Supporting study for the Review of the Construction Products Regulation: Evaluation

Final Report

Written by VVA Economics & Policy, Joint Institute for Innovation Policy (JIIP), Danish Technological Institute (DTI), and Global Data Collection Company (GDCC)

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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Legislation on Construction Products

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1. INTRODUCTION

The Joint Institute for Innovation Policy (JIIP) together with Valdani Vicari Associati (VVA), the Danish Technological Institute (DTI) and the Global Data Collection Company (GDCC) (hereinafter "the study team") have been mandated by the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, to carry out a Supporting Study for the joint evaluation and impact assessment for the CPR.

This Final Report presents the findings and the conclusions in relation to the evaluation of Construction Products Regulation (the CPR), which is the basis for the other part of the study, the Impact Assessment.

The report is structured as follows:

- Chapter 2 sets the scene for the evaluation by describing the main features, the rationale for the CPR and the current state of play in the construction product sector.
- Chapter 3 presents the objectives and methodology of the evaluation.
- Chapters 4 to 8 contain the findings of the evaluation, based on the primary and secondary data collected. This part is structured according to the five main evaluation criteria: effectiveness, efficiency, relevance, coherence, and EU added value.
- Finally, our replies to each evaluation question and our conclusions are presented in chapter 9.

The annexes to this report include a list of references, an evaluation evidence table, as well as data collection tools and results of data collection activities. These are provided in a separate volume, as is an Executive Summary of the present report.

2. BACKGROUND: THE CPR AND THE CONSTRUCTION PRODUCTS SECTOR

To set the stage for the evaluation, we first provide an introduction to Construction Products Regulation[1], its main features and state of play, followed by a brief overview of the state of play of the European construction products sector, featuring economic indicators based on statistical analysis.

2.1. Main features and state of play of the CPR

The overall objective of the EU legislation on construction products is to facilitate the consolidation of the Internal Market and improve the free movement of construction products in the EU, by laying down harmonised conditions for marketing construction products and introducing a common technical language in which manufacturers can express the performance of the products that they place on the market.

Construction Products Regulation (the CPR) replaces the former Construction Products Directive (the CPD[2]) and has been applied fully since July 2013. As stated in the preamble to the CPR (Recital 8), '*Directive 89/106/EEC should be replaced in order to simplify and clarify the existing framework, and improve the transparency and the effectiveness of the existing measures*'.

The rationale behind the revision of the CPD was thus to:

- respond to clarification needs in the construction sector for the operators;
- reinforce the credibility of the system (particularly with respect to increased harmonisation of the procedures and criteria for designation by the national authorities of the notified bodies and a better coordination of the market surveillance mechanisms); and
- simplify the overall system.

In addition to the objectives of removing barriers to trade and setting up a common technical language, the CPR's objectives are to ensure legal clarity (including simplicity) and certainty, to keep costs incurred by manufacturiners proportionate/fair (also for SMEs), and to provide appropriate means for public authorities at all levels to set perfomance requirements and to check compliance.

The CPR works differently from the general principles of the New Legislative Framework, mainly by defining a common technical language and generally not defining any specific requirements for construction products. Hence, harmonised conditions for the marketing of construction products are established by harmonising information about the performance of construction products instead of harmonising the construction products themselves or their requirements. As noted by the Supporting study for the fitness check of the construction sector[3], "While a New Approach Directive on e.g. the safety of certain

[1] Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011R0305

[2] Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31989L0106

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

products would state the minimum safety level that a manufacturer needs to guarantee to place a product on the Single Market, the CPR 'only' sets a common methodology for measuring the performance of construction products over their essential characteristics".

With respect to the division of powers between the EU and Member States, construction is a field of clearly identified subsidiarity. Member States have exclusive competence for building regulations, i.e. the rules of design and building of works and thus the use of the products, while EU legislation is put in place to ensure the Internal Market for the products used in the works. Member States retain full control of establishing construction design rules in their respective territories (safety and security of the citizens). Different rules generally relate to each type of construction work, reflecting their specific features (buildings, bridges, dams, etc.). The construction works, and consequently also the products used and integrated, are extensively influenced by the design as determined by the designer (architect, engineer, etc). Thus, design rules (building regulations) are set at Member State level (sometimes even at regional/local level) and are generally not related to the performance of an individual product but rather to the performance of the entire works (or a major feature of it) in which it is integrated.

Key elements and state of play of the CPR

The CPR lays down harmonised rules for marketing construction products in the EU. It aims to achieve the proper functioning of the internal market for construction products by establishing rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products (Article 1).

For this purpose, it provides a **common technical language** to assess the performance of construction products, and to ensure the availability of reliable information for professionals, public authorities and consumers and enable the comparison of the performance of products from different manufacturers in different countries[4].

The common technical language is created by means of harmonised technical specifications, **Harmonised European standards (hENs)** and **European Assessment Documents (EADs)**. The common technical language enables:

- Regulatory authorities in EU countries to define legal requirements applicable to construction works;
- Manufacturers to draw up the Declaration of Performance (DoP) as defined in the CPR and to affix the CE marking;
- Design engineers and contractors to verify compliance with legal requirements and demands from their clients[5].

The European Committee for Standardisation (**CEN**) and the European Committee for Electrotechnical Standardisation (**Cenelec**) are the competent organisations for the drafting of harmonised standards. In accordance with Article 17 of the CPR, harmonised standards are drafted by the European standardisation bodies[6] on the basis of requests

[4] European Commission (2017) Construction Products Regulation (CPR). Available at: http://ec.europa.eu/growth/sectors/construction/product-regulation_en, accessed 31/07/2017.

[5] European Commission (2017) Harmonised standards. Available at: https://ec.europa.eu/growth/sectors/construction/product-regulation/harmonised-standards_en, accessed 31/07/2017.

[6] Listed in Annex I to the Standardisation Regulation ((Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation,

('mandates') issued by the Commission after having consulted the Standing Committee on Construction. Mandates are developed by the European Commission, taking into account requirements of Member States, the industry and the construction stakeholders. Standards are drafted by the concerned CEN Technical Committee and submitted to internal CEN approval procedures. The standard is then submitted to the Commission for citation in the Official Journal of the European Union (OJEU). Once cited in the OJEU, the standard is the official reference for the assessment and performance of the essential characteristics covered by the standard and manufacturers are obliged to use the cited standards.

As of 30 June 2018, 444 hENs have been cited in the OJEU, based on about 60 mandates drawn up in the 1990s and early 2000s. These standards represent 13% of all cited hENs. Since 2013, 208 standards have been developed by CEN/CENELEC, 34% of which have been cited. 124 out of the non-cited 138 standards have been sent back and accepted for review at CEN level, while 14 require action at Commission services level, including 11 to be progressed through delegated acts[7] (see section 4.1.2 for more details).

Products not covered, or not fully covered, by harmonised standards can be voluntarily CE marked. The **European Technical Assessment (ETA)** is an alternative for such construction products. If a manufacturer of such a product wishes to have his product CE marked, the manufacturer is to request a ETA from the Technical Assessment Body (TAB, see below). The ETA is issued on the basis of a **European Assessment Document (EAD)**, which is the documentation of the methods and criteria applicable for the assessment of the performance of a construction product in relation to its essential characteristics[8]. If the product in question is already fully covered by an existing EAD, this will be used as the basis for the ETA to be issued. When a manufacturer requests a ETA for its product and no relevant EAD exists, the TAB which has received the request for a ETA defines the work programme for drafting the EAD, taking into account the essential characteristics relevant for the intended use. The **European Organisation for Technical Assessment (EOTA)** coordinates the work and adopts the EAD[9].

The uptake of the ETA option has been significant. As of 31 December 2017, more than 4000 ETAs have been issued. 186 EADs have been proposed for citation, and 153 of these have been cited. ETAs based on ETAGs[10] remained almost stable from 2015 to 2017 while

amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1025&from=EN)

7 Figures provided by the European Commission.

8 Under the CPD, European Technical Approval Guidelines (ETAGs) were elaborated upon the mandate of the European Commission in order to establish how Approval Bodies should evaluate the specific characteristics/requirements of a construction product or a family of construction products. ETAGs were used as basis for European Technical Approvals until the CPR came into force in 2013. After the entry into force of the CPR, no new ETAGs are developed. According to EOTA, published ETAGs may be used by TABs as EADs unless EOTA decides that changes are in order, in which case an EAD needs to be elaborated first. Source: EOTA website: *What is an EAD?*, https://www.eota.eu/en-GB/content/what-is-an-ead/30/ -- According to the Commission, the ETAGs could be used as EADs only as far as the state of art had not rendered them outdated (which currently is the situation for all of them).

9 BRE, Ecorys, and Vito (2016), Supporting study for the evaluation of the relevance of EOTA tasks, European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, December 2016

10 Cf. footnote 8

the number of ETAs based on EADs has seen large-scale increase since 2014, as shown in Table 2-1. This is partly due to the conversion of ETAGs into EADs having taken place.

Table 2-1: Number of ETAs issued as of 31st December 2017

Year	2013	2014	2015	2016	2017	Total
ETAs based on ETAGs	20	642	820	945	946	3373
ETAs based on EADs	0	11	87	256	511	865
Total	**20**	**653**	**907**	**1201**	**1457**	**4238**

Source: Figures provided by the European Commission

The establishment of draft EADs and the issuing of ETAs is entrusted to **Technical Assessment Bodies (TABs)**. Article 29(1) of the CPR allows MS to designate Technical Assessment Bodies 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. A total of 47 TABs have been established in EU Member States (except Bulgaria, Estonia, Greece, Latvia, Malta and Luxembourg) and in Norway, Switzerland and Turkey[11].

The Member States furthermore notify **Notified Bodies** authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance under the CPR. The requirements, obligations and other aspects relating to the operation of Notified Bodies are laid out in detail in Articles 43-55 of the CPR. A total of 646 Notified Bodies have been established in all EU Member States (except Luxembourg and Malta), as well as in Norway, Switzerland and Turkey[12].

Annex I to the CPR lists 7 **basic requirements** for construction works. These basic requirements constitute the basis for the preparation of standardisation requests (mandates). Subject to normal maintenance, construction works must be designed and built in such a way as to satisfy the basic requirements for construction works for an economically reasonable working life, in the following areas:

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

It needs to be underlined that the above-mentioned basic works requirements, in spite of the word "requirements", do not impose any obligations on anybody. They rather bring forward a cathegorisation of the requirements Member States have defined or may define

[11] EU NANDO-CPR Database of Notified Bodies, http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=notifiedbody.notifiedbodies&num=TAB&text=Technical%20Assessment%20Body. It should be noted that TABs for Finland and Ireland are not listed in the Nando database, whereas TABs from these countries are listed on the EOTA website, https://www.eota.eu/en-GB/content/how-to-find-a-tab/55/.

[12] EU NANDO-CPR Database of Notified Bodies, http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=directive.notifiedbody&dir_id=33.

for construction works on their territory, and at the same time present the sphere of harmonization for CPR purposes, both these aspects to be taken duly into account when determining essential characteristics of construction products.

The **Declaration of Performance (DoP)** is required for every construction product covered by a European harmonised standard or for which a European Technical Assessment has been issued[13]. The DoP details both the product and the standard (or the EAD and the ETA) and contains information about the product's performance in relation to the **essential characteristics** defined within the applicable harmonised technical specification (harmonised standard or EAD)[14]. A DoP should be supplied in the language of each Member State where the product is marketed - or another language decided by that Member State.

Each construction product covered by a European harmonised standard, or for which a European Technical Assessment has been issued, must also be **CE marked**. This marking indicates that the product is in conformity with its declared performance, and that it either has been assessed according to a harmonised European standard, or a European Technical Assessment (ETA) has been issued for it[15]. **The Member States are obliged to allow the marketing of CE marked construction products, without requiring any additional marks, certificates or testing**[16]. The Member States can however set requirements on the use of such products in buildings and other construction works, utilizing in this context only the harmonized structure created in or by means of the CPR.

Products covered by a harmonised standard may be **exempted from drawing up a DoP and affixing the CE marking**, if they are individually manufactured/custom-made for a given use, if they are manufactured on the construction site, or if the manufacturing must maintain traditional processes for the conservation of officially protected works, as outlined in Article 5 of the CPR.

The **Assessment and Verification of Constancy of Performance (AVCP)** is a harmonised system defining how to assess the performance of construction products and control the constancy of the assessment results. Five different systems are in place for construction products under the CPR. They range from self-declaration and monitoring by the manufacturer to a large-scale third party involvement by Notified Bodies (the different

[13] European Commission (2017) Declaration of Performance (DoP) and CE marking, Available at: https://ec.europa.eu/growth/sectors/construction/product-regulation/performance-declaration_en, accessed 31/07/2017.

[14] MPA (2012), Frequently Asked Questions on the Construction Products Regulation and CE marking. Available at: http://www.mineralproducts.org/documents/frequently_asked_questions_CPR.pdf, accessed 31/07/2017.

[15] European Commission (2017) Declaration of Performance (DoP) and CE marking, previously cited.

[16] European Commission (n.d.) CE marking of construction products step by step. Available at: http://ec.europa.eu/DocsRoom/documents?tags=ce-guide, accessed 31/07/2017.

systems are designated 1+, 1, 2+, 3, and 4)[17]. All AVCP systems require that the manufacturer establishes **Factory production control (FPC)[18]**.

Article 27 of the CPR permits the Commission to adopt delegated acts to establish **threshold levels and classes of performance in relation to the essential characteristics** of construction products. 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.

The CPR also contributes to **EU SME policy**, which aims to level the playing field for SMEs, especially micro-enterprises. Article 37 is specifically aimed at providing micro-enterprises with an option to use simplified procedures when carrying out the AVCP.

Simplified procedures are also provided for in Article 36 which enables any manufacturer to replace the type-testing or type-calculation stage of the assessment process with Appropriate Technical Documentation, in case tests have been carried out for corresponding products or systems of components.

Article 38 allows manufacturers to replace performance assessment with Specific Technical Documentation for construction products that are individually manufactured or custom-made in a non-series process.

Furthermore, Article 10 of the CPR requires Member States to designate Product Contact Points for Construction **(PCPCs)** to act as information sources for enterprises, and in particular SMEs. Member States "shall ensure that the Product Contact Points for Construction provide information, using transparent and easily understandable terms, on the provisions within its territory aimed at fulfilling basic requirements for construction works applicable for the intended use of each construction product".

Expected impacts of the transition from the CPD to the CPR

The proposal for the new Regulation (the CPR) underwent an Impact Assessment in 2008[19]. The main problems identified at the time were that the CPD had shown a lack of clarity, controversial interpretation by Member States and other stakeholders, difficulties and delay of putting in place and applying its tools, burdensome procedures, disproportionate administrative burden, and unsatisfactory implementation on the ground. As a result, the internal market potential for construction products was seen as only partly exploited. The Directive and its detailed wording as well as the modalities and variations of the national implementation mechanisms were seen as the major drivers of the problems identified. The following key issues requiring action were identified in the Impact Assessment:

[17] The AVCP systems are specified in annex V to the CPR, which was later amended by the 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, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0568&from=EN

[18] According to Article 2.26 of the CPR, 'factory production control' means the documented, permanent and internal control of production in a factory, in accordance with the relevant harmonised technical specifications

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

- Issues associated with the **implementation mechanisms** of the CPD, including slow advances in the harmonisation due to substantial delays in the standardisation work; Attestation of Conformity procedures not always precise enough regarding the required involvement of the Notified Bodies; an important number of infringement proceedings caused by unclear provisions in the Directive; and the fact that four Member States had made CE marking non-mandatory;
- Issues related to **hENs**, including confusion regarding the meaning of standards under the CPD and unnecessary rigidity in the technical solutions proposed;
- Issues related to **ETAs**, including confusion as to whether it was mandatory to request an ETA in the absence of harmonised European standards; bureaucratic and costly procedures for establishing ETAGs and for obtaining an ETA;
- Issues related to the **functioning and competences of Approval Bodies (ABs) and Notified Bodies (NBs)**;
- Issues related to **CE marking**, including confusion as to the meaning of the CE marking under the CPD, causing erroneous interpretations of requirements by Member States authorities, e.g. requiring the use of national marks and associated testing;
- Issues regarding **products manufactured individually/non-series and micro enterprises**, including concerns over the unproportionate costs associated with CE marking such products and the fact that the procedures involved did not seem to be the most appropriate tool to regulate such products; and
- Issues related to inefficient **market surveillance.**[20]

The 2008 Impact Assessment considered three main options:

- Option 1: No change (the CPD to continue in force)
- Option 2: No legislation – repeal of the CPD without any substitute and a reversion to mutual recognition
- Option 3: Revision of the Community legislation on construction products.

The preferred option in the Impact Assessment was option 3, which resulted in the CPR. To put the following evaluation into perspective, it is worth considering the kinds of impact that were expected from the proposed Regulation at the time of the 2008 Impact Assessment. The main expected effects can be summarised (in qualitative terms) as follows[21]:

- Increased levels of competition, leading to more transparency in markets (but not necessarily a large increase in cross-border trade/trade over long distances)
- Reduction of delays in technical specifications from quicker work in CEN and EOTA (stricter deadlines to be imposed, and working methods expected to be improved)
- Significant savings for manufacturers due to national marks and certifications no longer being necessary
- Harmonised standards – expected simplification effects (lower costs) through increased access of manufacturers to the reading and interpreting of (performance-based) standards. This was to be achieved through clarification of the meaning and the content of standards.
- Simplification of ETA system and elimination of delays – important cost savings expected for manufacturers using this route
- Improved market surveillance

[20] Impact Assessment previously cited.

[21] Own summary based on table p. 31-35 and accompanying text of the Impact Assessment report cited above.

- Simplifications for micro enterprises, individual products and non-series products etc. expected to lead to significant simplification effects (cost reductions)
- Significant reduction in cost of CE marking and placing products on the market through reductions of excessive burdens related to testing, incl. e.g. simplification measures for micro-enterprises, non-series products etc.

With respect to costs and benefits in monetary terms, due to a lack of quantitative data and big variations for different subsectors and types of enterprises, the 2008 IA found it impossible to assess monetary impacts resulting from the proposed policy options other than in the form of rough global estimates. With those caveats, the aggregated costs and benefits of option 3 were estimated at annual benefits in the range of EUR 245-685 million and annual costs in the range of EUR 100-130 million, providing net annual benefits in the range of EUR 145-555 million.

These expected impacts have been compared with the findings of this evaluation which are presented in the following chapters.

2.2. State of play of the construction products sector

In the following, a brief overview of key features of the construction products sector – production value and business demography – is presented. The purpose is to provide some background, particularly with respect to the size and development of the sector during the period in which the EU legislation on construction products has been in force.

The data that can be presented is limited somewhat by the general problem of the lack of statistical information for the sector. There is currently no single statistical measure for the construction products sector. The main sources of data, such as Eurostat and the OECD, include information on a higher level, for the construction industry, or manufacturing sectors that overlap with the construction products sector. The products database PRODCOM includes statistics on product groups that in most cases are not entirely used as construction products. Thus, to extract information directly on the construction products sector, intensive and sophisticated statistical analyses must be undertaken. Due to these difficulties, this analysis relies on recent studies that specifically tackled these problems and developed methods to do so. In addition, it was possible to use several proxies to make informed estimates about trends in the construction products sector. These estimates need to be interpreted with caution due to the number of assumptions on which they are based.

Production value of construction products

As mentioned above, the construction products sector does not map easily onto to the NACE level 4 categories used in the PRODCOM database. For this reason, it is not possible to directly estimate the turnover of the construction products sector. The product areas covering the entirety of the construction products sector span a wide variety of different product categories and sub-sectors. Determining the full scope of the economic activity, across all member states of the EU, is a very challenging task.

To address this, the "Economic Impacts of the Construction Products Regulation" study carried out an estimation to establish an indication of the scale of economic activity

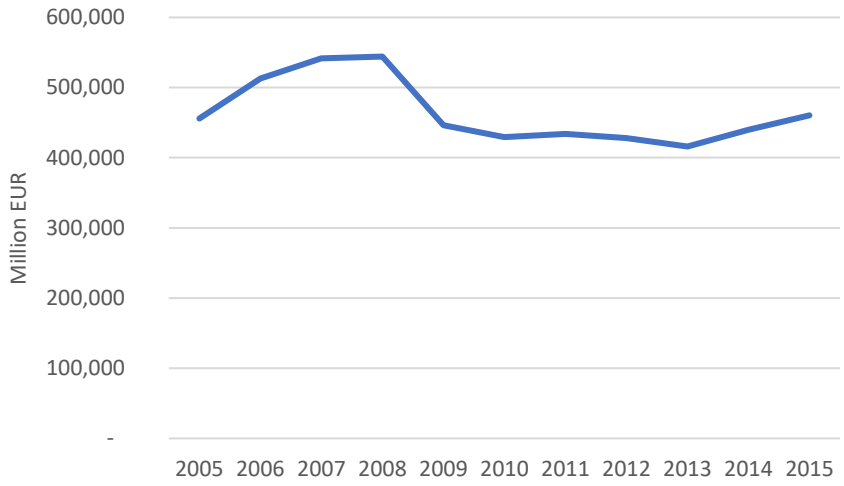
involved in the manufacturing of construction products[22]. The study estimated the total value of construction products manufactured in the EU28 in 2013 at 418 billion EUR.

The total value of construction products in 2013 can be compared with the production value in the overall construction sector in 2013, which stood at 1,485.7 billion EUR[23], leading to a ratio 0.28. In other words, 28% of the construction sector (by value) consisted of construction products in that year. Given that the proportion of construction products in the overall size of the construction sector may be assumed to remain stable over time, the construction products sector can be estimated as shown in the figure below.

[22] VVA Europe, DTI & TNO (2016) Economic Impacts of the Construction Products Regulation.

[23] Eurostat: Annual detailed enterprise statistics for construction (NACE Rev. 2, F): Construction (NACE_R2): Production value (INDIC_SB). Extracted on: 19.10.17

Figure 2-1: Estimated value of construction products produced in the EU28 between 2005-2015

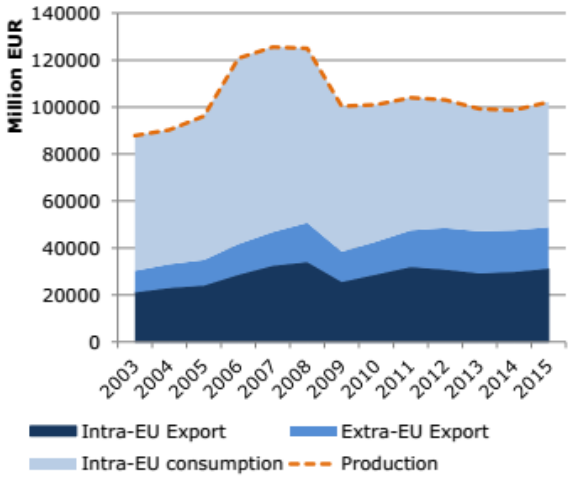


Source: Own calculation, based on Eurostat data on production value of construction products and the 2016 study on the Economic Impacts of the Construction Products Regulation; current prices.

It is noteworthy that the trend in Figure 2 is similar to the estimates produced for the study on "Cross-Border Trade for Construction Products" (Figure 3). Since this study was based on a different methodology (an in-depth analysis of a sample of 25 products), the similarity is a positive sign for the validity of the proxy used here.

Fig. 1 and Fig. 2 both show clearly the high levels of activity in the years leading up to 2008 and the drastic decline immediately following the financial crisis. The industry has not yet recovered from the drop in 2008/2009.

Figure 2-2: Value of production, intra-EU export, extra-EU export and consumption of the 25 construction products (2003-2015)



Source: Cross-Border Trade for Construction Products (2017).

The indicator of production value is not adjusted for inflation but reported in current prices. Thus, it might be asked whether the increase in production value in 2014 - 2015 also represents an increase in real terms. While inflation figures for the construction products

specifically are not available, the Harmonised Index of Consumer Prices (HICP) reported by Eurostat can be used as a proxy for inflation in the construction products sector.

The table below compares the percentage increase in production value for 2014-2015 and the percentage increase in the Harmonised Index of Consumer Prices (HICP) reported by Eurostat[24].

Table 2-2: Construction products production value adjusted for inflation (HICP)

	2013-2014	2014-2015
Production value increase	5.8%	4.6%
HICP	0.6%	0%
Production value increase adjusted for HICP	5.2%	4.6%

Source: Eurostat

Business demography of the construction products sector

Given the absence of direct data on the number of manufacturers of construction products, a useful proxy is the number of enterprises in the construction sector as a whole. While this indicator is at a higher level of aggregation, the European construction sector is characterised by pronounced domestic linkages between "upstream" and "downstream" industries within it, especially in comparison to foreign linkages[25], which suggests that the number of enterprises in the total construction sector can be used as an anchor to infer the number of enterprises in the construction products sector. It must be noted that this is a simplifying assumption. Moreover, it is not always possible to distinguish clearly between suppliers of construction products and suppliers of construction services. For instance, a company producing precast concrete products to be used in buildings erected by the same company could be categorised both as construction products manufacturer and as contractor. The exact proportion of construction products manufacturers within the construction sector is difficult to establish due to the lack of direct statistics. In addition, the proportion can vary over time. Thus, the estimation that follows should be treated with caution[26].

The recent supporting study for the Fitness Check on the construction sector estimated the number of construction products enterprises in the EU28 in 2013 to be around 245,000[27]. The study defined "construction product industry" by aggregating statistics on manufacturers from 11 NACE classes. The authors caution that the definition does not cover the whole construction product industry. Thus, the estimate is conservative. Nevertheless, it covers various materials (metal, wood, ceramics, plastic, cement), representing the main inputs to the construction sector, and different product stages, such as raw materials, semi-finished and finished construction products. At the same time, the

[24] Direct data on inflation for construction products is not available. Producing it would require aggregating inflation data for products used in construction.

[25] Ecorys (2016) The European construction value chain performance, challenges and role in the GVC. European Commission Contract No SI2-723540

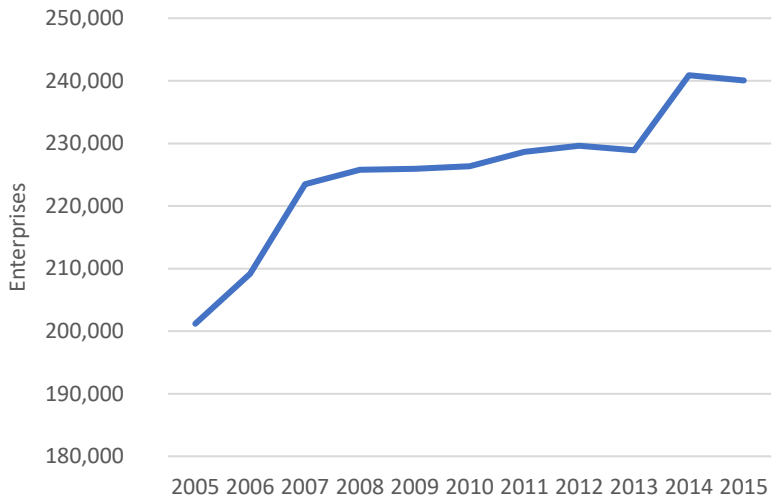
[26] The robustness of the results to changes in this simplifying assumption will be made subject to a sensitivity analysis to be carried out in the final stages of impact assessment carried out in conjunction with this evaluation.

[27] Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation, 2016, previously cited.

"Economic Impacts of the Construction Products Regulation" study estimated the number of enterprises that feed into the construction products sector[28] at 215,772 in 2012. The two calculations are very close both in values and date which suggests that the average of the two estimates, approx. 230,000 enterprises, can be used as a proxy for inferring trends in the number of construction products enterprises.

Using this average, the number of manufacturers of construction products can be estimated as representing 7% of the number of enterprises in the total construction sector in 2013 (3,269,946)[29]. The figure below presents the trend for 2005-2015, based on the application of this ratio to the number of enterprises in the total construction sector.

Figure 2-3: Estimated number of manufacturers of construction products (EU28)



Source: Own calculation, based on the Supporting Study for the Fitness Check on the Construction Sector, study on the Economic Impacts of the Construction Products Regulation, and the Eurostat data on the number of enterprises in construction

As the figure shows, based on the assumption of a constant ratio of construction products manufacturers to total number of construction companies, over the period 2005-2007 there was significant growth in the number of manufacturers of construction products. While the growth rate fell between 2008 and 2013 due to the financial crisis, it remained nevertheless positive, followed by a recovery in the number of enterprises in 2013-14, and a slight dip in 2015.

[28] Economic Impacts of the Construction Products Regulation, 2016, previously cited.

[29] Eurostat. Annual detailed enterprise statistics for construction (NACE Rev. 2, F): Construction: Number of enterprises. Extracted on: 19.10.2017

3. EVALUATION OBJECTIVES AND METHODOLOGY

This chapter introduces the objectives and the scope of the evaluation and details the methodology applied to address the evaluation questions. It includes the CPR intervention logic and the evaluation framework guiding the evaluation.

3.1. Objectives of the evaluation

The overall objective of the evaluation, as stated in the Terms of Reference, is to "**provide an informed retrospective analysis of the performance of the CPR and the extent to which it has met its original objectives**." The evaluation is part of a study that will also provide a prospective analysis (impact assessment) examining whether it will be appropriate to propose a revision of the CPR within the mandate of this Commission. The evaluation is carried out in line with the Better Regulation Guidelines[30].

The evaluation shall assess to what extent the CPR has delivered. Specifically, it shall evaluate the effectiveness, efficiency (with focus on the cost-benefits analysis), relevance, coherence and EU added value of the CPR, by providing an informed answer to the following evaluation questions listed in the terms of Reference for the evaluation:

Effectiveness:

- To what extent has the CPR made the internal market for construction products a reality? To what extent has the CPR achieved its specific objectives?
- What are the factors that have influenced positively and negatively the achievements observed? In particular, which obstacles to the internal market for construction products still remain?
- Has the CPR had unintended positive or negative consequences or collateral effects?

Efficiency:

- What are the benefits and how beneficial are they for the various stakeholders groups?
- What are the regulatory and administrative costs and are they affordable for the various stakeholders groups? Is there evidence that the CPR has caused unnecessary regulatory burden?
- To what extent has the CPR been cost effective? Are the costs proportionate to the benefits attained? What are the factors influencing the proportionality of costs? To what extent has the simplification potential expected at the time of the adoption of the CPR been achieved?

Relevance:

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

[30] https://ec.europa.eu/info/files/better-regulation-guidelines-evaluation-and-fitness-checks_en

- Is there a demand / potential for more cross-border trade between Member States?
- To what extent has the CPR followed / allowed for technological, scientific and social development (or do adaptation mechanisms in place allow the CPR to do so)?

Coherence:

- To what extent do the CPR features work together sufficiently well? Are there any inconsistencies, overlaps or gaps?
- To what extent is the CPR consistent with other legislation pieces applying on the same stakeholders? Are there any inconsistencies, overlaps or gaps?

EU added value:

- What is the added value of the CPR compared to what could be achieved at merely national level?
- Do the needs and challenges addressed by the CPR correspond to the needs of an EU internal market? Do the needs and challenges addressed by the CPR continue to require (harmonisation) action at EU level?
- What would be the most likely consequences of repealing the CPR?

3.2. Scope of the evaluation

The evaluation covers Construction Products Regulation. It also considers the legislative predecessor, Construction Products Directive, mainly with respect to the main changes introduced by the CPR in relation to the CPD, but also with respect to the overall impacts of European construction products legislation broadly, which includes the CPD. Other EU legislation (including proposed or planned revisions) is included in the analysis only to the extent that it has a direct impact on the functioning of the CPR in its current or future form (e.g. for the analysis of external coherence).

