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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}
{SEC(2008) 1901}**

ABBREVIATIONS

The following abbreviations are used hereafter:

ABs:	EOTA Approval Bodies
AoC:	Attestation of Conformity is the system for attesting the conformity of construction products to European technical specifications foreseen in 89/106/EEC
CEN:	Comité Européen de Normalisation
CPD:	Construction Products Directive (Directive 89/106/EEC)
CUAP:	Common Understanding of Assessment Procedures
EC:	European Commission
EFTA:	European Free Trade Association
EN:	European Standard
EOTA:	European Organisation for Technical Approvals
ETA:	European Technical Approval
ETAG:	European Technical Approvals Guideline
EU:	European Union
hEN:	Harmonised European Standard
MS:	Member States
NA:	New Approach Directives
NB:	Notified Body for AoC tasks (i.e. certification, inspection or testing bodies)
NRF:	New Regulatory Framework
SCC:	Standing Committee on Construction (Directive 89/106/EEC, Article 19)

1. SECTION 1: PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Context

For more than eighteen years Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products¹ (Construction Products Directive – CPD) has established the principles, provisions, rules, procedures and tools to be followed with regard to the Internal Market for construction products, i.e. for their free movement, placing on the market and use in the territory of the European Economic Area. During this time there has been only one amendment to adapt the directive to the terminology, general guidelines and procedures for conformity assessment and CE marking used in New Approach directives².

The simplification of the CPD is included in the Commission *Better Regulation: Simplification Strategy*³. The recast/simplification of the CPD is action Ref. No. 2007/ENTR/001 in the Commission Work and Legislative Programme (CWLP) 2007.

1.2. Organisation and timing

General considerations undertaken in view of a potential revision of the CPD started in 2003. In October 2004, the Commission provided information on the various options for a potential revision to the Competitiveness Council who, on 25/11/2004, adopted a list of Council priorities for simplification of Community Legislation, which included the CPD. Consequently, in 2005, these various options continued to be discussed, together with a time plan and the formulation of milestones as follow-up and as a contribution to the above-mentioned Simplification Strategy. In parallel the work preparing the revision of the New Approach was taken into account. Preparing the revision of the CPD contributed, with concrete information regarding this Directive, to the Secretary General exercise on reducing administrative burden and costs.

DG Enterprise and Industry launched a web-based public consultation in March 2006 (see http://ec.europa.eu/enterprise/construction/cpdrevision/cpd_cons_en.htm) to provide the Commission with stakeholder views on various identified policy options and major policy elements with regard to a revision of the CPD. Despite the official closing date of 31 May 2006, replies were accepted and taken into account when received until 15 June 2006.

Between December 2005 and November 2006 a contracted consultant⁴ undertook a study to evaluate the impact of the CPD on the internal market for construction products and the competitiveness of EU construction sector, looking at the provisions, tools and instruments of the current CPD from an economic point of view and particularly the issue of administrative burden and cost-benefit effects of the directive. This included contacting the necessary representatives of public and private stakeholders of the construction sector, at all relevant

¹ OJ L 40, 11.2.1989, p.12

² Council Directive 93/68/EEC of 22 July 1993, OJ L 220, 30.8.1993, p.1

³ COM (2005) 535 final: Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Implementing the Community Lisbon Programme: A Strategy for Simplification of the Regulatory Environment.

⁴ PRC Consultants, The Netherlands

levels, in order to ascertain their views, in particular with the help of four regional industry workshops in Paris, Copenhagen, Vienna and Bonn and via written stakeholder feed-back.

Another external study on the relevant policy options was undertaken between October 2006 and May 2007⁵. The main objectives of this assignment were to identify problems with the implementation of the existing CPD, define options available to address them and assess their implications. The results of the stakeholder consultation constituted one of the key inputs to the assessment undertaken in the framework of this study.

A Commission Inter-service Steering Group to support the impact assessment of the CPD was established in December 2006. The following Commission DGs were invited to take part: Secretariat-General, Legal Service, DG Competition, DG Employment and Social Affairs, DG Transport and Energy, DG Environment, DG Research, DG Internal Market, DG Health and Consumer Protection, DG Trade. The group met three times between mid-December 2006 and the end of March 2007 to provide guidance to the consultant undertaking the study on the relevant policy options and to review the development of a report. It had the opportunity to comment in writing on the final report of the study.

Finally, a series of direct consultations with a variety of key stakeholders has taken place during the months of May and June 2007. This included three open one-day meetings with Member State authorities and European industry associations and stakeholder bodies as well as several individual conferences with individual European industry associations and stakeholder bodies. The bases for these Consultations were two DG ENTR discussion papers (see Annexes II and III)

1.3. Consultation and expertise

(a) Consultation

A summary report of the over 300 replies received during the web-based public consultation, together with a statistical summary, (see Annex I) was published on the Europa website http://ec.europa.eu/enterprise/construction/cpdrevision/consultation_results_en.pdf and http://ec.europa.eu/enterprise/construction/cpdrevision/consultation_statistics_en.pdf

The main findings can be summarised as follows.

- Nearly all replies confirm the **need for a harmonised legislative framework**. Mutual recognition is generally regarded as not working well in its absence.
- Absolute **need for clarification**. This concerns the fundamentals of the legislation: general approach (performance based versus prescriptive; New Approach versus other; meaning and status (compulsory or not) of CE marking; acceptance of CE marking by the national authorities; role of standards and European Technical Approvals (ETAs), among other issues.
- Clear **scope for simplification**. The systems of attestation of conformity should be simplified and their number reduced. The ETA route for CE marking is perceived as necessary but the administrative procedures for its delivery should be lightened. The ETAGs should disappear. The “non performance determined” (NPD) facility should

⁵ by Risk & Policy Analysts Ltd (RPA), UK

be maintained but needs to be clearly defined as a means of simplifying the application of the Directive and avoiding unnecessary costs to companies.

- Concern about the potential specific effects of the CPD on small and medium enterprises (SMEs), with particular emphasis on the need for an appropriate treatment to be used for non-series products. Changes to the Directive should not place undue burden on their business activity.
- Finally, unanimous request for **reinforcing the credibility** of the system. This is seen as a necessary condition for the achievement of the internal market, mainly by an increased harmonisation of the procedures and criteria for designation by the national authorities of the conformity assessment bodies and a better coordination of the market surveillance mechanisms.

The wide-ranging public consultations have contributed to the assessment of policy options and are clearly reflected in such a combination of alternatives regarding approach, specific tools and procedures which can be considered most appropriate. If relevant, diverging views of main stakeholder groups are acknowledged throughout the impact assessment. Furthermore complaints, in the framework of the consultation or in addition to it, as regards the implementation and malfunctioning of the current directive, confirmed the problems identified by the Commission services and indicated possible solutions.

The Commission's minimum standards regarding consultation have been met.

(b) Expertise

Although the first external study undertaken put major effort into this issue, quantitative data provided by industry and compiled otherwise on economic facts and impacts, cost-benefit effects and administrative burden remain vague and unreliable. Despite these difficulties, the study managed to provide some rough indications on the impact of the CPD on the internal market for construction products (the degree of competition) and on the competitiveness of EU construction sector (manufacturers and builders), to conclude on its strengths and weaknesses and the potential for improvement of its provisions, with respect to competitiveness of the construction sector, and to make recommendations related to improving the impact of Community legislation on this competitiveness.

The external study on the relevant policy options confirmed the main problems with the existing legislation (see below Section 2) and considered four main policy options which were further explained with regard to choices for specific elements concerning principles, provisions, rules, procedures and tools to be followed, and analysed accordingly. The study assessed the impacts of the policy options and the related various choices for specific elements through mainly a qualitative description (including the size, timing and duration of impacts). Those impacts that could only be described in qualitative and non-monetary quantitative terms were assigned a rating according to the expected magnitude of the impact. Many of the predicted impacts of the measures proved to be only accessible to qualitative assessment, due to the lack of the more detailed information that would have been necessary to provide quantitative estimates. Given these restrictions it was not possible to apply the EU net administrative cost model better than in the form of rough estimates.

2. SECTION 2: PROBLEM DEFINITION

2.1. What is the issue or problem that may require action?

The importance of the construction sector to the economy of the European Union is evident from its significant part of total European GDP and employment. Annex IV contains two tables with data copied from the final report of external study on the relevant policy options⁶ which provide an idea on the structural set-up of the sector.

Although with regard to the part of the construction products in this sector, due to the nature of many of them that are suitable primarily for local manufacture and distribution, their internal market potential is with often more limited than for many industrial and consumer products, it is evident that the traditional setup with localised markets continues to prevail inappropriately and that the EU construction products market remains fragmented.

Although statistics vary slightly over time, it is generally accepted that the EU construction industry accounts for some 6-7 % of total European GDP with the added value of construction materials representing some 2-3% of the total GDP. The value of the EU25 construction material production in 2005 was around €325 billion, some 15% of EU total manufacturing output. The direct employment in the EU construction materials and building products industry was at the same time around 2.5 million.

The first of the two external studies carried out to provide expertise for this assessment (see 1.2 b) indicates, on the basis of thirteen construction product families (see Annex V), that average intra-EEA trade as a share of the apparent consumption for construction products has increased from 21% to 28% over the period between 1995 and 2005. Products mostly traded are structural section steel (90% of the apparent consumption in 2005). Nearly half to one-third of the ceramic tiles (45%), wood based panels (39%), thermal insulation products (36%), fire detection/extinguishers (33%) and sanitary appliances (32%) used are traded across EEA internal borders. Products relatively little-traded within the EEA are cement (8%), windows (6%) and masonry units (3%).

During its sixteen years of implementation Council Directive 89/106/EEC which aims at creating the Internal Market for these products has 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, despite substantial progress, the internal market potential for construction products has so far only been partly exploited, with an underdeveloped cross-border trade (for indicative figures, see Annex V).

In addition, there is a clear need to further develop this legislation, in order to address relevant developments on the market and in the regulatory field appropriately, for example the increased placing of “product kits” and “product systems” on the construction product market.

The issues and problems that may require action regard a series of elements in the CPD, of which the principles, instruments, tools and procedures can be summarised as follows.

- Construction products are intermediate products, to which safety considerations apply differently than to end-products. The issue at stake is rather the safety of the works built with them than genuine properties of these products. This has resulted in the CPD being a mix of New Approach and non-New Approach legislation.
- The Community legislation recognises that construction is a field of clearly identified subsidiarity: Member States have exclusive competence for building regulations, i.e. the

⁶ undertaken by Risk & Policy Analysts Ltd (RPA), UK

rules of design and building of works, while EU legislation needs to ensure the Internal Market for the products used in the works.

- To conciliate the competing issues above, the CPD sets out a total of six Essential Requirements applicable to works which may influence the technical characteristics of a construction product which are set out in European technical specifications. The necessary link between both is assured by so-called Interpretative Documents published by the Commission.
- The European technical specifications for construction products can be of two kinds: a harmonised European standard (hEN) established upon Commission mandate by CEN/CENELEC, on the one hand, and a European Technical Approvals (ETA) issued for specific individual products by one of the Approval Bodies which are associated in the European Organisation for Technical Approval (EOTA), on the other hand.
The usual type of technical specification is that of hEN, while ETA is an exceptional one reserved to innovative products and products differing significantly from hENs. With regard to the latter the CPD assigns to the Commission the role of issuing mandates for establishing a guideline (ETAG) and of authorising the issuing of an ETA in certain cases where such guideline does not exist.
- Construction products subject to hEN or ETA must undergo an Attestation of Conformity (AoC) which leads, according to the case, to a certificate of conformity or a declaration of conformity entitling the manufacturer to affix the corresponding CE marking. AoC consists of two distinct elements: Initial Type Testing (ITT) of the product, and Factory Production Control (FPC) which might also include additional product testing. There are a total of six different levels of AoC procedure under the CPD which all are more or less significantly distinct from the modules defined under the New Approach.
The administrative burden linked to the various levels of AoC procedure under the CPD varies significantly. With the exception of one the various levels of AoC procedure require to a degree which depends on the level, the involvement of Notified Bodies, i.e. a certification body, inspection body and/or testing laboratory. The directive requires the least onerous possible procedure consistent with safety to be chosen. However, in case of individual non-series production the simplest and less onerous of the six AoC procedures can always be applied, with the exception of some limited and clearly specified cases.
For a given product or family of construction products the level of AoC procedure to be applied to series production needs to be specified in a specific Commission Decision.
- Although not expressly provided for in the CPD, CE marking is largely considered as mandatory when an applicable hEN or ETA exists. Member States may, however, exempt a product for a single application.
AoC and subsequent CE marking with reference to specifications other than hEN or ETA, e.g. directly to the Essential Requirements or the related Interpretative Documents, are not possible.
CE marking does not stand alone but must be accompanied by varying amounts of additional information, including indications to identify the technical characteristics of the product.
- CE marking of a construction product provides presumption of fitness for use in works in application of the national design and building rules to be respected. Construction products bearing the CE marking must benefit from unrestricted free movement, placing on the market and use corresponding to their fitness.

- A Standing Committee on Construction assists the Commission in the management of the CPD, in particular with regard to the tools and instruments to be established and to be defined in detail. The committee has a function which is partly regulatory and partly advisory.
- Member States are competent for designating the Approval Bodies entitled to issue ETA and, in application of certain minimum conditions, the Notified Bodies which may be involved in the Attestation of Conformity. They are also exclusively responsible for ensuring correct use of CE marking, including market surveillance as well as initiating, where needed, and finally implementing the application of the Safeguard Clause provided for in the CPD.

Several of the problems identified when implementing these principles, instruments, tools and procedures are so important that they must be addressed, in order to enable further significant progress towards a functioning Internal Market for construction products. Awareness is growing that significant potential gains can be made from an improved functioning of this market, potentially offering advantages needed to better compete in a globalised market. While Europe is by far the most important player on the global market for internationally contracting construction activities, also its trade balance for many families of construction products is positive, but often at low level. Although the global market can be only relevant and important for certain European construction products, such as structural steel, ceramic tiles and some relatively high added-value appliances and systems, potential for still doing better can be seen in fields such as insulation products and certain specialised systems.

In addition, there is a need to further develop this legislation, in order to address relevant developments on the market and in the regulatory field appropriately, for example the increased placing of “product kits” and “product systems” on the construction product market.

To place the identified problems in their proper context, it is necessary to bear in mind the particularities of the construction sector and the features of the CPD as summarised in the box above, not least what distinguishes it from other EC legislation related to products.

A fundamental issue is that 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). In short: design rules (building regulations) are set at MS level (even 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.

To support and strengthen the Internal Market in such a setup the related Community legislation on construction products must aim in the first place at establishing a **common technical language** to be used by both the MS administrations when setting up and verifying the rules and by the manufacturers producing their products. Such a system should enable professionals to determine whether a specific product, regardless of its origin, lives up to the required characteristics in order for it to be integrated into a particular work according to the design chosen. To facilitate marketing and verification harmonised technical specifications are developed as explained. They constitute the above referred common technical language. CE marking, as a condition for free circulation on the internal market, is affixed when the

product satisfies all the applicable provisions of Community legislation and it can be demonstrated that conformity with the applicable harmonised technical specifications exists.

2.2. What are the underlying drivers of the problem?

During implementation of the CPD according to these principles it became clear that the Directive and its detailed wording as well as the modalities and variations of the national implementation mechanisms are usually the major drivers of the problems identified. However, the detailed issues, as presented below, generally represent complex and inter-related problems, both to be reviewed separately as individual items and components and to be addressed with regard to potential mutual effects on each other and cumulative effects.

A substantial part of the indicated problems are driven by misunderstandings among stakeholders of the overall objectives, concepts and tools of the CPD as summarised in the box in 2.1. A major source of misunderstanding/confusion has been the references to the CPD as being a New Approach act (NA). Although identical or similar expressions are used in the CPD and the NA, their definitions and/or significance are not matching. Since the New Approach concept is currently undergoing a revision⁷ to address problems discovered during implementation, this simultaneous review of the CPD offers a unique possibility to clarify misunderstandings, harmonise the language used and align the Community legislation regarding construction products and the Internal Market for them better to the NA with regard to aspects (e.g. terminology employed, notified bodies, market surveillance etc) in common.

The main identified underlying problem drivers can be grouped under six headings:

Issues associated with the implementation mechanisms of the CPD:

- The harmonisation work of the Internal Market advances slowly due to substantial delays in the technical harmonisation work by CEN/CENELEC and Approval Bodies;
- The application of the Attestation of Conformity procedures is not always precise enough regarding the required involvement of the Notified Bodies. This often leads to unnecessary burden for the manufacturers, which are submitted to more testing than necessary. An example is when only the specific treatment of one performance characteristic requires the involvement of a Notified Body. Then, it is not clear to what extent this body should also be involved in the treatment of the other characteristics.
- Four Member States⁸ have brought into force provisions which make CE marking not mandatory; this creates a non-level playing field for manufacturers across the EU.
- Unclear provisions in the current directive are also responsible for an important number of infringement proceedings, in particular regarding issues in relation to CE marking (see below). The Commission services need substantial resources to follow up on infringement claims related to MS imposing differing and additional national requirements and to follow closely CEN work.

Issues related to harmonised European standards under the CPD (hENs)

⁷ See COM(2007) 35 final

⁸ Finland, Ireland, Sweden and the United Kingdom

- Confusion exists regarding the significance, meaning and content of harmonised European standards under the CPD which are unduly identified with the “typical” New Approach harmonised standards.
- Many hENs contain an unnecessary rigidity in the technical solutions proposed, in particular related to the strong reliance on testing as the only method for evaluating performances, without exploring the possibility for proposing other means for evaluating the performances less onerous than testing.

Issues related to European Technical Approvals (ETAs)

- Ambiguous CPD provisions make certain parties believe that it is mandatory to request an ETA in the absence of harmonised European standards. The resulting differences in the implementation by various MS lead to confusion and distortions of the market.
- Establishing Guidelines as a basis for granting an ETA is bureaucratic, cumbersome, takes much time and costs several hundred-thousand Euros for one Guideline. Therefore it is often replaced by another approach developed by EOTA for achieving a common view of Approval Bodies, called Common Understanding of Assessment Procedure, not specifically provided for by the CPD. However there are some concerns, although to a lesser extent, that also the CUAP route is insufficiently transparent and too bureaucratic.
- Manufacturers consider the cost of often several ten-thousand Euros or even more for obtaining an ETA too high, and that they are insufficiently involved when this type of particular technical specification is established.

