly enhanced the free movement of construction

products as unlike with the CPD, CE marking is applicable to all European countries. But the principles that allow for the free movement of construction products were already laid down in the CPD. Besides that, it should be emphasised that the main obstacles to the free movement of construction products are the national marks and national requirements. In that respect, actions should be undertaken by the European Commission, like what was recently done against Germany..."

While further action may be required by the Commission to ensure that MS adhere to the rules put in place by the CPR, it is anticipated that the outcome of the recent ECJ case in Germany is likely to have a positive impact in terms of increasing compliance with the CPR. It is possible, therefore, that **the anticipated value-added benefits of this aspect of the CPR may be realised in the future**.

- **PCPC:** Economic operators that want to export their products to another MS must comply with the national requirements of the country they intend to export to[125]. Stakeholders have indicated that it is difficult to understand the national requirements in place in their own country, and even harder in other countries (an issue which is compounded by language barriers). The CPR requires MS to designate a PCPC with the intention of providing such information. Thus **the CPR sought to deliver added value by ensuring that economic operators in all MS have access to information on national technical rules in all other MS, thereby enabling the free movement of construction products**.

  According to an industry association in Austria, PCPC are a good thing, allowing manufacturers to get an overview of regulations and provisions within each of the respective national markets. Interestingly, although the intention of the PCPC was to help the movement of construction products across borders, a stakeholder in the UK commented that it has also proved a valuable tool for informing UK economic operators about matters related to UK construction (e.g. national building regulations).

  Although the effectiveness of PCPCs to date has been variable, **this aspect of the CPR has gone some way to improving economic operators' understanding and compliance with national requirements in other MS; an outcome that would not have been possible without EU-level action**.

Levelling the playing field

The aspects of the CPR outlined below interlink so as to harmonise construction product performance throughout Europe. Cumulatively, these aspects of the CPR aim to **enable end-users to accurately compare products** and select the product most suitable for their intended purpose. These aspects of the CPR thus seek to deliver added value in that they aim to level **the playing field for construction products across Europe (a benefit that could not be achieved by actions undertaken at a national level),** and thereby facilitate competition.

[125] Although as an EU Regulation, the CPR is applicable in all 28 MS (and some other countries, including Iceland and Norway), there are still national requirements relating to construction products and construction works. For example, partial safety factors, the chosen design life for structures, country specific data (e.g. snow maps, wind maps, isotherm maps and seismic maps, certain additional information on aspects such as durability and some additional safety-related parameters).

The aspects of relevance to this value-added benefit are as follows:

- Mandatory hENs outline the methods and the criteria for assessing the performance of construction products in relation to their essential characteristics and provide a common technical language for declaring product properties. If a product is not (fully) covered by a hEN, a manufacturer may request a EAD. The TABs that draw up the EAD must meet the same requirements in all MS, outlined under Annex IV;

- The AVCP systems detail how a construction product should be assessed and/or how production in the factory shall be controlled to ensure that the performance of the product is constant. The relevant AVCP system is stipulated in the hEN/EAD;

- Depending on the AVCP system, it may be necessary for notified bodies to undertake particular tasks, e.g. audit testing of samples or inspections of factory production control. All notified bodies must meet the requirements under Article 43 of the CPR; and

- The DoP and CE marking information are the outcomes from the provisions described above and are the only means of users being able to compare products and verifying a construction products' performance.

With regards to the ability to **compare products**, some stakeholders noted:

> *"Easier comparison between products (for end-user)"*
>
> *"CE marking should enable easier comparison between products and properties from various origins"*

On the matter of a **level playing field for construction products across Europe**, a stakeholder from the Netherlands commented that the mandatory nature of hENs has meant that it is only possible to demonstrate compliance with a prescribed hEN (and not by means of other standards or determination methods on the principle of equivalence), which is beneficial, as there is a single harmonised technical language. Similarly, a public authority in Latvia stated that the mandatory nature of hENs has made the procedure clearer for manufacturers and has enabled them to market their products elsewhere in the EU. German companies explained that it is advantageous that there are now uniform requirements for the testing and classification of construction products and the DoP across the EU. One company mentioned that there is almost no need to deal with national schemes anymore and to obtain nationally valid test certificates. Stakeholders noted that national deviations that were present under the CPD are gone and further interpretation by MS is not permitted. A Finnish manufacturer of construction products noted that the mandatory nature of hENs under the CPR has made it easier and clearer with regards to marketing their products. It was commented that the standards are very useful and beneficial for their organisation as a company which has operations in more than one country, as the same documentation and procedures can be used.

Nine EADs have been published and more are due to be published in the future, which will in turn bring all of the above benefits to innovative construction products.

