



Impact Assessment of the European Commission's proposed Construction Products Regulation



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Online via the Communities and Local Government website: www.communities.gov.uk

August 2009

Product Code: 09BD06002

ISBN 978-1-4098-1611-9

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Summary: Intervention and options		
Department/Agency: Communities & Local Government	Title: Impact Assessment of European Commission's proposed Construction Products Regulation	
Stage: Final	Version: 1	Date: 27 January 2009
Related Publications: European Commission's 1989 Construction Products Directive and proposed replacement Construction Products Regulation		

Available to view or download at:

<http://www.europa.eu>

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What is the problem under consideration? Why is government intervention necessary?

Communities and Local Government is leading for the UK in negotiations on the European Commission's proposed Construction Products Regulation (CPR). The aims of the CPR are to improve the internal market in goods and specifically to address some perceived problems with the 1989 Construction Products Directive (CPD) and the ways in which it has been implemented.

What are the policy objectives and the intended effects?

The intended effects of the Commission's proposal include:

- clarifying that CE marking is mandatory for construction products within the scope of the Regulation to be placed on the market, thereby breaking down barriers to trade and improving the internal market for construction products
- improving the overall credibility of the system
- simplifying procedures for micro-enterprises and
- introducing a new basic works requirement on the sustainable use of natural resources.

What policy options have been considered? Please justify any preferred option.

The CPR is subject to co-decision between the EU Commission, the Council and the European Parliament, and negotiations are timetabled to conclude in spring 2009. For the consultation stage impact assessment we considered resisting the CPR proposals as Option A. We have now concluded that this is not an option, as it is almost certain that even if the UK resisted the proposals, the Regulation would be passed anyway, and apply into our law. The final impact assessment therefore assesses the impacts of the main proposal in the CPR (Option B) against the baseline of the status quo in the UK.

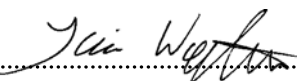
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

If adopted by spring 2009, the main provisions of the CPR will come into force from July 2011. Communities and Local Government will review implementation in the UK three years after this date.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

..........

Date: 4 February 2009

Summary: Analysis and evidence

Policy Option: B

Description: Accept CPR proposals

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Estimated marginal cost for UK manufacturers not voluntarily CE marking by 2011. One-off costs estimated in range £33m–£46.2m; annual costs in range £6m–£8.4m. £0.2m one off cost for enforcement authority training.
	One-off (Transition)	Yrs	
	£ 39.8m	10	
	Average Annual Cost (excluding one-off)		
£ 7.2m		Total Cost (PV)	£ 80m
<p>Other key non-monetised costs by 'main affected groups' Manufacturers of bespoke products subject to building regulation on fire safety will face much higher than average costs for testing. Additional responsibilities for importers and distributors.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' It is not possible to monetise benefits.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
£ 0		Total Benefit (PV)	£
<p>Other key non-monetised benefits by 'main affected groups' Benefits from greater clarity on requirements for manufacturers, and standardised performance information for product users. Possible benefits to enforcement agencies in market surveillance, and mandatory CE marking may lead to more reliable information on imported products.</p>			

Key Assumptions/Sensitivities/Risks Eighty-six per cent of UK construction product manufacturing market (by value of sales) has potential for CE marking; one-off/annual costs to CE mark all such products are £66m/£12m; 50–70% are forecast to be CE marking voluntarily by 2011.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £–67m to £–94m	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	July 2011			
Which organisation(s) will enforce the policy?	Various			
What is the total annual cost of enforcement for these organisations?	£ 0 annual cost			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£–£) per organisation (excluding one-off)	Micro 700	Small 700	Medium 700	Large 700
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase – Decrease)
Increase of	£	Decrease of	£
Net Impact			£

Key: **Annual costs and benefits: Constant Prices**

(Net) Present Value

Evidence Base (for summary sheets)

