Response to the consultation on

"Consultation on Future Options for the Review of the Construction Products Regulation (CPR)"

AUGUST 2020

Glass for Europe is a registered organization on the European Commission's register of interest representatives under the ID number 15997912445-80.

Glass for Europe *is the trade association for Europe's flat glass sector. Flat glass is the material that goes into a variety of end products, primarily in windows and facades for buildings, windscreens and windows for automotive and transport as well as solar energy equipment, furniture and appliances.*

Glass for Europe brings together multinational firms and thousands of SMEs across Europe, to represent the entire building glass value-chain. It is composed of flat glass manufacturers, AGC Glass Europe, Guardian, NSG-Group and *Saint-Gobain Glass Industry, and works in association with national partners gathering thousands of building glass processors and transformers all over Europe.*

GLASS FOR EUROPE aisbl/ivzw | Rue Belliard 199, B - 1040 Brussels | T + 32 2 538 43 77 | F + 32 2 280 02 81
info@glassforeurope.com | VAT : BE 0418 828 479 | EU Transparency Register : 15997912445-80
WWW.GLASSFOREUROPE.COM

Option A - Baseline scenario

No legislative change, but improving implementation through guidance / soft law by the European Commission.

The Commission would pursue its efforts at implementation level to:

- **Streamline the standardisation work, to the (limited) extent that it is in the hands of the European Commission [1], e.g.:**
- **following initiatives like the Joint Initiative for Standardisation;**
- **inviting CEN to ensure clarity of the scope of harmonised standards;**
- **inviting CEN to front-load[2] acceptability criteria to be applied by the European Commission;**
- **inviting CEN to ensure internal quality control;**
- **inviting CEN to speed up the revision of CPD-era standards with high market relevance or relevance for the safety of citizens;**
- **inviting CEN to ensure fair and equitable representation of various categories of stakeholders;**
- **ensuring that the rules in Articles 3(3) and 27 CPR on classes or thresholds are used and respected;**
- **issuing, where needed and promising, new standardisation requests which respond to nowadays legal requirements, Member States' regulatory needs and market needs.**

[1] The elements listed below have indeed already been pursued by the European Commission services, though with limited success.

[2] This would mean that the acceptability criteria become quality goals for the development of the respective standards during the entire process of development.

What is your position on this?

I fully agree

Please explain your position:

This is part of an essential continuous improvement process. It is not necessary to wait for a possible revision of the CPR to improve the current system. The industry cannot afford to wait several years before being allowed to update the technical content of the standards, to publish new ones and to CE-mark products according to these new standards.

If you have technical suggestions, please provide them:

- *Endorse the templates prepared by JIS action 5 for better clarity and certainty. If not considered acceptable by the EC, please, provide another template.*
- *Allow CEN TC to send answers to the Mandate until the revised CPR is in force.*
- *For the new standardisation requests: as far as the situation of BRCW 3 (EU classes) and BRCW 7 (decision on how to declare this performance) is not clarified, don't consider these BRCWs at first and make amendment to these standardisation requests later.*
- *Speed up the establishment of delegated acts for new classes, thresholds, and new characteristics related to existing BRCWs. Accept thresholds and classes already included in cited hENs that are currently used for the revised versions of these hENs.*

Go against national marks, ex ante processes and verifications, by using informal dialogue and the formal tools provided by primary or secondary EU law (pending Court judgement on German case T-229/17), namely by infringement procedures and support for economic operators acting against infringements at national courts;

What is your position on this?

I fully agree

Please explain your position:

Persistence of national marks are responsible for the remaining barriers to trade. Besides the obligations linked to CE-marking, producers must take over so-called "voluntary" marks to access markets in some countries. The main drawbacks with these marks are that they do not recognise each other, they deviate from the EN standards and they are most often 'de facto' mandatory. One of the reasons why national marks still exist is extreme weakness of market surveillance.

If you have technical suggestions, please provide them:

One of the main arguments used by national marks is that they guarantee the quality of the product and the insurability of the building component using that product. So long this linkage with 'insurability' is in place, national marks will claim their relevance.

The weakness of the market surveillance for the technical aspects of the products (product quality rather than paperwork checks) gives national marks an apparent legitimacy.

Finally, the procedure to act against national marks is too heavy. Producers hesitate to go out against the national mark as it costs less to obtain it than it does to miss many orders simply because the mark has not been embraced.

