Supporting study for the Review of the Construction Products Regulation: Impact Assessment

Final Report

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Legislation on Construction Products

2018

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1. INTRODUCTION AND CONTEXT

1.1. Objectives of this study and report structure

Objectives

The Joint Institute for Innovation Policy (JIIP) together with Valdani Vicari Associati (VVA), the Danish Technological Institute (DTI) and the Global Data Collection Company (GDCC) (hereinafter "the study team") have been mandated by the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs to carry out a Supporting Study for the joint evaluation and impact assessment for the review of the Construction Products Regulation (EU) No 305/2011 (CPR).[1]

There are two distinct parts to the project:

- Support to the ex-post evaluation of the current CPR;
- Support to the ex-ante impact assessment of different proposed options for the CPR.

This report presents the findings and the conclusions emerging from the data collection and their analysis in relation to the Impact Assessment of the CPR. Since the study aims to provide an assessment of the policy options in preparation of a possible Commission proposal, this report follows the structure of the Impact Assessment Report suggested in Better Regulation Tool 8 and it draws on the methodology provided in the Guidelines on Impact Assessment[2].

Structure of this report

The report is structured as follows:

- **Chapter 1 – Introduction and context** presents the objectives of the study, introduces the CPR and its intervention logic and describes the current state of play in the construction products market.
- **Chapter 2 – What is the problem?** describes the concerns identified in the evaluation of the CPR and structures these concerns to define the problem to be addressed by the proposed policy options.
- **Chapter 3 – Why should the EU act and what should be achieved?** discusses the need for and the objectives of an EU level policy intervention to address the problem defined in Chapter 2.
- **Chapter 4 – What are the proposed solutions?** introduces the policy options to be considered in this impact assessment study.
- **Chapter 5 – What is the impact of the proposed solutions?** discusses the expected impacts of the policy options based on the data collected and analysed for this study.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0305

[2] European Commission guidelines on impact assessment. Available at: https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf.

- **Chapter 6 – How do the policy options compare?** summarises the impacts identified in Chapter 5 and compares the proposed policy options.

- **Chapter 7 – Overall conclusions, evaluation and monitoring** briefly sets out the key conclusions of the study, as well as depicts what further work may be needed to develop the preferred policy option and what is required to ensure effective evaluation and monitoring of impacts.

This report is accompanied by two separate volumes, one containing the Executive Summary and the other the following annexes:

- Annex I: List of references
- Annex II: Methodology
- Annex III: Data collection tools
- Annex IV: List of interviewees
- Annex V: Questionnaires
- Annex VI: Online survey and Company phone survey results
- Annex VII:Background document to the Validation Workshop
- Annex VIII: Report on the public consultation on EU rules for products used in the construction of buildings and infrastructure works

1.2. Introduction to the CPR

To set the stage, we first provide a brief introduction to the CPR, its main features and rationale including its intervention logic, followed by an overview of the state of play in the construction products sector.

1.2.1. Main features, rationale and intervention logic of the CPR

The overall objective of the EU legislation on construction products is to facilitate the consolidation of the Internal Market and improve the free movement of construction products in the EU, by laying down harmonized conditions for marketing construction products and introducing a common technical language in which manufacturers can express the performance of the products that they place on the market. Construction Products Regulation (CPR) replaces the former Construction Products Directive (CPD), setting up harmonised conditions for the marketing of construction products in the EU and has been applied fully since July 2013. As stated in recital 8 of the CPR, 'Directive 89/106/EEC should be replaced in order to simplify and clarify the existing framework and improve the transparency and the effectiveness of the existing measures'.

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

- respond to clarification needs in the construction sector for the operators;
- reinforce the credibility of the system; and
- simplify the overall system.

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

The CPR works differently from the general principles of the New Legislative Framework, mainly by defining a common technical language and generally not defining any specific requirements for construction products. Hence, harmonised conditions for the marketing of construction products are established by harmonising information about the performance of construction products rather than harmonising the construction products themselves or their requirements. As noted by the Supporting study for the fitness check of the construction sector[3], "While a New Approach Directive on e.g. the safety of certain products would state the minimum safety level that a manufacturer needs to guarantee to place a product on the Single Market, the CPR 'only' sets a common methodology for measuring the performance of construction products over their essential characteristics".

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

Key elements and state of play of the CPR

Construction Products Regulation (EU) No 305/2011 lays down harmonised rules for marketing construction products in the EU. It aims to achieve the proper functioning of the internal market for construction products by establishing rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products (Article 1).

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

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

- The regulatory authorities in EU countries to define performance requirements of the products;
- Manufacturers to draw up the Declaration of Performance (DoP) as defined in the CPR and to affix the CE marking;

[3] Economisti Associati, Milieu and CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation. Available at: http://ec.europa.eu/growth/sectors/construction/fitness-check_en, accessed 27/08/2018.

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

- Design engineers and contractors to verify compliance with legal requirements and demands from their clients[5].

The European Committee for Standardisation (**CEN**) and the European Committee for Electrotechnical Standardisation (**Cenelec**) are the competent organisations for the drafting of harmonized standards. In accordance with Article 17 of the Regulation, harmonized standards are drafted by the European standardisation bodies[6] on the basis of requests ('mandates') issued by the Commission after having consulted the Standing Committee on Construction. Mandates are developed by the European Commission, taking into account requirements of Member States, the industry and the construction stakeholders. Standards are drafted by the concerned CEN Technical Committee and submitted to internal CEN approval procedures. The standard is then submitted to the Commission for citation in the Official Journal of the European Union (OJEU). Once cited in the OJEU, the standard is the official reference for the assessment and performance of the essential characteristics covered by the standard and manufacturers are obliged to use the cited standards.

As of 30 June 2018, 444 hENs have been cited in the OJEU, based on about 60 mandates drawn up in the 1990s and early 2000s. These standards represent 13% of all cited hENs. Since 2013, 208 standards have been developed by CEN/CENELEC, 34% of which have been cited. 124 out of the non-cited 138 standards have been sent back and accepted for review at CEN level, while 14 require action at Commission services level, including 11 to be progressed through delegated acts[7] (see section 2 for more details).

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

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

[6] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, available at: http://data.europa.eu/eli/reg/2012/1025/oj.

[7] Figures provided by the European Commission.

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

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

The uptake of the ETA option has been significant. As of 31 December 2017, more than 4000 ETAs have been issued. 186 EADs have been proposed for citation, and 153 of these have been cited. ETAs based on ETAGs[10] remained almost stable from 2015 to 2017 while the number of ETAs based on EADs has seen large-scale increase since 2014, as shown in Table 1-1. This is partly due to the conversion of ETAGs into EADs having taken place.

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

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

Source: Figures provided by the European Commission

The establishment of draft EADs and the issuing of ETAs is entrusted to **Technical Assessment Bodies (TABs)**. Article 29(1) of the CPR allows MS to designate Technical Assessment Bodies within their territory, according to their national procedures for the designation of TABs. However, TABs must meet strict requirements, as outlined in Article 30 and Annex IV (Table 2) of the CPR. A total of 47 TABs have been established in EU Member States (except Bulgaria, Estonia, Greece, Latvia, Malta and Luxembourg) and in Norway, Switzerland and Turkey[11].

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

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

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

[10] Cf. footnote 8

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

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

7. Sustainable use of natural resources

It needs to be underlined that the above-mentioned basic works requirements, in spite of the word "requirements", do not impose any obligations on anybody. They rather bring forward a categorisation of the requirements Member States have defined or may define for construction works on their territory, and at the same time present the sphere of harmonization for CPR purposes, both these aspects to be taken duly into account when determining essential characteristics of construction products.

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

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

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

The **Assessment and Verification of Constancy of Performance (AVCP)** is a harmonised system defining how to assess the performance of construction products and control the constancy of the assessment results. Five different systems are in place for construction products under the CPR.[17] They range from self-declaration and monitoring by the manufacturer to a large-scale third-party involvement by Notified Bodies (the

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

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

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

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

[17] Annex V of the CPR, amended by the Commission Delegated Regulation (EU) No 568/2014 (available at: http://data.europa.eu/eli/reg_del/2014/568/oj).

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

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

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

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

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

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

Expected impacts of the transition from the CPD to the CPR

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

- Issues associated with the **implementation mechanisms** of the CPD, including slow advances in the harmonisation due to substantial delays in the standardisation work; Attestation of Conformity procedures not always precise enough regarding the required involvement of the Notified Bodies; an important number of

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

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

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

The Impact Assessment considered three main options:

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

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

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

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

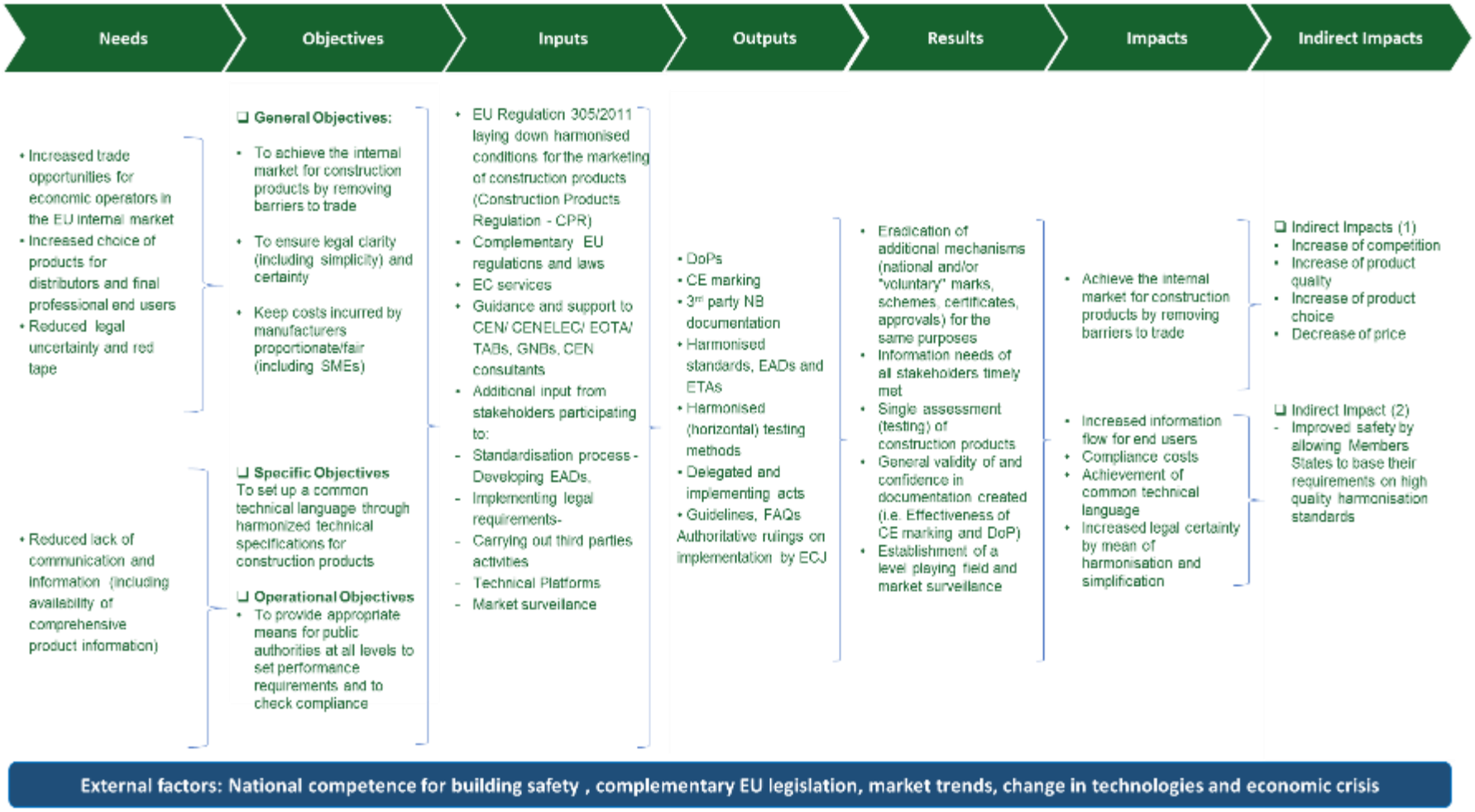
- Simplifications for micro enterprises, individual products and non-series products etc. expected to lead to significant simplification effects (cost reductions)
- Significant reduction in cost of CE marking and placing products on the market through reductions of excessive burdens related to testing,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

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

Intervention logic

The figure below presents the intervention logic of the CPR.

Figure 1-1: Intervention logic



1.2.2. State of play in the construction products sector

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

Production value of construction products

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

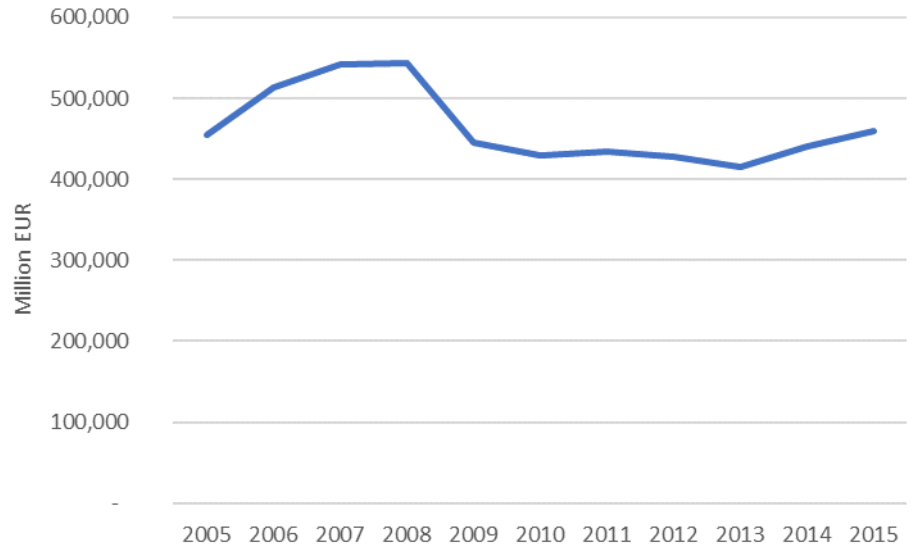
To address this, the "Economic Impacts of the Construction Products Regulation" study carried out an estimation to establish an indication of the scale of economic activity involved in the manufacturing of construction products[22]. The study estimated the total value of construction products manufactured in the EU28 in 2013 at 418 billion EUR.

The total value of construction products in 2013 can be compared with the production value in the overall construction sector in 2013, which stood at 1,485.7 billion EUR[23], leading to a ratio 0.28. In other words, 28% of the construction sector (by value) consisted of construction products in that year. If the proportion of construction products in the overall size of the construction sector remained stable over time (an assumption that can be examined in greater detail over the course of this study), the construction products sector can be estimated as shown in the figure below.

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

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

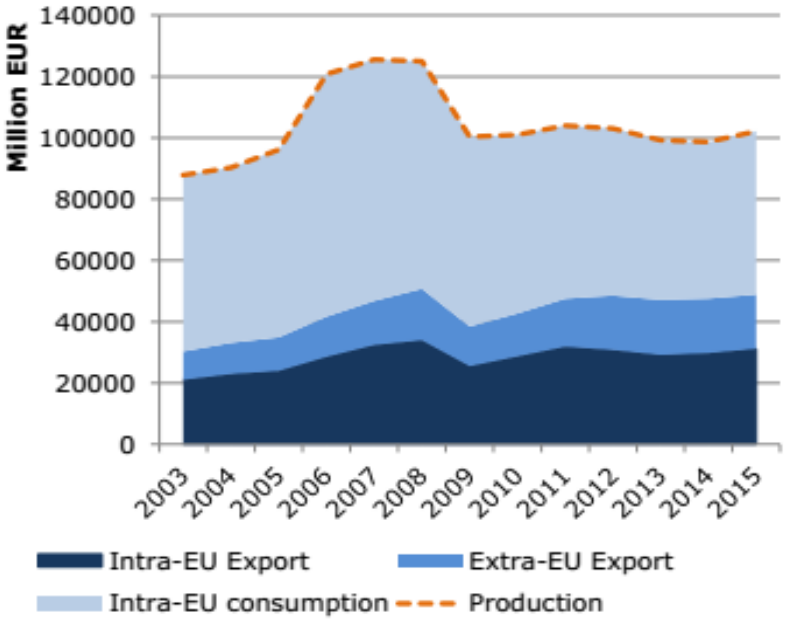
Figure 1-2: Estimated value of construction products produced in the EU28 between 2005-2015



Source: Own calculation; current prices

It is noteworthy that the trend in Figure 1-2 is similar to the estimates produced for the study on "Cross-Border Trade for Construction Products" (Figure 1-3). Since this study was based on a different methodology (an in-depth analysis of a sample of 25 products), the similarity is a positive sign for the validity of the proxy used here.

Figure 1-3: Value of production, intra-EU export, extra-EU export and consumption of the 25 construction products (2003-2015)



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

Both Figure 1-2 and Figure 1-3 show the significant impact of the economic crisis on the value of production. While there is an observable recovery from 2013 onwards, the production value has not yet reached the pre-crisis levels.

The indicator of production value is not adjusted for inflation but reported in current prices. Thus, it might be asked whether the increase in production value in 2014 - 2015 also represents an increase in real terms. While inflation figures for construction products specifically are not available, the Harmonised Index of Consumer Prices (HICP) reported by Eurostat can be used as a proxy for inflation in the sector.

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

Table 1-2: Construction products production value adjusted for inflation (HICP)

	2013-2014	2014-2015
Nominal production value increase in the construction products sector	5.8%	4.6%
HICP	0.6%	0%
Real increase in the production value of construction products (adjusted for HICP)	5.2%	4.6%

Source: Eurostat; own calculations

Business demography of the construction products sector

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

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

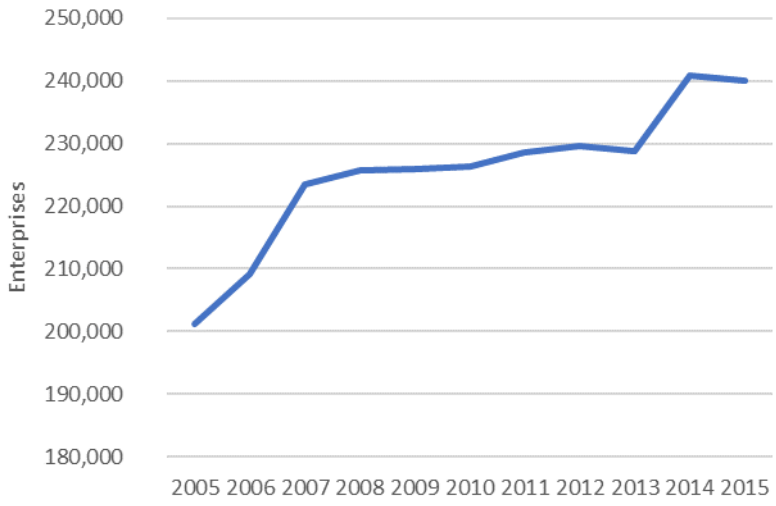
[25] Ecorys (2016) The European construction value chain performance, challenges and role in the GVC. European Commission Contract No SI2-723540

the proportion can vary over time. Thus, the estimation that follows should be treated with caution[26].

The recent supporting study for the Fitness Check on the construction sector estimated the number of construction products enterprises in the EU28 in 2013 to be around 245,000[27]. The study defined "construction product industry" by aggregating statistics on manufacturers from 11 NACE classes. The authors caution that the definition does not cover the whole construction product industry. Thus, the estimate is conservative. Nevertheless, it covers various materials (metal, wood, ceramics, plastic, cement), representing the main inputs to the construction sector, and different product stages, such as raw materials, semi-finished and finished construction products. At the same time, the "Economic Impacts of the Construction Products Regulation" study estimated the number of enterprises that feed into the construction products sector[28] at 215,772 in 2012. The two calculations are very close both in values and date which suggests that the average of the two estimates, approx. 230,000 enterprises, can be used as a proxy for inferring trends in the number of construction products enterprises.

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

Figure 1-4: Estimated number of manufacturers of construction products (EU28)



Source: Own calculation

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

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

[27] Economisti Associati, Milieu and CEPS (2016) Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation. European Commission, B-1049 Brussels.

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

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

nevertheless positive, followed by a recovery in the number of enterprises in 2013-14, and a slight dip in 2015.

2. WHAT IS THE PROBLEM?

This section summarizes the problems with the current CPR, as identified in the evaluation exercise and discussed at the Validation Workshop held on 3 May 2018, against which the policy options are assessed in this Impact Assessment. The evaluation of the CPR conducted as part of this study assessed the effectiveness, efficiency, relevance, coherence and EU added value of the CPR. This exercise identified the following problems that need to be addressed:[30]

Trade and market opportunities

. While there is no statistical evidence that the CPR has influenced cross-border trade within the EU, overall, the evaluation results indicate that the CPR has created market opportunities for construction products manufacturers and that EU rules on construction products are required to create an internal market in construction products. In particular, interviewees observed that the **common technical language** was helpful for cross-border market opportunities and most respondents to the company phone survey, across all stakeholder groups, considered that the current and/or expected ease of selling and/or sourcing construction products from other EU countries is due at least to some extent to the CPR.

Some stakeholders[31] in the company phone survey continue to identify "differences in standards between Member States" as well as "implementation of EU regulation" as leading reasons for difficulties in selling and/or sourcing construction products from other EU countries. Those interviewees confirmed that in some areas, **where the CE marking is considered to be insufficient for example in terms of product safety, voluntary and/or national marks would still "rule" national markets.** Such assertions are indicative of the lack of uniform application of the EU acquis, and the ensuing legal uncertainty, which needs to be tackled by this review.

Additionally, **obstacles to the internal market** remain in the form of national marks and certifications. It should be noted that some stakeholdersdo not consider these as obstacles but rather a supplement to the CPR. Such stakeholders often distinguish between national marks that are compulsory, and voluntary marks which are industry-driven. The voluntary marks are seen by them as beneficial both to industry and to end-users, allowing the documentation of quality, safety and other aspects that may not be contained in the CE marking.

The construction products market is very diverse in terms of types of products traded, and for some types of products distance is more prohibitive than for others. Product such as concrete are naturally not traded over bigger distances due to the weight/value ratio. As a result, in sectors where products are sold mainly in the domestic market, such as concrete and concrete building blocks, bricks, and masonry, the positive market impact of the CPR is seen as less significant. While it is not possible in the context of this study to do a product-level assessment, it should be noted that the goal of the CPR is to remove the barriers of cross-border trade within the EU, not address impacts of trade borne from long distances.

If the current situation were to persist, it would lead to **a gradual increase of cross-border trade in construction products and the internal market for construction**

[30] The order in which the problems are presented does not reflect their significance.
[31] 30% of raw material suppliers, 33% of professional end users, 25% of importers/distributors and 27% of manufacturers.

products. While some sub-sectors of construction products are unlikely to develop significant cross-border trade due to the intrinsic nature of the products at stake, the results of the evaluation also show that there remains **significant potential for further and faster growth in cross-border trade** in other sub-sectors, if remaining obstacles to the development of the Internal Market are removed. As discussed above, the main identified obstacles related to the CPR have to do with national implementation and additional requirements, rather than direct shortcomings of the Regulation.

Administrative costs and burdens

The **administrative costs and burdens can be quite substantial for SMEs**, particularly micro-enterprises while, relatively speaking, they are negligible for large enterprises. Given that 99% of the enterprises in the construction products sector are SMEs and 82% are micro-enterprises, impacts on costs need to be examined thoroughly in the Impact Assessment.

The current total annual administrative burden from DoP- and CE-related activities for construction product manufacturers was found[32] to be:

- EUR 8,452 for a micro company (between EUR 8,150 and EUR 8,700 or a range of +/- 3%);
- EUR 21,550 for a small company (between EUR 15,801 and EUR 27,300 or a range of +/- 26%);
- EUR 56,294 for a medium company (between EUR 51,200 and EUR 61,387 or a range of +/- 9%); and
- EUR 122,330 for a large company[33].

Activities related to the DoP include:

- Drawing up the technical documentation (incl. assessing performance on each essential characteristic, drawing up the description of FPC);
- Drawing up the DoP (incl. translating the DoP if necessary);
- Supplying the DoP on paper or electronically; Storing the DoP and technical documentation.

Activities related to CE marking include:

- Acquiring hEN(s), familiarising with standards, and affixing CE marking (incl. gathering the required information (from DoP);
- designing the label/accompanying documents;
- translating into other languages if necessary;

[32] VVA Europe, DTI and TNO (2016) Economic Impacts of the Construction Products Regulation. European Commission; Economisti Associati, Milieu and CEPS (2016) Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation. European Commission. The average of the results of the two studies is used to calculate the baseline costs in this impact assessment – see Annex II for a description of the methodology.

[33] The Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation did not provide an estimate for large companies (>250 employees).

- printing the label/accompanying documents and affixing the label).

The resulting costs every year are estimated at between **€2.6 billion[34] and €3. 4 billion[35] for European manufacturers of construction products** (the average of the two cost estimates is €3 billion and this is used henceforth in this report as the best point estimate for the costs of the CPR). This is substantially higher than the estimation of the 2008 Impact Assessment study, which anticipated annual administrative and non-administrative costs of €55 million for manufacturers.

Were the Regulation not to be revised, these costs would not change in the future, thus leading to continued impacts on the cost of production which – if reflected in the price of construction products - are ultimately paid for by end-users.

In the Open Public Consultation, 32% of the enterprise respondents thought that the benefits outweigh the costs, while 44% thought that the costs outweigh the benefits. The highest rate of sceptical respondents was found among microenterprises, where 54% thought that the costs greatly outweigh the benefits, and 7% that the costs just about outweigh the benefits. In the interviews, the need to duplicate information in the DoP and CE marking was considered unnecessary and burdensome.

While the costs of the current regime were highlighted as an area of concern in the evaluation, overall 45% of stakeholders responding to the online survey (including representatives of construction product manufacturers and market surveillance authorities) believed that **the benefits of the current CPR outweigh these costs**, and 20% that the benefits are equal to the costs.[36] According to the stakeholders, the main issues related to the costs of the CPR are the aforementioned duplications and unnecessary burdens that could be reduced, and the lack of take-up of simplification measures targeted at SMEs in particular.

Simplification

The CPR aims at ensuring legal clarity, including simplicity/simplification and legal certainty, as well as keeping costs incurred proportionate and fair (particularly for SMEs). Cost reductions from significant simplification effects were thus expected when the CPR was proposed, and much faith was put into the simplifications aimed specifically at particular types of manufacturers and products. However, the **simplification potential of the CPR has been achieved only partially**. Previous studies[37] have shown that the uptake of these provisions is very limited, with the exception of sharing and cascading testing (Article 36), which is reported to be widely applied, although no quantifications of the uptake or associated cost savings have been possible to date.To what extent the "classification without testing" and "classification without further testing" (Art. 36(1)a) is being applied seems not to have been subject to the previous studies. The results of the online survey also supported the overall view that the simplification measures in general are not very effective. 35% of respondents state that no simplification has been achieved through these and 34% state that some simplification has been achieved, while only 10% believe that significant simplification has been achieved (21% don't know).

[34] VVA Europe, DTI & TNO (2016) Economic Impacts of the Construction Products Regulation.
[35] Economisti Associati, Milieu and CEPS (2016). Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation.
[36] It should be noted that manufacturer organisations were more divided in their opinions with 35% believing benefits outweighed costs and 35% stating that costs outweigh benefits
[37] E.g. Economisti Associati, Milieu and CEPS (2016).

Across the board, stakeholders agree that **the simplification Articles are too unclear to be taken up efficiently**, particularly Article 5. Specific mention was made in the semi-structured interviews of the notion of "equivalence" of the procedures to the procedures laid down in the harmonised standards in Article 37, which is not explained. Interviewees also noted that there is a **lack of awareness among enterprises of the simplified procedures in general** and some questioned the justification of the simplified procedures aimed at micro-enterprises. It was observed that it is difficult to justify relaxing the requirements for technical documentation in order to benefit smaller companies. Interviewees pointed out **that the degree of confidence in the product needs to be the same for all products**, regardless of whether these products have been placed on the market by micro-enterprises, SMEs or large companies. It was furthermore suggested that exemptions or alternatives should be considered primarily in terms of artisanal methods or particularly complex products, independently of the size of the firm. Therefore, in order to attain the desired simplification effect, a balance needs to be found between ensuring awareness among businesses, ensuring equal confidence in the information provided about the performance of the product, independently of types of companies and products involved, and ensuring fair access to the simplification measures for all companies.

At the Validation Workshop it was also observed that the documents for assessment are unclear, and it is not specified what kind of alternative documentation can be used to demonstrate compliance. Regarding Article 5, it was noted that the lack of clear definition for "series" and "non-series", as well as "industrial" and "non-industrial", makes the Article very difficult to use, and **operators choose not to apply it to be on the safe side.**

The participants to the semi-structured interviewees suggested that improved guidance and communication about the provisions and their use would be helpful.

Information and fitness for use

While some indications exist about the information provided to end-users having improved over the situation pre-CPR, it was suggested that the utility of the information is hampered by **many users not being able to understand the information,** and the information provided **not always being sufficient and/or clear enough** for the end-user to assess whether the product is fit for purpose.

However, **no coherent interpretation of the concept of 'fitness for use' has emerged among the stakeholders**. For some stakeholders, it is linked to installation instructions, i.e. how to properly incorporate the product in construction works so that the declared performance is preserved. For others, it is linked to Member State requirements for construction works, i.e. whether the product complies with the national building codes and can thus be used in a specific country. Often the meaning is that the product must fulfil specific performance requirements in order to be fit for a specific use: according to these opinions, the product should not be allowed on the market if it does not fulfil these requirements (in line with the approach of other Internal Market Directives). However, when viewed from these ex ante –angles, the concept is in direct opposition to the CPR approach which does not specify performance requirements but instead foresees the provision of information on the performance of the product with respect to specific essential characteristics, as opposed to whether this performance is in fact adequate for specific conditions (e.g. climate conditions) in which the product will be used.A conflict therefore prevails between the expectations of some stakeholders, and the common technical language approach of the current CPR, according to which the methods and criteria for the declaration of performance should be established rather than specific product requirements. Inserting fitness for use in this structure would therefore go against the overarching philosophy of the CPR.

