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## **REGULATORY SCRUTINY BOARD OPINION**

**Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011**

COM(2022) 144

SWD(2022) 88 - 89



Brussels,  
RSB

## **Opinion**

**Title: Impact assessment / Construction Products Regulation**

**Overall 2<sup>nd</sup> opinion: POSITIVE WITH RESERVATIONS**

### **(A) Policy context**

The Construction Products Regulation (EU) No 305/2011 (CPR), lays down harmonised conditions for the marketing of construction products in the EU. It sets harmonised rules to express the products' performance in relation to their essential characteristics (e.g. reaction to fire, thermal conductivity, sound isolation). Through a common technical language, the CPR aims to make the single market work better and improve the free movement of construction products in the EU.

The initiative builds on a 2016 Commission implementation report and a 2019 evaluation of the CPR that both revealed a number of weaknesses. It also aims to respond to the new EU policy ambition set out in recent initiatives, in particular the European Green Deal (2019), the Circular Economy Action Plan (2020), and Commission Communications on the Renovation Wave (2020) and the European Climate Pact (2020). It is linked to the parallel Sustainable Product Initiative (SPI).

### **(B) Summary of findings**

**The Board notes the information added in the report in response to the Board's previous opinion.**

**However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:**

- (1) The report is not sufficiently clear about the problems that the initiative aims to tackle and how these link to the objectives and options. It is not clear how the baseline scenario, options and impact analysis reflect and articulate with the expected effects of the parallel SPI.**
- (2) The report is not sufficiently clear whether all of the options identified can tackle all of the problems, whether the selection of measures contained in the preferred option is the best performing combination and whether all measures are necessary.**
- (3) The report is not sufficiently clear on the net benefits, efficiency advantages and**

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This opinion concerns a draft impact assessment which may differ from the final version.

**justification of incorporating sustainable product requirements into the CPR, compared to addressing them in the horizontal SPI framework as for other products.**

- (4) The summary comparison of options is not sufficiently clear or robust on the cost and benefit estimates of the options. Some of the effectiveness and efficiency scores are not convincingly justified.**

### **(C) What to improve**

(1) The problem section should be further improved to ensure problems and their drivers are clearly differentiated and that the issues identified are sufficiently explained. The report should be more explicit about the safety issue and clarify whether it is (i) a self-standing problem beyond the functioning of the internal market and harmonising the way performance is communicated across Member States (and therefore to be tackled by the options) or (ii) an issue already covered by other EU instruments. In this context, the explanation and evidence related to the inclusion of 3D printed products as well as prefabricated small houses should be clearer.

(2) When describing the difficulties with implementation and enforcement of the current CPR, the way the problem is described implies that clearer CPR provisions would solve this. However, the issue of lack of administrative capacity in Member States is not addressed. The report should be clearer about how a revised CPR would address this core problem, especially if the framework becomes more complex as proposed, since it would not only regulate how information on the products is presented across the EU but also include sustainability requirements.

(3) The report should be clearer about the links between options, problems and objectives. For instance the report should clarify whether: (i) sub-option C3 (making the common technical language voluntary) would not undermine the objective related to the functioning of the single market, (ii) sub-option D1 (voluntary standards leading to a presumption of conformity, while allowing for other means to prove conformity) would not further lead to diverging approaches and make it more difficult for the objective related to market surveillance authorities to be achieved.

(4) While the report provides a better explanation of the envisaged interaction between the future CPR and the SPI, it still needs to better explain how the SPI is reflected in a consistent manner in the baseline scenario and in the presentation, assessment and comparison of options.

(5) The report should clearly explain whether the options considered are realistic and can effectively deliver all the objectives of the proposed initiative (i.e. product safety, sustainability). It should also explain whether the selection of measures contained in the preferred option is the best performing combination and whether all envisaged measures are necessary. It should identify the hybrid sub-option D1/D2 upfront and then compare it with the two stand-alone sub-options, including in terms of adding legal complexity. It should provide more detail on the envisaged empowerment of Member States to exempt micro-enterprises and explain how this would be in line with the envisaged single market objectives.