Enhance market surveillance and enforcement (e.g. by recommending highly effective default / standard market surveillance controls [1]), and this clearly in the context of Regulation (EU) 2019/1020 on market surveillance [2];

[1] E.g., it is very efficient to control formal compliance because in most of the cases of formal non-compliance, the manufacturers are also non-compliant for requirements of substance, e.g. regarding performance. Hence, a program could be set-up to list elements of formal non- compliance which can be easily verified.

[2] OJ L 169, 25.6.2019, p. 1–44.

What is your position on this?

I fully agree

Please explain your position:

If there is no or only a weak market surveillance, consumers will not trust the values given in the DoP, especially for AVCP 3 and 4. They will request other proofs, for instance national certifications / marks.

If you have technical suggestions, please provide them:

Market surveillance cannot limit itself to check formal compliance / paperwork only. A manufacturer declaring accurate values in the DoP may be non-compliant. On the contrary, a manufacturer perfectly compliant from a formal / paper point of view may cheat with the tolerances or use inappropriate test methods.

Both aspects shall be inspected, at least punctually, as it is widely known that most market surveillance authorities only check the formal aspects.

Improve the functioning of EOTA and Technical Assessment Bodies, Notified Bodies, national authorities, PCPCs [1], to the extent that the functioning can be influenced by the European Commission;

[1] Product Contact Points for Construction.

What is your position on this?

I fully agree

Please explain your position:

One major issue lies in the contradiction between the requirements of some EADs on systems or kits and the hENs of the components, without technical reason.

It seems also that some countries are using EOTA to re-establish the requirements they had with former national certification schemes.

Other issues are linked to the absence of citation of the EAD (it may take several years before citation). Like for hENS, the ever-changing templates and rules seriously impair efficiency.

Increase, to the limited extent possible under the current CPR, the legal sustainability of the EAD route to CE marking, namely by formal Commission Decisions on the citation of EADs in the Official Journal;

What is your position on this?

I fully agree

Please explain your position:

This is a necessary step to ensure the transparency and the legality of the process, provided that this citation can happen in a reasonable timeframe. The EADs shall continue to cover innovative products or systems only and cannot be used to bypass the hENs.

If you have technical suggestions, please provide them:

Actions shall be taken to avoid overlap and contradictions between EADs and standards.

Promote the uptake of simplification provisions by clarification / guidance /information, to the extent possible [2] (incl. 5, 9(2), 37, and 38 CPR);

The extent is limited because the European Commission cannot disseminate an authoritative interpretation where different interpretations are equally possible due to an unclear wording of the CPR. Only the European Court of Justice can provide for authoritative interpretations in such situations.

What is your position on this?

I fully agree

Please explain your position:

The most urgent article to revise is article 9.2., as it is a real burden for manufacturers (and almost none of them comply perfectly with this article). Moreover, it unnecessarily duplicates the information already contained in the DoP in a format that is not appropriate, nor useful.

Article 37 cannot be used by SMEs as they often do not have the skills or the equipment to carry the tests required themselves or to justify the use of another test method. This is just not applicable.

Article 38 is difficult to use as the concept of small series depends on the kind of product.

If you have technical suggestions, please provide them:

Article 9.2: this needs to be reduced to the basic information to avoid duplication of DoP. Keep only the CE logo (with no year), the identification of the manufacturer, a way to retrieve easily the DoP (URL, alphanumeric code, bar code, QR code…), and the intended use, when relevant (to be decided by the TC and stated in the hEN). Optional: the reference to the standard (without publication date).

Article 37 should be deleted. All standards should favour less onerous although reliable methods. Tabulated values and substitution / extension rules should also be encouraged.

Article 38 and article 5a: CEN TC should be allowed to define the concept of small series for each family of products, when appropriate, and to include this definition in the relevant hEN. Conditions of article 5a are not applicable in practise.

Promote the understanding of the CPR in general and in particular with regard to the CE marking and the Declaration of Performance, and this with special focus on SME and microenterprises and including the "Your-Europe-Portal" and possibly the "Single Digital Gateway";

What is your position on this?