Background

1. The 1989 Construction Products Directive (CPD) envisaged a European-wide approach to assessing and labelling of construction products. It is an internal market directive, and the aim is to overcome the technical barriers to trade created where different countries in Europe have different standards, testing and labelling approaches for the same products. Neither the Directive nor the new Regulation (CPR) seek to direct Member States in how they set building regulations or levels of product performance. The aim is simply to create a free market for products.
2. The Directive introduced the concept of CE marking for construction products used in building or civil engineering works, for example cement, reinforcing steel, doors and windows. CE marking is a "passport" enabling a product to be placed legally on the market in any Member State. CE marking indicates the performance characteristics of a product for the information of purchasers or users, but does not guarantee that the product is suitable for a particular purpose. Standards specify the level of third party involvement required for a product: high risk products require more onerous testing and certification by an established ('Notified') body, while manufacturers can self-certify some lower risk products.
3. The Directive was implemented into UK law with the 1991 Construction Products Regulations. The UK interpretation was and is that the Directive does not make CE marking mandatory in order for products to be placed on the market. Our Regulations do not do so either. The Commission considers that this is a misinterpretation of the Directive. However, they do acknowledge the Directive's ambiguity, and the fact that CE marking is not mandatory here and in three other Member States (Finland, Ireland and Sweden) is one of the stated reasons for revision of the Directive into the new Regulation.
4. England and Wales Building Regulations are functional, and although the Approved Documents refer to standards, the only specific requirement for products is that they are fit for purpose in use (Regulation 7). The CE marking is listed as one way of demonstrating this fitness for purpose, but is not the only way. Scotland and Northern Ireland have similar provisions.

Proposed Construction Products Regulation

5. The main aims of the proposed CPR (<http://ec.europa.eu/enterprise/construction/cpdrevision/CPRproposal-com2008-311.pdf>) are to improve the internal market in goods and address some perceived problems with the current Directive and the ways in which it has been implemented, but

the intention is not to make drastic changes to the practical process of CE marking or unwind the work done to develop harmonised product standards since 1989.

6. The main policy implications of the CPR and our initial views (summer 2008) were set out in the consultation stage impact assessment and consultation document. The consultation ran from 18 August to 10 November. Fifty-two responses were received from a range of bodies, including small and large manufacturers, trade associations, notified bodies, regulatory bodies and experts.
7. We have also consulted with other Government departments, of whom BERR, DIUS, Defra and the Highways Agency have the main policy interests.
8. CE marking is enforced by local authority Trading Standards departments, and we have discussed the proposals with LACORS (the Local Authorities Coordinators of Regulatory Services). Both LACORS and the Trading Standards Institute responded to the consultation.
9. The main issues highlighted in the consultation stage impact assessment were:
 - **the introduction of mandatory CE marking:** for products placed on the UK market
 - **simplified process of CE marking, particularly for small businesses:** to answer accusations that the process of CE marking is a burden for these businesses
 - **greater credibility for CE marking:** including criteria for certification bodies and increasing responsibilities on the supply chain to improve product traceability
 - **a new basic works requirement on the sustainable use of natural resources:** meaning that (where national regulation applies) the life cycle sustainability of products (including recyclability and use of sustainable resources) could be included in standards and on the CE marking

OPTIONS CONSIDERED BY EUROPEAN COMMISSION

10. The Commission considered three options:
 - **Option 1: No EU action**, i.e. no change
 - **Option 2: No legislation**, i.e. repeal of the CPD without a substitute and reversion to mutual recognition
 - **Option 3: Revision of the CPD**
11. They concluded that Option 3 was the only option that satisfactorily addresses the perceived problems with the current CPD: the lack of clarity on the meaning of key concepts, in particular on the meaning of CE marking and whether or not it is obligatory to CE mark products in scope; weaknesses in implementation, insufficient acceptance of CE marking and proliferation

of national marks affecting the overall credibility of the system; and complex and burdensome requirements, especially for micro-enterprises. Analysis underpinning the preference for this option is contained in a study by a UK-based organisation, Risk & Policy Analysis Ltd (RPA), for the European Commission *The policy options for revision of Council Directive 89/106/EEC*, May 2007 (http://ec.europa.eu/enterprise/construction/cpdrevision/study_policy_revision_directive.pdf).