Issues related to Approval Bodies (ABs) and Notified Bodies (NBs)

- Concerns over the functioning, neutrality, competence and transparency of certain Approval Bodies (ABs) whose designation is exclusively based on national selection criteria. The CPD contains no criteria concerning their designation and these issues.
- There are even more frequently concerns expressed regarding the technical competence of NBs, the reliability of their work and their interest. This is mainly due to different interpretations by the MS of the inadequate indications of their role and of weak minimum conditions for their designation in the CPD.

Issues related to CE marking

- Confusion as to the meaning of the CE marking under the CPD, often mistakenly thought to relate directly to safety, as in the New Approach directives. However, CE marking under the CPD does **not** indicate conformity of the product to the six Essential Requirements since these requirements are not related to the product itself but to the entire works in which the product is incorporated. CE marking under the CPD indicates that the certified or declared performance is accurate, reliable and stable and that the manufacturer has followed the AoC procedures foreseen in the applicable hEN or ETA.
- This confusion has led to erroneous interpretations of requirements by MS authorities involved at the various levels with enforcement of the CPD, resulting often in requiring manufacturers to perform additional testing of the product which is both unnecessary and contrary to the provisions of the CPD. The continuing reference of new application

standards in national regulations and related national conformity markings affects companies' ability to place products on national markets with CE marking "only".

Moreover, once affixed, CE marking is in practice not fully accepted by various parties (public bodies, designers, contractors, building/works owners, insurance companies, etc.). This seems to be due to (perceived) lacking consistency between the working of the Notified Bodies involved in Attestation of Conformity plus a lack of efficient market surveillance. In turn this leads to builders and insurance companies not accepting CE marking as being reliable with regard to product performances and to MS authorities continuing to refer to national or voluntary marks in their national regulations.

As a result, products very often bear national marks costing several thousand Euros or even more to obtain in addition to the CE marking, the latter being perceived as generating added cost without added value rather than as a passport for the whole European market, while further burden often exists for the companies to identify and fulfil the requirements of additional national requirements.

Issues regarding products manufactured individually/non-series and micro enterprises

- As the cost of Attestation of Conformity and CE marking increases little with the number of product specimen manufactured, for products manufactured in small number, often by very small enterprises/artisans the cost of Attestation of Conformity and of CE marking potentially contributes more to total costs per product specimen compared with manufacturers producing big series with economies of scale.
- Despite the general possibility of applying, with some exceptions, in case of individual non-series production the simplest and less onerous of the six AoC procedures the CPD provisions and the technical specifications established under the CPD seem not to be the most appropriate tool to regulate for individually manufactured products (for example type testing and factory production control necessarily need to be dealt with differently for these products than for products manufactured in series). The placing on the market of such individually manufactured products normally follows a specific and well-established agreement between the manufacturer and the client-user, and technical or regulatory obstacle impeding intra-Community trade are not relevant for them.

Issue related to market surveillance:

- A market surveillance system equally effective in all Member States does not exist. It is claimed that falsely CE marked products can enter the EU market. Many stakeholders consider the absence of efficient market surveillance as leading to abuses of the system.

2.3. Who is affected, in what ways, and to what extent?

All operators on the construction market are directly affected by the Internal Market for construction products, i.e. besides manufacturers of construction products also designers (architects and engineers), contractors (builders), clients (owners/contract assigners) as well as public authorities at the various levels in various functions and specific technical bodies.

Manufacturers of construction products are most fundamentally affected at their activities by the tools and instruments provided for by legislation relating to these products, with direct effects on their costs. However, these effects are very different depending on the nature of the product and the volume of the manufacturer's production, on the one hand, and on the market

area to which he is providing or wanting to provide his products as well as on the various national regulatory requirements in this targeted market area, on the other hand.

With regard to the market area, the effects on the costs of the products for an individual manufacturer can be found between the following two extremes. The one extreme is a manufacturer targeting with a product manufactured in a single factory the entire EEA market or a large part of it with previously many different national requirements → this manufacturer has high cost savings through referring to harmonised technical specifications instead of many different national ones and through a single attestation of conformity followed by CE marking instead of many national attestations of conformity followed by different national markings. The other extreme is the frequent case of a manufacturer who provides to a market in the territory of only Member State which, furthermore, might have rather low-profile regulatory requirements with regard to this product → this manufacturer does not have cost savings from harmonisation which, moreover, might require him to respect minimum specifications, attestation of conformity and marking, which were not relevant for him and therefore mean new and additional cost and burden. The way in which manufacturers' cost and burden are affected, and to what extent, therefore also depend on to what extent products of the family concerned are traded within the EEA across national borders (see box below and Annex V), and on the national regulatory situation which exists or has existed before harmonisation in the market area targeted by an individual manufacturer.

In addition, a well-functioning Internal Market means business opportunities for manufacturers which result from a larger market, but also exposure to more competition. Depending on the case and the individual business model, this might result in expansion or new enterprises being set up, but also in loss of clients and business failure. As in most other sectors, for common products rationalisation and concentration are likely to result, while new business opportunities and creation of new enterprises are more to be expected for specialised and innovative products and niche markets.

For architects and engineers a well-functioning Internal Market for construction products has the advantage of being able to choose among or refer to products to be used which originate from a larger geographical area. While these products must have performance characteristics according to harmonised technical specifications, and therefore can be easily compared, the geographically larger market and the variety of products within the limits of the harmonised technical specifications allow an optimal choice both in design and performance terms and in terms of cost-effectiveness. A wider choice also from formerly unused origin does not mean necessarily more efforts to be invested by designers. A larger market with harmonisation makes it more attractive for manufacturers or other initiative parties to provide designers with effort and cost cutting IT-based tools facilitating their work.

Contractors are usually in a comparable situation: although most of them use products usually marketed in their geographical area of activity, they may in principle choose among products placed on the market anywhere in the EEA, trying to improve their performance and to reduce costs generated by the construction products used⁹. Furthermore, well-developed and commonly agreed technical specifications for construction products and reliable attestation of

⁹ A generally accepted approximation says that about one third of the cost of a typical building is related to the cost of the building materials and products. The figures are more variable (but often higher) when it comes to civil engineering works. Indirectly all operators on the market, also occasional buyers of products and services, are affected by the functioning of this market.

conformity and marking based on them correspond to contractors' general wish to be as far as possible discharged from liability for the deliverables of their activity.

The contract assigners and/or owners of works as well as the users of the works are the final ones to bear the cost of construction and to benefit from the quality of works. In a construction market characterised by competition, improved performance and reliability and cost savings benefit at the end these operators. Their decisions are largely influenced by these factors, including prices. Available data (see reference in Annex VI) show important price variation between some EU countries for a number of common construction products delivered at the site. The highest variations were found for masonry products (common bricks) (up to 700%), structural steel (up to 300%) and cement (up to 200%). These price differences have to be taken cautiously for several reasons: first, for a given product, there is not "one price", but a range of prices in a country, second, the product concept is not necessarily covering the same reality through the different countries, for example, a common brick is defined by the authors of the report as a "non facing brick usually applied in each country in residential buildings". Such a brick may obviously vary between countries. The quality may be different, but also dimensions of common bricks may vary between countries. So, it is obvious that prices of common bricks are not so easily comparable as in the case, for instance, of a product like cement.

It can nevertheless be concluded that these figures indicate important price differences between countries and that they mainly stem from a lack of competition either within the industry itself or in the downstream distribution, stockholding and retail chain. Increased trade and choice of products and suppliers should create pressure to reduce these price differentials. Potential gains from trade, or increase of competition, can be very big, especially from the increased trade between the old and new Member States.

Finally, there are many parties that are indirectly affected: the construction sector plays a strategic role in providing the buildings and infrastructure underpinning the activities of the rest of the economy.

From the above it is clear that measures improving the resource use and performance of the construction sector including construction products, could have significant potential impact on the EU economy as a whole.

2.4. How would the problem evolve, all things being equal and taking into account actions already taken or planned by the EU, Member States and other actors?

The likely developments under an option where the CPD continues to be in force unchanged ('no change option', see chapter 4.1) would be insufficient to fulfil in a satisfactory way the specified objective of fostering an internal market for construction products.

This baseline option (CPD unchanged), implies that only measures related to a natural evolution of the legislation in its current form would be introduced. Some of the recent and current developments pointing towards some modifications in the functioning/implementation of the CPD would lead to maintaining (or even worsening) the current problems related to the absence of a level-playing field within the EU. Other measures initiated, however, are expected to reduce existing divergences in national requirements as well as in testing and certification regimes.

Chapter 5.1 below contains more details of this evolution. With the detailed projected developments building on current trends, it became clear that even under the hypothesis of

appropriate acts of the proposed New Legal Framework¹⁰ being in force and quickly implemented, with further modest steps towards greater convergence likely, an unchanged Community legislation regarding construction products would not allow the EU to live up to fostering the Internal Market and to properly and fully address the problems as identified under 2.1 and 2.2.

2.5. Does the EU have the right to act – Treaty base, ‘necessity test’ (subsidiarity) and fundamental rights limits?

Community legislation on construction products has Article 95a (former 100a) of the Treaty establishing the European Economic Community as a firm legal basis. In the 1980s, the CPD was developed following the Single Market Programme and White Paper on Completing the Internal Market¹¹. A new proposal for a revised legal act related to construction products places itself in a similar logic of further strengthening the Internal Market with direct reference to Article 95 of the Treaty establishing the European Community.

Although cross-border trade of construction products in the Internal Market shows big variations between very high and very low depending the family of products concerned, technical barriers to trade in this area are a very serious issue and continue to be so despite 16 years of implementation of Council Directive 89/106/EEC). This constitutes a clear necessity for the EU to act. The existing Construction Products Directive (89/106/EEC) was developed as a measure for establishing mechanisms for a harmonised set of attestation procedures which enables multiple attestation to be removed and national regulations on both products and works to use common language when expressing specifications. This approximation of national systems should provide an appropriate level of protection to health, safety and the environment whilst ensuring that the costs imposed on business remain reasonable. Appropriately strict product regulations and enforcement of such rules are expected to lead to more security about the consistency of performance levels, but are overall also likely to increase costs for producers.

To achieve a well-functioning Internal Market for construction products and the required legal certainty in technical terms as well as to address the above-mentioned inherent conflicts of interest without fragmentation of the markets, the issues relating to construction products need to be addressed at EU level. The principle of subsidiarity is fully respected by the fact that Member States not only are assigned appropriate responsibilities with regard to the implementation of Community legislation on construction products, but furthermore maintain exclusive competence for building regulations, i.e. the rules of design and building of works.

3. SECTION 3: OBJECTIVES

3.1. What are the general policy objectives?

The general policy objective is that of improving the free circulation and use of construction products. More specifically, it is intended to achieve a less fragmented construction products market, which has a traditionally localised setup and consequent limited amount of cross-border trade. This is expected to also have significant consequences regarding more competition, in turn followed by higher productivity development in the construction products

¹⁰ COM(2007) 37 final, and COM(2007) 53 final

¹¹ COM (85) 310 final

sector and in the construction sector as a whole. To this end a number of problems need to be solved which seriously limit the advances towards an Internal Market and have been identified with regard to the implementation of the current EU tool for improving the functioning of the market, i.e. Council Directive 89/106/EEC (Construction Products Directive -CPD).

3.2. What are the more specific/operational objectives

Ensuring better functioning of the Community legislation in this field on the ground includes addressing difficulties, costs, etc. for individual actors when attempting to understand and live up to stipulations of the Community legislation, as implemented in the Member States. Consequently, as indicated in the Commission initiative *Better Regulation: Simplification Strategy*¹² of 2005, one important policy objective is to make this legislation less burdensome and easier to apply, in particular for SMEs, while preserving the other EU policy objectives of this legislation. In line with this simplification initiative, the review of the functioning of the existing Directive should include a decision as to whether the approach originally chosen (the format and functioning of the legislative tools) is the most effective in order to meet the objectives of the legislation.

The Commission agrees with the view strongly expressed in the replies to its consultations, i.e. that the approach chosen in the CPD to achieve the Internal Market objective through technical harmonisation placing demands on both manufacturers of construction products and on public authorities as well as the general *acquis* and technical specifications established under the CPD should be maintained. This means that:

- manufacturers are expected to express the performance characteristics of the product that they place on the European market using exclusively the harmonised technical language set in the technical specifications relevant to that product; and
- public authorities are obliged to use this harmonised language when defining the technical requirements of works, affecting directly or indirectly the products used in those works.

3.3. Consistency of these objectives with other EU policies and horizontal objectives, such as the Lisbon and Sustainable Development strategies or respect for fundamental rights.

As indicated above, the general policy objective and the more specific/operational objectives pursued are not only fully consistent with several of the basic Community policies, but are even a direct and necessary consequence of them, such as the Lisbon Strategy and the policies aiming at better and simplified regulation.

They are also fully in line with the strategies related to Sustainable Development. For instance several of the Essential Requirements already set out in the current CPD and intended to continue as the basis for formulating technical specifications for construction products, are directly related to the fields of preserving the environment and ensuring environmental protection as well as achieving energy economy, thus fighting climate change.

It is important to underline that the technical language referred to above, needed for a proper functioning of the internal Market, must be also a powerful tool at the service of the

¹² COM (2005) 535 final

environmental policies of the Union and of the Member States in the field of construction and construction products. Harmonised technical specifications must integrate this dimension and provide technical means to fulfil environmental requirements.

Aspects of fundamental rights are not concerned.

4. SECTION 4: POLICY OPTIONS

4.1. What are the possible options for meeting the objectives and tackling the problem?

Option 1 - No EU action: no change

The baseline option is for Council Directive 89/106/EEC, the CPD, to continue to be in force as it currently exists. No clarification or simplification of the requirements of the Directive other than those related to the natural evolution of the legislation in its current form and to legislation applicable to this field beyond the CPD (see 2.4 above) would be undertaken.

However, some of the existing divergences in national requirements and in testing and certification regimes could be reduced through already initiated means of administrative cooperation between national authorities.

Option 2 - No legislation (non-regulatory option)

This option would imply a repeal of Council Directive 89/106/EEC without any substitute, and a reversion to mutual recognition while taking into account the current Commission proposal in this field as part of the New Legal Framework¹³.

In practice the Internal Market would be based exclusively on the principle that a product lawfully marketed in one Member State can be marketed in any other Member State, even if the product does not fully comply with the technical rules of the destination Member State, as long as a Member State has not sufficiently justified reasons for banning the product on the market in its territory.

This approach, facilitating the free movement of goods and services without a need to harmonise Member States' national legislation, should receive serious consideration as seems to be well-suited for the construction sector based on national/regional rules regarding the technical design of works.

¹³ COM(2007) 36 final

Option 3 - Revision of the Community legislation on construction products (the CPD)

This option would consist of clarifications, expansions and revisions, in order to address all the problems identified (see 2.1 and 2.2 above). Under it a wide range of various alternatives with regard to principles, provisions, rules, procedures and tools to be followed can be explored.

The external study on the relevant policy options undertaken from December 2006 to May 2007¹⁴ has largely entered into this exploration and roughly grouped them under two alternatives as separate options, i.e. either bringing the Community legislation on construction products fully into line with the New Approach or not doing so. However, since major parts of the New Legal Framework proposed in February 2007¹⁵ will need to be integrated or taken into account also in a revised Community legislation on construction products, it would be misleading to continue considering these alternatives as separate options.

Nevertheless, the analysis of this option starts by assessing the potential for fully aligning the revised legal document with the New Approach.

4.2. Which options have been discarded at an early stage and why?

Despite the fact that the Commission has announced in several official documents a proposal for a recast (revision) of Council Directive 89/106/EEC, no option has in principle been excluded beforehand. Each of the three main policy options is assessed in Section 5 below with reference to the problems identified in Section 2 above and the objectives of the CPD, in particular supporting the free circulation and use of construction products throughout the Internal Market by means of technical harmonisation.

5. SECTION 5: ANALYSIS OF IMPACTS

Hereafter the following four issues have been dealt which comprehensively without addressing them in separate chapters¹⁶:

- 5.1. What are the likely economic, social and environmental impacts of each of the short-listed options?**
- 5.2. Positive and negative impacts, direct and indirect, including outside the EU.**
- 5.3. Uncertainties and how impact may be affected by changes in parameters (uncertainty and sensitivity analysis).**
- 5.4. Include impacts in the EU and outside the EU.**
- 5.5. Specify which impacts are likely to change over time and how.**

The impacts were analysed using a **step by step approach**, starting with the degree to which the different policy options could address the problems identified in Section 2 above while strengthening the general policy objective related to fostering an Internal Market for

¹⁴ by Risk & Policy Analysts Ltd (RPA), UK

¹⁵ COM(2007) 35 final, COM(2007) 37 final, and COM(2007) 53 final

¹⁶ As these issues are inter-related and influencing each other at the level of findings, they have been dealt with simultaneously. Separating them would have meant significant repetition of statements.

Construction Products. The three main policy options identified were assessed, and despite uncertainty and lack of quantitative data it was also possible to indicate trends according to which impacts are rather likely to change over time.

As policy option 3 - Revision of the Community legislation on construction products (the CPD), was found to have the highest potential of strengthening the abilities to live up to the Internal Market objective while addressing the problems identified, the subsequent analysis focused on the detailed impact assessment and the comparison between the large number of possible measures falling under Option 3.

Subsequently, a series of detailed possible measures under Option 3 were defined and examined, all potentially addressing one or several of the identified problems. This provided the starting point for defining comprehensive revision alternatives. The implications of implementing the defined measures were assessed both individually and in combination, in order to identify a preferred package of revision measures.

The environmental impact category has been excluded from this analysis, since the main objective of the Community legislation in question is to establish an Internal Market through technical harmonisation. As stated before, this objective is fully compatible with the environmental objectives to the extent that the instrument used for achieving the Internal Market must also integrate the environmental objectives both at European and Member States level. This is why the technical specifications for construction products cannot be dissociated from environmental aspects and implications even if the provisions included in this revised Community legislation or the other options do not in themselves have environmental implications as in any case they take the environmental issues into account.

Nevertheless, it has to be underlined that the proposal significantly extends the scope of the former Directive as far as the environmental aspects are concerned. The draft CPR covers now effects on the environment that occur during the work's entire lifecycle. This is done through an important modification of the Basic Work Requirement n° 3 (BR 3). Furthermore, a BR 7 is added to cover aspects related to the sustainable use of natural resources.

