

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Review of the Construction Products Regulation		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs Clean technologies and products PLAN/2017/972	DATE OF ROADMAP	19/06/2017
LIKELY TYPE OF INITIATIVE	Legislative		
INDICATIVE PLANNING	4 th quarter 2018		
ADDITIONAL INFORMATION	https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en		
<p>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Roadmap/Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</p>			

A. Context, Problem definition and Subsidiarity Check

Context
<p>The Construction Products Regulation (CPR) was adopted in 2011 and applies in full since mid-2013. The main objective of the CPR, like the earlier Construction Products Directive (CPD), is to make the single market work properly and ensure the free movement of construction products in the EU, by laying down harmonised conditions for their marketing. The CPR, in replacing the CPD, also had specific operational objectives: simplify the existing system, clarify concepts and definitions and increase the credibility of the whole structure. For this reason the CPR was included in the REFIT programme in 2013.</p> <p>The CPR did not set product requirements for construction products, including on sustainability but harmonised 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. The Member States are responsible for safety, environmental and energy requirements applicable to construction works.</p> <p>Construction products are products meant to be attached to or built into buildings and infrastructure works in a lasting manner. This includes a wide variety of products, ranging from for example cement, mortar and planks, windows and doors, roof tiles and paving stones, bathtubs and kitchen sinks, fire detection systems and smoke alarms, to traffic signs and steel beams to support structures.</p> <p>The Commission presented an Implementation Report on the CPR in July 2016¹ and engaged in wide stakeholder consultation on a variety of aspects through technical platforms² since then. It is also working on a Fitness Check of the Construction Sector³ as announced in its Communication (COM (2012) 433 of 31.07.2012) on "Strategy for the sustainable competitiveness of the construction sector and its enterprises" and the Commission Work Programme 2015.</p> <p>In June 2016, the REFIT Platform adopted an opinion⁴ on perceived overlapping and repetitive requirements of different EU regulatory measures on construction products. These issues are currently further examined in the ongoing Fitness Check of the Construction Sector; the Commission staff working document to be issued at the end of 2017 will indicate the effects of the legislation allowing for further action, if appropriate. The other issue described in the opinion relating to European harmonised standards for construction products is currently part of the dialogue with stakeholders launched as a follow-up to the Implementation Report.</p>

¹ Report required by Article 67(2) CPR, COM(2016)445 final, 7.7.2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470658645697&uri=CELEX:52016DC0445>

² Three meetings have taken place so far: on 12.10.2016 on standardisation, on 18.01.2017 on simplification issues and on 14.03.2017 on information needs.

³ https://ec.europa.eu/growth/sectors/construction/fitness-check_en

⁴ https://ec.europa.eu/info/files/refit-platform-recommendations-internal-market-xii8a-construction-product-regulation_en

The CPR has not yet been subject to an evaluation (within the evaluation methodology and better regulation guidelines). However significant evidence has been collected in the course of the aforementioned actions and a number of reports and studies are available or under preparation (see section D below). At this point of time, an evaluation could provide a comprehensive view while filling the information gaps and allow an informed decision about potential need for revision of the existing rules.

The November 2016 Energy Union Package⁵ mentioned the need to unlock the construction sector's growth and jobs potential by improving the functioning of markets, in particular the internal market for construction products which is still fragmented. In this context it also referred to the ongoing consultation process with stakeholders, following up on the 2016 Implementation Report, as "possibly leading to a revision of the Construction Products Regulation within the mandate of this Commission".

In order to respect the timeframe set, a "back-to-back" evaluation and impact assessment shall be conducted to provide a solid basis for any future adaptation, should results from consultations and assessments warrant this.

Problem the initiative aims to tackle

Any problem definition is preliminary at this stage and only the retrospective evaluation including further consultations is expected to allow its further development.

According to recent studies⁶, product manufacturers across the EU28 incur regulatory costs estimated at between € 2.62 and € 3.4 billion per year to comply with CPR obligations. This accounts for approximately 0.6% to 1.1% of the total turnover of the construction products sector, with micro companies facing the highest costs as a share of their turnover (1.3%). Overall, only an insignificant share of these costs is deemed to be additional costs compared to the situation under the CPD. The CPR did not yet seem to generate significant cost savings for manufacturers compared with the situation under the CPD, although the possibility to supply an electronic Declaration of Performance has reduced the administrative burden. So far, the implementation of the CPR does not seem to have led to much increase in cross-border trade.