Efficiency savings

The CPR puts in place several provisions that are designed to deliver **value-added benefits through enhancing cooperation and increasing efficiency at an EU level**. For instance:

- The CPR (Article 55) requires the cooperation and coordination (e.g. exchange of information and experience) among notified bodies in the form of the Group of Notified Bodies (GNB). The GNB aims to ensure a close and efficient exchange of information between the different notified bodies active in the MS;

- The CPR (Recital 23) requires the establishment of the Organisation of TABs to coordinate procedures for the establishment of draft EADs and for the issuing on ETAs. In particular, the Organisation of TABs ensures that examples of best practice are shared between TABs to promote greater efficiency; and

- Pursuant to the CPR (e.g. Articles 56(2), 56(6), 58(3)), the competent MSAs of MS must facilitate the exchange of certain information between MS. Again, this is intended to increase the efficiency of market surveillance at an EU level.

Unfortunately, stakeholders have not provided any information on the extent to which the GNB and Organisation of TABs have enhanced cooperation and coordination at an EU level, and the degree of any efficiency savings achieved[126]. It should, however, be noted that several stakeholders have highlighted that there are still divergent practices between notified bodies operating in different MS.

Joint market surveillance action was, however, highlighted by stakeholders as an effective and efficient means of undertaking market surveillance and, in the view of most stakeholders, should be encouraged where possible. Several stakeholders identified that more needs to be done to increase coordination between MSA in different MS, for example, noting that:

> *"Need coordination between authorities at different levels."*
>
> *"Need for increased cooperation, coordination and common training of market surveillance authorities…"*

A Slovenian public authority suggested that it is important to improve international cooperation in order to achieve better market control overall, as ultimately the European market is an Internal Market. There are already efforts underway to coordinate the inspectorates, but (in the view of this stakeholder) more should be done to exert joint international control. Indeed, it was noted by an organisation involved in conformity assessment that greater harmonisation in terms of market surveillance would be positive. The stakeholder reported that there are already two or three European campaigns in this regard. For example, a thermal insulation campaign 1-2 years ago, whereby all the national market inspectorates were inspecting at the same time and sharing information. However, it was noted that there can be problems in some MS where national laws do not allow the exchange of data.

[126] It should be noted that under the CPD, several MS authorities showed a lack of interest in participating actively, or passively, in the work of the obligatory Group of Notified Bodies (Fuchs M., 2011).

6.6.3 Summary of findings

One of the overarching objectives of the CPR was to increase the free movement of construction products within the Internal Market. MS alone would not be able to ensure that manufacturers can export their products and compete on a level playing with other manufacturers from across Europe. The CPR thus sought to bring **added value in the form of free movement of construction products and fair competition on a level playing field.**

The extent to which CPR has delivered added value in terms of the free movement of construction products has been limited (in part due to the persistence of quality marks). However, it is important to note that the CPD set the framework and paved the way in terms of enhancing the free movement of construction products. Nevertheless, stakeholders have noted that the CPR has delivered some value added benefits in terms of levelling the playing field for economic operators.

Through encouraging greater international cooperation and coordination, the CPR also sought to contribute to **efficiency savings** at an EU level. Unfortunately, insufficient information has been provided by stakeholders to identify the degree to which this benefit has actually been achieved.

7 Conclusions

7.1 Overview

The main objective of the CPR - compared with the CPD - was to facilitate the consolidation of the Internal Market for construction products through, *inter alia*, simplification, clarification and increasing the credibility of the legislative framework for construction products.

Although the CPR has only recently been implemented, technical, economic and societal developments over recent years mean that it is essential to assess the extent to which the CPR has met (or is likely to meet) its main objectives, based on the first experiences of its implementation.

With this in mind, DG GROW commissioned this study with the objective to gather, analyse, validate and summarise data in order to answer three key questions which can be paraphrased as follows:

1. How and to what extent has the Construction Products Regulation (CPR) been implemented at national and EU level?
2. To what extent has the CPR been useful in producing the intended results and effects in terms of free movement of products, clarification, credibility and simplification?
3. To what extent has the CPR fulfilled the objectives of the Commission's policy for products regarding competitiveness, sustainability and innovation, including in order to respond to future technological developments?

7.2 CPR implementation

In response to the first key question for this study, it is clear (as discussed in Section 3) that the Construction Products Regulation (CPR) has been implemented at national and EU level although some aspects have yet to be fully utilised.

7.3 CPR objectives

7.3.1 Overall effectiveness

In response to the second key question for this study, Table 7-1 provides an overview of the extent to which the CPR's objectives (in terms of simplification, clarification, credibility and free movement) have been achieved, based on the research undertaken for this study with further detail on the individual aspects provided in the following sub-sections.