The *European Commission Survey on users' need for information on construction products*[38] found that the preferred sources of information in general were product information accompanying a DoP/CE marking provided on the manufacturer's/supplier's website (53%) and product data sheets provided by the manufacturer or supplier on the manufacturer's/supplier's website (52%). When **using a construction product for the first time**, the preferred source of information on product performance would be **the DoP (48%) and the CE marking (42%)**. The intended use of the product is the most commonly searched type of information for construction products (50% of respondents), followed by mechanical strength (48%), behaviour in fire (40%) and guidance/manual for installation (36%). For the four most commonly searched types of information, **at least 89% of the respondents were able to find the information either relatively easily or with some effort**. The *Survey on information needs among Member States Authorities*[39] yielded similar results regarding information needs and availability, but 84% respondents stated that they obtained the information from the DoP, the CE marking or similar, and 76% from the product data sheet. These results seem to indicate that for the first-time users, the DoP and the CE marking are important sources of information, and the majority is able to find the information at least with some effort.

There is to some extent a lack of understanding among both manufacturers and end-users of the **specific role of the CE marking under the CPR, which differs from the function of the CE marking under other pieces of internal market legislation**. Furthermore, there are four issues related to information provision that stakeholders would like to see the CPR address in a more specific manner than is currently the case: information on product safety[40], fitness for use, sustainability and, in the longer term, reusability/recyclability in a circular economy.

Regarding the **technical coherence** of the DoPs, at the Validation Workshop the observation was made that some manufacturers make very comprehensive DoPs declaring the performance of many essential characteristics while other manufacturers only declarerelatively few characteristics It was suggested that declaring certain characteristics should be made mandatory.

Product safety

Regulating the product safety of construction products differs from the general principles of the New Legislative Framework (NLF). Whereas in the CPR setting, the general principle of safety laid down by General Product Safety Directive (GPSD) (2001/95/EC)[41] applies to construction products as well, the principle has to be operationalised differently compared to the NLF setting, since construction products are intermediate products even if an important share of them can be considered potentially to be made available to consumers.

Within the performance approach of the CPR, "product safety" does not mean an "inherent safety" or a "built-in safety" of the product, but rather a compliance with the rules of the harmonised system and the achievement of the declared performances. Thus, a construction product is not "safe" or "unsafe" in itself, but product safety of construction

[38] Ecorys, 2018. Available at: https://publications.europa.eu/en/publication-detail/-/publication/50666501-3d3c-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-69036660

[39] European Commission 2018, available at: https://ec.europa.eu/docsroom/documents/28684?locale=en

[40] In the context of this study, "health and safety" refers to whether construction products are safe and do not present a danger to end users (i.e. product safety).

[41] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, Available at: http://data.europa.eu/eli/dir/2001/95/oj.

products has to be operationalised by the common technical language, i.e. by means of harmonised technical standards.

This approach also links to the potential risks of a construction product as a result of non-compliance of the economic operator with the common technical language. Indeed, a risk could occur if the information given by the economic operator is incomplete, incorrect, missing, or misleading.

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

It is stated in the recital 3 of the CPR that: 'This Regulation should not affect the right of Member States to specify the requirements they deem necessary to ensure the protection of health, the environment and workers when using construction products'. For that reason, the "safety clause" of Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products was included in Article 58:

> "Where [...] Member State finds that, although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic requirements for construction works, to the health or safety of persons or to other aspects of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk, to withdraw the construction product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, which it may prescribe."

Notwithstanding the above considerations, stakeholders are concerned with the link between the CPR and the safety of construction products. A large majority of respondents of the Open Public Consultation pointed to safety of construction products as an issue that should be addressed by the European construction products legislation.

Standardisation process

The **slow adoption and non-citation of standards is seen as a problem**, as the adoption process is too slow to keep pace with the developments of the sector. Combined with the long mean time from ETA request till the adoption of EAD, these slow processes are also not beneficial to innovation. With respect to whether the adaptation mechanisms in place allow the CPR to support innovation and technological development, the adoption of delegated acts also appears to take too long. However, the ETA system is generally seen as a positive aspect of the CPR.

The slow adoption and lack of citation was frequently brought up by the stakeholders. It was observed that the **lengthiness of the process has serious consequences for the realisation of the Internal Market**. The stakeholders also consider that the resulting standards may not always be relevant to the market.

Problems related to overlaps with other EU legislation and national legislation

With respect to **external coherence with other European legislation**, several areas have been identified where the legislations overlap and/or conflict with each other. The interviewees indicated a certain level of confusion as to whether in certain cases the CPR

or another piece of EU legislation should be applied. In other cases, the pieces of legislation apply at the same time and might not be entirely consistent.

The most frequently indicated piece of EU legislation in conflict is **Eco-design Directive**,[42] which is seen as both overlapping and having conflicting provisions with the CPR. It should however be noted that Eco-design Directive does not itself contain direct requirements for products. Such requirements would be specified in Implementing Regulations. Hence, it would be left to the legislators to avoid conflicts.

For the time being, overlap with the EDD only concerns solid fuel local space heaters, fireplaces and sauna stoves. A revision of the standardisation mandate on space heating appliances is under preparation, to allow to mitigate the risk by adapting the CPR-based harmonised standard before the entry into force of Ecodesign Implementing Regulation (EU) No 2015/1185,[43] i.e. by 1st January 2022. The objective is to include in the same harmonised standard all pertinent essential characteristics and threshold levels equivalent to the minimum requirements set out also in the Ecodesign context, and to demand a single assessment method to be developed for emissions of particulate matter. It has however to be noted that the further implementation of the EDD is expected to increase the occurrence of this type of cases, and in the longer term a definition of clear collision rules should ensure that additional potential coherence issues of the same kind are avoided in the future[44].

Another conflict is with the view of standards as contained in Standardisation Regulation 1025/2012.[45] However, it is assumed that in case of any discrepancy between the standardisation regulation and CPR **the latter would prevail in the case of harmonised standards for construction products**.

Another Directive with alleged potential conflict is Public Procurement Directive 2014/24/EU[46], which is increasingly moving towards labels, and thus the promotion of voluntary marks, **going against the principles of the CPR**. It should however be noted that this Directive states that:

> "Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics" (Article 43 (1)).

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[42] Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0125

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

[44] Information provided by the European Commission

[45] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R1025

[46] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0024

Thus, the CPR as the specific regulation on the marketing of construction products will prevail; public authorities are not allowed to require that construction products bear additional marks/labels other than the CE marking. Therefore, **we cannot conclude that this provision in Public Procurement Directive is in direct conflict with the CPR,** although it could be seen as an indirect conflict encouraging public procurers to require additional marks on the products.

The CPR also does not completely align with other **Internal Market (New Approach) Directives**, as the basic function and meaning of the CE marking is different. The fact that the CE marking has a different meaning under the CPR compared to other Internal Market Directives creates some interpretation problems and confusion among economic actors. Specific overlaps (products subject to more than one piece of legislation) were mentioned for Machinery Directive (2006/42/EC)[47] (e.g. for automated doors), Electromagnetic Compatibility Directive (2014/30/EU)[48], Low Voltage Directive (2014/35/EU),[49] and Pressure Equipment Directive (2014/68/EU).[50]

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

The European Court of Judgement case C-100/13[51] found that the German administrative practices of using *Bauregellisten*[52] for setting additional requirements on the performance of construction products covered by harmonised technical specifications, instead of having such requirements inserted into the said European harmonised system, were **in breach of CPD and thus, in Commission's view, also constitute an infringement of the CPR.** Several Member States and other stakeholders oppose the continued applicability of these principles of the ECJ judgement, making this matter also an issue of **legal certainty**.

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47 Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery and amending Directive 95/16/EC. Available at: http://data.europa.eu/eli/dir/2006/42/oj.

48 Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility. Available at: http://data.europa.eu/eli/dir/2014/30/oj.

49 Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits. Available at: http://data.europa.eu/eli/dir/2014/35/oj.

50 Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment. Available at: http://data.europa.eu/eli/dir/2014/68/oj.

51 Case C-100/13: Judgment of the Court (Tenth Chamber) of 16 October 2014 — European Commission v Federal Republic of Germany (Failure of a Member State to fulfil obligations — Free movement of goods — Rules of a Member State requiring that certain construction products bearing the 'CE' conformity marking conform to additional national standards — Lists of construction rules ('Bauregellisten'))

52 The Construction Products Lists, regularly updated by the *Deutsches Institut für Bautechnik*, consolidating the technical rules for construction products introduced by the Supreme Building Authorities of the German federal states.

Two cases related to this are pending before the European General Court, T-229/17[53] for which a judgement is expected for the end of 2018 or early 2019, and T-53/18[54].

Market surveillance and enforcement

The overall aim of market surveillance in Member States is to ensure compliance and thus create trust in the products on the Internal Market. Ineffective market surveillance under the CPD was one of the issues to be addressed by the CPR. While a 2015 study[55] found that implementation of the CPR had facilitated compliance and enforcement, **market surveillance is still broadly seen as insufficient**. The report relied on stakeholder consultation and data provided by the MSAs on the inspection of construction products from 2010 to 2013. The latter is only available for selected Meber States, and the type of inspections carried out on construction products varies from MS to MS, therefore only a "snapshot" of non-compliance could be provided. The numbers from different countries are not comparable, and it is not possible to draw conclusions that are applicable to the EU more generally.

Stakeholders across the board expressed negative views about the effectiveness of market surveillance. It was also noted that the quality and the effectiveness of market surveillance vary significantly between Member States. The lack of market surveillance creates the basis for **limited trust in the legislation**, and thus could potentially disincentivise the companies to comply with the legislation, as there is a low risk of getting caught, and/or because "everyone is doing it", i.e. companies feel that they would face unfair competition if they complied. However, at present ther is no concrete evidence of this type of behaviour.

The insufficiency of market surveillance has also had the effect of a certain **lack of confidence in the CE marking** among some market actors. It was expected that the CPR would lead to significant positive effects on market surveillance in Member States, but the implementation in this area by many Member States has been insufficient and thus has not provided the expected impacts.

Insufficient market surveillance and enforcement is a factor that potentially has a negative influence on the achievement of the objectives of the CPR. It was observed at the Validation Workshop that **because the CE marking under the CPR is about performance and not safety**, it is not of high priority for Member States, and as the Member States do not have indefinite budget for market surveillance, they are likely to prioritise other issues. Under an unchanged policy, the problems caused by ineffective market surveillance would be likely to remain unaffected.

The recent **Commission Proposal on Market Surveillance (COM(2017) 795 final)**[56], tabled as a part of the "Goods Package"[57], aims to address the increasing number of cases of non-compliance on the Union market. Its aim is to consolidate the existing market surveillance framework, to encourage joint actions by Market Surveillance Authorities (MSAs) from multiple Member States, to improve the exchange of information and

[53] Case T-229/17: Action brought on 19 April 2017 — Germany v Commission. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1531127153870&uri=CELEX:62017TN0229

[54] Case T-53/18: Action brought on 31 January 2018 — Germany v Commission. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018TN0053

[55] Risk and Policy Analysts (RCA) (2015) Analysis of the implementation of the Construction Products Regulation. Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission).

[56] Available at: http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM%3A2017%3A795%3AFIN.

[57] The "goods package" aims to address two identified structural weaknesses of the single market of goods, the compliance and enforcement of EU harmonised product safety rules and the use of mutual recognition.

coordination, and to create a strengthened framework for controls on products entering the market. Regarding resources available for market surveillance in the Member States, it includes provisions for the Member States to equip MSAs with the necessary financial resources to properly perform their tasks (Article 21(1)) and for the Union to potentially finance the implementation of national market surveillance strategies (Article 36(2f)). It does not, however, have an impact on how Member States would prioritise the market surveillance of construction products. Therefore, the problem can be expected to not be completely abolished by the proposal.

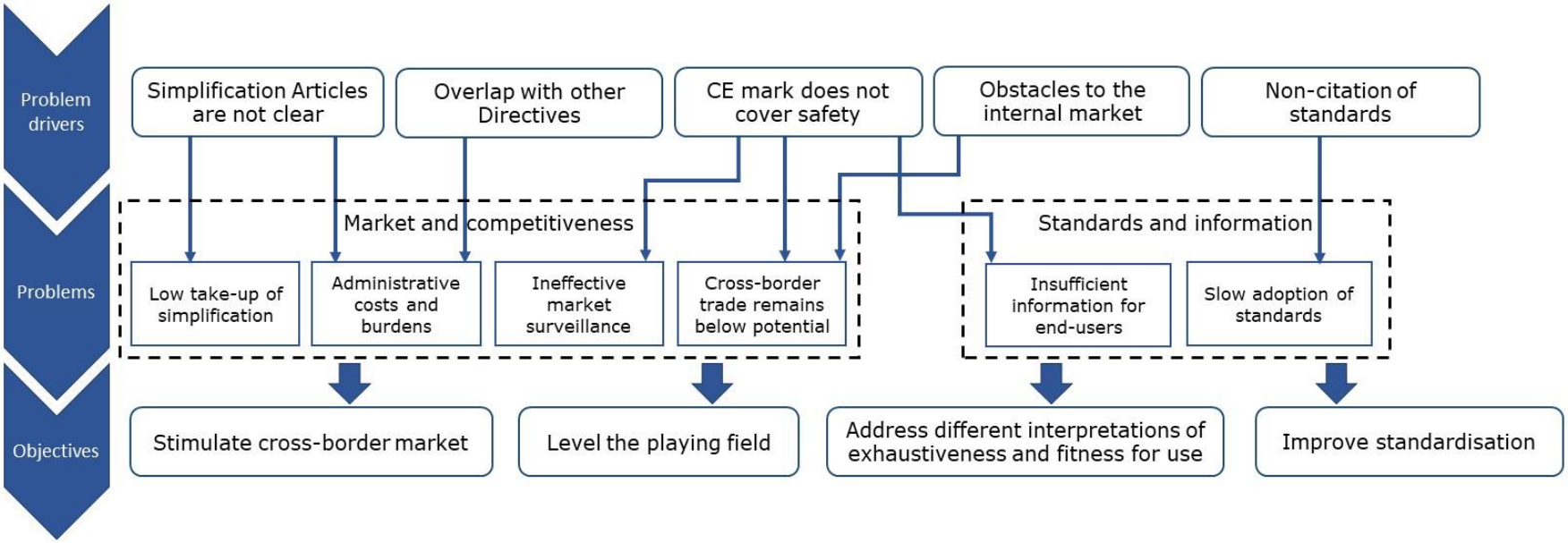
Conclusion

The concerns summarised above can be divided into two broad problem groups which require different sets of solutions:

1. **Problems related to markets and competitiveness,** including obstacles and barriers to the Internal Market, disproportionate administrative costs and burdens for SMEs, ineffective simplification measures for SMEs, and ineffective market surveillance.
2. **Problems related to standards and information,** including unclear information for end-users, overlap with existing Directives and slow adoption and citation of standards.

While the current CPR aims to address the problems in both groups (with the exception of slow adoption of standards and to a large degree ineffective market surveillance, which can be considered horizontal issues), regulatory failures mean that the problems persist. Figure 2-1 below illustrates the links between problem drivers, problems and objectives. The different approaches to address the identified issues taken by each future policy option are discussed in greater detail in Chapter 4.

Figure 2-1 Logical links between problem drivers, problems and objectives



3. WHY SHOULD THE EU ACT AND WHAT SHOULD BE ACHIEVED?

3.1. Why should the EU act?

The first paragraph of Article 114 of the Treaty on the Functioning of the European Union[58] (TFEU) empowers the European Parliament and the Council to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the **internal market**. Article 114 TFEU allows the EU to take measures both to eliminate current obstacles to the establishment and functioning of the internal market and to address barriers that dissuade economic operators from taking full advantage of the benefits of that market.

The EU has sought to **remove these obstacles to the trade of construction products within the European single market** since the adoption of the CPD. The CPR, which replaced the CPD in 2011, still pursues the same main objective, also aiming to clarify and simplify the system and to reinforce its credibility.

Regarding the **economic scale of the sector**:

- The total value for construction products manufactured in the EU28 was estimated at EUR 418 billion in 2013.[59]
- The value of intra-EU trade has increased by 48% from 2003 to 2015, amounting to EUR 31 billion for a sample of selected products[60] in 2015.[61]
- The number of companies in the construction products manufacturing sector in the EU28 has been estimated at approximately 230,000, of which 99% are SMEs and 82% micro-enterprises.[62]
- The economic recovery is likely to lead to further growth in the construction products sector, mirroring the expansion of the overall construction sector which (in terms of volume) grew by 2.4% per year on average between 2015 and 2017[63].
- The construction products sector is also closely linked to the wider construction sector, and the growth of the sector can be expected to positively influence the economy as a whole.

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58 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

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

60 Cement, additives, sands, bricks, aluminium bars, copper tubes and pipes, steel tubes and pipes, wire rod, concrete reinforcing bards, articles of asphalt, doors and windows in wood, doors and windows in plastic, prefabricated buildings of plastics, concrete or aluminium, ceramic tiles, wood parquet flooring, textile flooring, plasterboards, insulating glass, insulating materials, roofing tiles, natural stone coating, clay flooring blocks, valves, optical fibre cables and electric systems.

61 CSIL and CRESME (2017) Cross-Border Trade for Construction Products.

62 The number of companies in the sector has been calculated by two studies conducted for the European Commission, VVA Europe, DTI and TNO (2016) Economic Impacts of the Construction Products Regulation; and Economisti Associati, Milieu and CEPS (2016) Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation. We use the average of the results from these two studies.

63 Annual rate of change in EU28 construction production was 1.1% in 2015, 2.5% in 2016, and 3.8% in 2017. Eurostat. Construction production (volume) overview. March 2018. Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Construction_production_(volume)_index_overview

Thus, obstacles to the trade of construction products have both direct and indirect impact to a significant economic sector, and also to the EU priority of the single market strategy.[64]

In addition to the legal and economic rationale for EU action, past analyses of the CPD and the CPR have indicated that the sector benefits from EU intervention. A 2008 consultation on the CPD confirmed the need for a harmonised legislative framework, which was considered preferable to mutual recognition.[65] A 2015 study found that implementation of the CPR had improved legal clarity, reduced ambiguity, and facilitated compliance and enforcement[66] – though the evaluation study conducted in parallel to this Impact Assessment and the problem statement in this report indicate that there is further room for improvement regarding all of these aspects.

Finally, the evaluation conducted as a part of this study found strong support emerging among the different stakeholder groups for construction products legislation and harmonisation at EU level. The main added value cited by the interviewees is the improved – albeit not perfect – Internal Market, with common rules and common technical language, giving economic operators access to cross-border markets. 67% of the respondents to the online survey also considered that EU rules on construction products are required to create an Internal Market for construction products.

Indeed, stakeholders agree that the benefits of EU legislation, particularly the removal of obstacles to the Internal Market, could not be achieved by legislating only at national level. A repeal of the CPR would lead to increased fragmentation of the market, with Member States putting up new or strengthened barriers for trade. Considering, in particular, the increasing cross-border trade within the EU, a well-functioning EU internal market for construction products requires sufficient tools for meeting the information needs of all the stakeholders as comprehensively as possible to ensure:

- (a) any additional national mechanisms to remain complementary to, rather than in conflict with, the aims of the CPR; and
- (b) the validity of and confidence in the assessment procedures and documentation of construction products in the internal market.

Achieving this would be difficult for Member States acting alone.

3.2. What should be achieved with the review of the CPR?

As identified in Chapter 2, problems remain for the Internal Market for construction products: these can be structured into two broad problem groups:

1. **Problems related to markets and competitiveness,** including obstacles and lack of growth of the Internal Market, disproportionate administrative costs and

[64] See for example COM(2015) 550 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Uprgrading the Single Market: more opportunities for people and business.

[65] Commission Staff Working Document SEC(2008) 1900 Accompanying the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of the construction products.

[66] Risk and Policy Analysts (RCA) (2015) Analysis of the implementation of the Construction Products Regulation. Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission).

burdens for SMEs, ineffective simplification measures for SMEs; and ineffective market surveillance.

2. **Problems related to standards and information,** including unclear information for end-users, overlap with existing Directives and slow adoption of standards.

To support a fully functional Internal Market, with a level playing field for both SMEs and large enterprises, the objectives of the review should aim to address these problems:

- **Ensure that no significant barriers to intra-EU cross-border trade remain**, particularly by ensuring that any national measures are complementary to rather than in conflict with the goals and aims of the CPR.
- **Support the creation of a level playing field by minimising non-compliant construction products** on the EU market through sufficient market surveillance, and provide adequate and functional support to SMEs;
- **Improve standardisation and associated documentation,** to ensure that the standardisation process does not hinder trade in the sector, sufficient information is available to end-users in an easily understandable form that also reflects the technical developments in the sector, and the requirements are not in conflict with other Directives;
- **Address the different interpretations** related to exhaustiveness and fitness for use between different stakeholders and the Commission.

The Figure 2-1 displays the logical flow from the problem drivers through the problems described in Chapter 2, to the objectives of the review.

4. WHAT ARE THE PROPOSED SOLUTIONS?

This section presents the policy options that were developed in collaboration with the Commission to address the problems identified in Chapter 2. It should be noted that the structure of the options and the level of detail to which they are specified were not fully clear to all stakeholders during the data collection process. Thus, the ability to calculate exact impacts of each policy option was somewhat limited. Nevertheless, most stakeholders were able to differentiate between the options sufficiently in order to provide their opinions on possible impacts and to allow for an Impact Assessment. However, before implementation, the precise provisions of each option would need to be further specified.

Option	Description		Reference
0	Baseline – No changes at all		(Section 4.1)
I	"Enhanced baseline " - No legislative change but improved implementation through guidance/soft law		(Section 4.2)
II	Revising the CPR		(Section 4.3)
	A	Limited CPR revision only tackling the issues explicitly identified in the July 2016 Implementation Report	(Section 4.3.1)
	B	Wider CPR revision also touching the basic principles underlying the CPR 1) Harmonise only the assessment methods, or 2) Only harmonise specified essential characteristics, or 3) Make use of the common technical language optional.	(Section 4.3.2)
	C	Profound CPR revision shifting the balance in the present repartition of tasks between EU & Member States: 1) New Legislative Framework (NLF) approach, or 2) Old approach, or 3) Agency approach	(Section 4.3.3)
III	Repealing the CPR: No European Union legislation on construction products		(Section 4.4)

It should be recognised that all described policy options should be understood as possible directions for the future development of the European legislation for construction products. None of the options should be understood as complete, exhaustive scenario descriptions. They would all need further development to become feasible. For instance:

- All of the options (except for Options II.C and III: repeal) will also use elements of Option I (enhanced baseline). Even if the CPR is revised, this would not necessarily mean that all identified problems would be addressed by changes to the Regulation: some of the problems might still be addressed by improved implementation measures.
- In sub-option II.B, in principle the three elements (harmonising assessment methods, harmonising specified essential characteristics, and having common technical language optional) could be combined into new sub-options. As none of the elements affect the balance between the Union and the Member States, and as they are all based on the current common technical language approach, a high degree of freedom would exist with regard to picking different elements of these options and combining them into new options if required.
- In sub-option II.C, the suggested elements are mutually exclusive, and it is not possible to combine elements of sub-option II.B with sub-option II.C.
- For some of the options, it might still be needed to carefully consider whether the description presented would be compatible with some basic principles of the Union. For instance, the definition of common requirements in EU legislation or the appointment of an agency to define common European requirements for construction products (sub-options II.C.2 and II.C.3) may give rise to concerns with regard to the principle of subsidiarity. Notwithstanding these points, the options as presented are useful for this impact assessment in order to provide a solid evidence base which supports the Commission in its development of an effective solution to these problems. As mentioned above, each of the options assessed in this report would require further detailed specification before implementation.
- In December 2017, the Commission presented a proposal for revised general/horizontal legislation for products, the so-called Goods Package. If the CPR were repealed (Option III), the general/horizontal rules for products would apply, including the rules for mutual recognition. The Goods Package may also have an influence on the functioning of CPR, for instance with regard to market surveillance across all of the policy options For the present impact assessment these proposed changes to the general/horizontal legislation for products have been taken into account to the extent possible. It should be noted that, given the recency of thse proposals stakeholders were not yet very familiar with the Goods Package.

The analysis in this report assesses the **future impact of the different policy options** on:

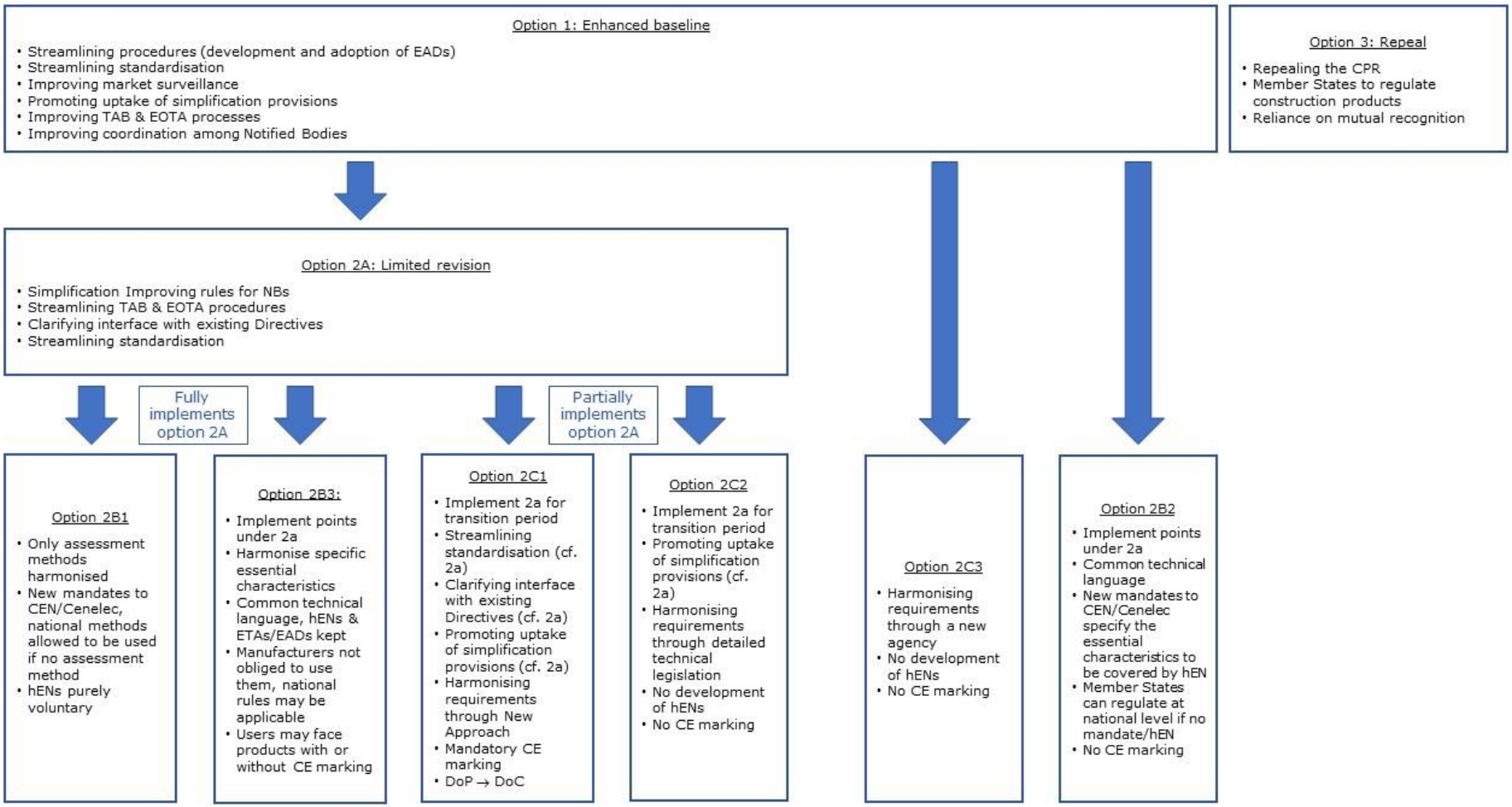
- compliance costs,
- market opportunities,
- surveillance and enforcement,
- product quality,

- product information,
- health and safety, and
- the environment.

The measurement of these impacts via semi-structured interviews, online survey, company phone survey, online public consultation and the workshop was concluded in consultation with the Commission. The reasoning was that stakeholders are likely to identify, at least in qualitative fashion, how each policy option would impact them. In addition, to ensure relative consistency between the different data collection tools, the number of impacts measured had to be limited to these essential ones. This allowed to triangulate the data received and provide a relatively robust assessment of the possible impacts.

Figure 4-1 below illustrates the relationships between the different policy options.

Figure 4-1 Relationships between different policy options



4.1. Option 0: Baseline - no change

The baseline serves as a benchmark against which the impacts of all other policy options are assessed. It represents the scenario where the current EU legislation on construction products remains in place as it is today ("no change" option), meaning also that no specific additional action is taken at implementation/soft law level.However, any decisions already taken and implementations currently in process are considered part of the baseline, for example, in the context of the Joint Initiative on Standardisation.

Modelling this option is required by the Better Regulation Guidelines as it forms the starting point for the assessment of any proposals for change. According to the Guidelines, the option of changing nothing (the "baseline") should always be developed and used as the benchmark against which the alternative options should be compared.[67]

Under this option, the current costs and benefits of the CPR as well as current challenges identified in the evaluation continue to persist into the future (except for those issues linked to the transition from the CPD to the CPR that are expected to fade over time).

4.2. Option I: "Enhanced baseline" - No legislative change but improved implementation through guidance/soft law

Under this option ("enhanced baseline"), the CPR continues to be in force as it currently exists, i.e. based on the common technical language for the performance of construction products. No regulatory changes other than those which are within the **scope of the Commission's delegated and implementing powers** are made. This could include:

- Possible further use of the empowerment to derogate from Article 7(1) and (2), allowing a copy of the Declaration of Performance (DoP) to be made available on a website – delegated act foreseen under Article 7(3) & Article 60(b)[68];

- Possible amendment, for families of construction products on the basis of the expected life or part played by the construction product in the construction works, of the period of 10 years during which the manufacturer must keep the technical documentation and the DoP[69];

- Possible amendment of Annex II, containing the procedural rules for the development and adoption of European Assessment Documents (EADs). Such amendment could not deviate from the principles laid down in Article 20 and could only ensure compliance with Article 20 or the application in practice of the procedures set out in Article 21[70];

- Possible amendment to the format of the European Technical Assessment (ETA)[71];

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[67] Better Regulation Guidelines on Impact Assessment. Available at: https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf

[68] This was already used once in derogation from Article 7(1): Commission Delegated Regulation (EU) No 157/2014.

