



2020/2028(INI)

9.9.2020

DRAFT REPORT

on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation)
(2020/2028(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Christian Doleschal

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

On 18 March 2020, the Rapporteur was given the task of drafting a report on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products in response to the Commission's plans to revise the Construction Products Regulation (CPR).

Since his appointment, the Rapporteur has gathered information and based his research, among others, on the following sources:

- CPR Revision Technical Stakeholders Conference organised by the European Commission, DG GROW on 07 September 2020;
- Danish Technological Institute (DTI), Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission), Global Data Collection Company (GDCC), Joint Institute for Innovation Policy (JIIP), VVA Economics & Policy “Supporting study for the review of the Construction Products Regulation. Impact assessment: final report”, 2018¹;
- Supporting study for the impact assessment for the review of the construction products regulation, final report to be published end 2020, Copenhagen Economics, Danish Technological Institute (DTI) and EPRD;
- European Commission “Construction Products Regulation (EU) No 305/2011 - Analysis of production and trade data on construction products”, 2019²;

Construction Products Regulation - introduction

Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (Construction Products Regulation/CPR) was adopted in 2011 and aims to ensure the free movement of construction products on the internal market.

EU legislation on construction products does not follow the so-called *New Approach for Technical Harmonisation*, which is widely applied to internal market legislation for products. The particularity of the rules on construction products results from their characteristic as intermediate products and from the fact that the rules on construction works are national competence. In consequence, the CPR does not lay down product requirements. The CPR rather contains a set of harmonised rules for assessing the performance of construction products in relation to the principal characteristics of those products (e.g. fire performance, sound insulation). However, Member States maintain their competences with regard to the safety, environmental and energy requirements that apply to buildings and civil engineering works.

In Europe, 18 million people are employed in the construction sector, a sector that contributes 9% to GDP.³ A revision of the CPR must in particular take into account the particularities of the sector. The deadlock in the creation and adaptation of harmonised standards for

¹ <https://op.europa.eu/en/publication-detail/-/publication/57fd5ffa-ed41-11e8-b690-01aa75ed71a1/language-en>

² <https://ec.europa.eu/docsroom/documents/34621>

³ European Commission, The European construction sector - A global partner, 2016.

construction products, which can be attributed in part to formal requirements (see the ECJ judgement C-613/14 - “James Elliot”), has brought to a halt the further development of harmonised standards. The Rapporteur considers this a serious threat to the functioning of the internal market for construction products. Both short-term solutions and future-oriented actions are needed to relaunch the deadlocked standardisation process. The Rapporteur welcomes the Commission’s evaluation of the CPR and the ongoing review aimed at removing obstacles to the internal market for construction products.

Development and enhancement of the internal market for construction products

While the CPR ensures the free movement of construction products within the European Union, the interests and needs of Member States should be considered. The CPR sets harmonised rules for the CE marking of construction products and defines how their performance, in relation to their main characteristics, should be declared. These requirements are necessary to ensure that reliable information is available to professionals, authorities and consumers, and to enable manufacturers in different Member States to compare construction products.

The Rapporteur stresses that the concept of a common technical language should be maintained as a link between the requirements of the Member States and the Declaration of Performance specified in the Construction Products Regulation. The Rapporteur acknowledges the important role of the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) as competent bodies for the development of harmonised standards. The European Organisation for Technical Assessment (EOTA) and the Technical Assessment Bodies (TABs) should remain responsible for preparing European Assessment Documents.

The Rapporteur is concerned that out of 444 existing harmonised standards for construction products only 12 have been published in the last four years. This gridlock is connected to the time required to create new standards as well as the revision backlog relating to existing standards. Speeding up this process and improving the quality of existing European harmonised standards is of the utmost importance. Manufacturers of construction products and end-users require both legal certainty and long-term planning security.

CE marking and Declaration of Performance (DoP)

In practice, the CE marking for construction products is often misunderstood as a quality mark. However, the CE marking refers to product performance and does not indicate conformity with specific product requirements, such as safety. The Rapporteur therefore advocates for solutions that provide the end user with precise and clear information on the safety of construction products and their conformity with national requirements on the safety of buildings. End-users, SMEs and professional users should be able to have all relevant product information in order to ensure that the product complies with Member States’ building requirements. The Declaration of Performance must always include a specific and clear intended use.

The Rapporteur thus calls on the Commission to consider whether it is possible to include

minimum product requirements in the CPR. These should ensure the health and safety of citizens and the protection of the environment. Minimum product requirements may also be useful in counteracting possible fragmentation of the internal market.