The 2016 Implementation Report⁷ concluded that part of the challenges reported relate to implementation difficulties and delayed adaptation by stakeholders, and that further work is necessary to improve implementation. However it also identified, based on the available evidence, a significant number of issues which go beyond mere implementation and that deserve further serious examination and discussion (need for clarification regarding simplification provisions, limited evidence of uptake of simplification provisions/lighter regimes by micro enterprises, link with Regulation 1025/2012 on standardisation and mandatory use of standards in the CPR triggering a call for a quicker and better streamlined standardisation process, sector-specific market surveillance and enforcement provisions, detailed rules regarding Notified Bodies and streamlining of procedural rules for finalising European Assessment Documents by EOTA).

Moreover, the aforementioned Communication "Clean Energy for all Europeans" highlighted the need to ensure coherence of related internal market and energy efficiency legislation.

The complaints and infringement proceedings relating to the CPR seem to point towards incomplete/imperfect uptake of the harmonisation of the rules for the marketing of construction products, for example by Member State authorities requiring national ex ante verifications or processes before products can be marketed or are eligible for public procurement. The 2016 Implementation Report specifically highlighted that the use of national marks continued in several Member States, against the principles of the CPR, and the 2016 Economic Impacts study⁸ finds that persistent national testing requirements have been mentioned as a barrier to the realisation of a fully-fledged single market for construction products. The ECJ judgment of 16 October 2014⁹ ruled that Member States are to refrain from setting additional requirements for effective market access and use of construction products bearing the CE marking, considering that, since the harmonised system under the CPR is exhaustive, no space is left for any other systems dealing with the marketing of construction products within the harmonised sphere.

Various factors have been influencing the construction sector, especially latest information and information processing technologies (e.g. smartphones and other devices allowing on-the-spot information access), which may now make it appropriate to re-examine some choices made.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Clean Energy For All Europeans, COM(2016)860 final, 30.11.2016, Annex 1, p. 9, http://ec.europa.eu/energy/sites/ener/files/documents/1_en_annexe_autre_acte_part1_v9.pdf

⁶ Economic Impacts of the Construction Products Regulation by VVA Europe, the Danish Technological Institute (DTI) and the Netherlands Organisation for applied scientific research (TNO), October 2016, https://ec.europa.eu/growth/sectors/construction/support-tools-studies_en; Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation, Economisti Associati, Milieu and CEPS, October 2016, https://ec.europa.eu/growth/sectors/construction/fitness-check_en

⁷ Report required by Article 67(2) CPR, COM(2016)445 final, 7.7.2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470658645697&uri=CELEX:52016DC0445>

⁸ See footnote 6

⁹ Judgment of the Court of Justice in Case C-100/13, Commission v. Germany, 16 October 2014, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-100/13&td=ALL>

Subsidiarity check (and legal basis)

The EU adopted the CPR in 2011 on the basis of Article 114 TFEU. Like in the case of its predecessor, the CPD, the reason was that the disparity of Member State requirements for construction products hindered trade within the Union¹⁰.

As the CPR is an existing piece of EU legislation, any revision or repeal of it, if warranted by the outcome of the back-to-back evaluation and impact assessment, has to take place at EU level and cannot be usefully undertaken at Member State level.

Any efforts to improve its functioning without legislative change would likely have to take place at EU level as well, as otherwise the aforementioned disparity between requirements for construction products would start to materialise again in the way they are applied and enforced at national level, absent EU-wide coordination. In any event, optimising processes such as standardisation and the work of Notified Bodies and Technical Assessment Bodies can by definition not be usefully undertaken within the confines of national borders.

Also in a scenario where it would be deemed advisable to repeal the CPR and let Member States decide on marketing rules for construction products, relying on the concept of Mutual Recognition, the CPR repeal would have to be undertaken at EU level and the impacts of it assessed at EU level, as they will touch upon the functioning of the single market and the free movement of construction products between Member States.

B. Objectives and Policy options

This initiative aims to unlock the construction sector's growth and jobs potential by improving the functioning of the internal market for construction products, including for micro, small and medium sized enterprises in line with the Think Small First principle.