[69] Delegated acts foreseen under Article 11(2) & Article 60(c). Knock-on effects then possible for authorised representatives and importers as well as for Article 16.

[70] Delegated act foreseen under Article 19(3) & Article 60(d).

[71] Implementing act foreseen under Article 26(3) & Article 64(2). The format is already laid down through Commission Implementing Regulation (EU) No 1062/2013.

- Possible amendment, in response to technical progress, of Annex III containing the model of the DoP. Such amendment could not deviate from the provisions on the content of the DoP contained in Article 6(1) to (3)[72].

Efforts would be made within the existing CPR, i.e. through flexible and uniform interpretation, to:

- **Smoothen the application of the CPR**. The Commission would reiterate its request to Member States to align their national systems with principles prohibiting national approaches concerning marks and ex ante processes or verifications (Implementation Report section 3), in line with its interpretation of the exhaustiveness of harmonisation[73].
- **Streamline the standardisation work**. The Standing Committee on Construction and the Committee on Standards could have joint meetings to discuss issues of common interest, to speed up mandating and other issues to be submitted to both Committees under the CPR; to ensure that Member States' regulatory needs are taken up in the standardisation process beginning with mandates; to check that the market indeed needs the standards being initiated; to ensure clarity about the scope of harmonised standards; to speed up the alignment of CPD-era standards with the concept of the common technical language embodied in the CPR and revision in line with technical and market developments and user needs (Implementation Report section 5); based on this, to achieve a higher citation rate of candidate harmonised standards in the OJEU; to ensure fair and equitable representation of the various categories of stakeholders; to improve compliance with rules in Articles 3(3) and 27 of the CPR on establishing classes or thresholds; However, some of the above objectives seems already to have been addressed, e.g. by the Joint Initiative on Standardisation. The roles and responsibilities of the committies, as defined by the respective legislations, must also be respected.
- **Step up market surveillance and enforcement** including improving use of the Rapid Alert System for dangerous non-food products (RAPEX) and Information and Communication System on Market Surveillance (ICSMS).
  The administrative coordination for market surveillance (AdCo) would be supported in their efforts to make the market surveillance of the member states more efficient, e.g. by conducting more joint market surveillance actions. The member states should be encouraged to allocate more ressources for the market surveillance.
- **Smoothening out the overlaps between the information required in the DoP and in the CE marking**. Under a flexible interpretation of Article 9(2), the CE mark could contain only the critical information and refer to the DoP for other information. The DoP would be either provided on paper with the product, electronically or via a website.
- **Improve Technical Assessment Bodies' and EOTA's processes and improve coordination among Notified Bodies**.

[72] Delegated act as foreseen under Article 60(e). It was already used once: Commission Delegated Regulation (EU) No 574/2014.

[73] This is subject to confirmation of the European Court of Justice in two pending cases related to German formal objections (the first judgement expected for end 2018 / beginning 2019).

For instance, the transition from ETAGs used as EADs to native EADs should be speeded up.Efforts could be made to raise the level of competence among notified bodies, e.g. by supporting common European training programmes. The notifying authorities could be encouraged to increase their effort to ensure that notified bodies take part in the GNB coordination and adhere to the GNB guidance.

As other options, Option I would need to be specified in greater detail to ensure that each of the provisions can be implemented without requiring a legislative change to the CPR (i.e. soft-law).[74] This impact assessment considers the above set of measures as examples of aspects that could be taken forward under Option I. Irrespective of the detailed provisions to be included in the final specification of the policy option, the key element of this option is that these provisions would be specified in such a way that they could be taken forward without requiring a legislative change.

4.3. Option II: Revising EU legislation in the field of construction products

Under Option II, three sub-options are envisaged, all of which require a legislative revision of the CPR though they vary in scale and scope:

- Sub-option II.A consists of a **limited revision focused on the issues identified in the CPR Implementation Report**.

- Sub-option II.B consists of a **wider revision** adjusting **the scope of harmonisation**, with three different scenarios: harmonising only the assessment methods, harmonising only specified essential characteristics, or making use of the common technical language optional for manufacturers. All of the three scenarios under sub-option II.B could be seen as limiting, or perhaps rather re-focusing, in different ways the scope of the harmonisation.

- Sub-option II.C consists of a **profound** revision touching on the balance in the present division of tasks between the EU and Member States through three alternatives: New Legislative Framework (NLF) approach, Old approach, or Agency approach. All of the three alternatives would imply setting common (EU) performance requirements for construction products and hence go beyond the current CPR approach of (only) providing a common technical language.

Each of the three sub-options under Option II are described in greater detail in the remainder of this section.

4.3.1. Sub-option II.A - Limited revision tackling the issues explicitly identified in the July 2016 CPR Implementation Report.

Whilst the heading restricts the scope of this sub-option only to the contents of the 2016 Implementation Report, account should be taken also of the simultaneous developments in the REFIT context, concerning the relationship between the CPR and other EU legislative

[74] For instance, it might be challenged whether it were possible to apply a flexible interpretation of Article 9(2) to avoid or limit the overlaps between CE marking information and the DoP.

acts dealing with construction products. Both of these sources have therefore been used for the compilation of the following list of topics involved:

- **Improving/introducing simplification provisions** benefiting micro-enterprises as well as other simplification provisions (e.g. on information following the CE marking):

  1) *Derogations from the obligation to draw up a DoP* (Article 5 of the CPR)[75];

  2) *Simplified procedures* (Articles 37 and 38 of the CPR). Redrafting of the provisions to increase their usability or opting for entirely different simplification alternatives instead;

  3) *Information following the CE marking* (Articles 6 and 9(2) of the CPR)[76]. Removing overlaps between information required in the DoP and in the CE marking. Considering whether a DoP is even needed, or whether its content or model is to be revised.

- **Introducing appropriate sector-specific market surveillance and enforcement provisions** supplementing the horizontal ones[77]:

  1) Articles 56 to 59 are based on reference provisions of Articles R31 to R34 of Decision No 768/2008/EC but have been adjusted for the CPR context. These adjustments appear to cause challenges for market surveillance. No formal procedures, including safeguard procedures, appear to have been initiated by Member States under Articles 56 to 58. In the current circumstances, with the horizontal rules still under development, their application could be considered where appropriate. In addition, however, sector-specific provisions could be envisaged for the CPR only;

  2) A risk assessment approach is being developed specifically for use under the CPR compared to the New Legislative Framework (NLF) and may be considered to be included in the CPR.

- **Improving detailed rules regarding Notified Bodies**, notably further distinguishing the CPR from the NLF. This could include possible amendments to clarify and/or add precision to Articles 43, 45, 46, 52(2) and 55 of the CPR and/or to distance Articles 44, 50(1), 51 and 53(2) of the CPR more clearly from the NLF principles.

- **Improving the transition from "approvals" to "assessments"** by Technical Assessment Bodies and the related EOTA procedures. This could include possible amendment of Annex II, containing the procedural rules for the development and adoption of European Assessment Documents (EADs). It would also be possible to

[75] Obviously, the introduction of such derogating provisions is necessary (or even logically possible) only if this obligation is maintained.

[76] Again, the necessary pre-requisite of simplifying the system by decreasing the information content requirements for the CE marking is that the CE marking would continue to be used.

[77] Cf Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:795:FIN; and Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:796:FIN.

deviate from Articles 20 or 21, or to accompany such an amendment by changes to Articles 20 or 21.

- **Clarifying the relation between the CPR and Standardisation Regulation 1025/2012, as well as other EU legislation**, including improving coherence between the CPR and Eco-design legislation. This could include:

  1) Different wording of Article 18 of the CPR compared to Article 11 of Regulation 1025/2012. Application of a comitology procedure in formal objection context under Regulation 1025/2012, but no comitology procedure under the CPR;

  2) Updating references to Directive 98/34 in the CPR by replacing them with appropriate references to Regulation 1025/2012;

  3) Increasing coherence of the mandating process in Article 17 of the CPR with that of Article 10 of Regulation 1025/2012;

  4) Streamlining the standardisation work, improving coordination among Notified Bodies and improving TAB's and EOTA's processes as under Option I;

  5) Foreseeing a means of ensuring that requirements stemming from Eco-design policy objectives are incorporated, where relevant, into the harmonised standards under the CPR applicable to the same products, so as to provide manufacturers with one single framework for the testing of products; clarifying more generally the relation between the CPR and Eco-design Directive;

  6) Clarifying the relation between the CPR and General Product Safety Directive.

It should be emphasised that not necessarily all of these would require changes to the legislation where implementation measures as described under Option I would be possible.

4.3.2. Sub-option II.B – Wider revision also touching the basic principles underlying the CPR

This sub-option consists of three alternative scenarios ranging from covering assessment methods only, or harmonising only specific essential characteristics, to making the common technical language optional for manufacturers. These options would build on and go beyond Option I (all provisions of which they include) and II.A to simplify the regulatory environment and to reduce costs, especially for manufacturers who do not operate across borders, as well as to focus the regulatory approach at EU level on a more limited number of aspects, which then could be addressed more profoundly, where deemed appropriate.

4.3.2.1. Scenario II.B.1 - only harmonise assessment (=testing) methods

In this option, by harmonising only assessment methods, other elements of the current harmonised standards would be left out. The harmonised product standards as they are currently known under the CPR would no longer be harmonised or cited in the OJEU; they would become purely voluntary industry standards.

The Commission would issue a series of mandates of a new type to CEN/Cenelec: CEN/Cenelec would be requested to deliver a catalogue (= a list) of already existing European assessment methods for the identified essential characteristics. This list would be cited in the OJEU.

Where European assessment methods for specifically identified essential characteristics do not exist yet, CEN/Cenelec could be requested to develop such methods, also by means of mandates. During drafting these mandates and deciding upon them, Member States would have to signal their regulatory needs in terms of (additional) essential characteristics to be covered by assessment methods.

In case of essential characteristics covered by a mandate, for which CEN/Cenelec have not (yet) been able to provide an assessment method, national methods would be allowed to be used to assess the performance in relation to such characteristics. They would be replaced by the corresponding harmonised assessment methods when the latter would become available.

A comprehensive and closely managed interim strategy would be required to replace existing mandates by mandates based on the assessment methods philosophy and for the catalogues to be delivered and referenced in a timely manner. The resources demanded from the Commission, CEN (and Member States) under this option would therefore need to be examined carefully.

4.3.2.2. Scenario II.B.2 - harmonise specified essential characteristics

Under this option, the currently applied common technical language approach is generally kept, whilst alleviating the quest for the exhaustiveness of harmonised standards, as compared to the current demands[78]. The deep-going harmonisation could thus be directed only to a part of the essential characteristics, leaving the rest to be dealt with otherwise under initiative of Member States, and thus facilitating the consideration of national regulatory needs. Rather than increasing market fragmentation, the approach would "legalise" the de facto market fragmentation that already exists in many areas, while harmonising where appropriate to increase legal certainty.

Standards continue to be at the core of the harmonised system. Mandates to CEN/Cenelec specify the essential characteristics to be covered by them. To allow this, Member States must formally come forward with their regulatory needs in a timely manner that allows those regulatory needs to be considered for decision-making on mandates under Regulation 1025/2012[79].

For those essential characteristics which have not been included in the mandates and which therefore are not envisaged to be covered by harmonised standards, Member States could be allowed to lawfully regulate performance assessment at national level.

All points mentioned under sub-option II.A would be implemented so as to address identified issues with the current CPR and avoid repeating those known issues, with the exception of issues related to the CE marking: under this scenario, there would be no CE marking as its use would lead to confusion about its meaning, in particular in comparison with the NLF situation.

As the CE marking would not apply to products covered by harmonised standards, it would not apply either to products not covered by them. There would likely be little interest from

[78] The obliging base of these demands is the judgement of the European Court of Justice on case C-100/13, which enshrined the principle of exhaustiveness: however, it merits to be emphasised that the Court did not talk here about the exhaustiveness of harmonised standards, but instead that of the whole harmonised system, now operating under the CPR.

[79] It is worth stating here that such demands would appear necessary to be posed to Member States even if it turned out advantageous to take a broader view on the concept of harmonised technical specifications.

manufacturers in submitting such products to EU level technical assessment bodies for the purposes of ETAs/EADs. Accordingly, this scenario would not provide for ETAs/EADs/technical assessment bodies.

In addition, a comprehensive and closely managed interim strategy would be required to go through all existing mandates and standards one by one to implement this approach. The resources demanded from the Commission (and Member States) under this option would therefore need to be examined carefully.

4.3.2.3. Scenario II.B.3 - optional common technical language

Under this option, harmonised standards as well as ETAs/EADs continue to be at the core of the harmonised system. However, manufacturers would not be obliged to use the common technical language or the harmonised system.

By making the use of the harmonised technical language optional for them, manufacturers whose construction products are only used locally would not have any obligation to CE mark and would save the costs involved. Instead, they can choose to assess and communicate performance according to non-harmonised means. In such a case, they cannot affix the CE marking nor draw up or pass on a document that could be mistaken for a DoP. The option can therefore be considered as an extension of the possibility under the current CPR for manufacturers to choose to obtain the CE marking by applying for a ETA or not, to be affixed to products not covered or not fully covered by harmonised standards.

Member States will continue to be required to stipulate their national requirements to performance of construction products (levels/classes) by reference to the common technical language. In addition, they may wish to consider in their national requirements the possibility of manufacturers choosing not to apply the harmonised system.

Awareness raising will be indispensable for this option and resource needs are therefore to be assessed carefully.

4.3.3. Sub-option II.C - Profound revision of the CPR shifting the balance in the division of tasks between EU and Member States

This sub-option consists of three alternative scenarios, all of which propose to harmonise product requirements for construction products, rather than keeping only to the creation of the common technical language as under the current CPR. Each scenario proposes a unique way of achieving this, ranging from the New Legislative Framework Approach, to the Old Approach (setting out product requirements in legislation), and to the creation of a EU agency for construction products. Responsibility for (safety of) construction works would remain with Member States.

While in theory it could be considered to subject all construction products to harmonised product requirements in one "big bang", the variety of construction products and the challenge of developing and laying down harmonised product requirements for them would speak in favour of a phased and stepwise approach.

4.3.3.1. Scenario II.C.1 - New Legislative Framework (NLF) approach

The essential requirements for construction product families would be determined in legislation at EU level. Furthermore, mandates would be issued for the development of European harmonised standards by CEN/Cenelec, then to be cited in the OJEU, for the provision of the presumption of conformity with the essential requirements, but other

means to prove conformity would also remain possible. This approach includes a mandatory CE marking. The DoP would become a Declaration of Conformity. The degree of intervention of notified bodies would be laid down in accordance with the NLF modules. No need would prevail for technical assessment bodies, EOTA or ETAs as conformity with essential requirements could generally be proven through other means than complying with harmonised standards.

4.3.3.2. Scenario II.C.2 - old approach

The harmonised product requirements would be determined in legislation at EU level and in the necessary precision of technical detail. This scenario would not entail any development of European standards, and the CE marking would no longer remain in use.

4.3.3.3. Scenario II.C.3 - agency approach

A new Agency would be established, and entrusted with the technical work of developing harmonised product requirements in the necessary precision of technical detail. This scenario would not entail any development of European standards, and the CE marking would no longer remain in use.

4.4. Option III: Repealing the CPR: no European Union legislation on construction products

The CPR would be repealed without any substitute: no harmonised common technical language for assessing and communicating performance, no harmonised standards[80], no basic requirements for construction works, no obligation to draw up a DoP or communicate it down the supply chain, no CE marking, no classes, threshold levels, AVCP systems or conditions for classification without testing determined at EU level, no roles for notified bodies or technical assessment bodies defined at EU level, no role for EOTA, no coordination of notified bodies, no market surveillance.

Absent Union harmonising legislation, Member States and operators would rely on the principle of mutual recognition[81] to achieve free movement of construction products. Member States would be free to regulate construction products (and construction works). Articles 34 and 36 TFEU apply. This means that a product lawfully placed on the market in one Member State can freely circulate and be used in other Member States, even if it was manufactured according to technical rules different from those that must be met by domestic products in the Member State of destination (the principle of mutual recognition). The only exceptions are restrictions justified on the grounds of Article 36 TFEU (including protecting health and life of humans) or other mandatory requirements recognised by the case law of the Court of Justice, if they are proportionate to the protection aim pursued.

The Commission would enforce the respect of Articles 34 and 36 TFEU by Member States legislation/rules or administrative practices through infringement proceedings (Articles 258 and 260 TFEU).

[80] Albeit it should be remembered that the currently existing harmonised standards would not disappear, but only their status would be changed.

[81] Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:796:FIN.

For individual Member State decisions in which legislation/rules are applied to deny a product access to the national market, the procedure of Mutual Recognition Regulation (COM(2017) 796 final as proposed) would apply. An issue to consider in this context in the impact assessment (Chapter 5) is whether in fact companies would adapt to the different national requirements in all the different Member States where they wish to market their products, without relying on mutual recognition, or whether they would apply the requirements of their Member State of origin and then rely on mutual recognition to gain market access in the Member State of destination[82].

[82] It should be noted that, in the present impact assessment the proposed changes to the general/horizontal legislation for products could not fully be taken into account, because most interviews and surveys had already been completed at the time of the proposal and most respondents would have had very limited knowledge of the new proposal in any case.

5. WHAT IS THE IMPACT OF THE POLICY OPTIONS?

This chapter reports on the findings of all the different data collection tools for each of the impact types and across all of the data collection tools (online survey, interviews, company phone survey, open public consultation and validation workshop). A discussion of the results for each option and interpretation of the findings is provided in Chapters 6 and 7.

As mentioned in Chapter 4, in accordance with the Better Regulation Guidelines, the baseline (option 0) serves as a benchmark against which the impacts of all other policy options are assessed. The baseline measures future impacts if the current EU legislation on construction products remains in place exactly as it is today ("no change" option) only including changes that have already been decided.

The following impacts are considered in the impact assessment for all options:

- Costs
- Market opportunities
- Surveillance and enforcement
- Product quality[83]
- Information
- Health and safety
- Environment

For each of the options in this chapter, the detailed findings are reported for all of these impacts. To aid with readability of the report and avoid repetition, diagrams are not included for all impact types but only where the detailed survey results could provide added value to the report. Where the diagram did not yield interesting results, this is stated in the report and all survey results are reported in a separate annex to the report.

5.1. Option 0: Baseline – no change

5.1.1. Impact on Costs

Under option 0, compliance costs have been identified as potentially substantial for SMEs, with annual costs between EUR 8,150 and EUR 8,700 for micro-enterprises, between EUR 15,801 and EUR 27,300 for small companies, between EUR 51,200 and EUR 61,387 for medium companies and approximately €122,330 for large companies[84]. As observed in Chapter 2, the total compliance costs with the CPR obligations related to the DoP and the CE marking every year is estimated at €2.6-€3.4 billion for European manufacturers of construction products. Were the Regulation not revised, these **costs would not change**

[83] Impacts on product quality were assessed only for options where there was a theoretical impact potential under the provisions of the option (options IIB1, IIB2, IIB3, IIC1, III). Where impacts on product quality were measured, the results are reported in the respective section. As it were, the results of the impact assessment show that none of the options will lead to any changes in product quality.

[84] These estimates are based on the 2016 study Economic Impacts of the Construction Products Regulation, European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (2016), previously cited.

(except for potential marginal reductions as a result of stakeholder learning and adaptation), leading to continued impacts on the cost of production.

5.1.2. Impact on Market Opportunities

As discussed in Chapter 2, there has not been a statistically discernible impact on trade and market opportunities from the implementation of the CPR. However, stakeholders considered that the common technical language has been helpful in cross-border sales and sourcing of construction products. Under the baseline scenario, *ceteris paribus*, there would not be **significant changes to market opportunities** as a result of the CPR, thus leaving the potential for European legislation on construction products to stimulate further growth in cross-border trade in the sector unexploited.

5.1.3. Impact on Surveillance and Enforcement Costs

As observed in Chapter 2, insufficient market surveillance and enforcement has been highlighted as a significant issue undermining the efficiency and effectiveness of the CPR. Under the baseline option, the Commission Proposal on Market Surveillance (COM(2017) 795 final) would apply, as discussed in Chapter 2. While stakeholders were unable to assess the impact of the Commission Proposal on Market Surveillance at the time of this study, a closer examination of the Proposal suggests that issues specific to the market surveillance in the construction products sector **would remain unaddressed**.

5.1.4. Impact on Information

The identified issues on information related to some users not being able to understand the information, and the information provided not always being sufficient and/or clear enough for the end-user to assess whether the product is "fit for purpose"[85]. In addition, there is, to some extent, a lack of understanding among both manufacturers and end-users of the specific role of the CE mark under the CPR, which differs from the function of CE marking under other pieces of internal market legislation. Under the baseline option, the information provided, or the role of the CE mark would not be changed, and therefore these issues **would remain unaddressed**.

5.1.5. Impact on Health and Safety

As noted in Chapter 2, in the context of this study "health and safety" refers to whether construction products are safe and do not present a danger to end users (i.e. product safety) when using them.

Some stakeholders observed that currently the CPR affects product safety primarily by raising awareness of safety issues and product requirements. In their opinion, the impact the CPR could exercise on health and safety is restrained by the CE marking not certifying product quality limits: the level of safety has to be established by each Member State. This according to some stakeholders leads to barriers in the Internal Market[86]. Under the baseline scenario, product safety would remain an indirect impact of the Regulation. **No significant changes in product safety** would therefore be expected.

[85] In general, "fitness for purpose" can be expressly agreed or implied in construction products and contracts to ensure that, whatever is being designed, built or supplied is fit for its intended purpose. Cf. also the previous elaborations (*with reference here!*) on "fitness for use" and adjacent concepts.

[86] Please note that maintaining the declared performance in compliance with CPR is related to the safety of products. RAPEX cases indicate performance different from the one declared, thus, non-compliance with CPR.

5.1.6. Impact on the Environment

The study on economic impacts of the CPR[87], following the Better Regulation Toolbox of the European Commission, considered benefits that could be expected to arise from the implementation of the CPR. As an ultimate (long-term) impact of the CPR, the study identified **improved information about the conditions for better hygiene, health and environment** - potential impacts related to **Basic Work Requirements (BWR) 3 and 7** concerning environmental protection and sustainability. However, the study also found that the benefits pertaining to the CPR are difficult to evaluate in quantitative terms because of the intangibility, lack of data (inability of consulted stakeholders to provide quantitative estimates), and long-term materialisation of certain benefits.

During the evaluation, a number of different viewpoints were put forward with respect to the coverage of environmental impact of the CPR. Some respondents stated that the issue is in theory addressed by BWR 3 and 7, but that the details of their implementation/application need to be clarified.

Based on the evaluation and the problem definition in Chapter 2, the table below provides a summary of the future impacts of the CPR in its current form (i.e. if no changes are made).

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

Impacts on	Impacts
Costs	• The administrative costs and burdens will remain quite substantial for SMEs, particularly micro-enterprises while, relatively speaking, they will be negligible for large enterprises. This will lead to continued impacts on the cost of production which – if reflected in the price of construction products - might be paid for by end-users. However, the extent to which this might be the case is not determined in this impact assessment study. • It should be noted that most stakeholders (including representatives of construction product manufacturers and market surveillance authorities) would nevertheless continue to support the CPR because they view the benefits as outweighing these costs.
Market opportunities	• Limited additional growth in trade in construction products: ○ No statistically discernible link between the CPR and the value of intra-EU trade. ○ Obstacles to the internal market remain in the form of national marks. • Growth in market opportunities for CP manufacturers: ○ The common technical language will be helpful for cross-border market opportunities, selling and sourcing construction products from other EU countries. ○ However, differences caused by national marks and certifications between Member States as well as uneven implementation and market surveillance of EU regulations, here the CPR, will be the leading reasons for difficulties in selling and sourcing construction products. • Overall, *ceteris paribus*,

Impacts on	Impacts
	there would not be **significant changes to market opportunities** as a result of the CPR, thus leaving the potential for European legislation on construction products to stimulate further growth in cross-border trade in the sector unexploited

Surveillance and enforcement costs	• Market surveillance will remain broadly seen as ineffective:
	  ○ Significant variance in quality and effectiveness of market surveillance will remain between Member States. The lack of market surveillance will create the basis for lack of trust in the legislation, and, thus, will disincentivise the companies to comply with the legislation, as there will be a low risk of getting caught.
	  ○ The lack of confidence in the CE marking among some market actors will remain due to insufficient implementation in this area by many Member States.
	• Because the CE marking under the CPR is about performance rather than safety, it will not be of high priority for Member States, and as the Member States do not have indefinite budget for market surveillance, they are likely to prioritise other issues. Under an unchanged policy, the problems caused by ineffective market surveillance would be likely to at least partly remain unaffected. This is the case despite the proposed changes to market surveillance under the so-called Goods Package which, as also noted in Chapter 2, are unlikely to solve the problem entirely.

Information	• The utility of the information provided under the CPR will be hampered by the fact that many users are not able to understand the information, and the fact that the information provided is not always sufficient and/or clear enough for the end-user to assess whether the product is fit for purpose. It should however also be noted that there

Impacts on	Impacts
	is no coherent interpretation of the concept of 'fitness for use' among stakeholders. • Lack of understanding among both manufacturers and end-users of the specific role of the CE marking under the CPR, which differs from the function of the CE marking under other pieces of internal market legislation, will remain. • The issue of fitness for use will continue to be divisive among stakeholders. There is also a conflict between the expectations of some stakeholders and the common technical language approach of the current CPR, according to which the methods and criteria for the declaration of performance should be established rather than specific requirements to the products. Under the current policy, fitness for use could not feasibly be included.
Health and safety	• Since the CE marking for construction products is not about safety, it will not be a high market surveillance priority for Member States, meaning that where resources are stretched, the issue will remain under-surveyed. • Under the CPR in its current form, product safety will remain an indirect impact of the CPR, depending on that Member States can base their safety requirements on high-quality harmonised standards. No significant improvements in product safety therefore can be expected.
Environment	• Improved information about the conditions for better hygiene, health and environment - potential impacts related to Basic Work Requirements 3 and 7 concerning environmental protection and sustainability.

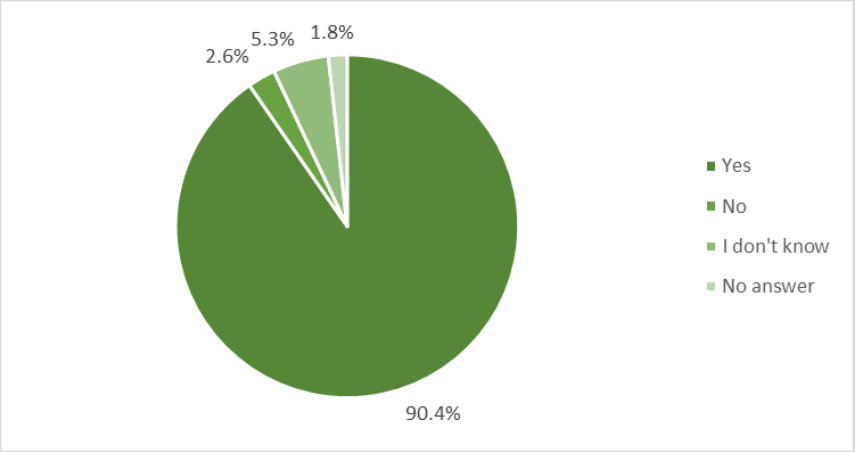
5.2. Option I: "Enhanced baseline " - No legislative change but improved implementation through guidance/soft law

5.2.1. Introduction

Of the 76 interviewees who participated in the semi-structured interviews, five technical bodies, four business representatives, three public authorities, and one SME representative expressed a clear preference for this option. In the validation workshop organised on the 3rd of May 2018, 38% of the participants (n=73), many of whom had also been participants in the semi-structured interviews, expressed a preference for option I. In their comments, the stakeholders stressed the need to improve market surveillance, address the problem of the slow citation of the harmonised technical specifications, and simplify the CE marking, making it ready for digitisation.

Similarly, in the open public consultation, the 114 respondents who believe that the EU legislation on construction products should not be maintained as it is and who do not favour a repeal (i.e. 18% of the 641 participants) were asked what type of reform they would support. 90.4% supported the proposed option "with clarifying procedures, better aligning the CPR with other legislation and simplifying rules, making them easier to apply (for smaller businesses especially)(Figure 5-1).

Figure 5-1: Clarifying procedures, better aligning with other legislation and simplifying rules so as to make it easier to apply (for smaller businesses especially)



Source: Open public consultation. N=114

Most of the comments provided by these respondents relate to the need to speed-up the procedures of standardisation and of citation of hENs in the OJEU, as well as to the need to communicate and provide guidance to all relevant stakeholders in order to ensure a better and more uniform understanding and application of the CPR. One specific point made by a number of participants concerned the need for alignment with the Drinking Water Directive and Regulation (EC) No 764/2008, defining the principle of mutual recognition[88]. At a more general level, many respondents plead for a more pragmatic approach and application of the CPR and for standards to be seen as technical, not legal documents.

[88] Open public consultation

It was suggested by the interviewees that this option would improve the understanding of rules by all actors, reduce frustration by speeding up the EAD procedure and lead to much improved acceptance of the CPR by all actors. The respondents were almost unanimous in their support for streamlining the EAD procedures and standardisation work, as well as for stepping up market surveillance and enforcement to improve the implementation of the CPR. It was however noted that the streamlining of standardisation might need to be done through other means, mainly through Standardisation Regulation and acknowledged that the new COM (2017) 795 proposal on market surveillance might improve the situation regarding insufficient market surveillance. The speed of revision and update was considered a significant issue by many.