Table 7-1: Summary of findings

Aspect	Objectives achieved[1]			
	Simplification	Clarification	Credibility	Free movement
Definitions		✓		
Obligations of economic operators		✓		
Declaration of performance	✓ X	✓		
CE marking	✓ X	✓	✓	X
Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)	X	X	X	
PCPC	X			X
hENs		✓	X	X
AVCP		✓ X	✓ X	
Levels and classes of performance	X			X
TABs			✓ X	
Notified bodies			✓	
Notifying authorities			✓	
Simplified testing procedures	✓ X			
Information campaigns		✓		
Market surveillance			X	

[1] **Key:**

✓	Objective achieved
✓ X	Objective partly achieved
X	Objective not achieved
	Not applicable

7.3.2 Definitions

Information obtained from consultation indicates that the definitions provided in Article 2 have been effective in terms of reducing ambiguity and enhancing legal clarity and also increasing ease of compliance and enforcement. There are, nevertheless, some terms and concepts referred to in the CPR that would benefit from further clarification, or new definitions. These include the terms non-series production process; construction works; identification code; single user/customer; specific technical documentation; and individually manufactured.

7.3.3 Obligations of economic operators

Responses to consultation indicate that clarifying the obligations of economic operators has been effective in terms of increasing legal certainty and transparency regarding the rules. In turn, the

improved understanding of companies has facilitated their ability to comply with the CPR and made enforcement of the legislation easier for Market Surveillance Authorities (MSAs). The legal certainty provided by these provisions has also increased the respect of legal obligations by economic operators.

Some stakeholders have, however, indicated that there has been an increase in the administrative burden on economic operators as a result of this aspect of the CPR and that the practical interpretation of the obligations varies in some cases. It has also been indicated that some economic operators (particularly importers and distributors) are not aware of their obligations under the CPR.

7.3.4 Declaration of performance

The transition from the DoC to the DoP appears to have been smooth and information from stakeholders indicates that this provision has been effective in terms of increasing legal certainty and transparency regarding the rules and increasing the ease of compliance and enforcement.

There are, however, only isolated examples of Article 5 being applied by industry and, consequently, the financial burden on companies has not been alleviated to the extent envisaged. Stakeholders have attributed the limited uptake of this provision to *inter alia* a lack of certainty regarding key terms, including the caveat "*absence of Union or national provisions*" in the chapeau, determining what constitutes a product that is "*individually manufactured*" or "*custom made in a non-series process in response to a specific order*…" and when a construction product can be considered to be "*manufactured on the construction site for its incorporation in the respective construction works*".

7.3.5 CE marking & quality marks

Across Europe, industry has undertaken the necessary steps to comply with the new (mandatory) requirements for CE marking. The CPR has increased legal certainty and transparency of the rules associated with CE marking, which in turn has increased the credibility of the CPR and made compliance and enforcement easier. Overall, mandatory CE marking has not enhanced the free movement of construction products, most likely because CE marking was previously undertaken in all but four MS under the CPD and quality marks are still in use. Industry stakeholders believe that additional action may be required by the Commission to enforce the recent ECJ judgement concerning the application of the German Ü Mark.

In terms of improvements, stakeholders have indicated that there is duplication of information, which is already provided in the DoP, in the CE marking information. Looking to the future, it may be necessary to address the duplication issue in order to make compliance easier for economic operators. The information included in the CE marking itself could be simplified and further efforts should be made to clarify the meaning of the CE marking within the context of the CPR.

7.3.6 Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)

EOTA has experienced significant delays in the development of EADs, specifically in the publication phase. As a result, the anticipated benefits associated with this provision have not yet been fully achieved.

7.3.7 Product Contact Points for Construction

All MS have established a PCPC, which are functioning and responding to requests for information from industry. However, awareness of the PCPCs remains relatively low.

Where PCPCs are being used, they are helping industry to better understand how to apply the CPR, and have increased legal certainty and transparency regarding the rules. However, some stakeholders have noted that PCPCs are slow to respond to requests for information and provide only enough detail to fulfil their obligations, rather than necessarily responding to the specific question from industry.

There is no evidence to suggest that PCPCs have had any impact in terms of enhancing the free movement of construction products within the EU. To some extent, this is because industry is mostly unaware of the PCPCs in other MS.

7.3.8 Harmonised standards

The mandatory nature of hENs under the CPR has improved legal certainty and increased the credibility of the legislative framework without significantly impacting (positively or negatively) the free movement of construction products (this is because hENs were already widely applied under the CPD). However, it is clear that many hENs still need to be adapted to the CPR. It has been indicated that the process for drawing up and amending hENs needs to be more inclusive, particularly with regard to taking into account the position and needs of SMEs.

7.3.9 Assessment and verification of constancy of performance

While some stakeholders acknowledged that this aspect of the CPR has been effective in terms of improving legal certainty and enhancing the credibility of the legislative framework, the changes which took place under the CPR (e.g. the removal of System 2+, which was barely used under the CPD) are generally perceived as a streamlining exercise and, as such, have had limited tangible impact for the majority of stakeholders.