OPTIONS CONSIDERED BY CLG

Do nothing: Resist CPR proposals

12. For the consultation stage impact assessment we assumed that the 'do nothing' baseline could be achieved by the UK (together with other Member States) resisting the CPR proposals.
13. The CPR is subject to the co-decision process in Europe. This means that the final adopted text will be the outcome of negotiations between the Commission (who drafted the original text), the Council of Ministers (representing the 27 Member States) and the European Parliament.
14. In light of the progress of the negotiations, we have now concluded that this is not a realistic option: not because we could not resist the proposals if we felt they were not advantageous for the UK, but because there is no evidence of a consensus emerging that the CPR should be blocked (although there is a distinct possibility that the negotiations could run out of time before the European Parliament elections in June).
15. Once adopted the Regulation will apply directly in our law, so (unlike a Directive) refusing to implement it is not an option.
16. This final impact assessment no longer includes the option to resist the proposals: doing so solo would not result in 'no change' for the UK and is not feasible. However, whilst not regarded as an option *per se* the 'no change' scenario (i.e. retaining voluntary CE marking) is still the baseline against which we have assessed the likely costs and benefits of the CPR for the UK.

Impact of the CPR proposals (summarised as Option B in summary sheet)

17. As stated above, whether or not we in the UK accept the CPR, it is more or less certain that the CPR will be adopted in some form (unless outside factors such as the tight time limits prevent it).
18. Negotiations on the Regulation will continue until March/April 2009, and only then will we have a firm view on the scope of the CPR and whether/when the new requirements will apply.
19. The main cost of the CPR is the introduction of mandatory CE marking. A number of options for the scope of this requirement have been proposed.

We will strongly resist some of these, as they could result in extra unjustified cost for UK businesses. The main options are:

- a. **the CPR as presently drafted**: this suggests that a product which is placed on a market where regulation applies to it, **and** for which there is a harmonised standard must be CE marked. This is our preferred option, and the one which we consider to be the least onerous on UK businesses and most similar to the status quo for those already CE marking
 - b. **amendments from the outgoing French Presidency**: these would make it obligatory for products to be marked if a standard exists and any regulation applies anywhere in the Community (i.e. if regulation applies in Germany but not the UK, the product would still have to be marked in the UK). We oppose this, but it may be possible to accept if manufacturers can continue to put 'No Performance Determined' against those characteristics which they do not wish to test for. The Commission is strongly opposed to this option, which reduces its chance of success significantly
 - c. **draft amendments from the European Parliament**: these would establish a system of European Essential Characteristics – that is a small number of characteristics that would need to be declared on any CE marked product, regardless of what regulation applies anywhere in the Community. We are strongly opposed to this, and this would add significant cost for manufacturers to carry out potentially irrelevant tests. 'No Performance Determined' would not be an option for these characteristics. As above, the Commission is strongly opposed to these amendments
 - d. the **incoming Czech Presidency** has recently suggested some wording which seems to have the same intended effect as the original Commission proposal, although the drafting is unclear
20. With any of these options, the 'No Performance Determined' option is an important issue. This allows manufacturers to include reference to a characteristic but not make any declaration of performance, and is usually used where a few characteristics are not relevant to the intended use. In the extreme, this could be used as a cheaper solution for manufacturers who did not want to test their products at all, creating an 'empty' CE marking, but it would also mean the manufacturer would incur some administrative burden to get a meaningless CE marking, thus get none of the potential benefits.