Those interviewed stakeholders who were in favour of the option as it is presented either expressed globally satisfaction with the CPR in its current state arguing that more significant changes are not needed or considered that the CPR is not mature enough for full revision. Similar opinions were expressed by many of the stakeholders who provided feedback on the Roadmap,[89] with 35 respondents expressing explicit support for this option, either as a sole favourite or as equally favourable as Option II.A.

However, some interview participants who did not favour this option, as well as six of those who expressed general agreement with the content of the proposal (three business representatives, two technical bodies, and one public authority), suspected that soft law is not enough. Specifically, one manufacturer organisation for instance feared the policy option would not work because the Commission and Member States would not be able to agree on common interpretations that could be implemented in practice. One technical body and one business representative expressed concern about the issue of voluntary labels, considering them difficult to sufficiently address through soft law. The question of who would issue the soft law and on whose authority was also raised, and the concern expressed that the Commission would become both the lawmaker and the enforcer. One workshop participant also suggested that with the soft law option, it would not be possible to intensify market surveillance at the European level, if the interpretation of Article 9(2) concerning the information accompanying the CE marking is not common to all Member States.

Similarly, some interviewees considered that guidance is not helpful, and not relevant when issues are taken to court. The participants in the second CPR Technical Platform observed that the soft law approach, even if a common interpretation could be agreed on, would not offer the stakeholders more guarantees as the implementation would remain at the judicial level.[90]

However, one interviewed public authority considered that while it is a positive thing that court cases are initiated to discover the legal limits of the CPR, a more dialogue-based approach can be a more practical way to solve problems. This public authority also suggested publication of a catalogue of cases showing how relevant problems can be solved without requiring taking the matter to court, to provide guidance and inspiration for finding a common solution for future cases. For instance, such a publication could be produced at EU level. One public authority and one technical body raised the issue of lack of sustainability requirements. The technical body suggested that it would be worth considering creating a separate legislation concerning circular construction materials.

[89] See http://ec.europa.eu/growth/sectors/construction/product-regulation/review_en for the Roadmap and the feedback.

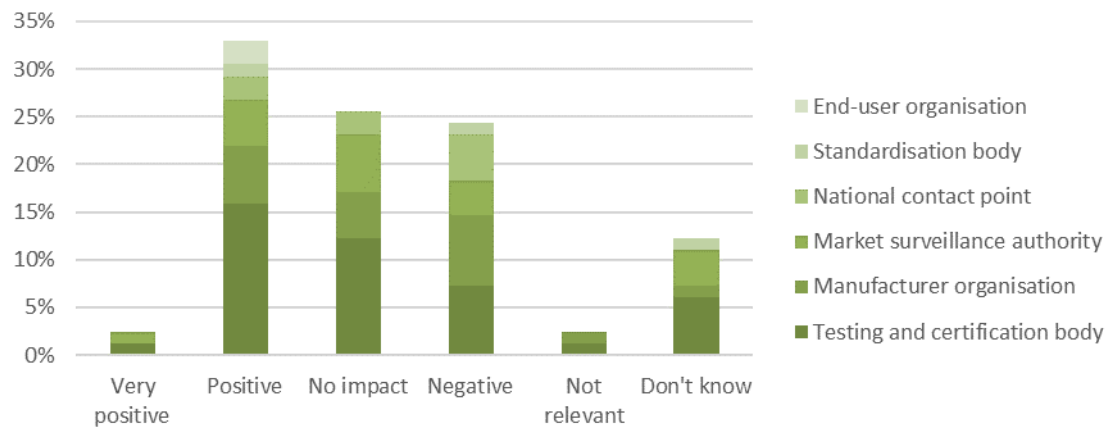
[90] Summary of the second Technical Platform, 18.01.2017.

5.2.2. Impact on Costs

On average, online survey respondents[91] considered that Option I as a whole would lead to a small reduction in compliance costs[92] (Figure 5-2). However, opinions were somewhat divided among the stakeholders, with manufacturers and national contact points expecting a small increase in cost while testing and certification bodies, market surveillance authorities and end-user organisations expected a small decrease[93].

The reason why manufacturer organisations were less positive about the impact on costs of Option I might have to do with doubts concerning the interpretation of guidance/soft law. For instance, one manufacturer organisation responding to the online survey thought the policy option would not work because the Commission and Member States would not be able to agree common interpretations that could be put directly into practice. Some national contact points had similar doubts with one respondent noting that soft law is not strong enough to make a real difference to market surveillance and another one indicating that guidance/soft law would not solve problems of implementation.

Figure 5-2: Impact on compliance costs of Option I



Source: Online survey. N=101.

These results are based on the responses of the above stakeholder groups (end-user organisations, manufacturing organisations, market surveillance authorities, national contact points for the CPR, standardisation bodies, testing and certification bodies). In order to get a more in-depth understanding of the drivers of cost impacts in option I, the

[91] The small number of responses would indicate that survey results should be interpreted with caution. At the same time, the survey results focused on representative organisations – not individual companies – and they complement the company phone survey which gathered opinions from a large number of manufacturers. Across the different data collection tools, the study findings therefore draw a robust and representative picture of the sector.

[92] Qualitative survey answers where converted into the following numbers: "Very positive impact" = 2; "Positive impact" = 1; "No impact" = 0; "Negative impact" = -1; "Very negative impact" = -2. Then, the average response was calculated which in this case resulted in a score of +0.2 indicating a small positive impact. Values between 0-1 indicate a positive impact, values between 1-2 indicate a very positive impact. The same logic applies to negative values. Zero indicates no impact.

[93] Results: End-user organisations: Average response=1; Respondents=2 / Manufacturer organisations: Average response=-0.06 ; Respondents=15 / Market surveillance authorities: Average response=0.23 ; Respondents=13 / National contact points: Average response=-0.25 ; Respondents=7 / Standardisation bodies: Average response=0 ; Respondents=2 / Testing and certification bodies: Average response=0.3 ; Respondents=30.

company phone survey asked individual enterprises four further questions regarding the impact on their costs:

a. of streamlining (simplification)procedures for the issuance of European Technical Assessments (ETAs);
b. of more uniform application of European legislation on construction products across EU Member States;
c. if the DoP was generally accepted without any need for additional national or private certificates and marks;
d. of simplifying the CE marking so that it would contain only the critical information and refer to the DoP for other information.

The results indicate that streamlining (simplification) of procedures for the issuance of ETAs is not expected by companies to have a significant cost impact: this was confirmed across all types of stakeholders included in the company phone survey (39% chose "no impact", out of 736 respondents). In interviews, some authorities indicated that streamlining of standardisation work was necessary.

Similarly, more uniform application of European legislation on construction products across Member States is not expected to have a significant cost impact, though micro-enterprises on average indicated that this could lead to an increase in costs for them. Presumably this is due to the fact that many micro-enterprises do not operate cross border and therefore prefer their traditional national regulation. In terms of different stakeholder groups, more professional end-users expected a decrease in costs as a result of more uniform application of the CPR in comparison to importers/distributors, which may indicate that they see European legislation on construction products as particularly beneficial to them.

For the two other cost-related questions, the results are more encouraging:

- On average, all stakeholders, irrespective of type or size, agreed that a small cost decrease would ensue if the DoP were generally accepted without any need for additional national or private certificates and marks.

- Similarly, simplifying the CE marking so that it would contain only the critical information and refer to the DoP for other information would also result in a small decrease in costs according to all types of respondents to the company phone survey, irrespective of their size.

At the level of the sector as a whole, the changes in compliance costs incurred by manufacturers under Option I, per annum, are estimated to amount to between EUR 5.64 and EUR 6.36 million[94] or between 0 and 300 eur per manufacturer, a negligible amount.

5.2.3. Impact on Market Opportunities

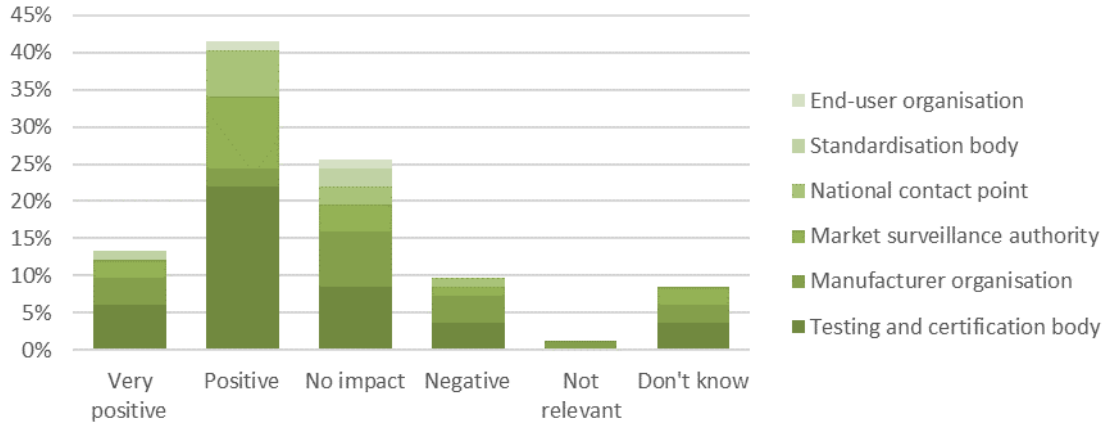
According to the results of the online survey, Option I would have a small positive impact on market opportunities (Figure 5-3), a perception shared across all types of stakeholders[95]. Market surveillance authorities and testing and certification bodies were

[94] Please see Annex II for an explanation of how impact on costs was calculated.

[95] End-user organisations: Average response=0.5 ; Respondents=2 / Manufacturer organisations: Average response=0.35 ; Respondents=14 / Market surveillance authorities: Average response=0.78 ; Respondents=14 / National contact points: Average response=0.5 ; Respondents=8 / Standardisation bodies: Average response=0.66 ; Respondents=3 / Testing and certification bodies: Average response=0.75 ; Respondents=33

slightly more enthusiastic than the average while manufacturer organisations and national contact points, on the other hand, were slightly more cautious, but still believed the impact would be positive.

Figure 5-3: Impact on market opportunities of Option I



Source: Online survey. N=101.

Like for costs above, the company phone survey asked three further detailed questions to individual companies in the sector regarding the impact on market opportunities:

- of more uniform application of European legislation on construction products across EU Member States;

- if the DoP was generally accepted without any need for additional national or private certificates and marks;

- of increasing market surveillance and enforcement of the rules so that products that do not conform to the stated performance would not be available on the market.

All types of stakeholders, irrespective of their size, agreed that all three of these aspects would have a small positive impact on market opportunities. Regarding the first point on more uniform application of the CPR across the EU Member States, some participants in the Third Technical Platform on the CPR suggested that national approaches are not necessarily a barrier to trade. Indeed, the greatest impact is expected from improved market surveillance and particularly from small, medium manufacturers as well as importers and distributors who are most likely to trade across borders.

Overall, the results of the company phone survey indicate that this policy option could result in a 1.33% increase in market opportunities for an average manufacturer, leading to between an estimated EUR 9,900 and EUR 11,200 increase in revenue, per annum, a figure that is negligibly low[96].

5.2.4. Impact on Surveillance and Enforcement Costs

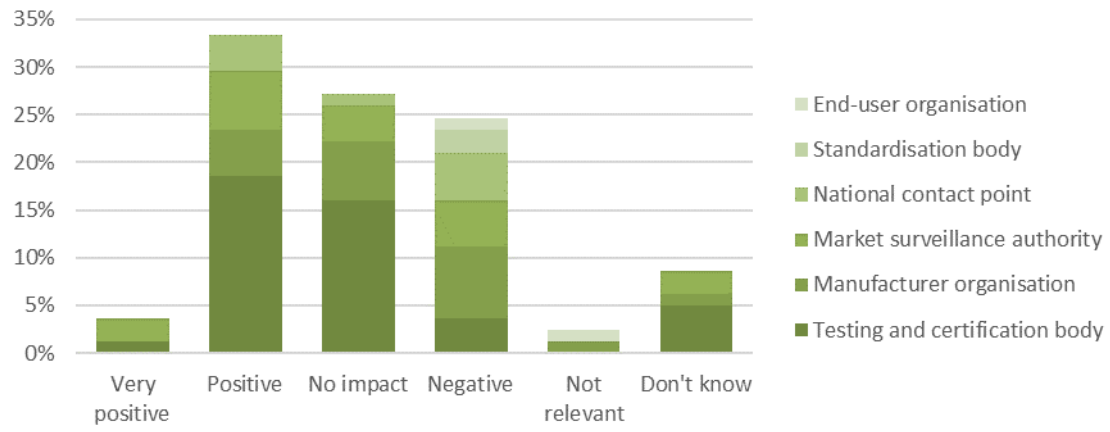
Regarding the impact of option I on the costs of surveillance and enforcement, different stakeholder groups in the online survey had different views. While market surveillance

[96] Please see Annex II for an explanation of how impact on market opportunities was calculated.

authorities and testing and certification bodies thought the impact would be positive (i.e. a cost saving), all other stakeholders (end-user organisations, standardisation bodies, national contact points) believed slightly more that the impact on surveillance and enforcement costs was likely to be negative (i.e. a cost increase)[97]. It should be noted that most surveillance and enforcement costs would be borne by market surveillance authorities who expect the option to lead to a cost saving.

At the same time, it is important to keep in mind the fact that the survey did not elicit responses from all authorities and, unlike the company phone survey, is not based on a representative sample. Furthermore, support from market surveillance authorities was not unanimous. For instance, one market surveillance authority indicated that because "soft law" cannot change existing law, organisational and informational measures cannot be sufficient to address the current problems with the CPR in any substantial way. Another market surveillance authority noted that soft law is almost impossible to enforce, and a soft law option would therefore burden market surveillance authorities without bringing any substantial benefit.

Figure 5-4: Impact on surveillance and enforcement costs of policy option I



Source: Online survey. N=101.

5.2.5. Impact on Information

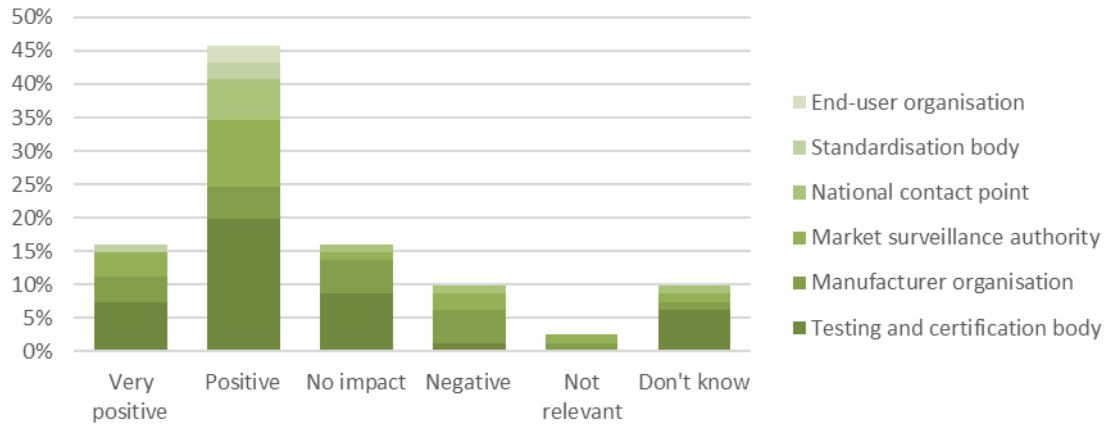
All stakeholders expect option I to lead to an improvement in meeting the information needs (Figure 5-5). It should however be noted that there are only very few responses from the main beneficiary group of such information (i.e. end users) and hence the results need to be interpreted with care.

Some of the participants in the third CPR Technical Platform noted that more information is needed not only about the products but also about their installation and environmental implications. However, the additional burden of providing such information should not be imposed on the manufacturers if there is no demand for such information.[98]

[97] End-user organisation: Average=-1 ; Respondents=1 / Manufacturer organisation: Average=-0.13 ; Respondents=15 / Market surveillance authorities: Average=0.35 ; Respondents=14 / National contact points: Average=-0.12 ; Respondents=8 / Standardisation bodies: Average=-1 ; Respondents=2 / Testing and certification bodies: Average=0.43 ; Respondents=32.

[98] Summary of the third Technical Platform, 14.03.2017.

Figure 5-5: Impact on information of Option I



Source: Online survey. N=101.

5.2.6. Impact on Health and Safety, and on the Environment

Finally, all stakeholder groups expect either no (28%) or a small positive impact (26%) of policy option I on health and safety and on the environment (27% and 28% respectively). As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.2.7. Summary

In conclusion, despite the above-mentioned limitations in terms of the scope of the option and concerns about its effectiveness, option I is seen as generating positive impacts in all areas and often presented as a potential starting point to improve the functioning of the CPR while considering other longer-term solutions (see also Chapter 6 and 7). The possibility of combining elements of Option I with Option II.A was seen as a viable solution, raised by multiple stakeholders.

5.3. Option II.A: Limited revision of the CPR, only tackling the issues explicitly identified in the July 2016 CPR Implementation Report.

5.3.1. Introduction

General agreement reigned among stakeholders participating in the company phone survey and online survey that this option would have at least a small positive impact, including on cost savings, market opportunities, surveillance and enforcement cost as well as information, health and safety and the environment.

Moreover, 8 of the 121 stakeholders providing feedback on the roadmap[99] explicitly favoured Option II.A, either as the sole favourite or alongside option I. Of the 76

[99] See https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3070078/feedback_en?p_id=31424.

stakeholders participating in the semi-structured interviews, 3 business representatives, 6 public authorities, and 4 technical bodies also highlighted Option II.A as the most suitable approach to CPR revision.

In the validation workshop 41% of the 73 participants, many of whom had also been participants in the semi-structured interviews, considered Option II.A to be their favourite. Generally, these stakeholders considered that Option II.A would be able to go further than soft law without introducing too major a revision, considering the relatively recent introduction of the CPR and the monetary investments already made by the stakeholders to comply with the current rules. Option II.A was suggested to improve clarity on several points and reduce legal uncertainty, as well as improve acceptance of the CPR by all actors.

Across the board, the stakeholders called for clarifying the simplification provisions to improve their usability and reduce confusion[100]. One business representative noted that this is important also since SMEs are often a major source of innovation. Several respondents also noted that some or all points in Option I should be taken on board as part of Option II.A.

However, one issue with the assessment of this option was that respondents were not fully clear what the specific changes would be under this policy option and what the differences were between this option and Option I. In addition, there may also have been different perceptions on what Option I is about and what would require a more radical revision. For instance, some stakeholders considered the issue of coherence with Standardisation Regulation and Eco-design regulation worth addressing, however it was also noted that this would need to be addressed not just through the CPR, but as part of a wider revision that looks at these pieces of legislation in greater detail[101]. One business representative raised the question of sustainability in the context of Option II.A, noting that the slow revision speed of standards can prevent the introduction of more sustainable products. To avoid this, they recommended allowing the industry to develop a new reference framework, to be incorporated into the standard once appropriately tested. The slow adoption of new standards, and particularly the slow citation in the OJEU was also highlighted as a major and urgent problem in multiple responses to the roadmap. Increased coordination between the Commission and CEN, more resources, and a more transparent process were called for (which would also be addressed by Option I).

The validation workshop participants observed that the need for simplification may be more dependent on the size and complexity of the product than the size of the company: it was therefore suggested that simplification should not be limited to SMEs only, but rather treated as a wider issue.

Additional suggestions for points to be incorporated into this policy option provided by stakeholders[102] responding to interviews included the following (it should be noted that it is unlikely that all of these suggestions could be accommodated under a limited revision)[103]:

[100] Simplification provisions include: 1) Derogations from the obligation to draw up a DoP (Article 5 CPR); 2) Simplified procedures (Articles 37 and 38 CPR).
[101] Moreover, this issue had clearly not been addressed within the Implementation Report, the conclusions of which were to form the base for Option II.A.
[102] The type and number of stakeholders are indicated in brackets.
[103] Some of these suggestions are already included in Option II.A.

- Promotion of the use of simplified procedures[104] (two business representatives, two public authorities);
- Simplification of Annex II to speed up the publication of EADs (one technical body, one public authority);
- Clarification of exceptions specified in Article 5 (two technical bodies);
- Removal or clarification of non-applicable New Approach rules, taking into consideration the specificities of the sector (a technical body);
- Including mandatory accreditation and surveillance of NBs, list the individual tests (a technical body);
- Requiring those involved in standardisation to put forward their trade interests (a technical body);
- Allowing Notified bodies without testing facilities to use a manufacturers' accredited laboratory for testing purposes without restrictions, as mentioned in Article 43 (a technical body);
- Taking sustainability, health and safety, and/or product use/installation into consideration (one business representative and two public authorities);
- TABs should have the possibility to elaborate assessment criteria (supplementary EADs) for the product characteristics not covered by harmonised standards, or alternatively the Member States should have the possibility to regulate the performance assessment for product characteristics not covered by harmonised standards (according to the proposal under Option II.B.2) (a workshop participant).

Again, it is clear that some of the provisions suggested by stakeholders under this option (especially the last two bullet points) could in fact not be accommodated within the scope of a 'limited revision'. In other words, there is a mismatch between stakeholder expectations with regard to the specific provisions to be considered and the procedural requirements that such a review would entail (see also Chapter 6 and 7 for further discussion on this point).

Finally, and related to the point on the clarity of the option itself, several stakeholders commented on the more general problems surrounding the concept of a "limited revision". One manufacturer organisation indicated that, if the limited revision under Option II.A can be done relatively rapidly, it could be a good thing. However, if it takes too long (several years), it would be better to immediately undertake a wider review. Similarly, a national contact point thought it might be difficult to only open up parts of the CPR for revision.

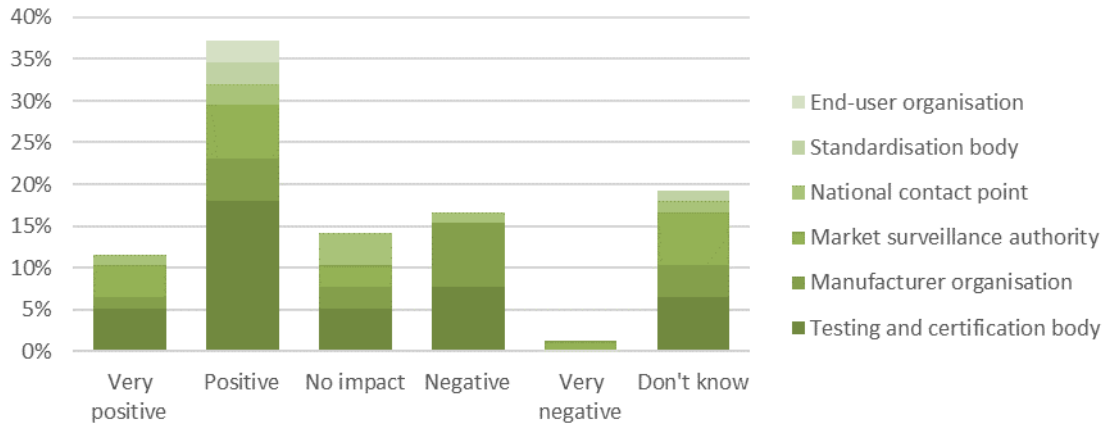
5.3.2. Impact on Costs

The online survey results indicate that Option II.A would have a small positive impact (Figure 5-6): this was shared among all stakeholders, except for manufacturer organisations, which were equally divided between those expecting a small positive impact and those expecting a small negative impact.[105]

[104] Simplification provisions include: 1) Derogations from the obligation to draw up a DoP (Article 5 of the CPR); 2) Simplified procedures (Articles 37 and 38 of the CPR).

[105] End-user organisations: Average=1 ; Respondents=2 / Manufacturer organisations: Average=0 ; Respondents=13 / Market surveillance authorities: Average=0.81 ; Respondents=11 / National contact points: Average=0.42 ; Respondents=7 / Standardisation bodies: Average=1 ; Respondents=2 / Testing and certification bodies: Average=0.59 ; Respondents=27.

Figure 5-6: Impact on compliance costs of Option II.A

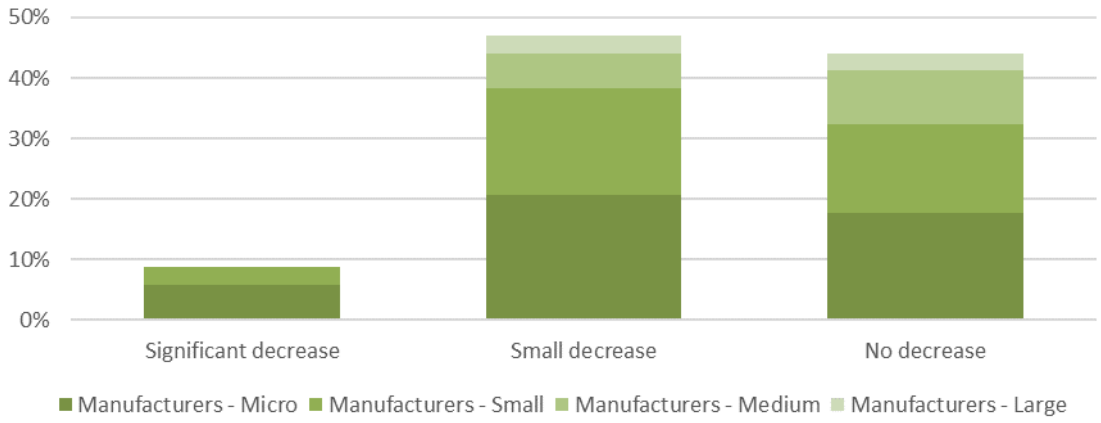


Source: Online survey. N=101.

In the company phone survey, only few manufacturers had experience with using the simplified procedures offered under the current CPR regime which confirms that the take-up of these procedures is low (a result that also emerged from the evaluation). Because only the respondents who used the simplified procedures were asked the question on them, the number of responses for this policy option is lower than for other options (N=34 in comparison to the usual N=>700). However, the targeting of manufacturers familiar with the simplified procedures allows to have higher confidence in their responses. Overall, respondents with experience of using the simplified procedures[106] indicated that these had led to a small decrease in costs (Figure 5-7), though it is also interesting to note that a large number of respondents had not experienced a cost decrease despite using the simplified procedures which may indicate that there is an issue not only in terms of take-up but also in terms of the level of simplification that these procedures allow.

[106] Simplification provisions include: 1) Derogations from the obligation to draw up a DoP (Article 5 of the CPR); 2) Simplified procedures (Articles 37 and 38 of the CPR).

Figure 5-7: What was the impact of using the simplified procedures on your costs of complying with the European legislation on construction products?



Source: Company phone survey. N=34.

The second CPR Technical Platform also discussed the limited uptake of the CPR simplification provisions of Articles 5, 37 and 38. The participating stakeholders emphasised the need for legal clarity and uniform interpretation of the CPR. It was also suggested that it should be examined whether the procedures relevant to Article 37 are indeed found too heavy or costly for micro-enterprises, and whether these two simplified procedures are actually needed. In addition, it was noted that if Articles 37 and 38 need to be adapted, interpretation of the Articles cannot go against the wording in the Regulation, and as Article 37 mixes the Old Approach with new concepts that cannot coexist, and Article 38 fails to solve the problem created by Article 5, simply reformulating the Articles might not be enough. Regarding Article 37, the Technical Platform also considered that simplification should benefit all operators and should not endanger product reliability. It was noted that simplification is perhaps more appropriate for artisanal methods of manufacturing, rather than for a particular size of enterprise.[107]

Based on the responses to the company phone survey, the policy option could result in cost savings[108] for manufacturers though the amount of the cost saving is very small (negligible) and the sample size is limited.

Indeed, for the manufacturing sector as a whole, cost savings could reach between EUR 46 and EUR 52 million per annum (less than EUR 250 per company per year). Micro and small-sized manufacturers could gain the most as a group, saving an estimated 30 and 12 EUR million respectively.

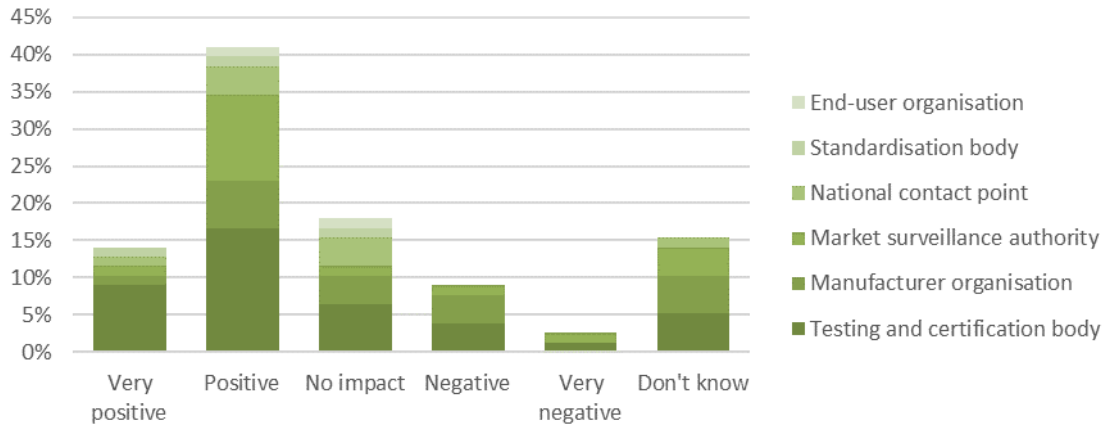
5.3.3. Impact on Market Opportunities

According to the results of the online survey, Option II.A would have a positive impact on market opportunities (

[107] Summary of the second Technical Platform, 18.01.2017.
[108] Costs savings are calculated on the basis of the baseline (existing studies) and the results of the company phone survey.

Figure 5-8): this opinion was shared among all types of stakeholders participating (end-user organisations, manufacturing organisations, market surveillance authorities, national contact points for CPR, standardisation bodies, testing and certification bodies)[109]. End user and manufacturer organisations were slightly less enthusiastic about the market opportunities generated by this option than other groups.