In relation to the **sectoral scope**, since the study objective is the assessment of the Internal Market regulation for construction products, all the subindustries and products of the construction sector are covered by the analysis. The sectors covered mirror the ones identified in the study on the economic impact of the CPR[31], where the construction products sector was mapped to NACE codes.

The **geographical scope** is the EU. Data is collected across all the EU Member States, although more in-depth research is carried out in 10 Member States, namely: Belgium, Denmark, France, Germany, Ireland, Italy, Poland, Romania, Spain, and United Kingdom. Those countries are considered representative of the five main construction business systems in the EU; in terms of output these 10 Member States represent more than 80% of the EU turnover in the sector (2013 data from Eurostat SBS). Finally, they cover the various EU geographical sub-regions, and both large and small Member States. In addition, the Open Public Consultation carried out in connection with the review of the CPR also allowed for stakeholders from non-EU countries to provide input (cf. section 3.5).

[31] VVA Europe, DTI & TNO. (2016) Economic Impacts of the Construction Products Regulation

With respect to the **temporal scope**, the research covers the CPR and the CPD since their practical implementation. For some products, the harmonised standards under the CPD became applicable already in 2001 meaning that the harmonisation for these products has been in process for more than 15 years. A few harmonised standards have been implemented over the last years or they have not yet been implemented. For many construction products, the harmonised standards became applicable in the years 2006 to 2010. Hence, the time perspective is not uniform but the main focus of the study is typically on the last 10 years. This time frame allows for a long-term perspective in the assessment of EU legislation in the field of construction products. Moreover, it allows to take in consideration the overall economic climate, including the effects of the economic crisis.

In terms of **target population**, the collection of primary data targets the following categories of stakeholders of the construction product sector:

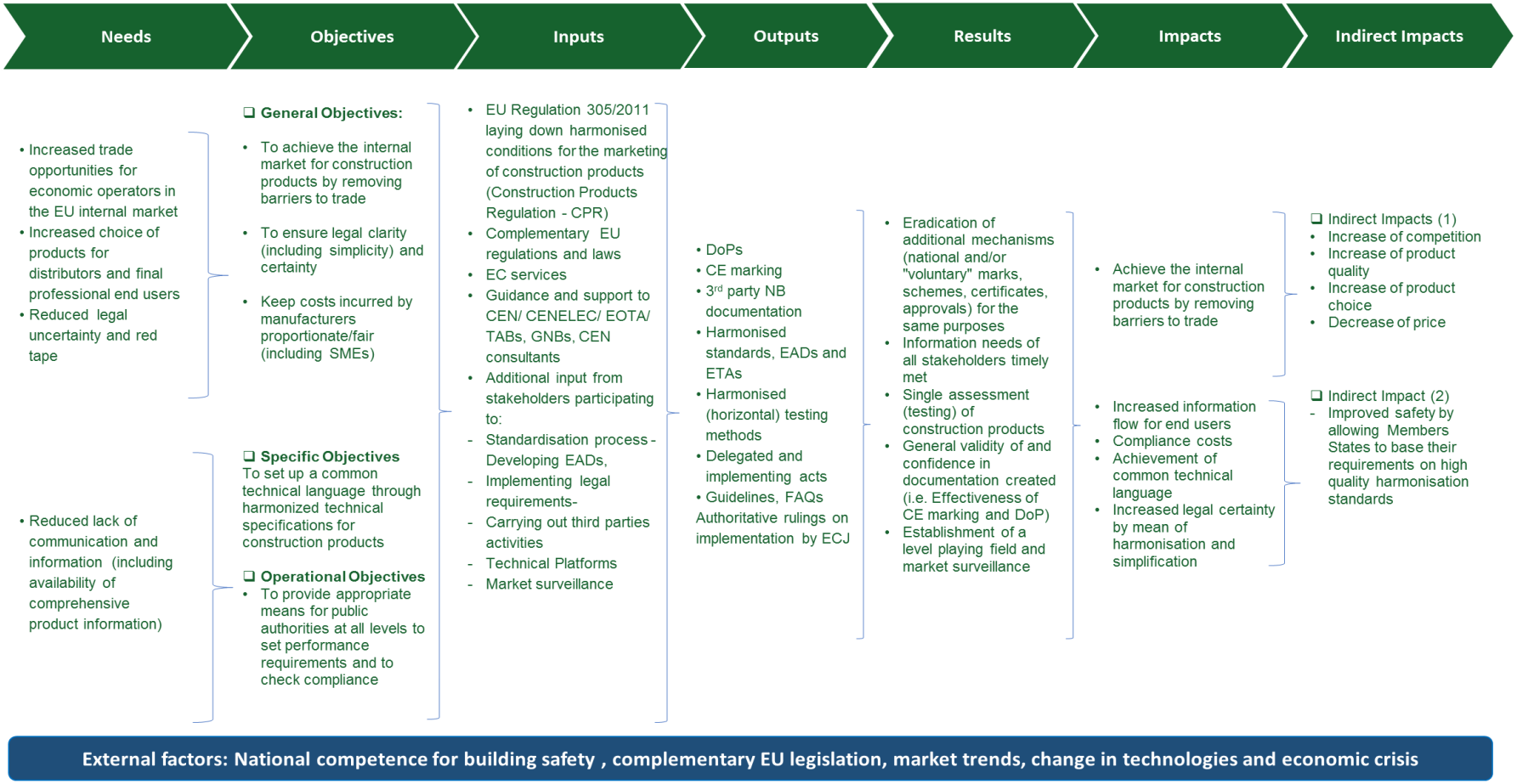
- Companies, including:
  - manufacturers,
  - importers and distributors,
  - raw material suppliers
  - professional end users (such as construction companies, architects, designers working with construction products in a professional capacity)
- Business representatives, including:
  - Industry associations
  - Chambers of Commerce
  - Professional organisations
- Technical bodies, including:
  - Notified Bodies
  - Technical Assessment Bodies
  - EOTA
  - National Standardisation Bodies
  - Other Standardisation Bodies
- Public authorities, including:
  - National Public Authorities / Institutions in charge of CPR issues
  - Market Surveillance Authorities
  - National Accreditation Bodies
  - Notifying Authorities
  - Inspectors / Enforcement Officers
  - Product Contact Points
  - Tendering / contracting authorities (public procurers)
  - Road authorities
- Other stakeholders, including:
  - Environmental NGOs

- Consumer organisations
- Private end users (mainly consumers using construction products for DIY)
- Construction worker associations

3.3. Intervention logic

To guide and understand the evaluation process the CPR intervention logic is shown on the following page.

Figure 3-1: Intervention logic



3.4. Evaluation framework

Following on from the above Intervention Logic, the research team developed an evaluation framework which guided the researchers when collecting and analysing data to assess the performance of the current legislative text.

The evaluation framework shown in the table on the following pages links the five evaluation dimensions and the corresponding evaluation questions with the indicators and data sources used to answer the questions.

During the preliminary analysis of the intervention logic, and the subsequent analysis of the data, some adjustments were made to the original evaluation framework since it was found that some issues were better addressed under other evaluation dimensions than originally thought. Particularly, the issue of simplification was originally meant to be addressed under the "efficiency" criterion. However, as this issue was found to have significant impact on the effectiveness of the Regulation, the question "To what extent has the simplification potential expected at the time of the adoption of the CPR been achieved?" was moved from the efficiency section to the effectiveness section as simplification was one of the specific objectives of the CPR when replacing the CPD and is now addressed under the evaluation of effectiveness. The question "To what extent has the CPR followed / allowed for technological, scientific and social development (or do adaptation mechanisms in place allow the CPR to do so)?", was moved from the relevance section to the effectiveness question since this was also seen as more pertinent to the analysis of the effectiveness of the CPR. The investigation of this question was furthermore narrowed somewhat to focus on the extent to which the CPR has allowed for – i.e. been able to keep up with - construction products innovation. The reason for this was that establishing a link to social development caused by legislation aimed at regulating the performance of construction products was not considered possible, while scientific and technological development were grouped together under the heading of "innovation", as this seemed a more realistic outcome of the legislation.

Figure 3-2: Evaluation Framework

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
Effectiveness			
To what extent has the CPR made the internal market for construction products a reality?	Effect on cross-border trade for construction products	• Increase in cross-border trade	• Study on Cross-border trade for construction products
		Stakeholder perception on: • increased cross border trade/market opportunities for construction products • functioning of the internal market for construction products (e.g. increased ease of doing business and selling products in other EU countries)	• Semi-structured interviews, qu. 1a, 7 • Online survey, question 3, 10 • Public consultation qu. 15 • Company phone survey qu. 12, 13 • 2008 Impact Assessment
		• impact on competition	• Company phone survey q. 10 • Public consultation qu. 15b • Semi-structured interviews qu. 1b
		• ability for small companies to compete with large companies	• Public consultation qu. 15d
	Achievement of legal certainty	• Achievement of legal certainty	• Semi-structured interviews, various questions • Judgements of the European Court

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
To what extent has the CPR achieved its objectives?	Setting up a common technical language	• Reduced confusion/overlap between CE and other elements of CPR • Usefulness of DOPs information for economic operators • Standardisation	• Company phone survey qu. 15 • Public consultation qu. 13, 14, 15f • Semi-structured interviews, qu. 1d & various questions • On-line survey • Report on Survey on users' need for information on construction products • Report on Survey on information needs among Member States authorities • REFIT Platform Opinions • Summaries of Technical Platforms
	Product choice for end-users	• Product choice for end-users	• Semi-structured interviews qu. 1c • Online survey • Public consultation qu. 15f
	Achievements of compliance and market surveillance	• Use of RAPEX database • Stakeholders' perception of efficiency of market surveillance	• Implementation Report • Study on the Implementation of the Construction Products Regulation • Feedback on Roadmap • RAPEX database • Semi-structured interviews, various questions • Public consultation, comments to various questions and position papers • Scoping interviews

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
To what extent has the simplification potential expected at the time of the adoption of the CPR been achieved?[32]		• Achievement of simplification	• Supporting study for the Fitness Check on the construction sector • Implementation Report • Study on the Implementation of the Construction Products Regulation • Summaries of Technical Platform meetings • Scoping interviews • Semi-structured interviews qu. 5 • Online survey
What are the factors that have influenced positively and negatively the achievements observed? In particular, which obstacles to the internal market for construction products still remain?	Identification of factors influencing observed achievements Identification of remaining obstacles	Stakeholder perceptions on remaining obstacles: • Whether there are obstacles when exporting in another EU countries • What are these obstacles • Which obstacles remain specifically for SMEs • Significance of these obstacles (based on their occurrence)	• Semi-structured interviews qu. 2 and various questions • Answers to previous evaluation questions
Has the CPR had unintended positive or negative consequences or collateral effects?	Identification of unintended effects/consequences	Stakeholder perceptions on: • Unintended effects/consequences, perceived as the causes of these effects/consequences and how significant are these effects/consequences considered to be	• Semi-structured interviews qu. 1h and various other questions • Online survey with public authorities and experts in the other EU countries • Company phone survey qu. 7, 8

[32] The question on simplification has been moved from the efficiency section and was finally addressed as an effectiveness question.

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
To what extent has the CPR followed / allowed for technological, scientific and social development (or do adaptation mechanisms in place allow the CPR to do so)?[33]	Flexibility to allow for innovation	• Impacts on innovation: • The extent to which the stakeholders consider that the adaptation mechanisms in place allow the CPR to support innovation	• Evaluation of the relevance of EOTA tasks • Semi-structured interviews qu. 6 • Online survey • Public consultation qu. 15g
Efficiency			
What are the benefits and how beneficial are they for the various stakeholders' groups?	Identification and assessment of benefits for different stakeholder groups	Stakeholder perceptions on benefits and their effects • What stakeholders identify as benefits • Administrative cost savings linked to posting the DOP online • Administrative cost savings due to the easier accessibility of information through the Product Contact Points for Construction	• Study on the Economic Impacts of the Construction Products Regulation • Supporting study for the Fitness Check on the construction sector • Study on Cross-border trade for construction products • Semi-structured interviews qu. 3 • Online survey with public authorities and experts in the other EU countries • Company phone survey
What are the regulatory and administrative costs and are they affordable for the various stakeholders' groups? Is there evidence that the CPR has caused unnecessary regulatory burden?	Regulatory and administrative costs by stakeholder group • Manufacturers • Constructors • Importers/distributors • End-users	• Administrative costs linked to the obligation of providing information to customers – drafting and supplying the DOP and the CE marking • Substantive costs linked to the obligation for manufacturers to put in place factory production controls and to have an AVCP performed	• Study on the economic Impacts of the Construction Products Regulation (main source for cost data, indicators are aggregated and not shown individually in the report) • Supporting study for the Fitness Check on the construction sector • Implementation Report • Feedback on the Roadmap • 2008 Impact Assessment

[33] The issue of innovation was assessed by the evaluators as primarily being an issue of effectiveness (impact on innovation) and was thus moved from relevance to effectiveness.

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
		• Regulatory charges • Time spent on activities related to the technical documentation and DOP • Administrative burden related to the technical documentation and DOP • Substantive compliance costs related to the technical documentation and DOP • Time spent on activities related to the CE marking • Administrative burden related to the CE marking • Substantive compliance costs related to the CE marking • Time spent on activities related to the DOP and CE marking under the CPR • Administrative burden related to the DOP and CE marking under the CPR • Administrative burden related to the DOP and CE marking under the CPR in the EU28 • Administrative and substantive compliance costs for distributors • Quantification of regulatory costs. Indicator: costs as a share of turnover for product manufacturers.	• Public consultation qu. 15i • Scoping interviews • Semi-structured interviews qu. 1g
To what extent has the CPR been cost effective? Are the costs proportionate to the benefits attained? What	Quantification (if possible) of costs and benefits	• Extent to which the stakeholders consider costs proportionate to the benefits	• Semi-structured interviews qu. 4 • Online survey • Public consultation qu. 16, 17

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
are the factors influencing the proportionality of costs?	Identification of factors influencing the proportionality of costs		
Relevance[34]			
To what extent are the objectives of the CPR appropriate to meet the needs and problems it is expected to meet and solve?	• Extent to which objectives of CPR are relevant to th needs	Stakeholders' perceptions on: • Extent to which the objectives of the CPR were appropriate to the needs and problems it was expected to meet and solve. • Extent to which these objectives are still relevant to meet the current needs and problems	• Public consultation qu. 18 • Semi-structured interviews qu.12
Is there a demand and a potential for more cross-border trade between Member States?	• Demand and potential for more cross-border trade	• Indicator of demand: the extent to which stakeholders express demand for more cross-border trade.	• Company phone survey qu. 9 • Semi-structured interviews qu. 7
Coherence			
To what extent do the CPR features work together sufficiently well? Are there any inconsistencies, overlaps or gaps?	• Internal consistency of CPR	• The extent to which stakeholders consider that there is consistency between the CPR features	• Semi-structured interviews qu. 8 • Online survey

[34] The Terms of Reference indicates an additional evaluation question to be investigated: "to what extent has the CPR followed allowed for technological, scientific and social development (or do adaptation mechanisms in place allow the CPR to do so)?". After the elaboration of the CPR intervention logic,the question has been classified under Effectiveness

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
To what extent is the CPR consistent with other legislation pieces applying on the same stakeholders? Are there any inconsistencies, overlaps or gaps?	• External consistency of CPR	• The extent to which CPR stakeholders consider that there is consistency between the CPR and other legislation applying to them • Identification of any inconsistencies overlaps or gaps between the CPR and other legislation	• Supporting study for the construction sector fitness check • Summaries of Technical Platform meetings • Feedback on the Roadmap • Semi-structured interviews qu. 9 • Online survey • Public consultation qu. 19, 20
EU added value			
What is the added value of the CPR compared to what could be achieved at merely national level?	• EU added CPR value	• The extent to which CPR stakeholders think that the Directive adds EU value in comparison to MS regulation • Stakeholders perception on whether the benefits brought by the CPR would have taken place anyway	• Semi-structured interviews qu. 10, 11 • Public consultation qu. 21
Do the needs and challenges addressed by the CPR correspond to the needs of an EU internal market? Do the needs and challenges addressed by the CPR continue to require (harmonisation) action at EU level?	• Needs and challenges correspondence with the Single Market	• The extent to which CPR stakeholders consider that the needs and challenges addressed by the CPR correspond to the needs of an EU internal market. • The extent to which CPR stakeholders consider that the needs and challenges continue to require action at EU level • Stakeholders perception on the quality and utility of the EU harmonisation standards and EC marking in the field of construction product	• Semi-structured interviews qu. 12 • On-line survey • Open public Consultation

Evaluation Question (EQ)	Issues to be analysed	Indicators	Data sources
What would be the most likely consequences of repealing the CPR?	Description and, if possible, quantification of consequences of repealing the CPR	• The extent to which CPR stakeholders consider the repeal option as preferable and their opinion on the consequences	• Semi-structured interviews qu.10, 11 • On-line survey

3.5. Data sources and analysis

The evaluation is based on both primary data collected specifically for this evaluation and secondary (existing) data.

Existing (secondary) data

The evaluation builds on a significant amount of existing information, including especially:

- Economisti Associati, Milieu and CEPS. (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation
- VVA Europe, DTI & TNO. (2016) Economic Impacts of the Construction Products Regulation
- CSIL Centre for Industrial Study & CRESME Ricerche. (2017). Cross-Border Trade for Construction Products
- European Commission (2016, July). Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, COM(2016) 445 final ("Implementation Report")
- BRE, Ecorys, and Vito (2016, December). Supporting study for the evaluation of the relevance of EOTA tasks, European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
- Summary of the first Technical Platform, 12 October 2016: Standardisation under the CPR
- Summary of the second Technical Platform, 18.01.2017 - Simplification, including SME-related provisions
- Summary of the third Technical Platform, 14.03.2017: Information flows and needs within the supply chain
- Summary of the fourth Technical Platform, 21.06.2017 - Co-existence of EU and Member States' systems for marketing and use
- Summary of the fifth Technical Platform, 04.10.2017 - The future of EOTA, European Organisation for Technical Assessment
- CPR REVIEW - Feed-back on roadmap
- Impact Assessment of the CPR - Commission staff working document accompanying the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products, Impact Assessment COM(2008) 311 final.
- RPA Risk & Policy Analysts Ltd. (2015) Analysis of the implementation of the Construction Products Regulation
- Eurostat statistics
- Two surveys on need for information on construction products among users and Member States Authorities, respectively.

Please cf. Appendix I for a full list of references.

It should be noted that the primary data collection activities collected data both for the evaluation and for the impact assessment.

As can be seen from this list, the construction products sector has been the subject of a considerable number of studies in recent years, several of which have collected primary data from the same groups of stakeholders on overlapping issues. This evaluation has therefore endeavoured to take into consideration a certain "evaluation fatigue" among stakeholders, making as much use as possible of the information that was already available, and to avoid approaching certain key stakeholder representatives who have already been consulted multiple times over a relatively short time span.

Data collected for this study (primary data)

The following types of primary data were collected for the study:

- Six **scoping interviews** were carried out in the early stages of the study with representatives of European associations of construction products manufacturers from different sectors. The main purpose of these scoping interviews was to gain insight into key issues of relevance to the evaluation and impact assessment in order to prepare the data collection tools for the study. The scoping interviews were thus of an explorative nature but results from these interviews are included in the evidence base where relevant.
- **Semi-structured interviews** were carried out with stakeholders across 10 Member States (Belgium, Denmark, France, Germany, Ireland, Italy, Poland, Romania, Spain, UK). The main stakeholder groups covered by these interviews included 22 Business Representatives (industry associations), 29 Technical Bodies (standardisation bodies, NBs and TABs), 20 Public Authorities and 5 other stakeholders. A total of 76 in-depth interviews were carried out in the 10 selected Member States as well as with four EU-level SME organisations.
- An **online survey** covering stakeholders in the remaining Member States from the same types of stakeholder groups covered by the semi-structured interviews. The purpose of the online survey was to complement the semi-structured interviews by going beyond the selected 10 Member States and give relevant stakeholders from other Member States the chance to contribute to the study by answering a series of targeted questions. 103 stakeholders from across the 18 Member States answered the online survey (15 Business Representatives, 42 Technical Bodies, 32 Public Authorities and 14 other stakeholders).
- A **company phone survey** collected views from a representative sample of individual companies from across the value chain, with a focus on small and micro companies established in the 10 Member States covered by the primary research. 736 companies participated in the survey, distributed on the following types of companies: construction products manufacturers (51%), professional end users 25% (architect/ consulting engineer: 12%, building industry/ contractor: 13%), importers and/or distributors (13%), and raw material suppliers (11%). 93% of the participating companies were SMEs (i.e. with less than 250 employees), and 78% were small and micro enterprises with less than 50 employees.
- An **Open Public Consultation** on EU rules for products used in the construction of buildings and infrastructure works. 641 stakeholders responded to the public consultation, of which 42% represented companies and 38% represented business organisations, technical bodies account for 8% and public authorities or testing bodies for 5%, while 15% of the respondents were individuals (answering in their personal rather than organisational capacity). The consultation was published on the EU Commission website. The consultation period was 22 January - 16 April 2018.
- A **validation workshop** with 96 stakeholders, held in Brussels on 3 May 2018. The workshop presented and discussed the key preliminary findings of the evaluation and collected input for the accompanying Impact Assessment.

The answers to the evaluation questions draw on analysis of all the evidence from different relevant data sources, aiming to corroborate data from at least two different sources for each question. As the most in-depth and detailed primary data have been collected through the **semi-structured interviews** with stakeholders in the 10 selected Member States, these interviews have been given significant weight in the evaluation. Quantifications of the overall views of the interviewed stakeholders have been made where possible. However, due to the semi-structured interview method, respondents may bring up different aspects or perspectives on a particular question which does not always lend itself to quantification of the type "x% of the respondents agree that...", since their viewpoints may go beyond the direct question asked and explore other perspectives. Where an interesting issue is addressed by one or more respondents without prompting from the interviewer, this has in many cases been included in the report, sometimes accompanied by illustrative interview quotes that express the viewpoints of several interviewees or pinpoint a specific issue particularly well.

Data from the **online survey,** the **company phone survey** and the **open public consultation** provide quantifications and are used to complement the evidence gathered through the semi-structured interviews. Note that percentages provided for different answer categories in the text (data from surveys) do not always add up to exactly 100% due to rounding.

It should be noted that the semi-structured interviews and the online survey address the same types of stakeholders (in the 10 selected Member States and the remaining Member States, respectively). However, since the methods of collecting data were different, the two data sets are treated as separate, but complementary, data sources in the analysis.

The **desk research** (literature review) has two main functions: for some evaluation questions, such as questions related to costs and benefits (efficiency), the existing literature provides the main basis for answering the question. For other evaluation questions, the literature complements the primary data collected for this study.

3.6. Limitations of the data and methodology

As indicated above, the existing substantial number of reports and other written sources of relevance to this evaluation have been used extensively in the evaluation. Furthermore, primary data were collected via a variety of data collection activities aimed at various stakeholders and in different formats. This has provided a comprehensive evidence base for the evaluation.

The main limitations of the available data are the following:

- The construction products sector is **not well-defined in statistical terms**, which means that it is very difficult (sometimes impossible) to establish a solid, statistical overview of the sector with respect to enterprise population, economic data, trade data etc. Attempts have been made to mitigate these factors (e.g. the study on cross-border trade and the study on economic impacts of the construction products sector). However, given the lack of data the quantitative evidence is somewhat patchy.
- Data on **costs** of implementation of the Regulation are based on estimates by stakeholders of the time and money which their company spends on complying with the Regulation. These estimates tend to be imprecise, since the costs specifically caused by the Regulation are seldom accounted for separately within

companies and are often difficult to separate from costs accrued from related activities such as quality control. This leads to a significant margin of error, and any estimates based on the data gathered via surveys and interviews can thus only be approximate. The main tool applied to mitigate this problem is ensuring that data is collected from a large number of stakeholders (such as in the company phone survey) and that data quality is validated and ensured (e.g. identifying outliers).

- Quantitative data on **benefits** are very sparse. Available data from previous studies (cf. chapter 5) have only to a very limited extent been able to quantify benefits (cost savings) of the CPR. Thus, the analysis relies largely on qualitative data.
- **Baseline data** are very limited. The main source is the Impact Assessment (IA) carried out in 2008 for the proposed revision of the CPD which tried to estimate expected impacts based on a very limited data set. The lack of data available for the IA was explained mainly by the complexity of the sector (the number of product families involved) and the lack of statistical data (as discussed above).
- **Time elapsed.** The CPR has been in force for 5 years (4 years at the time of data collection), meaning that some impacts – particularly benefits – have yet to materialise. Other impacts, e.g. on cross-border trade, may however already have materialised.

Furthermore, the following issues have been considered when drafting the report to ensure quality and reliability of the findings and conclusions:

- A significant part of the evidence is **qualitative** (interviews, comments to survey questions, position papers etc.). Collection and analysis of qualitative data are subject to a certain amount of subjectivity, both on the part of the interviewees, and in the synthesis and selection of data to present. The evaluation team has endeavoured to mitigate this problem both by involving rather large quantities of data (safety in numbers), and by using a structured approach to extract and analyse data from interviews and other qualitative sources.
- For these reasons, **triangulation of data** (or at least more than one source) has been sought for all evaluation questions to the extent possible. In this connection, the **balance** between sources has also been considered. In this evaluation, the large number of in-depth interviews have provided a very rich material, which provides a lot of nuance and perspective on most aspects of the evaluation. It therefore naturally takes up much "space" but the evaluation team has taken care to give weight also to other data that provides different perspectives on the same issues.
- Finally, the **validation workshop** held towards the end of the evaluation process aimed to validate the findings of the evaluation by presenting the findings and discussing them with a large group of knowledgeable stakeholders. The validation workshop shed additional light on some issues, but did not lead to any substantial changes in the analysis and findings.

The following chapters present the results of the evaluation, structured according to the five main evaluation criteria and the associated indicators, as outlined in the evaluation framework.

4. EVALUATION FINDINGS: EFFECTIVENESS

Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its general and specific objectives. The evaluation should form an opinion on the progress made to date (the outputs, results and impacts identified in the intervention logic) and the role of the CPR in delivering the observed changes.

As shown in the intervention logic, the **general objectives** of the Regulation are:

- To achieve the internal market for construction products by removing barriers to trade
- To ensure legal clarity (including simplicity/simplification) and certainty
- To keep costs incurred for manufacturers proportionate/fair (including SMEs)

To achieve these, specific and operational objectives have been set:

- To set up a common technical language through harmonized technical specifications for construction products

- To provide appropriate means for public authorities at all levels to set performance requirements for construction works and to check compliance.

This chapter will assess the extent to which these objectives have been achieved. The issue of proportionality of costs will be adressed in the subsequent chapter on efficiency, which deals in more detail with the costs incurred by manufacturers.

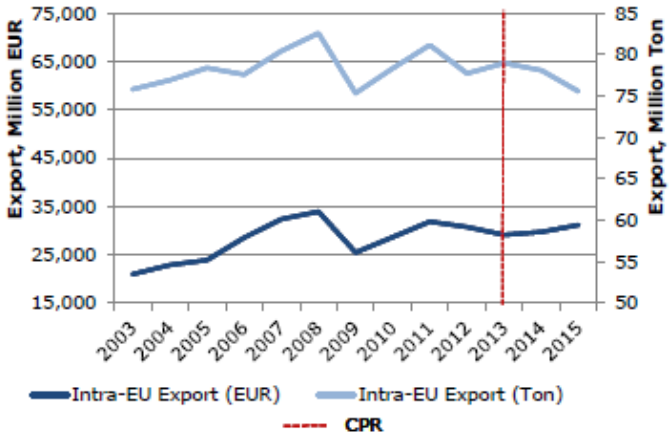
4.1. Achieving the internal market: Cross border trade trends, export and import of construction products

Data for cross border trade, export and import of construction products are taken from the **study on "Cross-border trade for construction products"**[35]. The study is part of the assessment of the role of the CPR as an Internal Market instrument to facilitate cross-border trade within the European Union (EU). The study includes historical reconstruction and descriptive analysis of production and trade data for a sample of 25 construction products[36] over the 2003-2015 period, utilising data from PRODCOM for production and trade, and COMEXT for bilateral trade flow data.

[35] CSIL Centre for Industrial Study & CRESME Ricerche (2017), Cross-Border Trade for Construction Products, for the European Commission.

[36] The study identified a list of 471 construction products. A sample of 25 construction products were selected from the list, representing 5% (25 out of 471) of the total number of construction products identified and 17% in terms of average production share in 2013-14. The sample covers a variety of products widely used and traded in the construction market.

Figure 4-1: Intra-EU trade for the 25 construction products (EU28)



Source: CSIL Centre for Industrial Study & CRESME Ricerche (2017) Cross-Border Trade for Construction Products. European Commission.

According to the study, over the whole 2003-2015 period, cross-border trade of construction products within the EU increased in terms of value and decreased slightly in terms of volume (Figure 4-1). The value of intra-EU exports increased by 48% (from 21 billion EUR in 2003 to 31 billion EUR in 2015, current prices) while it decreased by 1% in terms of volume (from 59 million ton in 2003 to 58 million ton in 2015). Large fluctuations occurred during the period of interest. Cross-border trade of construction products among Member States was characterised by steady growth until 2008, when it reached its highest peak both in value (34 billion EUR) and volume (71 million tons). In 2009 trade significantly dropped, as an effect of the world financial and economic crisis and the related construction sector crisis. In 2009 the value and volume of intra-EU export dropped by -25% and -17% respectively as compared to the previous year. A modest recovery started in 2010. However, the economic crisis hit the sector again in 2011. The volume of intra-EU trade suffered another decline, while its value started increasing again in the most recent years.

In terms of assessing the impact of the CPR on intra-EU trade, the study on cross-border trade shows that there is **no statistically discernible link** between the advent of the CPR and the value of intra-EU trade, after controlling for the effect of other possible influencers, e.g. GDP and fixed investment in construction of the origin and destination countries, membership of the EU, distance between countries, and others[37]. In other words, the statistical analysis does not provide any evidence that the CPR has had an effect on cross-border trade within the EU.

In the **semi-structured interviews**, 70% of the 76 interviewed stakeholders indicate that they consider the impact of the European construction products legislation on cross-border trade as positive or very positive. The remaining 30% are roughly equally divided between those who do not consider that the legislation has had any significant impact, those who do not have an opinion, and finally those who state that the impact is not clear-cut.

Particularly, several stakeholders point out that the impact and the potential for cross-border trade depends on both the type of product and the country - and in the cases where

[37] 2017 Study on Cross-Border Trade for Construction Products, previously cited.

geography and/or product type constitute significant barriers to cross-border trade, the CPR has had no impact on trade patterns. With respect to the type of product, the extent to which there is cross-border trade (and potential for more) depends very much on the "tradability" of the product (particularly with respect to the weight/value ratio), according to several stakeholders. For instance, pre-cast concrete is mentioned by several stakeholders in the semi-structured interviews as an example of products that are traded within a narrow radius and cross-border trade (if any) is limited to border regions, while for smaller and/or higher-value products the potential for cross-border trade is much bigger. Ireland constitutes an interesting example. Interviewed stakeholders from Ireland state that the CPR has not had any impact on the volume of exports from Irish manufacturers. According to Irish stakeholders, the few products that are being exported (mainly pre-cast concrete) are all going to the UK market and exports only really began after the financial crisis when the building boom in Ireland ended abruptly and some exporters managed to gain a foothold in the UK market instead[38].