I tend to agree

Please explain your position:

It is always valuable to continue promoting the understanding of the CPR, although a lot has already been done. The main problem with the "understanding" of the CPR is the lack of guidance for the specification writers and the ever-changing templates and rules. New conditions derived from ECJ judgments make it difficult for the CEN TC experts as well. In good faith, CEN TC experts do their utmost to write standards according to information they have but it's virtually impossible for them to stay abreast of constant changes and to apply them immediately.

If you have technical suggestions, please provide them:

Ready-to-use templates shall be provided to help specification writers in their work.

Apply the existing empowerments for delegated and implementing acts, as well as the formal objections procedure, also to complement, correct, overrule or delist deficient standards. The empowerments to correct or overrule deficient standards are uncertain and content-wise limited. Thus only a small part of the deficiencies of harmonised standards can, if any at all, be remedied.

What is your position on this?

I tend to disagree

Please explain your position:

The most fundamental question and objection to this is to define what is a "deficient standard"? Considering the number of hENs currently blocked for citation because of minor non-conformities in some cases, as well as the ever-changing rules and templates, this procedure is dangerous and will lead to uncertainty. It could jeopardise the system by delisting useful standards, confusing market actors and rebuking voluntary and motivated experts.

If you have technical suggestions, please provide them:

In case of problem, the normal route for resolution should continue to be the CEN route. The delegated and implementing acts procedure is slow and opaque. In case of deficient standards for minor issues, such as non-dated references, possibility should be given to the TC to quickly amend the concerned hEN to make it compliant, without modifying the technical content of this hEN.

Fast treatment or procedures for 'simple' standardisation requests will help solve this issue.

In parallel, the procedure of answers to the Mandate should remain valid and continue until the current deadlock with new standardisation requests (and related problems with BRCW 3 and 7) is solved, and a new standardisation request is issued to replace the earlier mandate. Otherwise, no revised standard can be cited, which is very detrimental for the concerned sector.

Option B - Repairing the CPR

This option would not so much invest into the implementation of the current CPR, but focus on the repair of the CPR through revision. Option B might include legislative amendments to realise the following aims (the envisaged amendments are outlined below) :

1. Scope and objectives

- Clarifying and streamlining the scope of the CPR
- Ensuring coherence with other EU legislation
- Addressing environmental aspects of construction products (BWR7)
- Promoting circularity of construction products

2. Harmonisation

- Empowering the Commission to act against partial system failures
- Ensuring the comprehensiveness of the CPR's Common Technical Language
- Allowing manufacturers to obtain preliminary CE marking
- Reducing the administrative burden for manufacturers
- Improving access to Harmonised Technical Specifications

3. Improving effectiveness

- Improving the use of the CPR's non-conformity procedures
- Enhancing market surveillance
- Improving the efficacy of Notified Bodies
- Supplementing Notified Bodies with special bodies in charge of BWR7
- Evaluating the role of PCPCs
- Better covering information needs
- Allowing for true claims or no claims
- Better coverage of Member States' needs by determining the "harmonised zone"
- Improving legal certainty

4. Transition

- Ensuring a smooth phasing in of the revised CPR

Scope and objectives

Clarifying and streamlining the scope of the CPR

The future CPR would dispel confusion by specifying its application to certain products or product categories, as well as prevent future confusion by anticipating future developments and allowing the Commission to modify the CPR's scope in light of such developments. This would include the explicit exclusion of certain product categories, in particular to avoid overlap with other EU legislation (e.g. Drinking Water Directive).

In order to dispel confusion about the scope of the regulation as much as possible, a revised CPR would make explicit its application to possibly confusing products or product categories. It would

exclude some products for which there is little regulatory need from Member States, little intra-EU trade and little safety or environmental aspects to be covered as well as explicitly include others for which currently there is uncertainty (e.g. construction products manufactured for immediate incorporation by their manufacturer in construction works [1]). In addition, a revised CPR would provide clearer definitions of modules, kits and assemblies and specify in what circumstances they can be considered construction products, as well as stipulate under what circumstances used construction products newly made available on the market come under its scope.

To prevent future confusion about the CPR's scope, a revision would also anticipate new business models. In anticipation of the increased use of 3D-printing, a revised CPR would bring the placing on the market of materials and datasets used for the decentralised 3D-printing of construction products by operators other than those responsible for these materials and datasets within its scope [2]. It would assign to operators of 3D-printshops the responsibilities of distributors under the current CPR. In addition, it would bring prefabricated one-family-houses of less than 150 m² exterior ground surface with one floor, or of less than 80 m² with two floors, within its scope (probably without the fundament, the roof coverage and façade coverage to permit adaptation to Member States' construction codes). This could be reached by letting them become a construction product altogether or by qualifying them as kits.

