



Council of the
European Union

Brussels, 1 April 2022
(OR. en)

Interinstitutional File:
2022/0094(COD)

7799/22
ADD 2

ENT 42
MI 245
CODEC 418
IA 38
COMPET 215

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	31 March 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 87 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the document 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

Delegations will find attached document SWD(2022) 87 final.

Encl.: SWD(2022) 87 final



Brussels, 30.3.2022
SWD(2022) 87 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

**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 final} - {SEC(2022) 167 final} - {SWD(2022) 88 final} -
{SWD(2022) 89 final}

Subsidiarity Grid

<p>1. Can the Union act? What is the legal basis and competence of the Unions' intended action?</p>
<p>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</p> <p>The proposal is based on Article 114 of the Treaty on the Functioning of the European Union, because the main purpose of the Regulation is to remove obstacles to the circulation of construction products within the European single market.</p>
<p>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</p> <p>It is a shared competence, as it mainly deals with the functioning of the European single market.</p> <p><i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
<p>2. Subsidiarity Principle: Why should the EU act?</p>
<p>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:</p> <ul style="list-style-type: none"> - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level? <p>Throughout the preparation of the revision of the Construction Products Regulation, the following groups have been consulted: Member States, European technical bodies and associations, national authorities, companies/manufacturers, importers and distributors, consumer associations, market surveillance authorities, European/international organisations (industry associations), notified bodies, workers/professionals' associations and others, such as citizens and other NGOs. Consultation activities included a general online survey, a company survey, a public consultation and several meetings with Member States (including in the Council Working Party on Technical Harmonisation (Construction Products)):</p> <ul style="list-style-type: none"> - The general survey targeted selected experts and aimed to identify how to address the various general issues identified during the evaluation of the Regulation, to collect input to be used to further refine the draft options. - Dedicated meetings with national experts on the review of the Regulation took place in March and September 2020, with the goal of discussing the process and the refined indicative options paper, as well as to collect Member States' views on: scope and relationship with other EU law, national law and information needs, Annex I (basic requirements for construction works), environmental requirements.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

- The purpose of the company survey was to assess how the refined indicative policy options for the Regulation were expected to impact firms in the European construction products sector. The survey targeted companies relevant to the construction products market and therefore the questionnaire was sent out to economic operators in the sector.
- The public consultation was accessible to all types of respondents, including businesses and manufacturers. Overall, the consultation activities showed that all stakeholder groups strongly rejected a repeal of the Regulation (policy option E). In most stakeholder groups, the largest groups were in favour of maintaining the current Regulation (i.e. baseline policy option A). A substantial part of the stakeholder groups preferred a revision of the Regulation (i.e. options B, C or D).

The explanatory memorandum and the impact assessment contain a section on conformity with the principle of subsidiarity.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The explanatory memorandum and the impact assessment contain respective sections in which compliance with the principle of subsidiarity is assessed. Without EU-wide regulation, the deficiencies of the current Regulation cannot be remedied by national laws, as the Member States have no competence to revise the Regulation framework, nor to correct its failures through national measures.

Currently, in the absence of EU action to set uniform rules, the environmental protection objectives and climate performance of construction products are being addressed in different ways in the EU, leading to differing requirements for businesses. Uniform EU action is therefore justified and necessary.

Only at EU level can conditions to ensure the free circulation of construction products be set while ensuring a level playing field and pursuing sustainability goals. An envisaged role for the EU should be to promote the development of a competitive single market in construction products by removing any unnecessary disparities in the regulation of these products’ performance, including environmental performance, while allowing Member States to reflect their specific requirements in national building codes.

Therefore, coordinated EU action is the most efficient way to effectively reinforce and supplement national and local action, contributing in particular to construction products’ sustainability regarding climate performance and environmental protection.

As for the added value of regulatory action at EU level, this helps improve the overall functioning of the single market for construction products, increases legal certainty and predictability, makes the conditions for competition in the construction industry fairer and addresses the aspects of environmental performance and circularity of construction products, which can only be tackled at EU level.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

There is a necessity for EU action, as the Member States cannot address the objectives of the proposal without creating barriers for the single market. The administrative burden for companies and public administration would be much higher with action in 27 different countries than with the

proposed revision of the Regulation.
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
<p>The proposal aim to repair and improve the functioning of the single market for construction products and so is expected to have a significant positive impact on trade within the EU.</p> <p>It aims to align information on performance of construction products as regards essential characteristics, and to introduce, where needed, product requirements, to improve the safety and sustainability of construction products. In the absence of such provisions, diverging environmental or safety assessment methods applied at national level risk creating additional barriers to trade.</p>
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty ⁵ or significantly damage the interests of other Member States?
National action targeting the identified problems under the current Regulation would create barriers to trade and therefore undermine the functioning of the single market for construction products.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
<p>The Member States could reach the objectives of protecting safety and the environment by acting at national level. However, this could not be pursued in a uniform manner without the revised Regulation being in place. The discrepancy among national legislations would result in increased fragmentation in the single market.</p> <p>Moreover, individual Member States would not be able to establish common environmental assessment methods that would not risk distorting the single market for construction products.</p>
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
Only one of the four problems (Problem 2: Implementation challenges at national level) identified in the impact assessment varies across national levels. Despite improved cooperation among market surveillance authorities, it became apparent during the implementation of the Regulation that market surveillance activities were broadly seen as ineffective and widely varying in quality and effectiveness from one Member State to another.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problems identified in the evaluation of the Regulation and presented in the impact assessment concern the whole EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
While the proposal is expected to bring positive impacts in terms of technical harmonisation of construction products, the objective of improving the effectiveness of market surveillance would require certain measures to be put in place which will be dependent on Member States' ability to