Figure 5-8: Impact on market opportunities of Option II.A



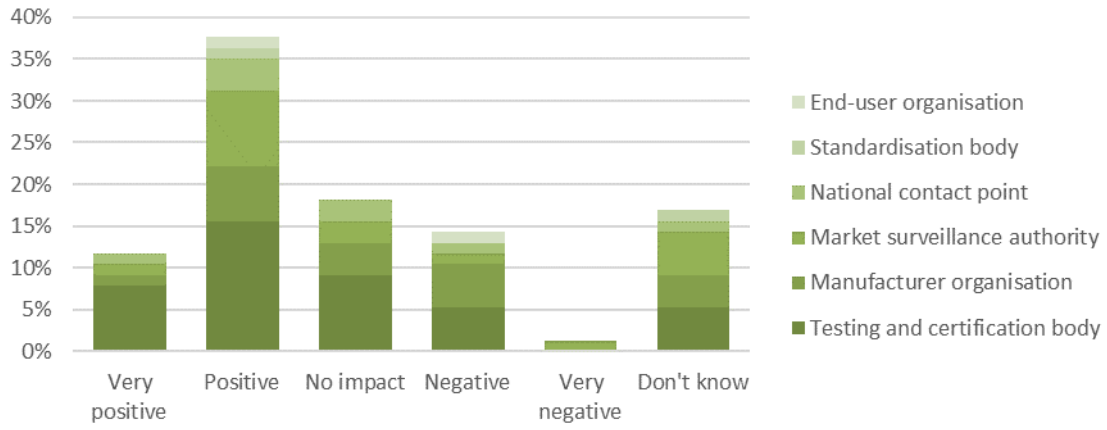
Source: Online survey. N=101.

5.3.4. Impact on Surveillance and Enforcement Costs

All types of stakeholders responding to the online survey, including market surveillance authorities, agreed that this option would have a positive impact on surveillance and enforcement costs (Figure 5-9). The response from the latter group is especially important given their close involvement in surveillance and enforcement.

[109] End-user organisation: Average=0.5 ; Respondents=2 / Manufacturer organisation: Average=0.33 ; Respondents=12 / Market surveillance authorities: Average=0.62 ; Respondents=13 / National contact points: Average=0.71 ; Respondents=7 / Standardisation bodies: Average=1 ; Respondents=3 / Testing and certification bodies: Average=0.76 ; Respondents=29.

Figure 5-9: Impact on surveillance and enforcement costs of Option II.A



Source: Online survey. N=101.

5.3.5. Impact on Information, Health and Safety, and the Environment

The impact of this option on information (34%) was seen as positive by most stakeholders participating in the online survey. While the stakeholders expected there to be no impact on health and safety (34%) and the environment (33%) without much variation across groups[110]. As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.3.6. Summary

In conclusion, despite reservations among some stakeholders about the concept of a "limited" revision and a lack of detail about the specific provisions to be included in this option, this policy option was assessed positively or as having no negative impacts. That is, across data collection tools, most stakeholders thought the limited revision of the CPR would produce small positive impacts on costs, market opportunities, surveillance and enforcement costs, and information, while there were no impacts expected on health and safety and the environment.At the same time, Option II.A (even when enlarged to include elements that are not dealt with explicitly in the Implementation report) would not allow to adequately address the issues related to standardisation, 'fitness for use' and 'exhaustiveness' of the CPR –based system, all of which also have been identified by stakeholders as challenges to be dealt with. Questions were raised in particular with regard to the effectiveness of soft law *on its own* to lead to actual change in the market.

[110] Manufacturer organisations: Average=0.91 ; Respondents=12 / Market surveillance authorities: Average=0.66 ; Respondents=12 / National contact points: Average=0.83 ; Respondents=6 / Standardisation bodies: Average=1 ; Respondents=3 / Testing and certification bodies: Average=0.6 ; Respondents=28.

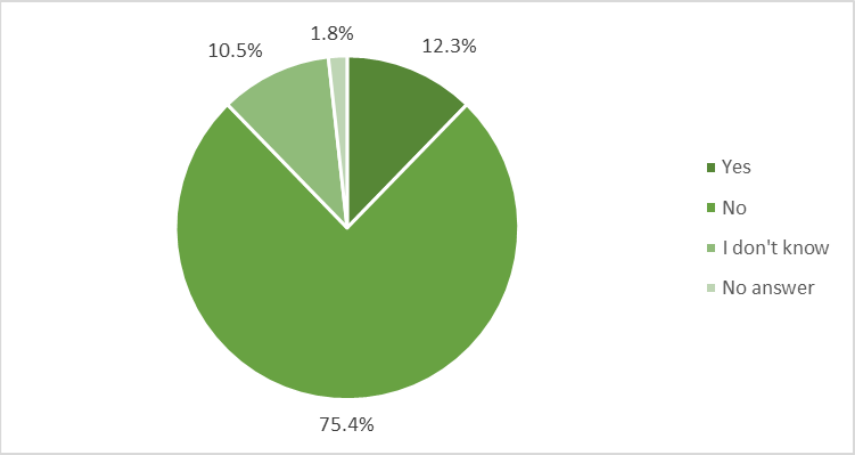
5.4. Option II.B.1: Wider revision, harmonising assessment (testing) methods

5.4.1. Introduction

Generally, stakeholders considered Option II.B.1 a step back, weakening the Internal Market and undermining the achievements already attained in consolidating the Internal Market for construction products. 29 of the 76 interviewees expressed opposition to making current harmonised standards purely voluntary. While many stakeholders called for more flexible harmonised standards and a smoother publication process, their continued existence in the current form was considered vital for the Internal Market.

In the open public consultation, the 114 respondents who believe that the EU legislation on construction products should not be maintained as it is and who do not favour a repeal (i.e. 18% of the 641 participants) were asked what type of reform they would support. 75% disagreed with the possibility of making European standards purely voluntary and creating European-wide testing/assessment methods (Figure 5-10).

Figure 5-10: Making European standards purely voluntary, while creating European-wide testing/assessment methods



Source: Online public consultation. N=114.

The majority of comments in the public consultation explained why making the current European product standards purely voluntary was not seen as a good option. Almost of all of them considered this to be a step back or a "jump into the dark". This is in line with the discussion at the first CPR Technical Platform on the mandatory nature of harmonised standards. There, the opinion was expressed that standardisation is more effective for the Internal Market than mutual recognition.

Several public authorities made additional comments during the open public consultation, observing that:

- Voluntary harmonised standards would make market surveillance very difficult;
- Making the declaration of a set of essential characteristics mandatory and then providing an option to declare additional characteristics would make more sense;
- Option II.B.1 would create economic confusion similar to mutual recognition, as well as an information problem to find out what kind of performance is delivered by a particular product;
- It would not lead to better products for the environment or sustainable development;

- Each country having its own product- and/or application standards would also create an additional administrative burden;
- This option might not be possible to deliver, as standards are written by the industry, and they might just not bother to comply; and
- Option II.B.1 is poorly worded with too many intricacies: The regulation should be kept simple, and watering down the standards would be a less preferable option to removing them altogether.

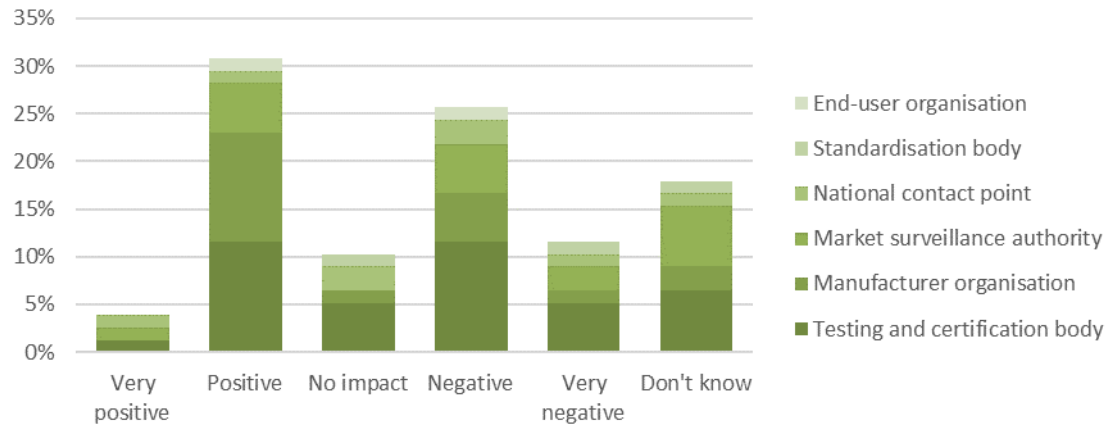
Of the few comments supporting this option, the following detailed point was made by CEN/CENELEC: "CEN/CENELEC produces standards in the field of construction for use in a variety of purposes. By definition they are voluntary and organizations that use them do so voluntarily. Users include manufacturers and specifiers, sometimes well beyond the EU/EEA. When a regulator, national or European, requires the use of a standard, this can put into question its voluntary use and may constitute a deviation from the principle of the New Approach. This is a deviation from Regulation (EU) No 1025/2012 that has to be further clarified. Article 4 Clause 1 and 2 of CPR gives requirements for the expression of information about the performance of products and on the use of CE marking for products."

The coments from CE/CENELC points to a fundamental issue with the current concept of harmonised standards for construction products. The organisations consider themselves developing the standards for voluntary use, not regulatory use.

5.4.2. Impact on Costs

The online survey shows that, for manufacturers, the impact of Option II.B.1 on compliance costs is expected to be slightly positive (Figure 5-11)[111]. This is likely to be due to the fact that harmonised standards as they are currently known under the CPR would no longer be harmonised or cited but become purely voluntary/industry standards under this option.

Figure 5-11: Impact on compliance costs of Option II.B.1

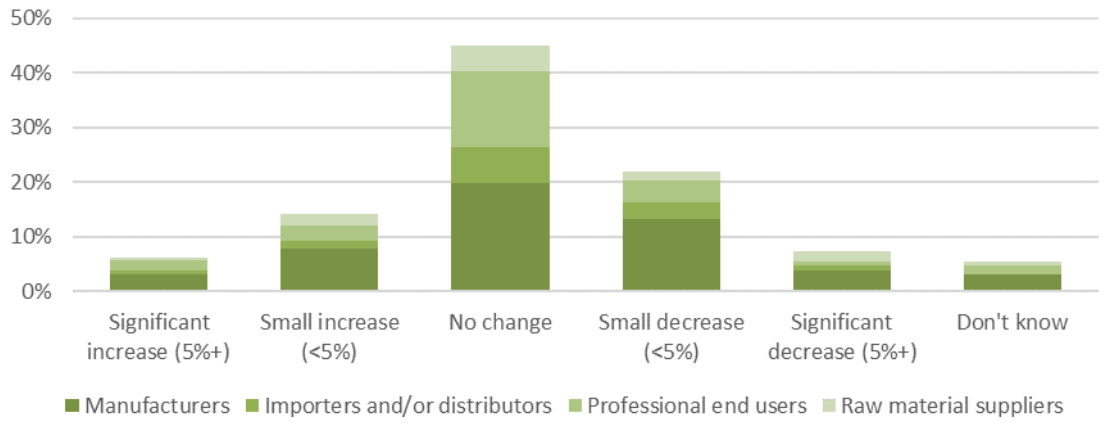


Source: Online survey. N=101.

[111] End-user organisation: Average=0 ; Respondents=2 / Manufacturer organisation: Average=0.2 ; Respondents=15 / Market surveillance authorities: Average=-0.18 ; Respondents=11 / National contact points: Average=-0.14 ; Respondents=7 / Standardisation bodies: Average=-1 ; Respondents=2 / Testing and certification bodies: Average=-0.22 ; Respondents=27.

In the company phones survey, most companies thought there will be no change (Figure 5-12). While the second most popular answer was small decrease in costs, this suggests that any cost decrease is likely to be limited. Small and large manufacturers as well as raw material suppliers were most certain about the possibility of small cost savings under this policy option.

Figure 5-12: The impact on the costs to business if harmonised standards were limited only to contain testing methods



Source: Company phone survey. N=736.

Based on the results of the company phone survey, it is estimated that this policy option could result in very small cost savings for manufacturers of all sizes. However, these impacts are so small as to be insignificant in terms of the overall business of manufacturers in Europe.

At the level of the sector as a whole, the policy option could potentially result in cost saving of between EUR 36 million and EUR 41 million per annum with most savings falling on micro and small-sized businesses.

5.4.3. Impact on Market Opportunities

On the whole, across all stakeholder groups, the online survey shows that this option would lead to a positive impact on market opportunities (Figure 5-13). However, there was significant disagreement between stakeholders, with most groups split between the expectation of either a positive or a negative impact[112].

Four different stakeholders commented on the impact of the voluntary standards on the integrity of the Internal Market:

- For one market surveillance authority, if only test methods will be harmonised, and hENs made voluntary, such an approach would create confusion on the market and allow the reintroduction of national systems on top of the European system. Similarly, another market surveillance authority thought this policy option would have a negative impact on the structure of the Internal Market. There would be a

[112] End-user organisation: Average=0 ; Respondents=2 / Manufacturer organisation: Average=-0.33 ; Respondents=15 / Market surveillance authorities: Average=0.29 ; Respondents=14 / National contact points: Average=-0.17 ; Respondents=6 / Standardisation bodies: Average=0.33 ; Respondents=3 / Testing and certification bodies: Average=-0.29 ; Respondents=28.

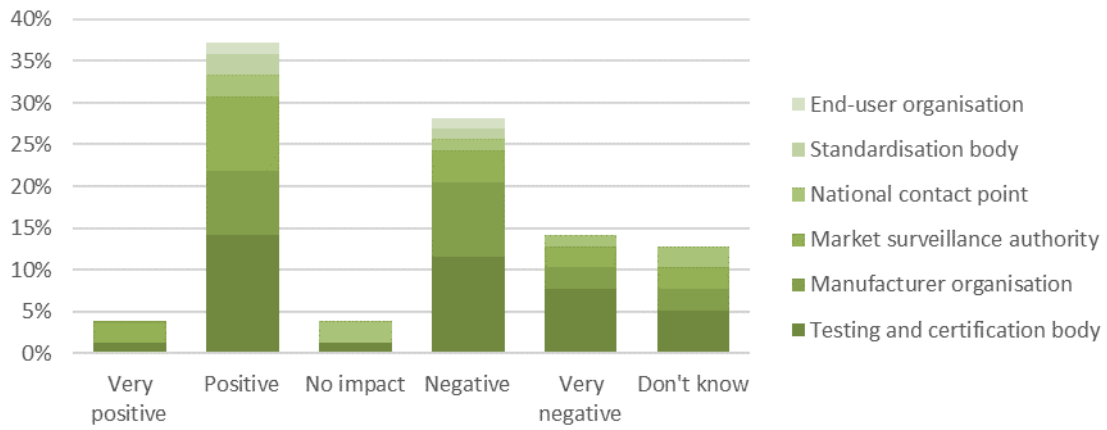
relatively large fragmentation and confusion, which would result in the gradual disintegration of the Internal Market.

- Manufacturer organisations pointed to the possibility of voluntary standards introducing confusion into the market. For instance, one manufacturer organisation stated that there would be no Internal Market if harmonised standards were made voluntary. Another manufacturer organisation agreed that this would be a very confused market situation and definitely a deterioration.

- Testing and certification bodies indicated that this change would result in them losing their customers and one such body thought voluntary/industry standards would create a parallel system, which in turn would create problems and obstacles to trade.

- A national contact point pointed to the probable introduction of trade barriers which would make the control of construction products more difficult.

Figure 5-13: Impact on market opportunities of Option II.B.1

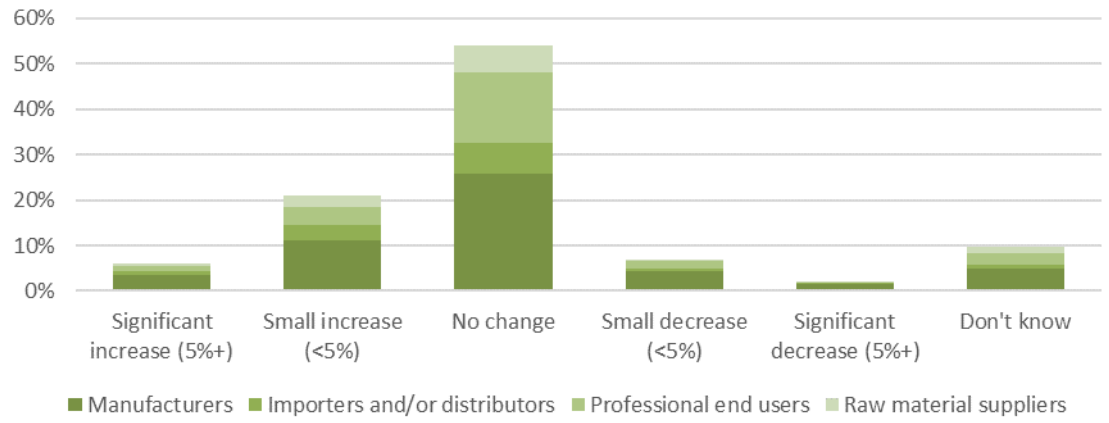


Source: Online survey. N=101.

In contrast to the results from the online survey, in the company phone survey, the average company response to the question of the impact on new market opportunities abroad indicates that companies either expect no change at all (by far the most frequent response), or a small positive change (Figure 5-14). There were no significant differences in responses across sectors, including CP manufacturers of different sizes[113].

Figure 5-14: The impact on new market opportunities abroad for business if harmonised standards were limited only to contain testing methods

[113] Construction products manufacturers: Micro: Average=0.16; Respondents=119; Small: Average=0.29; Respondents=128; Medium: Average=0.28; Respondents=68; Large: Average=0.17; Respondents=24; Total: Average=0.23; Respondents=339 / Importers and/or distributors: Average=0.30; Respondents=89 / End users: Average=0.20; Respondents=164 / Suppliers: Average=0.32; Respondents=72.



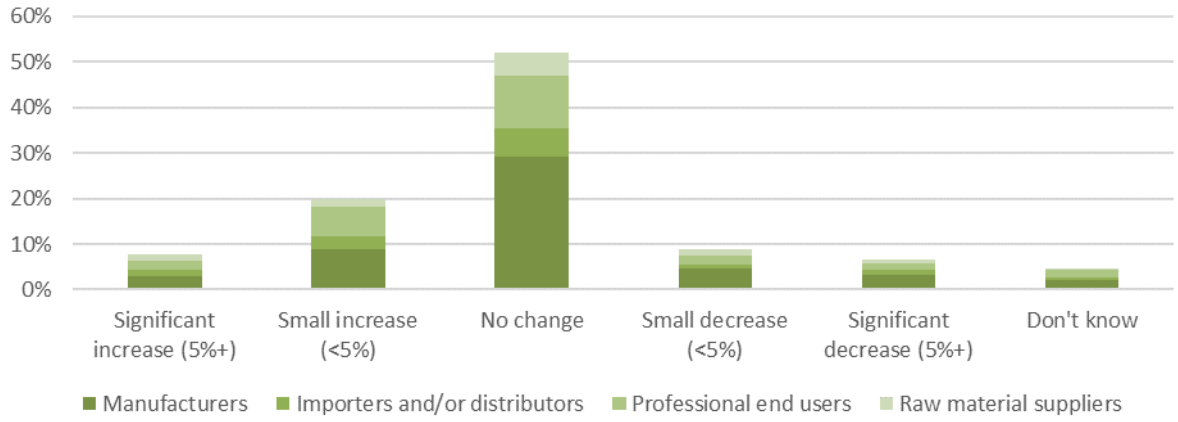
Source: Company phone survey. N=736.

Basing the estimate on the company phone survey results (which were most favourable to this option), Option II.B.1 would potentially generate only a 0.58% increase in market opportunities for an average manufacturer, leading to an **insignificantly small increase** in revenue (<less than 5,000 EUR per annum).

5.4.4. Impact on Product Quality

The vast majority of companies responding to the company phone survey indicated that there would be no impact on product quality if harmonised standards were limited only to contain testing methods (Figure 5-15).

Figure 5-15: What would be the impact on your business's product quality if harmonised standards were limited only to contain testing methods?



Source: Company phone survey. N=736.

5.4.5. Impact on Surveillance and Enforcement Costs

On average, the online survey shows that stakeholders participating in the online survey (testing and certification bodies, manufacturer organisations, market surveillance authorities, national contact points, standardisation bodies, and end-user organisations) expect this option to lead to a **negative impact on surveillance and enforcement costs**, i.e. an increase in costs (27% responded negative and 10% very negative). This

opinion was especially prominent among market surveillance authorities and testing and certification bodies who thought that the voluntary application of hENs might make the the compliance verification of construction products more difficult for the market surveillance authorities, thereby increasing surveillance and enforcement costs.

5.4.6. Impact on Information, Health and Safety and the Environment

Responses to the online survey on the impact of this option on information, health and safety and the environment were spread relatively evenly across all participating stakeholder groups (testing and certification bodies, manufacturer organisations, market surveillance authorities, national contact points, standardisation bodies, and end-user organisations), with no clear picture emerging. Indeed, based on the wide spread of responses to the online survey it is likely that the overall impact of this option on all three categories of impact is very **small / negligible**. As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.4.7. Summary

In conclusion, **the assessment of Option II.B.1 was split between companies in the sector, who thought the option would bring little change or have a small positive impact, and the other actors, who thought this option posed a threat to the Internal Market**. Broadly speaking, the dividing line was the possible introduction of voluntary/industry standards. For companies, the possibility of purely voluntary/industry standards was welcomed while the other stakeholders saw it as potentially undermining the Internal Market.

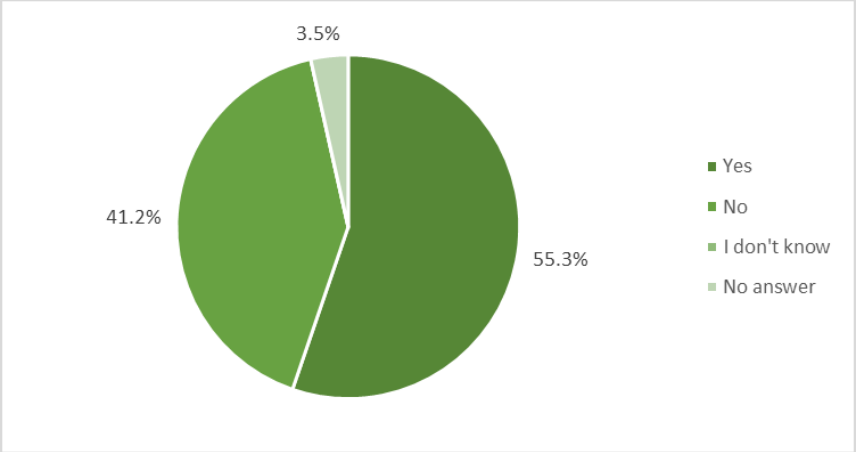
5.5. Option II.B.2: Wider revision, harmonising specified essential characteristics

5.5.1. Introduction

Overall, the opinion of stakeholders on the potential impacts of the policy option was very mixed: the picture emerging is that the impact of this option would overall be quite limited in terms of actual changes on the ground (cost or market opportunities) while at the same time generating significant legislative upheaval and potentially creating new barriers to trade depending on the specific provisions that would be included under this option. This result is shared across all the different data collection tools from the online survey, to the company phone survey, and the interviews.

In the open public consultation, 55.3% of the 114 respondents who favoured a revision (i.e. 18% of the 641 participants) expressed support for this policy option, while 41.2% disagreed (Figure 5-16), showing the uncertain and mixed feelings among stakeholders.

Figure 5-16: Would you support harmonising specified essential characteristics?



Source: Open public consultation. N=114.

Among those respondents against this option, virtually all pointed out the fact that this would lead to a fragmented system and, thus, the CPR would lose its meaning.

One market surveillance authority thought that the proposed option is certainly a new approach and wondered whether the various stakeholders were ready for it. Another market surveillance authority said this option did not seem to be realistic. It would mean new mandates (including the essential characteristics) had to be negotiated and issued for all construction products presently to be covered by approximately 500 harmonised standards. Furthermore, this would give rise to new barriers to trade where Member States regulate the essential characteristics still at national level. One manufacturer organisation thought the policy option would make it necessary to further apply parallel legislation, at EU level as well as at national level. It would be more complicated, more demanding for national legislators and it would make it easier for certain Member States to, in effect, close their markets from external competition. Another manufacturer organisation agreed that this option simply would not work in practice.

The possible negative impact on trade was a major concern for several stakeholders. One national contact point commented that all the essential characteristics should be covered by the hEN. If harmonized testing methods are not developed for some characteristics, Member States should be allowed to test using the national methods for them. The requirement for additional characteristics by Member States as well as the absence of the CE marking will make it difficult for manufacturers and market surveillance authorities. In light of this, another national contact point thought it will probably create barriers to trade. Furthermore, one testing and certification body pointed out that for large Member States the impact will be more positive, for small Member States it will be more negative.

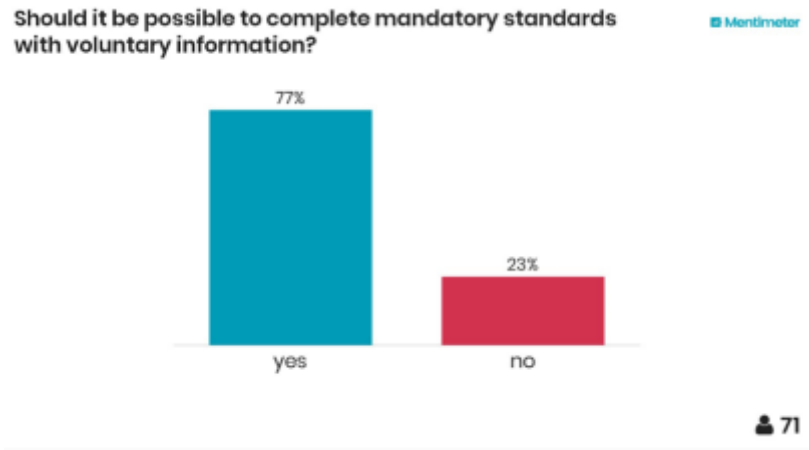
In the semi-structured interviews, about 10% of the stakeholders, primarily public authorities and business representatives expressed tentative support for option II.B.2, or parts of it. Giving some regulatory powers to the Member States was considered a potential way of addressing the challenge of keeping mandates up-to-date with industrial developments, and addressing quality, safety and other aspects not included in the CE marking. Safety not being addressed through the CE marking was a particularly often highlighted issue; it was suggested that further clarification and further tools for Member States are required to address this. However, especially technical bodies considered that it is either a more significant change to the current principles than they are willing to support, or detrimental / nonsensical. Removing the CE marking was considered very

negative, and delegating regulation to Member States was suggested to lead to general fragmentation and creation of obstacles to protect national markets. One public authority noted that Member States in charge of the regulation would take the market back to the pre-CPD era, bringing back problems CPD and CPR have tried to address. It was observed that currently mandates are not necessarily up-to-date with the development and best practices of the industry, and consequently also a more flexible interpretation of the CPR is required. Therefore the practical application of updating mandates received some support from business representatives and technical bodies.

Among those that were in support of this option and who provided further explanatory comments, the following subgroups can be discerned. A first group argued that this option is necessary in the interest of consumer protection and safety rules regulated at national level. A second group of respondents argued on the basis of the subsidiarity principle. A third group consisted of respondents who struggled with the question itself. Last but not least, there was a following comment from CEN/CENELEC: "CEN/CENELEC produces standards in the field of construction for use in a variety of purposes and hENs represent between 10-15% of the standards that are developed for this sector. It should be ensured that hENs produced for the construction sector reflect the needs of all stakeholders, in particular users, address aspects that include and are not limited to the CPR, and not only focus on the mandatory regulatory elements. Therefore, the scope of a hEN can have a wider scope than the regulatory provisions that meet the requirements, which are identified in the Annex ZA. It shall be noted that essential characteristics are those identified in the mandate/standardization request and therefore only in this case we can ensure their inclusion in the hEN."

Most validation workshop participants (54 out of 71) agreed with complementing mandatory standards with information on other characteristics than the essential characteristics defined as relevant for the basic works requirements. (Figure 5-17).

Figure 5-17: Validation workshop participants' opinion on complementing mandatory standards with voluntary information



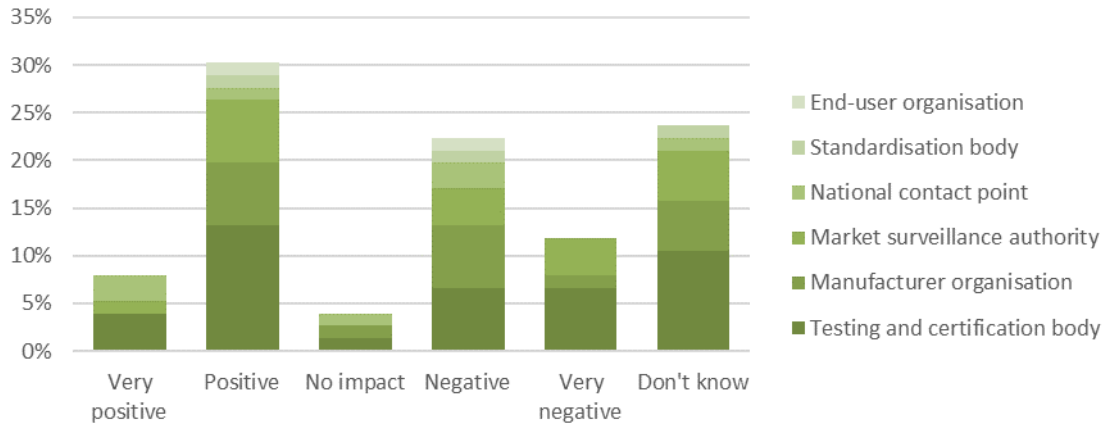
Source: Validation workshop. N=71.

However, agreement on the principle of voluntary information might depend on the condition that restrictions are put in place, so that only information that is agreed with the Member States and determined by national legislative authorities can be incorporated into mandatory standards. Stakeholders raised concern that, otherwise, this might lead to a flood of information and characteristics that users could find difficult or even impossible to assess in terms of liability and legal obligation.

5.5.2. Impact on Costs

With regard to costs, no clear picture on the impact of this policy option emerges from the online survey (Figure 5-18). While the most popular answer was positive impact, negative impact followed closely, with only very small variations across stakeholder groups[114].