It is important to add that the proposal will require even more from the harmonised technical specifications in so far as the scope of the basic requirement number 3 has been extended to cover also the external air and not only the indoor air as it is the case in the present directive. The effect of the revision is then positive for the environment taken into account that the emissions to the external air, CO₂ or other, could be taken into account in the mandates for standards and in the European Technical Assessments.

On the other hand, it can be argued that the expected increase in the intra-community trade flows will result in an increase of transport flows and then in negative impact on environment. These considerations are of course very important but they have to be placed in the general discussion of the sustainable growth. It is assumed here that the positive economic and welfare (including the resulting increased safety) effects will largely compensate the induced negative environmental effects.

- Social impacts are not considered as part of the detailed assessment either, as they do not depend on the legal approach and provisions at Community level under which construction products are specified, placed on the market and their free movement and use guaranteed. Instead, these impacts together with potential economic impacts at the level of the macro-

economy are considered together in the light of the final combination of measures identified as being the preferred policy option for the revised legislation.

The impact categories considered in this assessment have been selected through a screening of possible impacts against the impact categories listed in the Impact Assessment Guidelines which are relevant to this case. This has involved considering each impact type against the stakeholder groups that would be affected and the options to identify those impact categories that should be considered in this study. The impacts against which the measures have been assessed are as follows:

- operating costs and conduct of business;
- administrative costs on businesses;
- competitiveness, trade and investment flows;
- competition in the internal market;
- innovation and research.

Although both the big variations depending on the various individual specific conditions and the lack of quantitative data make it impossible to assess sufficiently in monetary terms any of the many effects that would result from the three basic options, it was tried to roughly estimate administrative costs¹⁷ incurred under each of them with the help of the very limited data available from the two external studies undertaken. Since the data available did not allow a calculation by applying the Core equation of the cost model¹⁸ as foreseen in the updated Section 10 of the Annexes to the Impact Assessment Guidelines, EU net cost model could not be used. Nevertheless the undertaken global quantitative estimates were compared and aggregated for each option. It should be noted that without further proof all three options are considered to be cost-neutral in terms of administrative burden for contract assigners, owners and users of works.

The lack of relevant data is mostly explained by the big complexity of the issue. The number of sectors (families of products) involved, the number of different uses for a given family of products and the number of different regulatory situations that can apply to a given use/product, explain, for instance, that there is not a “type” of European Technical Approval representative of the “normal” cost of such approval. This explains as well the enormous range observed in the interview based estimations of both, costs and benefits of a given measure.

Figures provided in annex V are a good illustration of this. Original data has been obtained from surveys realised by PRC and RPA studies, directly on the stakeholders. They show the

¹⁷ Please note that in the context of administrative costs measurement and reduction, terms administrative "costs" and administrative "burden" are used interchangeably in the sense that the term “costs” is preferred when burden has a measurable economic consequence.

¹⁸ Administrative costs should be assessed on the basis of the average cost of the required action (Price) multiplied by the total number of actions performed per year (Quantity). The average cost per action will be generally estimated by multiplying a tariff (based on average labour cost per hour including prorated overheads) and the time required per action. Where appropriate, other types of costs such as equipment or supplies' costs will be taken into account. The quantity will be calculated as the frequency of required actions multiplied by the number of entities concerned.

complexity of the issue and give some valuable indication of the range of the values that can take some important components of the cost of the CE marking.

5.5.1. Option 1 - No EU action: no change

Option 1 is assumed to be characterised by the following developments and effects for the period from 2007 to 2015¹⁹:

- i) The development of a critical mass of harmonised standards begins to take effect, for example improving the standing of the CE marking. The present programme of hENs should be completed over the next 3-5 years, with all hENs being effective by 2015²⁰
- ii) The tool of European Technical Approval (ETA) will be used and accepted more widely, generally based on Common Understanding of Assessment Procedures (CUAP). It can be assumed that there will be no or only very few new European Technical Approval Guidelines (ETAGs) mandated by the Commission. The opposite scenario is also possible: the voluntary character of ETAs together with the costly and bureaucratic nature of the procedures could result in a lower confidence in such system and stronger position for national marks and systems.
- iii) CE marking continues to be mandatory in most Member States and voluntary in four others, including differences in interpretation with regard to when CE marking is required and for what products. The current concerns regarding a level playing field would remain in principle. However, Court rulings in the case of current infringement proceedings could result in convergence and force the remaining four Member States also to make CE marking for construction products mandatory.
- iv) New voluntary quality marks continue to develop to enable product differentiation in relation to characteristics or performances not covered by hENs. Voluntary marks or national technical approvals may still be in use for new, innovative products or traditional products with specific characteristics of interest to the market.
- v) Initial steps towards co-ordinated market surveillance might be taken based on the administrative cooperation of Member State authorities as initiated. This could be reinforced by the implementation of mechanisms of the proposed New Legal Framework²¹.
- vi) Some steps towards creating increased confidence in the competency of Notified Bodies (NBs) could develop through the introduction of new requirements for their designation and notification, etc., in particular as soon as appropriate acts of the proposed New Legal Framework¹⁷ are in force and implemented.
- vii) The Commission gradually shifts the emphasis of its work from managing the process of developing standards (gradually finalised) towards enforcement concerning the obligations of public authorities under the CPD, including follow-up

¹⁹ The period 2007-2015 is seen as appropriate in order for ongoing developments to produce tangible results, notably those related to “completing the development of standards” and “the using of the tools of the existing directive to take steps towards more harmonized implementation across the EU”.

²⁰ Currently, 319 out of a total of 463 ‘concerned’ standards have been referenced as hENs in the OJEU.

²¹ COM(2007) 37 final, and COM(2007) 53 final

to complaints. This shift could lead to greater pressure for national marks and approval systems to gradually be reduced, including a reduction in the use of insurance-related marks.

The assessment of whether continuing with the CPD in its current form – including the assumptions i) to vii) above – would address the main identified problems as discussed in Section 2 shows that without further clarifying the key aspects of the CPD – such as its objective, the meaning of CE marking, and the obligations of both manufacturers and public authorities – it will be difficult to improve the functioning of the Directive and to meet the internal market objective of the CPD.

During stakeholder consultations and other information fora there has been a unanimous strong request (across all stakeholder groups and all countries) for clarification of CPD provisions, including several fundamental concepts regarding the general approach, such as clearly indicating/distinguishing the CPD concepts from those of the New Approach, defining the meaning and the status of the CE marking, the acceptance of the CE marking by National authorities and by private economic actors, the role of the standards and the European Technical Approvals (ETA's), among other issues.

It is also clear that a series of further measures need to be undertaken if many of the identified problems, as listed, are to be addressed.

The assessment also indicates the remaining issues/steps that would need to be addressed in order to overcome the identified problems related to the implementation of the CPD. These include using definitions from the New Legal Framework²² and making links to the proposed forthcoming legislation on the accreditation of notified bodies and on market surveillance which would require an adjusted legal document. These measures are likely to help addressing issues regarding the confidence in the CE marking, but would not necessarily make the meaning of CE marking clearer or ensure that the dual obligations of manufacturers and public authorities were fulfilled.

Consequently, many of the current problems, such as the unclear meaning of CE marking, different approaches to CE marking in different MS (mandatory, non-mandatory), others related to the system of attestation of conformity, etc., would continue to exist. Thus, the Community legislation would continue to face serious impediments meeting its Internal Market objective.

This assessment indicates that continuing with the CPD in its current form, even with the changes that are predicted to occur in the scenario up until 2015, would not be sufficient to address the identified problems.

The impacts which this option would have on individual stakeholders can be summarised as follows.

Manufacturers: to a certain extent continued undue costs of manufacturers when placing products on the market (from more testing than necessary, unnecessarily high costs of ETAs

²² For example, the proposed Decision of the European Parliament and of the Council on a common Framework for the Marketing of Products [COM(2007) 53 final] sets out definitions for key concepts such as 'placing on the market', and 'manufacturer'. Some of these are relevant to the existing CPD, while the differences between the CPD and the NA would make adoption of the proposed definitions concerning a harmonised standard and a technical specification inappropriate.

and much time needed for their delivery, nearly no flexibility in how to demonstrate compliance), offset by advantages, if any, from the Internal Market which are lower than they could be.

As the experience with the CPD shows, and can to some extent also be expected for the other options, there would be variations in the impacts depending on the kind of the product, on the one hand, and the category of manufacturer and his marketing area, on the other hand. The kind of product influences the impact mainly because of the specific level of Attestation of Conformity determined for the product, which can be more or less costly, possible difficulties with the official or market acceptance of the CE marking and consequently needed additional testing and marking, which can be different depending on the product, and whether the product is of high or of low manufacturing added value. Furthermore the general level of intra-EEA trade as a share of the apparent consumption is largely product-specific (see box on page 12)

For individual manufacturers, including those located outside the EEA, not only some of the potential net benefits from the Internal Market would not be obtained with this option, perhaps even entirely, but it is also not unusual that there be particular situations in which this option generates net costs for EU manufacturers which are not offset by savings when compared to the option of mutual recognition only. In such a comparison roughly large EU manufacturers and the non-EU manufacturers rather benefit from the CPD in the place of mutual recognition. But for manufacturers whose products are distributed in a marketing area which does not cross borders, in particular a big share of the about 90% **smaller and crafts enterprises** among the manufacturers, and particularly those who are located in the territory of a Member State with low requirements as long as harmonised technical specifications under the CPD do not apply, **undifferentiated implementation of the CPD generates additional costs** through the need of complying with its provisions and its implementation instruments which are not offset by any savings they could realise, as the Internal Market for construction products is not relevant for them.

Professional users: no tangible cost effects compared to the current situation, but gradually over time CE marking should be considered as an advantage and provide benefits from a wider range of products to choose from, and potential savings, despite the remaining problems with the CPD system.

Member State public authorities: no tangible effects compared to the current situation.

European Commission: saving of costs which a revision would generate as administrative task, but no tangible cost effects in the management of legislation compared to the current situation and continued administrative costs due to complaints and to certain difficulties with hENs which could be avoided with a better functioning legislation.

Standardisation bodies (CEN): at first no tangible effects compared to the current situation, but afterwards less standardisation activity or a shift to periodic revision.

Approval Bodies (EOTA): continued income from quite demanding procedures for obtaining ETAs, but in a situation where the ETA route remains partly unattractive.

Notified Bodies: continued income from partly onerous Attestation of Conformity mainly based on physical testing, gradually increasing as further hENs are established and ETAs continue to be issued. When in force and implemented accreditation as proposed under the New Legal Framework will generate for some Notified Bodies additional costs of complying

with the accreditation framework and increased competency requirements, while some of them may not succeed in obtaining accreditation.

In an attempt of quantification it can be estimated that Option 1- No EU action: no change would lead to maintaining certain unnecessary costs of manufacturers from undue administrative burden at a total amount of up to € 50 million a year. While these costs would entirely be offset by Internal Market advantages, these advantages would be lower than possible, with estimated benefits that could not be realised possibly totalling up to € 200 million a year.

Against this, overall effects on costs in form of administrative burden of the various other stakeholder categories (professional users, authorities, specification writers and bodies related to attestation of conformity) are negligible.

However, continued undue costs of manufacturers placing products on the market, in particular in the territory of a number of Member States, could be expected to become relatively less important over time when the practice of the current CPD system is further improving. But with an increasing number of harmonised European standards there are also increasing numbers of cases where enterprises manufacture construction products distributed in a marketing area which does not cross borders and to which requirements less burdensome than those under the CPD system applied, and for which the CPD generates additional costs through the need of complying with its provisions and its implementation instruments which are not offset by savings at a same rate. But in relative terms, i.e. compared to the overall market for construction products, this problem should be less important over time.

For the various other stakeholder categories changes in impact related to Option 1 over time are not significant enough to be considered, with the exception of more or less steadily increasing advantages and benefits for professional users and activity and income of Approval Bodies and Notified Bodies.

5.5.2. Option 2 - No legislation (non-regulatory option)

Repealing Council Directive 89/106/EEC could lead to Member States re-introducing very different systems and technical specifications for the placing on the market and use of construction products. The mutual recognition principle based exclusively on Article 28 of the Treaty establishing the European Economic Community and in future also on an act as proposed in the context of the New Legal Framework²³ would largely correspond to the situation in place for construction products prior to the introduction of the CPD and, *de facto*, remains relevant for products for which harmonised technical specifications (hEN or ETA) do not (yet) exist. Although such an approach, i.e. facilitating free movement without a need to harmonise provisions and rules would seem to suit the construction sector based on national or regional rules regarding the technical design of the works, it must be emphasised that this approach is limited to free movement and placing on the market of construction products, but does not cover their use²⁴ as both, Option 1 and Option 3 do.

In the context of the construction sector mutual recognition on its own, as illustrated by the example in the box below, faces problems when trying to live up to these objectives mainly

²³ COM(2007) 36 final

²⁴ As one of many examples can be indicated experiences regarding testing of external Fire Performance for Roof elements, where there are at least four (4) distinct test methods that need to be used when testing using the product in the UK, the Nordic Countries, France and Germany.

due to the widely varying technical language and rules applied in the Member States and the differing design and construction practices that apply.

Products in contact with Drinking Water (Industry views on mutual recognition)

Although with variations according to materials groups, stakeholders indicate that the large number of *de facto* regulatory requirements in the MS has led to a wide range of different tests to be undertaken before products could be accepted for use in different MS, with huge differences in costs for the necessary testing. The overall conclusion from the reactions of manufacturers consulted on this specific issue is clearly in favour of harmonisation at EU level, in order to significantly reduce the economic and administrative burden for the manufacturers, in particular the sub-sector using organic materials.

The April 2006 Commission public consultation concerning the future of the Internal Market and the mutual recognition principles identified that, although many stakeholders are pleased with the achievements that have been made, difficulties still exist. In particular, national technical rules are still considered to constitute important barriers to free trade, in particular in non-harmonised product sectors²⁵. The conclusion of the Commission proposal for a regulation aimed at strengthening the day to day implementation of the principle of mutual recognition in the context of the New Legal Framework and the related impact assessment²⁶ point to the serious problems faced by the mutual recognition principle, “specifically for technically complex products or products which can pose safety or health problems”, including construction products not covered by existing harmonisation regulations.

Due to serious delays in developing some of the harmonised standards under the CPD, mutual recognition was and is still relevant for numerous construction products. The experience in this respect makes it possible to assess with a high degree of reliability the consequences of Option 2 for the period from 2007 to 2015 as indicated hereafter.

- i) There could be a limited reversion in some countries to national standards and certification requirements, including the use of lists of approved products. Its degree should be limited by the precedence that European standards should take over national ones as recognised in key legislation such as the Public Procurement Directive.
- ii) ETAs would become a tool not necessarily recognised. Existing ETAs might not be accepted anymore, with national technical approvals required in their place. There would be no legal basis for extending the validity of existing ETAs or issuing new ones. In contrast, most existing hENs would probably continue to be used by industry as non harmonised European standards (in particular, this is likely to be the case for those well accepted within a given sector and which are linked to common design rules). In some sectors, voluntary industry-led self-regulation may lead to the further development/completion of harmonised standards.
- iii) Where reversion to national standards takes place, attestation requirements across countries and products are likely to diverge gradually.
- iv) There would be an increase in the number of national approvals and in the number of national or characteristic based quality marks.

²⁵ See SEC(2006) 1215

²⁶ SEC (2007)112

- v) Depending on the degree to which countries revert to national standards, some manufacturers are likely to re-focus on smaller markets, leading to less intra-EU trade.

Although some of the problems associated with the current CPD would disappear with the withdrawal of the Directive and its replacement with an approach based on mutual recognition, a detailed assessment highlights the fact that reliance on mutual recognition would generate other problems that would be detrimental to the free circulation of construction products in the Internal Market.

The impacts which this option of repealing Council Directive 89/106/EEC and a reversion to mutual recognition without new specific Community legislation on construction products would have on individual stakeholders can be summarised as follows.

Manufacturers: increase in the costs of manufacturers placing products on the market in the territory of more than one Member State (from observing different national rule and multiple testing, attestation of conformity). In benchmark to the baseline option (continuing the CPD) this can be estimated in total at around € 100 million for the time-being, amounting to several hundred million Euro when the harmonisation effects that could be achieved with the CPD and the improvement of these effects are completely realised.

As for the other options, the impact of this option varies considerably depending on the type of product and the category of manufacturer and his marketing area. Manufacturers distributing products in more than one country would be those for which this option instead of continuing with the CPD would increase costs, in particular large EU manufacturers and non-EU manufacturers, and among them those for whom the testing and attestation of conformity of their products is relatively expensive compared to the added value of manufacturing the product. But advantages from the Internal Market for construction products only marginally concern the large number of manufacturers, among them in particular **smaller and crafts enterprises**, who distribute their products in a marketing area that does not cross borders. In certain cases the option of mutual recognition would help this category of manufacturers to avoid costs generated by the implementation of and compliance with specific Community legislation for harmonisation in this field, if this legislation requires more than a single Member State national legislation in the situation of mutual recognition.

However, very rough estimates show that the total costs avoided (only in certain cases) for the manufacturers limited to the market in the territory of one single Member State do not equal more than two-third of the parallel total increase of costs for those manufacturers who are placing products on the market in the territory of more than one Member State.

Professional users: avoiding short-term adaptation costs from loss of national marks, but it would not be possible to gain long-term benefits from a wider range of products to choose from, and to make potential savings.

Member State public authorities: in general slight general savings in administrative costs from not needing to undertake further efforts towards harmonisation. But these savings would be likely to be offset by costs generated from adapting/reversing harmonisation already undertaken to a situation again characterised by national systems. In the longer term effects would very much depend on the national system to which the individual Member State reverts: the cost of administering a strong and demanding national system would be more or less equal to that of administering at the national level the system provided for by the CPD, while a light national system certainly would mean noticeably less cost.

However, even without CPD, provisions and measures to ensure mutual recognition in compliance with Community law generate certain administrative costs for national authorities.

European Commission: saving the costs of administering the CPD and its tools and deliverables, and of undertaking measures helping its good implementation. But with this option the number of complaints is rather likely to be even higher than with the CPD, leading to additional costs of case handling.