Costs

FBE report findings

21. The headline findings of the FBE report (which was published with the August 2008 consultation stage impact assessment at <http://www.communities.gov.uk/publications/planningandbuilding/reviewconstructionproducts>) on the costs of CE marking for the UK construction products industry are as follows:

22. Eighty-six per cent of the UK construction product manufacturing market (by value of sales) has the potential for CE marking, i.e. mandated products. The sales value potentially subject to CE marking is £37.4bn p.a.
23. It is believed very approximately that about a third of all mandated construction products currently on the UK market are CE marked voluntarily, and this would rise to about four fifths when all the prospective harmonised standards for mandated products come to the end of their co-existence period, i.e. without introducing compulsory CE marking.
24. The mandated construction products sector, i.e. products potentially subject to CE marking, covers around 18,000 enterprises (93% of total construction sector) with average sales per enterprise of around £2.0m and employing on average 19 staff.
25. The total one off cost for the UK construction products industry to move from 0% to 100% of mandated products being CE marked would be of the order of £66m, with an annual cost of £12m to maintain their CE marking.

Conclusion on overall estimated costs

26. This assessment is based on the assumption that the main principle of the Commission proposal for the scope of CE marking is adopted. Were the other options (including the proposed amendments from the European Parliament) adopted instead, there would be some increase in costs, as these will either bring in manufacturers who would not otherwise be required to CE mark, or increase the number of characteristics against which testing would be needed for some manufacturers already CE marking.
27. Any assessment of the cost of moving to compulsory CE marking at any particular point in time would need to take account of the proportion of mandated products already CE marked on a voluntary basis. Our estimate for the initial impact assessment was that this could be in the range 70–85% (by value of sales by 2011 (the most likely date for mandatory CE marking to be introduced). Consultation responses suggested this was too high although there was no clear indication by how much. We have, however, reflected this view by revising the estimate down to the range of 50 to 70% by 2011.
28. One-off and annual costs per enterprise are estimated as £4,000 and £700 respectively. It is important to note that this is an average figure: the costs will vary between product types, and even within product types, depending on whether the product is mass produced or part of a short run/individual manufacture. In addition, for some product types/sectors the cost will be higher than this average because of the amount/type of the testing required.
29. Having revised our assessment of the proportion of the market that would be CE marking voluntarily, we now consider that the cost of CE marking would be 30–50% of the total £66m/£12m one-off/annual costs given above for moving from 0% to 100% of mandated construction products manufactured in the UK being CE marked. Our conclusion is therefore that the one-off net additional cost to UK manufacturers of implementing the CPD would

be in the range £33m–£46.2m and the ongoing cost in the range £6m–£8.4m per annum. These are broad order estimates only, given the number of hypotheses on which they are based. Discussion on specific sectors is provided below.

Manufacturers

30. In the consultation stage impact assessment we considered that the additional costs were likely to impact disproportionately on:
- a. **smaller companies** for whom the cost per product type tends to be higher than for larger companies and for whom costs of familiarisation with new legislation and standards will also have a higher impact
 - b. **companies operating within the UK market only** for whom there will be little benefit to compensate for the significant direct costs and management time to CE mark their products
 - c. **companies without a certified factory production control system** who will be faced with significant internal management costs (although under the CPR these may be less onerous than under the CPD)
 - d. **companies not currently faced with heavy competition of imports from developing countries** and not themselves exporting who will see no advantage in CE marking e.g. manufacturers of insulated glazing units, door and windows, and aggregates and
 - e. **companies with little demand for product marking from customers** for some construction products (e.g. certain natural stone products, specialist/small clay brick manufacturers) aesthetic considerations are critical and CE marking of declared values is of little value
31. The consultation responses have affirmed our initial assumptions of who is most likely to bear the costs of mandatory CE marking disproportionately (ie with minimal associated benefits), in particular those in categories (a) (b) and (e) above. In terms of sectors, these responses represented in particular makers of made-to-measure doors or curtain walling and wallcovering manufacturers.
32. The common characteristic of these two sectors is that their products are (in some applications) regulated for fire performance. Tests for fire safety are expensive, in particular those for resistance to fire.

Wallcoverings

33. For domestic wall coverings, resistance to fire is not regulated under the Building Regulations. The internal linings of public/commercial buildings are covered in Part B of the Building Regulations, and in particular in sensitive applications (eg escape routes). Compulsory CE marking, while a potentially significant cost, will only affect those producing wallcoverings for non-domestic buildings.