Embracing IT-based methods

The volume of product information that has to be communicated to users in accordance with the CPR will in all likelihood increase, especially in the light of sustainability and environmental requirements. Therefore, it is to be expected that the product information can no longer be fully reflected in the CE marking on the product. It is vital that builders and other users of construction products are able to easily and reliably ascertain whether a construction product in a specific Member State is authorized for the intended use. In this way, digital methods are strongly recommended. They would allow for a simple comparison of Member State requirements and the information provided by the Declaration of Performance. Experience has shown furthermore that declaring the same information twice, once in the Declaration of Performance and then a second time via the CE marking is not necessary. As an alternative route, IT-based methods should be used in order to render the communication between actors within the supply chain more efficient. In this way, the Rapporteur views concepts and methods such as Blockchain and Smart DOP⁴ as indispensable developments that should be incorporated into a revised CPR. In order to ensure a uniform implementation of such digital solutions, the revised CPR should envisage an appropriate framework to be implemented by the Member States. National Product Contact Points could be entrusted with digitally providing information on the national requirements for construction products for specific uses.

Strengthening market surveillance

The market surveillance provisions of the revised CPR should take the specificities of the construction sector into account.

In particular SMEs have deplored the current state of market surveillance methods as insufficient and ineffective. The absence of efficient market surveillance undermines confidence in Union legislation and in the CE marking. Additionally, it fails to create a level playing field for economic operators. Weak market surveillance could also lead to a rise in construction products that do not meet their declared performance, thereby endangering end-users and consumers.

Therefore, the Rapporteur consequently calls on the Member States to fully implement Regulation (EU) 2019/1020 on market surveillance.⁵

Market surveillance authorities must be able to verify whether the Declaration of Performance

⁴ Smart Declaration of Performance (DoP) solutions allowing users of construction products to easily compare the requirements of a Member State with the product information according to the Declaration of Performance. These solutions, however, require that the existing use-specific requirements for construction products can be digitally reconciled by Member States with an electronic declaration of performance. The digital provision of requirements for construction products in specific use situations could be carried out by the national Product Contact Points.

⁵ OJ 169, 25.6.2019, p.1

of a product meets the Member State requirements for the intended use. Furthermore, the competencies of market surveillance authorities must also be effective and implementable in cases where the product is supplied directly to the user.

Market surveillance authorities should additionally focus on online sales in the construction products sector: there is a need to ensure effective market surveillance of construction products sold online, in particular for construction products purchased from third countries, in order to ensure not only product safety but also fair competition on the internal market.

Scope and relationship with other EU laws

In addition to the CPR, other harmonized areas of secondary EU law, such as the Machinery Directive, the Energy Labelling Framework Regulation⁶, the Waste Framework Directive⁷ and the Ecodesign Directive, also affect construction products. Therefore, it is important to clarify the scope, the limits and the relationship between the CPR and the relevant secondary EU laws. Conflict-of-law rules should be established in cases of overlap with CPR in order to ensure transparency and legal certainty.

Sustainability of construction products

The rapporteur welcomes the Commission's objective to make the construction sector more sustainable by addressing the sustainability performance of construction products in the revision of the CPR, as announced in the Circular Economy Action Plan. Nevertheless, the inclusion of the objectives of sustainable development into the new CPR/revised CPR should not lead to an increase in the prices of construction products. It should be assessed how sustainability criteria could be addressed in the possible review of the CPR.

Involvement of stakeholders

The involvement of stakeholders in the consultation and evaluation process of the CPR should be guaranteed in order to ensure a level playing field between economic operators. In addition, the needs and costs for enterprises, in particular SMEs, should be taken into account in the evaluation of the CPR.

Rapporteur's Position

Especially in the light of the COVID-19 pandemic and its economic consequences, it is important not to impose unnecessary unjustified bureaucratic obstacles on the construction sector. The effects of the COVID-19 pandemic on the construction sector are evident from supply shortages in building materials and the absence of workers due to quarantine obligations. Economic operators, municipalities and private households are reluctant to make new investments, which negatively impacts the construction sector. Stakeholders require flexible, clear and easy-to-implement solutions in order to work towards economic recovery.

⁶ OJ L 198, 28.7.2017, p.1

⁷ OJ L 312, 22.11.2008, p.2

In the event of a revision of the CPR, this revision should take into account the needs of the industry and the specificities of the construction sector, in particular SMEs. Legal clarity must be provided when revising the existing CPR-related standards. This is particularly important during any transition period during which new standards are developed. In this respect, regulatory gaps are to be avoided, transparency and quality requirements must be met and all interested parties, including public authorities and SMEs, must be involved.