Standardisation bodies (CEN): While at European level (CEN) costs of writing standards or establishing them as harmonised instead of voluntary would be saved, this saving would be offset many times over by the costs of national standardisation bodies having in parallel many individual Member State standard systems.

Approval Bodies (EOTA): While at European level (EOTA Approval Bodies) there would no longer be income from issuing ETAs, depending on the national system and requirements national approval bodies would flourish and in total across the EEA gain income higher than that lost from European activities.

Notified Bodies: in total considerably increasing their income from the need of multiple attestation of conformity in the case of products placed on the market in the territories of more than one Member State, but with considerable variations depending on the national system and requirements. Certification bodies, inspection bodies and testing laboratories established in Member States reverting to a light national system would even lose part of their business.

Costs incurred as administrative burden under Option 2 - No legislation (non-regulatory option) can be roughly estimated as follows:

Balancing the increase in costs of manufacturers placing products on the market in the territory of more than one Member State with the potential avoidance, in certain cases, of costs no longer being generated by the implementation of and compliance with specific Community legislation in the field of harmonisation for manufacturers with a very limited marketing area, the net additional administrative burden which this option would cause for manufacturers can be estimated at costing at least € 50 million a year in comparison to baseline Option 1, with a trend increasing until 2015.

For professional users and authorities at the various levels this option would mean in the short term avoiding some administrative burden, but in the longer term it would add costs different to that avoided, so that by the year 2015 the net cost in the form of not realised potential savings or of administrative burden can be estimated for these types of stakeholders as slightly higher than their net cost from administrative burden under baseline Option 1.

The necessarily higher activity of standardisation bodies, Approval Bodies and Notified Bodies, while shifting back to a national level dimension, would result for the EEA as a whole in a net increase in standardisation costs of several million Euro a year and a net increase in income of bodies involved in issuing approvals and in attestation of conformity. Logically, the latter net increase in income largely corresponds to the net additional administrative burden caused for manufacturers and estimated at costing them at least € 50 million a year.

Under Option 2 all new negative impacts as well as increases needed in the activity of approval bodies and bodies involved in attestation of conformity would not particularly change over time. But in benchmark to baseline Option 1 (continuing the CPD) they would become ever more important, as the CPD system would be expected to work better at the same time. In parallel, the contribution of mutual recognition to manufacturers saving costs because of a national legislation in their limited marketing area which is less demanding than

the CPD would gain importance over time in absolute terms but less in relative terms. Finally, there would be some non-recurring administrative costs (public authorities and standardisation bodies) at the beginning from reverting to mutual recognition and returning to national provisions, rules and technical specifications.

The likely increases of employment related to administrative and service tasks in the wider sense (MS public authorities, specification writers and bodies involved in attestation of conformity) which would result from re-nationalisation under this option would not be important enough to match the losses of scale effects and EU competitiveness for manufacturers placing construction products on the market in the territory of more than one Member State and in the longer term for professional users of these products.

In summary, it is clear that a reversion to mutual recognition neither helps to strengthen the Internal Market for construction products nor reduces overall burden for manufacturers, although it might do so for certain categories of in particular smaller and crafts enterprises who do not distribute their products across national borders. It does not truly facilitate activities of other professionals in the construction sector and is not in the interest of contract assigners, owners and users of works. Previous and ongoing implementation of the mutual recognition principle in this field has demonstrated the fundamental problems stemming from the use of incompatible technical language between Members States. A return to nationally based systems is also likely to create new differences rendering attempts by manufacturers to penetrate MS markets others than their home market more difficult. For all these reasons this option is not retained.

5.5.3. Option 3 – Revision of the Community legislation on construction products

As an initial step, mainly based on the analysis of the identified problems (Section 2), indications from stakeholders and respondents to the internet consultation, findings from investigation, a total of 65 possible solutions for addressing these problems through a revision of the Community legislation on construction products have been formulated. In cases where problems could be addressed through provisions proposed in the New Legal Framework (NLF), this has been taken into particular consideration.

New Approach directives have the dual purpose of ensuring the free movement of goods through technical harmonisation of entire product sectors, and of guaranteeing a high level of protection of public interest objectives referred to in Article 95 paragraph 3 of the EC Treaty. Innovative features of this legislative technique include the definition of mandatory essential requirements for the goods, the setting up of appropriate conformity assessment procedures and the introduction of CE marking. Business and industry are given a wide choice of how to meet their obligations while the European standards bodies have the task of drawing up technical specifications which offer one route to complying with these essential requirements.

In February 2007 the Commission has presented a New Legal Framework (NLF) mainly related to the New Approach, with proposals for acts²⁷ representing a horizontal legislative approach to harmonisation. Practice has shown problems in the implementation of the existing New Approach legislation, which are fully in line with some of the main issues identified in relation to the implementation of the CPD, or even more pronounced for the CPD, and which need to be addressed in a revised Community legislation for construction products. In order

²⁷ Proposal for a Regulation on accreditation and market surveillance [COM(2007) 37 final], and proposal for a Decision of the European Parliament and the Council on a common framework for the marketing of products [COM(2007) 53 final].

to overcome these problems, the NLF proposals complete the existing legal instruments by putting forward reinforced Community policies on market surveillance and accreditation; bringing coherence to existing sector instruments with horizontal instruments that can be applied to all sectors regardless of whether they are "old" or "new" approach.

A full alignment of the Community legislation on construction products with the New Approach as completed by the New Legal Framework defining one concept valid for all product sector legislation therefore offers in principle potential considerable advantages.

However certain fundamental particularities of the construction activity and sector and of the market for construction products, such as the need to link the construction products and the works that they are used in, make it impossible to fully follow the New Approach in this field. In this period of simultaneous discussion of the Commission's New Legal Framework proposals and presenting a proposal to review of the Community legislation on construction products it seems pertinent to look at whether these differences can be overcome, paving the way for a revision leading to a full alignment of the latter with the New Approach.

A thorough assessment into the matter has resulted in the conclusion that a full alignment is not possible. The MS rules to protect the safety and health of their citizens remain in principle on the level of the construction works. Construction products themselves are neither safe nor unsafe, neither healthy nor unhealthy. It depends on their concrete use in the works what is the level of safety, health and other features that achieved with them. Therefore the need to have a clearly established direct link between the products and their use will continue to exist, and in the sector the view prevails that the essential requirements should be defined at the level of the works and not the products. This has as a consequence that the NA modules for Attestation of Conformity would need to be modified before they can be used for construction products, i.e. no real alignment can take place for the AoC. In view of their activities, those related to the use of construction products (designers, contractors, authorities and permitting/receiving bodies etc.) require from the market of these products, i.e. the manufacturers of the products, reliable information on product characteristics and performances to be able to select and use products appropriately when designing, authorising, constructing and receiving the works. Thus, the Community legislation on construction products cannot readily become fully aligned with the NA.

However, since some of the problems faced in the NA setup are similar to those of the CPD, it would be most appropriate to draw on elements of the proposed New Legislative Framework as means of addressing some of the problems encountered with the implementation of the current CPD while increasing coherence between the different instruments influencing the construction product market. Using common definitions, tools, etc. facilitates the understanding by all actors present on markets where the NA applies.

In a second step a screening regarding effectiveness, efficiency, versatility, consistency and feasibility of the 65 formulated solutions has been undertaken. This has resulted in three basic findings: 1) there are solutions formulated to address the identified problems which can be effective and efficient, which are flexible and can be adapted to the specific nature of the problem, and which are consistent and generally feasible; 2) a substantial number of them can be addressed through using provisions proposed in the NLF; and 3) a revision of the Community legislation on construction products is possible to be fully compatible with meeting the overall objective to strengthen the internal market for these products.

However, before formulating a detailed revision package made up of the most suitable solutions regarding provisions, rules, procedures and tools to be followed, the Commission services in extensive consultation with stakeholders revisited some principles. This led to:

- (c) retaining the basic philosophy followed by the CPD regarding subsidiarity in the field of construction, i.e.. the Community legislation lays down the Essential Requirements (ERs) applicable to works, while Member States remain exclusively competent for regulating (or not) construction works and for doing so as they consider necessary.

Nevertheless, the development of a common (harmonised) technical language for expressing the performances of the products facilitates placing construction products on the national markets, and their free circulation and use, throughout the EEA. However, free circulation and use can only be achieved if national building requirements are expressed in a way compatible with such a common technical language and based upon it.

- (d) retaining the current performance based approach while strengthening its implications, which means emphasising the obligation for Member States to adapt the way they express building requirements, so that these are consistent and compatible with the agreed harmonised technical specifications, and to require Member States to ensure such consistency and compatibility through technical adaptations wherever necessary;

- (e) preferring the form of a regulation and not a directive for the Community legislation on construction products. In the various consultations undertaken (see 1.2 a)), manufacturers have come out very strongly in favour of a regulation as a tool to achieve a level-playing field across the Union, while a number of Member States have expressed a preference for the form of a directive.

A regulation enforces implementation of provisions in the same manner across the entire EU and EEA, thus reducing the potential for interpretations which would differ depending on the Member State. This should increase consistency in application and help ensure that barriers to trade across national borders in the EEA do not arise due to differences in national implementation.

Finally, taking account of these basic features, in a third step the revision package with a shortlist of most suitable main solutions (with variations for some of the) has been established as in the table below, for final analysis assessment. For each of the short-listed solutions, the existence of the alternative of doing nothing should be noted, i.e. the possibility to make no changes to the current version of the legislation and its relevant tools or instruments.

Option 3 – Revision of the Community legislation on construction products: shortlist

<p>most suitable main solutions <u>without</u> variations</p> <p>Clarification of the objective, scope and terms²⁸, including clarification of provisions on the application, non-application and partial application of technical specifications, on Attestation of Conformity in the case of individual non-series production, and on the extent and way in which the provisions apply to kits, systems and parts of works.</p> <p>Clarification of specific definitions and concepts such as ‘No Performance Determined’ or ‘Cascading Testing’.</p> <p>Simplification of the routes for ETA, with no future use of ETAGs, simplification of process for obtaining a CUAP, strengthening of competency requirements for Approval Bodies.</p> <p>Strengthening Attestation of Conformity that needs no or only reduced physical testing.</p> <p>Improvement of market surveillance and requiring necessary accreditation of Notified Bodies.</p> <p>Introduction of stronger EU control over harmonisation of standards.</p>			
<p>most suitable main solutions <u>with</u> variations</p>			
Variation package 1	Variation package 2	Variation package 3	Variation package 4
CE marking			
Provision of non-mandatory CE marking but with flexible scope.	Provision of non-mandatory CE marking but with flexible scope.	Provision of mandatory CE marking without flexibility	Provision of mandatory CE marking without flexibility
Attestation of Conformity			
Reduction of number of AoC levels from 6 to 4.	Moving to NA modules as basis for AoC.	Reduction of number of AoC levels from 6 to 4.	Moving to NA modules as basis for AoC.
Use of IT tools for provision of information that must accompany CE marking			
Providing for the use of IT tools for provision of a limited amount of information	Providing for an expanded use of IT tools for provision of most information.	Providing for the use of IT tools for provision of a limited amount of information.	Providing for an expanded use of IT tools for provision of most information.

5.5.4. Identified problems, proposed measures and expected effects

²⁸ It is self-evident that the revised legislation will contain the full set of definition of terms used in it.

Before entering in the analysis of the different packages, it is useful to present the suitable main solutions in front of the problems they are due to answer in order to have an idea of the expected effect of each proposed measure. This is what is intended with the following table.

Problems, proposed measures and expected effects

The issue	Problem definition	Proposed measures	Effects
CE-marking	meaning	Meaning explicitly defined	No direct effects; positive indirect effects expected from clarification
	Status: it is not clearly stated in the CPD if the CE marking is compulsory or not.	Will be made compulsory inside the scope of the CPR	Will introduce more transparency in the markets which should result in increased levels of competition (positive effects). Some additional cost for “marginal” (not applying the CE marking) manufacturers in the 4 countries where now CE marking is not compulsory.
	Delays in technical specifications	Stricter deadlines to be imposed to EOTA in the definition of CUAPS (Commission decision implementing the Regulation) and also to CEN (Improving working methods)	Positive effects to be expected from quicker work in CEN and EOTA
	Reluctance in accepting the CE marking by Nat. authorities and users	Stricter notification criteria for NB and improving the Market surveillance	Increased costs for national administrations. Increased costs for NB (cost of accreditation). Significant savings

			for manufacturers by the fact that national marks and certification will not be any longer necessary. = Important simplification effects =
Harmonised standards	Confusion on the meaning and the content due to the wrongly identification with the NA standards	Introduce clarification (in the recitals) about the exact role of the CPR standards: performance based	This should facilitate the direct access of the manufacturer to the reading and interpreting the standards whereby lowering the cost of such an access. = Simplification effects =
	Rigidities in the way the technical solutions are proposed (almost only by testing)	. Encourage to introduce technical classes where appropriate . Encourage to foresee as far as practicable other methods less onerous than testing	Important savings for manufacturers are expected when demonstrating the performances of the products they place on the market = simplification effects =
ETA system	Long, complex and expensive procedures	. Eliminate the Guideline route for ETAs and foresee only the redefined CUAP route. . Introduce deadlines (global and intermediary) in the CUAP procedure. . Redefine the common and individual responsibilities of Assessment bodies in the process of issuing an ETA.	All these measures will result in important cost savings for manufacturers using this route = simplification effects =

		<p>Introduce transparency elements: CUAPs references will be published in the OJEU</p> <p>Suppress the green light procedure to reduce the delays caused by unjustified bureaucratic procedures.</p>	
Attestation of conformity	<p>Confusion with meaning of conformity assessment in the NA, which is not at all the same concept.</p> <p>Some imprecision as far the distribution of tasks between the manufacturer and the NB, in particular concerning the so-called “cumulative” character of the AoC.</p>	<p>Clarify definition and introduce all the necessary details to avoid any ambiguity in this field.</p> <p>Probable elimination of the system “2”, used only once.</p>	<p>Savings for the manufacturers can be expected but not significant.</p> <p>= some simplification effect =</p>
Notified Bodies	<p>Linked with the above mentioned reluctance on the acceptance of the CE marking</p>	<p>Introduction of new and stricter criteria for designation and notification of NB (accreditation)</p>	<p>Positive effects on the system but maybe some increase in the cost of the CE marking can be expected</p>
Approval Bodies	<p>No harmonised criteria for their designation results in an ETA system with too many bodies and heavy functioning procedures.</p>	<p>Introduction of strict and harmonised criteria for designation, notification and controlling of the AB</p>	<p>Increased confidence on the ETA system and increased efficiency are expected.</p> <p>In principle, no direct effect on the cost structure is expected.</p>
Market surveillance	<p>Practically inexistent contributing to the above mentioned reluctance to accept</p>	<p>Harmonised criteria for Market surveillance will be introduced following</p>	<p>Significant positive effects are expected for the well functioning of the</p>

	the system	the Horizontal framework regulation.	system.
Micro enterprises, Individual products and non-series products,...	The obligation of CE marking poses sometimes disproportionate cost problems to small manufacturers	. SCOPE: CE marking will be made voluntary for those products which are not submitted to any regulatory requirement in their traditional markets.	This applies very much to real “local” products which are traditionally placed in the market without any performance statement. Artisans and micro enterprises are the direct beneficiary of this measure. = simplification effects =
	<p>Incorrect use of the “NPD” clause. Explanation: 1) While this facility is an option of the manufacturer, a wrong interpretation has conditioned its use, under the CPD, to a specific provision which had to be foreseen in the corresponding Technical specification, whereby limiting the possibility of using it by submitting the use to the fulfilment of specific conditions and procedures.</p> <p>2) One of the conditions for the use of this clause under the CPD is to explicitly mention in the labelling of the product, all the characteristics for which the NPD is used, whereby</p>	<p>1. Correct definition of the concept of declaration of conformity in order to permit to the manufacturer an appropriate use of the facility “Non Performance Determined” (NPD);</p> <p>2) In the proposal, the manufacturer will declare the values/classes of performance for the characteristics he will have decide, taking account of the applicable regulatory requirements, and he will not be obliged to mention other characteristics foreseen in the technical specification and for which he is not providing information.</p>	<p>These measures will facilitate the use of this important clause and will result in important costs savings in particular for the SMEs, by reducing accordingly the obligation to perform unnecessary testing. = simplification effects =</p>

	discouraging its use.		
	Excessive burden originated in testing.	<p>The proposal introduces special measures aiming at reducing as far as possible the testing part in the evaluation of the product-type.</p> <p>With the same purpose, standards writers are encouraged to introduce other and less onerous means for evaluating the performances of the products.</p> <p>Specific measures for micro-enterprises and for the individual and non-series products are also foreseen.</p>	<p>All these new measures will contribute to significantly reduce the cost of the CE marking and then the cost of placing products on the market. = important simplification effects =</p>

As it can be seen from the table most of the measures foreseen under this option are expected to produced important simplification results, not only, but specially for the SMEs.

Furthermore, in order to avoid imposing unnecessary burden to companies, the proposal will let open the possibility of combining the option of the revision with the one of no legislation. In fact, the definition of the scope is flexible and entitles the Commission, together with Member States, to exclude from it the families of construction products for which it is considered that no obstacles to the free circulation remain which can justify the application of the harmonising legislation.

Analysis and assessment of the short-listed solutions

When analysing and assessing the impacts of each of the short-listed measures (and comparing the sub-alternatives listed under them), the following five steps were included:

- (1) identifying which impact categories (from those included in the IA Guidelines) are seen to be relevant to the revision of the Community legislation on construction products;
- (2) screening the impacts by identifying the impact types (positive and negative) that may result from each option for each of the stakeholder group(s);
- (3) describing the impacts of each option qualitatively using matrices of option versus impact category (e.g. competitiveness, trade, administrative burden, etc.);

- (4) validating preliminary assessments of impacts through consultation with expert bodies and individuals and cross-check against responses to the Commission consultation; and
- (5) quantifying impacts, as far as possible using the EU net administrative cost model and other approaches as appropriate.

The information on the impacts of the individual options then fed into the identification of the preferred combination of solutions.

◇ Identification of the appropriate impact categories

Each impact category was provisionally screened against the stakeholder groups that would potentially be affected (for a definition of the stakeholders see below) The impacts against which the solutions have been assessed are as follows:

- operating costs and conduct of business;
- administrative costs on businesses;
- competitiveness, trade and investment flows;
- competition in the internal market;
- innovation and research.