Option I - Baseline scenario: No legislative change. The CPR would stay as it is. Efforts would be made - i.a. through flexible and uniform interpretation - to smoothen its application, promote the uptake of simplification provisions in particular SME-related simplification, help Member States step up market surveillance and enforcement, improve coordination among Notified Bodies, improve Technical Assessment Bodies' and EOTA's processes, streamline the standardisation work, etc.

Option II: Revising the CPR

II.A: Limited CPR revision only tackling the issues explicitly identified in the July 2016 Implementation Report
This would include:

- Revision of the simplification provisions in particular those related to SMEs.
- sector-specific market surveillance and enforcement provisions supplementing the horizontal ones.
- detailed rules regarding Notified Bodies, distinguishing the CPR from the New Legislative Framework¹¹.
- clarification of the relation between the CPR and Regulation 1025/2012 on standardisation and other standardisation issues, including improving coherence between the CPR and Ecodesign legislation.

II.B: Wider CPR revision also touching the basic principles underlying the CPR

Several variations (and combinations of them) can be envisaged under sub-options:

- CPR harmonisation to stay obligatory for some construction products, but be made optional for others.
- common technical language to stay obligatory for some actors, but be made optional for others.
- institutional framework and the roles of the bodies involved to be rethought.

II.C: Profound CPR revision shifting the balance in the present repartition of tasks between EU & Member States

Based on the fact that after 28 years of EU legislation (CPD, then CPR), the internal market of construction products is still imperfect, this would imply harmonising *product requirements* for construction products.

Several variations (and combinations of them) can be envisaged under sub-options:

- This could be done (1) by choosing the New Legislative Framework approach, which would allow maintaining CE-marking¹² for construction products, or (2) by developing an alternative means, to be defined, of setting the technical details of product characteristics.

¹⁰ Recitals (1) and (2) of Regulation (EU) No 305/2011, recitals (1) to (3) of Directive 89/106/EEC.

¹¹ The New Legislative Framework was adopted in 2008 to improve the internal market for goods and strengthen the conditions for placing a wide range of products, on the EU market. See https://ec.europa.eu/growth/single-market/goods/new-legislative-framework_en

¹² Under the CPR, CE marking means that the performance of construction products bearing this marking and sold in the EU has been assessed in accordance with applicable harmonised standards or European Technical Assessments and that the construction products are in conformity with the performance declared in the Declaration of Performance accompanying them. CE marking under the New Legislative Framework means that products bearing this marking and sold in the EU have been assessed to meet high safety, health and environmental protection requirements. See https://ec.europa.eu/growth/single-market/ce-marking_en

- The deeper harmonisation could be made obligatory for some construction products, but optional for other construction products.
- The field of application of deeper harmonisation could be defined by listing product families to be covered; for the non-listed product families, the current CPR system could be maintained or abandoned.
- The institutional framework and the roles of the bodies involved could be rethought.

Some issues listed under alternative II.A may also be covered under alternatives II.B or II.C.

Option III: Repealing the CPR. The CPR would be repealed without any substitute. Member States and operators would rely on the principle of mutual recognition to achieve free movement of construction products.

C. Preliminary Assessment of Expected Impacts

The following groups are potentially affected: industry, in particular small and micro enterprises (as the construction sector is estimated to be populated at 94% by firms with fewer than 10 employees), i.e. manufacturers of construction products, construction contractors, providers of construction-related services (such as architectural and engineering activities), public authorities at all levels (EU, national and sub-national), standardisation organisations, technical assessment, testing and verifying bodies, as well as consumers, workers and citizens.

Likely economic impacts

Option I: It can be anticipated that costs for economic operators would stay largely the same as under the current CPR. In particular, costs for manufacturers linked to additional national procedures, requirements and marks in some Member States, although against the principles of the CPR, would decrease only slowly, in view of the time involved in conducting infringement procedures.

Option II: Simplification in line with the "Think Small First" principle would give rise to benefits for all economic operators, especially SMEs. Improved market surveillance and enforcement would benefit those responsible economic operators respecting the rules, by helping to ensure fairer competition. Addressing issues related to Notified Bodies and standardisation would increase legal certainty and smoothen implementation of the CPR, thus contributing to overall efficiency of the system including for economic operators. The additional economic benefits and costs of the wider and profound revision options would depend on the possible variations. Setting product requirements would lead to adjustment costs for operators, yet it should facilitate cross-border trade.