In terms of clarification, lastly, a revised CPR would allow the Commission to modify the CPR's scope, by Delegated Act, to exclude specific products or to close regulatory loopholes, in particular where this is necessary to clarify the CPR's application to emerging new business models. The control mechanisms foreseen for the adoption of Delegated Acts would guarantee the involvement of Member States and the European Parliament.

Overall, the scope of the future CPR would remain rather broad. However, as today, the harmonised sphere (i.e. the sphere covered by technical specifications) will not be as large as the scope of the CPR. The broad scope of the CPR thus has the function to give room for technical specifications to be developed in accordance with the needs of today and tomorrow.

[1] Regarding this issue: see also the possibility for Member States to exempt certain economic operators on a national basis.

[2] Regarding the regulatory issues raised by decentralised 3D-printing, see https://www.howtoregulate.org/decentralized-3d-printing-a- regulatory-challenge/#more-23.

What is your position on this?

Neutral

Please explain your position:

It may be a good idea to better define the scope of the CPR, but on the other hand, it will be challenging to be exhaustive. A broader scope, possibly with explicit exclusions could be an option.

If you have technical suggestions, please provide them:

Logically, it should be the role of the standardisation requests to define what shall be standardised, the absence of them meaning that no standard is needed for these (families of) products.

Ensuring coherence with other EU legislation

In order to ensure coherence with other EU legislation, a revision of the CPR would clarify its relationship with current rules as well as introduce clear collision rules for potential future overlap.

Coherence with existing EU legislation would be ensured by making explicit the CPR's relationship to overlapping rules (e.g. REACH [1] or the Waste Framework Directive [2]). Additionally, a revised CPR would exclude certain construction products to prevent overlap (e.g. in relation to the Drinking Water Directive [3]). For other legislation (e.g. the Energy Labelling Directive [4] and Eco-design implementing regulations [5]), coherence would be ensured at the level of tailor-made Harmonised Technical Specifications that cover all aspects not governed by the other legal instrument ("Harmonised Technical Specifications" in this survey shall be understood as harmonised standards cited in the Official Journal, or Implementing or Delegated Acts that contain technical specifications).

In anticipation of the expected increase in energy efficiency, environment, health and consumer protection rules, a revised CPR would also include provisions governing its relationship with such future rules.

[1] OJ L 396, 30.12.2006, p. 1–849 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008D0768).

[2] OJ L 312, 22.11.2008, p. 3–30 https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576749547065&uri=CELEX:32008L0098

[3] OJ L 330, 5.12.1998, p. 32–54 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31998L0083)

[4] OJ L 198, 28.7.2017, p. 1–23 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32017R1369)

[5] OJ L 285, 31.10.2009, p. 10–35 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0125, a list of implementing regulations can be found here: https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/ecodesign_en

What is your position on this?

I fully agree

Please explain your position:

Glass for Europe is in favour of any provision that could ensure the best possible coherence between different legislations. It must be ensured that any harmonisation or change does not slow down or block the normal process of standardisation requests and the hENs citation.

Addressing environmental aspects of construction products (BWR7)

A revised CPR would speed up the operationalisation of environmental aspects by introducing a harmonised method for assessing and communicating construction products' environmental performance.

Amid increasing environmental concern, Member States are likely to increasingly implement national legislation on how to assess the environmental footprint of construction works and thus implicitly also construction products. As a result, diverging approaches could weaken the internal market. A revised CPR would therefore provide a harmonised method for assessing and communicating the environmental performance of construction products. This would happen in full coherence with the horizontal approach with regard to the environmental assessment of products, currently being

considered by the EC services. First, Annex I would be amended to include all relevant environmental aspects in a dedicated Basic Work Requirements [1]. Second, the Regulation would prescribe the general principles of a harmonised method for assessing and communicating construction products' performance in relation to those aspects; the method itself would be laid down more precisely in a Commission act. The harmonised method would be based on an existing Life Cycle Assessment method, such as the Commission's Product Environmental Footprint [2] or EN 15804, and provide for the development of harmonised Product Category Rules and the use of common datasets in order to ensure fairness and comparability. Importantly, a revised CPR would ensure that the resulting environmental data can be used in the assessment of the environmental performances of buildings [3].