7.3.10 Levels and classes of performance

While the potential benefits of this provision (in the form of reduced costs for manufactures, increased legal certainty and transparency regarding the rules and enhanced free movement of construction products) were acknowledged by stakeholders, it has been identified that these benefits have not (yet) been achieved because only few delegated acts have been issued and only limited time has elapsed since the first delegated acts were adopted. Some stakeholders believe that the process for establishing levels and classes will be more time consuming and onerous than the old regime (under the CPD). Clearly this may negatively impact upon the credibility of the CPR.

7.3.11 Technical assessment bodies

Outlining strict requirements that TABs must meet has not had any tangible impact (positive or negative) in terms of increasing legal certainty and transparency regarding the rules, ensuring that TABs have the necessary competence (technical and personnel) for carrying out their tasks or increasing the credibility of the CPR. This is mainly because many TABs already satisfied similar criteria under the CPD. In terms of scope for improvement, stakeholders have indicated that further work may be required with regard to harmonising the accreditation process for TABs.

7.3.12 Notified bodies

The strict requirements for notified bodies have had a positive effect in terms of increasing legal certainty and transparency regarding the rules, ensuring that notified bodies have the necessary competence for carrying out their tasks and increasing the credibility of the CPR. Moreover, the strict requirements are also likely to have had a positive effect in terms of ensuring the impartiality of notified bodies and addressing issues relating to conflicts of interests.

Stakeholders noted that the administrative burden on notified bodies has increased as a result of the CPR. There is also a perception that the practices of notified bodies can vary greatly, in part because Articles 46 and 52(2) are not sufficiently precise in their wording. Stakeholders identified that the process for challenging the competence of a notified body should to be made faster and more efficient, to ensure the credibility of the CPR is not jeopardised. Finally, concerns have been raised with respect to Article 53 (concerning information obligations for notified bodies); namely that it is not possible to implement this provision and for the notified body to maintain confidentiality.

7.3.13 Notifying authorities

Overall, it appears that the designation of notifying authorities has had a positive effect in terms of increasing legal certainty and transparency regarding the rules, ensuring notified bodies have the necessary competence and are impartial and increasing the credibility of the CPR. However, as identified above, the presence of notifying authorities has not prevented differences between MS in terms of the practices of notified bodies. Stakeholders identified that the accreditation process for notified bodies could be improved, although it should be noted that mandatory accreditation is not currently within the scope of the CPR.

7.3.14 Simplified testing procedures for products covered by harmonised technical specifications

Article 36 has successfully transposed Guidance Paper M (under the CPD) into legislation and is commonly applied in some sectors, thereby making compliance easier for economic operators. However, the uptake of Articles 37 and 38 has been low, which has prevented their associated benefits from being achieved.

To increase the uptake of these simplified procedures, the Commission and MS authorities should raise awareness amongst industry, particularly Small and Medium Sized Enterprises (SMEs), of these provisions and clarify the key terms mentioned in these provisions (e.g. Specific Technical Documentation).

7.3.15 Information campaigns

The Commission and MS, in collaboration with stakeholders, have carried out a range of information campaigns to inform the construction sector of legislative changes introduced by the CPR. These campaigns appear to have been successful, in that they were informative and reached a wide audience.

Further information campaigns should be targeted at those stakeholders that are traditionally hardest to reach (e.g. micro-enterprises and SMEs) and should focus on promoting the simplified procedures that seek to alleviate the burdens of complying with the CPR. Additional efforts should

also be made to raise the awareness of PCPCs. The Commission's webpage should be updated more regularly and more of the content should be translated into all EU languages.

7.3.16 Market surveillance

It is evident that MSAs across Europe are undertaking their activities on both a proactive and reactive basis. There is also evidence of economic operators taking corrective action to comply with the CPR, where necessary. Despite this, industry perceives that more needs to be done in order for MSAs to fulfil their obligations and properly enforce the CPR (e.g. more sample testing, more visible enforcement action). Industry stakeholders thus believe that the anticipated benefits of market surveillance (in terms of increased compliance with the CPR, reduction in products posing a risk to health and safety, increased credibility of the CPR and improved competitiveness for EU economic operators) have not yet been achieved. It can be concluded that there is a need for more visible market surveillance and enforcement action across the EU.

7.4 Competitiveness, innovation and sustainability

In respect of the third key question for this study, the CPR accords with the Commission's policy objectives of competition, innovation and sustainability. Provisions designed to ease the burden of compliance for SMEs and boost their competitiveness (e.g. the simplified procedures and derogation from drawing up a DoP) form an integral part of the CPR. The CPR has also updated the regime that governs innovative construction products (EADS/ETAs) to facilitate their route to market within Europe. The CPR also includes a formal reference to sustainability in Annex I.