Some of the stakeholders representing small open economies on the continent put forward different opinions on the impact of the CPR. One interviewee mentions the example of Belgium, where the impact is considered limited because the market was already very open even before European legislation was put in place, with very limited national regulations and marks. On the other hand, several Danish stakeholders emphasize that the common rules and common technical language have had a positive effect on both exports from and imports to Denmark (figures not available, however).

In the **online survey** among stakeholders, the impact on cross-border market opportunities is seen as quite positive. 79% of the 103 respondents indicate that there has been some or a large increase in market opportunities for companies in other Member States. In addition, 72% indicate that they consider the current situation with respect to cross-border trade among Member States as satisfactory.

The participants in the **public consultation** also tend to see the impact on cross-border market opportunities as positive. Asked about the impact of EU legislation on construction products (specifically harmonised European standards and the harmonised system to select testing/assessment bodies), 72% of the 641 respondents answer that the impact on market opportunities for companies in other Member States than their own is some or a large increase of opportunities. 17% see no effect, while only 2% see a negative effect (9% do not know or have not provided an answer). The respondents representing enterprises do not differ much from the overall picture, with 70% of enterprises seeing a positive effect and 22% indicating no effect.

The enterprises indicating the most positive effect are the medium-sized (76% indicate an increase in opportunities) and the large companies (75%). Micro and small enterprises are less positive, but still with a clear majority indicating a positive effect (64% and 57%, respectively). It should be noted than when broken down on size categories, each group of respondents becomes rather small and representativeness may thus be affected[39].

[38] This could seem contradictory to the fact that pre-cast concrete is an example of products that are traded within a narrow radius. An explanation could be that transport costs for sea transport are relatively low. If the producers in Ireland are located close to a harbour, this could explain why they are able to export pre-cast concrete to the U.K. Another possible explanation could be that Ireland and the U.K. share a landborder and that actually most of the exports go across the border to Northern Ireland.

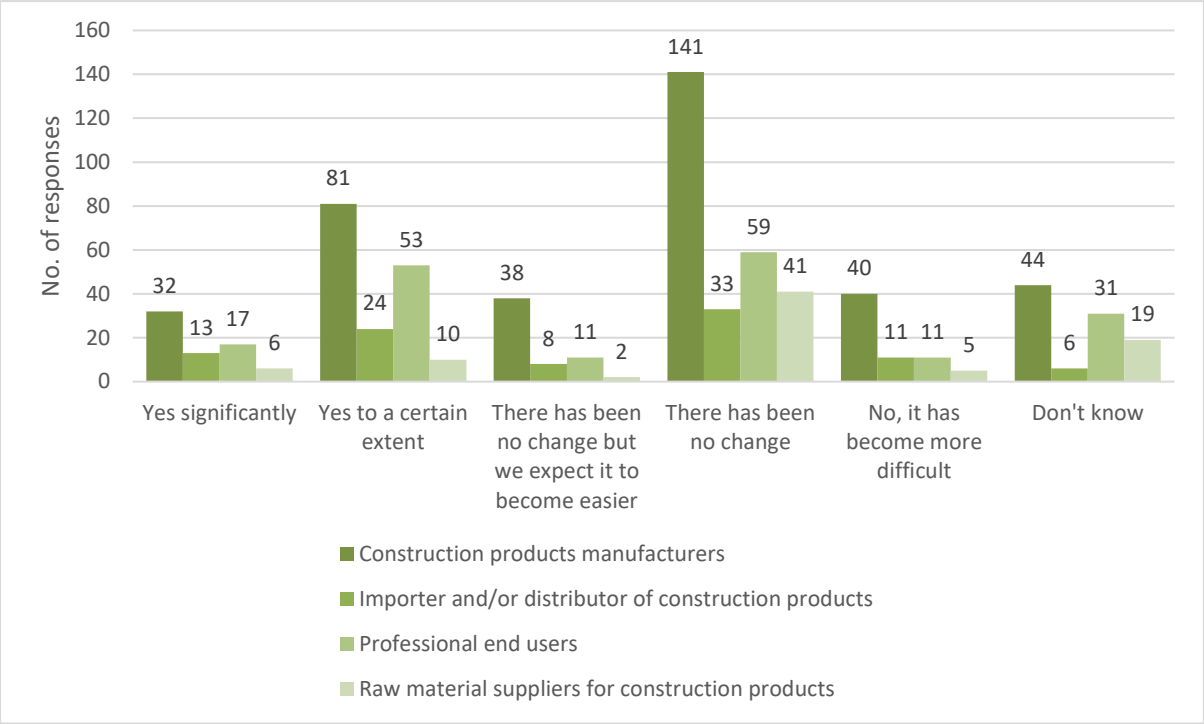
[39] The group of small and micro enterprises, i.e. enterprises with less than 50 employees, contains 82 respondents, while there are 54 medium-sized (50-249 employees) and 96 large companies (>250 employees).

When asked the same question about the impact on market opportunities for EU companies in countries *outside* the EU, the assessment is more mixed: 39% of all respondents indicate no effect, and 38% some or a large increase in opportunities (3% indicate a negative effect while 20% do not know/do not answer). For the enterprises, the pattern of response is again that the medium and large enterprises are more likely to indicate increased opportunities (46% and 42%, respectively), while the micro and small enterprises are well below those figures with 29% and 27% respectively indicating increased opportunities. This is hardly surprising given that medium-sized and large companies are much more likely to enter third country markets than small and micro companies, although it should be noted again that the respondent groups are not necessarily representative.

The assessment of companies participating in the **company phone survey** with respect to whether it has become easier to buy or sell construction products from other Member States is somewhat more mixed. Across different types of companies, 32% of the 736 respondents consider that the situation has become easier, while 38% consider that there has been no change. The most positive respondent groups are importers/distributors and end users, where 39% and 41% respectively, state that it has become significantly easier or to some extent easier to sell/source construction products from other EU countries over the last 4 years compared to previously, while only 30% of manufacturers think that it has become easier (Figure 4-2). Thus, it seems that those that source/import construction products from other EU countries tend to be slightly more positive than those that sell (the manufacturers)[40]. Also in this case, however, the differences between the groups should be interpreted with some caution as the respondent groups (particularly importers/distributors and end users) are quite small and thus not necessarily representative.

[40] The different respondent groups were : 376 Construction products manufacturers, 95 Importers and/or distributors of construction products, 182 Professional end users and 83 Raw material suppliers for construction products.

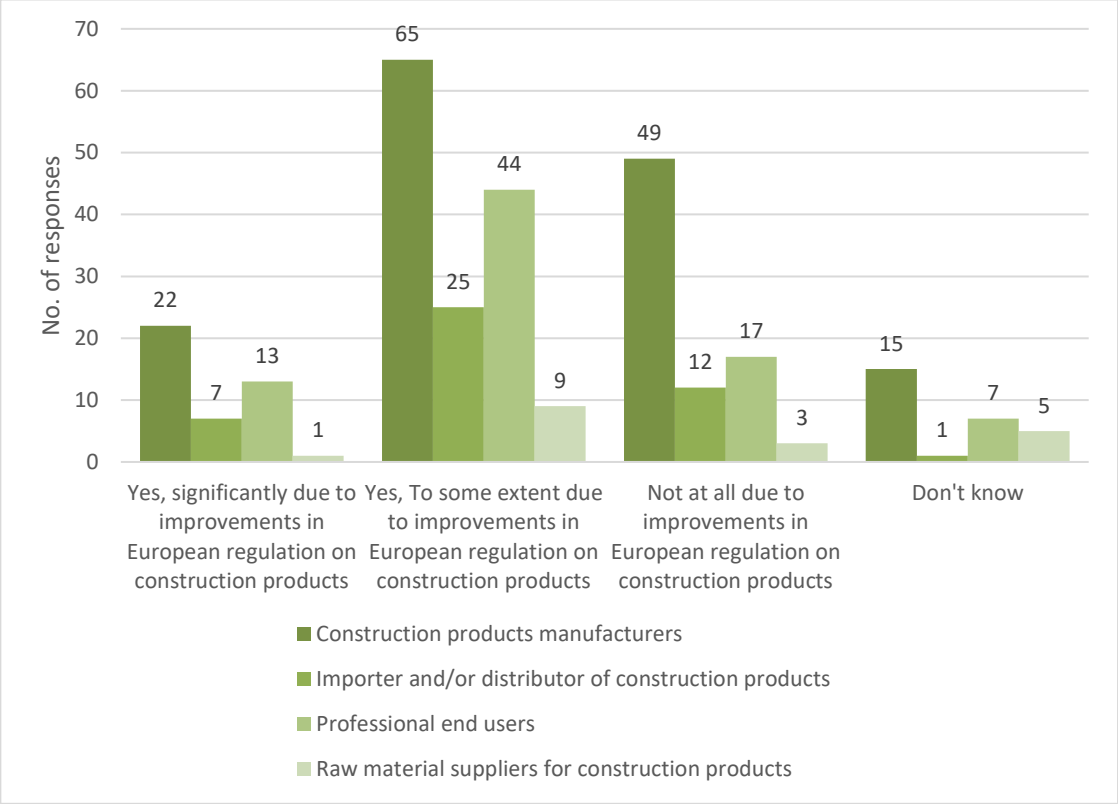
Figure 4-2: In your experience, has it become easier to sell/source construction products from other EU countries over the last 4 years compared to previously?



Source: Company phone survey. N=736

Those participants in the company phone survey who indicated that it has become easier to sell or source construction products from other EU countries (236 out of 736 respondents) were asked whether they saw this as due to improvements in European regulation on construction products. The majority of respondents in all groups thought that this was to some extent or a significant extent due to EU legislation – for manufacturers 58%, importers/distributors 71%, and professional end users 70% (Figure 4-3).

Figure 4-3: In your view, to what extent is the current / expected ease of selling / sourcing construction products from other EU countries due to improvements in European regulation on construction products?



Source: Company phone survey, N=293

Another indicator of the extent to which the CPR has contributed to making the internal market for construction products a reality, is stakeholders' perception of the impact on **competition in their national market**.

The participants in the **company phone survey** include the primary economic actors who have direct experience with competition in the markets in which they operate. A small majority of the 736 respondents stated that they had *not* experienced more competition from manufacturers from other Member States in recent years (57%) while a large minority (40%) said that they had experienced more competition.

In the **public consultation**, respondents were asked about the impact of EU construction products legislation (again, specifically the impact of harmonised European standards and the harmonised system to select testing/assessment bodies). Overall, 59% answer that the impact on competition in their national market is "some increase" or "large increase. 27% see no effect, while 5% see a decrease (9% do not know or do not answer). Looking only at the 232 enterprises, micro enterprises is the group with the most reports of increased competition (71% of 28 respondents), while the small companies are well below the average with respect to the share of companies seeing more competition: 45% (of 44 respondents). Among the 150 medium and large companies, 65% report increased competition.

Among the 76 stakeholders in the **semi-structured interviews** a little over half – 55% - considered that there was some (mostly limited) impact of European construction products legislation on competition in their national market, while 25% of the interviewed stakeholders did not see any impact. The remainder either did not have an opinion or

considered that the question was too complicated to answer either positively or negatively, with different types of products and manufacturers being affected differently – similar to the issues mentioned above for cross-border trade. In particular, several interviewees pointed to the smaller manufacturers, especially those producing mainly for the local market, suffering under increased competition from foreign, and often cheaper, products. The figures from the public consultation (above) seem to support this statement, at least for micro-enterprises and medium-sized enterprises.

In the **online survey**, 69% of respondents indicated that competition in their national market had increased to some or a large extent due to EU legislation on construction products, while 20% thought that it had no effect.

Finally, the respondents in the **public consultation** were asked what impact EU regulation on construction products has had on **the ability for small companies to compete with big companies**. Recalling the aim of the CPR to ease the burden on the smallest companies, this is an important issue. Here, the answers are mixed. The largest group (39%) answer that there *has* been some or a large increase in the ability of small companies to compete with bigger companies. On the other hand, 21% say that there has been no effect, while a third (33%) think that the impact has been negative (some or a large decrease). As for what the small companies themselves report, the response is least positive among micro-enterprises (25% see a positive effect, while 46% see a decrease in their ability to compete), whereas this ratio is quite different for medium-sized companies with 50-249 staff - with 43% indicating a positive effect, 33% a negative effect, and 36% no effect.

One of the expected impacts at the time of the 2008 Impact assessment was that the CPR would lead to increased levels of competition, but not necessarily a significant increase in cross-border trade since many construction products are not traded over large distances[41].

The expectation that the CPR might not induce a significant increase in cross-border trade has been confirmed since the statistical analysis cannot demonstrate any EU-wide impact of the CPR on cross-border trade for construction products. While the study on cross-border trade[42] does in fact show an increase in cross-border trade relative to domestic sales, this is explained by other factors rather than the CPR. This contrasts with the fact that a majority of the consulted stakeholders hold the perception that the EU construction products legislation has had a positive impact on cross-border market opportunities. However, an exception from this are the companies responding to the company phone survey, where only about a third think that it has become easier to export/import products across borders. The largest group think that there has been no change. Among companies in the public consultation, perceived improvements in market opportunities seem to benefit medium-sized and large enterprises more than micro and small enterprises (although the sample is small and results should thus be interpreted with some caution).

With respect to competition in the national markets, which would be a result of increased cross-border trade, the feed-back is mixed and does not point to significantly increased levels of competition.

An explanation for the apparent paradox between the statistical analysis and the perception of some stakeholders that the CPR has had a positive impact might be found in the fact that cross-border trade, as mentioned above, has indeed increased, but that

[41] Impact Assessment (2008), previously cited.
[42] CSIL Centre for Industrial Study & CRESME Ricerche (2017), Cross-Border Trade for Construction Products, previously cited.

the effect cannot be statistically shown to be caused by the CPR. Thus, stakeholders who perceive an impact of the CPR may simply not be able to distinguish between which factors have indeed caused the increase. Furthermore, the stakeholder groups dominated by non-private company stakeholders (public authorities and bodies, associations etc.) perhaps simply assume that it must have become easier due to the internal market legislation, while the economic actors 'on the ground' may not experience this in their day-to-day work, where market factors (customer demand and preferences) are likely to play a much bigger role than internal market legislation.

4.1.1. Simplification

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

- **Article 5** provides derogations from the obligation to draw up a DoP when the construction product is individually manufactured or custom-made in a non-series process in response to a specific order and installed by the manufacturer; or is manufactured on the construction site; or manufactured in a traditional manner or in a manner appropriate to heritage conservation.
- **Article 36** aims to avoid the unnecessary testing of construction products for which performance has already been demonstrated. It enables any manufacturer to replace the type-testing or type-calculation part of the assessment of performance with Appropriate Technical Documentation, if the product by nature is deemed to obtain a certain level or class of performance (conventionally accepted performance), in case tests have been carried out for corresponding products (shared ITT[43]), and for assembled systems of components, when testing has been carried out for the same system (cascading ITT).
- **Article 37** provides micro-enterprises with the option to use simplified procedures when carrying out the AVCP. It allows micro-enterprises to use different methods from those contained in the applicable hEN for products covered by Systems 3 and 4, and to resort to System 4 for products for which System 3 would be required. It is up to the manufacturer to demonstrate compliance of the product with the applicable requirements by means of a Specific Technical Documentation and to demonstrate equivalence of the procedures used with those laid down in the harmonised standard.
- **Article 38** allows manufacturers to replace performance assessment with Specific Technical Documentation for construction products that are individually manufactured or custom-made in a non-series process.

Previous studies[44] have shown that the uptake of these provisions is very limited, with the exception of sharing and cascading (Article 36), which is reported to be widely applied, but none of these studies were able to quantify the uptake or associated cost savings.

[43] Initial Type Testing

[44] Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation (2016); Analysis of the implementation of the Construction Products Regulation (2015, RPA), both previously cited.

These findings were also included in the CPR Implementation Report[45]. The supporting study for the fitness check confirms limited benefits so far (moderate for some products, not specified) and moderate potential for increasing the take-up of CPR simplifications, especially for SMEs (by means of improved legal clarity of the provisions and the enforcement mechanisms).

These reports conclude that the reasons for the very low uptake (except for Article 36) include, on the one hand, low awareness of the derogations and simplified procedures and, on the other, a lack of clarity and risk of different interpretations by national authorities of the relevant articles of the CPR.

Evidence from the **Technical Platforms** underlines the fact that exceptions tend to increase uncertainties. They raise the question whether the "normal" rules might not be considered so complex after all and whether this might be one of the reasons for low use of the alternatives provided in Articles 37 and 38. It was also suggested that many SMEs may have found more advantages (e.g. acceptance by clients) than disadvantages in complying with general rules. It was furthermore stated that exemptions or alternatives should be considered for artisanal methods, independently of the size of the firm. Articles 5 and 38 require that the products are manufactured for a specific construction, but artisanal methods can be used for elements that could be used in more than one construction, and the possibility to CE mark these products with alternative methods is considered as an advantage by these stakeholders.

The evidence from the written sources was confirmed and expanded by the primary data collected for this study.

In the **scoping interviews,** criticism about the ambiguity of the derogations was expressed by a majority of the 76 interviewed stakeholders.

In the **semi-structured interviews**, the opinion that the simplified procedures with the exception of Article 36 have had little to no effect was almost unanimously shared by interviewees, with a very small minority expressing positive opinions. The main points made by a significant number of interviewees were:

- In line with the other sources, several interviewees mention that the provisions in Article 36 allowing for **cascading and sharing** test results are useful and an effective way of simplifying demonstration of compliance with the CPR, and that they have been widely applied. With respect to classification without testing, six delegated acts for specific products have been enacted (cf. also section 4.5). These seem to be widely used but were not commented on specifically by the interviewees.
- Lack of clarity: More than half of the interviewees point specifically to the articles providing for simplified procedures as being unclear. Specific mention was made by several interviewees of the notion of "equivalence" of the used procedures to the procedures laid down in the harmonised standards, which is not explained. Thus, the conditions for practical implementation of the simplified procedures remain unclear, with small enterprises and other actors, including Member State authorities, struggling to understand the rules. The lack of clarity causes legal uncertainty. Interviewees also point to a lack of awareness among enterprises of

[45] Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, COM(2016) 445 final, Brussels, 7.7.2016 (Implementation Report).

the simplified procedures and several interviewees call for improved guidance and communication about the provisions and how to use them.

- Another issue which came out strongly in the semi-structured interviews was a questioning of the justification of the simplified procedures aimed at micro-enterprises. The point was repeatedly made that if one of the aims of the CPR is to allow for Member States to regulate buildings and thereby ensure the protection of users and consumers, it is difficult to justify relaxing the requirements for technical documentation in order to benefit smaller companies. Related to this, several interviewees pointed out that the degree of confidence in the product needs to be the same for all products, regardless of whether these products have been put on the market by micro-enterprises, SMEs or large companies. A respondent touched upon both the issue of equivalence and that of justification, neatly summarising points made by several other stakeholders as well: *"With regards to micro-enterprises, it is a nice concept, but it does not work because many efforts are needed to demonstrate that the simplified method is as good as the method described in the standard. Furthermore, there is no reason why the simplified method should not be included in the standard so that everybody can take advantage of this simplified method."* (Industry Association). Several interviewees call for other ways to help small companies that do not "distort competition", and a few concrete suggestions are made, including European or national funding programmes for SMEs to support costs of testing/assessment, or allowing micro-enterprises to demonstrate compliance *"by means of standard manufacturing provisions rather than simply performing measures based on compliance with a quality system that is unsuitable for small enterprises"*, as put by one interviewee. Another stakeholder suggests that simplified procedures should depend on the product and be based on a risk analysis rather than the size of the company.

The results of the **online survey** support the overall view that the simplification measures in general are not very effective. 35% of respondents in the online survey state that no simplification has been achieved and 34% state that some simplification has been achieved, while only 10% believe that significant simplification has been achieved (21% don't know). A few explanatory comments are made by survey participants that tend to point to the same main issues as those discussed above for the other primary data sources.

The expectation for the replacement of the CPD with the CPR was that simplification provisions for micro enterprises, individual products and non-series products etc. would lead to significant simplification effects, and thus cost reductions.

The simplifications aimed at avoiding unnecessary repetition of testing (Article 36) are widely applied and are thus effective, while the uptake of Article 37 (for micro-enterprises) and Article 38 (individually manufactured products), as well as the derogation for individually manufactured/traditional products in Article 5, remain very limited. The main reasons for the low uptake of these simplification provisions appear to be related to low awareness and lack of clarity of the provisions, particularly with respect to what actually constitutes "equivalent" documentation. The expected simplification effects of these articles (except Article 36) have thus not been achieved.

Specifically, with respect to Article 37, this was a key element in an attempt to "level the playing field" for the smaller companies, and this attempt has not been successful. Furthermore, the justification of measures that allow some manufacturers to implement such "lighter" procedures may also be called into question, considering that this creates uncertainty for end-users, who may justifiably expect that all products bearing the CE mark are subject to the same requirements.

4.1.2. Standardisation

Standardisation is the basic tool for achieving the common technical language and is thus a key element of the CPR. Furthermore, the harmonised standards under the CPR are mandatory and thus constitute an exception to the general rule (as laid down in Standardisation Regulation[46]) that compliance with standards is voluntary.

As described in section 2.1, in accordance with Article 17 of the CPR, harmonised standards are drafted by the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) on the basis of mandates issued by the Commission. The main steps in the standard development process under the CPR are:

1. Mandates are developed by the European Commission after consulting the Standing Committee on Construction and taking into account requirements of Member States, the industry and other construction stakeholders.
2. When the mandate is received by CEN, the standard and answer to the mandate are drafted by the concerned CEN Technical Committee and submitted to internal CEN revision and approval procedures. The draft standard is then released for public comment and vote, a process known as the 'Enquiry'. During this stage, everyone who has an interest (e.g. manufacturers, public authorities, consumers, etc.) may comment on the draft. These views are gathered by the members who then submit a national position by means of a weighted vote. The results are subsequently analyzed by the CEN Technical Body. If the results of the Enquiry show approval for the standard, the Technical Body can decide to submit the standard to the Commission for citation in the Official Journal of the European Union (OJEU). If the results of the Enquiry show that the draft standard requires technical reworking, the Technical Body can decide to update the draft and resubmit it for another weighted vote, called the Formal Vote[47].
3. Pursuant to Article 17 of the CPR, the Commission assesses the conformity of the harmonised standard established by the European standardisation bodies with the relevant mandate and the requirements of the CPR more in general. If the Commission finds that the standard does not conform with the mandate and/or with the CPR, the standard is sent back for review by CEN. As previously mentioned, since 2014, 208 standards have been developed by CEN/CENELEC, 34% of which have been cited. The main reason for non-citation of the remaining 138 candidate standards is their incompability with the CPR, i.e. lack of adaptation to the new CPR approach. Another reason for non-citation or withholding citation is the introduction into hENs of new threshold levels or classes which would require the European Commission to first draft and adopt delegated acts. 124 out of these 138 standards

[46] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025

[47] CEN website: *Developing a European Standard*, https://www.cen.eu/work/ENdev/how/Pages/default.aspx.

are being reviewed at CEN level, while 14 require action at Commission services level, including 11 to be progressed through delegated acts[48].

The process to develop new standards is generally long (several years). The key factors contributing to the long process can be found in all three steps; the Commission's drafting of the mandate usually involves stakeholder consultation, which is inherently lengthy. The internal procedures at CEN are also lengthy since, apart from the drafting work itself, the draft standard must undergo various quality checks, Member State consultation and consolidation of votes, which may lead to revision and sometimes a renewed round of voting. Finally, under the CPR the Commission must assess the conformity of the standard before citation (CPR Art. 17 (5)), as confirmed by the *James Elliott* ruling of the ECJ (case C-613/14)[49] and, as seen above, about two-thirds of the standards developed since 2014 have not been cited. The large majority of these non-citations are due to non-conformity which then requires further revision at CEN, while a smaller number of standards require the Commission to issue delegated acts which is also a lengthy procedure.

In the 2016 **Implementation Report** on the CPR, the Commission noted that there are several issues arising from the transition from the CPD to the CPR. Specifically, that "the transition from the CPD to the CPR has required stakeholders, European standardisation organisations and Member State authorities to learn to assimilate the new features and carry them over into harmonised standards. There have been some delays in starting this process and the adaptation is ongoing." An effect of this transition is the above-mentioned significant number of candidate harmonised standards which are not cited in the OJEU before appropriate adjustments (requested by the Commission) have been implemented or before the delegated acts on the incorporation of classes and/or threshold levels in the standards have been adopted, which may delay the whole process. The Commission also notes that stakeholders demand a "quicker and better streamlined standardisation process, with harmonised standards responding better to user needs". At the same time, the current backlog of non-cited standards needs to be cleared and a number of harmonised standards need to be revised[50]. The latter refers to the fact that in order to ensure that a European Standard is still current, it must be reviewed within five years of its publication. This review results in the confirmation, modification, revision or withdrawal of the EN[51] and means that all the CPD-based standards are now up for revision, as well as some newer standards as well.

In the summaries of the **Technical Platforms (TPs)** it was stressed that standardisation processes should be improved to increase the quality of standards, speed up the revision of existing standards and the uptake of new standards. It was stated that part of the problem is the mandates' poor quality, and that high quality drafting at mandate stage is the first main challenge. It is not further specified in the summary of the Technical Platform on Standardisation what exactly is meant by "quality" of standards and of mandates: however, this should be implicitly clear from the context, since the purpose of these documents is to serve well the needs of their users. In order to speed up the process it

48 Figures provided by the European Commission.

49 JUDGMENT OF THE COURT (Third Chamber), 27 October 2016, Case C-613/14, James Elliott Construction Limited, http://curia.europa.eu/juris/document/document.jsf?text=&docid=184891&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=416009

50 Implementation Report (2016), previously cited.

51 CEN website: *Developing a European Standard*, previously cited.

was considered that the procedure for citation in the Official Journal should be accelerated and generally improved.

CEN/CENELEC considers that there is a need for transparency and openness highlighting the status of mandates/standardisation requests and answers to them as they evolve. They also consider that establishing clearly defined timeframes for the EC to respond to revised answers will help to speed up hEN revisions and provision of new standards.

In the **semi-structured interviews**, issues relating to standardisation, and in particular the standardisation procedures, surfaced repeatedly throughout the interviews. As these issues were brought up unprompted in connection with various interview questions that did not explicitly ask about standardisation, it is not possible to provide a valid quantification of the frequency of which the issue was brought up. Instead, the issues that are included here in relation to standardisation are those that were brought up by several stakeholders and were assessed by the evaluator as valid points that merit inclusion in this report.

The main problem identified by stakeholders in the semi-structured interviews is also the lengthiness of the standardisation process. The long standardisation process has serious consequences for the realisation of the Internal Market, as the harmonisation process is slow. Linked to this, there is a perception among a significant number of interviewed stakeholders that proposed standards are sometimes rejected by the Commission for unjustified reasons, and that this stalls the standardisation process. On the other hand, the Commission emphasises that well justified reasons have always been brought forward for not citing proposed harmonised standards in the OJEU, linked to the fact that the proposed standards often do not meet the necessary compliance and quality criteria (cf. above).

Another criticism put forward in relation to standardisation by some stakeholders is that the resulting standards are not always market-relevant in the sense that they do not respond to the needs of the economic operators (mainly with respect to which performance criteria are covered by the standard). This can imply that ISO standards are preferred by the market, making CEN standards less relevant for international trade.

Some stakeholders mentioned in the interviews that some (innovative) products may fall outside the scope of the standard, thus possibly hampering innovation, referring to products that cannot be CE-marked when there is no corresponding standard. This conception however is wrong and would possibly require clearer information to actors in the construction products sector about the real operation of standards and the role of the EOTA in filling possible gaps. The possibility of requesting ETAs is available under the CPR as a way of speeding up the CE marking of innovative construction products, but there is dissatisfaction about the fact that the publication of certain EADs in the Official Journal has been delayed.

An additional aspect concerns not the process of standardisation, but the requirement for the standards to be "exhaustive" in terms of defining all the relevant essential characteristics and assessment methods (this will be discussed further in section 4.1.6). This issue is specific to the CPR since other products' essential requirements are set in directives or regulations and the use of harmonised standards is not mandatory. It was suggested by some stakeholders that harmonised standards should be allowed to include other characteristics than just the defined 'essential characteristics'. The reason is that otherwise, it could limit the usability of hENs for manufacturers and users if certain characteristics they require are not included or it could hinder the development of innovative products if the scope of the product standard is too narrow.

The issue of standardisation also came up repeatedly in the **public consultation**. The public consultation did not contain specific questions on standardisation. However, respondents were given the possibility to specify other impacts and standardisation was one of the most frequently mentioned aspects of the CPR with negative impact. Respondents see the standardisation process as too slow, and they tend to see the reason as the European Commission being too involved in the process, and perhaps not having the necessary capacity. Thus, many respondents express frustration about the slowness of the harmonisation procedure and about the fact that the hENs are not (promptly) cited in the OJEU. In line with that, a very frequently made comment is that the positive impact of the CPR would be much higher if standards were more quickly cited. Position papers submitted in connection with the public consultation underline the need for high-quality standards but express concerns about the issues relating to the slow process and the back-log of non-cited standards. Some position papers suggest that the responsible units in the Commission should be given more resources to deal with these issues.

One of the issues to be addressed in the transition from the CPD to the CPR was that the harmonisation work of the Internal Market was seen to be advancing slowly due to substantial delays in the technical harmonisation work by CEN/CENELEC[52].

The harmonised standards are at the core of the CPR and the main vehicle for delivering the expected results of the Regulation. It is clear from all the sources consulted that problems associated with the standardisation process, resulting in very long lead times for the development and citation of standards (as well as a backlog of revision and updating of existing standards) are perhaps the most significant problems associated with the implementation of the CPR. It should be mentioned that the process required for developing standards is long for any product, not just construction products, due to procedures put in place to guarantee the principles of Coordination, Cooperation, Transparency and Inclusiveness as part of an initiative already in place to improve the standardisation process in general (not just for the CPR)[53].

The delays are to a large extent due to the specificities of the CPR, namely that standards define performance and not product requirements, and that their use is mandatory, which means that the importance of high quality standards is particularly high. The final decision on citation of harmonised standards is the sole competence of the Commission, as the legal effects of a harmonised standard ensue from the Commission decision to publish its reference in the Official Journal of the EU and the fact that the European Court has affirmed that a harmonised standard is subject to the Court's jurisdiction under Article 267 TFEU (C-613/14, *James Elliott*). The Commission is also charged with drafting the mandate to CEN for the preparation of new standards. Furthermore, the "standard" CEN process for developing standards is prolonged in many cases when the proposed standards are deemed non-conforming by the Commission and sent back to CEN for revision.

These issues have a significant negative impact on the effectiveness of the Regulation, since harmonisation of many product areas is delayed and economic actors are left in a

52 Impact Assessment (2008), previously cited.

53 These concepts stem from the Joint Initiative on Standardisation, a partnership of European and national standardisation bodies, industry, SMEs, consumer associations, trade unions, environmental organisations, Member States and the Commission. These partners committed to modernising, prioritising, and speeding up the timely delivery of standards by the end of 2019. Source: REFIT Platform Opinion on the submission by a member of the REFIT Platform Stakeholder group on the non citation of harmonised standards (2017)

situation of legal uncertainty when new standards are anticipated but not yet fully applicable.