The supervision of the application of these very specific systems could be based on the current Notified Bodies system which would minimise the burden. However, in view of harmonising the assessment of environmental footprints across all product sectors and to optimise assessment methods, there could also be a separate designation and supervision process (see below under Supplementing Notified Bodies with special bodies in charge of BWR7).

Measures directly supporting the reduction of environmental impacts of construction, such as funding the research and development of more sustainable construction products or the creation of incentives to limit the surplus of construction products, as suggested by Member States [4], are beyond the remit of the CPR. As mentioned above, the CPR could contribute indirectly through facilitation of the use of certain recycled or used construction products by allowing them to be CE marked. It will also contribute to the transparency of the market by facilitating the comparability of construction products based on their environmental impacts.

[1] One might regard some environmental aspects as nowadays being covered in BWR 3 and 6 instead of 7. This makes the regulatory management difficult.

[2] Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0179&from=EN (for proposed updates see https://eplca.jrc.ec.europa.eu/permalink/PEF_method.pdf).

[3] Council of the European Union, Conclusions on Circular Economy in the Construction Sector, 28 November 2019, Doc. 14653/19, n9.

[4] Ibid., n7.

What is your position on this?

I tend to agree

Please explain your position:

The glass industry believes that such harmonisation has become urgent. The industry cannot afford continuing the multiplication of EPDs to match the specificities of each country. Glass for Europe is in favour of the EN 15804+A2 approach.

It is important to stress the fact that characteristics related to BRCW 7 are not made to compare products but are necessary to calculate and define the environmental impact of the building, at all stages. In-use performances at building level (like solar gains or improved insulation) may counterbalance and outweigh the product manufacturing impacts and the performances declared in the EPD so they must be considered together.

If you have technical suggestions, please provide them:

For BRCW 7, the approach of EN 15804+A2 shall be chosen. A link between the DoP and the EPD shall be allowed to avoid that the same information is unnecessarily repeated twice. In addition, duplicating EPDs in the DoP is virtually impossible in the glass in building sector that counts configurations in hundreds of thousands.

Promoting circularity of construction products

In order to promote the circular economy, the CPR would support the placing on the market of certain used or used and remanufactured construction products. However, several aspects of the CPR would need to be adapted (i). In addition, the issue of trans-generational availability of product data needs to be tackled (ii). Finally, the CPR might contain a series of provisions reflecting the Circular Economy Action Plan and the European Green Deal (iii).

(i) The revised CPR might cover certain construction products which were used and remanufactured or just used but newly made available on the market, allowing such products to obtain CE marking and gain access to the European market. We speak here of "remanufacturing" to cover processes like cleaning, cutting-off of damaged parts and new coating because the term "recycling" in the meaning of the Waste Framework Directive is limited to items which have become waste in the first place, whilst the regulatory approach of the CPR would be different, aiming at used construction products to undergo a process before they become waste [1]. The purpose would be to promote reuse, in particular to reduce construction products' climate and other environmental impacts. These goals cannot be pursued without limiting obligations for the relevant economic operators (when compared to the original manufacturer). This could often lead to a marginal loss in terms of safety when compared to new products. If the legislators oppose this approach, a revised CPR might only define a gold standard for remanufactured or reused construction products permitting free circulation of these (at the end of the day very few) products and empower Member States to regulate on all other products not fulfilling the gold standard. Member States would then be empowered and invited to decide on the best domestic trade-off between two not fully compatible goals: promoting re-use on one hand and preserving full safety as for new products. They would most likely make different choices, adapted to their domestic balancing of interests.

Used construction products will have to be treated slightly different in terms of CE marking, declaration of performance, performance assessment and certain other obligations of economic operators. Maybe, the original manufacturer should remain responsible to some extent, e.g. with regard to information that only he can provide, whilst overlapping responsibility fields of different economic operators have to be avoided.

[1] See Article 3(17) of the Waste Framework Directive, OJ L 312, 22.11.2008, p. 3–30 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098)

What is your position on this?

I tend to disagree

Please explain your position:

Reuse of products is not common practice in the glass in building sector for several technical and economic reasons.