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

enact them, e.g. a minimum number of checks to be performed.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
<p>The findings of the supporting study for the impact assessment of the Regulation review show that a little less than half of the public authorities prefer maintaining the current Regulation (i.e. baseline policy option A).</p> <p>Moreover, the repeal option is strongly rejected. Looking across the 13 elements considered in the study, the preference of public authorities for revision is particularly strong only for the following elements:</p> <ul style="list-style-type: none"> ○ Market surveillance and enforcement – 77% of public authorities in the public consultation prefer a revision (variant B); ○ Scope of EU alignment – 83% of public authorities in the public consultation prefer one of the revision options; ○ CE marking and Declaration of Performance – 41% of public authorities in the public consultation prefer a revision (variant B, C2, C3 or D); ○ Environmental aspects – 47% of public authorities in the public consultation prefer a revision.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
<p>There is a clear EU added value of the proposed actions. Member States alone can reach the same level of safety and protection of the environment, but not without creating manifold obstacles for the functioning of the single market.</p> <p>Fewer obstacles for the single market will increase the average quantity of products of a certain type and thus reduce costs, both to the benefit of competitiveness of manufacturers and to European citizens.</p>
(a) Are there clear benefits from EU level action?
<p>Harmonised (uniform) standards and other harmonised technical specifications for construction products allow products to be sold in all Member States.</p> <p>They must be developed only once and, when cited in the EU's Official Journal, create the legal effect that allows manufacturers to draw up the Declaration of Performance and affix the CE marking.</p>
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
<p>The common technical language describing the characteristics of construction products creates market transparency, reduces national obstacles to trade and increases the average quantity of products of a certain type, thus reducing costs for all stakeholders. The proposal aims to restore and promote the smooth functioning of the single market for construction products.</p>
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
<p>The Regulation mainly sets uniform (harmonised) rules on how to express the performance of construction products in relation to their essential characteristics (e.g. reaction to fire, thermal</p>

conductivity or sound insulation). In contrast, Member States are responsible for the safety, environmental and energy requirements applicable to buildings and civil engineering works.

Based on their needs (e.g. regarding flood or earthquake risks) they can demand that construction products used in these Member States fulfil certain performance criteria. Performance is assessed on the basis of the Regulation's standardised rules. Thus only one assessment is needed for all the Member States, even though the requirements differ.

This legal setting protects both the single market for construction products and Member States' regulatory needs for construction works.

- (d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

The proposal for a revised Regulation creates a uniform scheme for assessing construction products. Market surveillance activities by one Member State have positive external effects on other Member States.

- (e) Will there be improved legal clarity for those having to implement the legislation?

One of the objectives of the Regulation revision is to clarify the rules. According to feedback received during the implementation and the consultations, these were lacking clarity.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The explanatory memorandum and the impact assessment discuss proportionality aspects. The proposal is consistent with the principle of proportionality because it does not go beyond what is necessary for achieving a well-functioning single market for construction products and is proportionate for achieving the intended objectives.

The proposal aims to address the shortcomings identified in the current Regulation and the needs of the European Green Deal and the Circular Economy action plan in relation to construction products. The core principles of the Regulation (like the common technical language and mandatory standards developed by the European Standardisation Organisations) will be maintained. Some of the new features, such as product requirements or Commission acts containing technical specifications, will be only applied when needed, for specific products.

The proposal addresses all identified problems in the most effective and efficient way, proposing a revised Regulation that is future proof by offering a comprehensive regulatory framework, including fall-back solutions and new regulatory tools that can be activated if there is a need for a specific product category or group, based on a detailed analysis.

Given the extreme variety of construction products, only this approach can ensure that the goals of the initiative are effectively pursued without creating unnecessary burdens for economic operators.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposal is based on the preferred option identified in the impact assessment report and is therefore the most appropriate approach to achieve the objectives. It aims to address the identified shortcomings in the current Regulation and the needs of the European Green Deal and Circular Economy action plan in relation to construction products.

The revised text takes the form of a regulation to minimise differences in interpretation and avoid costs and delays linked to transposition. The benefits of this initiative offset the costs incurred.

- (a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

The proposal is repealing and revising an existing regulation. It aims to repair and improve the single market for construction products. Only if taken at EU level can this action create uniform product safety and allow the free circulation of construction products within the EU.

- (b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The instrument proposed for revising the Construction Products Regulation is a regulation, repealing and revising the existing one.

It is seen as the most effective and efficient solution, as it minimises the potential differences in interpretation and avoids costs and delays linked to transposition.

- (c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

The Regulation regulates only the marketing of construction products. The proposal improves the Member States' rights to step in where construction products could endanger the safety of construction works, an area falling under the responsibility of the Member States.

- (d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

The assessment of the economic impacts demonstrated several cost savings.

The administrative burden, regulatory charges and compliance costs for manufacturers will fall. Also, for manufacturers covered by the simplification requirements, costs savings are expected due to a decrease in the level of ambiguity and the extended scope of the simplification.

Better market surveillance will require investment by public administrations. From this all economic actors and public administration responsible for the safety of buildings will benefit. There will be fairer competition on the construction products market.

- (e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Member States can decide to facilitate the reuse of construction products in certain cases and can exempt their own micro-companies from the obligations of the Regulation.

A Member State can seek administrative support from another Member State when performing

market surveillance tasks.

Member States may exempt from the obligations under this Regulation products placed on the market or directly installed in the territory of their outermost regions.