A reduction of delays in technical specifications from quicker work in CEN (with stricter deadlines to be imposed, and working methods improved) was one of the expected impacts of the transition from the CPD to the CPR as outlined in the 2008 Impact Assessment. This expectation may however not have been well-founded, since the CEN processes were not regulated neither in the CPD nor in the CPR, but rather (at the time) in the Standardisation Directive 98/34[54] and currently in the Standardisation Regulation 1025/2012[55]. Thus, the delays have not been reduced, on the contrary. Most stakeholders tend to lay the responsibility for the delays mainly on the Commission (pointing to mandates not being of sufficient quality and - allegedly - unjustified delays in the citation of standards). However, since such a large share of draft standards are assessed as not being compatible with the CPR, it seems clear that issues need to be addressed in all steps in the process described earlier in this section.

Another issue concerning standards is that harmonised standards are not available for free; CEN's copyright prevents the publication and cost-free distribution of the standards. Furthermore, standards are not translated into all official languages of the Union despite being mandatory. The standards are fully available in English, French and German. Moreover 99 per cent of harmonised standards are available also in Spanish, Italian and Romanian. Around 38 per cent of the harmonised standards have been translated into all of official languages. According to the Commission, the cost of translating the whole body of standards would be prohibitive[56]. The issue was raised in a query to the **European Ombudsman** who concluded that: "It is hard to reconcile the fact that the standards are mandatory in the Member States with the fact that, so far, they are available in only six of the official languages of the EU"[57].

The costs to economic operators of the need to buy standards were investigated in the **Supporting study for the fitness check of the construction sector**, which found that the costs incurred ranged widely (provided by 12 companies) from €80 to €40,000 per year. The costs vary depending on whether the company buys only hEN or a subscription from a standardisation body or private service provider for both access to standards and other tailored services. Excluding companies with special subscriptions, 9 data points remained, ranging between €80 to €4000, with a median value amounting to €1,000[58].

The 2008 Impact Assessment expected that simplification effects (lower costs) would be gained through increased access of manufacturers to the reading and interpreting of

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54 Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31998L0034

55 Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025

56 European Ombudsman (2015). *Report of the European Ombudsman closing query Q2/2013/EIS* (letter sent to Commission President Juncker on 11 December 2015)

57 European Ombudsman, previously cited.

58 Supporing study for the fitness check of the construction sector (2016), previously cited. It is not clear whether these costs in all cases cover purchase of standards in the official language of the economic operator.

(performance-based) standards. The issue was identified by the 2008 Impact Assessment in terms of confusion as to the meaning and the content of standards due to the wrong identification with New Approach standards, and the proposed measure was to introduce clarification (in the recitals of the proposed construction products legislation) about the exact role of the performance-based CPR standards. In this context, it should be taken into consideration that the real potential of the CPR to tackle such matters may have been overestimated at the time. In effect, given that the standards are not freely available, and may not even be available in the language of the economic operator concerned, such access is not yet fully achieved.

4.1.3. Product Contact Points for Construction

As required by Article 10 of the CPR, Product Contact Points for Construction (PCPCs) have been established by all Member States[59] to provide information on national rules aimed at fulfilling basic requirements for construction works (applicable for the indended use of each construction product), with the objective to make information freely available to economic operators and thus facilitate the free movement of construction products in the internal market.

The 2015 **Analysis of the implementation of the Construction Products Regulation[60]** found that, even though all MS had functioning PCPCs responding to requests for information from industry, awareness of the PCPCs remained relatively low (57% of surveyed stakeholders were (at that moment) not aware of the relevant PCPC in their own country or another EU country). Where PCPCs were being used, they were found to be helping industry to better understand how to apply the CPR, and to have increased legal certainty and transparency regarding the rules. According to the surveyed stakeholders, the most frequent topics on which information was requested related to information on national technical rules, information on products subject to CE marking or covered by harmonised standards, and information on rules applicable to the incorporation, assembling or installation of a specific type of construction product. On the other hand, information on the law in force in other Member States was not requested very often. However, it was noted by some of the stakeholders consulted for the study that PCPCs are slow to respond to requests for information and provide only enough detail to fulfil their obligations, not always fully responding to the specific question from industry. The study found no evidence to suggest that PCPCs have had any impact in terms of enhancing the free movement of construction products within the EU, mainly because industry is mostly unaware of the PCPCs in other Member States.

The supporting study for the fitness check[61] found some (limited) cost savings, based on data from the above-mentioned Analysis of the implementation of the Construction products Regulation (the number of requests received by a selection of PCPCs, and estimated time saved per request and hourly salary rates). Thus, the supporting study for the fitness check of the construction sector found a range of total administrative cost savings (for the whole industry) linked to the use of the PCPC between € 760,000 and € 1.2 million (cost savings are dealt with in more detail in chapter 5). A 2016 **study on**

[59] Implementation Report (2016), previously cited.
[60] RPA (2015), previously cited.
[61] Supporting study for the Fitness Check on the construction sector (2016), previously cited.

Product Contact Points[62] found a lack of consistency in the implementation of Article 10 of the CPR; additionally, access to information on technical national rules was not equally provided to economic operators. Information on PCPCs is generally hosted either on websites of national ministries or national agencies. Member States have opted for varying structures for complying with the Regulation, also in terms of website content. The main tasks of national experts working on PCPC-related activities consist of replying directly to requests or forwarding requests to competent authorities.

Thus, PCPCs are functioning in all Member States and provide information to economic operators. However, they seem mostly to be used by economic operators for issues relating to information and interpretation of rules within the national context of the economic operators, and only to a limited extent on applicable rules in other Member States, meaning that their impact on the functioning of the Internal Market is limited.

4.1.4. CE marking and the DoP

The CPR can be seen as an information system, which is expected to deliver accurate and reliable information about construction products, in particular relating to their performance. The vehicles for providing this information to end-users are the DoP and the CE marking.

In the **public consultation**, respondents were asked about their knowledge and understanding of the CE marking. Overall, the CE marking is well known: 99% of the respondents indicate that they know the CE symbol. Their knowledge of the meaning of the CE marking was then tested. The respondents were asked to select one or more options from a list of statements about what the CE marking means. However, while 95% could correctly answer that the CE marking means "this construction product has been assessed as to its performance in accordance with a harmonised European standard or a European Assessment Document", a significant number of respondents also thought that the CE marking had additional meaning(s) and chose more than one answer, for instance that the product is safe or that it complies with applicable local, regional or national building requirements. Thus, only 71% could actually identify the correct, and only the correct, answer.

Commenting on a different question pertaining to legal certainty (which will also be addressed in the chapter on relevance), some respondents in the public consultation comment directly on the link between the CE marking and legal certainty. Several respondents stress that the fact that the CE marking does not mean compliance with all (national) building safety rules has created legal uncertainty. Furthermore, several respondents point to the fact that the real meaning of the CE marking is still not clear to many and that efforts should be made to clarify that the CE marking is not a quality mark, and that the confusion created by the misunderstanding/misinterpretation of the CE marking creates significant legal uncertainty.

[62] Ecorys (2016), Inventory of Contact Points (PCP, PCPC) - Guidelines for improving consistency across PCPC and PCP websites. The study aimed at screening the implementation of Product Contact Points (PCP) and Product Contact Points for Construction (PCPCs) in order to identify minimum desirable website content and best practices.

In their **feedback on the Roadmap**[63], stakeholders reported several misuses and misinterpretations of the CPR. The most frequently mentioned issue is that of the DoP and/or CE marking being incorrectly formulated or applied. They also recognise that many difficulties implementing the CPR are not directly linked to the CPR itself but to divergent interpretation between stakeholders. A common request from the stakeholders providing feedback on the Roadmap is the provision of more guidelines and clarification documents. According to some stakeholders both manufacturers and users are unsure about the meaning of the CE marking, and these issues may undermine confidence in the marking.

The Commission has however provided information to clarify and help interpretation and application of the CE marking, including a webpage with Frequently Asked Questions (Europa page)[64], an information campaign on CE marking (2014)[65], a brochure on CE marking in all official EU languages (2015)[66], guidelines with CEN and EOTA, etc. The PCPCs (cf. the previous section) also play a role in this effort by answering questions from economic actors (and other stakeholders) on the application of CE marking etc. Thus, a significant amount of guidance is in fact available.

A little over a third of the stakeholders in the **semi-structured interviews** see no impact, or even a slightly negative impact, on the utility for end-users of the information provided in the DoP and the CE-mark, while a slightly smaller group – about a third - state that the information for end-users has improved. Typical reasons given by the stakeholders for thinking that the information to end-users has improved is that the information is harmonised, which creates transparency and a better possibility for users to compare products with respect to the declared performance[67].

A recent **survey on information needs** among more than 2,000 professional end-users[68] however shows a more positive picture with respect to whether users' information needs are covered. First, the respondents were asked which types of information they have been looking for in relation to the construction products (or product groups) for which they have needed technical information. The most frequent answer to this question is 'Intended use of the product'[69] (50%), followed by 'Mechanical strength' (48%) and 'Behaviour in fire' (40%)[70]. Asked about which sources were used to obtain the required information, 77% reply 'Product Data Sheet'. The second-most used source of information is Product information supplied on the product or accompanying the product (e.g. Declaration of performance or CE marking)' (53%). Other sources, mainly 'Certificates supplied by authorities' are used by 25-31% of respondents[71]. The respondents were then asked

63 Feedback received on: Review of the Construction Products Regulation, published on the Commission website, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3070078/feedback_en?p_id=31424

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

65 http://ec.europa.eu/avservices/video/player.cfm?ref=I088654

66 European Commission (1015). *CE Marking step by step*. http://ec.europa.eu/DocsRoom/documents?tags=ce-guide

67 The remaining stakeholders (a little under a third of the interviewees) did not have a clear opinion on this issue.

68 Ecorys (2018). Survey on users' need for information on construction products, European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

69 Intended use of the product is defined in CPR art. 1 as follows: 'intended use' means the intended use of the construction product as defined in the applicable harmonised technical specification.

70 Survey on users' need for information on construction products (2018), cited above. Figure 15. Multiple replies possible - Question open to respondents who signalled they needed to obtain product information in the past 5 years.

71 Survey on users' need for information on construction products (2018), cited above. Figure 19. Multiple replies possible - Question open to respondents who signalled they needed to obtain

whether they were able to obtain the information that they were looking for (presumably using the sources indicated above). The information that was most easy for construction professionals to obtain was the 'Intended use of the product', which is also the most needed type of information, cf. above. Only 3% were not able to find the information, while 31% were able to find it, but with some effort required, and a significant majority - 66% - found the information relatively easily[72]. Finally, respondents were asked whether the technical information obtained was sufficiently precise for the purposes of their work. The information that was most often considered sufficiently precise concerns 'Contact details of the manufacturer' and 'Intended use of the product' which, together with information on 'Mechanical strength', have the fewest respondents indicating the information is 'not sufficient'. For 'intended use of the product', 58% of the respondents answered 'Yes, the information is sufficiently precise', 39% 'Yes, but could be better', and only 4% said 'No, not sufficient'.

It should be noted that the focus of this survey is on the current situation and no comparison is made with the situation before EU regulation on construction products was introduced.

The participants in the **online survey** are quite positive as regards improved information for end users. More than two thirds (68%) think that product information for end users has increased to some or a large extent due to EU legislation on construction products, (while 20% think that it has had no effect and 11% think that there has been some or a large decrease). Asked whether they think that the current situation is satisfactory, 70% agree that the situation with respect to comprehensive product information for distributors and end-users of construction products is satisfactory.

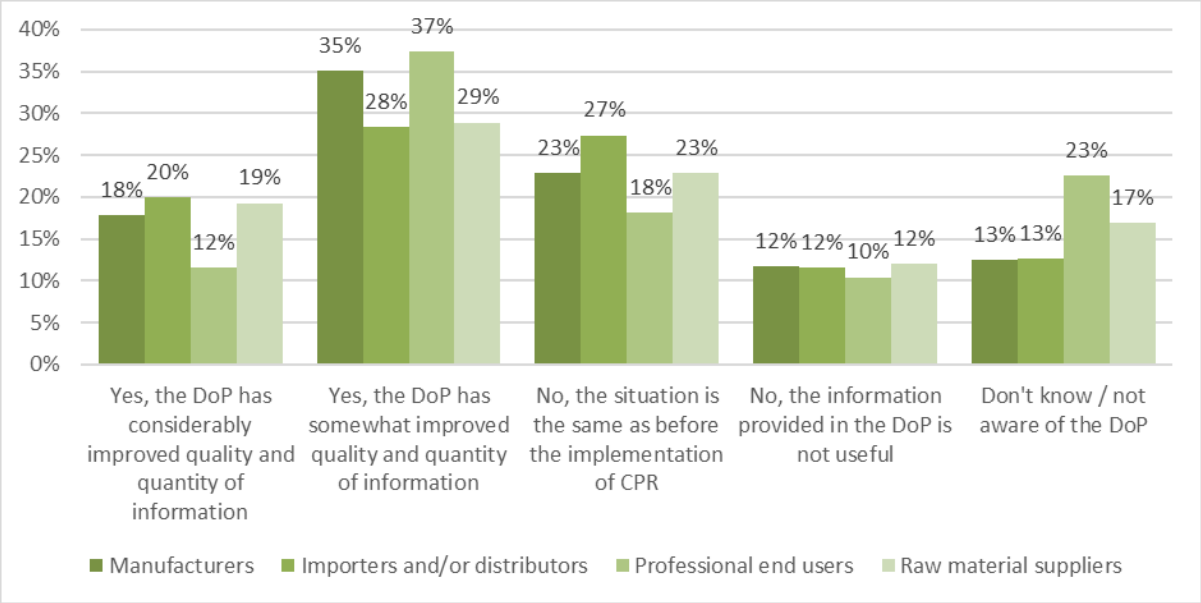
The respondents in the **public consultation** are also positive in terms of the impact of the CPR on product information for end-users, with 62% seeing a positive effect, as opposed to 14% seeing a negative effect and 19% seeing no effect (5% don't know or do not answer).

Among the participants in the **company phone survey**, 51% indicate that the DoP provides somewhat or considerably (improved) quality and quantitative information to the economic operators, while 22% think that the situation is the same as before the introduction of the EU legislation and 11% think that the information provided in the DoP is not useful (15% don't know). The distribution on different types of companies are shown in Figure 9 below.

product information in the past 5 years. It should be noted that Certificates supplied by authorities are not defined by the CPR.

[72] Survey on users' need for information on construction products (2018), cited above. Figure 22. Question open to respondents who signalled they needed to obtain product information in the past 5 years.

Figure 4-4: Do you think that the Declaration of Performance (DoP) provides useful information to economic operators in your sector?



Source: Company phone survey. Number of respondents: Manufacturers=376; Importers and/or distributors=95; Professional end users=182; Raw material suppliers=83

A key issue brought up by many in the **stakeholder interviews**, both as a reply to the specific question on whether EU legislation has brought better information for end-users, but also repeatedly throughout the interviews, is the issue of fitness for use. This issue will be dealt with in more detail in the chapter on relevance.

Issues have also been identified concerning significant overlaps of the information to be provided in DoP and the CE marking, respectively. The main consequences of this are additional costs. This issue is therefore addressed in the efficiency chapter.

Problems related to CE marking, including confusion as to the meaning of the CE marking under the CPD was one of the issues to be addressed by the CPR. There are indications that these issues continue to exist, despite information efforts and guidance delivered by the Commission. While most stakeholders know that the CE marking indicates that the construction product has been assessed as to its performance in accordance with a harmonised European standard or a European Assessment Document, some stakeholders continue to believe that the CE marking has additional meaning, e.g. that the product is safe or that it complies with national building requirements, etc. Thus, the issues with confusion as to the meaning of the CE marking have still not been completely solved.

Overall, however, the information provided to end-users of construction products seems to have improved with the DoP and the CE mark; in almost all user groups consulted on this issue, by far the largest group see the information as improved. The large-scale survey among professional end-users showed that the DoP and CE marking is an important source for information and that the users were generally able to find the most needed information with relative ease.

4.1.5. Product choice for end-users

Linked to the provision of information on construction products, an expected indirect impact of the CPR was improved product choice for end-users by providing means for comparison between products and improving conditions for intra EU trade. End-users can be both professional users of construction products (e.g. builders, architects) and private consumers.

About 25% of stakeholders in the **semi-structured interviews** believe that the CPR has had a limited positive impact on product choice. The majority of the stakeholders that see a positive impact are from Eastern and Southern Europe (Italy, Spain, Poland, Romania), and a few from Germany and France. A fifth of the interviewees state that there has been no impact, while more than half do not have an opinion or cannot give a clear answer. None indicate a negative impact.

Participants in the **online survey** are more positive, with 48% indicating that there has been some increase or a large increase in product choice for end users. However, 38% do not see any effect, and 13% indicate some or a large *de*crease in product choice. Furthermore, 80% indicate that the current situation in the EU market with respect to product/supplier choice for distributors and end-users of construction products is satisfactory.

Finally, in the **public consultation**, 49% of the respondents see a positive effect on product choice for the end-users as opposed to 11% who see a negative effect. The remaining 40% see either no effect, do not know or choose not to answer the question.

Overall, the CPR does not appear to have had a significant impact on product choice for end-users. This may be related to the fact, as discussed previously, that there has not been a significant impact of the CPR on cross-border trade and competition in the national markets, which would also indicate that the availability of different products has not been significantly impacted.

4.1.6. Providing means for public authorities to set performance requirements and to check compliance

The objective of providing means for public authorities to set performance requirements and to check compliance with these requirements is to be delivered via the provision of the common technical language through the mandatory standards.

It seems that there is no common pattern in the way national legislations make reference to the CPR; the approach varies significantly between Member States. Some Member States regulate at the level of systems (e.g. buildings or infrastructure) while some only refer to the performance of products. Furthermore, some Member States have dismantled pre-existing legislation and are thus wholly dependent on the CPR, while others have their own approach coexisting with the CPR, thus presenting bigger risks of tension at the interface between the performance-based requirements of the CPR and their own building codes[73]. As will be discussed in section 4.4, national marks (setting additional procedural requirements to assessing and declaring the performance of construction products) are

[73] Information provided by the European Commission, based on exchanges with Member States.

still in use in some Member States, even though these were expected to disappear with the introduction of the CPR.

The issue of whether the CPR satisfies the regulatory needs of the Member States in order to rule on safety etc. of building works is closely related to the issue of "exhaustiveness" of the harmonised standards, which has come into focus following a judgement of the European Court of Justice (ECJ) in 2014 (case C-100/13)[74]. The case concerns the German administrative practices of using *Bauregellisten* for setting additional requirements on the performance of construction products covered by harmonised technical specifications, as opposed to having such requirements inserted into the European harmonised system. According to the ECJ, such practices are in breach of the CPD and thus, in the Commission's view, also constitute an infringement of the CPR.

In line with the principle of "exhaustive harmonisation" as confirmed in ECJ Case C-100/13, in the Commission's view, a Member State does not have a right to unilaterally regulate by setting performance requirements on CE–marked construction products outside the harmonised system. In the Commission's view, Member States can only refer to harmonised standards in their legislation and may not set additional criteria for measuring/testing performance of products, even if the standard covering this product does not contain all essential characteristics. This issue is specific to the CPR since for other products, essential requirements are set in directives and the use of harmonised standards is not mandatory.

Several Member States and other stakeholders oppose the Commission interpretation of the ECJ judgement in case C-100/13, which is expected to be clarified by the Court in two pending cases linked to German formal objections (relating to the CPR). The judgement is expected for the end of 2018/beginning of 2019 in case T-229/17, unless an appeal is lodged, which might add a year to the timeframe[75].

The issue thus remains authoritatively unsolved. The key aspect is whether or not Member States may use national marks or otherwise set requirements to the performance (and testing) of construction products outside the harmonized system created in or by means of the CPR. If the judgement were to go against the Commission's view, this would almost certainly lead to a reduced level of harmonisation and thus represent a step backwards for the realisation of the Internal Market for construction products. If the Commission's view is confirmed, however, the Member States still using national marks on construction products will find it increasingly difficult to argue for their legality.

On a more practical level, the survey among professional users discussed above in the section on information for end-users is matched by a smaller **survey among Member State authorities** active in the field of market surveillance or building control, with 34 respondents[76]. The survey provides some evidence (although with limited representativeness due to the small number of answers) on the extent to which the CPR provides appropriate means for public authorities to find the information that they need in order to check the compliance of construction products in their market.

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[74] Court of Justice of the European Union (2014). *Judgment of the Court (Tenth Chamber) of 16 October 2014 — Commission v Germany (Case C-100/13)*

[75] Information provided by the European Commission.

[76] European Commission (2018). Construction Products Regulation. Survey on information needs among Member States Authorities, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. 34 responses in total, of which 25 answered the questions discussed here.

The Member States authorities were given the same questions on information needs as the professional users in the survey discussed above, and the results were very similar. The types of information that were most frequently needed were the same as in the professional user survey: 'Intended use of the product', followed by 'Mechanical strength' and 'Behaviour in fire'. The three most needed types of information were also considered the most easy to find, and overall sufficiently precise for the needs of the users, although with some room for improvement, particularly with respect to 'Intended use of the product'.

The different sources of information were used almost equally, with 'Product information supplied on the product or accompanying the product (e.g. Declaration of performance or CE marking)' as the most commonly used with 21 of 25 responses, while product data sheet and certificates provided by authorities get 19 replies.

While the survey indicates that the most sought-after information among the Member States authorities participating in the survey is generally available in sufficient detail, this is not the case for all types of information; for about half of the types of construction product information listed, the survey respondents report that the information took some effort to find, or could not be found at all. Similarly, in many cases, the information was not sufficiently specific for the purposes of their work.

The respondents provide a number of examples of the problems that they experience in this connection:

- The quality of standards is not always high enough, for example "the essential features are partly incomplete in the mandates. Some of the references in Annex ZA.1, Essential Characteristics, are missing in the clauses of the standard or there are less essential features in Annex ZA.1 than properties in the clauses of the standard. Due to the legal situation, these surplus properties cannot be verified by the market surveillance authorities. A better alignment of Annex ZA with the sections of the standard is desirable."

- Cross-border information is not always easily accessible. There is a need to improve cooperation and exchange of information between MS market surveillance authorities.

- DoPs are sometimes difficult to find/access. There is no central database of DoPs and they are not always accessible on the websites of manufacturers.

Thus, the information on individual construction products that market surveillance authorities and other public authorities need to carry out their responsibilities is often, but not always, accessible and of sufficient quality. There seems to be a need to improve cross-border cooperation, digital access to DoPs, and to improve the quality of the information provided in the standards.

4.2. Compliance and market surveillance

The overall aim of market surveillance in the Member States is to ensure that all actors comply with the CPR and thus to create the basis for trust in the products on the market. Ineffective market surveillance under the CPD was another issue to be addressed by the CPR.

Within the new legislative framework adopted in 2008, Regulation (EC) No 765/2008[77] established the main administrative framework for market surveillance in Member States, whereas Decision No 768/2008/EC contained reference provisions for individual market surveillance procedures. The market surveillance-related Articles 56 to 59 of the CPR draw largely on Decision No 768/2008/EC, adjusted to the specificities of the construction products sector (i.e. referring to specificities such as "construction products", EADs, etc., while keeping the overall provisions)[78].

According to the **Implementation Report**, market surveillance authorities for construction products were duly established in all Member States, albeit with variable availability of resources and real impact on the market. The Implementation Report points to the (delayed or insufficient) adjustments to the market surveillance system required by the CPR as a partial cause for some of the market surveillance challenges experienced during CPR implementation. Among these challenges is that the prerequisites set out in Article 56(1) for starting the procedures described in Articles 56-58 to deal with construction products presenting a risk, include both that the construction product does not achieve the declared performance *and* that it presents a risk for the fulfilment of the basic requirements for construction works (both obligatory). Since the manufacturer has the choice whether to declare the performance related to any given essential characteristic, he has little incentive to provide a false declaration of performance for that characteristic rather than simply not declaring it. In practice, this prevents the Market Surveillance Authorities from effectively using these procedures.

Across the board, stakeholders in the **semi-structured interviews** have a quite negative view of the effectiveness of market surveillance. Unprompted, many respondents comment on market surveillance not being sufficient or effective (again, typically commenting that non-compliant products are not removed from the market), as well as being unevenly implemented across Member States.

This was also a clear message in the **public consultation**. Although not directly addressed, this issue was brought up frequently in the optional comments to various questions. Commenters point out that stronger market surveillance and enforcement in the national markets with respect to non-compliant products is crucial. This was by far the most common issue brought up by respondents in relation to the question on whether the EU legislation on construction products should be maintained as it is.

Similarly, the issue was brought up in several position papers submitted in the context of the public consultation. It was repeatedly pointed out that the implementation should be improved across Member States. Combating unjustified use of the CE marking is seen as a prerequisite for building confidence in the CE mark on construction products among market actors in the construction industry. Some also see it as a task for market surveillance authorities to halt the continued use of voluntary quality marks on CE-marked products.

The point about the insufficiency (or unequal implementation) of market surveillance mechanisms was also made by a number of stakeholders in **the scoping interviews.**

In their **feedback on the Roadmap**, a number of stakeholders stated that the insufficiency of market surveillance is one of the main issues to be solved in the CPR.

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[77] 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 and repealing Regulation (EEC) No 339/93, OJ L 218, 13.8.2008

[78] Implementation Report (2016), previously cited.

These stakeholders consider that there is not enough surveillance and punishment for producers and users providing or using non-compliant products and that there is an issue with lack of control of the content of the DoP and the CE marking. The problem of control and of enforcement results in a certain lack of confidence with regard to the CE marking, which impacts effectiveness of the CPR.

Findings from the analysis of the use of **RAPEX** hint at gradually increased effectiveness of market surveillance. Legally speaking, RAPEX applies only to products presenting a serious risk to consumer health and safety. RAPEX has only been used for a few categories of construction products, e.g. smoke and CO alarms mainly. Accordingly, RAPEX might not be an adequate indicator for the effectiveness of market surveillance. The text box below provides more details.

RAPEX

The Rapid Alert System for dangerous non-food products (RAPEX) facilitates the exchange of information between the national authorities of 31 participating countries and the European Commission on measures taken against products posing a serious risk to health and safety. Manufacturers or distributors are obliged to inform the competent national authority if one of their products on sale is dangerous.[79]

An analysis of the 102 construction products reported in the database for the full period available (2005-2017) found that, according to the information provided in RAPEX, reported construction products did not comply with one or several of the following legal acts:[80]

- Construction Product Regulation (EU) No 305/2011 (CPR) / Construction Product Directive 89/106/EEC (CPD) / European Standard (EN)

- Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

- Low Voltage Directive 2014/35/EU (LVD)

- Dangerous Substances Directive 67/548/EEC (DSD) / Regulation (EC) No 1272/2008 on the classification, packaging and labelling of dangerous substances (CLP)

- Chemicals Restrictions Directive 76/769/EEC (CRD)

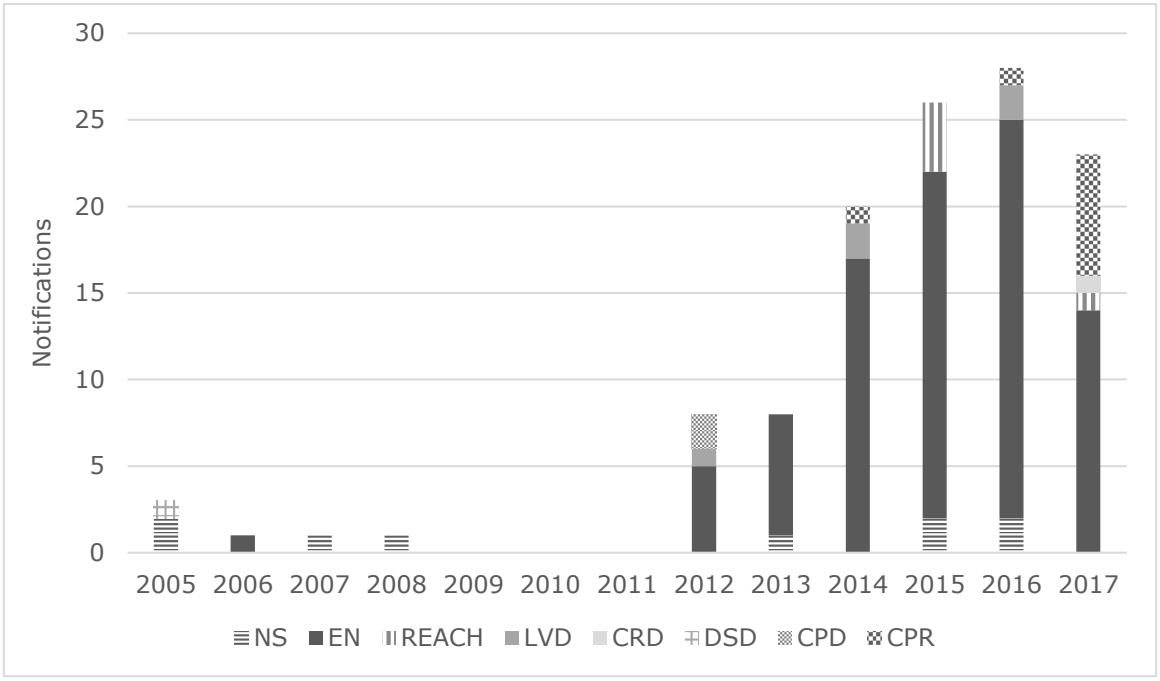
- Not specified (NS)

[79] https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.search

[80] RAPEX database provides information on "Construction products". For each construction product notified it provides a reason for non-compliance. Figure 14 lists reasons for non-compliance reported in the RAPEX database for construction products. Among the reasons for several construction products were non-compliance with the Low Voltage Directive (LVD), or a particular European Standard (EN).

The figure below presents the number of notifications of construction products per type of non-compliance.[81]

Figure 4-5: Notifications of construction products in the RAPEX database by category of non-compliance (2005-2017)



Source: VVA, based on RAPEX database available at: https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.search

While in 2009-2011 there were no notifications of construction products, the number of notifications increased from 2012, reaching 25 in 2015 and 2016, before dropping to 15 in 2017. While the number of notifications increased, this represents a very small proportion of the total number of construction products. The study on economic impacts of the CPR estimates that there are more than 500 *types* of construction products alone,[82] while according to CEN, the construction sector covers more than 3,000 work items on product standards.[83] The number of individual construction products is likely to be higher. Consequently, it is safe to conclude that the proportion of individual construction products affected by a notification to the RAPEX database was well below 1% (and probably only a small fraction of a per cent) for each year.

As of the end of 2017, 9 products have been reported as non-compliant with the CPR. 6 of them were carbon monoxide detectors of various brands originating in China, one a carbon monoxide detector originating in Taiwan (the carbon monoxide detectors were also non-compliant with the European standard EN 50291), one a door lock originating in

[81] The reason for non-compliance is listed in the online database for each construction product. The research team strictly followed the descriptions of non-compliance provided in the database. For example, for a smoke alarm in 2012, the description reads: "The product does not comply with the Construction Products Directive and the relevant European standard EN 14604". The reason for non-compliance was coded as **both** CPR and EN (European Standard). For another product, it reads: "The product does not comply with the relevant European standard EN 14604". In this case, the product was coded as non-complying with EN (European Standard) only.

[82] Economic Impacts of the Construction Products Regulation (2016), previously cited.

[83] https://www.cen.eu/work/areas/construction/products/Pages/default.aspx

Switzerland (also non-compliant with the European standard EN 179), and one an item of building glass from the United Kingdom. The risk type for the carbon monoxide detectors was catecorised as asphyxiation, for the door lock, health risk/other (due to potential forcing out of position of the internal cylinder, leading to the lock being blocked and escape routes thus not available), and for the building glass, fire (due to the lack of fire resisting properties).