◇ Potential stakeholders affected

The first provisional screening of impact against different stakeholder groups (see 2.3) led to the identification of the groups that potentially might be directly affected by the individual options. It also showed that some of these groups needed to be further broken down to enable a proper assessment of impact. The stakeholder groups considered with respect to direct affects have been defined as follows:

- *EU manufacturers* of construction products, subdivided into i) micro business, ii) small and medium sized enterprises (SMEs) and iii) larger manufacturers;
- *non-EU manufacturers* exporting construction products to the Internal Market;
- *professional users* involved in the design and construction of works, including the range of activities carried out by engineers, architects, and designers as well as the contractors;
- *public sector bodies*, Member State authorities and the European Commission;
- *standardisation bodies* (CEN and CENELEC) *and approval bodies* (including EOTA as an organisation); and
- *notified bodies* (certification bodies, inspection bodies and testing laboratories).

The impacts from Community legislation on construction products are in overall quantitative terms primarily related to intra-EU stakeholders. But non-EU manufacturers already active on or with an ambition to enter the EU market for construction products are on an individual and

cumulative basis very significantly affected with regard to costs for placing their products on the EEA market and business opportunities in this market. As these effects might be in nature and individual importance considerably different from those for EU manufacturer, they have been considered for the assessment as a separate stakeholder group where particular concerns regarding the external dimension have been assessed. However, it should be noted that, independent of the origin of manufacturers, the effects on them differ according to size, specialization and role.

◇ Analysis and comparison of the impacts of the short-listed solutions

Due to the fact that despite the serious attempts undertaken within and beyond the two studies gathering external expertise it was impossible to obtain detailed information in monetary or other otherwise quantitative terms, the impacts of the short-listed solutions can only be assessed qualitatively. Thus, impacts are rather described in qualitative terms and assigned a rating according to the expected magnitude of the effect, taking into account the likely duration of the effect (short term versus longer-term and ongoing). A rating scale with the following seven levels was applied, while considering also potential slight positive/slight negative impact due to uncertainty:

- may have a major negative impact (>30% change)
- may have significant negative impact (>10% change)
- may have slight negative impact (<10% change)
- may have no/negligible impact
- may have a slight positive impact (<10% change)
- may have a significant positive impact (>10% change)
- may have a major positive impact (>30% change)

In line with the statement on lack of relevant data above, the notional percentage change as indicated in the scale above, served as guidance, but normally without being verifiable against quantitative data. However, linking the ratings to percentage changes in this way helps ensure a certain equivalence of significance of impacts regardless of the size of organisation, turnover, value, etc.

The comparative assessment of the four comprehensive packages (each of them consisting of the most suitable main solutions without variations + most suitable main solutions with variations according to one of the variation packages) was done as follows:

- the ratings assigned to the impacts arising under the individual measures were combined to generate an overall score for each of the packages, based on assigning an equal weight to impacts on the different stakeholder groups and to the different impact types;
- a sensitivity analysis was then undertaken to determine the effect that different weighting systems would have on the ranking of the packages, and
- based on the results of the sensitivity analysis, the ‘preferred’ comprehensive revision was identified.

From the comparative assessment was concluded that Revision Package 1 is to be preferred. Only if clearly disproportionate weights are assigned to the interests of large manufacturers or professional users (e.g. six times more important than other manufacturers) package 3 would be preferred over package 1 while the other two packages (2 and 4) come out significantly less well under any assumption, so that none of them were preferred under any conditions included in these sensitivity analyses.

◇ Overall impacts of the preferred Revision Package 1

The preferred Revision Package 1 would help remove barriers to trade through clarifications, while at the same time reducing burden.

The total savings, mainly due to less administrative burden, of Option 3 - Revision of the Community legislation on construction products are estimated at around € 1.8 billion in present value terms over a 15-year period. This equates to savings of around € 160 million a year, or some 0.08% of the value of annual production of construction products. These savings are offset by estimated additional costs of around € 190 million in present value terms, or roughly € 16 million a year when discounted over 15 years at 4%, again with the majority of these realised by manufacturers. Although it has not been possible to place estimates on all of the savings and additional costs that may arise from the preferred package, net benefits of around € 140 million a year is the best possible estimate in this situation of uncertainty characterised by serious lack of monetary data.

The majority of the savings result from net reduction of administrative burden for manufacturers compared to baseline Option 1, mainly incurred by those placing products on the market in the territory of more than one Member State. Professional users would in the long term gain benefits in the field of administrative costs as well, while those of public authorities and for standardisation would slightly increase but only for an amount not significant compared to the net reduction of cost from administrative burden for the private economy. Also overall effects on income and administrative costs of Approval Bodies and Notified Bodies are expected to be insignificant as to be nearly negligible.

It is likely that on a competitive market these cost savings will lower the prices of products placed on the market accordingly and therefore reduce the costs for constructing works between some more than 0.01% and some less than 0.04%, depending on the case. The final benefit of this reduction will fall in one way or another to contract assigners, owners and users of the works and in the end represent savings for the entire economy and society in general.

The impacts from this option on individual stakeholders can be summarised as follows.

Manufacturers: reduction in the costs of manufacturers when placing products on the market (from reduced testing costs, reduced costs of ETAs and increased flexibility in how to demonstrate compliance).

However, it is necessary to mention the predictable enormous variations in these impacts depending on the kind of the product, on the one hand, and the category of manufacturer and his marketing area which are often correlated, on the other hand. While compared to the baseline option of continuing with the CPD as it is, probably no manufacturer would have additional net costs from this Revision Package, and number of them would realise net savings across all kinds of products, manufacturer categories and types of marketing area, the situation is rather different compared to the option of mutual recognition only. In such a comparison roughly large EU manufacturers and the non-EU manufacturers benefit from this Revision Package in the place of mutual recognition. But for the large number of

manufacturers whose products are distributed in a marketing area which does not cross borders, in particular the **smaller and crafts enterprises**, mutual recognition is of no concern whereas additional costs generated for them by the implementation of and compliance with this Revision Package despite a certain reduction of administrative cost and burden is not offset by any savings they could realise, as the Internal Market for construction products is not relevant to them. **In the best case the costs generated by the Revision Package for them can be estimated equal to those if the national system was to continue to exist.**

Therefore, as a conclusion from this assessment, **further specific provisions have been included in the final revision proposal.** This has been done **for the purpose of ensuring even more flexibility and excluding remaining risk of disproportionate and uncontrolled administrative costs**, thus corresponding to concerns about the potential specific effects on SMEs, in particular micro and crafts enterprises manufacturing construction products, and with regard to the need for an appropriate treatment to be used for non-series products.

Professional users: short-term increase in costs from loss of national marks, but increased confidence in CE marking should minimise these costs and provide benefits from a wider range of products to choose from, and potential savings.

Member State public authorities: limited increase in administrative costs associated with market surveillance and the setting up of accreditation schemes plus revising building regulations (or equivalent).

European Commission: costs of the revision as administrative task and of explaining it but reduced administrative costs due to a decrease in the number of complaints. There may also be costs of verifying that standards are appropriate for publication but there may be net savings from not having difficulties with these standards later.

Standardisation bodies (CEN): additional costs from having to revise standards (but could be done when standards are due for periodic revision). CEN may also incur additional costs with re-writing standards not accepted for publication (but such short-term costs may be minimised with increasing clarification).

Approval Bodies (EOTA): reduction in income from less cumbersome procedures for obtaining ETAs, and some Approval Bodies may fall short of fulfilling strengthened competency requirements (maybe offset to some degree as less cumbersome procedures and strengthened competency requirements make the ETA route more attractive).

Notified Bodies: reduction in income from less onerous Attestation of Conformity, in particular less physical testing, (maybe offset to some degree as further hENs are established and more ETAs issued). Costs include the additional ones of complying with the accreditation framework and increased competency requirements, while some bodies may not succeed in obtaining accreditation.

Since the revision of the Community legislation on construction products would not result in a system at full cruising speed from the beginning, all positive impacts of Option 3 can be expected to gradually increase over time during a 5 to 10-year period of implementation. While this could also be expected for the limited additional costs and negative impacts, their relative importance for the entire market of construction products is likely to decrease over time. There is even certain likeliness that even in absolute terms they would by the year 2015 or soon afterwards remain at a stable level.

5.6. Specify which social groups, economic sectors or particular regions are affected.

The more a social group or an economic sector is concerned by construction products, in the first place, by the construction of works, in the second place, and by their use in the third place, the more this group or sector is concerned by the relevant Community legislation. Besides national authorities and Commission services administrating implementation of this legislation, and largely independent of the three options considered, these are the following stakeholder groups in decreasing order: EU manufacturers of construction products, specialised organisations and bodies providing key services needed for entitling manufacturers to legally place construction products on the market and for ensuring their appropriate use (standardisation bodies, Approval Bodies and Notified Bodies), non-EU manufacturers of construction products, other professionals of the construction sector (designers, contractors and building authorities), clients of the construction sector and user of works.

The PRC study has evaluated the impact of harmonisation on 12 families of products following the standards route to CE marking. The study distinguishes three types of effects: 1) direct cost/benefits for certification and testing, 2) effects on trade and competition and 3) possible efficiency benefits (restructuring & dynamic effects) in the manufacturing industry.

It has to be underlined that the study does not take into account the effects that the simplification measures, proposed under the option 3, will produce on administrative burden of enterprises. This is an indirect route to clearly show which sectors should, in principle, be the most positively affected by such measures. The more they suffer from the situation today, the more they are expected to benefit from simplifying measures to be proposed, in particular if, like in the windows case, the presence of SMEs is important.

As far as trade and competition and efficiency effects are concerned, it can be assumed that the PRC reported effects will be accelerated and improved as a consequence of the measures foreseen in option 3.

Summary of estimated direct costs and benefits for manufacturers in EEA

Industry sector	Production value EEA (€M)	Initial + transition costs		Direct annual cost/benefit	
		€M	% of production value	€M	% of production value
Cement	14.000	-11	0,1%	0 to +32	0 to 0.2%
Structural steel					
- steel products	9.000	-4	0,0%	0 to +1	0 to 0.01%
- steel structures & components	47.000	-100	0,2%	0 to +20	0 to 0.04%
Rebar	15.000	-1	0,0%	0 to +8	0 to 0.05%
Masonry	12.000	-50	0,4%	0 to +20	0 to 0.2%
Thermal insulation	12.000	-24	0,2%	-3 to +1	-0.03 to 0.01%
Wood-based panels	18.000	-30	0,2%	0 to +6	0 to 0.03%

Ceramic tiles	10.000	-13	0,1%	0 to +8	0 to 0.1%
Sanitary appliances	7.000	-10	0,1%	0 to +24	0 to 0.3%
Windows	30.000	-76	0,3%	-10 to 0	-0,03 to 0%
Geotextiles	800	-0.5	0,1%	0 to +4	0 to 0.5%
Chimneys	1.700	-16	0,9%	0 to +4	0 to 0.2%
Fire fight. Systems	8.000	-14	0,2%	0 to +70	0 to 0.9%

Note: The table shows estimated total direct costs/benefits (in €million) for all manufacturers in the EEA (aggregated to the whole industry sector) for introduction of CE-marking in their business

Note: benefits are +, costs are - . All costs are order of magnitude estimates and cost/benefits are expressed as a range.

Initial and/or transition costs for the sectors range between €1 million to ca. €250 million – all very small compared to the potential internal market benefits from increased trade and competition. They are low for sectors like steel products which have few producers and already have sophisticated testing and certification systems, but higher for the windows sector with very many small firms, most of which had no or much less onerous previous conformity assessment systems.

After the initial costs, however, CE-marking is expected to lead to annual savings in the costs for testing and certification for almost every industry sector. The fire fighting and fire detection industry, the geotextiles industry and the sanitary appliances industry appear to benefit most, with annual benefit up to +0.9% /year (as percentage of production value). The annual benefit in cash terms is less in those sectors where industry expects some of the national testing and certification systems to persist, because of lack of agreement on testing (insulation, tiles, chimneys), because application rules are important (insulation, masonry) or because the initial costs are particularly high because some of the testing requirements are largely new (masonry, tiles).

Some companies in the insulation materials industry may face some increase in annual costs, because CE-marking in this sector may not lead to significant reduction of (voluntary) national ‘application approval’ marks, and many national firms had no mandatory attestation requirements before. The CE-marking costs for such firms may or may not be outweighed by the significant savings for multinational firms which would otherwise face multiple national conformity marks.

The windows industry faces possible additional long term costs from CE-marking, because CE-marking requires continued costs for ITT renewals and ITT of new products for many smaller companies where this was not or less needed previously. Initial ITT and FPC costs

may also be significant ²⁹. Even though we assume most small firms will benefit from shared or cascaded ITT so the costs for individual firms are very small, there are many thousands of small firms, so the aggregate costs are relatively high (but still insignificant compared to the internal market benefits. These costs for small local firms are likely to be higher than the savings enjoyed by the relatively small number of firms trading across borders. (However, since energy conservation standards and related regulations are increasing, it is likely that new or stricter testing and certification requirements would be introduced anyway in the anti-monde, so the additional cost cannot be ascribed just to CE-marking. Nevertheless, CE-marking makes it compulsory to make these investments at present.)

In the case studies only the cost savings for EEA manufacturers were calculated. But it should be noted that there would also be savings for non-EEA firms which sell in several EEA member states.

Impact on trade and competition

CPD CE-marking will lead to increased and stiffer competition within EEA markets, both because of increased trade or threat of trade across borders, and because of increased transparency in the performance of products and reduction in the protectionist effect of national approvals and quality marks. This will lead to lower prices and/or increased quality. This in turn will lead to a shift in production towards lower cost producers (in lower cost locations or to more efficient producers within a location) and consequent restructuring of the industry sectors, analysed in the next section.

As discussed in Annex 4, this increased competition does not necessarily result in a large increase in trade, or of trade over long distances: there will be increased trade across border regions which have a cascading effect across the EEA, but also increased competition within local areas.

CPD CE-marking can also open markets in countries outside the EEA in the future, if these countries adopt the ENs and hENs, or accept the CE-marking. It will also make it easier for some non-EEA producers to compete within EEA (because CPD CE-marking removes any regulatory barriers to trade and makes the performance of their products transparent) but can also cause additional costs for them because they may now need CE-marking and may not have easy access to a notified body.

²⁹

Most companies had or have some sort of quality management system in force before CE-marking. CE-marking will not bring about large extra costs in that case. But compared to FPC requirements in the hENs, this quality management system is for many very small firms very rudimentary, mainly based on the master's eye. To comply with the FPC requirements these enterprises have to do something more like record keeping of inspections, written procedures, action taking, etcetera, even under AoC 4. So, in general these companies will have additional initial costs in upgrading their quality management system.

The following table summarizes the observations from the case studies.

Impact on trade and competition

	<i>Potential trade and competition benefits <u>inside</u> EEA (€million)</i>		<i>Potential trade and competition benefits <u>outside</u> EEA</i>	
Cement	large	Potential very large savings from price competition at retail level. EEA-market could become more attractive for producers of common low priced cements from outside EEA.	negligible	Limited to none: production plants of the 'big 9' exist all over the world. Production costs in EU are high in comparison to most other countries
Structural steel	up to 500	From reduced steel prices: easier for steel producers to respond to ad hoc orders from other EEA countries: increased competition between distributors	some	Potential for ENs and Eurocodes to be adopted in Russia, China, Africa, Asia - improved safety and better engineering for them; trade benefits for EEA.
Rebar	up to 400	The likely levelling of prices would lead to a big saving for steel users, from competition between distributors.	some	Potential for adoption of the CE system in other countries, because some countries are seeking a better system of control of the quality of steel.
Masonry	up to 1,000	More competition, so price reductions and more choice for architects/ users. Some more local cross-border trade, possibly leading to cascade effect of reduced prices across EEA.	not expected in near future	
Thermal insulation	~ 100 to 1,000	Price impact - benefit for users	some	Potential for CE-marking to displace the US-based FM and UL markings in world markets
Wood-based panels	up to 40M	More extra-EEA competitors entering the EEA-market; stiffer competition and lower prices for consumers.	high, but not foreseen before 2010	Adoption of ENs and hEN in other markets; opening new markets outside EEA
Ceramic tiles	up to 30M	More extra-EEA competitors entering the EEA-market; stiffer competition-lower prices.	high, but not foreseen before 2010	CE-marking has no effects yet on extra EEA trade because the mark is still unknown but could possibly open new markets outside EEA
Sanitary appliances	poss. very important	More standardisation in design (WC pans, flushing cisterns), and also more competitors entering the EU market leading to more choice and better price/quality for consumers.	potentially high, but not foreseen before 2010	Removal of barriers to export by 3rd party certification schemes outside EEA.
Windows	not foreseen before 2010	Potential benefits by more standardisation in design. Some restructuring of the industry, SME-firms leaving the market.	Not foreseen before 2010	Probably no significant increase of trade by CE-marking
Geo-textiles	Negligible	Very limited: tailor made products are either produced in West-Europe and shipped all over the world or produced in local plants owned by multinationals	Negligible	Sector is quite well structured with multinationals playing a dominant role, especially for tailor made products. Therefore negligible effect.

	Potential trade and competition benefits <u>inside</u> EEA (€million)		Potential trade and competition benefits <u>outside</u> EEA	
Chimneys	not foreseen before 2010	Little trade, due to the product (material/dimensions), but competition is increased or is expected to increase by CE-marking.	Limited	Only in cases of low transportation costs for common products
Fire fighting systems	Up to 50	More standardisation in design; more transparency; more competitors entering the EEA market; stiffer competition-lower prices.	High	Acceptance of CE-marking in other markets; opening new markets outside EEA

In several case studies, industry respondents expect price reductions to result from stiffer competition (more competitors entering the market). It is often observed that for construction products in general there is a high dispersion of the prices of products between countries, which indicates in general market segmentation and barriers to free competition. For some sectors (steel, cement, masonry) there is indeed evidence of inexplicable dispersion in the retail prices, but little reported difference in ex-works prices, indicating wide differences in the apparent mark up between ex-works prices and prices to end-users. Therefore, no definitive conclusions can be drawn as to whether the apparent price dispersion is due to lack of competition within the industry sector itself, or lack of competition in the downstream distribution, stockholding and retail chain. Increased trade, and choice of products and suppliers for users, however, should create market pressure to reduce these price differentials. These potential gains from trade (or increase of competition) can be very big, to be measured in hundreds of millions of Euros. This may particularly be the case if there is increased trade from new member states to old Europe.