34. Costs provided by these manufacturers were much higher than the averages quoted in the consultation stage impact assessment, but there was little consensus in the figures provided. The one-off/annual costs quoted in consultation responses ranged from £6000/£2000 to £90,000/£36,000. The individual cost per business will depend on the extent to which their products are used for regulated applications in the UK, which we do not have the information to assess.

Bespoke products (fire doors in particular)

35. Responses from manufacturers of one-off or bespoke fire doors were particularly concerned about the high cost of fire resistance testing on individual products. The range provided for one off costs was between £4,000 and £2m with annual costs of between £1,200 and £6,000. The Architectural and Specialist Door Manufacturers Association (ASDMA) note in their response that it is not possible to put a firm figure on the financial impact, as each company will have a different range of products and a different set of tests necessary to meet the functional regulatory requirements.
36. For the purposes of this impact assessment, we have examined the potential costs of fire resistance testing for individual fire doors. A made-to-measure door (or doorset) is likely to cost between £400 and £1000. Testing for fire resistance may cost in the region of £12,000, possibly more. This obviously makes a single bespoke product or a short run of products unviable. In terms of overall impact on the UK, the ASDMA has fourteen members. If mandatory CE marking means that these companies have to fire test one door in order to sell one door, then this would force them to stop offering bespoke doors to the market: the impact of this will depend on what proportion of their total business this activity represents.
37. **Next steps:** The issue of products made in response to a specific order and whether these should be subject to the CE marking requirement has been the subject of considerable discussion. In negotiations we raised the issue of whether these products are really 'made available on the market' and whether the CE marking is of any benefit to expert specifiers who have commissioned a product to a detailed brief. If they are not 'made available on the market' then in our view even once the CPR is passed, they would not necessarily need to be marked, as manufacturers could demonstrate compliance with the functional requirements of the Building Regulations in different ways (for example assumed performance based on experience of similar products).
38. Legal opinion and the views of the Commission are that these products are 'on the market' and therefore are included in the scope of the Regulation. The Commission believes that it is in the spirit of the CPR that specifiers should have have harmonised performance information available to them before making their choice of manufacturer for the individual product.
39. On the assumption that the implementation of mandatory CE marking is a given, we will continue to explore what this will mean in practice, and how

we can protect the free market aims of the CPR and safety requirements without inflicting avoidable burdens on manufacturers. We will need to explore what other solutions there could be for these businesses, but this may be an issue for implementation discussions. This will need to take account of the restrictions/freedoms in the relevant product standards (eg the extent to which test results from one product can be assumed to cover similar products).

Other costs identified

40. Manufacturers also noted the importance of effective market surveillance in a cost/benefit assessment. It was pointed out that the cost of CE marking incurred by reputable manufacturers will be wasted if there is no enforcement against disreputable manufacturers who either apply fraudulent CE markings or no marking at all.
41. Many consultees commented on the potential impacts of the proposed simplified procedures. These are intended to cut costs for all manufacturers by formalising some arrangements which already exist under the CPD, plus additional exemptions are proposed for micro-enterprises and makers of individual products.
42. In general, responses to this saw benefits to the simplified processes, although these are already custom and practice under the CPD, so these benefits may already have been accrued. However, there were great concerns at the costs of the exemptions offered to small businesses in terms of damage to the CE marking's reputation, potential safety impacts and distortions in the market created by having a 'two-tier' system. Many consultees commented that this could be solved by making all manufacturers eligible to use these routes. The simplified procedures are discussed below in to the small firms' impact test.
43. The consultation stage impact assessment also discussed the EU wide benefits of a level playing field and increased competition. However, for the UK, these need to be considered as costs rather than benefits: without mandatory CE marking, many UK manufacturers are operating at a commercial advantage over foreign manufacturers, and may face increased competition from imports once both UK and foreign manufacturers are required to CE mark.