In addition to those mentioned above, 79 other products were found non-compliant with harmonised standards. These included two in 2012 that were declared as not compliant with Construction Products Directive (CPD) and with EN 14604 – a smoke alarm and a smoke detector. Both products, originating from China, were deemed to be of insufficient quality to detect smoke, potentially causing risks of asphyxiation, and were taken out of the European market.

In general, the harmonised standards with most notifications were EN 50291-1 with 31 notifications (carbon monoxide detectors with asphyxiation risk), EN 14604 with 30 notifications (smoke detectors and alarms with fire, asphyxiation and/or burn risks), and EN 50291 with 15 notifications (also carbon monoxide detectors with asphyxiation risk). Other standards with notifications (one or two each) were EN 179, EN 196, EN 13240, EN 14527, EN 14785 and EN 60335, as well as BS 6375 and BS 8213. Asphyxiation was the most common risk type with 56 product notifications, followed by fire with 24 notifications.[84] Other risk types (one or two notifications each) were cuts, chemical risk, electric shock and injuries.None of these standards are in fact harmonised under the CPR.

What can be concluded from the above is that the use of RAPEX with respect to construction products is on the rise, along with the references to the CPR. Overall, the number of reported products is too low to draw any conclusions with respect to the effectiveness of market surveillance under the CPR. Even if the numbers were higher, the share of dangerous products on the market is not known, and an increase in RAPEX notifications could either be due to the share of dangerous products increasing, or market surveillance increasing, or a combination.

4.3. Factors that have influenced the achievements observed

In this section, the focus is predominantly on external factors that influence the effectiveness of the CPR, i.e. not the legislation itself but factors in the market and factors relating to implementation of the legislation – although at times it can be difficult to extricate external from CPR-internal factors.

The achievements reported above with respect to the functioning of the internal market for construction products, effects on end-users, etc. appear to be significantly influenced by issues relating to implementation of the CPR.

First of all, insufficient and ineffective market surveillance and enforcement in the Member States, as discussed above, is a factor that has significant negative influence on the achievement of CPR objectives. The insufficient market surveillance creates the basis for lack of trust in the legislation and thus a disincentive for companies to comply with the

[84] Two products were labelled as both asphyxiation risk and burns risk, two were labelled as both asphyxiation and fire risk, and two as both burns and fire risk.

legislation, either because there is little risk of getting caught, and/or because "all the others are doing it", i.e. companies feel that they are exposed to unfair competition.

The second big factor (also discussed above) with significant negative influence on the effectiveness of the CPR, are the issues concerning the lengthy standardisation process. Lengthy procedures and delays result both from the procedures of CEN/CENELEC and the Technical Committees, where it may take years before a standard is adopted and published by CEN/CENELEC, and from the subsequent procedure for the Commission to publish the reference to the standard in the Official Journal (OJEU).

Other factors influencing the effectiveness of the legislation are discussed in the following, namely the specific obstacles to the internal market that still remain.

4.4. Remaining obstacles to the internal market for construction products

A significant number of stakeholders participating in the **semi-structured interviews** consider the internal market to be open with no major barriers: according to them, the CPR enables construction products to cross borders and enter other EU markets. CPR compliant construction products can be sold everywhere in the EU. However, it is broadly acknowledged by interviewees that there are differences in climate, national building traditions etc. which mean that customers may have different requirements in different countries, or that due to national building regulations some products can not be used in some countries. These are de facto barriers which impact the movement of goods in the internal market, but the typical view is that these national/regional/local differences can be accommodated within a harmonised product market.

National marks or setting performance requirements to construction products other than those contained in the relevant European standard are not allowed. That the use of national marks was considered illegal also in the field of mutual recognition was confirmed already by the the ECJ judgement in 2008 on case C-227/06[85], and thus should not be deemed allowed in the harmonised sphere either. However, it is a fact that national marks, certification schemes etc. are still used in a number of Member States. From a CPR perspective, the use of such national marks undermines the Internal Market for construction products since they create barriers for CPR compliant products to enter a market - typically, the need for additional testing of the product within the Member State in question, with associated additional costs.

However, even though the illegality of national marks has been confirmed by ECJ judgements (cf. above), the issue of national marks and certifications as an obstacle to the internal market is not seen as clear-cut for all parties concerned. Stakeholders tend to distinguish between national (compulsory) marks and voluntary marks or certification schemes which are often industry-driven. Some stakeholders actually consider the voluntary marks as beneficial both to industry and to end-users because they allow to document quality, safety and other aspects that go beyond CE marking, since the CE marking only documents performance in a technical sense. A couple of quotes from the **interviews** illustrate the points that are made by a significant number of interviewees:

[85] Judgment of the Court (Third Chamber) of 13 March 2008 – Commission v Belgium (Case C-227/06), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62006CJ0227&from=EN

"The main obstacle to the development of the internal market for products is above all the lack of explicit significance of the CE marking for users." (Professional user organisation). As indicated by this interview quote, and according to several other interviewees, since the CE marking does not guarantee quality or fitness for purpose, there is actually a *demand* for voluntary marks and certification schemes, both among (parts of) the industry who would like to differentiate their products and among end-users. *"The main obstacle is getting a common understanding of what the CE-mark means, and a more uniform interpretation of that across the EU. With respect to e.g. national marks, the problem has diminished. The issue is rather whether people have the same understanding of what CE-marked construction products can be used for and how to interpret the CE-mark."* (National Accreditation Body).

Some of the interviewed stakeholders however *do* see national marks as a continuing obstacle to the internal market. Many interviewees specifically mention Germany, and see such marks as expressions of national interests, or even protectionism, limiting harmonisation. Another example of such obstacles, which is mentioned by several respondents, are the requirements from insurance companies in France for specific certifications which also play a role in limiting the further integration of the market.

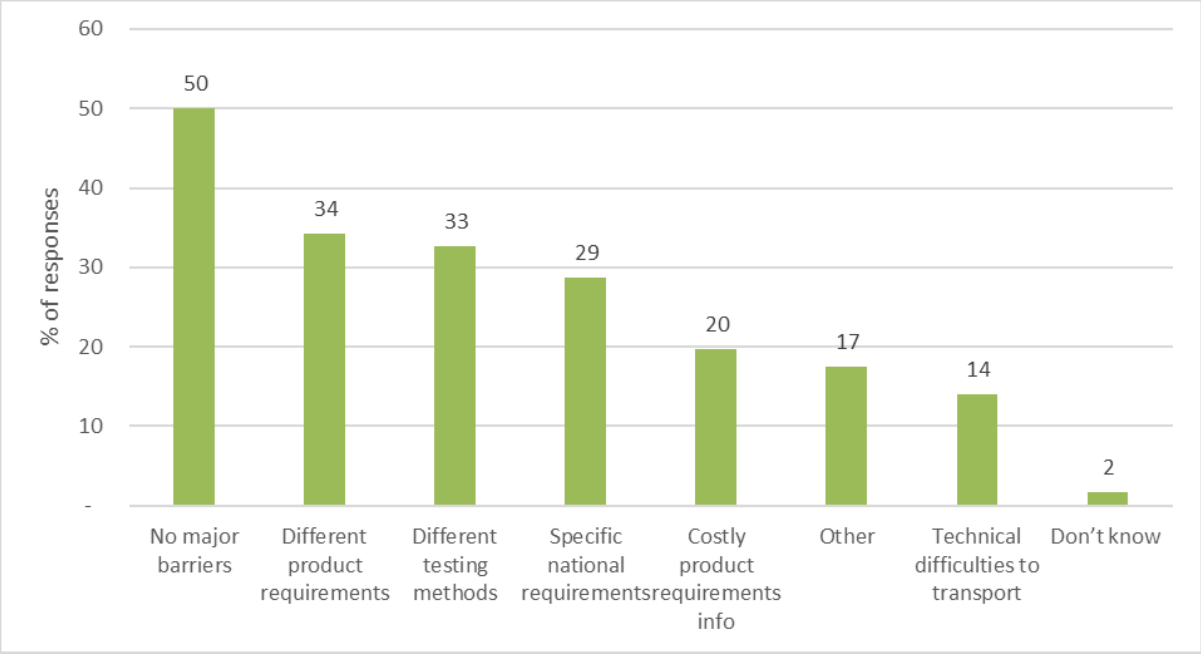
Another obstacle or barrier to realisation of the internal market which is mentioned by several stakeholders is the lengthy process of establishing harmonised standards, and sometimes having them published as incomplete harmonised standards with essential characteristics for which no harmonised assessment (testing) methods or criteria have been specified.

In the **company phone survey**, when asked about the main barriers/obstacles that construction products manufacturers face when exporting to other EU Member States, 50% of the manufacturers state there are no major barriers (

Figure 4-6). To the question: what are the main reasons for difficulties in selling/ sourcing construction products from other EU countries?, the main reasons cited by all types of respondents were the economic crisis (chosen by 26% of all respondents) and differences in standards (national requirements), chosen by 28% of all respondents. However, the answer that was most frequently selected was "Don't know" (34%) (

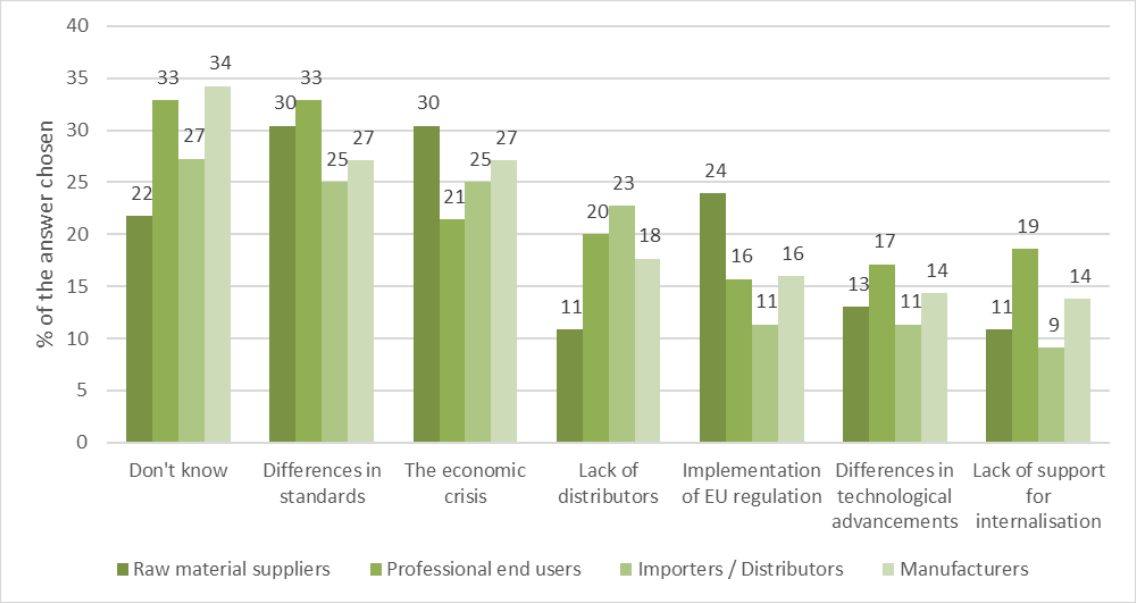
Figure 4-7).

Figure 4-6: The main barriers/obstacles that construction products manufacturers face when exporting to other EU Member States (%)



Source: Company phone survey. Number of respondents: Manufacturers=74. Multiple answers possible.

Figure 4-7: What are the main reasons for difficulties in selling/ sourcing construction products from other EU countries?



Source: Company phone survey. Number of respondents: Manufacturers=155; Importers/Distributors=39; Professional end users=58; Raw material suppliers=40.

4.5. Innovation

Innovation is not a specific objective of the CPR, but given the importance of the topic, the issue of whether the CPR has an impact – positive or negative – on innovation in the construction products sector has been included in the study. In public debate, this topic has often been connected to the role of the European Organisation for Technical Assessment (EOTA).

The CPR provides for an alternative route for CE marking for construction products not covered or not fully covered under hENs by providing the possibility for manufacturers to request a European Technical Assessment (ETA). The manufacturer may issue a DoP and affix the CE marking on the basis of an ETA. ETAs are issued by TABs on the basis of European Assessment Documents (EADs). The development of EADs is the responsibility of EOTA[86]. The 'ETA route' thus allows manufacturers with innovative products to be able to affix the CE marking to their product even when it is not covered by a harmonised standard. It should however be noted that the degree of innovativeness of products for which an ETA/EAD is requested, varies from highly innovative to not innovative at all (the latter typically 'non-standard' and therefore not (yet) covered by a hEN)[87]; all in all, the analysis from this angle of all ETAs issued has not been carried out yet, but the prima facie statistical evidence (the predominance of ETAs issued on the basis of ETAGs used as EADs) appears to indicate that the emphasis remains on the less innovative side.

86 The procedures are laid out in Articles 19-21 and Annex II of the CPR

87 BRE, Ecorys, and Vito (2016), Supporting study for the evaluation of the relevance of EOTA tasks.

The 2016 evaluation of the relevance of EOTA tasks[88] found that manufacturers having turned to TABs benefit from being able to CE mark using ETAs through the development of EADs. It was found that the commercial gains for a large majority of manufacturers from getting a ETA for their products outweigh the costs of compliance from a moderate to a large extent. However, the evaluation pointed to very long procedures and delays in the development of both EADs and ETAs (evidence from a limited number of interviews with manufacturers pointed to a mean time from ETA request till the adoption of the EAD of 17.5 months, and a mean time period for the ETA to be issued of 16.3 months). Concerning the role of EADs and ETAs in innovation, the manufacturers interviewed for the evaluation commented that they did not perceive the EADs/ETAs as a support to the innovativeness and competiveness of the industry but rather as a 'quality mark'. The fact that the development of ETA/EADs is time consuming was judged by the evaluators as a restriction on innovation. However, in cases where the EAD development went well, EOTA was seen as a useful route for innovative firms.

Among the conclusions and recommendations of the EOTA evaluation were that Annex II to the CPR should be reviewed and revised to reflect actual responsibilities and timescales that are required to develop and cite EADs since the evaluation found that this would support a greater clarity in informing manufacturers of timescales and the potential for delays.

The majority of stakeholders in the **semi-structured interviews** were of the opinion that EU legislation on construction products neither supports nor hinders entry of new/innovative products in the construction sector – i.e., that the legislation has little or no effect either way on the amount of product innovation. A typical statement from a stakeholder (a Notified Body): *"I haven't really seen any impact one way or another. Certainly, CPR is not preventing innovation, the ability to gain certification has encouraged new players to get certification to be able to market their products. This brings new manufacturers to the market. We have certified some organisations with interesting, innovative products. Nothing in the CPR that hinders them. But neither anything there that particularly encourages innovation to be the solution"*. Smaller groups of respondents (16-18%) have an overall somewhat (but not very) positive or negative opinion. However, the main driving force for innovation, according to the interviews, is the market demand, which is an incentive for innovation, but also a hindrance since the products, as parts of buildings, are expected to have a very long lifetime. Customers can therefore be risk averse with respect to new construction products.

An issue pointed to by a significant number of the interviewed stakeholders in the semi-structured interviews (including among those that take a neutral or even positive view) is that the standardisation process is too slow to keep pace with innovation. It takes too long to adopt standards, which hampers innovation.

The ETA system as established by the CPR is overall seen in a positive light by most of the stakeholders in the semi-structured interviews. For instance, one stakeholder said that *"CPR has done more for innovation than many of the other internal market directives, with the ETA system and because a product is not covered before there are harmonised standards that apply to it. In the other internal market directives, the essential requirements are stated in the directive itself, and a new product must meet these requirements before it can be marketed. In that respect, the CPR provides more freedom of method"* (National Accreditation Body). While the procedure to get a ETA is also seen as too cumbersome and too slow, which is remarked upon by a significant number of

[88] Supporting study for the evaluation of the relevance of EOTA tasks (2016), cited above.

interviewed stakeholders, this is attributed more to the implementation than to the CPR as such. For example, a stakeholder stated that *"The process is too long [...]But a manufacturer, what matters to him is the time to market. And we know that whoever invents something new, wants to go as quickly as possible to be able to recoup its investments. This process does not work well today. The CPR is not at fault. These difficulties are much more related to an implementation problem. The way it is implemented today is not efficient."* (Notified Body).

In the **online survey**, the overall perception of the effect of EU legislation on innovation in the construction products sector is similar – perhaps slightly more positive - with 46% selecting "no effect", while 31% believed that there has been "some increase [in innovation] due to EU legislation on construction products", and 10% that there has been a large increase. 10% and 3% believe that there is some or a large *de*crease, respectively, in innovation due to EU legislation.

In the **public consultation**, reactions were similar. Respondents were asked how they think the main elements of the CPR (harmonised European standards and a harmonised system for selecting and defining the role of testing/assessment bodies) have impacted innovation in the construction products sector. 49% either see no effect, do not know or choose not to answer the question. 35% see a positive effect, while 16% see a negative effect. In the comments to this question, a majority of respondents state that they see little or no relevance of the CPR to innovation and that innovation should be left to industry and not be regulated by law. A certain number of comments point out the importance of faster standardisation procedures and of a much swifter citation of the standards.

There is no information in the semi-structured interviews or the other primary data collected for this study to indicate whether the CPR has had an effect on investment in innovation. Furthermore, it has not been possible to identify any secondary sources that could shed light on any link between the CPR and incentives to invest in innovation (including whether resources are shifted from R&D to compliance activities).

Overall, the CPR does not seem to have any significant impact on innovation, neither positive or negative. The main explanation is that the main driver for innovation is the market, not regulation. However, the EOTA route is generally commercially beneficial for companies with innovative products (or other products not covered by a harmonised standard). The process is seen as too slow, though; manufacturers want to put their product on the market as quickly as possible, and the slow process may sometimes act as a restriction on innovation. It should however be kept in mind that manufacturers are not obliged to apply for an ETA, and the fact that a large number of ETAs have been issued (more than 4,000 as of end 2017, cf. section 2.1), and that the number of ETAs issued each year is growing rapidly, seems to indicate that manufacturers think that this option is worth the time and cost – in other words, that it is effective, despite there being room for improvement in terms of length of the process.

Adaptation mechanisms

The question with respect to adaptation mechanisms is the extent to which the stakeholders consider that the adaptation mechanisms in place allow the CPR to support innovation and technological development. Adaptation mechanisms are the legislative tools allowing to amend annexes, to adopt delegated and implementing acts, to mandate and cite new or updated harmonised standards. These can be seen as the margin for flexibility of the CPR and allowing for a proportionate approach. Thus, a number of matters are delegated to the Commission (Article 60), for instance with respect to revising AVCP systems and choosing the least onerous system or systems consistent with the fulfilment

of all basic requirements for construction works (Article 28), and the establishment and adaptation of classes of performance in response to technical progress (Article 27) etc.

To date, one implementing act (on the ETA format) and 17 delegated acts have been enacted under the CPR. 6 of the delegated acts relate to conditions for classification without testing, 5 to AVCP systems for specific products and product families, and 3 to performance classification while the remaining 3 relate to amendments and procedures including e-supply of Declaration of Performance and amendments of the annexes and FAQs on DoPs and AVCP, respectively[89].

Only a small number of the interviewed stakeholders in the **semi-structured interviews** had knowledge of the adaptation mechanisms, and mostly related to delegated acts. The few stakeholders that have an opinion on this aspect tend to see the use of delegated acts as a good idea in principle, but too slow in practice. *"The CPR is definitely helpful in introducing innovative products on the market. First of all, acquisition of the ETA is voluntary which allows innovative manufacturers to acquire experience on a local market before introducing the product in the EU. Secondly, acquisition of the ETA does not require a European Commission mandate. However, in cases when an EAD concerns a product not covered by current decisions on the AVCP system and it is necessary to adopt a delegated act, this process is too lengthy."* (TAB)

A couple of stakeholders see the use of delegated acts as over-regulation, hampering innovation. One stakeholder summarises the issues as follows: *"[...] the over-regulation caused by the regulation (by delegated acts) of classes and thresholds which do not need to be regulated in all European countries and which make them regulatory constraints. This form of regulatory constraint at European level can be compared with the freedom afforded by international standards (ISO), which free themselves from this framework outside Europe and therefore favour innovation. We could therefore have European manufacturers who manufacture internationally by innovating and restrict themselves at European level in order to stay within the framework. [...] Finally, the regular production of new delegated acts in itself, even with the aim of making the regulation more flexible or clarifying it, constitutes an effect of over-regulation that is difficult for stakeholders to follow and interpret. The system becomes too cumbersome and complicated for SMEs/small businesses"* (Professional user organisation).

The evidence with respect to whether the use of adaptation mechanisms in the form of delegated and implementing acts is effective – particularly with respect to allowing for technological development - is thus rather sparse. The Commission does exercise its delegated powers to establish classes and threshold levels but this is not always judged as effective, or necessary, by stakeholders. The adaptation mechanisms provide some flexibility with respect to the precise implementation of certain aspects of the CPR, but they do not seem to have any real impact with respect to innovation, since the set-up of the system is such that the procedure is long and complex (among other things to provide an option for the Member States to have a say). Delegated acts are used e.g. for establishing classification systems for performance but such a system requires that the developers have sufficient experience of the product(s) in question, in order to know what performance ranges could well be distinguished in this context, which is hardly the case for innovative products. Thus, the adaptation mechanisms do not appear to play a role with respect to product innovation.

[89] Implementing and Delegated Acts under CPR, http://ec.europa.eu/growth/sectors/construction/product-regulation

4.6. Summary of findings on CPR effectiveness

At the time of the 2008 Impact assessment, it was expected that the CPR would lead to increased levels of competition, but not necessarily to a significant increase in cross-border trade. The expectation that there might not be a significant increase in cross-border trade has been confirmed since **the statistical analysis cannot demonstrate any overall impact of the CPR on cross-border trade** for construction products. Among the key reasons for this is probably that the tradability of construction products varies hugely among different product families. Many construction products have a low value-to-weight ratio, which means that it is not feasible to transport them over long distances.

The movement of construction products also depends to a high extent on national and local preferences, based on factors such as climate and building traditions. However, stakeholders overall tend to think that the EU construction products legislation has had a positive impact on cross-border market opportunities, although companies tend to perceive less of a change, possibly because they tend to see the market drivers as having more of an impact than internal market regulation.

The perceived improvements in cross-border market opportunities for some companies seem to benefit medium-sized and large enterprises more than micro and small enterprises. Again, this is not surprising since the smallest companies tend to be those least involved in exports. With respect to **competition** in the national markets, which would be a result of increased cross-border trade, the evidence **does not point to significantly increased levels of competition**. Given that there has not been an increase in trade overall, this is an indication that markets still tend to be fragmented.

The expectation for the replacement of the CPD with the CPR was that simplification provisions for micro enterprises, individual products and non-series products etc. would lead to significant **simplification effects**, and thus cost reductions. The uptake of Article 37 (for micro-enterprises) and Article 38 (individually manufactured products), as well as the derogation for individually manufactured/traditional products in Article 5, remains very limited. The main reasons for the low uptake of these simplification provisions appear to be low awareness and lack of clarity of the provisions, particularly with respect to what actually constitutes "equivalent" documentation. The expected simplification effects of these articles have thus not been achieved. **The attempt to "level the playing field" for the smaller companies particularly through Art. 37 has thus not been successful**. Furthermore, the justification of measures that allow some manufacturers to implement such "lighter" procedures are called into question, considering that this creates uncertainty for end-users, who may justifiably expect that all products bearing the CE mark are subject to the same requirements.

On the other hand, the **simplifications aimed at avoiding unnecessary repetition of testing (Article 36) through cascading and ITT sharing are widely applied and are thus effective**. Another simplification effect (lower costs) was expected to be gained through increased access of manufacturers to the reading and interpreting of performance-based standards. However, the standards are subject to copyrights held by CEN and their member organisations (national standardisation organisations) and are not freely available, entailing costs for the economic operators in the form of fees to gain access to the full text of the standards. Furthermore, the majority of standards are not translated into all official Union languages, among other things because translation of the huge body of texts would entail very large costs. This means that the **economic operators do not have full (free) access to the standards, even though they are mandatory to use**, and the expected simplification effects are not fully achieved.

One of the key issues to be addressed in the transition from the CPD to the CPR was that the harmonisation work of the Internal Market was seen to be advancing slowly due to substantial delays in the technical harmonisation work.There is substantial evidence that the process of drafting and citing **harmonised standards** overall is too lengthy. There is a considerable backlog of candidate harmonised standards that are yet not cited in the OJEU because adjustments requested by the Commission or the adoption of delegated acts are still pending. This is one of the most significant problems in the implementation of the CPR which severely impacts the effectiveness of the Regulation since harmonisation of many products is delayed. The delays are to a large extent due to the specificities of the CPR, namely that standards define performance and not product requirements, and that their use is mandatory. High quality standards are therefore essential, and an inclusive and quality-oriented process is necessary. The final decision on citation of harmonised standards is the sole competence of the Commission. The Commission is also charged with drafting the mandate to CEN for the preparation of new standards. The CEN procedure for developing standards – which applies to all standards, not just for construction products - is already time-consuming and prolonged in many cases since a large share of the proposed standards are deemed non-conforming by the Commission and sent back to CEN for revision. Although some joint activities to speed up the process have already been initiated, a need prevails to analyse in detail the processes involved in drafting quality mandates and ensuring a streamlined drafting process resulting in quality standards that conform to the CPR requirements.

PCPCs have been set up and are functioning in all Member States, providing information to economic operators. However, they seem mostly to be used by economic operators for issues relating to information and interpretation of rules within the national context of the economic operators, and only to a limited extent on applicable rules in other Member States, meaning that their impact on the functioning of the Internal Market is limited.

The information provided in the **Declaration of Performance (DoP)** is seen by the economic operators as useful. The DoP and the CE marking are an important, but not always the most important, source of product information for professional users. The most searched-for information is "intended use of the product", and users are generally able to find this information via product data sheets and/or the DoP and the CE marking. Users also indicate that the information on intended use of the product and other frequently needed types of information is generally sufficiently precise for their needs. The evidence points to an **improvement of the information provided over the previous situation: the common technical language has created transparency and a better possibility for users to compare products with respect to the declared performance.** A significant number of stakeholders however wish for information on fitness for use to be included in the standards, since they see this as important to ensure product quality and safety. This however goes against the basic principles of the CPR (and will be addressed further in the chapter on relevance).

There is to some extent a **lack of understanding among both manufacturers and end-users of the specific role of the CE marking under the CPR**, which differs from the function of CE marking under other pieces of internal market legislation since it relates to product performance rather than essential requirements (i.e. it is not a "safety mark"). There is some evidence from **Member State authorities** (market surveillance and building control) that the accessibility and quality of the information provided on construction products (e.g. via the DoP) is not always sufficient for their work (checking compliance etc.).

While market surveillance structures under the CPR have been established in all Member States, **market surveillance is broadly seen as ineffective** and widely varying in

quality and effectiveness between Member States. This also has the effect of **a certain lack of confidence in the CE marking** among some market actors.

Obstacles to the internal market still remain in the form of national marks and certifications. From a CPR perspective, the use of such national marks and certifications undermines the Internal Market for construction products since they create barriers for CPR-compliant products to enter the market - typically, the need for additional testing or approval of the product within the Member State in question, with associated additional costs. However, some stakeholders do not consider these marks as obstacles but rather a natural – and perhaps necessary – supplement to the CPR. These stakeholders distinguish between national marks that are compulsory, and voluntary marks which are industry-driven and are seen by them as beneficial both to industry and to end-users because they allow to document quality, safety and other aspects that may not be contained in the CE marking.

With respect to **innovation**, the indications are that the CPR neither hinders nor fosters innovation. The ETA is recognised as a positive element of the CPR, which is generally commercially beneficial for companies applying for an ETA. There has been a significant and rapidly growing uptake of this option, with more than 4,000 ETAs issued, indicating that manufacturers assess the ETA option as attractive – in other words, that it is effective, even though some stakeholders think that the process is too slow. The slow adoption of standards can however be seen as hampering innovation.

With respect to whether the **adaptation mechanisms** (legislative tools allowing to amend annexes, to adopt delegated and implementing acts, to mandate and cite new or updated harmonised standards) in place allow the CPR to support innovation and technological development, delegated acts are mostly seen as a good tool but in practice the process takes too long.

5. EVALUATION FINDINGS: EFFICIENCY

Efficiency considers the relationship between the resources used by an intervention and the changes generated by the intervention (which may be positive or negative). Evaluations aim to quantify regulatory costs and benefits and to identify burdensome and complex aspects of EU legislation and its implementation in the Member States as well as any subsequent implementing or delegated act adopted by the Commission.

This chapter addresses in particular the overall objective of the CPR concerning costs, namely: To keep costs incurred for manufacturers proportionate/fair (including for SMEs).

5.1. Benefits

5.1.1. Types of benefits identified

In the **semi-structured interviews**, the most commonly named benefits are better access to other EU Member State markets and the existence of the common technical language and common rules, including common standards. Related to this, another benefit frequently mentioned is uniform information for end-users in their language (CE marking and DoP) which helps e.g. when checking construction products arriving at construction sites, and some interviewees also believe that the existence of the rules encourages manufacturers to focus more on quality (through more/better production control).

It is also mentioned in several semi-structured interviews that implementation of the CPD/CPR has helped companies improve their production processes in connection with audits (inspections) carried out by Notified Bodies. This applies not least to smaller companies who in AVCP systems 1+, 1, and 2+ need to have their production processes subjected to auditing by a Notified Body, which perhaps they did not have much incentive to do before the legislation was enacted. Even larger companies take the opportunity to optimise, as illustrated by one interviewee: *"We have developed our ability to swim in the waters that we are put in and make the best of any given situation. Some new initiatives arrive, they become a fact of life, so we consider how we can use this to optimise our production processes. So, we take the opportunity to take a critical look at our procedures."* (Industry association representative, representing a large international manufacturer).

Finally, several Notified Bodies and Technical Assessment Bodies in the semi-structured interviews mention that the implementation of the CPR has provided more business opportunities for their services, including more clients from other Member States.

About 25% of the stakeholders could not name any benefits. Among these, several mention that there are potential benefits in terms of opening up markets and levelling the playing field for competitors, but that insufficient market surveillance and enforcement prevents those potential benefits from materialising.

5.1.2. Analysis of benefits

The **2008 Impact Assessment** foresaw that benefits for economic operators, in the form of cost savings, would arise mainly from clarification of the legislation and from simplification (mainly related to the testing requirements), as well as from more efficient processes in CEN and EOTA, as already discussed previously (see e.g. sections 4.1.1 and 4.1.2). The 2008 Impact Assessment expected cost savings in a range of 245- 685 million Euro with the caveat that it was impossible to assess monetary impacts resulting from the analysed policy options other than in the form of rough global estimates[90].

With respect to quantification of the actual achieved benefits, this was attempted in recent years by several studies, including the **Supporting study for the fitness check of the construction sector**[91], the **Study on economic impacts of the CPR**[92], and the **Study on Cross-Border Trade**[93], and the following is therefore based on those studies. However, the studies encountered significant issues with quantifying benefits due to lack of data, so the available quantifications are limited.