There are also potential trade and competition benefits outside EEA. Some case studies report on the opening of new markets outside EEA by acceptance of CPD CE-marking in those markets. It could for example displace the US-based FM and UL marking in world markets, or the CE-system can be adopted in other countries because those countries are seeking a better system of control of the quality of the product.

Possible efficiency benefits (restructuring & dynamic effects) in the manufacturing industry

Increased competition and pressure on prices and quality will lead to industry restructuring. Trade improvement and benefits, however, will flow from restructuring in construction products sectors, irrespective of CE-marking. For example, the merger between Arcelor and Mittal would permit more trade between Mittal's Polish and Czech plants and the French and Spanish markets; other consolidation and rationalisation is also likely. CPD CE-marking has no direct impact on such rationalisation, but CE-marking does facilitate the process, by enabling restructured companies to achieve economies of scale and rationalisation in production, distribution, logistics, and marketing. CE-marking is thus at least a necessary condition for (re)structuring to continue.

The following table presents the analysis of potential restructuring and efficiency benefits in each of the case studies. Overall benefits across all sectors are likely to be in the high hundreds of million euros, and possibly in billions, and outweigh the direct cost impact of product assessment costs.

Possible efficiency benefits (restructuring & dynamic effects) in the case study sectors.

	<i>Efficiency benefits (€Million)</i>	<i>Comment</i>
Cement	None	Industry is well structured with a limited number of players dominating market and capital intensive
Structural steel	Negligible	Already restructured industry. Slightly simplified marketing and sales literature
Rebar	25 –100	From shift of production to low cost producers
Masonry	Up to 100	Rationalisation of plants and production in border regions. Transfer of technology and new investment resulting from consolidation
Thermal insulation	Small	Some benefit from new investment in older plants (e.g. in new MSs), but industry is generally modern and efficient. Possible increased competition from more transparent product performance data.
Wood-based panels	Small	Further consolidation by mergers; economies of scale; but also relocation to low cost producers
Ceramic tiles	Negligible	Industry already highly consolidated; no direct effects from CPD
Sanitary appliances	Negligible	industry already highly consolidated
Windows	Up to 100	Restructuring and efficiency improvement; more competition in 'border' areas; fewer small producers ; shift of production to more efficient producers
Geotextiles	Negligible	Production process is very efficient, innovation / tailor made products will be restricted due to ITT costs and interpretation of hENs.
Chimneys	Some	Possibly some restructuring. Efficient production processes will be stimulated
Fire fight. systems	Negligible	industry already highly consolidated

Most respondents in the industries concerned did not foresee significant market benefits from CE-marking, and many were concerned about the likely increase in competition, especially from non-EEA suppliers. Respondents to questionnaires and interviewees, however, were mainly those responsible for quality and testing, and did not have a wider perspective of the industry strategy, and the impact of increased competition could be much wider than the industries anticipate. For three sectors in particular there are substantial benefits expected: reinforcing and prestressing steel, masonry and windows, from the shift of production to lower cost or more efficient producers.

The effects and impacts of the three options concern these stakeholder groups to varying degrees without geographically-related regional distinction all over Europe. However, differences among Member States could be quite important depending on three principle factors: the share of production of construction products consumed in the country and that exported to the rest of the EEA, the volume of construction products consumed which are imported in particular from the rest of the EEA, and the severity of the national provisions,

rules and technical specifications before applying those under the CPD or a revised Community legislation and when reverting to mutual recognition.

The more construction products manufactured in a Member State are placed on the market in the territory of this state and not exported to the rest of the EEA, the more important the advantages of mutual recognition and the administrative burden related to harmonisation, and the less interesting the advantages from the Internal Market for these products.

The more construction products used in the territory of a Member State are imported from the rest of the EEA, the more administrative efforts are needed to implement mutual recognition in a way not infringing the Treaty, but the more it is also likely that national approval bodies and bodies involved in attestation of conformity have opportunities.

Finally, it could be erroneously concluded that the less severe the national provisions, rules and technical specifications before applying those under the CPD or a revised Community legislation have been, and would be when reverting to mutual recognition, the higher is on average unnecessary administrative burden generated by harmonisation for manufacturers in this country who do not export to the rest of the EEA and, for those who do so, the cost of adaptation to comply with the harmonised system, and the easier it should be to import under a system of mutual recognition from the outside onto the market in the territory of this Member State. And, in the opposite case, that particularly severe national provisions, rules and technical specifications, harmonisation generates no more than little additional administrative burden even for manufacturers who do not export to the rest of the EEA, the cost of adaptation to comply with the harmonised system is in general relatively low, but it would need quite significant efforts to achieve under a system of mutual recognition the acceptance and use of products imported from the outside onto the market in the territory of this Member State.

Due to the flexible character of the harmonising legislation in the field of construction products, these conclusions would not have corresponded to the reality. In fact, in order precisely to avoid unnecessary testing, the proposal under option 3, as well as under option 1, entitles the manufacturer to adjust the number of tests to be done to the requirements of the countries where the product is placed on the market. It can be concluded that, all things being equal, in particular, for unchanged national regulatory frameworks, adjustment costs could even be higher for manufacturers placing products on the market in the latter category of countries.

Outside Europe, non-EU manufacturers of construction products are the most concerned. But the EU system can also have some effect on the exports of construction products manufactured by EU enterprises and on other professionals of the construction sector established in the EU but active in third countries. In some cases even related authorities and services as well as clients and users can be affected in third countries, in particular when these countries are geographically close to the EU and/or have Mutual Recognition Agreements or other relevant arrangements with the EU.

5.7. What are the potential obstacles to compliance?

There do not seem to be real obstacles to compliance depending on the option.

Despite its disadvantages Option 1 would be relatively easy to comply with as it means no change and continuing what has been practiced for many years. With the exception of the identified problems not being solved sufficiently and the fact of being not the best potential option and an inappropriate policy choice, there would be no imperative requirement to give up the CPD.

Although Option 2 would mean a rather radical change from the current situation, and has important net disadvantages, there would be no principle obstacles to comply with mutual recognition in the field of construction products. The necessary legal base exists in the Treaty, experience with construction products to which no harmonised technical specifications apply is plentiful, and additional Community legislation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State is scheduled to be in force in near future.

Option 3 would not lead to potential obstacles to compliance either. It largely continues what has been developed under the CPD, but improves it at decisive points, and fully addresses the problems identified. The fact of its clear net advantages, both with regard to overall impact and reducing administrative burden must be expected to facilitate compliance. This option is likely to be the most favoured and accepted across all stakeholder groups.

6. SECTION 6: COMPARING THE OPTIONS

6.1. Indicate how positive and negative impacts have been weighted for each short-listed option and

6.2. Results of the weighting

An equal weighting has been assumed, i.e. the positive and negative impacts estimated as precisely as possible in monetary terms, in the absence of sufficient information and data that would give a methodologically better result, have been summed up to one total. As for all three options one-off costs and benefits are also incurred over several years, and such costs and benefits are in relative terms nearly negligible compared to overall impact, they have been integrated as an average into annual costs and benefits. All global costs and benefits amounts for which no annual figure could be obtained otherwise have been discounted over 15 years at 4%. However, where in the tables below a range of amount is given, the first figure corresponds to the beginning of a hypothetical implementation of the option and the second figure to when annual costs and/or benefits have become more or less stable, or to the end of the assumed 15-year period.

Based on the more detailed assessment of Option 3 according to a descriptive approach in qualitative terms assigning a rating according to the expected magnitude of the effect, the package with the highest number of positive impacts and the lowest number of negative impacts would be considered to have the greatest net benefit (lowest net costs). In addition, the sensitivity of the results to different weightings was assessed when bringing together the different solutions into packages to act as comprehensive revision package.

Note that based on the ratings, and taking into account the fact that impacts may arise from the combined effect of individual solutions, only the change in administrative and other costs after combining individual solutions to a potential revision package have been assessed. Impacts have also been distinguished into one-off and annual negative and positive effects.

6.3. Aggregated and disaggregated results

It is recalled that due to the lack of quantitative data and the big variations depending on the various individual specific conditions, for which certain examples are given in Annex VII, it has been **impossible to assess monetary impacts resulting from the three policy options otherwise than in the form of rough global estimates**. More specifically, the poor

information available **did not allow a calculation by applying the Core equation of the cost model** of Section 10 of the Annexes to the Impact Assessment Guidelines, so that also **the EU net cost model could not be used.**

Table 1 Aggregated administrative and non-administrative costs and benefits of options estimated in monetary terms (Benchmark = Option 1)

	<i>annual benefits</i> (€ million)	<i>annual costs</i> (€ million)	<i>net annual benefits (+) or costs (-)</i> (€ million)
Option 1- No EU action: no change (continue with the current CPD)	185 / 430	110 / 145	+75 / +285
Option 2 - No legislation: non-regulatory option (repeal CPD and reverse to mutual recognition)	275 / 265	170 / 320	+105 / -55
Option 3 - Revision of the Community legislation on construction products (the CPD)	245 / 685	100 / 130	+145 / +555

Table 2.1 Administrative and non-administrative costs and benefits of Option 1 estimated in monetary terms

<i>Stakeholder group</i>	<i>annual benefits (€ million)</i>	<i>annual costs (€ million)</i>
Manufacturers	130 / 230	80
Professional users	0 - 40	-
Member State public authorities	-	9
European Commission	-	1.5
Standardisation bodies (CEN)	6	6
Approval Bodies (EOTA) and Notified Bodies	55 / 155	12 / 50
TOTAL (rounded)	185 / 430	110 / 145

Table 2.2 Administrative and non-administrative costs and benefits of Option 2 estimated in monetary terms

<i>Stakeholder group</i>	<i>annual benefits (€ million)</i>	<i>annual costs (€ million)</i>
Manufacturers	100	150 / 300
Professional users	10 / 0	0 / 5
Member State public authorities	5	5 / 0
European Commission	1	-
Standardisation bodies (national level)	-	15
Approval Bodies and Notified Bodies (in current terms)	160	-
TOTAL (rounded)	275 / 265	170 / 320

Table 2.3 Administrative and non-administrative costs and benefits of Option 3 estimated in monetary terms

<i>Stakeholder group</i>	<i>annual benefits (€ million)</i>	<i>annual costs (€ million)</i>
Manufacturers	190 / 500	55
Professional users	0 / 60	5 / 0
Member State public authorities	-	12
European Commission	-	2
Standardisation bodies (CEN)	6	10
Approval Bodies (EOTA) and Notified Bodies	50 / 120	15 / 50
TOTAL (rounded)	245 / 685	100 / 130

6.4. Indicate if the analysis confirms whether EU action would have an added value.

Options 1 of no action and Option 2 of repealing the directive and reverting to mutual recognition respectively would have considerably less benefits. While Option 1 would produce constantly only about half of the benefits of Option 3, Option 2 would in the beginning range in the middle of these two options but in the longer term even result in cost being higher than benefits. Thus the analysis confirms that EU action of an appropriate revision of the CPD will have added value, while at the same time reducing overall costs and increasing overall benefits in comparison to the baseline option.

6.5. Highlight the trade-offs and synergies associated with each option.

For all options there is a potential trade-off between the nature and level of impact on manufacturers who distribute their products only in the territory of one Member State, notably micro and crafts enterprises, and therefore have no benefits from the Internal Market but risk incurring in certain cases additional costs if specific Community provisions for harmonisation are not sufficiently tailored to their specific situation and implemented in their favour, and the net benefits which other manufacturers and, at least at the longer term, most other stakeholders will gain from specific Community legislation on construction products (Option 1), in particular when appropriately revised (Option 3), or would lose in the case of mutual recognition (Option 2) which becomes for some even a net cost.

There is for all options a synergy with the Commission proposals regarding the New Legal Framework. Under Option 2 this would be limited to the proposed Regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State³⁰. While these provisions have also some relevance for Option 1 and Option 3 as long as there remain construction products placed on the market to which harmonised technical specifications do not (yet) apply, there would be a particular synergy between these two options and the proposed Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products³¹. Moreover, a revision of the Community legislation on construction products (Option 3) will need to take into account the proposed Decision on a common framework for the marketing of products³².

6.6. If possible, rank the options in terms of the various evaluation criteria.

Independently of whether the options are ranked according to horizontal objectives, such as the Lisbon strategy, and more general policy objectives, such as simplification and reduction of administrative burden, or according to a set of non-monetary criteria and more technical criteria proper to the construction sector, or finally in terms of a rough cost-benefit analysis which must remain an estimate because of the lack of data and the difficulties to apply the EU net-cost model, the result is always the same: Option 3 is clearly preferred against Option 1 and Option 2, the latter to be qualified as being contrary to the objectives pursued.

The only difference would be if the Options were assessed exclusively on the basis of criteria relating to manufacturers, in particular micro and crafts enterprises, who distribute their products only in the territory of one Member State and for whom therefore the Internal

³⁰ COM(2007) 36 final of 14.2.2007

³¹ COM(2007) 37 final of 14.2.2007

³² COM(2007) 53 final of 14.2.2007

Market is of no concern. In this case, a clear picture cannot be obtained, and under certain assumptions Option 2 could be preferred against Option 3 and even more against Option 1.

6.7. If possible and appropriate, set out a preferred option.

Option 3 to revise the Community legislation appropriately is the preferred option consisting of a package that mirrors the existing necessity and scores best in the Impact Assessment. It is the only one fully corresponding to the issues and problems requiring action as well as to the findings of the stakeholder consultation undertaken in this respect. It addresses the main identified underlying problem drivers in an optimal way and allows the best possible improvements with regard to those who are affected. With Option 3 it is possible to best achieve both the general policy objectives and the more specific and operational objectives. At the same time, it ensures the desired legal continuity by maintaining the approach chosen in the CPD to achieve the Internal Market objective through technical harmonisation placing demands on both manufacturers of construction products and on public authorities as well as the general *acquis* and technical specifications established under the CPD. Finally it also continues the good subsidiarity balance achieved in the field of construction, i.e. Member States are competent for the rules of design and building of works, while EU legislation ensures the Internal Market for the products used in the works.

The preferred option foresees the revision by re-casting the Community legislation on construction products into the legislative tool of a regulation which

- - lays down a common technical language when dealing with construction products and establishes the obligation to exclusively use this common language in relation to construction works and products;
- - brings about the further clarification missing under the current CPD and reinforces the credibility of the system;
- - lays down the rules and procedures to be followed by manufacturers when placing construction products on the EU market, and at the same time;
- - sets out the obligations to be respected by national authorities when regulating on construction works, and when acting in implementation of this Community legislation;
- - provides the basis needed for establishing harmonised technical specifications regarding construction products;
- - provides for the legal basis and specific tools needed for ensuring a well-functioning Internal Market for construction products, including accreditation, designation and notification of the bodies involved, market surveillance and safeguard clauses; and
- - at the same time shapes them more appropriately, such as a reduced number of simplified systems of attestation of conformity and lightened administrative procedures for ETAs.

The proposal contains further specific provisions to ensure flexibility and proportionality and to keep administrative costs as low as possible, also corresponding to concerns about the potential specific effects on SMEs, in particular micro and crafts enterprises manufacturing construction products, and with regard to the need for an appropriate treatment to be used for

non-series products. Moreover, it integrates procedures to follow for dealing with innovative products as far as their placing on the market is concerned.

7. SECTION 7: MONITORING AND EVALUATION

7.1. What are the core indicators of progress towards meeting the objectives?

Monitoring and evaluating progress towards meeting the objectives is considered only in relation to the performance of the preferred comprehensive revision Option 3. Annex VIII sets out the approach which is structured around the main objective of the CPD (i.e. to facilitate the free circulation and use of construction products in the Internal Market), plus the more general aims of the Commission in terms of simplification. It also presents a set of general indicators and possible means of verification which can be utilised to track performance. The indicators will need to be adapted to the legal instrument finally adopted but cover the main areas which will need to be monitored and evaluated over time.

7.2. What is the broad outline for possible monitoring and evaluation arrangements?

Distinction needs to be made between continuous and periodic monitoring and evaluation. Continuous monitoring is suggested to be done in the context of the Commission's continuous activities of administering this legislation, starting from the date when it comes into force (which will have a clear-cut point as the legislation is proposed to be a Regulation).

At the time of the revised legislation coming into force also a baseline state of the art for periodic monitoring and evaluation should be established (e.g. on cross-border trade, number of national marks, time needed to establish harmonised standards, previous complaints relating to the then former CPD, number of ETAs requested/issued per year and costs and time needed to have them, burden and cost for Attestation of Conformity and CE marking, and market surveillance) as baseline for future monitoring and evaluation.

Periodic monitoring measures and periodic evaluation based on both continuous and periodic monitoring is proposed to be foreseen in two-to-three-year intervals. At this occasion it should also be decided to which extent the monitoring and evaluation approach and its details should be adapted for working still better. Exercises of periodic evaluation would need to prepare reporting/examination/evaluation as finally provided for by the legislation put into force. Periodic evaluation between such regulatory reporting/examination/evaluation could be considered of taking the form of an evaluation "light" not addressing all issues with the same intensity.

7.3. How has the opinion of the IA board of 10.09.2007 been taken into account?

(1) The expected simplification and administrative burden benefits for stakeholders should be better presented. Section 5.5.4 includes now a table and comments where the main identified problems are presented together with the proposed measures and the expected results. Latter, in the same section, specific instruments are presented with their expected effects in so far as they should alleviate the administrative burden of companies and, in particular, of SMEs.

(2) The IA report highlights significant price variations across the internal market and the significance of this should be assessed and possibly carried forward in the

subsequent steps in the impact analysis. In section 2.3 a paragraph has been introduced to qualify the empirical findings concerning the price differences between countries in particular commenting on the difficulties in comparing the observed variations due, for example, to the difficulties in having comparable product definitions. A second paragraph has been introduced in section 5.6 when commenting on the expected effects on economic sectors and regions affected and more precisely as one aspect of the impact on trade and competition.

(3) The analysis of impacts should better illustrate differentiated impacts across product groups and across producers from different countries. Extensive comments on the effects across sectors and countries have been added in section 5.6. These comments are mainly based on the PRC external study mentioned above. They go through 13 economic sectors and analyse the direct cost/benefit effects of the CE marking and the impact on trade and competition and the possible longer run efficiency benefits. The section ends with an additional comment on the expected impacts across countries.