Other economic operators

Distributors

44. The CPR creates new responsibilities for importers and distributors to check that the correct information was provided with products and to retain such information. Responses to the consultation focused on the impact of this on distributors. There was concern that this will create an administrative burden, and that distributors do not have the resources to meet these obligations, as they are not technical experts, and have no way of knowing whether or not

a product has the right CE marking or whether it conforms to the declared performances.

45. Assessing the impact of these duties will depend a lot on their practical implementation. CLG agrees with the view expressed by manufacturers, regulators and specifiers that it is sensible to make sure that the CE marking paperwork is not lost half way down the supply chain or there is no point in providing it in the first place, and that distributors have an important role to play in ensuring that misleadingly or incorrectly CE marked products are not allowed onto the market. Some manufacturers also suggested that this would be minimal extra burden (provided that it can be merged with the CE marking process) as manufacturers conforming to ISO management standards will already be tracing their products down the supply chain. CLG therefore considers that there are benefits in this, provided it is implemented in a proportionate manner.
46. There was broad support for the inclusion of importers in the requirements.

Market surveillance

47. The consultation responses from market surveillance authorities supported the proposals, noting that there is confusion in industry about whether or not CE marking is required.
48. LACORS assesses the cost of initial training and procedure changes for local authorities at around £1,000 per authority, making an estimated total of £210,000 for the UK). However, they note that the cost involved in investigating the performance of products that were suspected of not meeting their claims would be more significant, if this were necessary. The Environment Agency were strongly in support of mandatory CE marking – see below under Benefits.

Notified bodies

49. Notified bodies and Approvals bodies (who carry out CE marking) considered that the costs and benefits for their businesses would be broadly balanced, with the obvious increase in CE marking business balanced by the potential need for new resources to handle this demand and the potential drop off in other areas of their business such as voluntary quality marking.

Benefits

50. Discussions with industry indicate that there is greater acceptance of the benefits of CE marking than there has been in the past: in the early years of CE marking there were concerns about whether harmonised methods would turn out to be robust, and what the costs of marking would be. However, as standards have been completed and systems have bedded in, the processes have become more familiar and CE marking has become a necessity for the increasing number of companies exporting into the EEA.

51. There is also recognition that as more products enter the UK market from abroad (including from countries outside the EEA) mandatory CE marking would provide some assurance that the performance of products had been assessed in a reliable manner. Some sectors of industry have raised concerns about the increase in poor quality products entering the UK (either unmarked or apparently incorrectly/fraudulently marked) and suggested that this is due to the perception that there is no control on product quality as we do not have mandatory CE marking. It would not be possible to put a figure on the implications of an increase in poor quality products in the UK, but this could result in costs for premature replacement or (in extreme circumstances) threaten the safety of works. It has been suggested that a mandatory marking system would help address the perception of the UK as having minimal control on products, provided that this goes hand in hand with effective market surveillance.
52. There was also support for mandatory marking in order to reduce confusion and simplify the current UK position. However, there were also doubts that the CPR as drafted achieves this, some even doubting that the text does make CE marking mandatory. CLG will continue to address the issues raised and seek to improve the text during the remaining negotiations.
53. For competition benefits for UK businesses, see the Competition impact test below.

Market surveillance authorities

54. Enforcement authorities were in favour of the increased clarity which would be brought by mandatory CE marking. In particular, the Environment Agency see CE marking as potentially allowing them to adopt a lighter touch regulatory regime because of the assurance that all products would have been tested to a consistent methodology. They also considered that this would be only a minimal extra cost for those in the manufacturing sectors they deal with, as many are already carrying out some of the relevant tests.

Specific impact tests

55. We have considered all the specific impacts listed in the checklist below. We have concluded:
56. Legal aid, health impact assessment, race equality, disability equality, gender equality, human rights and rural proofing are not relevant to the CPR.

Environmental impacts

57. The CPR includes a new basic work requirement on the sustainable use of natural resources. This is an enabling provision, in the sense that it means that if the UK regulates for environmental product performance in the future, this could be included in a product CE marking if standards were available.