The **support study for the fitness check** considered the following types of benefits:

- Free movement of construction products within the Single Market - which should result in impacts such as lower price and better quality for customers and new market opportunities for manufacturers; however, the study could not find any evidence to support the materialisation of these benefits. Benefits on trade flows were also found to be very limited (in line with the Study on cross-border trade, cf. below).
- Harmonisation - companies selling their products throughout the EU have to comply with the same, or similar, requirements, throughout the EU, thus enjoying 'regulatory economies of scale', reducing costs. However, potential savings linked to harmonisation were found to be reduced because product specifications vary from country to country for non-regulatory reasons, i.e. variable needs linked to traditions, climate, seismology etc.
- Provision of information - findings on the value of the information provided under the CPR, both for manufacturers and customers, were inconclusive and could not be quantified.
- Simplification - the issues discussed previously in this evaluation relating to the limited take-up of simplification clauses were also found by the fitness check study to prevent the full achievement of the cost savings potential for companies. Thus, Articles 37 and 38 were assessed as "not currently generating significant savings" and, similarly, for Article 5 no savings could be identified. The uptake of Article 36 testing simplifications, including test-sharing and cascading, was found to be significant, with 57% of surveyed stakeholders reporting some uptake among their associates. However, while most of the stakeholders indicated that Article 36 simplifications did generate cost savings, no quantitative estimates could be provided, as none of the companies within the sample hade made use of this simplification. For that reason, the savings related to simplification resulting from Article 36 could not be quantified.

90 Impact Assessment (2008), previously cited
91 Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation. (2016), previously cited
92 Economic Impacts of the Construction Products Regulation (2016), previously cited previously cited
93 Cross-Border Trade for Construction Products (2017), previously cited.

- Sustainability – the CPR introduced Basic Requirement 7 on 'Sustainable use of natural resources'; however, the study at hand found that it was too early to meaningfully assess any impact.

As mentioned above, the 2017 **study on cross-border trade**[94] found that on average, the correlation between the CPR and the value of intra-EU trade of 25 construction products between 2003 and 2015 is not statistically significant, after controlling for the effect of other possible influencers, e.g. GDP and fixed investment in construction of the origin and destination countries, membership in the EU, distance between the countries, and others. Hence, any impact of the CPR on cross-border trade cannot be statistically determined and thus no economic benefits can be calculated.

The **study on economic impacts of the CPR**[95], following the Better Regulation Toolbox of the European Commission, considered three main types of benefits that could be expected to arise from the implementation of the CPR:

- Direct benefits:
  - Cost savings for manufacturers and distributors: cost savings generated because the testing and certification for each national market are no longer necessary once the CE-marking is applied; the possibility of providing an electronic version of the DoP contributes to the reduction of the cost burden; simplified procedures for specific types of tests (test sharing under Article 36), specific types of companies (micro-enterprises under Article 37) and specific types of products (custom-made products under Article 38).
  - Improved provision of information and improved safety along the value chain (manufacturers, distributors, end-users) through the DoP and CE-marking. Benefits would translate into improved safety due to better communication on the technical performance of the construction products; for professional end-users, improved information about the performances of the construction product, improved comparison of products thanks to the harmonised way of declaring the performance as well as increased availability and choice of products.
- Indirect benefits:
  - New market opportunities in the Internal Market – benefits associated with business opportunities created or facilitated by the CPR. New market opportunities can create benefits in terms of increased turnover, reduced barriers to trade and increased competition for economic operators in the home and EU markets.
- Ultimate (long-term) impact of the Regulation:
  - Improved information about the conditions for better hygiene, health and environment - potential impacts related to Basic Work Requirements 3 and 7 concerning environmental protection and sustainability.

However, the study found that the benefits pertaining to the CPR are difficult to evaluate in quantitative terms because of the intangibility, lack of data (inability of consulted

[94] Cross-Border Trade for Construction Products (2017), previously cited.
[95] Economic Impacts of the Construction Products Regulation (2016), previously cited previously cited

stakeholders to provide quantitative estimates), and long-term materialisation of certain benefits.

The study found the following in relation to the three types of benefits and the different types of economic actors:

- Direct benefits:
  - The CPR had led to very limited cost savings for manufacturers; no stakeholders reported cost savings as a result of the implementation of the CPR in terms of administrative tasks, operational tasks and equipment, but the possibility to provide an electronic version of the DoP reduces the cost burden of complying with the CPR (compared to providing the DoP on paper). As for cost savings related to simplification, Article 36 was reported to generate cost savings, but no quantification could be provided;
  - Few manufacturers believe that information obligations and procedures introduced by the CPR have contributed to improved safety or an increase in users' trust as a result of improved information regarding construction products;
  - The CPR induced cost savings for around half of the consulted distributors in terms of staff cost savings and external cost savings (no further details provided);
  - Distributors saw the CPR improving safety and provision of information, and a resulting increase in user trust in the products;
  - Few professional end-users observed a change in price or an improvement in the availability of products;
  - the CPR improves safety and provision of information for professional end-users, and improved comparability of products.
- Indirect benefits:
  - The CPR has provided relatively few new market opportunities to manufacturing companies;
  - Few distributors experienced increased market opportunities as a result of the CPR;
  - Some professional end-users have experienced or expect increased cross-border market opportunities as a result of CPR.

- Ultimate/long-term impact:
  - The CPR has not yet contributed to better hygiene, health and environment conditions in construction works (Basic Works Requirement 3) nor to more sustainable use of natural resources (Basic Works Requirement 7), however it is expected to do so in the longer term.

None of the above-mentioned benefits could be quantified since the consulted stakeholders were not able to provide estimates of the value of the benefits experienced or expected.

5.2. Costs

Studies of regulatory and administrative costs of the CPR were carried out in 2016 and 2017, and the assessment of costs for this evaluation is therefore based on the results of these studies.

The **economic impact study** conducted in 2016[96] classified costs into:

- Direct costs: regulatory charges (fees, taxes and levies, e.g. fees applicable to the activities of the AVCP systems); substantive compliance costs (expenses incurred to fulfil obligations, e.g. preparation of the technical documentation for the DoP); Administrative burden (costs that would not otherwise have been incurred, e.g. making and maintaining information available to public authorities and other third parties); hassle costs (e.g. costs stemming from longer processes and delays);

- Indirect costs: incurred by operators as a result of obligations affecting other operators at different stages of the value chain (no indirect costs were reported).

Manufacturers: The study shows that time spent on DoP and CE marking-related activities increases with the size of the manufacturing company and ranges from 0.04 FTE for micro companies to 1.26 FTE for large companies (however, it should be noted that there were large variations in the costs reported, and the figures are based on a limited number of data points). It needs to be considered that in general, larger company sizes mean wider product ranges and larger sales, even if this relationship depends on the type of production (e.g. basic production of glass is in the hands of a few large enterprises and the product range limited). At the same time, larger companies can achieve economies of scale by spreading the cost of the DoP over a larger number of units.

As could be expected, the direct costs (cf. above) generated by the CPR are more significant, in relative terms, for micro-companies than for other SMEs and large companies.

The study's estimation of the incidence of the direct costs of the CPR on annual turnover is:

- Micro-enterprises: 1.31%

- Small enterprises: 0.49%

- Medium enterprises: 0.42%

- Large enterprises: 0.07%.

This confirms the intuition that economies of scale can be found in compliance activities. It also confirms that these costs, while they can be quite substantial for SMEs, particularly micro-enterprises – perhaps prohibitive in some cases, are of rather small significance for large enterprises. Of course, these are average costs which may vary significantly not just with company size, but also products (type and number of different products) which a company produces.

Distributors: The costs related to construction product distributors showed that the impact of the CPR on the distributors are much more limited than for manufacturers and importers (for instance, distributors do not have to store the DoP).

End-users: Only a few professional end-user associations reported costs attributed to the CPR and the study did not identify costs for private end-users. It is likely that a share of

[96] Economic Impacts of the Construction Products Regulation, European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (2016), previously cited.

the costs of manufacturers and distributors are ultimately passed on to end-users, as noted by the supporting study for the fitness check[97] on the construction sector, however, the extent to which this is the case cannot be determined.

The **supporting study for the fitness check** concludes that the CPR generates EU added value since its objectives are better achieved at Union level compared to e.g. national or local policies. All costs and cost savings stemming from the CPR are of EU origin, but not entirely additional when compared to the Business as Usual (BAU) activity. The calculation of the share of BAU activities is based on the content of the DoP and the CE marking, conveying commercial information that companies would have, at least partly, provided to their clients even in the absence of any legal obligation. As regards the substantive costs linked to the obligation to put in place factory production controls and perform AVCP, all companies reported that the majority of such costs would be incurred in any case (since manufacturers care about the quality of their products and perform testing and other quality management processes on an ongoing basis even without being required by legislation to do so).[98].

The study also considered the legal overlaps between the CPR and Ecodesign Directive[99] (EDD) and Energy Labelling Directive[100] (ELD) which may also apply to construction products (cf. section 7.2 on external coherence for a more detailed discussion of inconsistencies and overlaps) and found that:

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

The costs of these legal overlaps could not be quantified.

5.2.1. Total costs compared to the 2008 IA expectations

The study on **Economic Impacts of the Construction Products Regulation** estimated that the total direct costs (compliance costs and administrative burden) to comply with CPR obligations related to DoP and CE marking every year at **€ 2.62 billion** for European manufacturers of construction products. This accounts for around **0.6% of the total turnover** of the construction products sector in the EU. It should be noted that this is an absolute figure (i.e. the total current costs) and not relative to the costs under the CPD.

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97 Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation (2016), previously cited.

98 Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation (2016), previously cited.

99 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.

100 Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products.

The **Supporting study for the Fitness Check on the construction sector** found a total net cost of the EU construction products legislation to the construction products sector of 0.4-0.5% of turnover prior to the entry into force of the CPR (i.e. under the CPD), rising to **1.1% of annual turnover** from 2013, i.e. under the CPR (cf. Table 5-1). In other words, costs of compliance were found to be significantly higher under the CPR than under the CPD. In total, the study found that the CPR has a significant direct impact on the construction products industry, resulting in an increase in costs of about **€ 3.4 billion**.

It should be recalled that the estimates of both studies are based on a rather small evidence base (30 interviews for the Economic Impacts study, 17 interviews for the Supporting study for the Fitness Check).

Table 5-1: CPR/CPD: Summary of Costs (Positive Values) and Cost Savings (Negative Values) (EUR million) from Supporting study for the Fitness Check on the construction sector

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Administrative burdens/burden savings linked to the obligation of providing information to customers (including the DOP and the CE marking)	1,100	1,200	1,300	1,600	1,600	1,600	1,600	1,700	1,600	3,100	3,100
One off-costs linked to transition to the CPR	-	-	-	-	-	-	-	-	-	300	300
Administrative cost savings linked to the possibility of derogating from the DOP and posting the DOP online	-	-	-	-	-	-	-	-	-	*(-1,500)**	*(-1,500)**
Administrative cost savings due to the easier accessibility of information through the PCPC	-	-	-	-	-	-	-	-	-	-1	-1
Substantive burdens/burden savings linked to the obligation for manufacturers to put in place an AVCP system	0	0	0	0	0	0	0	0	0	0	0
Substantive cost savings due to the simplification of the procedures for the testing of products and for the AVCP (art. 36)	-	-	-	-	-	-	-	-	-	*n.a.*	*n.a.*
Substantive cost savings due to the simplification of procedures for the testing of products and for the AVCP (art. 37-38)	-	-	-	-	-	-	-	-	-	*0*	*0*
Total	**1,100**	**1,200**	**1,300**	**1,600**	**1,600**	**1,600**	**1,600**	**1,700**	**1,600**	**3,400**	**3,400**
Share over Turnover	***0.4%***	***0.4%***	***0.5%***	***0.5%***	***0.5%***	***0.5%***	***0.5%***	***0.5%***	***0.5%***	***1.1%***	***1.1%***

Notes: * Savings already accounted for in the item above.
Source: Economisti Associati, Milieu and CEPS. (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation, Exhibit 3.5.

The differences in the two recent estimates may be explained mainly by the use of different (and quite limited) datasets, as well as slightly different estimates of the total turnover of the construction products sector, stemming from the fact that the sector is not well-defined in statistical terms.

However, these results are significantly different from the estimate made in the **2008 Impact Assessment**, which foresaw net savings of the preferred Option 3 (Revision of the Community legislation on construction products).

It should be noted that the differences between the options assessed in 2008 were mainly to be found in the size of the expected benefits whereas the costs were largely at the same level. Thus, the costs of the no change option (1) at that time were estimated at € 110-145 million and the costs of the revision (option 3) at € 100-130 million. The main difference was in the benefits expected, (€185 - 430 million for the no change option and € 245 - 685 million for the revision option). For the revision option, substantial cost savings were expected mainly as a result of a reduction in the costs of manufacturers when placing products on the market (from reduced testing costs, reduced costs of ETAs and increased flexibility in how to demonstrate compliance compared to the CPD). Significant expected savings for manufacturers were expected due to national marks and certifications no longer being necessary. Compared to the baseline option of continuing with the CPD, it was deemed likely that manufacturers would not have additional net costs from the Revision Package, and many of them would realise net savings. However, for the large number of manufacturers whose products are not distributed across borders, in particular the **smaller and crafts enterprises**, additional costs were not foreseen to be offset by any savings they could realise, as the Internal Market for construction products is not relevant to them. In the best case the costs generated by the Revision Package for these enterprises were estimated as equal to those if the national system was to continue to exist.

The expected savings were in 2008 estimated at around € 1.8 billion in current value terms over a 15-year period. This would equate savings of around € 160 million a year, or some 0.08% of the value of the annual production of construction products. These savings were foreseen to be offset by estimated additional costs of around € 190 million, or roughly € 16 million a year (discounted over 15 years at 4%), again with the majority of these realised by manufacturers. Although it was not possible to place estimates on all of the savings and additional costs that might arise from the preferred package, **net benefits of around € 140 million a year** was the best possible estimate at the time. The study acknowledged that the estimate was uncertain due to a "serious lack of monetary data".

Thus, while the expectations for the CPR was a reduction in costs and administrative burdens, the result is in fact increased costs as shown by the results of the two studies (the Supporting study for the fitness check of the construction sector and the study on Economic Impacts of the Construction Products Regulation) referred to above. Although the two recent estimates differ somewhat, they are of roughly the same magnitude, which reinforces the credibility of these estimates and indicates that the reduction in costs projected for the CPR have not materialised and that in fact the compliance costs are now significantly higher than they were under the CPD.

The cost estimates are supported by stakeholder views. In the **public consultation**, respondents were asked how they think the main elements of the CPR (harmonised European standards and a harmonised system for selecting and defining the role of testing/assessment bodies) have influenced costs of production. Across all respondent groups, 59% see 'some increase' or a 'large increase' in costs of production, while 10% consider that there has been 'some decrease' or a 'large decrease'. 18% do not see any effect while 13% don't know/do not answer. Looking only at respondents representing enterprises (232 respondents), which are the ones facing the actual costs (as opposed to respondents representing other types of stakeholders) the picture is fairly consistent across all company sizes: the view that production costs have increased (some or a large increase) is shared by 66% of companies across all segments. Micro companies[101] appear to have taken the hardest hit, with a higher share – 54% - indicating that there has been a *large* increase in costs of production (the average across all companies is 22%). This is

[101] It should be noted that this is a small group with only 28 respondents in this category.

consistent with the estimate provided by the Study on the economic impacts of the CPR, above, indicating that the smallest companies bear the largest administrative burden.

The **supporting study for the fitness check of the construction sector** estimated that the main incremental costs (administrative burdens) of the CPR were linked to the supply of the DoP and the CE marking, while substantive costs linked to testing and quality control mechanisms were considered as Business as Usual costs (i.e. costs that the company would also have incurred without the CPR). It should be noted that the BAU costs are thus not included in the calculation of costs. It is also notable that significant cost savings are attributed to the possibility to provide the DoP by electronic means (cf. Table 5-1). Even taking into account this cost saving, the CPR is considerably less efficient than foreseen in the 2008 Impact Assessment.

The Commission's 2016 CPR **Implementation Report** identified as a general issue relating to the efficiency of the DoP and the CE marking overlaps between the information required in the DoP and in the CE marking. It was acknowledged in the Implementation Report that these overlaps generate administrative and financial burdens. This additional burden was confirmed by the **Supporting study for the fitness check** of the construction sector, which also pointed out that the two tools include similar information which creates additional costs. There is no information available about the cost of this overlap but it constitutes a clear inefficiency. Addressing this inefficiency couldreduce costs. The Commission suggests in the **Implementation Report** that "under a flexible interpretation of Article 9(2), the CE marking could contain only the critical information and refer to the DoP for other information. The DoP would be either provided on paper with the product, electronically or via a website". This is seen as a solution to alleviate the burden on manufacturers, contributing to the CPR's simplification objectives. The same issue (and the same solution) was brought up repeatedly both in the **scoping interviews** and the **semi-structured interviews.**

5.3. Cost-effectiveness

5.3.1. Cost-effectiveness

As already discussed above, it is not possible to quantify the benefits.

Costs are mainly borne by manufacturers and to some extent by importers, who bear the responsibilities of manufacturers on the construction products they import.

For these reasons, it is not possible to assess whether the CPR has been cost-effective in quantitative terms. In the following, however, a qualitative assessment is made.

5.3.2. Proportionality of costs

Are the costs proportionate to the benefits attained? What are the factors influencing the proportionality of costs?

Stakeholders were asked in the **semi-structured interviews** about their perception as to whether the costs of compliance are commensurate to the benefits of the EU legislation

on construction products – in other words, whether the costs of compliance are proportionate.

Most interviewees found this question difficult to answer, and about 40% did not provide any answer. About 10% of interviewees indicated that they thought the costs for manufacturers of complying with the legislation are high but could not compare them to the benefits. Around 30% of interviewees indicated that the costs are proportionate. Finally, around 20% answered that this depends to a large extent on the product type, and especially on the size of the company, with SMEs and particularly micro-enterprises facing a relatively heavy cost burden, which in some cases may be prohibitive. In other words, they indicated that economies of scale existed in relation to the compliance costs, which is consistent with the cost analysis in the preceding section.

Several interviewees also distinguish between manufacturers who already have production control systems in place, and those that did not have such systems before. While costs are marginal for the former group, the latter experience high costs when they are forced to comply with the requirements. The following quote describes succinctly the points of view put forward by several interviewees*: "The answer depends very much on which costs are attributed to the effects of EU legislation. For a manufacturer that never organised factory production control and never tested his products before, the obligations of EU legislation and the costs generated by it are important. Yet, even without such legislation, a manufacturer should have put in place a system to control his production. So, for a manufacturer who believes factory production control is an essential part of production, the extra cost generated by the obligations imposed by the EU legislation is manageable. Manufacturers that complain about very high costs are perhaps those who never cared for the performance of their products." (Industry Association).*

With respect to administrative burdens, several interviewees refer to the duplication of information between the DoP and the CE-marking, and that keeping this information up to date is time-consuming and costly.

In the **online survey**, the responses were exactly equally divided: 50% answered that the current situation in the EU market for construction products with respect to administrative costs for market operators is satisfactory, while the other 50% found it unsatisfactory.

Further, the online survey asked stakeholders how the benefits of the legislation compare to the costs for manufacturers. Here, 40% of respondents answered that the benefits greatly outweigh the costs or just about outweigh the costs, while 19% stated that the benefits are equal to the costs. Only 21% think that the costs are just about or to a considerable extent larger than the benefits.

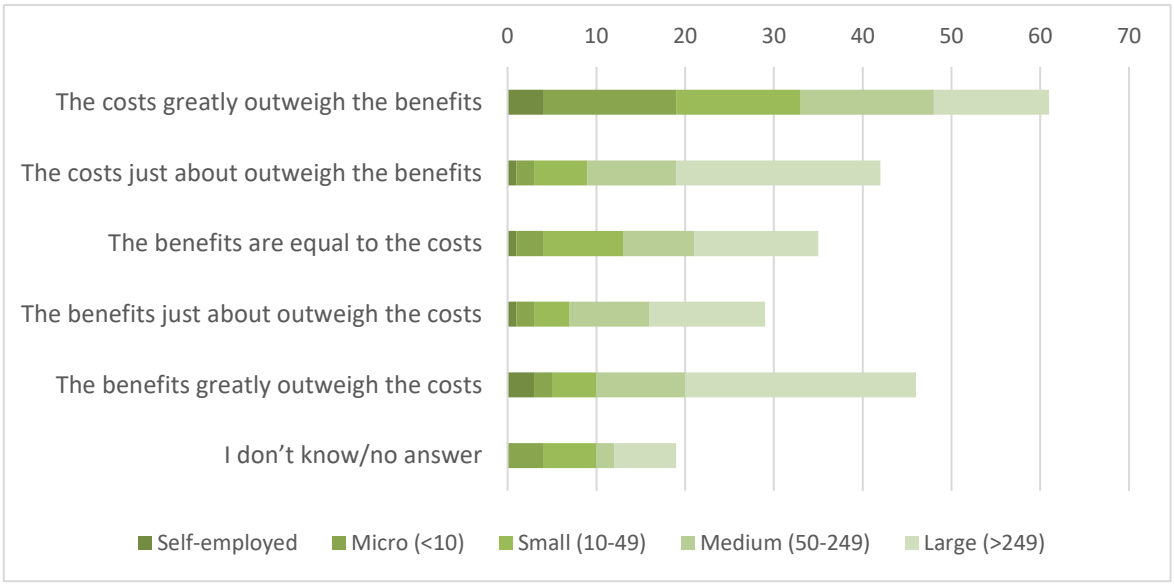
The **public consultation** also asked its respondents to compare costs and benefits of the CPR.[102] Across the totality of respondents, the answers are very divided. 37% are of the

[102] The full wording of the question: *Before the introduction of harmonised European standards for construction products, you were generally using national/regional systems. Comparing the situations before and since the introduction of harmonised European standards, how would you consider that the benefits of the EU legislation on construction products (e.g. improved product information, improved product safety, increased cross-border trade, greater market opportunities, greater product choice, greater legal certainty) compare to the costs you bear (e.g. fees and charges, administrative costs, staff costs, materials costs, investment costs, hassle costs) when applying it?*

opinion that the benefits outweigh the costs, while 39% state that the costs outweigh the benefits, and 13% state that the benefits are equal to the costs.

The figure below shows the results only for the enterprise respondents in the public consultation. Overall, enterprises are somewhat more negative than the totality of respondents. Only 32% think that the benefits outweigh the costs, while 44% think that the costs outweigh the benefits. The highest rate of sceptical respondents is found among micro enterprises, where 54% think that the costs greatly outweigh the benefits, and 7% that the costs just about outweigh the benefits. Only 14% of the micro enterprises think that the benefits outweigh the costs. The most positive group are the large enterprises, where 41% state that the benefits outweigh the costs against 28% stating that the costs outweigh the benefits. These results correspond well with the analysis of costs provided above, which showed that the smaller the enterprise, the larger the burden of costs. Nor is it surprising that enterprises in general are more negative than the full group of respondents, since the enterprises are those that bear the costs.

Figure 5-1 Comparison of costs and benefits of the CPR, enterprise respondents (public consultation), number of responses



Source: Public consultation survey. Only respondents representing enterprises, N=232. Size categories based on number of employees. For full text of the question, please see footnote 63.

The public consultation finally contained a question on whether the benefits of EU legislation on construction products could be achieved at a lower cost. 50% of respondents answered yes, the benefits could be achieved at a lower cost, while only 17% answered no (33% did not know or did not answer). With 66% of respondents answering 'yes', the group of business representatives shows the highest rate of respondents that say that the same results could have been achieved at lower cost, and only 11% of that group sees the current solution as the most efficient one.

Respondents were given the opportunity to provide further comments to their replies. These comments focus mainly on suggestions to reduce the costs for the market participants. These include the following, which include several issues discussed previously in this report:

- Improved and more consistent implementation and enforcement;
- Clarification of wording of unclear or ambiguous passages of the CPR;

- Reduction of redundancy between the information included in the DoP and that included in the CE marking;
- Swift citation of new hENs in the OJEU;
- Lowering of testing costs, harmonisation of testing methods;
- Focussing the information to be provided in the DoP/ the CE marking on aspects actually required by the market.

Whether the costs of the CPR are perceived as proportionate to the benefits depends a lot on who you ask. Those that bear the costs, i.e. the companies, and particularly the smaller companies, tend to think that the costs outweigh the benefits. Especially companies that do not export to other Member States (which is the case for many smaller companies) probably see fewer benefits of the CPR. On the other hand, the larger companies are more likely to export, and their cost burden is relatively smaller, making them more positive about the relationship between benefits and costs. For the smallest companies – particularly those that do not export – the cost-effectiveness is low. For larger companies, it seems to be at a satisfactory level, although all economic actors would benefit from increasing the cost-effectiveness, for instance by implementing some of the changes requested by the respondents above – clarification, reduction of overlaps between the DoP and the CE marking, etc.

5.4. Summary of findings on CPR efficiency

The most commonly named benefit by stakeholders is that **conditions for access to other EU markets have improved**, facilitated by the existence of the common technical language and common rules, including common standards. Related to this, other listed benefits include **uniform information for end-users** and a bigger **focus on quality** and on end-users being better able to, and more focused on, setting their requirements/specifications regarding the products. Some stakeholders also point to implementation of the CPD/CPR as having helped companies **improve their production processes**. About 25% of the interviewed stakeholders cannot name any benefits, claiming that insufficient market surveillance and enforcement prevents benefits in terms of opening up markets and levelling the playing field for competitors from materialising fully.

The costs of the CPR are mainly borne by manufacturers, while the benefits accrue to a wide range of stakeholders. The cost impact of the CPR on distributors is much more limited than for manufacturers and importers.

The 2008 Impact Assessment foresaw substantial cost savings mainly as a result of a reduction in the costs of manufacturers when placing products on the market (from reduced testing costs, reduced costs of ETAs and increased flexibility in how to demonstrate compliance compared to the CPD). Significant savings for manufacturers were expected due to national marks and certifications no longer being necessary. However, while the expectation for the CPR was a reduction in costs and administrative burdens, the result is in fact increased costs, constituting in the order of 0.6%-1.1% of the sector's turnover (the range provided by two different estimates). The main costs (administrative burdens) of the CPR are linked to the supply of the DoP and CE marking, while costs linked to testing and quality control mechanisms are largely costs that the company would also have incurred without the CPR. Significant cost savings are attributed to the possibility to provide the DoP by electronic means. However, even taking into account this cost saving, the CPR is considerably less efficient than foreseen in the 2008 Impact Assessment.

The efficiency of the DoP and the CE is negatively impacted by the overlap between the information required in the DoP and in the CE marking, which generates administrative and financial burdens and constitutes a clear inefficiency.

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

For the smallest companies – particularly those that do not export – the cost-effectiveness is low. For larger companies, it seems to be at a satisfactory level, although all economic actors would benefit from increasing the cost-effectiveness, for instance through reduction of overlaps between the DoP and the CE marking.

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

6. EVALUATION FINDINGS: RELEVANCE

Relevance looks at the relationship between the needs and problems in society and the objectives of the intervention, i.e. whether the objectives set for the intervention are appropriate to meet the needs.

This chapter will also look at whether there is a potential for more cross-border trade between Member States.

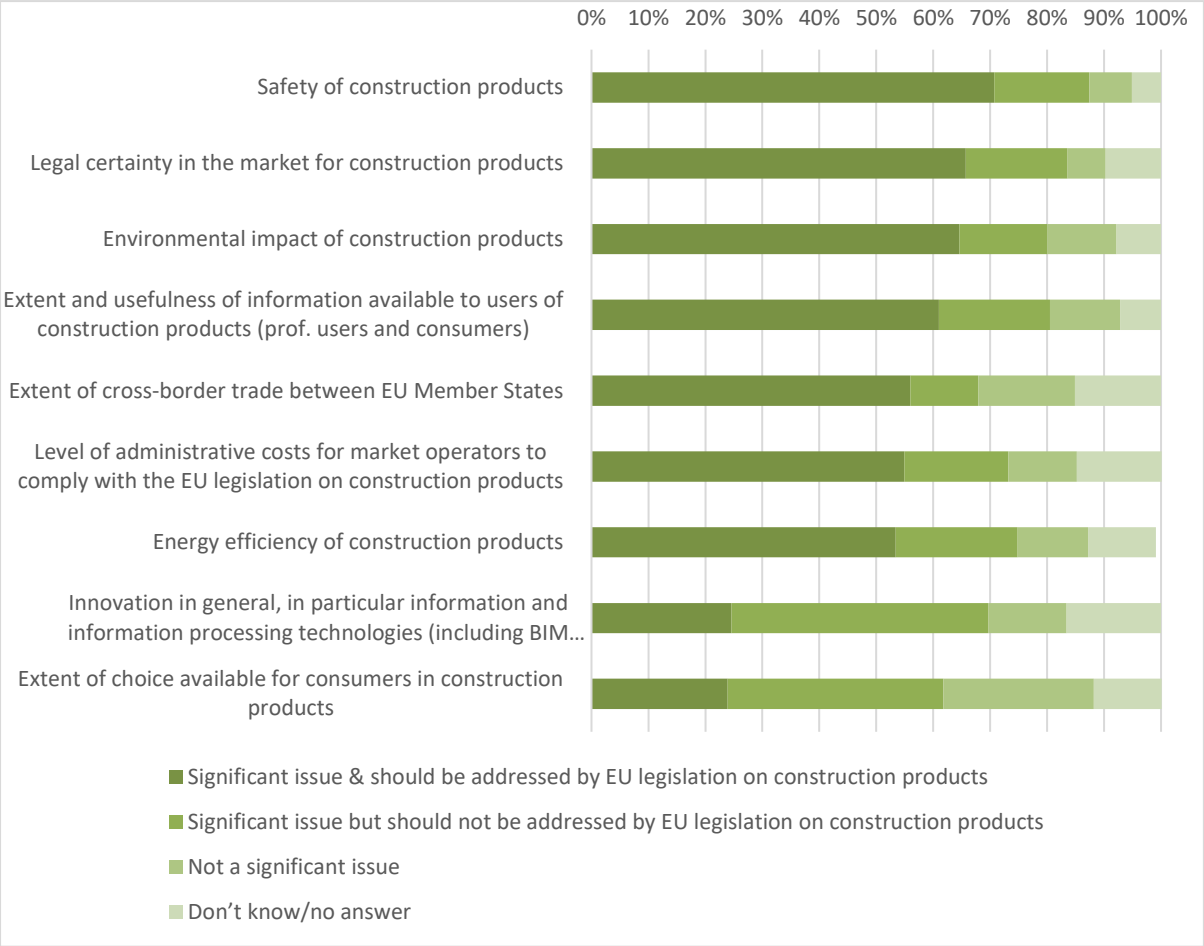
6.1. Appropriateness of the objectives to meet the needs

The needs that the Regulation is designed to address can be summarised as follows, based on the intervention logic analysis carried out for this evaluation (See section 3.3):

- Increased trade opportunities for economic actors in the EU internal market;
- Increased choice of products for distributors and final professional end users;
- Better communication and information (including availability of comprehensive product information);
- Reduced legal uncertainty and red tape.

The **public consultation** listed a number of issues and asked respondents to indicate whether they consider that the issue was significant and whether they believe it should be addressed by European legislation on construction products. The answers are shown in the following figure.