(4) The report should elaborate on environmental impacts. The environmental impact is considered shortly in section 5.5. Some noticeable comments have been added in that section to explain the mechanisms of the expected environmental impact. In particular, it is explained there that the scope of the basic work requirement number 3 has been significantly extended to cover, notably, lifecycle aspects, the outdoor air and greenhouse gases. In addition, basic requirement n° 7 has been added to cover recycling aspects and the sustainable use of natural resources.

(5) Procedure and presentation. As requested, the two external studies from RPA and PRC have been loaded in the site of the Construction Unit:

<http://ec.europa.eu/enterprise/construction>

Brussels, 04.10.2006
ENTR/G D(2006)

**THE REVISION OF THE CONSTRUCTION PRODUCTS DIRECTIVE.
THE STAKEHOLDER CONSULTATION:
SUMMARY RESULTS AND ANALYSIS**

SUMMARY RESULTS AND STATISTICS

The stakeholder consultation was launched on 17.03.2006 and closed on 15.06.2006. A total of 319 replies were received, which is considered a good rate of response. All relevant actors concerned by the CPD, industry, public administration and other interested parties, were represented in the survey, either through individual or grouped responses. The industrial representation in the responses can be considered as good: 94 sector associations, both at European and at National level, and 102 individual manufacturers reacted to the questionnaire.

As far as the geographical representation is concerned, two comments can be made. On the one hand, there was a low rate of response from some smaller Member States, in particular from the EU 10. On the other hand, there were a high number of responses from German stakeholders, whose replies constitute more than one-fifth of the total number of replies, and more than 30% of the group of manufacturers (see table in annex).

Concerning the type of responses, they demonstrate different degrees of knowledge of the subject and are of varying degrees of detail. Nevertheless, the responses on some issues appear coincide with the geographical origin of the response. One important example of this concerns question 5.2, on the possibility of applying to construction products the modules associated with the attestation of conformity in the New Approach directives. While replies from the UK, Spain, Italy and industry organisations show a clear preference in favour of integrating the modules in the CPD, in France three out of four replies are opposed to this option and in Germany and Belgium a mixed answer is given to the question.

As might be expected, many individual responses seem to reflect the opinion of the association or the interest group to which the members belong.

As far as the overall message itself is concerned, the findings show important misconceptions and misunderstandings in relation to the Directive itself, without, nevertheless, fundamentally questioning the basic principles of the Directive or its main implementing tools. It should be noted that, on the important issue of the role of standards in the implementation of the Directive, the opinions expressed by a very large majority of the contributors consider that standards or, in their absence, the ETAs, should be the only route to the CE marking. This preference,

contrary to the principles of the New Approach, has to be appreciated within the very specific context of the nature of the standards and European Technical Approvals (ETAs) in the framework of the CPD. The standards or ETAs provide manufacturers with a common technical language to express the performance of the products they put on the market, which is generally not the case for standards adopted in the context of the New Approach directives. While the quality of the standards is frequently criticised in the responses their performance based character is not questioned, with the exception of stakeholders originating from Germany, independent of the stakeholder group they belong to.

The main messages of the stakeholder consultation can be summarised as follows:

1. Nearly all replies confirm the **need for a harmonised legislative framework**. Mutual recognition is generally regarded as not working well in its absence.
2. There is an absolute **need for clarification**. This concerns the fundamentals of the Directive: the general approach (performance based versus prescriptive; New Approach versus other), the meaning and the status (compulsory or not) of the CE marking, the acceptance of the CE marking by the national authorities, the role of the standards and the European Technical Approvals (ETA's), among other issues.
3. There is clear **scope for simplification**. The systems of attestation of conformity should be simplified and their number reduced. The ETA route for CE marking is perceived as necessary but the administrative procedures for its delivery should be lightened. The ETAGs should disappear. The “non performance determined” (NPD) facility should be maintained but needs to be clearly defined as a means of simplifying the application of the Directive and avoiding unnecessary costs to companies.
4. There is a demonstrated concern about the potential specific effects of the CPD on small and medium enterprises (SMEs). There is particular emphasis on the need for an appropriate treatment to be reserved for non-series products. Changes to the Directive should not place undue burden on their business activity.
5. Finally, there is a unanimous request for **reinforcing the credibility** of the system. This is seen as a necessary condition for the achievement of the internal market, mainly by an increased harmonisation of the procedures and criteria for designation by the national authorities of the conformity assessment bodies and a better coordination of the market surveillance mechanisms.

SUMMARY REPLIES TO THE CLOSED QUESTIONS

Question 1

Is a harmonised legal framework such as the one valid today necessary?

The almost unanimous answer has been YES.

Questions 3.1 and 3.2

If the required supporting standards are available, do you consider that the CE marking of a product should await the availability of the harmonised standard for that product?

The answer is YES by large majority. The harmonised standard is considered to provide an important added value, namely by supplying essential information on the scope of supporting standards and on the way in which they should be applied, and by guaranteeing a harmonised use of them throughout the Single Market.

Question 3.3

Article 4.4 of the CPD sets up, for some types of product only, the conditions for affixing the CE marking in cases where the manufacturer has not applied, or has applied only partially, the relevant technical specification: what advantages /drawbacks do you see in generalising this flexibility?

The general body of opinion is against greater flexibility; a frequent request is even that of giving up entirely the possibility provided for in the current Article 4.4. The reasons are generally founded in concern that this possibility allows low-quality products to be placed on the market and undermines the credibility of CE marking, and that “individual” use of testing or measurement methods could potentially bring competition distortions between manufacturers. This same concern was also reflected in the replies to question 3.1. A relatively small number of responses would accept the generalisation of Art. 4.4 provided that the body involved in the assessment of the product is an Approval Body.

Question 3.4

Do you consider that the list of the product performance characteristics whose links with the ER on works have been established in the Interpretative Documents, should rather be set out in an annex to the revised legislation on construction products and capable therefore of rapid adaptation as necessary?

The question sometimes seems to have been misunderstood. This may be due to misunderstandings surrounding the reference to the interpretative documents which are considered largely obsolete by a considerable number of responses. However, the various views do not enable the establishment of a clear opinion either for or against such a possibility.

A more positive attitude is shown towards the option of including in an annex the list of mandated characteristics.

Question 4.1

Do you consider that the European Technical Approval remains a necessary instrument? If yes, for which kind of products?

The majority opinion was **YES**, but with very clear limitations in scope and in time of validity. It was also unanimously considered that ETAs should be applied to innovative products. Moreover, it is largely considered that, in this context, an innovative product should be defined as a product which is not covered by any existing or foreseen harmonised standard.

Questions 4.2 - 4.3 and 4.6

Do you consider that there is need and scope for making the ETA route simpler and more cost efficient?

Nearly all replies said **YES**. A very strongly supported suggestion for simplifying the ETA route resulting from the answers to these two questions is to remove the ETAG route and to make the ETAs without guide the only alternative to the harmonised standards. There was also frequent criticism of the insufficient involvement of industry in the process.

Questions 4.4 and 4.5

Should it be necessary to define selection and control criteria on a European basis and to set them at a sufficiently high level in order to provide the system with the necessary credibility? Which specific designation criteria, if any, should be applied to the Approval bodies?

There is a consensus on the principle that Approval Bodies should be designated and controlled according to European harmonised rules and criteria. It is also considered that, for this purpose, additional criteria to those required for notified bodies are needed.

Concerning these additional criteria, the following are the most often mentioned:

- high technical competence and experience regarding assessment of the product and the fitness for its use in works;
- being involved in research institutes, in particular in those dealing with sciences applied to construction;
- specific know-how and experience in the application domain of innovative products;
- full independence and confidentiality.

Question 5.1

Do you consider that the above-mentioned elements ITT and FPC are necessary for attestation of conformity? Give reasons.

Nearly all replies confirmed these two elements as fundamental for the attestation of conformity in the framework of the CPD.

Question 5.2

Do you think there is any reason why the procedures of attestation of conformity for construction products cannot be more in line with modules under the New Approach?

The question was not always understood. This is one of the few cases where the analysis of the replies offers different outcomes from one Member State to another and between industry associations and other interest groups. There is a group of countries which shows a clear preference for modules: this is the case of Italy, Spain, UK, Poland, Sweden, The Netherlands, Denmark and the Czech Republic. This is also the case for most industry associations. There is another group clearly opposed to that idea, France for example, and another showing no clear preference, for example Germany and Belgium. Some qualified interested groups have also strongly stated their opposition. A sizeable minority considers that the systems are in reality interchangeable with some minor adaptations. Where a change towards the New Approach modules is opposed, this is mainly done on the basis of the argument that construction products are significantly different from the product fields to which these modules are applied.

Arguably the most interesting outcome from this question is the widely shared need for the simplification of the present system under the CPD. A strong appeal is made in favour of reducing from 6 to 3 the levels of Attestation of Conformity.

Questions 6.1 and 6.2

What is your experience of and your opinion about the NPD clause?

Concerning the NPD facility, the following comments summarise the most frequently expressed views:

- The NPD clause is very much appreciated as positive for industry, in particular SMEs. A few stakeholders have expressed concerns about potential distortion of competition arising from the use of this facility.
- There is a general wish to maintain it, but clear guidance and clarification are needed on its application.
- The debate between the “implicit” NPD (without mentioning the non declared characteristics) or the “explicit” one (giving the list of characteristics for which no performance is declared) is not resolved by the consultation.

SUMMARY OF REPLIES TO THE OPEN QUESTIONS (2 AND 7)

Questions 2 and 7 were open questions and they were meant to provide the stakeholders with the possibility of expressing, in a free format, any problem or concern in relation to clarification, simplification or modification when revising the Directive.

For some countries the number of replies to these questions is significantly lower than to the more specific questions. Contributions are also of very uneven length and depth. Nevertheless some provide very interesting in-depth analysis of the CPD which will be very useful for the whole purpose of clarifying and simplifying the legislation.

The hierarchy of concerns and suggestions established by the answers is very similar in different countries and interest groups. This feature reinforces the relevance of the issues referred to.

Many responses, both on perceived priorities and solutions to perceived problems, confirm the need to clarify fundamental concepts related to the CPD.

Table I lists the most frequently mentioned issues.

The primary cause for concern relates to the various aspects of **CE marking**. Three problems are generally referred to: its meaning, its status (compulsory or not) and the reluctance of certain Member States to accept it without imposing additional national requirements.

Other important problems as mentioned by stakeholders are:

- **market Surveillance** (should be improved and better-coordinated between MS)

- **notified Bodies** (more strict and harmonised criteria for designating and controlling them are requested)

- **definitions** (there appears to be a strong need for precise definitions of key concepts of the legislation such as, construction product, manufacturer placing on the market, etc.)

- simplifying the Attestation of Conformity, the treatment of the small series, etc are among other important issues referred to in the survey.

Table I. Number of responses to the key issues referred to in the answers to the open questions

	E.Org	DE	U.K.	F	I	E	B	Sw	Other
CE-marking (meaning, status & acceptance)	19	28	14	28	14	8	6	3	19
Market Surveillance (improvement and coordination)	10	8	4	16	-	-	7	1	8
Notified Bodies (criteria for designating and controlling)	10	6	3	19	9	4	6	3	10
Definitions (constr. product, manufacturer,.....)	6	13	5	6	7	4	4	-	3
Simpler AoC (reducing the number of levels...)	6	14	-	16	7	3	5	4	8
Small series...(specific treatment etc..)	6	4	3	16	6	5	1	1	4

Overall, the free comments and suggestions provided by stakeholders can be clustered around three key issues: clarification, simplification and better implementation.

Requests for clarification referred to many provisions in the current Directive, such as basic definitions, the scope regarding the products concerned and ambiguity concerning the nature (compulsory or not) and interpretation of the CE marking and its meaning. An issue of clarification frequently mentioned is also that of clear relation to and delimitation from other Community legislation.

In accordance with the replies given under the specific questions, in the field of simplification in particular a reduced number of systems of Attestation of Conformity and a streamlined ETA procedure were asked for. Some replies also asked for a more practical application of the CE mark with regard to its layout and the use of electronic means.

Beyond this, the issue of better implementation was given a very high importance; indeed many stakeholders see it as the first priority. They deplore that so far acceptance of what has been set up and provided for by the CPD is largely lacking, as well as, and because of, the lack of harmonised implementation in Member States. This is not limited to what can be seen as infringement of the CPD, such as additional requirements imposed on manufacturers and users of CPD marked construction products, and which a revised legislation must ensure no longer happens.

Other major aspects of better implementation mentioned particularly frequently are the quality and reliability of harmonised European standards, which thus far have not always been sufficient. Similarly, major criticism is made regarding the qualifications, functioning and co-operation of Notified Bodies: this is seen as an important field where the revision of legislation must result in improvement at the implementation level. Also market surveillance is indicated as being often so deficient that the functioning and acceptance of the CPD system suffers, indicating that this should also be a major field of revision towards better implementation.

Vicente Leoz Argüelles

Statistics

EU	B	CZ	DK	D	EE	GR	E	F	IRL	I	MT	NL	A	PL	P	SI	SK	FIN	S	UK	N/ RO/ TR	CH	USA	TOTAL
N/A				1			1				1		1		1	2	1	1	1	1	3			14
N/A				4				1							1					1				7
N/A	1			11																				12
5	1	2		3		1		6				1		1		1			2	3				26
26	1	2	1	17	1		3	12	1	7		2	4	2					2	10	1			92
11	2		1	7			1	5						2				1		1				31
1	4		3	34			7	17	1	11		2	3	4	1	1				12	2	2	2	107
N/A	6			4			2	7		1			3						2	3		2		30
TOTAL	43	15	4	5	81	1	14	48	2	19	1	5	11	9	3	4	1	2	7	31	6	4	2	319
	TOTAL																						319	

Annex II

Summary data on number and size of enterprises in the construction industry						
Size of enterprise	No. of enterprises			Turnover €billion		
	Manufacturers	Designers	Contractors	Manufacturers	Designers	Contractors
self-employed	n.a.	400,000	5,000,000?	n.a.	25	n.a.
small/micro	60,000	36,500	2,570,000	200	29	560
med/large	5,000	3,490	89,000	200	44	520
multinationals	100	10	1,000	100	2	200
TOTAL non-self-employed	65,100	40,000	2,660,000	500	75	1,280

Number and size of manufacturers by selected product family					
Product family	Size of enterprise			No. of plants	No. of products
	micro/small	med/large	multinationals		
Cement	0	10	9	150	500
Steel		50	12	120	10,000
Steelwork fabrication		2,000	20	2,000	bespoke
Rebar, etc.		40	4	80	500
Masonry -	400	210	13	1,300	11,500
Wood panels		25		400	5,000
Tiles	600	50		700	20,000
Sanitary appliances		20	4	100	10,000
Doors/windows	50,000	500	10	60,000	100,000
Geotextiles		20	10	50	1,000
Plastics and chemical products	1,000	100	10	2,000	10,000
Misc. hardware	5,000	500		6,000	6,000
Other	3,000	1,500	8	5,000	5,000
TOTAL	60,000	5,025	100	77,900	179,500

Output and trade trends for selected construction products

Cement (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	10.467	10.614	11.445	12.042	12.410	13.250	13.481	13.297	13.343	13.419	14.000
Apparent consumption EEA (in current prices)	10.181	10.288	11.156	11.848	12.333	13.305	13.687	13.601	13.621	13.733	14.784
Intra-EEA trade as a share of apparent consumption	7,7%	7,1%	7,1%	6,6%	7,8%	7,6%	7,1%	7,1%	6,9%	8,0%	8,2%
extra-EEA imports as a share of apparent consumption	1,3%	1,4%	2,0%	1,9%	2,5%	3,2%	4,2%	4,5%	4,3%	4,6%	5,0%
extra-EEA exports as a share of production	4,0%	4,4%	4,4%	3,5%	3,2%	2,8%	2,7%	2,4%	2,3%	2,3%	2,5%
Structural steel sections (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	3.572	3.646	3.787	3.810	3.780	4.065	3.840	4.066	4.581	6.284	6.000
Apparent consumption EEA (in current prices)	2.735	2.761	2.756	2.875	2.920	3.004	2.894	3.169	3.598	4.937	4.538
Intra-EEA trade as a share of apparent consumption	87,3%	74,9%	80,7%	83,8%	86,1%	98,1%	#####	95,2%	83,5%	83,3%	89,8%
extra-EEA imports as a share of apparent consumption	4,7%	2,5%	3,2%	5,1%	5,7%	6,9%	7,6%	6,4%	6,8%	7,2%	8,1%
extra-EEA exports as a share of production	27,0%	26,2%	29,6%	28,3%	27,2%	31,2%	30,4%	27,0%	26,8%	27,1%	30,5%
Masonry units (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	8.567	8.398	8.747	8.931	9.648	10.056	9.563	9.904	10.101	10.643	11.703
Apparent consumption EEA (in current prices)	8.534	8.369	8.724	8.904	9.615	10.020	9.520	9.843	10.058	10.600	11.629
Intra-EEA trade as a share of apparent consumption	4,0%	4,0%	3,0%	3,0%	4,0%	3,0%	2,0%	3,0%	3,0%	4,0%	3,0%
extra-EEA imports as a share of apparent consumption	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
extra-EEA exports as a share of production	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	1,0%	1,0%	1,0%	1,0%	1,0%
Thermal insulation products (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	8.973	9.316	9.743	10.296	10.941	11.734	11.607	11.665	11.168	11.702	11.724
Apparent consumption EEA (in current prices)	8.723	9.078	9.438	9.982	10.626	11.403	11.200	11.201	10.709	11.166	11.160
Intra-EEA trade as a share of apparent consumption	23,0%	23,0%	24,0%	25,0%	27,0%	28,0%	28,0%	29,0%	31,0%	33,0%	36,0%
extra-EEA imports as a share of apparent consumption	3,0%	3,0%	3,0%	3,0%	4,0%	4,0%	4,0%	4,0%	4,0%	4,0%	5,0%
extra-EEA exports as a share of production	5,0%	5,0%	6,0%	6,0%	6,0%	7,0%	8,0%	8,0%	8,0%	9,0%	10,0%
Wood-based panels (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	12.363	12.702	14.086	14.901	15.378	16.166	15.949	16.132	16.134	17.500	18.075
Apparent consumption EEA (in current prices)	13.301	13.437	14.946	15.662	16.049	16.651	16.239	15.925	15.892	17.108	17.662
Intra-EEA trade as a share of apparent consumption	26,0%	26,0%	26,0%	27,0%	30,0%	33,0%	35,0%	37,0%	38,0%	40,0%	39,0%
extra-EEA imports as a share of apparent consumption	12,0%	11,0%	12,0%	11,0%	11,0%	12,0%	12,0%	12,0%	11,0%	12,0%	12,0%
extra-EEA exports as a share of production	5,0%	6,0%	6,0%	7,0%	7,0%	10,0%	11,0%	13,0%	13,0%	14,0%	14,0%
Ceramic tiles (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	6.785	7.498	7.932	8.518	9.070	9.543	9.979	10.217	9.896	10.185	10.000
Apparent consumption EEA (in current prices)	5.439	5.990	6.204	6.698	7.210	7.213	7.478	7.575	7.553	7.798	7.666
Intra-EEA trade as a share of apparent consumption	47,0%	43,0%	44,0%	45,0%	45,0%	47,0%	45,0%	44,0%	45,0%	45,0%	45,0%
extra-EEA imports as a share of apparent consumption	3,0%	2,0%	3,0%	3,0%	3,0%	3,0%	3,0%	4,0%	4,0%	5,0%	6,0%
extra-EEA exports as a share of production	22,0%	22,0%	24,0%	23,0%	23,0%	27,0%	28,0%	29,0%	27,0%	27,0%	28,0%
Windows (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	34.155	34.617	36.617	38.350	39.894	42.333	44.003	45.799	45.655	47.583	47.510
Apparent consumption EEA (in current prices)	33.906	34.381	36.340	38.087	39.668	42.126	43.730	45.514	45.336	47.303	47.199
Intra-EEA trade as a share of apparent consumption	5,0%	5,0%	5,0%	5,0%	6,0%	6,0%	6,0%	6,0%	7,0%	6,0%	6,0%
extra-EEA imports as a share of apparent consumption	1,0%	1,0%	1,0%	1,0%	1,0%	1,0%	1,0%	1,0%	1,0%	1,0%	1,0%
extra-EEA exports as a share of production	1,0%	1,0%	2,0%	1,0%	1,0%	1,0%	2,0%	2,0%	2,0%	2,0%	2,0%
Sanitary appliances (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	5.028	5.661	5.700	5.955	5.796	6.404	6.384	6.753	6.744	7.074	7.118
Apparent consumption EEA (in current prices)	4.763	5.335	5.361	5.681	5.562	6.119	6.081	6.289	6.560	6.976	7.075
Intra-EEA trade as a share of apparent consumption	25,0%	24,0%	25,0%	26,0%	32,0%	31,0%	32,0%	32,0%	32,0%	32,0%	32,0%
extra-EEA imports as a share of apparent consumption	6,0%	5,0%	5,0%	6,0%	7,0%	7,0%	8,0%	9,0%	9,0%	11,0%	12,0%
extra-EEA exports as a share of production	10,0%	10,0%	11,0%	10,0%	10,0%	11,0%	12,0%	13,0%	12,0%	12,0%	13,0%