Option III: The benefits and costs for economic operators linked to a return to, basically, the pre-CPD situation would depend on how far national regulations on expressing performance of construction products would start diverging, leading to additional costs for economic operators to comply with different regulatory regimes if they wish to trade across EU Member States. Economic operators may to some extent benefit from not having to comply with the CPR. Yet, economic operators also may incur additional costs in order to adapt to (changes in) their domestic regulatory regime compared to the CPR regime, even if they do not trade across EU Member States, potentially offsetting the possible benefits from not having to comply with the CPR regime. The observed attachment of some Member States to additional national procedures, requirements and marks in spite of the CPR suggests that divergence is not an unlikely scenario, the difference being that such divergence would be legally acceptable as long as it is compatible with TFEU rules on free movement of goods and the principle of mutual recognition. It is not excluded that intra-EU trade would decrease.

Likely social impacts

The legal regime under which construction products are marketed and/or used does not have direct social impacts. Hence no direct social impacts are expected from the revision either.

Nevertheless, indirect social impacts are likely to result from the above economic impacts: increased costs for industry may lead to less efficient allocation of resources; more benefits for industry can be expected to lead to more jobs. The construction industry has a multiplier effect on the manufacturing and services' sectors supplying inputs to its activities. The output multiplier effect of the construction industry is estimated to be around 2.3, meaning that a €1 increase in the construction activity results in a total increase in outputs of products and services of €2.3 (of which €1 is the increase in the construction activity and €1.3 the additional output of construction products/materials and services)¹³.

Improving the performance of the construction products sector will therefore likely improve the performance of other economic sectors as well as increase the quality of life for Europeans.

¹³ The European Construction value chain: performance, challenges and role in the GVC, Vienna Institute for International economic studies in collaboration with Ecorys and WIFO (Austrian Institute of Economic research), August 2016.

Likely environmental impacts
<p>The aforementioned Communication Clean Energy for all Europeans identifies the energy performance of building as a main means to foster and accelerate the greening of energy, as 40% of the energy in the EU is used in buildings and 75% of existing buildings in the EU are energy inefficient. Moreover, the construction sector plays a role in the environmental performance of buildings and infrastructure throughout their lifecycle. Improving legislative coherence (e.g. of related internal market and energy efficiency legislation) where needed and improving the functioning of the currently still fragmented market for construction products should reinforce the enabling role of the construction sector. Including sustainability considerations more clearly in the objectives and the mechanisms of the CPR could make it easier to facilitate the transition to a more innovative and sustainable European construction sector.</p> <p>Hence, benefits to the environment can be expected to result from Option II.</p>
Likely impacts on fundamental rights
No impacts on fundamental rights are expected.
Likely impacts on simplification and/or administrative burden
<p>Options I and II foresee (better uptake of) simplification provisions in line with the "Think Small First" principle as an integral part of their approach, although the ability of Option I to tackle simplification and/or administrative burden is more limited, especially considering the prevalence of additional national procedures, requirements and marks in some Member States leading to more testing etc. than necessary.</p> <p>Option I, which implies legislative stability, would avoid the additional administrative burden which under Options II and III would stem from having to become acquainted with, and adapt to, new legislation and requirements.</p> <p>Improving coherence between construction products legislation and energy efficiency/Ecodesign legislation, cf. Option II, would contribute to simplification and reduction of administrative burden as well.</p> <p>Under Option III, the return to, basically, the pre-CPD situation may well lead to additional administrative burdens at Member State level, depending on the degree of regulatory divergence that would result. Standardisation and technical assessment work at EU level would lose its core relevance and this risks to trigger a need for at least standardisation work to be ensured at Member State level, through national standardisation organisations, which would not be able to benefit from the economies of scale and burden sharing inherent in the EU level standardisation work. The resulting demands on stakeholders to participate in the standardisation work, possibly in several Member States at the same time, would lead to administrative burdens for those stakeholders. To note also that operators would need to consider purchase of standards in all Member States where they wish to market their products, instead of being able to purchase one EU level standard covering 28 Member States. Moreover, it should be decided at Member State level whether to maintain bodies of the Notified Body- or TAB-type and a structure and criteria for nominating and monitoring them would have to be set up at national level.</p>
D. Data Collection and Better Regulation Instruments
Impact assessment
A back-to-back evaluation and impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision.
Data collection
<p>Several Commission reports and studies are already available or are under preparation (see in Annex).</p> <p>The retrospective evaluation will assess to what extent the CPR has delivered against its objectives and in how far it has contributed to the reduction of obstacles to the internal market for construction products generally given its current scope. Specifically it shall evaluate the relevance (whether objectives are still meeting today's needs), effectiveness (whether objectives have been achieved), efficiency (an assessment of costs, benefits and simplification potential, coherence (with both internal and external instruments to the EU) and EU added value of the CPR by providing an informed answer to a series of evaluation questions, and considering the needs of the constituency, the main objectives, the main features of the CPR, its actors and the stakeholder groups. It will also assess to the extent possible any significant economic, environmental and social impacts the CPR may have had over the period evaluated. The back-to-back evaluation will cover the 28 Member States and the time period since entry into force of the Regulation (April 2011), focusing especially on the period starting 1 July 2013, when it started applying in full. Delegated and implementing acts adopted so far are included in the scope.</p> <p>This retrospective exercise will be combined with a forward-looking impact assessment analysing and assessing the potential impacts of the different policy options (presented in sections B and C) and covering the necessary elements of such an exercise.</p> <p>The exercise will also take into account relevant outcomes of ongoing consultation process launched as a follow-up to the Implementation Report (Technical platforms with relevant stakeholders, hearing in the European</p>