Because this is an enabling provision, there are no new cost implications for the UK.

58. However, many of the consultation responses were positive about the future potential for cost savings and environmental benefits. The Waste and Resources Action Programme (WRAP) provided the following assessment of potential benefits of greater product sustainability:
- a. *“work by Bioregional Development Group for WRAP identifies the carbon savings from increased recyclability¹ and use of reclaimed building products²*
 - b. *in certain product categories, reclaimed building products are cost competitive³ – and the economics could be expected to improve with increased market awareness and demand*
 - c. *extensive case studies⁴ illustrate the potential for lower carbon dioxide emissions and construction costs through the use of secondary and recycled aggregates*
 - d. *work by BRE for WRAP has shown that, on average, the use of additional secondary/recovered material in the manufacture of cost-competitive construction products reduces overall (life-cycle) environmental impact in every product category for which data were available⁵ and*
 - e. *the industry move towards whole-life costing indicates that durability is increasingly seen as a source of potential cost saving.”*
59. In terms of costs, other responses noted that there are numerous sustainability initiatives going on at EU and UK level, and though they supported this, they cautioned that duplication would mean wasted time and money.
60. The impacts on competition and on small firms are particularly important in the context of the CPR. These are discussed in more detail in the following paragraphs. There is some overlap between discussion in the two sections, as many of the concerns regarding the impact on small businesses also relate to (the reduction of) competition in the market.

Competition

61. The consultation asked how respondents thought that mandatory CE marking would affect competition. The responses follow the findings of the PRC report: larger manufacturers suggested that the affect would be positive, with a consistent way of declaring performance across the EU and a freer market, and small manufacturers/those representing non-EU manufacturers

¹ See http://www.wrap.org.uk/downloads/An_efficiency_metric_for_recyclability.2ec608cd.5141.pdf and http://www.wrap.org.uk/downloads/Recyclability_Efficiency_Metric.39c7d87e.5142.pdf

² See http://rcproducts.wrap.org.uk/construction/reclaimed_building.html

³ See http://rcproducts.wrap.org.uk/construction/reclaimed_building.html

⁴ See http://www.aggregain.org.uk/case_studies/index.html

⁵ See http://www.wrap.org.uk/downloads/Environmental_Impacts_-_abridged_version.99c05327.4497.pdf and http://www.wrap.org.uk/downloads/Environmental_assessment_report_FINAL_011007.cff08f.4492.pdf

were negative, fearing that the cost of testing would reduce product choice and drive small businesses out of the market.

62. The consultation also asked whether respondents would be likely to export their products if they had CE marking. Responses reflected the nature of construction products as intermediate products: while people accepted that their products should be accepted onto another market, the more important issue was whether their product was suitable for that market, and could meet required performance standards. The decision to export was likely to be a conscious one, and involve modification/design of a product for a specific market.
63. Exporting UK manufacturers welcomed the introduction of mandatory CE marking saying it would create a more level playing field across Europe and open up trade opportunities. This welcome was conditional on:
- a. Member States committing to the aims of the CPR by not imposing additional testing, accepting test results from other countries, and following the harmonised standards in specifying national performance requirements, and for other Member States/the Commission to enforce this
 - b. adequate market surveillance to make sure that manufacturers fulfil their CE marking obligations. It was pointed out that this may apply equally to countries which already have mandatory CE marking and those that don't, as in some countries the requirement is not enforced, and
 - c. the comment/caution that national building regulations, which are legitimately set by each Member State, effectively act as barriers to trade, but are outside the CPR's control

Small firms

64. There are estimated to be 19,300 enterprises in the UK construction products industry (92% producing products mandated under the CPD) with a total of 378,000 employees i.e. an average of about 20 employees per enterprise. Hence it is reasonable to infer that the majority of UK construction products enterprises are SMEs with many falling into the European sub-classifications of "micro" (0–9 employees and turnover less than €2m) and "small" (including "micro", with 0–49 employees and turnover less than €10m).
65. The position of SMEs in relation to the CPD is discussed in the FBE report (section 6.3). This is informed by discussions that they have had with a number of SMEs. They note that SMEs operating in the construction products sector are disproportionately affected as compared with larger organisations by:
- costs of involvement in standards making – large manufacturers are better able to afford representation on standards committees
 - costs of demonstrating compliance – test methods are frequently complex and expensive, and the costs of standards documents alone can be substantial for SMEs