(6) The report should better explain how the simplification provisions would be implemented and enforced compared to the current situation, to ensure they actually deliver the described benefits. It should be clearer on the net benefits and efficiency gains of incorporating sustainable product requirements into the CPR compared to regulating

these issues exclusively in the horizontal SPI framework as for other products. It should better explain how coherence would be ensured and legal complexity avoided.

(7) While the comparison of options has improved, the report still needs to better justify and substantiate the scores presented in the comparison overview tables. For instance, it is not clear why (i) option D receives a higher score in contributing to the reduction of the climate and environmental impact than option B (in combination with the horizontal SPI framework) or (ii) option B is considered more efficient than D given that efficiency arguments are considered as the main reason for bringing sustainability requirements under the remit of the CPR. Overall, the report should provide a clearer comparison of the costs and benefits of the options, including quantitative estimates as available to support the efficiency analysis.

(8) While the report is transparent about the overall preference of stakeholders for the baseline scenario, it should more explicitly discuss the reasons why there is only very limited support for any of the policy change options (e.g. empowering the Commission, integrating sustainability requirements), given the expected significant benefits.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

#### **(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.**

**If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**

Full title	Revision of the Construction Products Regulation
Reference number	PLAN/2017/972
Submitted to RSB on	16 December 2021
Date of RSB meeting	Written procedure

**ANNEX: Quantification tables extracted from the draft impact assessment report**

*The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.*

*If the draft report has been revised in line with the Board’s recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.*

<b><i>I. Overview of Benefits (total for all provisions) – Preferred Option</i></b>		
<b><i>Description</i></b>	<b><i>Amount</i></b>	<b><i>Comments</i></b>
<b><i>Direct benefits</i></b>		
Improved market surveillance	2.5 billion EUR	There appears to be significant benefits that can be reaped from improved market surveillance, with a potential 2.5 billion EUR to be gained in terms of revenue, equalling more than half the costs (burden) associated with the CPR.
<b><i>Indirect benefits</i></b>		
Increased safety of construction products	No quantification available	Benefits would occur thanks to enhanced safety of construction products, implying better protection particularly of construction workers and users/consumers using construction products.
Increase in economic actors’ compliance with relevant rules and regulations	No quantification available	Improved compliance with the regulatory framework is expected to create benefits in terms of levelling the playing field for construction products manufacturers (particularly important for SMEs).
Increased quality of the built environment in the EU	No quantification available	Benefits particularly for the citizens, stemming from more sustainable and durable built environment (buildings, urban architecture etc.).
Increase in cross-border trade in construction products within the EU Single Market	No quantification available	Beneficial for manufacturers, through expected increase in revenues, as well as to end-users, allowing improved access to broader range of construction products.
Increase in construction product innovation	No quantification available	Beneficial for the end-users of construction products, providing access to innovative products.

Source: Copenhagen Economics (CE), Danish Technological Institute (DTI) and Office for Economic Policy and Regional Development Ltd. (EPRD) (2021). Supporting study for the impact assessment of the CPR Review.

**II. Overview of costs – Preferred option**

		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
<b>Direct costs</b>	Increase in total costs				an increase of ~200 mEUR in costs among manufacturers associated with the CPR, equal to approximately 8% of the baseline costs and corresponding to 0.05% of the construction product manufacturing sector's total revenue	Increase in administrative costs and resources to administrations in all Member States related to the progressive adaptation to the revised CPR and the changes it brings with it.	
	Increase in substantive compliance costs in relation to CE marking and Declaration of Performance (DoP)				78 mEUR		
	Increase in administrative burden in relation to CE marking and Declaration of Performance (DoP)				70 mEUR		
	Increase in regulatory charges in relation to CE marking and				64 mEUR		

	Declaration of Performance (DoP)						
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Brussels,  
RSB

## **Opinion**

**Title: Impact assessment / Construction Products Regulation**

**Overall opinion: NEGATIVE**

### **(A) Policy context**

This initiative aims to revise the Construction Products Regulation (EU) No 305/2011, which lays down harmonised conditions for the marketing of construction products in the EU. The Construction Products Regulation (CPR) sets harmonised rules to express the products' performance in relation to their essential characteristics (e.g. reaction to fire, thermal conductivity, sound isolation). Through a common technical language, the CPR aims to make the single market work better and improve the free movement of construction products in the EU.