With this in mind, the rapporteur recommends: (I) the further development of the internal market for construction products; (II) the optimisation of the CE marking and the Declaration of Performance; (III) the strengthening of market surveillance; (IV) clear guidance in case of overlap of specific product legislation with the CPR; and (V) the use of digital tools.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation) (2020/2028(INI))

The European Parliament,

- having regard to 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 products¹,
- having regard to 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 Council²,
- having regard to the Commission evaluation of 24 October 2019 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products (SWD(2019)1770),
- having regard to the Commission report of 24 October 2019 on the outcome of the evaluation of the relevance of the tasks set out in Article 31(4) that receive Union financing pursuant to Article 34(2) of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products (COM(2019)0800),
- having regard to Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011³,
- having regard to 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 339/93⁴,
- having regard to 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, and repealing Council Decision 93/465/EEC⁵,

¹ OJ L 88, 4.4.2011, p. 5.

² OJ L 316, 14.11.2012, p. 12.

³ OJ L 169, 25.6.2019, p. 1.

⁴ OJ L 218, 13.8.2008, p. 30.

⁵ OJ L 218, 13.8.2008, p. 82.

- having regard to Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008⁶,
 - having regard to its resolution of 21 October 2010 on the future of European standardisation⁷,
 - having regard to the Commission communication of 30 November 2016 on clean energy for all Europeans (COM(2016)0860),
 - having regard to the Commission communication of 11 March 2020 on a new Circular Economy Action Plan for a cleaner and more competitive Europe (COM(2020)0098),
 - having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A9-0000/2020),
- A. whereas the construction industry directly provides 18 million jobs in Europe and generates 9 % of GDP⁸;
 - B. whereas the purpose of the Construction Products Regulation (CPR) is to remove technical barriers to trade in construction products in order to enhance their free movement in the internal market;
 - C. whereas the slow adoption and non-citation of harmonised standards is problematic, as the adoption process is not keeping pace with developments in the sector, creating uncertainty for businesses;
 - D. whereas CPR compliance costs represent 0.6 % to 1.1 % of the construction sector's turnover, borne mainly by manufacturers, which can be very burdensome for SMEs;
1. Welcomes the Commission's CPR evaluation and ongoing review, which seek to remove remaining barriers in the internal market for construction products;
 2. Points to the specific nature of the CPR, which differs from the general principles of the new legislative framework (NLF), chiefly because it does not harmonise any specific requirements or minimum safety levels for construction products, but instead defines a common technical language for measuring the performance of construction products over their essential characteristics;
 3. Highlights that the CPR ensures the free circulation of construction products within the Union, while Member States retain control of the rules on construction works; points out that building regulations set at Member State level are generally influenced by the performance of the construction products which are integrated in the works;

⁶ OJ L 91, 29.3.2019, p. 1.

⁷ OJ C 70 E, 8.3.2012, p. 56.

⁸ European Commission, 'The European construction sector – A global partner', 2016.

Common technical language, including standards

4. Notes that the common technical language introduced by the CPR is defined by harmonised European standards, and by European Assessment Documents (EADs) for products not – or not fully – covered by harmonised standards;
5. Points out that unlike other NLF legislation, the use of harmonised standards under the CPR is mandatory, which requires an effective system of adoption to address the needs of industry, keep up with technological developments and ensure legal clarity;
6. Is concerned by the fact that of the 444 existing harmonised standards for construction products, only 12 were issued after the adoption of the CPR; believes that the time required for the development and citation of standards and the backlog for revising and updating existing standards (*CPR acquis*) are among the most significant problems associated with the implementation of the CPR;
7. Urgently calls on the Commission to find a quick and viable solution to improve the standardisation processes and remove the backlog of non-cited standards; supports, in this regard, a combination of short-term measures to tackle the backlog alongside long-term measures to improve the process of defining the common technical language;
8. Points to the fact that standardisation issues need to be addressed in all steps of the preparation process; calls for transparency and openness from all parties involved; highlights the need to ensure the high quality of the mandates issued by the Commission and the necessity to provide clear guidelines for the standardisation bodies; suggests establishing clearly defined timeframes for the Commission to assess the prepared standards and clear deadlines for all parties to ensure further revision if a mandate or the CPR is found not to have been adhered to; considers it important to define the scope of the standards more precisely so that manufacturers can have clear guidance when declaring that their products fall within the scope;
9. Believes that owing to the mandatory nature of standards and the fact that they are considered part of Union legislation, the texts of issued harmonised standards should be available in all Union languages; highlights the need to ensure high-quality translation and involve national standardisation bodies in the translation process; calls on the Commission to further support and simplify the financial arrangements for the translation of harmonised standards;
10. Is concerned by the fact that while the alternative route for products not or not fully covered by harmonised standards was included in the CPR to allow innovative products to enter the market, the vast majority of EADs do not concern innovative products;
11. Believes, in consequence, that the current underperformance of the standardisation system is leading to an increasing use of the European Organisation for Technical Assessment (EOTA) route as an alternative means of standardisation;
12. Points to the lengthiness and high cost of the EOTA route, which is not SME-friendly and mostly only affordable to big market players;