Glass for Europe would like to draw your attention onto the fact that, although highly important, safety is not the only relevant aspect. Performance and expected remaining lifetime are also

relevant. As an example, the performances of a 20-year-old insulating glass will most certainly not meet applicable current EPD requirements, its remaining lifetime is significantly reduced although safety is probably preserved (provided that the type of glass is appropriate to the application). Cost of cleaning and polishing shall also be considered, as well as the benefits of reuse compared to recycling.

Reuse of glass is generally not possible as installed glazing have bespoken dimensions. Re-cutting insulating glass will ruin the tightness and re-cutting thermally toughened glass will make it break in small fragments. Re-polishing damaged surfaces is not cost effective. In the glass and glazing case, the best economic and environmental option remains glass recycling.

If you have technical suggestions, please provide them:

When relevant, information about expected remaining lifetime shall be provided with the CE-marking of reused products. Reuse shall be kept as a possible option but there should be no quota imposed.

***(*ii)** Given the likely enhanced longevity of construction products, re-use and remanufacturing will depend to a large extent on the trans-generational availability of product data. The establishment of a public database is the classic response to such a situation. However, alternatives have to be investigated. High market value IT companies are likely to be subject to mergers and acquisitions, but not disappearance. Hence, a multi- generational public tender might be a suitable alternative to the not always efficient process of setting up a public database. Alternatively, a tender could be launched every 5 years, with the running contract to be automatically renewed in case no competitor makes a potentially better offer.

What is your position on this?

I tend to disagree

Please explain your position:

In the glass in building sector, there are means to evaluate or retrieve the performance of old products (indications on the spacer of an insulating glass unit, direct measurement of the U-value, etc…). The purpose is generally to evaluate the energy savings done by replacing the older glazing by a better performing one. Besides that, the initial producer cannot be held responsible for the characteristics of its product for the remaining expected lifetime after that same product has been extensively used then dismantled and reinstalled.

For the public database, considering the number of different possible glass configurations (in hundreds of thousands), it will be almost impossible to maintain such a database at European level.

If you have technical suggestions, please provide them:

If such database is done, it shall be done at the level of the building (building material passport or logbook) and not at European or country level.

(iii) In addition, the recently published Circular Economy Action Plan [1] and European Green Deal [2] foresee a comprehensive change of our economy. In the next months and years, there will be a discussion on which measures shall be taken across all sectors. It might not be ideal for construction products to be covered by horizontal regulation as horizontal regulation can hardly be fine-tuned to construction products and might trigger overlapping and partly conflicting obligations. Hence, it is to

be considered to which extent the CPR can and should foresee measures applying the policies of the Circular Economy Action Plan and the European Green Deal to construction products. Measures to be considered in this context, as applicable to individual construction products and taking into account safety aspects, might notably include:

- The obligation to take back construction products which, after delivery onto the construction site, have not been used [3];
- conformity assessment or other procedural privileges for construction products which are based on recycled materials, typically derived from a previous construction product which has become waste;
- minimum recycled content quota; or the obligation to give preference to recycled materials where possible;
- the obligation to give preference to materials with a low overall environmental footprint, unless a higher environmental footprint is later overcompensated at the building level;
- the obligation to refrain from premature obsolescence;
- the obligation to reach state-of-the-art durability; and
- the obligation to facilitate repair, re-use, remanufacturing and recycling by appropriate design, information and, for repair, accessibility of spare parts.

These measures describe only the frame in which the discussion will take place. Not all these measures will be taken, the more so as hardly any of them is applicable to all construction products.

Furthermore, a Sustainable Product Policy Initiative has been announced under the umbrella of the European Green Deal and the Circular Economy Action Plan. The core of this legislative initiative will be to widen the Ecodesign Directive beyond energy related products so as to make the Ecodesign Framework applicable to the broadest possible range of products and make it deliver on circularity. As construction products would potentially fall within the scope of this future initiative, there could be multiple interactions between the horizontal policy, its concretion within the CPR and the many other elements of the CPR directly or indirectly aiming to enhance the sustainability of the construction products. It even cannot be excluded that the listed measures will mostly be laid down in the horizontal framework. In the latter case, defining a clear interface and avoiding duplications will be paramount.