The initiative builds on a 2016 Commission implementation report and a 2019 evaluation of the CPR that both revealed a number of weaknesses. It also aims to respond to the new EU policy ambition set out in recent initiatives, in particular the European Green Deal (2019), the Circular Economy Action Plan (2020), and Commission Communications on the Renovation Wave (2020) and the European Climate Pact (2020).

### **(B) Summary of findings**

**The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.**

**However, the Board gives a negative opinion, because the report contains the following significant shortcomings:**

- (1) The report does not sufficiently analyse and substantiate with evidence the key problems it aims to tackle. It is not sufficiently clear to what extent the Sustainable Product Initiative (SPI) determines the scope and measures of the initiative and how this interaction is reflected in the baseline and the options.**
- (2) The report does not provide a clear presentation of the options and how they differ from each other. The available policy choices are not brought out clearly enough. The links between the options, the specific objectives and the problem drivers are not well established.**
- (3) The analysis of impacts on administrative costs, simplification and SMEs is underdeveloped.**
- (4) The comparison of options does not reflect all available evidence, it is not**



**coherent and its conclusions are not clearly justified.**

**(C) What to improve**

(1) The report should better explain what the key problems are and how they inter-relate. It should also better explain what aspects of the Regulation's underperformance are within the scope of this revision and which are not.

(2) The report should make better use of the evidence available in the implementation and evaluation reports and the support studies. It should present the key findings upfront, so that the reader knows from the problem description what the key design and implementation issues with this Regulation are. It should substantiate with evidence the environmental protection and sustainability problems related to construction products, so that the need for harmonised environmental performance methods can be properly assessed. It should provide clear evidence for the need for action in the safety area and as regards pre-fabricated small houses.

(3) The report should better explain the planned interaction with the SPI. It should consider possible options to avoid loopholes and overlaps with the SPI. It should clarify how the SPI is reflected in a consistent manner in the baseline scenario and in the presentation and comparison of options.

(4) The report should provide a clearer presentation of options covering the full set of policy choices. It should clearly explain the difference, and interdependence, between the options as well as the measures that would be part of each option. It should be clear how the policy options each address the objectives and there should be a clear link between objectives and problems. It should better explain how the options incorporate the new EU sustainability ambitions set out in recent initiatives.

(5) The report should analyse more thoroughly the impacts of the different options in terms of costs, burden reduction and simplification potential. Given that SMEs play a particular role in the construction product sector and that the current ineffective exemption for SMEs is part of the problem, the impacts of the various options on them should be systematically assessed. If sector competitiveness is considered as a problem to be tackled, the report should assess the corresponding impacts of the options. The report needs to present the costs better and should clearly summarise them in the cost/benefit table in annex, while clarifying who has to bear the costs.

(6) The report should strengthen the comparison of options and the analysis leading to the choice of the preferred option. It should use all available evidence to present a coherent analysis of the implications of the different options, in comparison with a dynamic baseline. It should avoid relying almost exclusively on stakeholder views. The report should justify how it aggregates scores across the assessment criteria. The costs and benefits of the preferred option need to be more clearly identified and its choice better justified.

(7) The report should make better use of the feedback from stakeholders and in particular illustrate better how different stakeholder groups view the policy options and the associated costs and benefits.

*Some more technical comments have been sent directly to the author DG.*

**(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**

Full title	Revision of the Construction Products Regulation (CPR)
Reference number	PLAN/2017/972
Submitted to RSB on	23 June 2021
Date of RSB meeting	22 July 2021