CE marking and Declaration of Performance (DoP)

13. Is concerned by the fact that since the CE marking under the CPR only refers to product performance and not conformity with specific product requirements, such a difference in approach from other NLF legislation could create confusion as regards the CE marking and diminish its value; points, in this regard, to the overlaps in the information required by the CE marking and the Declaration of Performance (DoP); believes that this duplication creates additional unnecessary administrative burdens and costs for businesses;
14. Calls on the Commission to consider the possibility of including in the CPR minimum product requirements aimed at ensuring health and safety and protecting the environment and other public interests, thereby following the approach of NLF legislation, which has proven to be effective;
15. Emphasises the importance of fully harnessing digital technologies, which could allow for clear, transparent and reliable information to be provided to economic operators and end-users and enable market surveillance authorities to carry out their activities more effectively; calls on the Commission to evaluate the use of such technologies;
16. Believes that digital solutions such as a ‘Smart DoP’ could be used to allow economic operators to quickly assess and compare requirements for construction works with the information provided in the DoP;

Market surveillance

17. Is concerned by the fact that market surveillance for construction products is seen as insufficient and ineffective by the industry; emphasises that such a situation undermines the level playing field for economic operators who comply with the legislation, to the benefit of rogue traders, who do not; points out that weak and inconsistent market surveillance could lead to an increase of products that do not meet their declared performance, putting end-users at risk;
18. Calls on the Member States to fully implement Regulation (EU) 2019/1020, which aims to strengthen the market surveillance of products covered by Union harmonisation legislation, including the CPR;
19. Calls on the Commission to adopt implementing acts under Regulation (EU) 2019/1020 in order to determine the uniform conditions of checks, criteria for the determination of the frequency of checks and the amount of samples to be checked in relation to certain products or categories of products, and to lay down benchmarks and techniques for checks on harmonised products, including construction products;
20. Considers it necessary for national market surveillance authorities responsible for construction products to cooperate closely with national building control authorities to ensure a nuanced approach in assessing the conformity of construction products used in construction works with the declared performance or intended use, as well as ensure their compliance with building regulations, thereby guaranteeing the safety and security of end-users;
21. Points to the increase in online sales in the construction sector; highlights the need to ensure the effective market surveillance of construction products sold online, especially those purchased from non-EU economic operators;

Sustainability in construction products

22. Highlights the overall need for a transition to a sustainable and more circular economy in the sourcing and manufacturing of construction products and in their use in construction works;
23. Welcomes, in this regard, the Commission's objective to make the construction sector more sustainable by addressing the sustainability performance of construction products in the revision of the CPR, as announced in the Circular Economy Action Plan;
24. Calls on the Commission to explore the relevance of incorporating certain requirements such as sustainability criteria into the harmonised standards under the CPR, so as to provide manufacturers with one single framework for the testing of products; stresses the importance of a proper assessment of the product categories to which such requirements would be relevant; highlights that such incorporation should not lead to an increase in the prices of construction products;

Specific recommendations on the review of the CPR

25. Highlights the need to ensure the proper involvement of all stakeholders in the consultation and evaluation process; highlights the need for a level playing field in construction products legislation for all businesses, especially SMEs;
26. Calls on the Commission to clarify the relationship of the CPR to related internal market legislation, such as the Ecodesign Directive⁹, the Energy Labelling Regulation¹⁰, the Waste Framework Directive¹¹ and the Drinking Water Directive¹², and, where necessary, to streamline the relevant provisions in order to ensure legal clarity for businesses;
27. Emphasises that any revision of the CPR should be in line with the principles and objectives of Regulation (EU) No 1025/2012 as regards the preparation of harmonised standards in order to ensure their transparency and quality, and should ensure the appropriate involvement of all interested parties;
28. Stresses the need to ensure legal clarity for a transitional period as regards any revision of the CPR and the review of the CPR *acquis*, in order to avoid a legal vacuum;
29. Is concerned that any revision of the CPR and, in particular, the review of the CPR *acquis* will take significant time, while manufacturers need immediate solutions to overcome the legal uncertainty resulting from the lack of updated harmonised standards; calls on the Commission to address this issue prior to any revision of the CPR and in the review of the CPR *acquis*;

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⁹ OJ L 285, 31.10.2009, p. 10.

¹⁰ OJ L 198, 28.7.2017, p. 1.

¹¹ OJ L 312, 22.11.2008, p. 3.

¹² OJ L 330, 5.12.1998, p. 32.

30. Instructs its President to forward this resolution to the Council, the Commission and the Member States.