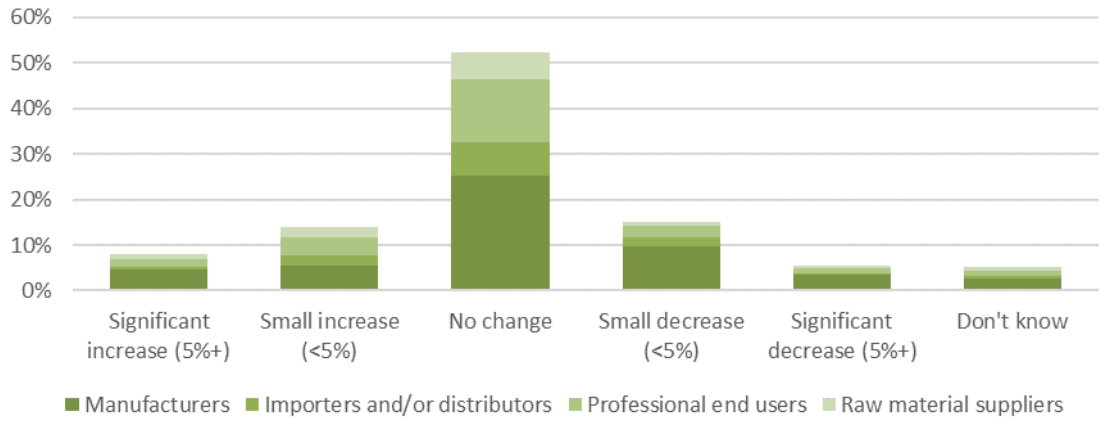
Figure 5-18: Impact on compliance costs of the policy option II.B.2



Source: Online survey. N=101.

The company phone survey also shows that the vast majority of business did not expect any impact on their costs if harmonised European standards for products covered only a few essential characteristics and this result held across all company size groups (Figure 5-19).

Figure 5-19: The impact on costs to business if the harmonised European standards for products covered only a few essential characteristics



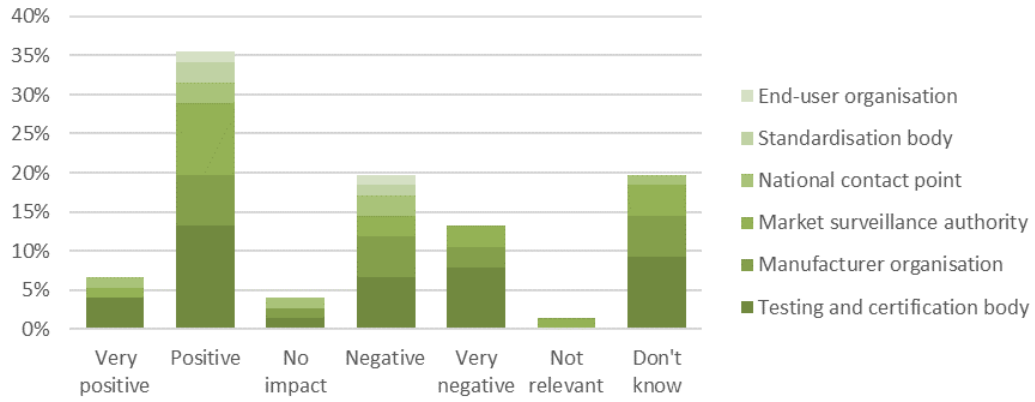
Source: Company phone survey. N=736.

[114] End-user organisation: Average=0 ; Respondents=2 / Manufacturer organisation: Average=-0.17 ; Respondents=12 / Market surveillance authorities: Average=-0.17 ; Respondents=12 / National contact points: Average=0.5 ; Respondents=6 / Standardisation bodies: Average=0 ; Respondents=2 / Testing and certification bodies: Average=0.04 ; Respondents=24.

5.5.3. Impact on Market Opportunities

Like for costs, no clear overall picture is discernible regarding market opportunities under Option IIB2 (Figure 5-20) with all stakeholders (testing and certification bodies, manufacturer organisations, market surveillance authorities, national contact points, standardisation bodies, and end-user organisations) surveyed through the online survey showing relatively even splits in opinion across all response options.

Figure 5-20: Impact on market opportunities of Option II.B.2

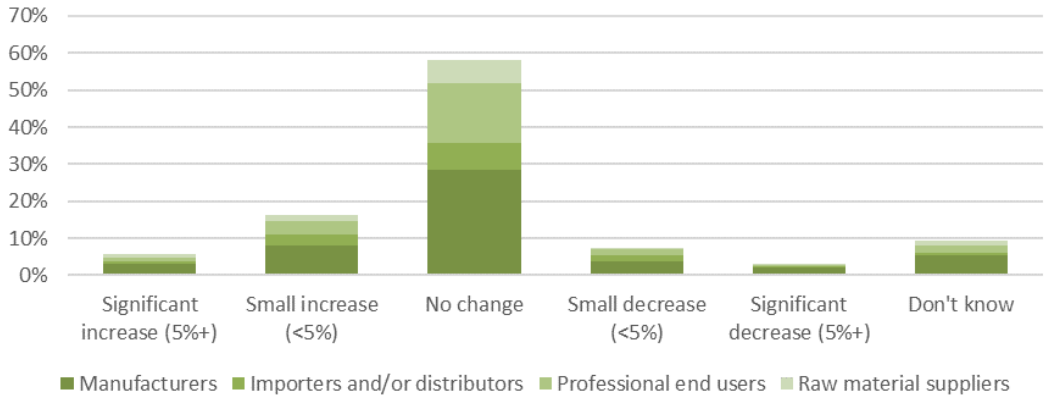


Source: Online survey. N=101.

The company phone survey shows a somewhat clearer picture with the vast majority of respondents from all size groups indicating that they do not expect a change in market opportunities as a s result of harmonised European standards covering only a few essential characteristics (Figure 5-21).[115] Among those who thought there would be an impact, more respondents opted for a small increase than any other response option.

[115] Construction products manufacturers: Micro: Average=0.12 ; Respondents=121 ; Small: Average=0.22 ; Respondents=127 ; Medium: Average=0.06 ; Respondents=68 ; Large: Average=-0.05 ; Respondents=21 ; Total: Average=0.14 ; Respondents=337 / Importer and distributors: Average=0.19 ; Respondents=90 / End users: Average=0.14 ; Respondents=168 / Suppliers: Average=0.24 ; Respondents=71.

Figure 5-21: The impact on new market opportunities abroad for business if the harmonised European standards for products covered only a few essential characteristics



Source: Company phone survey. N=736.

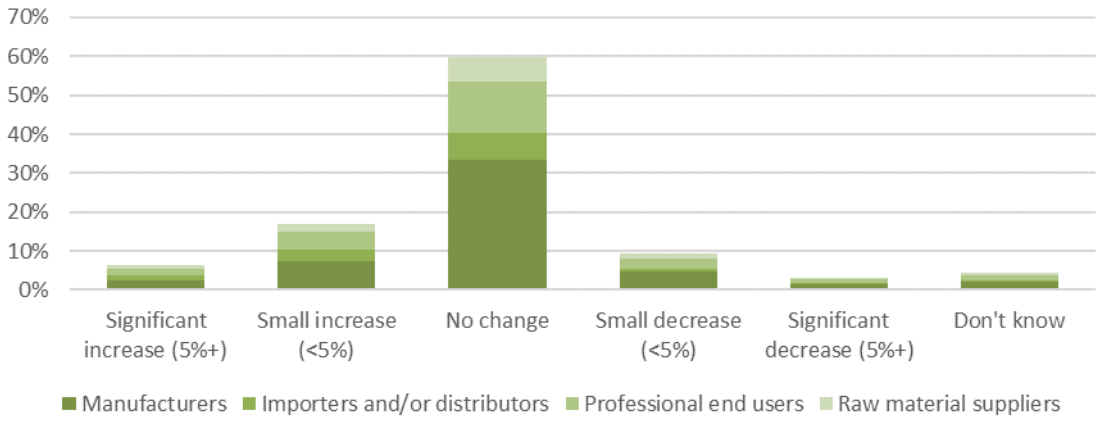
Based only on the results of the company phone survey, **Option II.B.2 could potentially result in 0.35% increase in market opportunities for an average manufacturer, leading to a negligibly small increase in revenue per annum (<3000 EUR)**.

5.5.4. Impact on Product Quality

The majority of respondents to the online survey did not expect any impact of Option II.B.2 on product quality (Figure 5-22). This position was shared across all company sizes within the construction products manufacturers' group.[116]

[116] Construction products manufacturers: Micro: Average=0.14 ; Respondents=135 ; Small: Average=0.08 ; Respondents=132 ; Medium: Average=0.04 ; Respondents=70 ; Large: Average=-0.04 ; Respondents=23 ; Total: Average=0.09 ; Respondents=360 / Importer and distributors: Average=0.3 ; Respondents=92 / End users: Average=0.15 ; Respondents=173 / Suppliers: Average=0.19 ; Respondents=78.

Figure 5-22: The impact on business's product quality if the harmonised European standards for products covered only a few essential characteristics



Source: Company phone survey. N=736.

5.5.5. Impact on Surveillance and Enforcement costs, Information, Health and Safety, and the Environment

No clear picture emerges from the online survey on any of the four remaining impact types: surveillance and enforcement costs, information, health and safety and the environment. Indeed, respondents across all groups of stakeholders were relatively evenly split between choosing the "no change", the "small positive" or "small negative" answer options. This leads to the overall conclusion that impacts of this option on surveillance and enforcement, information, health and safety or the environment is likely to be very small or dependent on the specific formulation of the option itself. As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.5.6. Summary

In conclusion, the assessment of potential impacts by stakeholders of Option II.B.2 can be characterised as uncertain. Concerning costs and market opportunities, companies and other stakeholders do not see substantial changes. Similarly, respondents see no change concerning impacts on product quality, surveillance and enforcement costs, information, health and safety. While producing limited impacts, the option is seen by some stakeholders as potentially creating legislative uncertainty and erecting new barriers to trade. In the open public consultation, on the other hand, a small minority (55%) expressed support for this option and, as discussed in the introduction, several stakeholders thought this option is necessary in the interest of consumer protection and safety rules at the national level. Finally, there was significant uncertainty and lack of clarity about the precise specification of this option which made it difficult for stakeholders to come to an informed assessment.

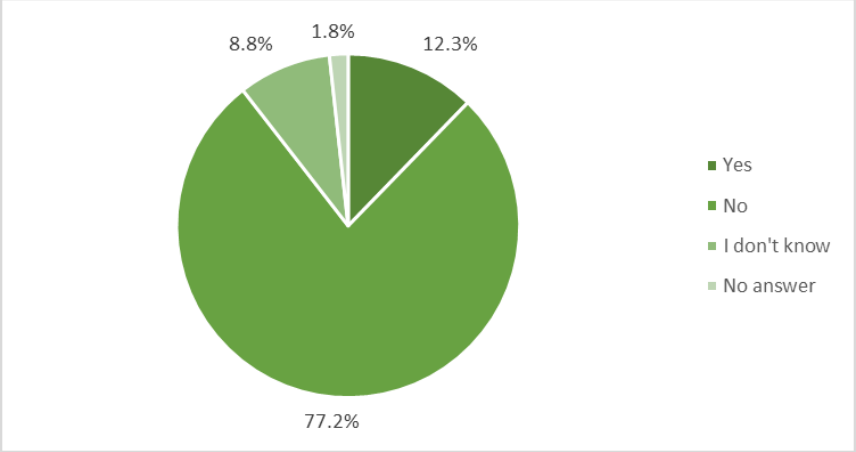
5.6. Option II.B.3: Wider revision, making common technical language optional

5.6.1. Introduction

Overall, the online survey results show that this option is expected to have little positive impact on any of the impact types under consideration: this perception is shared across all stakeholder groups. The general perception of this option is perhaps best summarised by one market surveillance authority which said that "making the common technical language voluntary would not cure the conceptual defects of the CPR, but it would increase uncertainty and create chaos"

In the open public consultation, 12.3% of the respondents who favoured a revision (i.e. 18% of the 641 participants) thought that making EU-wide rules for assessing and communicating construction products' performance optional was a good idea. 77,2% were against this policy option (Figure 5-23).

Figure 5-23: Would you support making EU-wide rules for assessing and communicating construction products' performance optional?



Source: Open public consultation. N=114.

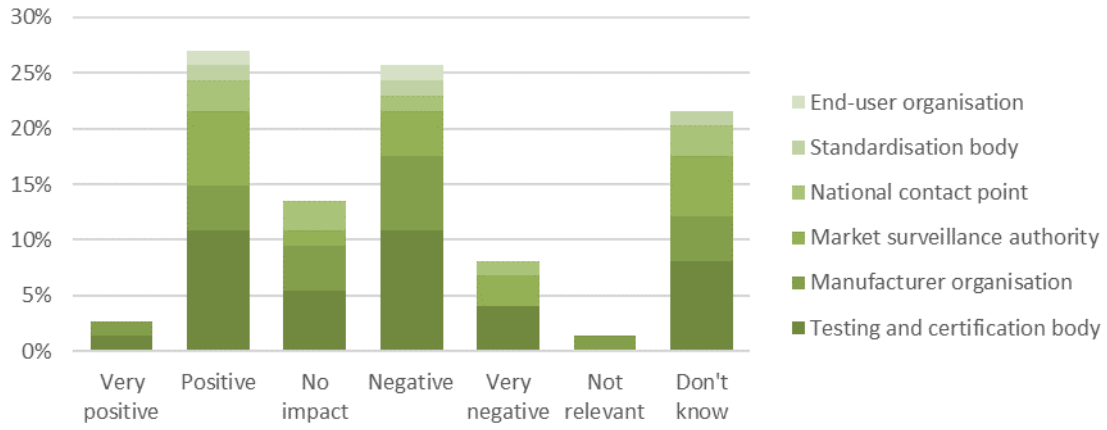
Most of those who rejected the option explained that this would run counter to the very idea of a harmonised technical language, which in principle is supported by majority of stakeholders.

5.6.2. Impact on Costs

The online survey results show that stakeholders are relatively evenly split between those who expect a small negative impact and those who expect a small positive impact (Figure 5-24).[117]

[117] End-user organisation: Average=0 ; Respondents=2 / Manufacturer organisation: Average=0; Respondents=12 / Market surveillance authorities: Average=-0.18 ; Respondents=11 / National contact points: Average=-0.16 ; Respondents=6 / Standardisation bodies: Average=0; Respondents=2 / Testing and certification bodies: Average=0; Respondents=24.

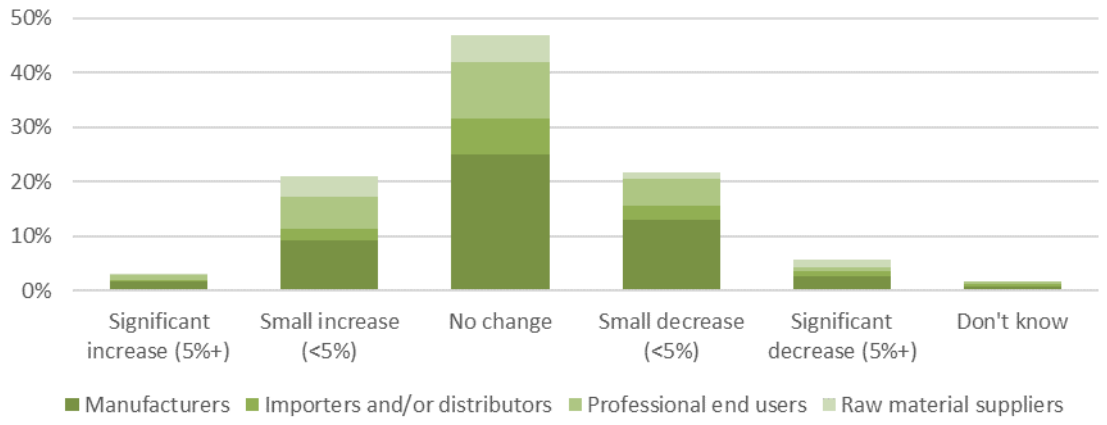
Figure 5-24: Impact on compliance costs of policy option II.B.3



Source: Online survey. N=101.

The results of the online survey are confirmed in the company phone survey where (Figure 5-25) most stakeholders chose "no change".[118] There are no significant differences across company size groups.

Figure 5-25: The impact on costs to business when making the use of harmonised standards voluntary



Source: Company phone survey. N=736.

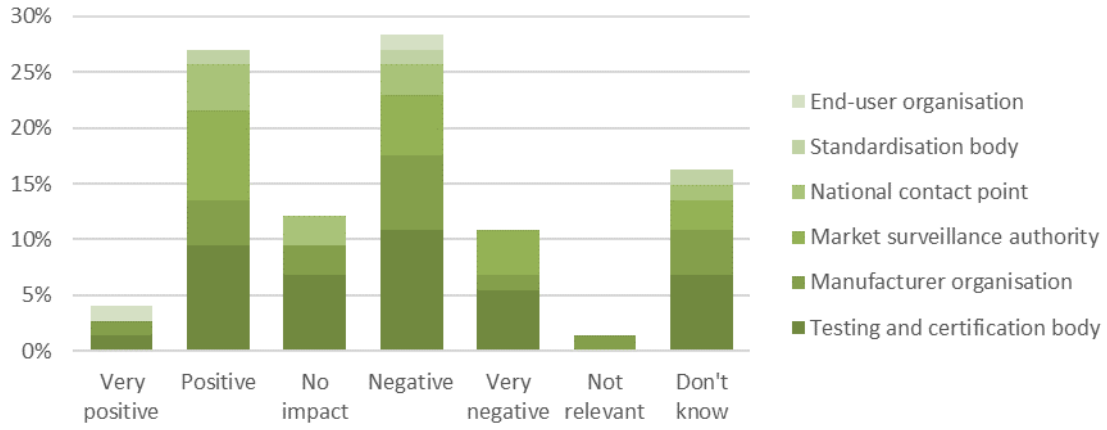
Based only on the company phone survey results, Option II.B.3 could potentially result in very small (<1000 EUR per annum) cost savings in all size groups. Across the sector as a whole, this option could potentially result in a total cost saving of between EUR 8.5 mission and EUR 9.5 million, a negligibly small amount considering the size of the sector.

[118] Construction products manufacturers: Micro: Average=-0.11 ; Respondents=95 ; Small: Average=-0.09 ; Respondents=93 ; Medium: Average=-0.08 ; Respondents=50 ; Large: Average=-0.19 ; Respondents=16 ; Total: Average=-0.10 ; Respondents=254 / Importer and distributors: Average=-0.14 ; Respondents=63 / End users: Average=0.06 ; Respondents=111 / Suppliers: Average=0.02 ; Respondents=56.

5.6.3. Impact on Market Opportunities

Regarding market opportunities, the online survey does not produce a clear picture with most respondents split between the expectation of a negative or a positive impact under this policy option (Figure 5-26). There are no clear differences between the different respondents' groups in the survey.[119]

Figure 5-26: Impact on market opportunities of the policy option II.B.3



Source: Online survey. N=101.

However, in interviews, a few stakeholders raised concerns about the impact of this option on the Internal Market:

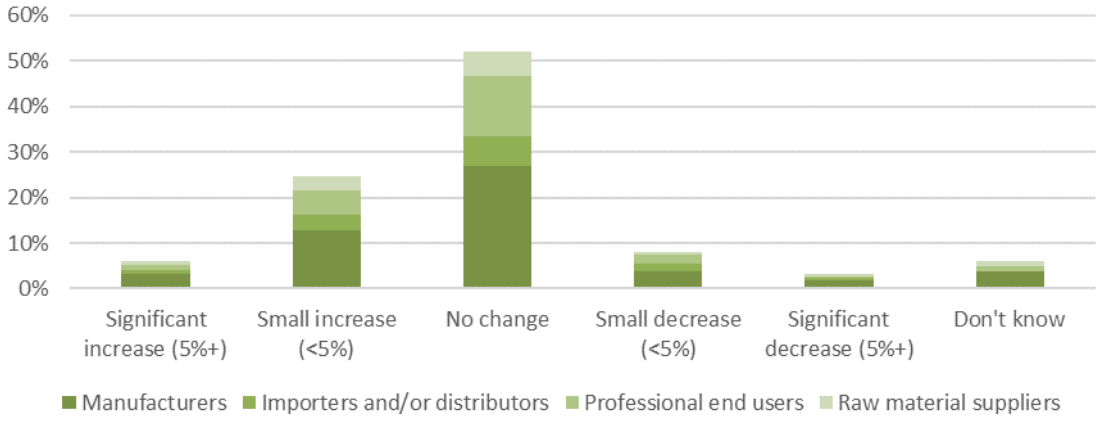
- Eight interviewees observed that this option is too drastic a change, a step backwards, and/or weakening the Internal Market in particular through the cumulation of national rules which lead to additional administrative burden.
- One manufacturer organisation thought the policy option would mean "disaster" to the Internal Market of construction products because Member States would create different requirements for CE-marked products and not CE-marked products.
- Finally, a testing and certification body remarked that for the recent Member States, the change to a voluntary system would mean that they would have to establish their own national regulation for construction products or risk becoming markets for low quality and dangerous products. Such a move would in turn lead to further fragmentation of the Internal Market.

In the company phone survey, the majority of respondents expect this option to have no impact on market opportunities. Among those that did not choose no impact, more respondents decided for a small positive impact than the other answer options (Figure 5-27). There are no significant differences across stakeholder groups or company size.[120]

[119] End-user organisation: Average=0.5 ; Respondents=2 / Manufacturer organisation: Average=-0.17; Respondents=12 / Market surveillance authorities: Average=-0.31 ; Respondents=13 / National contact points: Average=0.14 ; Respondents=7 / Standardisation bodies: Average=0; Respondents=2 / Testing and certification bodies: Average=-0.28; Respondents=25.

[120] Construction products manufacturers: Micro: Average=0.14 ; Respondents=85 ; Small: Average=0.28 ; Respondents=89 ; Medium: Average=0.42 ; Respondents=50 ; Large: Average=0 ; Respondents=16 ; Total: Average=0.24 ; Respondents=240 / Importer and distributors: Average=0.17 ; Respondents=64 / End users: Average=0.24 ; Respondents=108 / Suppliers: Average=0.3 ; Respondents=50.

Figure 5-27: The impact on new market opportunities abroad for business when making the use of harmonised standards voluntary



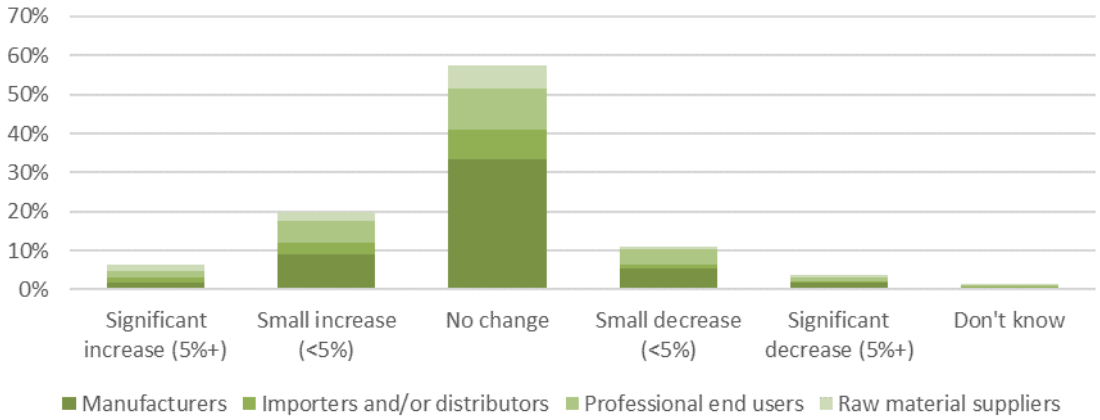
Source: Company phone survey. N=736.

Based only on the company phone survey results, this policy option could result in 0.6% growth in market opportunities for an average manufacturer, leading to a negligibly small increase in revenue (<5,000 EUR per annum).

5.6.4. Impact on Product Quality

Regarding product quality, the overwhelming majority of respondents did not expect this option to have any impact (Figure 5-28).[121]

Figure 5-28: The impact on business's product quality when making the use of harmonised standards voluntary



Source: Company phone survey. N=736.

[121] Construction products manufacturers: Micro: Average=0.15 ; Respondents=95 ; Small: Average=-0.11 ; Respondents=94 ; Medium: Average=0.28 ; Respondents=50 ; Large: Average=0 ; Respondents=16 ; Total: Average=0.07 ; Respondents=255 / Importer and distributors: Average=0.3 ; Respondents=64 / End users: Average=0.14 ; Respondents=111 / Suppliers: Average=0.31 ; Respondents=55.

5.6.5. Impact on Surveillance and Enforcement Costs, Information, Health and Safety, and the Environment

Regarding surveillance and enforcement costs, the most popular answer to the online survey for most stakeholder groups (testing and certification bodies, manufacturer organisations, market surveillance authorities, national contact points, standardisation bodies, and end-user organisations) was that this option would have a negative impact (41%). In particular, market surveillance authorities thought the policy option would result in "negative" (5 responses) or "very negative" (3 responses) impacts.[122] The same result holds for the impact on information (49%), health and safety (39%) and the environment (35%) which were, on balance, considered to potentially have negative impacts by all stakeholder groups responding to the online survey. As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.6.6. Summary

In conclusion, stakeholders were divided towards Option II.B.3. Concerning costs, both companies and other stakeholders were split between those who expect a small negative impact and those who expect a small positive impact, with potentially small cost savings. Similarly, no clear impact on market opportunities and product quality is expected. The impacts on surveillance and enforcement costs, information, health and safety and the environment, on the other hand, are expected to be on the negative side.

5.7. Option II.C.1: New Legislative Framework (NLF) approach

5.7.1. Introduction

Overall, the online survey and the company phone survey indicated that stakeholders expect this policy option to have a small positive impact on market opportunities but also lead to a small increase in costs. There was significant uncertainty regarding other types of impacts with a large share of respondents unable to make an assessment.

This is also reflected in some of the interview results where several interviewees considered this option "too unspecific", "too big a change", a "step backwards", or "going too far". One manufacturer organisations indicated that this option was impossible to implement in practice. Another manufacturer organisation noted that this option would start a lengthy process and it would be better to try to improve stepwise rather than changing too much at once.

More specifically, some interviewees (two business representatives, three technical bodies, and one public authority) specifically expressed opposition to switching to a Declaration of Conformity. According to their view, the DoP has added value and better allows the consumer to have a clear overview of the characteristics of the product without having to acquire knowledge of the relevant specifications defining the product requirements. As

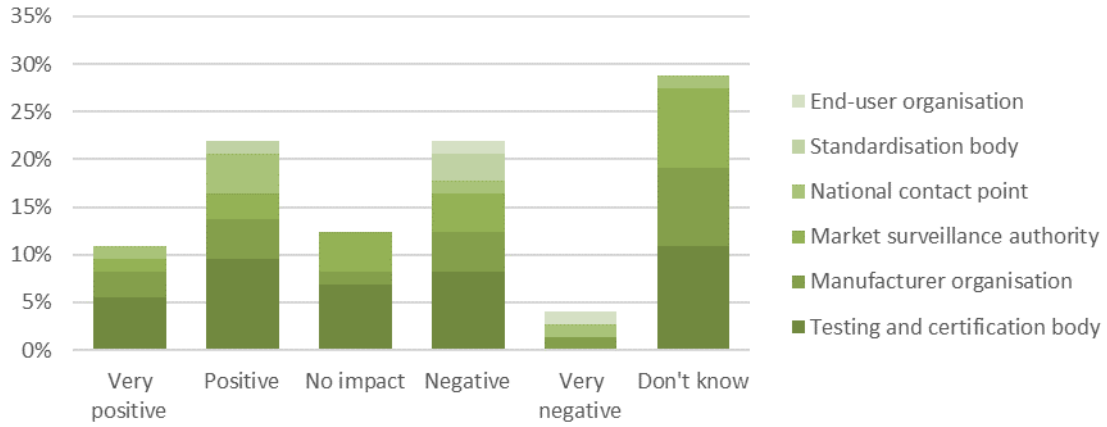
[122] End-user organisation: Average=-1 ; Respondents=2 / Manufacturer organisation: Average=0; Respondents=12 / Market surveillance authorities: Average=-0.58 ; Respondents=12 / National contact points: Average=-0.33 ; Respondents=6 / Standardisation bodies: Average=0; Respondents=2 / Testing and certification bodies: Average=-0.34; Respondents=23.

observed by one public authority: "We realised that according to the usage, the Declaration of Conformity was meaningless, [so] we switched to the Declaration of Performance".

5.7.2. Impact on Costs

The stakeholders surveyed in the online survey are split between expecting a small increase or a small decrease in costs as a result of this option (Figure 5-29). The tendency towards the positive answers were small. However, it is to be noted that a substantial number of major stakeholders (manufacturer organisations, market surveillance authorities and testing and certification bodies) were not able to give an assessment, choosing "don't know" instead.

Figure 5-29: Impact on the compliance costs of the policy option II.C.1

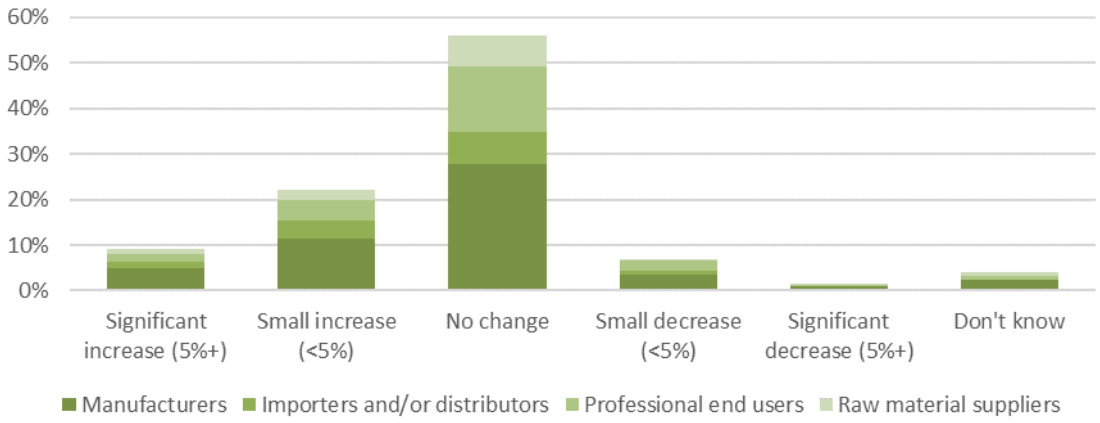


Source: Online survey. N=101.