Figure 6-1 Significance of issues and relevance for EU legislation on construction products



Source: Public consultation survey. N=641. Options ranked by share of respondents indicating "Significant issue and should be addressed by EU legislation on construction products"

The issue selected by the largest share of respondents as both significant and relevant for EU legislation is **safety of construction products** with 71% of respondents. The CPR is not meant to deal with safety, as this belongs to the domain of Member States. However, it is an issue which frequently surfaces among stakeholders and will be discussed further below. Three other issues are selected by more than 60% of respondents:

- **Legal certainty in the market for construction products**. Overall, respondents overwhelmingly confirm the importance and relevance of the issue. Many point out that stronger enforcement, market surveillance and more uniform interpretation of rules across the different Member States is crucial. A number of participants stress that the fact that the CE marking does not mean compliance with all (national) building safety rules has created significant legal uncertainty. Furthermore, several respondents point to the fact that the real meaning of the CE marking is still not clear to many and that efforts should be made in order to clarify that the CE marking is not a quality mark. Otherwise, the confusion created by the misunderstanding/ misinterpretation of the CE marking induces significant legal uncertainty. Some respondents also state that the complexity of the CPR creates legal uncertainties on the market.
- **Environmental impact of construction products**. A number of different viewpoints are put forward with respect to the coverage of environmental impact of construction products. Some respondents state that the issue is in theory

addressed by BWR 3 and 7, but that it is needed to clarify the details of their implementation/application. It is also put forward that the issue could be strengthened through the introduction of classes and threshold levels. Some stakeholders are of the opinion that the issue should be regulated at EU level but that higher requirements by individual Member States should be allowed.

- **Extent and usefulness of information available to users of construction products (professional users and consumers)**. Many respondents state that, in order to make the CE marking and the DoP more relevant to users, producers should have the possibility to include additional (voluntary) characteristics. A good number also expresses the point of view that the value of the information is limited as long as it is not related to the basic work requirements. Therefore, additional information covering the performance of the products under real conditions would be necessary. Furthermore, many respondents suggest to make it obligatory to include information on whether the product satisfies, or not, work requirements in certain countries.

The following issues are selected by a smaller majority (53-56%) of respondents as being both significant and relevant for EU legislation:

- **Extent of cross-border trade between EU Member States**. Many of the respondents refer to the additional requirements at national level. Some of the respondents state that these hamper the cross-border trade, while others emphasise the point of view that these are important and justified. Several respondents point out that the extent to which products are traded cross-border depends a lot on the product family. For concrete products, for example, the amount of cross-border trade is almost negligible. The more specialised and "high-tech" a product is, however, the more significant cross-border trade becomes.
- **Level of administrative costs for market operators to comply with the EU legislation on construction products**. Many respondents state that the administrative costs related to the compliance with current legislation are very high. While a certain number of them see these costs as a reason for a more thorough revision of the CPR, a clear majority is in favour of reducing complexity and increasing clarity within the current framework. Many also point out that a more thorough change of the CPR would cause even higher administrative costs. A frequent comment is that SMEs are disproportionally strongly "hit" by the administrative costs.
- **Energy efficiency of construction products.** A large number of respondents point out that energy efficiency should be dealt with at building level, not at product level, and that the CPR is not the appropriate tool to regulate this. In addition, comments on how the issue could be addressed are similar to those made for environmental impacts (cf. above).

Two issues score considerably lower support than the others:

- **Innovation in general, in particular information and information processing technologies (including BIM Building information modelling) use in the construction product sector**. Only 25% of respondents see this as an issue that should be addressed by EU legislation on construction products, and 45% think that the issue is significant but should not be addressed by EU construction products legislation. A majority of respondents see little or no relevance of the CPR to innovation and comment that innovation should be left to industry and not be regulated by law. As discussed in the chapter on effectiveness, the CPR seems to have little impact on innovation – most likely because innovation is largely market-driven rather than driven by internal market regulation – and innovation is not currently a specific objective of the CPR.

- **Extent of choice available for consumers in construction products**. Only 24% think it is important and should be addressed by EU construction products legislation, 38% think it is significant but should not be adressed by EU legislation, and 26% of the respondents do not think the issue is significant. The vast majority of respondents state that they do not see any connection between the CPR and the available product choice. Many of them stress that the increase of product choice should be left to market forces.

Compared with the needs that the CPR is designed to address, there is not complete correspondence with the priorities of the respondents in the public consultation. While better communication and information and reduced legal uncertainty is high on the priority list of the respondents, cross-border trade between Member States and, particularly, increased product choice for consumers are not prioritised highly. It is quite surprising – and difficult to explain - that cross-border trade is not among the options scoring highest as significant and relevant for a piece of internal market legislation whose main purpose is precisely to facilitate cross-border trade. It is possible that some respondents see the legislation as primarily levelling the playing field within their own national markets and are not much concerned with cross-border trade, but the comments by the respondents on this issue do not really provide an explanation.

Based on the **semi-structured interviews** (and referring to the issues discussed previously in this report), the interviewed stakeholders are more in tune with the needs that the CPR should address, indicating the following key issues:

- **The Internal Market.** Stakeholders acknowledge that 100% free trade across borders will probably never be achieved, since there will always be barriers, which are not necessarily imposed by governments but simply rooted in the cultural, climatic etc. differences between countries/regions. However, it is important to continue to strive towards achieving free trade. A significant number of stakeholders emphasize that national aspects should still be considered: *"The gap between CPR and national requirements should be closed. We should not look at construction products as if they exist in a vacuum. It would be helpful to give an idea to the consumer that a product is or is not acceptable in a certain market" (Industry Association).*
- **Legal clarity/certainty.** The CPR is considered too vague and/or too complicated; thus, legal clarity has not been achieved and should continue to be a priority. Among the issues mentioned are the need for clarification of the CE marking and the simplification provisions. As discussed in the chapter concerning effectiveness, the court cases between the Commission and Germany are mentioned by several stakeholders as a significant indicator of – and basis for – legal uncertainty with respect to the implementation of the CPR in the Member States. The CPR is based on the principle that the standards are exhaustive and that the Member States can only refer to harmonised standards in their legislation and may not set additional performance requirements to construction products (e.g. in the form of national marks). This is now being called into question by certain stakeholders, causing legal uncertainty for the economic operators who may face additional costs for e.g. testing or certification in order to comply with national marks in some Member States.
- **Effective market surveillance and enforcement.** Inconsistencies between Member States should be addressed, and coordination improved at EU level. Stakeholders indicate that some Member States have quite well-functioning market surveillance, while others do not. Several stakeholders point in the semi-structured interviews to the fact that this leads to market distortion and a certain level of mistrust in the system among economic operators. In order to address this issue,

it is even suggested by one stakeholder to monitor market surveillance budgets of each Member State.

- **Information for end-users, including consumers**. The information provided to end-users, particularly consumers, is seen by many stakeholders as not sufficiently useful or understandable for non-experts. This is closely related to **information on product safety and fitness for use**. A significant number of stakeholders call in the semi-structured interviews for ensuring a minimum level of safety and usability of the construction products that are placed on the market by allowing for this issue to receive more attention in the harmonised standards. The issue of fitness for use will be discussed in more detail below.
- **Sustainability**. Several stakeholders call for an increased focus on sustainability and specifically that Basic Works Requirement number 7 should be strengthened. Related to sustainability, a few stakeholders specifically mention **circular economy** as a new field that will need to be addressed by EU legislation in the future. The following interview quotes illustrate the key points that were made on this issue: *"The most important issue is to solve the challenge with respect to circular construction products, how to handle this. Requirements should not be too firm, this is in the innovative field, opening up for construction with completely different materials. Perhaps it should be separated as a new field: building with alternative construction materials and designing a more flexible future CE marking system."* (Standardisation body). Another stakeholder says: *"In future, the issues concerning circular economy and sustainability need to be accommodated in the legislation. A paradigm shift is on its way with respect to what is waste and what is resources. There will be a need for adaptation of laws concerning that, which also takes into consideration REACH[103]. But I don't see that it is time now to change the Regulation."* (Industry association).

6.1.1. Product safety

Product safety of construction products is regulated differently from the general principles of the New Legislative Framework (NLF). Whereas in the CPR setting, the general principle of safety laid down by General Product Safety Directive (GPSD) (2001/95/EC)[104] applies to construction products as well, the principle has to be operationalised differently compared to the NLF setting, since construction products are intermediate products, even if an important share of them can be considered potentially to be made available to consumers. Although the 2008 Impact Assessment foresaw that the relationship between the GPSD and the new construction products legislation (the CPR) should be clarified, the relation between the CPR and the GPSD is still not clear.

Therefore, construction products have to be treated differently as regards product safety. Within the performance approach of the CPR, "product safety" does not mean an "inherent safety" or a "built-in safety" of the product, but rather a compliance with the rules of the harmonised system and the achievement of the declared performances. As a rule, a construction product is not "safe" or "unsafe" in itself, but product safety of construction products has to be operationalised by the common technical language, i.e. by means of harmonised technical standards. Whether cement is deemed to be "safe" depends on the

[103] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410

[104] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32001L0095

correct information the manufacturer is declaring on the performance of the cement and on the intended use – to be used in a garden wall or in a dam wall –, on the conformity of the cement with the declared performance, and on the correct use of the cement. However, the incorrect declaration of the performance of a product can mean that the product is dangerous and may thus provide the basis for a RAPEX notification (cf. section 4.2).

This approach also links to the potential risks of a construction product. The risks which can occur mainly depend on non-compliance(s) of the economic operator as regards the common technical language. In this respect, a risk could occur if the information given by the economic operator is either incomplete, incorrect, missing, misleading or even false. Information on the performance of a construction product which is not reliable is a potential risk. If the construction product is made available to consumers, a risk, based on non-reliable information on the performance of the product, can occur also as regards consumer safety.

The competences with respect to construction product safety are divided between the EU and the Member States: while the EU is responsible for the rules relating to access to the Internal Market (the marketing of construction products), the Member States retain responsibility for safety as well as environmental and energy requirements applicable to construction works.

Furthermore, it is clearly stated in recital 3 of the CPR that 'This Regulation should not affect the right of Member States to specify the requirements they deem necessary to ensure the protection of health, the environment and workers when using construction products'. For that reason, the "safety clause" of Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products was included in Article 58: 'Where [...] Member State finds that, although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic requirements for construction works, to the health or safety of persons or to other aspects of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk, to withdraw the construction product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, which it may prescribe.'

Notwithstanding the above considerations, stakeholders are concerned with the link between the CPR and the safety of construction products. As discussed above, in the **public consultation**, a large majority of respondents pointed to safety of construction products as an issue that should be addressed by the European construction products legislation.

6.1.2. Fitness for use

A key issue brought up by many in the **stakeholder interviews**, both as a reply to the specific question on whether EU legislation has brought better information for end-users, but also repeatedly throughout the interviews, is the issue of fitness for use. The problem is formulated as the assertion that the information is often not sufficient for users to assess whether the product is fit for the intended purpose (this setting also refers to information on quality and safety).

There is no single definition of what "fitness for use" means, and various stakeholders seem to use the term with different meanings. It is sometimes linked to installation instructions, i.e. how to properly incorporate the product in construction works so that the declared performance is preserved. At other times, it is linked to Member State requirements for construction works, i.e. whether the product complies with the national

building codes and can thus be used in a specific country. Often the meaning is that the product must fulfil specific performance requirements in order to be fit for a specific use: according to these opinions, the product should not be allowed on the market if it does not fulfil these requirements (in line with the approach of other Internal Market directives). However, when viewed from these ex ante –angles, the concept is in direct opposition to the CPR approach which does not specify performance requirements but instead foresees the provision of information on the performance of the product with respect to specific essential characteristics, as opposed to whether this performance is in fact adequate for specific conditions (e.g. climate conditions) in which the product will be used.

In the semi-structured interviews, some stakeholders provided examples of why they think that fitness for use should be incorporated in the CPR. For instance, in some cases relevant characteristics (for a specific use) are not even declared. An example mentioned is freeze-thaw resistance. Another example that was brought up several times is sheathing boards where the performance with respect to resistance to moisture was not declared, but which proved to be the cause of extensive and severe damages to a large number of buildings once they were exposed to wet weather conditions in Northern Europe. One stakeholder sums up the opinion held by a significant number of stakeholders: *"For all the other internal market directives, the user knows that when it is CE marked the product lives up to certain requirements and can be marketed in the EU. For the CPR you have just declared some values, and what it can be used for is not specified. That makes it a lot harder to understand what the label says, and how to use the product correctly. That has a negative impact on end users, and on product safety."* (National Accreditation Body). Several interviewees also point to the issue that users may not be able to interpret/understand the information. They mention that advanced and experienced professional users, especially those with higher education, may be able to make proper use of the information provided in the DoP and the CE marking to assess whether the product is fit for the purpose and the conditions for which they intend to use it. However, the average private consumer, as well as some professional users, do not have the prerequisites to understand and use the information and are only able to ascertain that a product bears the CE marking.

6.2. Is there potential for more cross-border trade between Member States?

Among the companies participating in the **company phone survey**, a small majority (54%) do *not* expect in the future to export more products to other Member States. The company size group that has the highest expectations for future exports are medium-sized manufacturers with 10-249 employees, where 61% expect to export more in the future, while the share is only 37% for micro companies. Among the different types of companies, manufacturers have the highest share of respondents who expect to export (more) in the future. In Figure 6-2 below, the distribution of answers on different types of companies are shown.

Figure 6-2: Does your company expect in the future to export more products to other EU Member States?

Source: Company phone survey, N=564

The **semi-structured interviews** point to stakeholders overall being positive with respect to whether there is demand and potential for more cross-border trade between Member States. About two-thirds of the respondents with an opinion on this issue think that there is such a potential. A small handful do not think there is much more potential in their sector and/or home market. A large group of respondents (including many of those who are optimistic with respect to the potential) point to the fact that the extent to which there is such a potential depends primarily on the product's characteristics. Interviewees point out that for big, bulky and/or low-value products there are natural limits to how far they can be transported, and trade across borders is generally limited to border regions. For higher-value products, it is thought that there is potential, with the exception of very specialised products that are adapted to specific national building traditions (some types of windows are mentioned as an example). Trade also adapts to economic fluctuations, since companies will have a larger incentive to seek other markets for their products if demand in the home market declines.

Some stakeholders from smaller Member States state that their markets are so open that there is always potential for more trade, while others with similar conditions think that the market is already so internationalised that further potential is limited.

An industry stakeholder working for a large international and diversified supplier also stated that the company will relocate production if demand shifts geographically, which actually tends to reduce cross-border trade since many products are then produced locally. This is likely to be the case for many large multi-national companies and could help explain why more cross-border trade cannot be observed from trade statistics despite regulatory barriers to trade being removed.

6.3. Summary of findings on CPR relevance

The public consultation points to **safety of construction products, legal certainty, environmental impact of construction products, and usefulness of information available to users** as the issues that most stakeholders think EU legislation on construction products should address, followed closely by extent of cross-border trade between EU Member States, level of administrative costs for market operators to comply with the EU legislation on construction products, and energy efficiency of construction products which are also prioritised by more than half of the respondents. On the other hand, innovation and product choice for consumers are not seen as particularly relevant. There is thus not complete correspondence with the needs that the CPR is designed to address.

In the semi-structured interviews, **stakeholders largely agree with the needs that the CPR is designed to address but some add more to the list**. Needs that, according to stakeholders, are not explicitly (or not strongly enough) addressed are information on product safety and fitness for use, which indeed are not covered by the CPR, and issues related to sustainability and – perhaps more long-term – the circular economy.

Specifically, with respect to product safety, many of the interviewed stakeholders give weight to the fact that the CE marking gives little guidance or help for the user to determine the safety of a construction product, and they consider this a flaw in the CPR.

The competences with respect to construction product safety are clearly divided between the EU and Member States: while the EU is responsible for the rules relating to access to the Internal Market (the marketing of construction products), Member States retain responsibility for safety as well as environmental and energy requirements applicable to construction works.

Safety is often linked to the concept of "fitness for use", although no single definition exists of the meaning of this concept. It is sometimes linked to installation instructions, i.e. how to properly incorporate the product in construction works so that the declared performance is preserved. At other times, it is linked to Member State requirements for construction works, i.e. whether the product complies with the national building codes and can thus be used in a specific country. Often the meaning is that the product must fulfil specific performance requirements in order to be fit for a specific use, and that the product should not be allowed on the market if it does not fulfil these requirements (in line with the approach of other Internal Market directives). However, when seen ex ante, the concept is in direct opposition to the CPR approach which does not specify performance requirements but instead foresees the provision of information on the performance of the product with respect to specific essential characteristics, as opposed to whether this performance is in fact adequate for specific conditions (e.g. climate conditions) in which the product will be used.

While provisions for both safety and fitness for use are seen by many stakeholders as issues that should be covered by the CPR, their incorporation would necessitate a distancing from the current approach and an alignment with the approach taken by the other Internal Market (New Legal Framework) directives. This would mean a complete break with the current basic principles and approach chosen for the CPR in order to cover a complex and very diverse range of products, which are used under very different conditions in Member States with different climates, geology and building traditions, etc.

With respect to whether there is a demand or potential for more cross-border trade within the EU, there seems indeed to be such a potential, but it varies substantially depending on the type of product. As concluded in the chapter on effectiveness, the CPR has until

now not had any statistically demonstrable effect on the volume of cross-border trade in the EU. However, obstacles to cross-border trade still remain for reasons related to issues with the implementation of the CPR, such as the persistence of national marks, lack of understanding of the CE marking among some stakeholders, insufficient market surveillance leading to distrust among some economic actors, etc. These obstacles help explain why there has not been a larger impact on cross-border trade and could indicate that – at least for some products - there is a potential for "more internal market".

7. EVALUATION FINDINGS: COHERENCE

The evaluation of coherence involves looking at if and how well or not different actions work together. Checking internal coherence means looking at how the various components of the same EU intervention operate together to achieve its objectives. External coherence addresses to what extent the CPR is consistent with other legislation applying to the same products/stakeholders, and whether there are any inconsistencies, overlaps or gaps.

7.1. Internal coherence

On the overall question on whether the CPR is internally coherent, the general message from the **semi-structured interviews** is that the CPR is largely coherent. About 60% of the respondents see the legislation as overall coherent. Most of the remaining respondents state that they do not have sufficiently detailed knowledge of the CPR to judge its coherence, while less than a handful take an explicitly negative view of the coherence. A few points are however made by stakeholders on individual articles and annexes, where they see a conflict or overlap. A business representative from Germany states that points 3c and 3e of Article 6 contradict each other: Point 3c says that the DoP shall contain "the performance of at least one of the essential characteristics of the construction product, relevant for the declared intended use or uses"; while 3e says that the DoP shall contain "the performance of those essential characteristics of the construction product which are related to the intended use or uses, taking into consideration the provisions in relation to the intended use or uses where the manufacturer intends the product to be made available on the market". In fact, this stakeholder's perception that there is a conflict is rooted in a misunderstanding. The provision in Article 3e does not specifically require that the manufacturer is obliged to declare the performance of *all* the characteristics, meaning that there is in fact no conflict – the manufacturer can choose which characteristic(s) he wishes to include. However, the wording of the Article is not very precise (intentionally or not). Another TAB finds that the provisions of Article 5(1) and Article 38 are incompatible and should be clarified, especially with regard to the obligation to conduct an evaluation and verification of performance characteristics. According to Article 5 "a manufacturer may refrain from drawing up a declaration of performance", while Article 38 states that "the performance assessment part of the applicable system (…) may be replaced by the manufacturer by Specific Technical Documentation demonstrating compliance of that product with the applicable requirements and equivalence of the procedures used to the procedures laid down in the harmonised standards". It should be noted that these two provisions contain voluntary alternatives and are not meant to be applied simultaneously. Thus, these stakeholder perceptions of conflicts or incompatibilities related to specific articles are in fact not formally justified; but perhaps they point to a need for clarification to avoid misunderstandings.

The main exception from the overall assessment of the interviewed stakeholders that the CPR is internally coherent relates to the overlap between the CE marking and the DoP, which has already been discussed in the chapter on effectiveness.

The issues remarked upon by interviewees when asked about coherence tend to relate more to interpretation (lack of clarity, differences in interpretation) and implementation. A main issue with respect to interpretation and implementation, which is pointed to by a substantial number of interviewees, is the standardisation process, including the differences in opinion between the EC and CEN on the content of harmonised standards, and the fact that in many cases standards issued by CEN are not cited in the OJEU due to noncompliance with the criteria for citation, or are delayed due to the need for the Commission to introduce delegated acts. One interviewee stated that "*the need for*

complicated legal acts to introduce standards is counterproductive", and another that "*the relation between slow adoption of standards and the fact that they are essentially compulsory has to be improved"*. Several interviewees also point to a lack of clarity with respect to the simplification provisions. This goes particularly for Article 5 but is also an issue with other simplification articles (Articles 37 and 38).

In the **online survey**, the biggest group of respondents thought that there are inconsistencies/gaps, but the difference between the responses to the three answer options to the question "Do you see any inconsistencies or gaps in the CPR" was not large: 39% answered "Yes", 29% answered "No", and 32% "Don't know".

The issues with the standardisation process, which have already been discussed at length in the effectiveness chapter, may be considered an internal coherence problem since standards are at the core of the CPR as the instrument for implementing the common technical language and are mandatory to use. At the same time, the time-consuming process for developing harmonised standards (even in the best-case scenario when there are no delays) automatically leads to slow implementation and long response times for new requirements and developments. The problem is exacerbated when quality issues and lack of conformity with the CPR requirements occur in the draft standards, leading to even longer delays.

Similarly, the lack of clarity of simplification articles is a key factor in their low uptake (again, with the exception of Article 36) which leads to almost no simplification and can thus also be seen as an internal coherence issue.

7.2. External coherence with other legislation

The question of external coherence addresses to what extent the CPR is consistent with other legislation applying to the same stakeholders and/or products, and whether there are any inconsistencies, overlaps or gaps.

About 40% of respondents in the **semi-structured interviews** did not see any significant incoherence with other legislation, although some of these pointed to a certain degree of confusion as to whether in some cases the CPR or other pieces of EU legislation should apply. An equal share of the interviewed stakeholders pointed to one or more pieces of European legislation which conflict or significantly overlap with the CPR, including particularly Ecodesign Directive[105], Standardisation Regulation[106], Procurement Directive[107], and a number of Internal Market directives (all of these will be discussed further in the following). Several stakeholders also identified potential conflicts with the

[105] 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, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0125

[106] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025

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

Product Environmental Footprint method[108], as they did not consider it coherent with the CPR tools. The individual piece of EU legislation which was most frequently pointed to by interviewees is Ecodesign Directive, where stakeholders see a substantial (potential) overlap.

The **supporting study for the construction sector fitness check**[109] carried out an analysis of the coherence between selected EU acts applying to the construction sector, specifically instruments establishing product or labelling requirements: the CPR, Ecodesign Directive[110] (EDD), and Energy Labelling Directive[111] (ELD). The study found that the objectives of the CPR, the ELD and the EDD are clearly distinct and are mostly considered complementary and coherent. It aso concluded that the different legal instruments do not use identical definitions of economic operators covered by the obligations, which could be problematic since the obligations established by each of the instruments might apply to the same operators. It recommended, for the sake of legal clarity, to use the same definitions where possible, especially in situations where the requirements under the different instruments all apply to the same operator making one same product available on the market.

With respect to the substantive requirements, the supporting study for the construction sector fitness check found potential overlaps between the CPR and the EDD related to the procedures established for construction products, in particular to parallel routes for CE marking. Article 8 of the CPR specifies that the rules for affixing the CE marking provided for in other applicable legislation shall apply without prejudice to the CE marking requirements under the CPR. Further, Article 8(2) of the CPR notes that the affixing of a CE marking on a product ensures that the manufacturer takes responsibility for the conformity of the construction product, not only with the declared performance and the requirements of the CPR, but also with applicable requirements in other relevant Union harmonisation legislation providing for its affixing. This should ensure that the requirements for the CE marking under the CPR and EDD apply in parallel to those construction products that are at the same time considered as energy-related products under the EDD. However, one same CE marking applicable to a product type might have a different meaning, depending on its use. The study provides the example of local space heaters where the CE marking may involve responsibility for compliance with the CPR, although only when the product is incorporated in construction works. This would most likely not be the case for portable local space heaters, which would however be subject to the requirements of the EDD. The study found that "Existing overlaps between the EDD and CPR for specific product categories currently relate to five product categories, namely solid fuel boilers, (solid fuel) local space heaters and space/water heaters, as regulated by

[108] 2013/179/EU: Commission Recommendation of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations

[109] Supporting study for the fitness check of the construction sector (2016), previously cited.

[110] 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, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0125

[111] Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0001:0012:en:PDF

recently adopted Commission Regulations (EU) 2015/1185[112], 2015/1188[113], 2015/1189[114], 813/2013[115], and 814/2013[116]. Hence, potential impacts are very limited when compared to the whole market for construction products." The study pointed out that in only one case (solid fuel local space heaters), a product is covered by both a hEN and an EDD regulation but that this issue could expand to other product categories when new secondary regulations are adopted under the EDD.

The supporting study for the fitness check also points out that similar issues, with similar impacts as for the EDD, may become relevant for the ELD and its delegated acts, if the scope is widened in the future to construction products covered by harmonised standards.

For the time being, actual overlap with the EDD thus only concerns solid fuel local space heaters, fireplaces and sauna stoves; a revision of the standardisation mandate on space heating appliances (announced in the recitals of Ecodesign Implementing Regulation) is under preparation and will allow to mitigate the risk by adapting the CPR-based harmonised standard before the entry into force of Ecodesign Implementing Regulation (EU) No 2015/1185, i.e. by 1st January 2022. More precisely, the objective is to have in the same harmonised standard all pertinent essential characteristics and threshold levels equivalent to the minimum requirements set out also in the ecodesign context, and to demand only a single assessment method to be developed for emissions of particulate matter. However, it has to be noted that the further implementation of the EDD is expected to increase the occurrence of such cases. In the longer term, definition of clear collision rules should ensure that additional potential coherence issues of the same kind are avoided in the future (this matter shall be tackled in the context of the review of the CPR)[117].

The **supporting study for the fitness check** also considered the relationship between the CPR and Energy Performance of Buildings Directive[118] (EPBD), noting that there is a link between the EPBD and the CPR, as the latter establishes harmonised rules for the marketing of construction products, hereby allowing the comparison of the energy-related performance of products from different manufacturers. As the EPBD takes a system approach while the CPR acts at product level, it was concluded that the two pieces of

[112] Commission Regulation (EU) 2015/1185 of 24 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel local space heaters, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.193.01.0001.01.ENG

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

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

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

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

[117] Information provided by the European Commission

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

legislation do not overlap and that the adoption of a new standard on sustainability or energy economy under the CPR could contribute to achieving the objectives of the EPBD. There is thus an opportunity to achieve synergies between the CPR and the EPBD through a coordinated approach.

Another conflict is with Standardisation Regulation (1025/2012); as previously discussed, use of harmonised standards is mandatory under the CPR whereas Standardisation Regulation provides for voluntary standards. This is pointed out by stakeholders both in the **semi-structured interviews**, in **the scoping interviews**, as well as in the **Technical Platform summaries**. The problem identified by the stakeholders in this respect relates to the CPR adding additional regulatory burdens (and time) to the standardisation process compared to voluntary standards. In an Opinion from 2016, the **REFIT Platform**[119] noted that the current implementation of the CPR is creating additional problems introducing further burdens and contradictions, in particular with the Standardisation Regulation, regarding the voluntary nature of European Standards. It pointed to the procedures for introducing classes and thresholds (seen as one of the most useful features for the stakeholders in the construction value chain) in harmonised standards as unnecessarily burdensome. The REFIT Platform stated that as a result of these procedures, experts drafting standards might have to choose between removing needed classes and thresholds or facing a long process (usually years) to implement 'technical agreements' (delegated acts). The Platform concluded that drafting harmonised European standards is unnecessarily complex due to regulatory constraints, which is exacerbated by the delays related to publishing (citing) standards. The REFIT Platform therefore recommended to align Articles 6 and 17 of the CPR with Article 2 of Standardisation Regulation – in other words, making standards voluntary.

Several stakeholders pointed in the **semi-structured interviews** to the fact that the CPR is not in line with other internal market (New Approach) directives, since the basic function/meaning of the CE marking is different. Related to this, specific overlaps (where products are subject to more than one piece of legislation) are mentioned for Machinery Directive (2006/42/EC) (e.g. for automated doors), Electromagnetic Compatibility Directive (2014/30/EU), Low Voltage Directive (2014/35/EU), and Pressure Equipment Directive (2014/68/EU).

Several interviewees in the **semi-structured interviews** also indicated that, in their opinion, there may be a conflict between the CPR and the principles of Public Procurement Directive[120]. As one interviewee explained, Public Procurement Directive is increasingly moving towards labels, and thus the promotion of voluntary marks, whereas this is against the principles of the CPR. To this viewpoint it could be countered, however, that although Article 43 (1) of Public Procurement Directive states that "Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics", the CPR as the specific regulation on the marketing of construction products will prevail; public authorities are not allowed to require that construction products bear additional marks/labels other than the CE marking. Therefore, this evaluation cannot conclude that this provision in Public

[119] REFIT Platform Opinion on the submission by the Danish Business Forum on the Construction Products Regulation, 2016.

[120] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

Procurement Directive is in direct conflict with the CPR, although it could be seen as an indirect conflict encouraging public procurers to require additional marks on the products.

The **online survey** offers some support to the view that there are issues with the external coherence of the CPR, as 41% answered "Yes" to the question "Do you see any inconsistencies or overlaps between the CPR and other legislation at EU or national level", while 30% answered "No", and 29% answered "Don't know". Some respondents made additional explanatory comments which point to the same issues as those identified by the **semi-structured interviews**, outlined above.

A similar question was asked in the **public consultation**. Here, 59% answered yes to seeing contradictions or overlaps between the CPR and other legislation at EU or national level. 18% did not see any such contradiction or overlap, while 23% did not know/did not answer. In their comments to this question, respondents provided quite a large number of examples of specific pieces of legislation which overlap or conflict with the CPR. The by far most frequently mentioned example is that of contradiction with national legislation on buildings and in particular additional requirements. As discussed in the chapter on effectiveness, the CPR provides means for public authorities to set performance requirements and to check compliance with these requirements via the provision of the common technical language through the mandatory standards. Member States have taken different approaches, and some Member States have their own building codes or other national/local legislation for setting national requirements on safety etc. of buildings coexisting with the CPR. This provides a risk that Member States add other performance requirements not covered by the standards which cause contradictions and/or is in conflict with the "exhaustiveness" of the harmonised standards, presenting economic operators with additional requirements which add costs and act as obstacles to the internal market (cf. the discussion in section 4.1.6).

With respect to EU legislation conflicting or overlapping with the CPR, those already mentioned above appear multiple times in the **public consultation**: Public Procurement Directive, Ecodesign Directive (in particular because it also offers a route to the CE marking), Product Environmental Footprint, Energy Performance of Buildings Directive, and Machinery Directive (which also provides for the CE marking). In addition, the following pieces of legislation are named without further details of the concrete conflict or overlap: Drinking Water Directive, REACH and the CLP Regulation[121], Waste Framework Directive, Marine Equipment Directive, and Product Liability Directive.

The respondents were also asked whether they see any positive synergies between the CPR and other legislation at EU or national level (for example, rules on public procurement, rules on product safety, rules on eco-design, rules on health and safety of workers). The respondents were split in three groups of almost equal size between respondents who confirm that they see positive synergies (35%), respondents who do not see any (30%), and respondents who do not know (35%). In their comments to this question, respondents mention a number of existing or potential synergies with other pieces of legislation. Specific examples that are given in this context are national building codes, the EPBD, Product Liability Directive, REACH and fire safety regulations. A very frequent comment is that "any essential characteristic under the CPR could be used to fit the requirements of any other legislation", which is the option taken in Ecodesign Implementing Regulation (EU) No 2015/1185. A number of respondents also state that potential synergies could be achieved with the EDD and Drinking Water Directive.