Parliament on 31 January 2017) as well as other parallel exercises (Joint Initiative on Standardisation, Initiative "Internal Market for Goods – Enforcement and Compliance", Initiative "Achieving more and better mutual recognition for the single market for goods", Single Digital Gateway). The assessment will also take into consideration the REFIT Platform opinion as well as the outcome of the Fitness Check of the Construction Sector which is nearing completion.

Consultation strategy

Stakeholders, many of whom are SMEs with limited resources, have already been consulted in the framework of previous reports and studies as well as the Fitness Check. Therefore launching a single Open Public Consultation for the evaluation and for the impact assessment seems to be the most efficient way to carry out further consultations. More generally, the whole exercise is expected to make full use of the evidence already available to identify any further data collection needs and to target further consultation of stakeholders.

The main target of the consultation activities will be industry, in particular SMEs, i.e. manufacturers of construction products, construction contractors, providers of construction-related services (such as architectural and engineering activities), industry associations, public authorities, standardisation organisations, technical assessment, testing and verifying bodies, as well as potentially environmental NGOs, consumer associations, trade unions, consumers, workers and citizens.

The following elements for a consultation strategy are envisaged:

- a 12-week internet-based Open Public Consultation. It will be announced on the Commission's consultations website: https://ec.europa.eu/info/consultations_en;
- an appropriate targeted consultation of main stakeholders, to be further defined, for the purposes of the envisaged evaluation and impact assessment (i.e. aimed at answering the evaluation questions and providing evidence for assessing the impacts of future potential options);
- validation of the preliminary findings of the evaluation and impact assessment study by relevant stakeholders (in a dedicated Technical platform meeting).

The definitive consultation strategy will be defined more precisely at a later stage in line with the Better Regulation guidelines.

Will an Implementation plan be established?

An implementation plan is expected to be established, assuming that the results of the back-to-back evaluation and impact assessment so warrant.

Annex: Commission reports and studies already available or under preparation

Available Commission reports:

- Dangerous substances - Report from the Commission to the European Parliament and the Council as foreseen in Article 67(1) of Regulation (EU) 305/2011, 07.08.2014
- Delegated acts - Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 on the harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, 16.09.2015
- Implementation of the CPR, Report from the Commission to the European Parliament and to the Council, 07.07.2016

Available studies:

- Study on the Economic Impacts of the Construction Products Regulation (2016)
- Supporting study for the evaluation of the relevance of EOTA tasks (2016)
- Analysis of the implementation of the Construction Products Regulation: main report, annexes 1 to 4, annex 5: topical reports (2015)
- Study on EU legislation on internal market and energy efficiency legislation: executive summary, main report, annexes (2016)
- Study on EU legislation on environment and health & safety: executive summary, main report, annexes (2016)
- Guidelines for improving consistency across Product Contact Points for Construction and Product Contact Points: Screening report, survey analysis and guidelines for websites (2016)

On-going and planned reports and studies:

- On-going study on cross-border trade in construction products
- Upcoming survey on information needs of construction products' users
- Future Commission staff working document on the Fitness Check of the Construction Sector
- Upcoming report on the relevance of EOTA tasks