Fire detection/fire alarm systems/ fixed fire fighting systems (value in € millions)	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total production Eur. Economic Area	1.505	1.630	17.985	1.969	1.833	1.739	2.301	2.209	2.060	2.251	2.261
Apparent consumption EEA (in current prices)	1.474	1.599	1.738	1.932	1.834	1.754	2.316	2.262	2.097	2.300	2.308
Intra-EEA trade as a share of apparent consumption	11,0%	13,0%	13,0%	14,0%	18,0%	24,0%	19,0%	22,0%	27,0%	29,0%	24,0%
extra-EEA imports as a share of apparent consumption	5,0%	5,0%	6,0%	5,0%	8,0%	10,0%	9,0%	10,0%	11,0%	11,0%	13,0%
extra-EEA exports as a share of production	7,0%	7,0%	8,0%	7,0%	8,0%	9,0%	8,0%	8,0%	9,0%	9,0%	11,0%

Notes:

1. Source: “Study to evaluate the internal market and competitiveness effects of the CPD”, Final report, April 2007, PRC B.V.
2. Data are generated from the PRODCOM (PRODUCTION COMMUNAUTAIRE) database on production statistics and from CN/HS (Combined Nomenclature/Harmonised System) database on trade statistics from Eurostat.
3. 2005 estimated

Data on price dispersion for three common construction products

The tables show the high price countries (in blue), the median countries (green) and the low price countries (in yellow)

Notes:

Data from Gardiner & Theobald and Spon's studies.

The data represent ex-works prices (delivered at the site).

For further details, see "Study to evaluate the internal market and competitiveness effects of the CPD", Final report, April 2007, PRC B.V.

Common cement, €/tonne

	1987	Jan. 1991	1992	2000	2001	2002	2003	2004	2005
	Spon's	Spon's	G&T	G&T	G&T	G&T	G&T	G&T	G&T
Portugal	78	72	102	--	--	--	--	--	--
Spain	55	106	102	65	97	102	78	90	95
Sweden	80	--	113	108	102	107	--	112	104
Finland	--	100		103	108	103	105	107	108
Italy	63	75	118	91	105	103	103	107	113
Ireland	95	100	131	109	231	115	--	130	130
Greece	37	52		60	71	90	--	162	158
France	59	106	146	113	139	146	152	162	165
UK	73	96	116	131	145	149	141	154	190
Norway	82	157		158	--	190	--	185	190
Netherlands	65	82	--	101	110	113	--	--	190
Germany	70	121	164	103	102	192	--	--	--
Austria	76	91		137	--	--	--	--	--
Denmark	157	137		163	231	182	--	--	--
Belgium	60	191		--	--	--	--	--	--
<i>Minimum value</i>	37	52	102	60	71	90	78	90	95
<i>Maximum value</i>	157	191	164	163	231	192	152	185	190
<i>Median value</i>	70	100	118	108	108	113	105	130	158
<i>range%</i>	428%	366%	161%	270%	325%	213%	195%	206%	200%
<i>max/median</i>	225%	191%	139%	151%	214%	170%	145%	142%	120%

Structural steel, €/tonne

	1987	jan. 1991	1992	2000	2001	2002	2003	2004	2005
	Spon's	Spon's	G&T	G&T	G&T	G&T	G&T	G&T	G&T
Portugal	--	--	740	--	--	--	--	--	--
Italy	--	--	1230	859	577	560	560	560	770
Denmark	--	--		902	497	491	--	--	--
UK	--	--	750	1001	808	785	750	1021	878
Greece	--	--		1075	646	450	--	950	950
Netherlands	--	--	1820	1289	1402	1448	--	--	960
Sweden	--	--	1500	947	678	--	--	1121	1072
Ireland	--	--	670	1305	1030	1350	--	1150	1250
France	--	--	1360	1044	984	990	1030	1240	1277
Spain	--	--	1120	618	[336]	690	900	1050	1350
Germany	--	--	750	820	646	1116	--	--	--
Finland	--	--		1028	1064	1082	1140	1352	1407
Norway	--	--		1710	1800	1966	2000	2343	2414
Austria	--	--		--	--	--	--	--	--
Belgium	--	--		--	--	--	--	--	--
<i>Minimum value</i>			670	618	497	450	560	560	770
<i>Maximum value</i>			1820	1710	1800	1966	2000	2343	2414
<i>Median value</i>			1120	1001	678	990	900	1121	1250
<i>range%</i>			272%	277%	362%	437%	357%	418%	314%
<i>max/median</i>			163%	171%	265%	199%	222%	209%	193%

Common bricks, €/1000

	1987	jan. 1991	1992	2000	2001	2002	2003	2004	2005
	Spon's	Spon's	G&T	G&T	G&T	G&T	G&T	G&T	G&T
Spain	--	--	395	111	61	78	90	99	102
Poland	--	--	107	172	192	173	148	133	141
Greece	--	--		230	297	70	--	--	167
Italy	--	--		82	105	150	150	140	170
UK			385	294	291	306	321	284	293
France	--	--	423	358	--	370	384	407	413
Ireland	--	--	572	372	451	380	--	195	474
Norway	--	--		488	--	678	--	740	774
Netherlands	--	--	212	175	186	194	--	--	--
Sweden	--	--	376	315	297	374	--	--	--
Germany	--	--	227	330	326	493	--	--	--

Denmark	--	--	363	231	--	--	--	--	
Portugal	--	--	399	--	--	--	--	--	
Austria	--	--	--	--	--	--	--	--	
Belgium	--	--	--	--	--	--	--	--	
Finland	--	--	--	--	--	--	--	--	
<i>Minimum value</i>			107	82	61	70	90	99	102
<i>Maximum value</i>			572	488	451	678	384	740	774
<i>Median value</i>			385	294	291	306	150	195	293
<i>range%</i>			535%	598%	734%	969%	427%	747%	759%
<i>max/median</i>			149%	166%	155%	222%	256%	379%	264%

Annex V

Information and assumptions used for roughly estimating monetary impacts

A. Number and costs of European Technical Approvals (ETAs) issued

During the last 9 years an increasing number of ETAs have been issued, which corresponds to an increase in the number of ETA Guidelines established and manufacturers' generally growing interest in ETAs for construction products not covered by harmonised standards, in order to benefit from the advantages of the Internal Market.

YEAR	No. of ETAs issued
	7
	9
	4
	13
	32
	57
	121
	276
	247

For different reasons under each of the two policy options 1 and 3 it can be assumed that the choice of either Option 1 or Option 3 will not have a significant influence on the number of ETAs requested/issued in future. In a rough global estimate across all types and families of product it is assumed that this figure will stabilise at circa 500 ETAs a year, with a higher figure expected under Option 3 than under Option 1.

The cost of an ETA depends on the complexity of the product / kit and on the number of tests established by the reference assumed for the assessment (ETAG or CUAP). In the past, depending on the nature of the product, the average cost of an ETA usually varied between **€10,000** and **€ 80,000**. While Option 1 is considered to have no effect on reducing this amount, a decrease of this cost is intended to be achieved with Option 3.

Note: The cost of an ETA does not include that of the subsequent Attestation of Conformity. However, some Approval Bodies with test facilities are able to offer special arrangements to manufacturers (their clients) for a combined ETA-AoC package if appointed as Notified Body undertaking the AoC after having issued the ETA.

The counter-running estimates for the two factors above (Option 1: less future increase in the number of ETAs, but at more or less the same cost per ETA as in the past; Option 2: higher future increase in the number, but at a lower cost per ETA) means that it is not possible to significantly differentiate between the global estimates made for each of the two options with regard to the annual overall costs of ETAs incurred by manufacturers and overall benefits (income) that Approval Bodies gain from this activity.

B. Costs of Attestation of Conformity (AoC) needed to CE mark construction products

AoC costs

The efforts to be undertaken, the deliverables required and the degree of involvement, and therefore in total the costs involved, depend very much on the product and the system of AoC specified for the given construction product in the applicable Commission Decision.

Random figures provided by industry indicate that in application of harmonised technical specifications under the CPD the one-off costs for Initial Type Testing are usually significantly lower than the total of the recurring costs of Factory Production Control. The same figures suggest that in the case of most demanding AoC systems with in addition a particularly significant involvement of third parties (Notified Bodies), the overall costs related to AoC can total as much as € 50,000 or even more over an estimated 3-to-5-year duration of practical validity (see box below) of the AoC for one single product (e.g. a basic product for making concrete). For other products this cost is lower (e.g. cases of € 40,000 for an estimated 3-year duration or € 24,000 for an estimated 5-year duration). But there is also information that leads to the conclusion that this cost may total no more than € 5,000 over an estimated 5-year duration of practical validity of the AoC in the case of relatively simple products if the least onerous system of AoC applies.

In principle the AoC is valid for CE marking for an unlimited duration as long as all parameters taken into account (the product, but also e.g. the production line and incoming materials, the technical specification assumed as reference, etc.) remain unchanged.

But minor or important changes in these parameters could affect the AoC and/or its results, thus requiring its renewal or the repetition of parts of it, again depending on the required AoC system. Practice shows that usually the natural evolution in these respects takes place in a way such that the after an average period of **4 to 6 years** for more traditional construction products an AoC cannot no longer be considered to be valid for CE marking . The innovative character of some construction products could imply that this period is reduced to **2 to 3 years**.

From the above it must be concluded that, depending on the product, the average annual cost related to AoC can vary as much as between roughly € 1,000 and € 20,000. When this amount is low, usually Notified Bodies are not involved in the AoC, whereas part of it usually pays for their services and flows to them as income when this amount is higher.

The above, which is the best information available to the Commission and is only based on past practice under the current CPD, can only supply a general idea of AoC costs and certainly cannot serve as a basis for even an approximate calculation.

Cost relation between EU system and national systems

In a system under which exclusively national provisions would be applicable to construction products (national approvals, certificates of conformity against national standards, type-tests against national standards, etc.), the compliance costs could be roughly estimated, for an "average" country and an average product, as being **10% to 40% less** than those originated in a system that follows specific EU legislation on construction products for establishing the Internal Market for these products.

However, if a manufacturer is interested in obtaining the "validation" of the national documents covering his product, despite Article 28 of the Treaty he is in practice usually faced with one of the two following situations:

1. If the manufacturer's commercial interest is directed towards markets where no provisions or provisions similar to those in his own country are to be observed, he may use what is valid for his own country. In such a case in practice nevertheless some minor additional administrative costs are needed in order to be entitled to distribute the product on these markets, above those (if any) originated by quite usual specific requests of potential clients on these "foreign" markets. Even this case can be estimated to bring the total of the costs for placing products on the market in the territory of the own Member State, as well as that of one or several Member States with no or similar provisions, at **more or less the same level** of those under a system that follows specific EU legislation in this field.
2. If the manufacturer's commercial interest is directed towards markets where different / more demanding national provisions are to be observed, the costs for obtaining technical clearance of the product must be assumed as being **at least of the same magnitude** (often higher) **as those already incurred in the country of origin**, even if originated by simple repetition of assessments and tests already performed. In this case it can be estimated that placing products on the market in the territory of his own Member State as well as that of one or several other Member States results in costs for observing the various national systems which are **at least 50%, maybe 100% or even several times higher** than comparable costs under a system that follows specific EU legislation in this field.

In principle no geographical differences can be noticed that would be worth considering as to where the first or the second situation could be found in the EEA. However, it is more likely to find the first situation in parts of the market area with relatively little importance for the kind of product in question, and the reverse for the second situation. Altogether, this could lead to the very rough estimate that for an average case and an average construction product placed on the market in the territory of more than one Member State the costs induced for a manufacturer in respect of administrative acceptance by a system under which exclusively national provisions are applicable to construction products would be **about twice** the cost needed for the same case under a system that follows appropriate specific EU legislation for establishing the Internal Market for construction products.

Share in number of products³³ placed on the market in the territory of more than one Member State

Based on the very limited information available, the global families of construction products can be distinguished into three very rough classes regarding the share in number of products of such a family placed on the market in the territory of more than one EEA Member State:

³³ Refer also to Annex II, second table, and to Annex III.

Note:

products, not production. As in the case of none of the products it is likely that its entire production is placed outside the territory of the Member State where the product is manufactured, the share in number of products placed on the market in the territory of more than one EEA Member State is usually higher than that recorded in Annex III as "intra-EEA trade as a share of apparent consumption"

- Families for which a very high share or nearly all products are potentially consumed in more than one Member State. The only obvious example is that of structural steel.
- Several families for which a considerable share of products in this family (roughly estimated between 50% and 70% of the total) are potentially consumed in more than one Member State. Examples are ceramic tiles and certain wood products.
- Some families for which only a low share of products in this family (often only 10% or less) are consumed in more than one Member State. Examples are masonry units and the large family of common (without special protective function) doors and windows.

It would not correspond to market reality to assume a general correlation between the size of manufacturing enterprises and the extent to which they place products on the market in the territory of more than one EEA Member State. Nevertheless, for most product families medium-sized and large enterprises manufacturing construction products are more likely than small ones to be active in a market area in the territory of more than one Member State. However, this does not mean that they distribute in this market area products manufactured in a single plant. It is not unusual, in particular for large enterprises and brands, to manufacture more or less identical products in several plants in various countries. In this case, the Attestation of Conformity also under an EU system largely needs to be done per plant, at least with regard to Factory Production Control.

<u>Annex VI</u>		
Monitoring and evaluation indicators		
Objective	Indicators	Means of verification
<i>Internal Market</i>		
Free circulation and use of construction products in the Internal Market	Uptake of CE marking	Data and information on the evolution of cross-border trade
	Reduction in number of national marks	Number of national marks withdrawn or made voluntary only
Use of a common technical language relating to construction products	Reduction in number of different ways of expressing the same performance characteristics	Changes made to national building regulations/ requirements in line with common technical language
	Decrease in time needed to agree harmonised standards	Recorded (average) time between mandate and publication of harmonised standards
	Reliance on hENs in specifying public procurement requirements	Sample data and information from public tenders
<i>Better Regulation and Simplification - general</i>		

Annex VI

Monitoring and evaluation indicators

Objective	Indicators	Means of verification
Less burdensome legislation easier to implement and thus more effective, while also preserving EU policy objectives	Better and easier compliance with EU legislation Change in uptake of ETA route and in costs and time required to obtain ETA	Change in number of meetings needed to be held to ease implementation and in number of complaints and time spent replying to them Evolution of number of ETA requested/issued per year or, better, of data on cost for ETAs and on the time between requesting and issuing an ETA
Clear provisions and reduced administrative burden, in particular for SMEs	Reduction of administrative burden / costs of CE marking Uptake of CE marking by micro enterprises and SMEs	Sample data and information on burden and cost for Attestation of Conformity and CE marking Sample data and information on the experiences of SMEs (both e.g. obtained through associations at EU level)

(continued)

Monitoring and evaluation indicators

Objective	Indicators	Means of verification
<i>Better Regulation and Simplification – specific tools</i>		
Increased flexibility in the formulation and use of technical specifications	Inclusion within standards of to more easily conformity demonstrate (i.e. without testing/without further testing)	Number of standards including means of demonstrating compliance easier than testing
Elimination of implementation obstacles	Greater confidence in CE marking	Resources put into market surveillance Information from professional users to assess their confidence in CE marking as the only marking (from random sources and obtained from questionnaires distributed through associations)