Unfortunately, as has been discussed above, it is these aspects of the CPR that have not yet been fully implemented. Nevertheless, nine EADs have been published and more are likely to be published in the near future. Furthermore, the Commission and industry are aware of the need to clarify aspects related to simplified procedures and the derogation from drawing up a DoP. Had this study been undertaken in 2016/17 (i.e. several years after implementation) these issues may already have been resolved.

Despite this, it should be recognised that Article 36 has been beneficial in terms of enhancing competitiveness, as has the CPR more generally. For instance, mandatory hENs and CE marking, coupled with the system for the AVCP and the impartiality of notified bodies has helped to ensure fair competition and create a more level playing field in the European market for construction products. The ability to supply DoPs electronically has also been successfully implemented and is in accordance with the Commission's policy on innovation and competition.

Finally, Basic Works Requirement (BWR) 7 of the CPR that relates to sustainability represents a first step from which further progress can be made in the future.

8 Recommendations

8.1 Introduction

Overall, it appears that the level of knowledge of CPR and related issues is low amongst stakeholders, especially SMEs. Given that only two years have passed since the implementation of the CPR, it may simply be the case that more time is needed for industry to become acclimatised with all aspects of the CPR. Nevertheless, it is recommended that additional effort be made by the Commission, MS authorities, industry associations and other parties to disseminate information about the CPR, in particular those aspects that are posing a difficulty for stakeholders (e.g. the meaning of CE marking within the context of the CPR, how Article 5 and the simplified procedures should be applied, etc.). Table 8-1 provides a summary of recommendations pertaining to specific aspects of the CPR.

During the course of this study, four main areas for improvement have been identified; namely:

- CE marking;
- Quality marks;
- Market surveillance; and
- Article 5 and simplified procedures.

Specific recommendations relating to these areas are discussed in the sections that follow.

Table 8-1: Recommendations		
Aspect	**Key areas for improvement**	**Recommendations**
Definitions	There are some terms and concepts referred to in the CPR that would benefit from further clarification, or new definitions.	Additional and/or more detailed definitions could be provided in the CPR itself or through other means (e.g. the Commission's FAQs or interpretation/guidance papers).
Obligations of economic operators	Some economic operators still lack awareness of their obligations under the CPR. In some cases, practical implementation of the obligations still varies.	Additional information campaigns could be launched to reiterate and clarify economic operators' obligations. Stakeholders have indicated that SMEs/micro-enterprises, importers and distributors are the least conversant with the CPR; thus future information campaigns should target these groups. Raising stakeholders' awareness of PCPC and improving the quality of the information they provide should also help to increase economic operators' awareness of their obligations and lead to a more uniform application of the CPR's provisions.
Declaration of performance	There is uncertainty as to how and when the Article 5 derogation can be applied.	Detailed recommendations provided in Section 8.5 below.
CE marking	There is a duplication of information, which is already provided in the DoP, in the CE marking information. Some stakeholders do not understand the meaning of the CE marking in the context of the CPR.	Detailed recommendations provided in Section 8.2 below.
Quality marks	Quality marks are perceived as a barrier to the free movement of construction products.	Detailed recommendations provided in Section 8.3 below.
Simplified testing procedures for products	There is a lack of awareness and understanding of these provisions by industry stakeholders, particularly SMEs. There are difficulties in demonstrating 'equivalence' and/or providing specific technical documentation. There are doubts over the actual extent of financial savings that could be achieved.	Detailed recommendations provided in Section 8.5 below.
Simplified procedures for products not (fully) covered by a hEN (EADs/ETAs)	There is a need for more EADs to be published. Under the CPR it is possible for manufacturers to use voluntary markings for essential characteristics that may be listed within the EAD but have not been included in the ETA, with these voluntary marks linked to the ETA rather than the DoP. The ETA only indicates the performance values from tests and does not contain valuable information on the conditions and assumptions under which the	Further EADs are due to be cited in the OJEU in the future EOTA have suggested that any future revision of the CPR should ensure that Article 8(3) refers to the relevant DoP, rather than the ETA; or ensure that the ETA includes all essential characteristics (employing the NPD option where appropriate) as noted in the EAD. Information on the conditions and assumptions under which a product's performance was determined could be included in the ETA (Article 26 would need to