- costs for certification procedures – larger manufacturers are more likely to have in place quality marks or ISO9000 certification. As a consequence the marginal costs of CE marking will be less significant. For SMEs a written factory production control procedure is likely to be intrinsically less useful and more of a burden to prepare and maintain
 - poor information flow – SMEs, especially micro-enterprises, are difficult to reach with information on the CPD as they are generally not members of a trade association and work in local markets in situations where customers and local enforcement authorities are perfectly content with their products
66. The Commission claims that the burdens on small and micro enterprises will be mitigated by the introduction of simplified procedures:
- introduction of witness tests i.e. the possibility of performing tests in the manufacturer's production plant in order to avoid moving samples of products to a third party's laboratory (Article 36)
 - introduction of "simplified procedures" where a manufacturer's declaration of performance is supported by Specific Technical Documentation (STD) which a manufacturer keeps in the factory at the disposal of market surveillance authorities. Through STD, under certain conditions, products should be considered as suitable for a specific use or able to reach a specific level or class of performance without testing or without further testing. Under certain conditions, manufacturers may also be able to use the results of tests carried out by others (Articles 26–28)
67. In the negotiations, the UK has taken the line that while we support measures which reduce the burdens for small businesses, we can only support these if they are clear and effective: if provisions are confusing or complex to apply, this will simply create extra burden for time-poor small businesses.
68. Our concerns relate mainly to Articles 27 and 28 of the Regulation. The consultation responses show broad support for the provisions in Article 26, which simply reflect current custom and practice, and are viewed as effective in reducing the cost of CE marking in certain circumstances.
69. There is a strong opposition to the restriction of additional provisions (regardless of what these mean in practice) to micro enterprises and makers of individual products, from both small and large businesses and from enforcement agencies:
- a. manufacturers are concerned that the effective creation of a two-tier system would be anti-competitive and confusing. One respondent also claimed that this could open the door to Member States requesting extra testing for such products, thus reversing the whole aim of the CPR
 - b. manufacturers and others consider it inappropriate to determine the route to certification for a product based on an assessment of the size of the company that made it. Safety should be the primary consideration. CLG agrees with this view

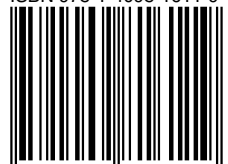
- c. market surveillance authorities consider that it would increase burdens for them in determining which system had been/should have been applied. They also suggest that this will increase burden for small businesses in trying to work out what provisions apply
 - d. manufacturers of individual bespoke products would prefer a complete exemption for their products
 - e. one respondent suggested that a two-tier system could actually work against small businesses if it gives the suggestion that it is a sub-CE marking or less thorough than a regular CE marking
70. Although we have assurances that the current drafting will be made clearer (as at January 2009), we remain to be convinced that the simplified procedures achieve their aims. As we understand it, the additional provision for micro enterprises is that they can carry out some testing themselves. As it is unlikely that many micro-enterprises have the facilities to perform tests, this may be of little or no significance to most.
71. Overall, we consider that there could be benefits to the simplified methods outlined in Article 26, and that it is appropriate that these apply across the board (as they do now). Mandatory CE marking will be an additional and in many cases unwelcome burden for many UK small businesses. It is more or less certain that we will have to accept this element of the proposals, as we are in a small minority of Member States not already CE marking, and we do not have a strong case of why we should not now accept this. We consider that the most effective way in which costs can be kept to a minimum will be by ensuring that there is one consistent system which is clear and straightforward to apply and enforce, rather than confusing or partial exemptions.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

ISBN 978-1-4098-1611-9

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