In the company phone survey, when asked about the impact on costs to business if legal product requirements were introduced (e.g. minimum reaction to fire class, minimum mechanical strength, minimum thermal resistance), respondents across all types and size groups indicated that they expected no change (Figure 5-30). While the second most popular answer was small increase, any such increase would likely be very small.[123]

[123] Construction products manufacturers: Micro: Average=0.36 ; Respondents=132 ; Small: Average=0.37 ; Respondents=132 ; Medium: Average=0.3 ; Respondents=70 ; Large: Average=0.09 ; Respondents=22 ; Total: Average=0.33 ; Respondents=359 / Importer and distributors: Average=0.4 ; Respondents=95 / End users: Average=0.23 ; Respondents=175 / Suppliers: Average=0.34 ; Respondents=77.

Figure 5-30: The impact on costs to business if legal product requirements were introduced across MS



Source: Company phone survey. N=736.

Based on these results, Option II.C.1 is estimated to result in negligible (<500 EUR per year) cost increases for average manufacturers across all size groups. At the level of the sector as a whole, this option is estimated to lead to between EUR 24million and EUR 28 million in costs per year[124].

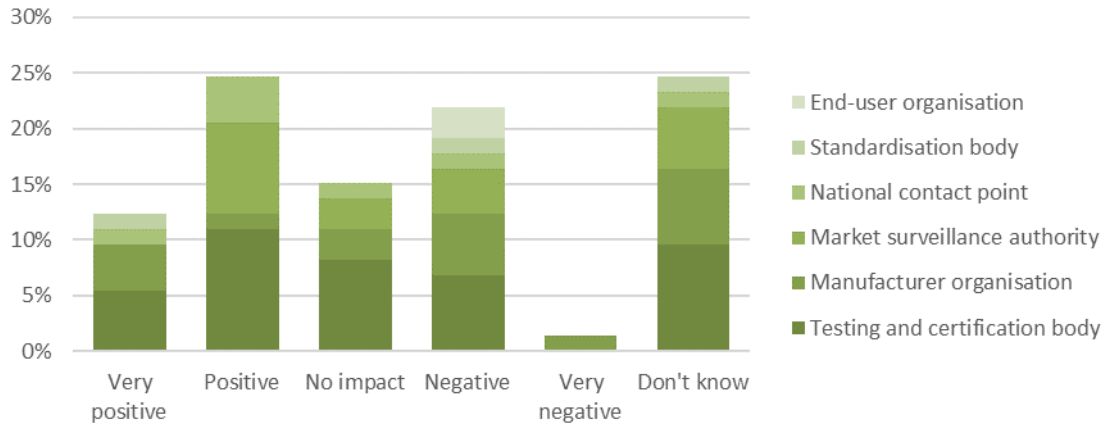
5.7.3. Impact on Market Opportunities

At the same time, when it comes to market opportunities, respondents to the online survey thought on balance that this option could lead to a small "positive impact" (Figure 5-31). However, a large number of respondents indicated "don't know" or "no change" and this high level of uncertainty needs to be considered when interpreting the results.[125]

[124] See Annex II on how impact on costs were calculated.

[125] End-user organisation: Average=-1 ; Respondents=2 / Manufacturer organisation: Average=0.09; Respondents=11 / Market surveillance authorities: Average=0.27 ; Respondents=11 / National contact points: Average=0.67 ; Respondents=11 / Standardisation bodies: Average=0.5; Respondents=2 / Testing and certification bodies: Average=0.35; Respondents=23.

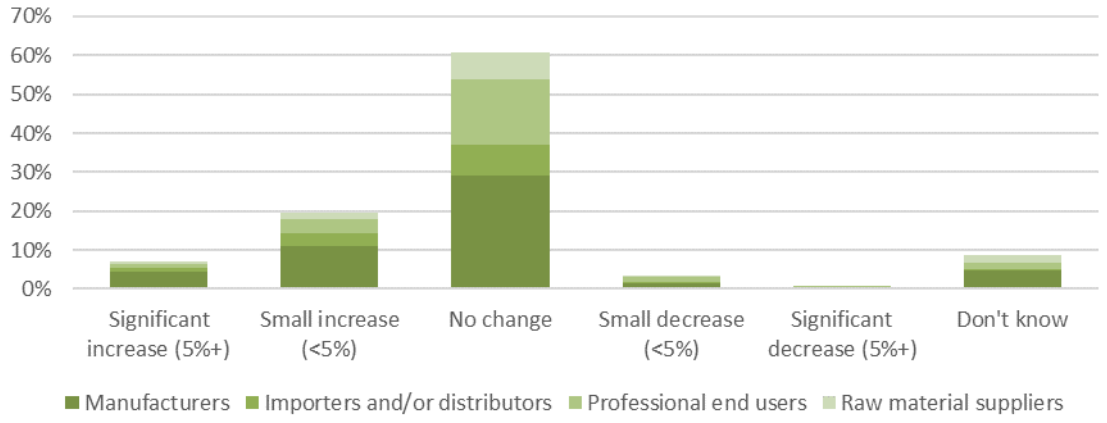
Figure 5-31: Impact on market opportunities of Option II.C.1



Source: Online survey. N=101.

The company phone survey results are in line with the online survey in that companies indicated that the impact on new market opportunities for business if legal product requirements were introduced would be "no change" (Figure 5-32).

Figure 5-32: The impact on new market opportunities for business if legal product requirements were introduced across MS



Source: Company phone survey. N=736.

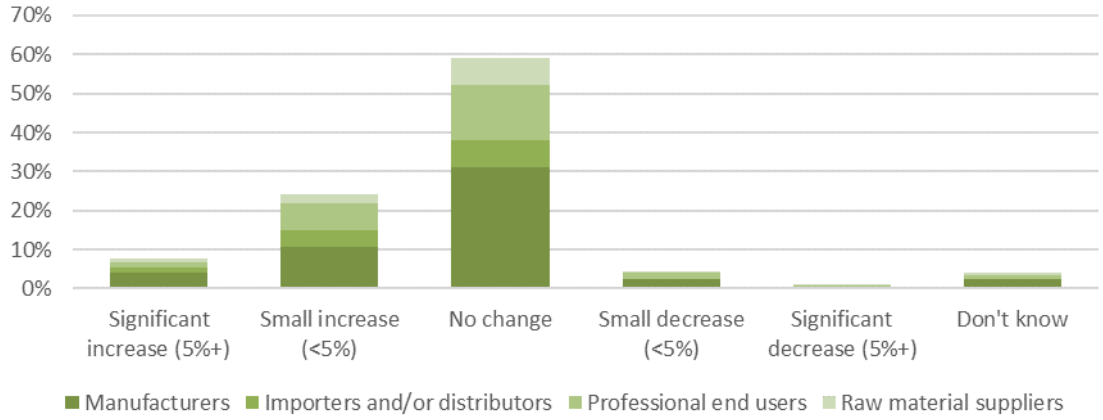
Based on the company phone survey results alone, Option II.B.3 is estimated to lead to a 0.93% increase in market opportunities for an average manufacturer (estimated between EUR 6,600 and EUR 7,500 increase in revenue, per annum) which is negligibly small.

5.7.4. Impact on Product Quality

Similarly, for product quality, the majority of companies responding to the phone survey indicated that this option would not have any impact. However, of those who did identify

an impact, the majority thought this was likely to be positive (Figure 5-33) and this was the case across all company groups.[126]

Figure 5-33: The impact on business's product quality if legal product requirements were introduced across MS

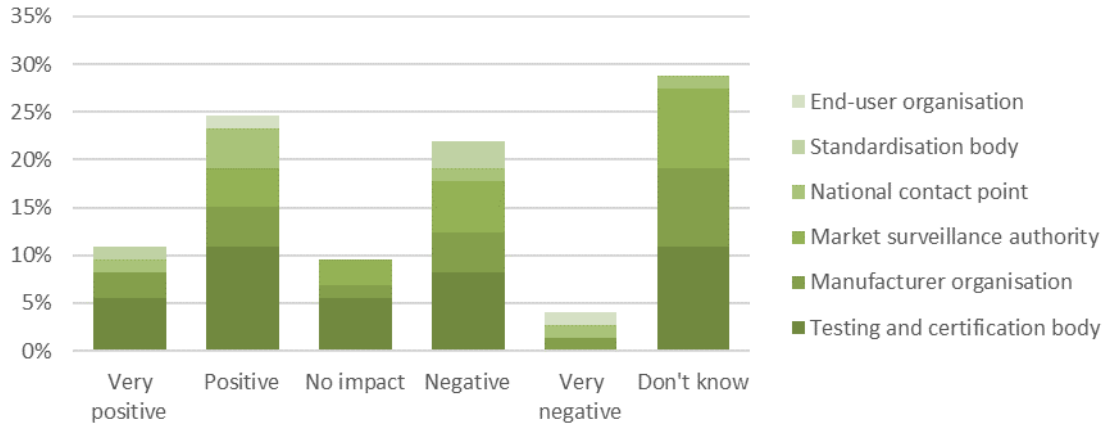


Source: Company phone survey. N=736.

5.7.5. Impact on Surveillance and Enforcement Costs

Regarding surveillance and enforcement costs, a large number of stakeholders (28%) responding to the online survey indicated that they did not know what the impact was likely to be, even among market surveillance authorities (Figure 5-34). On balance, most stakeholders were divided between positive and negative valuations.

Figure 5-34: Impact on the surveillance and enforcement costs of Option II.C.1



Source: Online survey. N=101.

[126] Construction products manufacturers: Micro: Average=0.31 ; Respondents=134 ; Small: Average=-0.36 ; Respondents=130 ; Medium: Average=0.3 ; Respondents=71 ; Large: Average=0.26 ; Respondents=23 ; Total: Average=0.32 ; Respondents=358 / Importer and distributors: Average=0.51 ; Respondents=94 / End users: Average=0.3 ; Respondents=176 / Suppliers: Average=0.32 ; Respondents=79.

Based on interviews, the driver of this result is a concern that this option would be difficult to implement in practice. Indeed, one market surveillance authority thought that defining one set of essential requirements for all construction products (as required by the NLF/New Approach) is not realistic. There is such a wide range of construction products of totally different kinds that it would not be possible to define a common set of essential characteristics. According to the authority, there is a wide variety of products presently intended to be covered by approximately 500 product standards. Similarly, another market surveillance authority said that due to the differences in the construction industry as a whole, this option seems unrealistic.

5.7.6. Impact on Information, Health and Safety, and the Environment

Overall, this policy option is expected to have a small positive impact on all three impact types: information (41%), health and safety (39%) and the environment (36%) based on the results of the online survey. While these results hold across all impact types and stakeholder groups, it should be noted that there was significant uncertainty with a large number of stakeholders choosing the "don't know" options.[127] . As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.7.7. Summary

In conclusion, stakeholders were either uncertain or slightly positive about this policy option. Concerning the impact on costs, market opportunities, product quality, surveillance and enforcement costs, companies and other stakeholders expect no significant impact from this policy option. On the other hand, potential small positive impacts could occur on information, health and safety and the environment.

5.8. Option II.C.2: Old approach

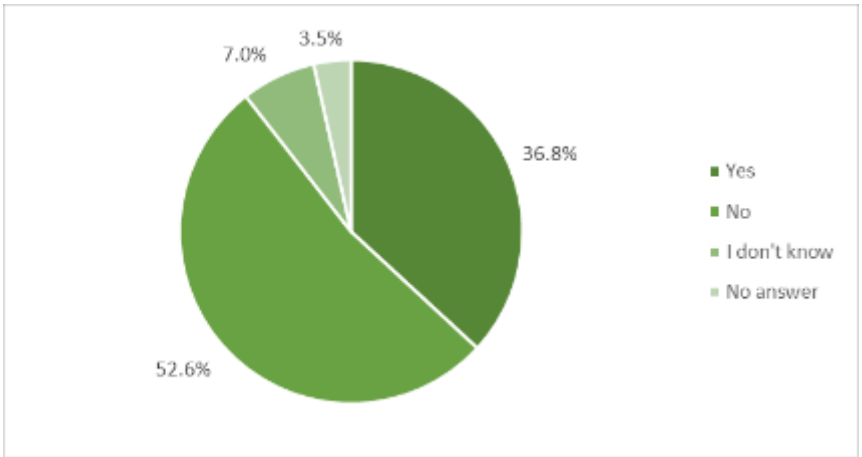
5.8.1. Introduction

Overall, this option is seen as having a negative impact by all stakeholder groups and across all of the impact types that are considered in this study.

In the open public consultation, 52,6 % of the 114 supporters of a significant revision did not support this policy option either (Figure 5-35). Only 36.8% were in favour (with 7% not having an opinion).

[127] End-user organisation: Average=0.5 ; Respondents=2 / Manufacturer organisation: Average=0.18; Respondents=11 / Market surveillance authorities: Average=0.45; Respondents=11 / National contact points: Average=0.33 ; Respondents=6 / Standardisation bodies: Average=0; Respondents=2 / Testing and certification bodies: Average=0.5; Respondents=24.

Figure 5-35: Prescribing precise technical requirements which construction products have to comply with across all EU Member States



Source: Online public consultation. N=114.

Among those who rejected this option, many argued that it would simply not be practical and/or not realistic, because of the competences of the Member States in the field of building safety and/or because of climatic and other differences. Others stated that the question is not clear and that a qualified answer can therefore not be provided. A number of German construction engineers argued that this could be an option, provided that it does not lead to a decrease in security standards.

In interviews, one market surveillance authority summarised the general opinion when they stated that this option would be "nearly impossible" because the Commission does not have the resources to draft a complete piece of European legislation regulating the wide field of construction products in detail. Similarly, CEN had not been able to finalise all 500 harmonised product standards for construction products in nearly 20 years, thus, developing a detailed technical legislation for all construction products would be very difficult. This general assessment was shared by interviewees from other stakeholder groups:

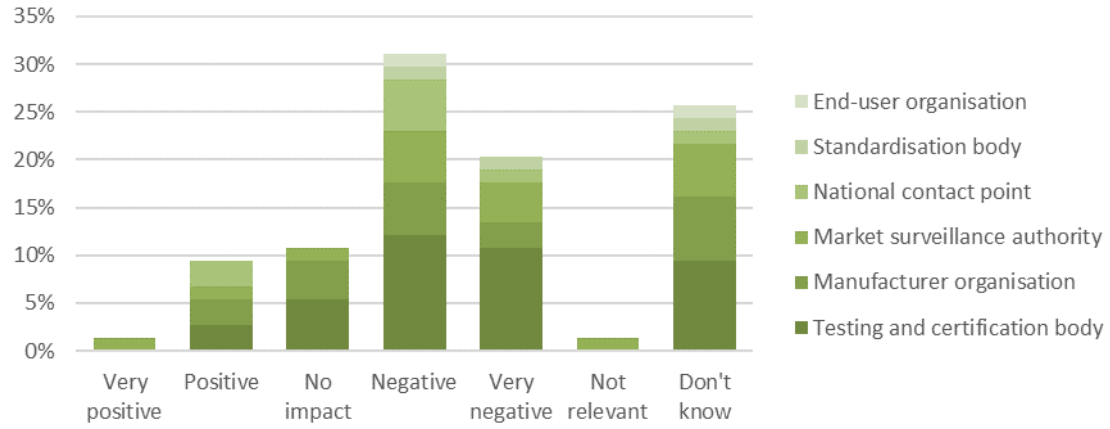
- One manufacturer organisation thought the policy option sounded like a complex and lengthy process and "impossible to implement this policy option in practice". Another organisation repeated the point made above that, while this option could provide the sector with a significantly higher degree of certainty about the quality and safety of the products than is currently the case, the lack of sufficient technical competences or resources at the EU level make this option unrealistic. A third business representative noted that it is unclear how the detailed technical legislation would be established, and which mechanisms would allow for this legislation to consider all the different national building codes and regulations. They suggested it could lead to significant contradictions between European and national legislation and be harmful for safety.
- A public authority noted that the problem with prescriptive legislation is that it very quickly becomes obsolete, and that the diversity of construction products placed on the market makes it impossible to legislate at the product level (this point was echoed by two technical bodies).

On another note, one of the interviewed market surveillance authorities indicated that this option would be a step back because it would impede standards from responding flexibly to current developments in research.

5.8.2. Impact on Costs

Respondents to the online survey[128], on balance, assessed the impact of this option on costs negatively (Figure 5-36) and this holds across all types of respondents. Like for the other options, this result is tempered by the fact that a relatively large number of responses indicated "don't know" which suggests that the results should be interpreted with caution. Furthermore, as indicated above, this option would likely lead to significant costs for the European Commission. Indeed, several interviewees indicated that the Commission does not have sufficient resources to make this option (a piece of legislation specifying detailed requirements covering the entire construction products sector) a realistic prospect.

Figure 5-36: Impact on compliance costs of policy option II.C.2



Source: Online survey. N=101.

5.8.3. Impact on Market Opportunities

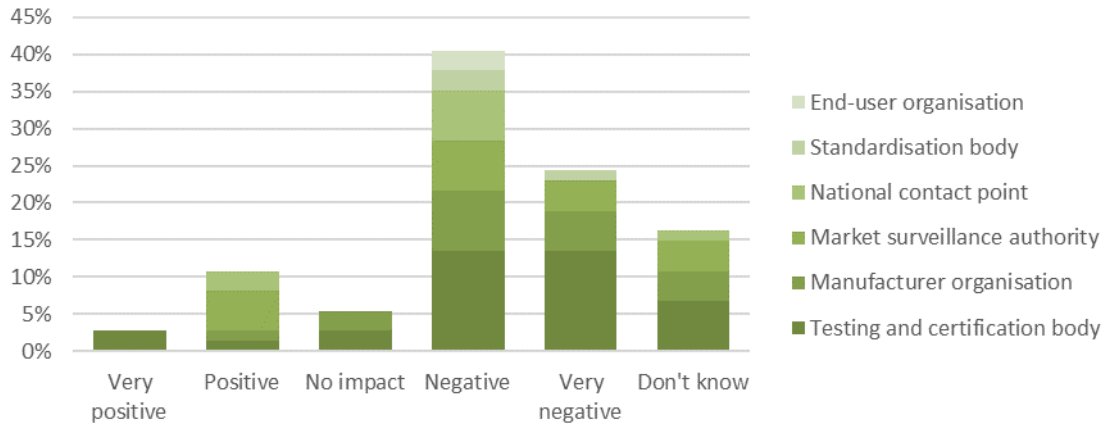
Similarly, to costs, the overall result in the online survey[129] regarding market opportunities indicates that stakeholders expect this option, on balance to have a negative impact (Figure 5-37). Again, this result holds across all types of stakeholders.[130]

[128] The company phone survey did not inquire about the costs of this option for companies as it would be difficult for companies to translate the content of this option into practical implications for their business and provide a cost estimate. The discussion in this section is therefore based on the online survey.

[129] The company phone survey did not inquire about the impact on market opportunities of this option as it would be difficult for companies to translate the content of this option into practical implications for their business and provide an estimate. The discussion here is therefore based on the online survey.

[130] End-user organisation: Average=-1 ; Respondents=2 / Manufacturer organisation: Average=-1; Respondents=13 / Market surveillance authorities: Average=-0.58 ; Respondents=12 / National contact points: Average=-0.43 ; Respondents=7 / Standardisation bodies: Average=-1.33 ; Respondents=3 / Testing and certification bodies: Average=-1 ; Respondents=25.

Figure 5-37: Impact on market opportunities of Option II.C.2



Source: Online survey. N=101.

5.8.4. Impact on Surveillance and Enforcement Costs, Information, Health and Safety, and the Environment

Finally, across all other impact types, all stakeholder groups indicated that the expected impact of the option would be slightly negative on balance: surveillance and enforcement costs (55%), information (63%), health and safety (60%), and the environment (57%).As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.8.5. Summary

In conclusion, all types of stakeholders across all data collection tools believe it will result in negative impacts in all aspects: costs, market opportunities, surveillance and enforcement costs, information, health and safety and the environment. In the open public consultation, 36% of respondents supported this policy option while 53% were against.

5.9. Option II.C.3: Agency approach

5.9.1. Introduction

Overall, this option led to a very clear negative assessment across all stakeholder groups and across all impact types.

36 respondents out of the 76 persons interviewed in the semi-structured interviews commented on this option, all unfavourably. In general, it was considered to be unrealistic, unclear, too big a change, or too "centralistic". It was also noted that there is a need for more specific information about the role of the proposed agency to assess the option fully. More specifically, the interviews collected the following specific concerns about this policy option:

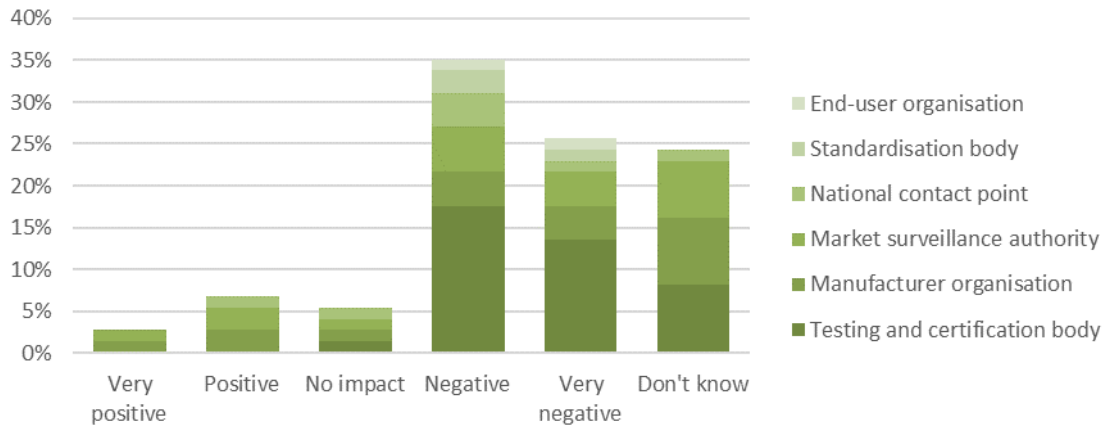
- One market surveillance authority said this would require a very large agency, perhaps with 100 staff or more, which would become a highly political issue. Another market

surveillance authority also thought that this would be a very centralized body and almost impossible to make work in practice.
- Manufacturer organisations agreed that this policy option appeared to be "impossible to implement in practice", or a "very lengthy process".
- For one national contact point, this policy option would be a complete change of system and all investments made to date would then have been in vain.
- Three technical bodies and one SME representative, one public authority, and one business representative considered that an agency would not provide any added value.
- One SME representative noted that a new agency would face the same challenges as are currently faced by CEN and bringing EOTA and CEN together would cause conflict and competition due to their different roles as a technical body and a regulatory body.

5.9.2. Impact on Costs

The online survey[131] results show that this option is considered to have a negative impact on costs across all stakeholder types, though a large number of respondents indicated that they did not know what the impact of this option would be (Figure 5-38)[132].

Figure 5-38: Impact on compliance costs of Option II.C.3



Source: Online survey. N=101.

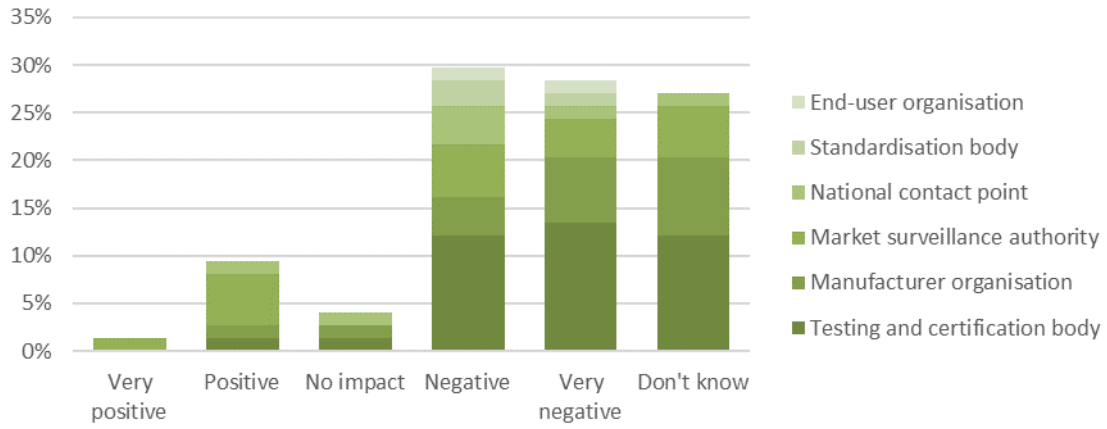
[131] The company phone survey did not inquire about the costs of this option for companies as it would be difficult for companies to translate the content of this option into practical implications for their business and provide a cost estimate. The discussion in this section is therefore based on the online survey.

[132] End-user organisation: Average=-1.5 ; Respondents=2 / Manufacturer organisation: Average=-0.5 ; Respondents=10 / Market surveillance authorities: Average=-0.55 ; Respondents=11 / National contact points: Average=-0.67 ; Respondents=6 / Standardisation bodies: Average=-1.33; Respondents=3 / Testing and certification bodies: Average=-1.38 ; Respondents=24.

5.9.3. Impact on Market Opportunities

Similarly, for market opportunities, the online survey[133] shows that this option is expected to lead to a negative impact (29% chose negative and 28% very negative) by all types of stakeholders surveyed online, with a large number of "don't knows" (Figure 5-39)[134].

Figure 5-39: Impact on market opportunities of policy option II.C.3



Source: Online survey. N=101.

5.9.4. Impact on Surveillance and Enforcement Costs

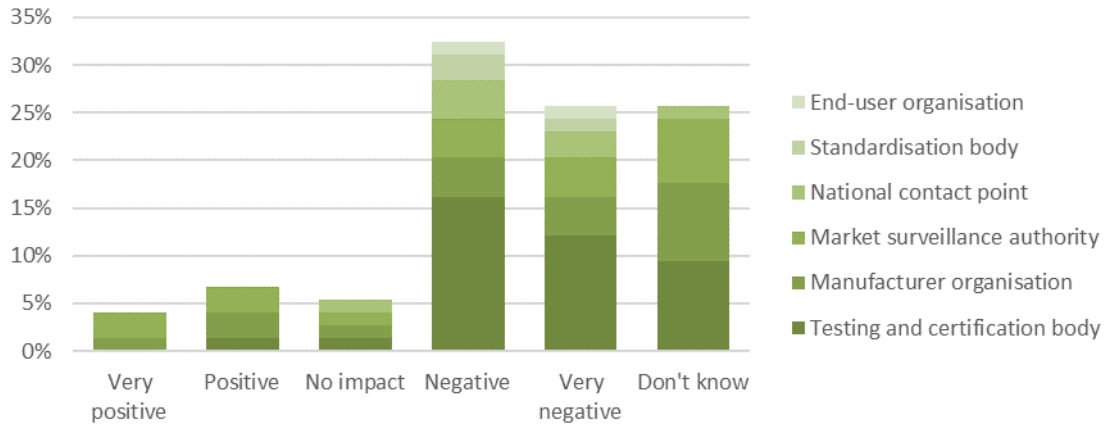
Regarding surveillance and enforcement costs, the online survey[135] results are similar, with all stakeholders, including market surveillance authorities, agreeing that this option would lead to a negative impact.

[133] The company phone survey did not inquire about the impacts on market opportunities of this option for companies as it would be difficult for companies to translate the content of this option into practical implications for their business and provide an estimate. The discussion in this section is therefore based on the online survey.

[134] End-user organisation: Average=-1.5 ; Respondents=2 / Manufacturer organisation: Average=-1.2; Respondents=10 / Market surveillance authorities: Average=-0.33 ; Respondents=12 / National contact points: Average=-0.66 ; Respondents=6 / Standardisation bodies: Average=-1.33; Respondents=3 / Testing and certification bodies: Average=-1.33; Respondents=21.

[135] As for costs and market opportunities, this was not included in the company phone survey since the impact would be difficult for companies to estimate.

Figure 5-40: Impact on surveillance and enforcement costs of Option II.C.3



Source: Online survey. N=101.

5.9.5. Impact on Information, Health and Safety, and the Environment

Finally, for all other impacts considered here, all stakeholder groups participating in the online survey (end-user organisations, standardisation bodies, national contact points, market surveillance authorities, manufacturer organisations, testing and certification bodies) attributed a negative impact to this option: information (62%), health and safety (57%), the environment (57%). As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.9.6. Summary

In conclusion, all types of stakeholders participating in the online survey (end-user organisations, standardisation bodies, national contact points, market surveillance authorities, manufacturer organisations, testing and certification bodies) were clearly against this policy option. They believe it will lead to negative impacts on all aspects considered in the report.

5.10. Option III: Repealing the CPR, no Union legislation on construction products

5.10.1. Introduction

Overall, there was agreement among stakeholders that they did not support this policy option as it is expected to have a negative impact on all impact types considered in this study.

In line with the online and company phone surveys, a number of stakeholders explained their opposition to a repeal as follows:

- One market surveillance authority said the fact that mutual recognition didn't work was the very reason why the CPD was introduced in 1989; mutual recognition was not strong enough a tool to eliminate barriers to trade.

- One public authority noted that some Member States might compete on having the most favourable conditions for companies. The repeal would also result in problems for producers in Member States posing higher requirements, as they would face higher costs and be less competitive in other markets.
- Two business representatives, a public authority and a technical body pointed out that repealing the CPR would mean that all the investments made by manufacturers and other stakeholders to comply with European legislation would be wasted.
- Another manufacturer organisation opined that while the CPR is a "regulatory monster", companies now are used to it and prefer keeping it (with only slight modifications) rather than changing to a completely new model.
- A third manufacturer organisation thought that at national level decision-making would be captured by locally dominant players in terms of production and (even more so) in terms of testing, approval and definition of rules.
- Another public authority observed that mutual recognition is suboptimal regarding information available to the consumers and other actors (including what skills are required for the use of a product), leads to lengthy processes, and increases costs. A third public authority noted that the repeal would also lead to bad quality products on the market, and consequently a lack of trust in the sector.