Table 8-1: Recommendations		
Aspect	**Key areas for improvement**	**Recommendations**
	product's performance was determined.	be revised accordingly).
PCPC	There is a need to increase stakeholders' awareness of PCPC. The response times and quality of information provided by PCPC need to be improved.	Additional information campaigns could be launched to raise stakeholders' awareness of PCPC. Further resources may need to be directed to PCPC to improve their response times and the quality of information they provide. A detailed review of the key questions put to PCPC could help to identify areas where new interpretation documents are required. Such documents could then be disseminated to stakeholders through the PCPC (and by other means).
hENs	There is a perception that many hENs are inadequate, incomplete or need to be updated following the implementation of the CPR. The position and needs of all stakeholders (particularly SMEs) are not always taken into account during the harmonisation process.	Provisional timetables for the revision of hENs could be provided online. Further steps should be taken to engage with stakeholders (particularly associations representing SMEs) when drawing up hENs.
AVCP	Stakeholders have indicated that the systems of AVCP could be further streamlined.	An investigation could be carried out of possible options for further streamlining the systems of AVCP.
Levels and classes of performance	There is a perception that the process for setting levels and classes could be faster.	An investigation could be carried out of possible options for speeding up the process of determining levels and classes.
TABs	There is not yet a level playing field for the accreditation of TABs in Europe.	The accreditation process for TABs should be harmonized.
Notified bodies	There is a view that the practices of NBs can differ greatly between MS. It is not currently possible for NBs to implement the obligation under Article 53(2) and maintain confidentiality.	The Commission should establish a faster and more efficient procedure for investigating the competence of NBs (Article 51) through implementation of the common schemes for accreditation foreseen in Regulation 765/2008. The Commission could work with the Group of Notified Bodies to identify (and then harmonize) areas where the practices of NBs currently differ. Article 53(2) will need to be revised to ensure that NBs can maintain confidentiality. This provision should either be deleted or amended to ensure that confidential data is treated as confidential by the NB.
Notifying authorities	There is not yet a level playing field for the designation and monitoring of NBs in Europe.	No recommendations.
Information campaigns	Information obtain from consultation suggests that the CPR is not easy for some economic operators to understand. In particular, there is a need to raise awareness amongst non-professional users of construction products, for	Given that most stakeholders are now familiar with the core aspects of the CPR, future information campaigns could perhaps focus on promoting the derogations and simplified procedures that seek to alleviate the burdens of complying with the CPR. Such

Table 8-1: Recommendations		
Aspect	**Key areas for improvement**	**Recommendations**
	example on the value and meaning of the CE marking, and on what they need to look for in the DoP. There is currently a low awareness of PCPCs and the simplified procedures listed under Article 37 and 38.	campaigns should, in particular, be directed towards micro-enterprises and SMEs, who are traditionally more difficult to reach. The Commission's construction products webpage could also be updated more regularly and translated into a broader range of EU languages.
Market surveillance	MSAs have limited resources and personnel and these are currently insufficient for a pro-active approach to market surveillance. There is a need for greater coordination of market surveillance between countries and at different levels. Stakeholders lack awareness of the activities of MSAs.	Detailed recommendation provided in Section 8.4 below.

8.2 CE marking

8.2.1 Duplication of information

Problem definition

The duplication of information, which is already provided in the DoP, in the CE marking information has been highlighted as an issue by stakeholders. As outlined in Section 6, this lack of coherence has resulted in various negative impacts including; the value of the CE marking being unclear for stakeholders, problems in affixing the CE marking to the construction product or to the accompanying packaging and costs to industry.

Furthermore, some construction products have a long list of characteristics that must be presented on the CE marking label. This can make it difficult to affix the CE marking label to the product or product packaging (e.g. for small products).

Possible solutions

The duplication issue could be resolved by **permitting a reduced CE marking label that contains only a product identification code and reference to the DoP**. This would reduce the costs associated with drawing up the CE marking label, reduce the environmental impact (i.e. smaller paper/label) and would also make it easier to affix the CE marking to smaller construction products. Moreover, such an approach would accord with market expectations, as most end-users are unlikely to acknowledge or consult the CE marking for information on its performance. The primary stakeholders who seek such information are specifiers/purchasers/architects who will consult the DoP before the product is ordered.

In fulfilling the solution for a reduced CE marking label, **it is fundamental that the information which is in the DoP can be accessed or made available in real time to end-users and other stakeholders, both now and in the future**. The CE marking must therefore contain a reference which allows the user to find the DoP, if desired and necessary, and to examine the various performance values of a

particular product. One means to achieve this could be to exploit available IT tools, for example the CE marking label could provide a link (website and QR code) to an electronic DoP available on a website which contains the relevant performance information). However, for those users that do not have access to electronic means or internet, it is important that Article 7(2) is respected (i.e. a paper copy of the DoP shall be supplied if the recipient requests it). Note that if the DoP is supplied electronically, there will always be the possibility for the customer to print a paper copy from the internet, if needed.

8.2.2 Concept of CE marking

Problem definition

The message that CE marking is mandatory for all construction products has been understood too literally by parts of industry, with some failing to appreciate that there are instances when the CE marking is not required.