[121] Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures.

In fact, overlaps and synergies are two sides of the same issue; overlaps may create an opportunity for synergy. An example was pointed out above for the EPBD, which asks for energy performance requirements at building level, at component level (e.g. walls, windows, roof, ventilation system) and only for a limited number of products (e.g. boilers, heat pumps, etc.). Synergy could potentially also be achieved for e.g. the EDD if a coordinated approach is applied for the elaboration of standards that cover the objectives of the different applicable pieces of legislation. However, the procedures and approaches involved would need to remain sufficiently similar, not to cause confusion about the meaning of the outcomes (this relates especially to the CE marking, which cannot simultaneously be based on the traditional NLF setting and that of the CPR). The potential for synergies could potentially also apply tothe relationship between the CPR and national regulations (building codes).

7.3. Summary of findings on CPR coherence

Stakeholders consider the CPR as being largely internally coherent. The main exception from this is the previously mentioned overlap between the CE marking and the DoP.

However, there are issues that present internal coherence problems. A key issue is the inherent **conflict between mandatory standards being the key instrument for harmonisation and the slow process for adoption of standards**. Thus, the CPR is by default "set up" for slow implementation and long response times to adapt to new requirements and developments. The problem is exacerbated when quality issues and lack of conformity with the CPR requirements occur in the proposed standards, leading to even longer delays. The issue is particular to the CPR due to the mandatory nature of standards under it. As already discussed in the effectiveness chapter, the lengthy process for adoption of new harmonised standards presents a significant barrier to achieving the implementation of the internal market.

Similarly, the **lack of clarity of simplification articles** is a key factor in their low uptake (again, with the exception of Article 36). In particular Article 5 but also Article 37 presents significant interpretation problems which leads to almost no simplification through these articles. Thus, the lack of clarity functions as an internal barrier within the CPR for achieving the important objective of simplification and reduced costs for specific types of products and economic operators, particularly micro-enterprises/craft enterprises.

With respect to external coherence with other European legislation, a number of pieces of European legislation potentially conflict or overlap with the CPR.

Potential overlaps exist between the CPR and the **EDD** with respect to the procedures established for construction products, in particular to parallel routes for the CE marking. Existing overlaps between the EDD and the CPR currently relate to five product categories, namely solid fuel boilers, (solid fuel) local space heaters and space/water heaters. Only one product (solid fuel local space heaters) is covered by both a hEN and an EDD regulation. Hence, impacts are currently limited to a few products, but the issue could expand to other product categories when new secondary regulations are adopted under the EDD. Costs of the overlap cannot be quantified (cf. the chapter on efficiency) but may be significant for manufacturers of those specific products.

Similar issues, with similar impacts as for the EDD, may become relevant for the **ELD** and its delegated acts, if the scope is widened in the future to construction products covered by harmonised standards, although there are no issues at present.

Overlapping cases such as these are expected to become more and more frequent which would require a global mitigating approach. For instance, a potential revision of the CPR could include the definition of collision rules to anticipate such situations.

A link exists between the CPR and the **EPBD**, as the CPR establishes harmonised rules for the marketing of construction products, hereby allowing the comparison of the energy-related performance of products from different manufacturers. The two pieces of legislation do not overlap and the adoption of a new standard on sustainability or energy economy under the CPR could contribute to achieving the objectives of the EPBD. There is thus an opportunity to achieve synergies between the CPR and the EPBD through a coordinated approach.

A clear conflict remains with Standardisation Regulation since the use of harmonised standards is mandatory under the CPR but voluntary under Standardisation Regulation. A key problem relates to the CPR adding additional regulatory complexity (and time) to the standardisation process compared to voluntary standards.

The CPR does not align with other **Internal Market (New Approach) directives**, since the basic function and meaning of the CE marking is different. The fact that the CE marking has a different meaning under the CPR than under other Internal Market directives creates some interpretation problems and confusion among economic actors as discussed in the effectiveness chapter. Related to this, specific overlaps (where products are subject to more than one piece of legislation) are mentioned for Machinery Directive (2006/42/EC) (e.g. for automated doors), Electromagnetic Compatibility Directive (2014/30/EU), Low Voltage Directive (2014/35/EU), and Pressure Equipment Directive (2014/68/EU).

Many stakeholders point to contradiction with national legislation on buildings and in particular additional requirements. The CPR provides means for public authorities to set performance requirements and to check compliance with these requirements via the provision of the common technical language through the mandatory standards. Some Member States have their own building codes making use of the common technical language to set national requirements for buildings, and coexisting with the CPR. While this potentially can create synergy effects and coherence between the national building code and the CPR, also a risk prevails that Member States set up additional requirements to the performance of construction products outside the harmonized system created in or by means of the CPR, presenting economic operators with additional requirements which add costs and act as obstacles to the Internal Market.

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

8. EVALUATION FINDINGS: EU ADDED VALUE

EU added value looks for changes which it can reasonably be argued are due to the EU scale of the intervention compared to what could reasonably have been expected from national actions by Member States.

8.1. EU added value

The **Supporting study for the Fitness check**[122] on the Construction sector found a clear case for EU added value for the CPR. The assessment is that by their very nature, i.e. the achievement of the Internal Market for construction products, the objectives of the CPR could only be achieved with EU measures.

In the **semi-structured interviews**, the interviewed stakeholders agree across the board that there is a need for EU regulation. The main added value cited by the interviewees is the improved – albeit not perfect – Internal Market, with common rules and a common technical language, and thus access for economic operators to cross-border markets. This is not likely to have been achieved at national level.

At the same time, several stakeholders emphasize that even though EU regulation is necessary, national specificities should be allowed to remain, within limits. These are usually linked to building traditions and specific experience and knowledge accumulated over a long period of time. Representatives from two different Member States specifically mention bridge building as an area with national specificities. One of them says: *"I think sometimes we ignore the fact that there may be better or best practices in national legislation that are not always captured in EU legislation – for example bridge safety in the UK, which was included in the national annex. But the system is as good as it can be. The same aims can't be achieved with separate national regulations."*

The participants in the **public consultation** are overall in line with the other sources. A clear majority of 79% agree that there is merit in legislating on construction products at EU level compared to doing it at national level. 11% disagree, while 9% do not know. Many comment that the alternative (a repeal of the CPR) would create an enormous amount of costs and administrative burden and/or even lead to "chaos". Notwithstanding, a good number of respondents criticize the fact that many additional national (de facto) requirements persist and thus limit the freedom of trade. On the other hand, quite a few also argue that these national regulations are necessary and justified and should therefore be allowed. A small number of respondents declare that the CPR, the CE marking etc. only benefit large companies.

8.2. Correspondence with needs of the EU internal market and continued need for harmonisation at EU level

The needs and challenges addressed by the CPR are as follows:

- Increased trade opportunities for economic actors in the EU Internal Market;

[122] Supporting study for the fitness check of the construction sector (2016), previously cited.

- Increased choice of products for distributors and final professional end users;
- Better communication and information (including availability of comprehensive product information);
- Reduced legal uncertainty and red tape.

All of these needs are related to the smooth functioning of the internal market for construction products. In the **semi-structured interviews**, some stakeholders identified additional needs related to the information provided to users on quality, safety, and fitness for use, not covered by the CPR, and related to clearer directions with respect to sustainability (cf. the discussions above in relation to these issues, in particular the reservations put forward with respect to the fact that including additional considerations regarding quality, safety and fitness for use would mean a departure from the current way of treating the common technical language).

With respect to whether the needs and challenges addressed by the CPR continue to require (harmonisation) action at EU level, interviewed stakeholders are very much in favour of maintaining harmonisation at EU level, at least in some form (cf. the section on added value, above).

The **online survey** also showed strong support for construction products to be regulated at EU level, with 67% of respondents replying "Yes" to the question "Do you think EU rules on construction products are required to create an internal market for construction products?", while 18% answered "No" and 15% "Don't know".

8.3. Consequences of repealing the CPR

As already indicated above, the vast majority of stakeholders consulted are not in favour of repealing the CPR. Not a single stakeholder among those interviewed in-depth was in favour of the option to repeal. In the **Open Public Consultation**, a few respondents were in favour of a repeal, with 17% for a repeal and 77% against – however relatively few respondents were asked this question (148 out of a total of 641 respondents[123]). Calculated against the total number of participants of the consultation, the share of respondents who are in favour of replacing the CPR with national regimes corresponds to a rate of 4.1% (26 out of 641). No position paper calls for a repeal of the Regulation, since all stakeholders support a solid and accepted EU framework ruling the European construction product market, and indicating the need for a strong legal framework for construction products, for regulatory certainty and for countering Member States attempts to put up barriers to cross-border trade.

The most likely consequences mentioned in the **semi-structured interviews** and in the **online survey** include further fragmentation of the market, dismantling the positive impacts achieved in terms of improved conditions for cross-border trade, and Member States putting up new or strengthened barriers.

These issues will be further analysed in connection with the Impact Assessment part of this study, as repeal of the legislation is one of the three main options being assessed.

[123] This question was only put to respondents that answered "no" to the previous question: Do you believe that the EU legislation on construction products should be maintained as it is?.

8.4. Summary of findings on CPR added value

There is evidence of **very strong support among all the stakeholder groups for construction products legislation and harmonisation at EU level**.

The vast majority of stakeholders agree that there is a need for EU regulation of construction products. Stakeholders also strongly agree that the benefits and achievements of EU legislation, such as the common technical language, a strong legal framework, improvement of information to end-users and (perceived) improvement of opportunities for cross-border trade would not be possible to be achieved if construction products were subject only to national legislation. The most likely consequences of the repeal of the CPR would be a fragmentation of the market, dismantling the positive impacts achieved in terms of improved conditions for cross-border trade, and Member States putting up new or strengthened barriers.

Given the many issues identified in this evaluation with the implementation of the CPR – standardisation delays, lack of significant simplification effects, insufficient market surveillance, confusion about the meaning of the CE marking, etc., it is in fact surprising that in the end, the support for maintaining EU regulation of the construction products sector is in fact extremely high. Only a very small minority of stakeholders would like to see a reversal to the national systems. The vast majority of stakeholders call for improvements to the system, indicating that they agree with its overall objectives of harmonisation and strengthening of the Internal Market.

9. CONCLUSIONS

The conclusions provide the answers to each of the evaluation questions, grouped by the five evaluation dimensions to which they relate.

9.1. Effectiveness

9.1.1. To what extent has the CPR made the internal market for construction products a reality? To what extent has the CPR achieved its specific objectives?

One of the expected impacts at the time of the 2008 Impact assessment was that the CPR would lead to increased levels of competition, but not necessarily a significant increase in cross-border trade since many construction products are not traded over large distances.

A firm conclusion on the extent to which the CPR has made the **Internal Market** a reality cannot be drawn. The overall perception of stakeholders points to increased market opportunities in other Member States due to the existence of a common technical language and common rules, including common standards. However, these improvements tend to benefit medium-sized and large enterprises more than micro and small enterprises. With respect to competition in the national markets, which would be a result of increased cross-border trade, the feed-back is mixed and does not point to significantly increased levels of competition.

Statistically, **the impact of the CPR on cross-border trade for construction products cannot be confirmed** on the basis of the available evidence.

Some anecdotal evidence exists that large international companies choose to relocate production to address changing demand, which may limit trade across borders.

The 2008 Impact assessment expected that the CPR would lead to significant positive effects on market surveillance in the Member States. At the time, the 2008 package on the New Legislative Framework had just been adopted, which meant that there was a need for alignment between the provisions on market surveillance. However, it is clear that **the implementation of market surveillance by many Member States has been insufficient** and thus has not provided the expected impacts. The reason for the insufficient market surveillance seems mainly to be insufficient resources to fully tackle the presence of non-compliance on the market. This also has the effect of a certain lack of confidence in the CE marking among some market actors.

Meeting the information needs of stakeholders (particularly end-users) was another objective of the CPR. The evidence points to an **improvement in the information provided to end-users over the previous situation: the common technical language has created transparency and a better possibility for users to compare products with respect to the declared performance.** However, the utility of the information is hampered by many users not being able to understand the information provided in the DoP and the CE marking, despite Commission efforts to produce guidance and improve awareness of the CPR, and the information role played by the PCPCs in their national context. There is also to some extent a **lack of understanding among both**

manufacturers and end-users of the specific role of the CE marking under the CPR, which differs from the function of the CE marking under other pieces of Internal Market legislation in that the CE marking under the CPR is *not* indicating that the product meets specific requirements. Improved (increased) product choice for end-users was another expected impact of the CPR. However, there is **not a clear impact of the CPR with respect to product choice** (nor is this issue highly prioritised by stakeholders).

Achievement of legal clarity/certainty was a key objective of replacing the CPD with the CPR. However, legal uncertainty is evident, as emerges from the European court cases between the European Commission and Germany, revolving around the question of whether Member States may set additional requirements to construction products outside and on top of those contained in the European harmonised system created (firstly) under the CPD. Although the European Court judgement on case C-100/13 went against the German claims, Germany has raised two new cases, this time referring to the CPR, involving the same principles.

Legal uncertainty also arises from misinterpretation by market actors of the CE marking, from uneven implementation of market surveillance, and from certain elements of the CPR, such as Article 5, being unclear and difficult to interpret.

9.1.2. To what extent has the simplification potential expected at the time of the adoption of the CPR been achieved?

Yet another key objective of the CPR was to ensure simplification in the area of construction products, aiming to reduce costs of complying with the legislation for economic operators, particularly micro and small enterprises. However, the **simplification potential expected at the time of the adoption of the CPR has only been partially achieved.** The simplifications aimed at avoiding unnecessary repetition of testing (Article 36) are widely applied and must thus be considered effective. Other simplifications aimed at micro-enterprises and non-series products have not been effective (Articles 37 and 38). The take-up of the provisions allowing small companies and producers of non-series products (which may also be small craft enterprises) to document product performance in (ostensibly) simpler ways has been practically non-existent. The main reasons for the low uptake of these simplification provisions appear to be related to low awareness and lack of clarity of the provisions, particularly with respect to what actually constitutes "equivalent" procedures and how to document these. The expected simplification effects of these articles (except Article 36) have thus not been achieved.

The simplification measures aimed at SMEs were a key element in an attempt to "level the playing field" for the smaller companies, and this attempt has not been successful. Furthermore, the justification of measures that allow some manufacturers to implement such "lighter" procedures may also be called into question, considering that this creates uncertainty for end-users, who may justifiably expect that all products bearing the CE mark are subject to the same requirements.

Simplification (and thus lower compliance costs) was also expected in the 2008 Impact Assessment to be gained through increased access of manufacturers to the reading and interpreting of performance-based standards, which was to be achieved by clarifying the role of standards under the CPR, expected to reduce confusion as to the meaning and content of performance-based standards under the CPR. However, the real potential of the CPR to tackle such matters may have been overestimated at the time. The standards are subject to copyrights held by CEN and their member organisations and are not freely

available, entailing costs for the economic operators in the form of fees to gain access to the full text of the standards. Furthermore, the majority of standards are not translated into all official Union languages. This means that the **economic operators do not have full (free) access to the standards, even though they are mandatory to use**, and the expected simplification effects in this area are not fully achieved.

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

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

A reduction of delays in the preparation of standards was one of the expected impacts of the transition from the CPD to the CPR. However, as in other cases, the real potential of the CPR to address this issue may have been overestimated. The delays have not been reduced under the CPR. The **lengthy standardisation process** is one of the most significant problems in the implementation of the CPR, which severely impacts the effectiveness of the Regulation. Lengthy procedures and delays result both from the preparation of standardisation mandates by the Commission, from the procedures of CEN/CENELEC and the Technical Committees, where it takes years before a standard is finalised by CEN/CENELEC, and from the subsequent procedure for the Commission to publish the reference to the standard in the Official Journal (OJEU). The delays are to a large extent due to the specificities of the CPR, namely that standards define performance and not product requirements, and that their use is mandatory. High quality standards are therefore essential, and an inclusive and quality-oriented process is necessary. The Commission must assess the conformity of the standard before citation and about two-thirds of the standards developed since 2013 have not been cited, the large majority of these due to non-conformity which requires further revision at CEN, while a smaller number of standards require the Commission to issue delegated acts, which is also a lengthy procedure. These issues have a significant negative impact on the effectiveness of the CPR, since harmonisation of many product areas is delayed and economic actors are left in a situation of legal uncertainty when new standards are anticipated but not yet fully applicable.

Obstacles to the Internal Market still remain in the form of national marks and certifications, although some stakeholders do not consider these as obstacles but rather a natural – and perhaps necessary – supplement to the CPR.

Such stakeholders distinguish between national marks which are compulsory, and voluntary marks which are industry-driven and are seen by many as beneficial both to industry and to end-users because they allow to document quality, safety and other aspects that may not be contained in the CE marking.

When the CPR was proposed, it was expected that national marks and certifications would disappear. This has however proven not to be the case, as is also evident from the legal disputes with Germany concerning additional national requirements to construction products. The issue has come into focus following a judgement of the European Court of Justice in 2014 (case C-100/13). In line with the principle of "exhaustive harmonisation"

as confirmed by the Court, in the Commission's view, Member States may only refer to the contents of harmonised standards in their legislation and can set requirements on the use of construction products in buildings and other construction works, utilizing in this context only the harmonized structure created in or by means of the CPR. Several Member States and other stakeholders oppose the Commission interpretation of the ECJ judgement, which is expected to be clarified by the Court in two pending cases concerning German formal objections. If the judgement should go against the Commission's view, this would almost certainly prevent further reduction of the number of national marks and certifications, a reduced level of harmonisation and thus represent a step backwards for the realisation of the Internal Market for construction products.

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

Some stakeholders see the lack of fitness for use information under the CPR as a sort of collateral effect of the CPR; however, providing information on fitness for use is specifically *not* an objective of the CPR. The issue will be addressed in more details below under the issue of relevance.

The CPR does not seem to have any significant impact on innovation. It neither hinders it nor fosters it. Evidence also indicates that stakeholders do not think that innovation is an issue that should be adressed by EU legislation on construction products, but rather left to the market.

The ETA system is generally seen as a positive aspect of the CPR, bringing significant commercial benefits to manufacturers that are provided with the possibility to CE mark their products even though they are not covered by a harmonised standard. However, when producers wish to CE mark them, the development of ETA/EADs is time consuming and this has a negative impact on time-to-market for the products in question. The uptake of this option has been growing rapidly, with more than 4,000 ETAs issued, indicating that the manufacturers concerned assess the ETA option as attractive – in other words, that it is effective, even though some stakeholders think that the process is too slow.

With respect to whether the adaptation mechanisms (legislative tools allowing to amend annexes, to adopt delegated and implementing acts, to mandate and cite new or updated harmonised standards) in place allow the CPR to support innovation and technological development, the process to establish the delegated and implementing acts takes too long, and the adaptation mechanisms are not really a suitable tool for enhancing innovation.

Box 1 Conclusions on effectiveness

The CPR has been partly effective, introducing a common technical language, improving information for end-users and helping to open up the internal market. Impacts on cross-border trade as a result of the CPR can however not be demonstrated statistically.

There are a number of issues that impact effectiveness negatively. These factors are mainly related to the implementation of the CPR, especially insufficient market surveillance and enforcement in the Member States, and to the problems with the standardisation process, which is lengthy and has in many cases resulted in standards which are not deemed suitable by the Commission for referencing in the Official Journal.

Issues of clarity and legal certainty that the CPR was meant to address have not been fully solved. Simplification has only been partially achieved and has not been achieved with respect to micro-enterprises, meaning that this attempt to create a level playing field for micro-entreprises has not been effective. The justification of such measures is questioned, since end-users may justifiably expect that all products bearing the CE mark are subject to the same requirements

9.2. Efficiency

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

The main benefit arising from the implementation of the CPR is **better access to other EU markets** for manufacturers of construction products, facilitated by the existence of the **common technical language and common rules**, including common standards.

Information for end-users is more uniform and has allowed users to be better able to check product characteristics. There is also evidence that the implementation of the CPD/CPR has helped some companies **improve their production processes** due to the requirements to implement Factory Production Control systems.

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

The 2008 Impact Assessment foresaw substantial cost savings mainly as a result of a reduction in the costs of manufacturers when placing products on the market (from reduced testing costs, reduced costs of ETAs and increased flexibility in how to demonstrate compliance compared to the CPD). Significant expected savings for manufacturers were expected due to national marks and certifications no longer being necessary. However, while the expectation for the CPR was a reduction in costs and administrative burdens, the result is in fact **increased costs, constituting in the order of 0.6%-1.1% of the sector's turnover** (the range provided by two different estimates). The main regulatory and administrative costs of the CPR are linked to the supply of the DoP and the CE marking, while costs linked to testing and quality control mechanisms are largely costs that enterprises would also have incurred without the CPR. Significant **cost savings can be attributed to the possibility to provide the DoP by electronic means**. However, even taking into account this cost saving, the CPR is **considerably less efficient than foreseen** in the 2008 Impact Assessment.

The efficiency of the DoP and the CE marking is **negatively impacted by the overlap between the information required in the DoP and in the CE marking**, which generates additional administrative and financial burdens and constitutes a clear inefficiency and an unnecessary burden.

The significance of administrative and regulatory costs depends to a large extent on the size of the company and the type of product, as well as the product range of each manufacturer. The analysis confirms the existence of **economies of scale in compliance activities**. It also confirms that these costs can be quite substantial for SMEs, particularly micro-enterprises while, relatively speaking, they are negligible for large enterprises. Cost reductions from significant simplification effects were expected when the CPR was proposed. Relatively large administrative burdens of compliance with the CPR were foreseen in the 2008 IA for micro-enterprises, craftsmen, non-series products etc., which is why much faith was put into the simplifications aimed specifically at these types of manufacturers and products. However, given that a relatively larger cost burden still rests

on the smallest shoulders (the smaller companies), this type of simplification impacts were clearly not achieved as expected, as was also seen in the discussion of simplification impacts, above.

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

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

With respect to the proportionality of costs, these are overall assessed as being commensurate to the benefits of the CPR. However, this is an assessment based on average costs. As mentioned under the previous evaluation question, the main factor influencing the proportionality of costs is the size of the company. For large companies, the costs are negligible. The smaller the company, the larger the costs in proportion to the turnover. For the smallest companies, the costs are quite significant and these companies are at the same time less likely to be able to benefit from increased access to cross-border markets. Thus, cost-effectiveness for this group is low. However, the burden of costs also depends on other factors, particularly the type of product and the complexity of requirements of the relevant standard, as well as the number of different products that each company produces.

Box 2 Conclusions on efficiency

Efficiency for individual companies (in terms of cost-effectiveness) depends to a large extent on the size of the (manufacturing) company. For larger companies and those that have a history of compliance, costs are relatively low, and efficiency is assessed as being adequate. For smaller companies – particularly micro enterprises - CPR efficiency does not appear to be high.

While the CPR was expected to reduce regulatory and administrative costs of compliance compared to the CPD, in fact these costs have increased, constituting in the order of 0.6%-1.1% of the sector's turnover. The main regulatory and administrative costs of the CPR are linked to the supply of the DoP and CE marking, and fall mainly on the manufacturers.

9.3. Relevance

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

The **objectives of the CPR remain relevant**, although there is not full correspondence between the priorities of stakeholders and the overall objectives of the CPR on some aspects. Stakeholders agree on the need for legal certainty and useful information for users. In particular, some stakeholders require **better information on product safety**

and fitness for use; and the need to focus more on **sustainability** of construction products. In the longer term, **circular economy** considerations may need to be taken into consideration in European legislation on construction products. On the other hand, **stakeholders do not prioritise innovation** (which is dealt with in more detail under effectiveness) **and product choice for consumers** as important issues for European legislation on construction products.

With respect to **product safety**, many of the interviewed stakeholders emphasize that the CE marking gives little guidance or help for the user to determine the safety of a construction product, and they consider this a flaw in the CPR. However, the CE marking is not meant to be used in such a way and the Member States retain responsibility for safety as well as environmental and energy requirements applicable to construction works.

An issue surfacing repeatedly throughout the evaluation is the concept of **fitness for use**. Evidence exists that stakeholders to some extent see the information on fitness for use (relating to product safety and quality) as being negatively affected compared to what was (allegedly) required during the CPD era. Many stakeholders have presented a strong wish to include fitness for use information in e.g. the DoP. This may reflect a mismatch between the expectations of some stakeholders and the CPR system, since the concept is in direct opposition to the CPR approach. The CPR does not specify performance requirements but provides for information on the performance of the product with respect to specific essential characteristics, as opposed to whether this performance is in fact adequate for specific conditions (e.g. climate conditions) in which the product will be used.

While safety and fitness for use are seen by some stakeholders as issues that should be covered by the CPR, their incorporation would necessitate a break with the current approach and basic principles chosen for the CPR in order to cover a complex and very diverse range of products, which are used under very different conditions in the Member States with different climates, geology and building traditions, etc.

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

With respect to whether there is a demand or potential for more cross-border trade within the EU, there seems indeed to be such a potential, but it varies substantially depending on the type of product. The CPR has until now not had any statistically demonstrable effect on the volume of cross-border trade in the EU which could indicate that there is not much potential. However, obstacles to cross-border trade still remain that are related to issues with the implementation of the CPR, such as the persistence of national marks and certifications, lack of understanding of the CE marking among some stakeholders, insufficient market surveillance leading to distrust among some economic actors, etc. These obstacles help explain why there has not been a larger impact on cross-border trade and could indicate that – at least for some products - there is a potential for "more internal market".

Box 3 Conclusions on relevance

The CPR is assessed as being relevant to the needs of the internal market for construction products. Additional needs have been identified by some stakeholders in relation to the safety and fitness for use of construction products. However, inclusion of these two issues in the CPR would be in conflict with the approach and basic principles of the CPR,

which does not set performance *requirements*. Stakeholders also call for increased focus on sustainability. Innovation is not seen as a particularly relevant issue for the CPR.

9.4. Coherence

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

Stakeholders generally see the CPR as being largely internally coherent. The main exception from this assessment is the previously mentioned overlap between the CE marking and the DoP.

However, an inherent **conflict remains between mandatory standards being the key instrument for harmonisation and the slow process for adoption of standards**. With harmonised, mandatory standards as the key instrument for delivering the objectives of the CPR, the Regulation is by default "set up" for slow implementation and long response times to adapt to new requirements and developments. The problem is exacerbated by the frequent quality issues and lack of conformity with the CPR requirements occurring in the draft standards, leading to delays in the standardisation process which already takes several years under the best of circumstances. The issue is particular to the CPR due to the mandatory nature of standards under CPR. As already discussed in the effectiveness chapter, the lengthy process for adoption of new harmonised standards presents a significant barrier to achieving the implementation of the Internal Market.

Similarly, the **lack of clarity of simplification articles** is a key factor in their low uptake (again, with the exception of Article 36). In particular Article 5 but also Article 37, present significant interpretation problems which lead to almost no simplification through these articles. Thus, the lack of clarity functions as an internal barrier within the CPR for achieving the important objective of simplification and reduced costs for specific types of products and economic operators, particularly micro-enterprises/craft enterprises.

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

With respect to external coherence with other European legislation, a number of areas can be found where the legislation overlap and/or are in conflict with each other, including Ecodesign Directive and several other product/technical directives.

Thus, there are potential overlaps between the CPR and **Ecodesign Directive** with respect to the procedures established for construction products, in particular to parallel routes for CE marking. Concrete impacts are currently limited to a few products but the issue could expand to other product categories when new secondary regulations are adopted under the EDD. Similar issues, with similar impacts as for the EDD, may become relevant for

Energy Labelling Directive and its delegated acts, if the scope is widened in the future to construction products covered by harmonised standards, although there are no issues at present.

Overlapping cases such as these are expected to become more and more frequent which would require a global mitigating approach. For instance, a potential revision of the CPR could include the definition of collision rules to anticipate such situations.

However, some of these legislative overlaps also entail potential for synergies, if sufficient coordination is applied and the procedures and approaches involved could remain sufficiently similar. Examples of such potential areas for synergy include e.g. Energy Performance of Buildings Directive, Ecodesign Directive and Energy Labelling Directive.

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

The CPR does not align with other **Internal Market (New Approach) directives**, since the basic function and meaning of the CE marking is different. Specific overlaps (where products are subject to more than one piece of legislation) are mentioned for Machinery Directive, Electromagnetic Compatibility Directive, Low Voltage Directive, and Pressure Equipment Directive.

With respect to interaction between the CPR and **Member States legislation**, stakeholders frequently point to contradiction with national building codes and in particular additional requirements. The CPR provides means for public authorities to set performance requirements and to check compliance via the provision of the common technical language through the mandatory standards. Some Member States have their own building codes making use of the common technical language to set national requirements for buildings, and coexisting with the CPR. While this potentially can create synergy effects and coherence between the national building code and the CPR, also a risk remains that Member States set up additional requirements to the performance of construction products that are not covered by the standards and which cause contradictions and/or go beyond the harmonised standards, presenting economic operators with additional requirements which add costs and act as obstacles to the Internal Market.

Box 4 Conclusions on coherence

Some issues exist related to the internal coherence of the CPR. These include the overlap between the CE mark and the DoP; the conflict between mandatory standards being the key instrument for harmonisation and the slow process for adoption of standards; and the lack of clarity of simplification articles which is a key factor in their low uptake. Particularly the latter two issues both function as barriers for the CPR for in achieving its objectives.

In relation to other European legislation (external coherence), there are a number of areas where legislations overlap and/or are in conflict with each other. Actual and potential overlaps exist with **Ecodesign Directive** and may also materialise for **Energy Labelling Directive** and its future delegated acts. Such overlaps are expected to become more and more frequent but also entail potential for synergies through coordination.

There is a clear conflict between the CPR and **Standardisation Regulation** since the use of harmonised standards is mandatory under the CPR but voluntary under Standardisation Regulation. Furthermore, the CPR does not align with other **Internal**

Market (New Approach) directives with respect to the basic function and meaning of the CE marking.

Some conflicts (and potential conflicts) exist with **Member States legislation** making use of the common technical language to set national requirements for buildings, and coexisting with the CPR. There is a risk that Member States set up additional requirements to the performance of construction products outside the harmonized system created in or by means of the CPR.

9.5. EU Added value

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

The CPR has achieved EU added value by facilitating potential access for economic operators to cross-border markets through the establishment of common rules and a common technical language. It is unlikely that improvement of the Internal Market in this way could have been achieved at national level.

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

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

All of these needs are related to the smooth functioning of the Internal Market for construction products and continue to be relevant. As indicated above, it is unlikely that this type of improvement of the Internal Market can be achieved at national level pointing to a continued need for EU regulation of construction products.

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

Very strong support exists among all the stakeholder groups for construction products legislation and harmonisation at EU level.

The most likely consequences of a repeal of the CPR would be a roll-back of the achievements of EU Construction Products Directive and Regulation over almost three

decades, with increased fragmentation of the market and Member States putting up new or strengthened barriers to trade, thus dismantling the positive impacts achieved in terms of improved conditions for cross-border trade for economic operators in the Internal Market.

It should be noted that the consequences of a repeal will be investigated in more detail in the Impact Assessment study accompanying this evaluation.

Box 5 Conclusions on EU added value

All of the needs addressed by the CPR are related to the smooth functioning of the Internal Market for construction products, and there is a continued need for EU regulation of construction products. A repeal of the CPR would not be beneficial to the construction products sector. The most likely consequences of such a repeal would be increased fragmentation of the market and Member States putting up new or strengthened barriers to trade, thus dismantling the positive impacts achieved in terms of improved conditions for cross-border trade for economic operators in the Internal Market.

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