It must be noted that the present impact assessment study did not ask stakeholders to consider the recent revision of the Mutual Recognition Regulation. In December 2017, the Commission tabled a legislative proposal[136] for the revision of mutual recognition in order to make the principle faster, simpler and clearer in practice (by reducing time required for companies to understand whether they can market their products, introducing voluntary declarations, a problem resolution mechanism, training and exchanges among officials[137]). Consequently, it is very likely that stakeholders did not factor these changes to the way mutual recognition works into their replies.

In the open public consultation, stakeholders were asked whether they think the EU legislation on construction products should be repealed and replaced by 28 (27) national regimes. Only 4% (26 out of 641) supported the repeal, with the main argument being that that free trade (i.e. the Internal Market promoted by the CPR) should not be prioritised over safety and consumer protection. On the other hand, the overwhelming majority of respondents indicated that replacement by national systems would not be a good option. There were two main types of arguments made:

- Agreement in principle with the idea of a European legislation (even though improvements may be necessary);
- Existing investment in adaptation to the current rules would be in vain if the CPR was repealed.

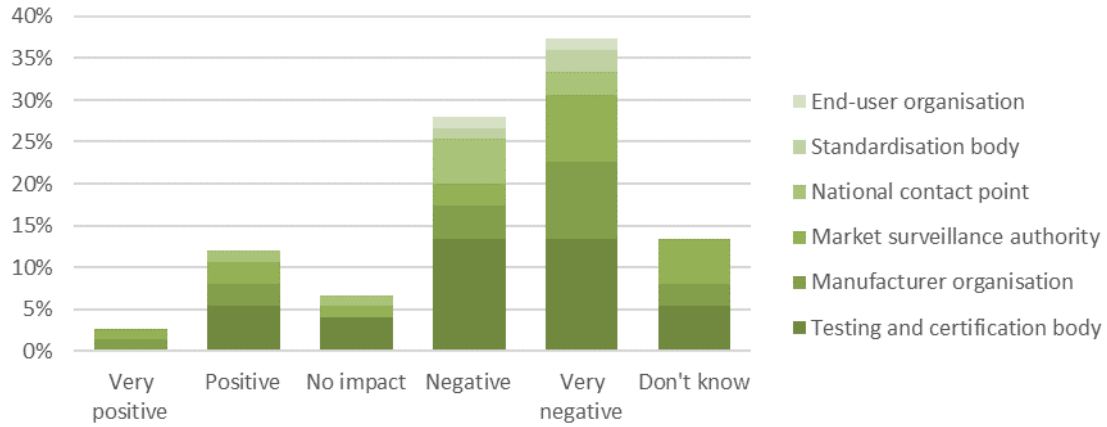
[136] Proposal for a regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State. COM/2017/0796 final - 2017/0354 (COD). Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1525095461281&uri=CELEX:52017PC0796

[137] See more details: http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en

5.10.2. Impact on Costs

On balance, all stakeholder types engaged in the online survey agreed that this option would have a very negative impact (Figure 5-41).[138]

Figure 5-41: Impact on compliance costs of Option III



Source: Online survey. N=101.

Respondents to the company phone survey were asked three specific questions on Option III:

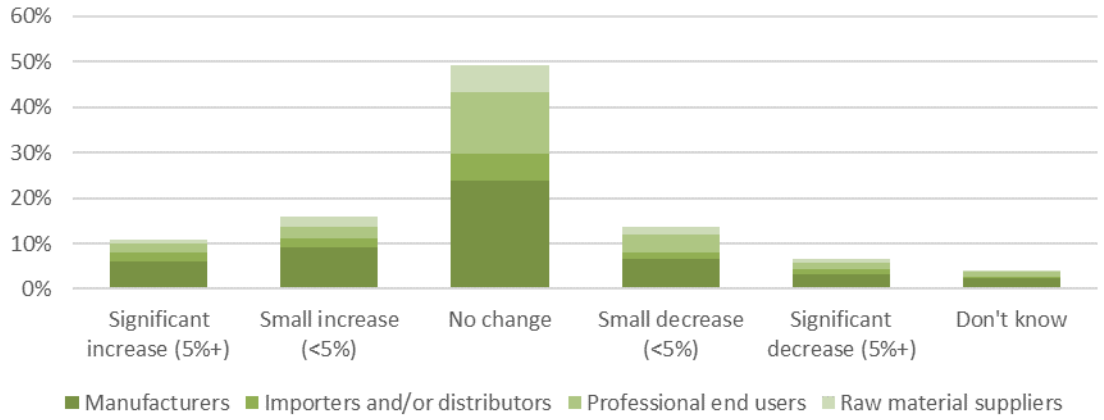
1. What would be the impact on costs to your business in the case of removing harmonised standards, EADs/ETAs?
2. What would be the impact on the costs of your company if there was no EU regulation and only national certification / marking schemes were made obligatory in other EU Member States than your own?
3. What would be the impact on the costs to your company if there was no EU regulation and only national certification / marking schemes would be made obligatory in your own Member State?

While all types of companies chose "no change" as their top answer to all of these questions, among those who did expect a change, more respondents believed it would result in an increase than a decrease in costs and this holds across all company size groups (Figure 5-42)[139]. The same goes for companies that export as well as those that do not. On average both exporting and non-exporting companies thought there would be "no change", while among those that did expect change, both exporting and non-exporting companies believed the change would only amount to a "small increase" in costs.

[138] End-user organisation: Average=-1.5 ; Respondents=2 / Manufacturer organisation: Average=-1 ; Respondents=13 / Market surveillance authorities: Average=-1 ; Respondents=13 / National contact points: Average=-0.83 ; Respondents=12 / Standardisation bodies: Average=-1.67 ; Respondents=3 / Testing and certification bodies: Average=-0.96; Respondents=27.

[139] Construction products manufacturers: Micro: Average=0.01 ; Respondents=140 ; Small: Average=0.05; Respondents=138 ; Medium: Average=0.18 ; Respondents=72 ; large: Average=0.28 ; Respondents=26 ; Total: Average=0.07 ; Respondents=376 / Importers and distributors: Average=0.12 ; Respondents=95 / End users: Average=0.05 ; Respondents=182 / Suppliers: Average=-0.01 ; Respondents=83.

Figure 5-42: Impact on business costs of Option III



Source: Company phone survey. N=736.

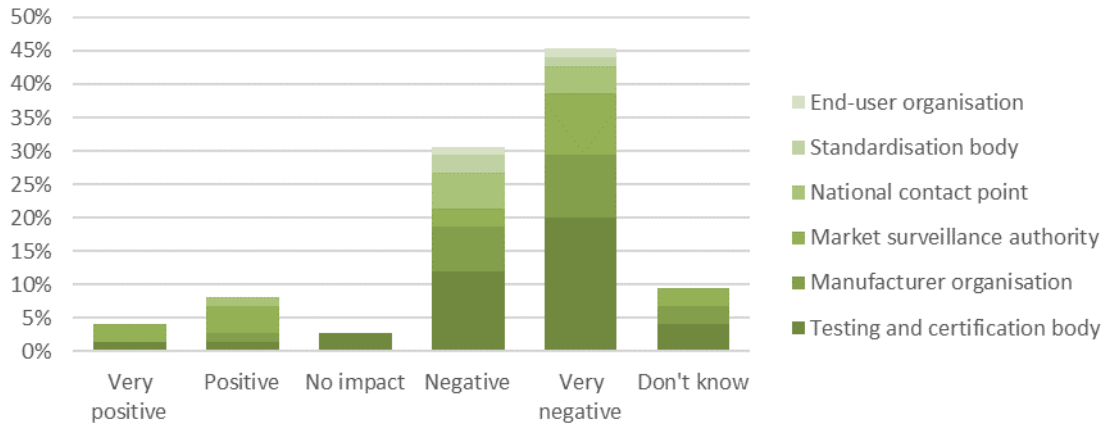
Based on the company phone survey, **it is estimated that Option III could lead to negligible cost increases (<1000 EUR per annum) for manufacturers across all size groups**. It must be noted that the costs calculated here are low. This is likely because the respondents did not consider the possibility that they would be required to undergo multiple testing in each country of export, for example if the harmonized standards were removed. **Based on these conservative estimates, for the manufacturing sector, Option III could result in cost increases of between EUR 5.6 million and EUR 6.4 million per annum**.

5.10.3. Impact on Market Opportunities

Regarding market opportunities, all types of stakeholders participating in the online survey agreed that this option would lead to a very negative impact (Figure 5-43).[140]

[140] End-user organisation: Average=-1.5 ; Respondents=2 / Manufacturer organisation: Average=-1.38 ; Respondents=13 / Market surveillance authorities: Average=-0.64 ; Respondents=14 / National contact points: Average=-1.12 ; Respondents=8 / Standardisation bodies: Average=3 ; Respondents=3 / Testing and certification bodies: Average=-1.28 ; Respondents=28.

Figure 5-43: Impact on market opportunities of Option III



Source: Online survey. N=101.

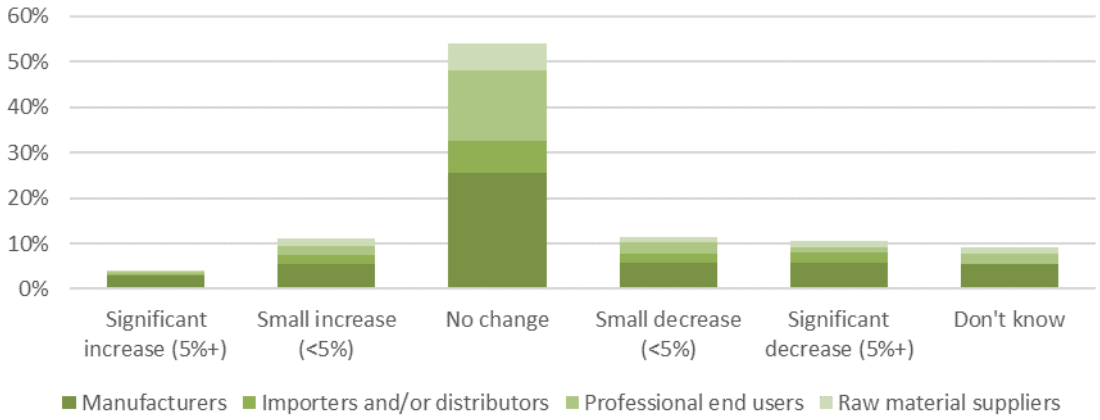
Respondents to the company phone survey were asked three separate questions on Option III:

1. What would be the impact on new market opportunities for your business in case of removing harmonised standards, EADs/ETAs?
2. What would be the impact on new market opportunities abroad for your company if there was no EU regulation and only national certification / marking schemes were made obligatory in other EU Member States than your own?
3. What would be the impact on new market opportunities abroad for your company if there was no EU regulation and only national certification / marking schemes would be made obligatory in your own Member State?

The results of all three questions indicate that companies expect the option to lead to no change in market opportunities (54%) (Figure 5-44). However, from those that expect change, most believe it will lead to a decrease in market opportunities (21% small and significant decrease). All types of companies shared that opinion including companies of all size groups within the construction products manufacturers[141].

[141] Construction products manufacturers: Micro: Average=-0.11 ; Respondents=140 ; Small: Average=-0.09 ; Respondents=138 ; Medium: Average=-0.02 ; Respondents=72 ; Large: Average=-0.43 ; Respondents=26 ; Total: Average=-0.11 ; Respondents=376 / Importers and distributors: Average=-0.16 ; Respondents=95 / End users: Average=-0.1 ; Respondents=182 / Suppliers: Average=-0.06 ; Respondents=83.

Figure 5-44: Impact on market opportunities of the Option III



Source: Company phone survey. N=736.

For an average manufacturer, this option is estimated to reduce market opportunities by 0.3%, leading to a small loss (<2,500 EUR per annum).

5.10.4. Impact on Product Quality, Information, Surveillance and Enforcement costs, Health and Safety, and the Environment

Finally, the results from the online survey confirm that all stakeholder groups consider this option to produce either very little change (i.e. product quality) or have a negative impact on surveillance and enforcement costs (71%), information (79%), health and safety (72%) and the environment (71%). As the online survey results for all of these impact types are very similar, to facilitate the readability of this report, the detailed diagrams for each impact type are not included here but they can be found in a separate annex.

5.10.5. Summary

In conclusion, the repeal of the CPR is unpopular. Most stakeholders think it will produce negative impacts, resulting in compliance costs increases and reduction in market opportunities for companies. While the impact on product quality is uncertain, respondents believe the repeal will be detrimental for product information, surveillance and enforcements costs, health and safety, and the environment.

6. HOW DO THE POLICY OPTIONS COMPARE?

Table 6-1 provides a summary assessment of all the policy options, based on the results of the semi-structured interviews, online survey, the company phone survey and the open public consultation presented above.

A purely quantitative comparison between the policy options is not feasible because it was not possible to monetise all the impacts and to assign weights to different impact types. In particular, monetising impacts on product quality, information, health and safety, and the environment was not possible to undertake due to the lack of secondary literature for the baseline and the ability of stakeholders to provide quantities. In addition, the impacts themselves, even if monetised, cannot be compared side-by-side. Such weighing would require trading off the importance of economic impacts on costs or market opportunities on the one hand with social impacts on health and safety, and the environment on the other.

Consequently, the final assessment uses "+" and "-" to give an indication of the results of the analysis (please see Annex II for further explanation). A "+" indicates that the policy option will have a positive, a "++", very positive impact; "-" and "--", indicate that the impact is negative and very negative respectively. For costs, a positive or very positive impact (+ or ++) means a *reduction* in costs[142].

[142] Questions on product quality were not included in the online survey and the company phone survey for policy options I, II.A, II.C.2, and II.C.3.

Table 6-1: Summary of impacts compared with baseline

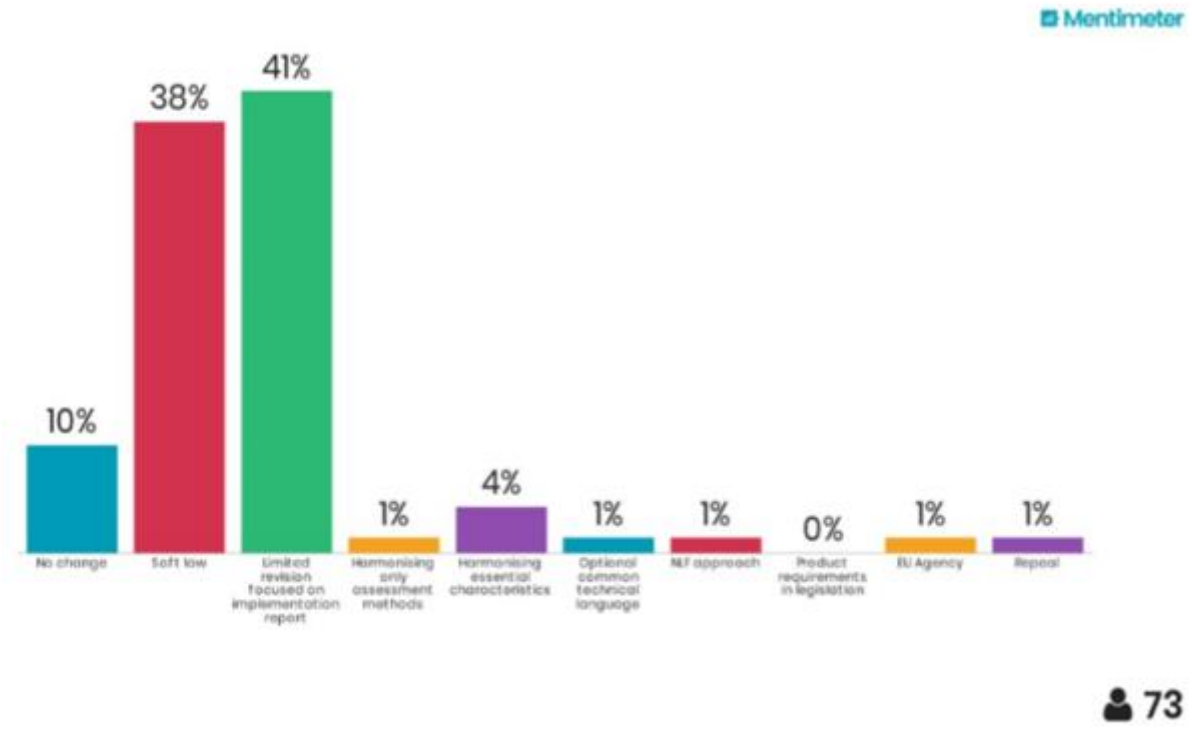
Option	Administrative & compliance costs	Market opportunities / Single Market	Product quality	Surveillance and enforcement	Information	Health and safety	Environment	Overall comment
0	**0**	**0**	**0**	**0**	**0**	**0**	**0**	No change, but current CPR drawbacks would not be addressed
I	**+ / 0**	**+**	**0**	**+/0**	**+**	**+/0**	**+/0**	**Favoured but seen as potentially ineffective**
II.A	**+ +**	**+**	**0**	**+**	**+**	**+**	**+**	**Favoured but precise content needs to be specified in greater detail**
II.B.1	**+ /0**	**-**	**0**	**-**	**0**	**0**	**0**	Potential cost saving due to voluntary nature of standards but threat to functioning of the Internal Market
II.B.2	**0**	**0**	**0**	**0**	**0**	**0**	**0**	High regulatory complexity; more details needed on specific provision to assess impact; potentially harmful to the Internal Market
II.B.3	**-/0**	**-**	**0**	**-**	**-**	**-**	**-**	Detrimental to single market; does not address the

								flaws of the CPR but requires big regulatory change
II.C.1	**-**	**+/0**	**0**	**-**	**+**	**+**	**+**	A significant change, perhaps more so than preferred; difficult to implement
II.C.2	**-**	**-**	**0**	**-**	**-**	**-**	**-**	Unrealistic and difficult to implement
II.C.3	**- -**	**- -**	**0**	**- -**	**-**	**-**	**-**	Unrealistic and difficult to implement
III	**-**	**-**	**-**	**-**	**-**	**-**	**-**	Detrimental to the Single Market; a step back; would undo progress made

Source: Company phone survey, online survey, semi-structured interviews, open public consultation, validation workshop.

As the table indicates, across all the different impact types, among all the options assessed against the benchmark, the options without significant changes to the principles of CPR (limited revision), namely Options "no change", I and II.A were assessed most positively. The broad support for the current principles was underlined at the validation workshop where 89 % percent of the voting participants expressed their preference for either Option I (improved implementation), Option II.A (limited revision) or Option 0 (no changes at all) (Figure 6-1).

Figure 6-1: Validation workshop participants' policy option preference



Source: Validation workshop

The main reservation that stakeholders had with regard to Options I and II.A relates to their effectiveness (in general the soft law provisions under Option I are seen as insufficient) and to their comprehensiveness (i.e. there are a number of specific provisions which some stakeholders thought should be included in the review alongside the proposed measures).

With regard to the *wider revision* described by Option II.B, stakeholders across all consultation tools were unsure about what precise impacts to expect, since they considered the options to be specified at a too abstract level: impacts would depend on the precise content of the option. In the absence of such further specification, the stakeholders considered the potential risk to the Internal Market to be too high for them to support these options. This was especially the case for the scenario presented in Option II.B.3 (optional common technical language), which stakeholders considered to be tantamount to a repeal of the CPR which would destroy the Internal Market and represent a significant step backwards. At the validation workshop, only 7 % of the voters indicated preference for one of the 3 scenarios described under Option II.B. However, on the question whether or not Member States should have the possibility of setting additional

requirements for the performance of characteristics not included by the harmonised standards, a slight majority (56%) of the participants in the validation workshop answered "yes", which does not seem to be in line with the generally low rating of Option II.B. Similarly, a majority of the participants in the validation workshop (77%) indicated that it should be possible to "complete mandatory standards with voluntary information". Both the possibility for Member States to set additional requirements and the possibility to add voluntary information to mandatory standards would seem contrary to the current CPR principles and would therefore seem to presume a wider revision than the preferred Options I and II.A.

With regard to the *profound revision* described by Option II.C, as described in Chapter 5, stakeholders globally expected that the NLF approach (Option II.C.1) would have a positive impact on the level of information, health and safety, and on the environment. With regard to administrative costs, compliance costs, and surveillance and enforcement, negative impacts were expected. Options II.C.2 (Old Approach) and II.C.3 (the establishment of an agency) were clearly assessed as negative. On the whole, these options were seen as unable to solve any of the flaws of the current regime. At the same time, these options would introduce major upheaval in the market and for regulators. Furthermore, at the validation workshop, only 3 % of the voters indicated preference for one of the 3 scenarios described under Option II.C, which would all imply more specific common rules for construction products.

The *repeal option*, Option III, was assessed negatively with regard to all assessment parameters. In addition, at the validation workshop, only 1 % of the voters indicated preference for the repeal option.

The general results of the assessment above and, specifically, the stakeholder preference for Options I and II.A reflect three broader considerations which emerge strongly from the results of the qualitative data collection tools (e.g. interviews):

First, there is a **broad consensus that there should not be radical change** (i.e. dramatic revision or repeal of the CPR). In addition to broad satisfaction with the principles of the current Regulation, several stakeholders considered that the CPR is simply not mature enough yet for a substantial revision. This is because a number of stakeholders are still in the process of adapting to the current rules and a significant change would be disruptive to that process and, ultimately, undermine the objectives of the Regulation which aims to bring greater legal certainty. Similarly, almost all stakeholders expressed disagreement with the option of repealing the CPR because this would put in jeopardy the adaptation and investment undertaken up to this point.

Second, however, the results of the impact assessment also point to a **need for incremental changes to the CPR in specific areas**. Option I, the preferred option for many stakeholders, proposes incremental changes at the level of implementation while stopping short of a significant legislative intervention. For example, stakeholders suggested that this option would allow to improve the understanding of rules by all actors, reduce frustration by speeding up the procedures for EADs and harmonised standards, and lead to greater acceptance of the CPR by all actors. A large number of stakeholders expressed support for streamlining the EAD procedures and standardisation work and stepping up market surveillance and enforcement to improve the implementation of the CPR. It should be noted that the changes included in Option I would also be included in Option II.

At the same time, it needs to be examined thoroughly whether all the incremental changes that are desired by stakeholders would actually be possible under Option I. For instance, with regard to the inefficiencies in process for the development and citation of harmonised

specifications, the soft law interventions proposed under Option I or even the incremental regulatory changes based on the Implementation Report (Option II.A) do not appear sufficient to address this issue. Article 5 would need to be revised (or the matter of derogations re-examined more profoundly) to solve the problem of this provision remaining not used. Finally, the principle of exhaustiveness does not allow for filling identified gaps in standards without some flexibility introduced to the legislation.

In the latter context, it might be relevant to consider if the current problems basically relate to the present concept of harmonised technical specifications. Given their legal nature, the Commission has a high degree of responsibility for their content. However, at present, pursuant to the CPR, harmonised technical specifications are developed by the external bodies CEN and EOTA, which limits the possibilities for the Commission to control the process as well as the contents of its outcomes. If candidate harmonised standards by CEN are found not to be consistent with the CPR, the only option left for the Commission is to refuse citation, explaining the reasons to CEN so that they can improve the candidate harmonised standard. As the appropriate functioning of the CPR depends on the continuing development of the harmonised technical specifications, this would point to the need for a wider ranging intervention that goes beyond the proposed Options I and II.A, and would involve the consideration of alternative concepts of harmonised technical specifications.

Third, "**fitness for use" has been identified as an issue for many stakeholders**. Construction products may be available on the market but would not necessarily be fit for the applications for which people may wish to use them. It may also be difficult for a user to assess on the basis of a declaration of performance if the construction product it accompanies is fit for a particular use. At the validation workshop, almost half of the voting participants (49 %) indicated a wish for the CPR to consider 'fitness for use'.

A conflict exists here between the expectations of some stakeholders and the common technical language approach of the current CPR, according to which the methods and criteria for the declaration of performance should be established rather than specific requirements to the products. The wish of some stakeholders to have 'fitness for use' information would require a change in the current system, pointing to Option II.C, for which there would be very limited support. Other stakeholders considered fitness for use a non-suitable addition to the CPR, as for many construction products fitness for use cannot be assessed independently of features such as installation.

At the same time, most stakeholders express general satisfaction with the current common technical language approach and indicate either Option I or II.A as their preference. Therefore, other means of taking 'fitness for use issue' into account without abandoning the common technical language should be considered, e.g. if any sort of information or tools could be provided for users of construction products to assess on the basis of a declaration of performance if a particular product would be fit for a particular use.

7. OVERALL CONCLUSION, EVALUATION AND MONITORING

The impact assessment collected input from a wide variety of stakeholders across several data collection efforts, including semi-structured interviews, online survey, company phone survey, the open public consultation and the validation workshop. The analysis of all the data points to four fundamental conclusions:

EU legislation on construction products is needed. All stakeholders rejected the possibility of repealing the CPR and returning to mutual recognition. If this were to happen, the major concern was the potential undermining of the Internal Market for construction products. The common technical language created by the CPR has actually improved the functioning of the market and created new market opportunities.Also, stakeholders have invested a lot in adapting to the current Regulation and this process is still ongoing.

- The current CPR is supported by most stakeholders. However, *the status quo should be improved*: Specific issues, such as compliance costs, slow standardisation, overlaps with other Directives, under-utilised simplification procedures, inadequate information and insufficient enforcement, could best be tackled by modifying the current regulatory framework.

- *Option I*, which foresees improving implementation through soft law, *and Option II.A*, which envisions a limited revision of the CPR in line with the conclusions of Implementation Report and which includes the soft law elements of Option I and, in addition, were the *most popular* choices. Both options may have positive impacts in all areas investigated.

- *Change should be incremental*. The wider the changes proposed, the less popular they were among the stakeholders. As a consequence changes to the CPR should not appear too radical.

All in all, based on the stakeholder input for the impact assessment, a recommendation could be made to improve the CPR via soft law, complemented by a limited legislative revision to address very specific issues; All this would amount up to Option II.A (perhaps enlarged somewhat) and include the following points raised in the Implementation Report: Simplification of Annex II to speed up the publication of EADs (one technical body, one public authority);

- **Improving/introducing simplification provisions** benefiting micro-enterprises as well as other simplification provisions (e.g. on information following the CE marking):

  1) *Derogations from the obligation to draw up a DoP* (Article 5 of the CPR)[143];

  2) *Simplified procedures* (Articles 37 and 38 of the CPR). Redrafting of the provisions to increase their usability or opting for entirely different simplification alternatives instead;

  3) *Information following the CE marking* (Articles 6 and 9(2) of the CPR)[144]. Removing overlaps between information required in the DoP and in the CE marking.

[143] Obviously, the introduction of such derogating provisions is necessary (or even logically possible) only if this obligation is maintained.

[144] Again, the necessary pre-requisite of simplifying the system by decreasing the information content requirements for the CE marking is that the CE marking would continue to be used.

Considering whether a DoP is even needed, or whether its content or model is to be revised;

4) Promotion of the use of simplified procedures and clarification of exceptions specified in Article 5 (not included in the Implementation Report)

- **Introducing appropriate sector-specific market surveillance and enforcement provisions** supplementing the horizontal ones (depending on progress on horizontal rules[145]):

  1) Articles 56 to 59 are based on reference provisions of Articles R31 to R34 of Decision No 768/2008/EC but have been adjusted for the CPR context. These adjustments appear to cause challenges for market surveillance. No formal procedures, including safeguard procedures, appear to have been initiated by Member States under Articles 56 to 58. In the current circumstances, with the horizontal rules still under development, their application could be considered where appropriate. In addition, however, sector-specific provisions could be envisaged for the CPR only;

  2) A risk assessment approach is being developed specifically for use under the CPR compared to the New Legislative Framework (NLF) and may be considered to be included in the CPR.

- **Improving detailed rules regarding Notified Bodies**, notably further distinguishing the CPR from the NLF. This could include possible amendments to clarify and/or add precision to Articles 43, 45, 46, 52(2) and 55 of the CPR and/or to distance Articles 44, 50(1), 51 and 53(2) of the CPR more clearly from the NLF principles.

- **Improving the transition from "approvals" to "assessments"** by Technical Assessment Bodies and the related EOTA procedures. This could include possible amendment of Annex II, containing the procedural rules for the development and adoption of European Assessment Documents (EADs). It would also be possible to deviate from Articles 20 or 21, or to accompany such an amendment by changes to Articles 20 or 21.

- **Clarifying the relation between the CPR and Standardisation Regulation 1025/2012, as well as other EU legislation**, including improving coherence between the CPR and Eco-design legislation. This could include:

  1) Different wording of Article 18 of the CPR compared to Article 11 of Regulation 1025/2012. Application of a comitology procedure in formal objection context under Regulation 1025/2012, but no comitology procedure under the CPR;

[145] Cf Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:795:FIN; and Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:796:FIN.

2) Updating references to Directive 98/34 in the CPR by replacing them with appropriate references to Regulation 1025/2012;

3) Increasing coherence of the mandating process in Article 17 of the CPR with that of Article 10 of Regulation 1025/2012;

4) Streamlining the standardisation work, as under Option I;

5) Foreseeing a means of ensuring that requirements stemming from Eco-design policy objectives are incorporated, where relevant, into the harmonised standards under the CPR applicable to the same products, so as to provide manufacturers with one single framework for the testing of products; clarifying more generally the relation between the CPR and Eco-design Directive;

6) Clarifying the relation between the CPR and General Product Safety Directive.

Streamlining the standardisation work, improving coordination among Notified Bodies and improving TAB's and EOTA's processes (Option I) should also be undertaken under this option. Though not included in the Implementation Repeort this could include requiring those involved in standardisation to put forward any trade interests and/or including mandatory accreditation and surveillance of NBs.However, Option II.A (even when enlarged) would not allow to adequately address the issues related to standardisation, 'fitness for use' and 'exhaustiveness' of the CPR –based system, all of which also have been identified by stakeholders as challenges to be dealt with somehow. Further elaborations are therefore required to explore how these issues can be tackled as part of the review of the CPR.

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