Possible solutions

Additional **efforts to disseminate information about the meaning of CE marking within the context of the CPR, and how it should be applied by stakeholders**, will help to ensure that the relationship between the DoP/CE marking and hENs is better understood. In this regard, information dissemination could take the form of:

- **A Guidance document** focussing on CE marking within the context of the CPR;
- **Leaflets, brochures and factsheets** targeted at particular groups, for example purchasers and end-users of construction products. These could be one or two page documents provided in all EU/EFTA languages to ensure they reach a wide audience, particularly SMEs. Such documents could be uploaded to the European Commission's dedicated webpage on CE marking[127], disseminated through industry associations and/or handed out at trade fairs.
- **Seminars and conferences** held either in Brussels or in selected MS. These could take a form similar to the promotional conference held by the Commission on the 25th June 2012 which provided a forum to exchange opinions and information in preparation for the full implementation of the CPR[128].
- **Webcasts, virtual seminars and informative videos**, such as DG GROW's 2014 video on "*Building trust in the construction sector*"[129] could be made available through website channels such as Youtube.

Between 2010 (first quarter) and March 2012, the EC carried out an information campaign on CE marking, which included outputs similar to those listed above. The success of this campaign, as illustrated by feedback from the seminars and fairs, the high demand for informational material and

[127] Available at: http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/

[128] BBS (2012): Construction Products Regulation Conference, Brussels, available at: http://www.bbsbarriers.com/announcements/ce-marking-mandatory-from-1st-july-2013-for-construction-products

[129] Available at: https://www.youtube.com/watch?v=_zMs_K23ZaI&list=UUvhco_i3akl_yhKLgsjEcNA

the strong interest of print and online media, suggests that there may be benefits from using a similar approach in the future.

Companies who are producing construction products and selling them in accordance with the CPR could also take more responsibility for explaining the meaning and obligatory nature of CE marking and the meaning of the DoP (e.g. to customers, partners, construction companies and other related parties).

Information campaigns should, in particular, target those stakeholders that are traditionally hardest to reach (micro-enterprises and SMEs). Note that seminars and conferences on their own may not be the best means of reaching SMEs/micro-enterprises, unless they are free/subsidised to attend.

8.3 Quality marks

8.3.1 Problem definition

Quality marks are perceived as a barrier to the free movement of construction products.

8.3.2 Possible solutions

Information obtained from stakeholders indicates that quality marks currently used on construction products available on the market pose different problems and, most likely, would require different solutions. For instance:

- **Standards-related marks**: As outlined in Section 6, some manufacturers are confused as to whether certain standards-related quality marks fulfil a different/complimentary function to the CPR, safety assessments, CE marking (e.g. in terms of covering essential characteristics)[130]. For the quality marks which would fall under this category, a case-by-case assessment would be required in order to identify the specific problems they pose. However, **it is worth considering whether there is a need for a systematic investigation of quality marks which go beyond the EU harmonised standards**. That said, it is expected that the ECJ ruling on case C-100/13 will have a direct impact on various quality marks which are currently overstepping the mark in several MS. However, the full impacts of the ECJ judgement in Germany will not be fully known until internal discussions between the DIBt, the Länder and the Federal Government are finalised[131].

- **De facto mandatory marks:** As outlined in Section 6, some marks are effectively (de facto) mandatory for manufacturers, as they will be unable to sell their products on certain markets, or in certain sectors, without them (e.g. due to procurement rules/insurance requirements). For example, it is evident that the need for (national) application marks, for example, for roofing insulation products, has not been diminished by the CPR (for further information, refer to Annex 3). During consultation, there was a very strong view that **more**

[130] Quality marks are permitted under the CPR, so long as they do not cover essential characteristics and fulfil a different function to the CE marking. Only the CE mark can be used to demonstrate compliance with the CPR.

[131] DIBt Press Release, Germany condemned by ECJ for impeding the free movement of construction products, See: https://www.dibt.de/en/Departments/data/ZD5_Press_release_Decision_ECJ_16_October_2014.pdf

needs to be done in this area by the Commission to address public bodies, or private bodies acting as a public undertaking, that seem to be imposing additional national requirements/standards that impede the free movement of CE marked construction products.

- **Market-driven marks**: As outlined in Section 6, the main problem in relation to market-driven marks is that there is no mutual recognition between these marks. **It may be possible, in some instances, to address the issue of market-driven marks using competition law** as it may be the case that some marks effectively hold a monopoly position and prevent access to a MS market.

8.4 Market surveillance and enforcement

8.4.1 Problem definition

As outlined in Section 6.3, there is a perception amongst industry that there is inadequate proactive market surveillance and that more sample testing of products against the declared performances should be undertaken. Furthermore, it is felt that appropriate enforcement actions are currently not being undertaken with regard to restricting or prohibiting the movement of non-compliant construction products from entering the EU market. At best, this indicates a lack of visible enforcement action (which has a deterrent benefit) and, at worst, suggests that insufficient action is currently being taken in terms of market surveillance in some MS. There is also a perception that, due to the current economic climate, many MSAs lack adequate resources and personnel.

8.4.2 Possible solutions

Industry should be given more information about market surveillance structures and on the programmes and actions of MSAs in MS. Annual reports reviewing and assessing the performance of MSAs are already prepared by MS and published on the Commission's website. Greater effort should thus be given to raising the profile of such reports and disseminating their findings to industry. This would help to ensure that the views of industry are based on data rather than anecdotal evidence.

MSAs should take full advantage of ongoing administrative cooperation (e.g. under the AdCo CPR Group and the ICSMS System) in order to exchange information and expertise, identify priorities for market surveillance actions and conduct more joint market surveillance actions. Joint market surveillance actions serve particularly to support MS with more limited resources and could enable more tests of construction products to be carried out. These actions could be focused on sub-sectors or products identified as being particularly problematic in terms of non-compliance. Positive experiences from joint market surveillance actions undertaken in the past (e.g. the 2013 Joint Market Action on Smoke Detectors[132]) may provide a possible template for wider future action on the market surveillance of construction products. A horizontal guidance document covering good practices in market surveillance could make activities more effective and seek to avoid conflicting implementation of the legislation in MS. Taking into account the weaknesses of RAPEX, the Commission are undertaking work to develop a reporting system within the ICSMS system that is more suitable for construction products and the CPR.

[132] PROSAFE (2014): Joint Action 2013, GA N° 2013 82 01, Call for Tender for Test Laboratories Product Activity Smoke Detectors, available at: http://www.prosafe.org/images/Documents/Tenders/JA2013/PROSAFE_Call_for_Tender_JA2013_SDs.pdf

Given that reports from industry stakeholders concerning non-compliant or suspicious products are being usefully used by MSAs, it may be advantageous to **increase the communication between MSAs and industry stakeholders**, in order to exchange more information. This could facilitate the work of MSAs at the same time as increasing trust in the activities of MSAs. It should be made easier for stakeholders in the construction sector to identify the relevant MSA in each MS, including contact details, reference to the national regulation dealing with market surveillance, the complaints procedures and the penalties incurred. An EU-wide web-based reporting mechanism, including the facility to upload pictures and other evidence, could enable reporting of possible infringements to the relevant MSAs. Providing a means for economic operators to report cases of non-compliance might also help to alleviate the burden on MSAs.

Moving forward, it is possible that the constraints linked to limited resources, which affect all EU administrations, may be overcome by a **more efficient prioritisation and organisation of market surveillance activities**.

8.5 Article 5 and simplified procedures

8.5.1 Problem definition

As outlined in Section 6.3, companies have encountered several difficulties in taking advantage of the derogations and simplified procedures, these include:

- **Legal difficulties**, including uncertainties as to how to interpret and apply Articles 5(a)(b)(c) as well the application and meaning of the caveat in the chapeau, that notes "*absence of Union or national provisions*";
- **A perceived lack of net financial savings** (for instance, after incurring legal costs) **and marginal economic benefits for specific construction products** resulting from the application of these provisions. Furthermore, there is scope for potential future costs or complications on the market from not obtaining CE marking;
- **Technical difficulties** in demonstrating 'equivalence' and/or providing alternative technical documentation; and
- **Information gaps** where this relates to the lack of awareness and understanding of the provisions (and associated guidelines) by industry stakeholders.

8.5.2 Possible solutions

It may be the case that, to date, public authorities and industry were primarily concerned with ensuring that all stakeholders were aware of the most fundamental aspects of the CPR (i.e. CE marking and DoP). Now that this is generally understood, **additional messages relating to the voluntary provisions designed to alleviate burdens on industry can begin to be disseminated to stakeholders**.

Some of the problems identified (e.g. a lack of clarity regarding key terms associated with Article 5 and what constitutes STD) could potentially be addressed by the Commission through the **issuance of supplementary and comprehensive guidance.** Such guidance, which could complement the Commission's existing CPR FAQs, should include examples and address any issues in a manner that can be easily understood by companies, with particular efforts made to target micro-enterprises and SMEs.

Many economic operators fear that their customers will not accept products without a CE marking and DoP, even though they are in compliance with the CPR. Until the market is informed and is willing to accept that derogations are permissible, the uptake of Article 5 and the simplified procedures are unlikely to reach their full potential. Again, **clarification of this aspect could be provided by the Commission in the form of a guidance document, but the best course of action may simply be to allow more time for industry to become acclimatised with all aspects of the CPR**.

Overall, it is clear that **additional efforts should be made by public authorities and industry associations to engage with all stakeholders, particularly those that are traditionally more difficult to reach** (SMEs and micro-enterprises). In particular, they should seek to ensure that all stakeholders better understand the options the CPR offers to enterprises to alleviate the financial burden of compliance.

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