Finally, measures to promote the use of tools that could facilitate the recycling or reuse of construction products, as suggested by Member States [4], are, in so far as such tools apply to the construction work or demolition level, beyond the remit of the CPR. E.g., both economic operators who remanufacture used construction products and those who manufacture new products on the basis of recycled (CP) materials need information about the previous use of the products, at least so as to appropriately inform their own customers. The CPR revision could, informally or in the form of a European Commission Recommendation, be accompanied by some prototype national legal provisions that would generate the relevant data. This example illustrates a general potential, still to be levied, which consists in developing finely imbricated regulatory approaches both at the EU and the Member States' level, to jointly pursue the common goals.

[1] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN .

[2] Available at: https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf .

[3] This could be economically interesting for both sides if the manufacturer reimburses the transportation costs, capped by his own manufacturing costs, whilst the dumping of the not used construction product would be costly, due to national law.

[4] Council of the European Union, Conclusions on Circular Economy in the Construction Sector, 28 November 2019, Doc. 14653/19, n15 and n16.

What is your position on this?

I tend to disagree

Please explain your position:

Many aspects developed in this paragraph are going beyond the remit of the CPR but several points have drawn our attention:

The obligation to take back unused products and the fact that the cost is supported by the manufacturer: this needs some nuances. In the case of glazing, unused products are often products damaged on-site. The manufacturer cannot be held responsible for that and cannot support the costs associated with third party damages. Since glazing has bespoken dimension, larger orders than necessary on the premise that left-over will be taken back by the manufacturer at its own expense, will lead to product waste with ad-hoc environmental costs. Ultimately, all that manufacturers can do in these cases is to take glazing back to recycling.

Conformity assessment or other privileges for products based on recycled materials: this is going too far. High content of recycled materials cannot presuppose "conformity" (conformity to what?) or the best product choice for a specific construction. If a quota is defined, it shall be product-based and shall consider technological possibilities. Recycling potential differs from one material to the other.

Ecodesign is not applicable to all products. For instance, an eco-design preparatory study has been conducted on windows and concluded that eco-design measures would be inappropriate. It must also be kept in mind that product rules do not necessarily reflect how the product performs when placed in a building.

If you have technical suggestions, please provide them:

The obligation to reach state-of-the-art durability is an interesting point. This will be possible only if thresholds are allowed, and if updates of standards are possible in a reasonable timeframe.

The CPR should only allow for a reliable CE-marking of used and reconditioned products. Concerning the recycled content of construction products, it should be covered by BRCW 7. On this aspect, the approach contained in EN 15804+A2 seems more appropriate.

2. Harmonisation

Empowering the Commission to act against partial system failures

The current situation where the Commission is not empowered to act against system failures should be remedied. Therefore, a revised CPR would introduce a full range of empowerments for Delegated and Implementing Acts.

E.g., the situation today is that the legislator has empowered CEN and EOTA to adopt Harmonised Technical Specifications, thus bodies outside the EU law legitimation chain, without empowering the Commission in the first place. Thereby the CPR deviates crucially from the standard pattern of EU legislation according to which the Commission is empowered in the first place and outside bodies only in the second. In the light of the current breakdown of the standardisation system under the CPR [1], this unfortunate inversion merits revision, the more so as the ECJ has in the meantime set

up severe conditions for delegation of regulatory powers to bodies not already mentioned in the Treaties.

But this is only an example of the past. More system failures can emerge in the future. To reduce the likelihood of another system breakdown, comprehensive empowerments to act against system failures should be foreseen.

[1] For analysis and explanation, see the evaluation of the current CPR accessible at https://ec.europa.eu/docsroom/documents/37827 (especially pages 28-31).

What is your position on this?

Neutral

Please explain your position:

Glass manufacturers do not share the view that 'the EC is empowered at the second place', as the EC has the final say in today's system. It is the EC that decides if a standard will be cited. CEN is only preparing the standards candidate for citation. It is however true that EC was not deeply involved in the process so far. An example of this is the lack of rules for the writing of a compliant standard. The current failure in the system is mainly due to the lack of guidance and the absence of templates to correctly revise standards or to write new ones.

That being said, Glass for Europe has no objection to the EC being empowered to act if the process fails for other reasons.

If you have technical suggestions, please provide them:

Endorse the documents written by JIS Action 5 or modify them if they are not acceptable to the EC.

Solve the issue with BRCW 3 and 7, speed up the elaboration of new standardisation requests and, in the meantime, allow for answer to the Mandates so that sectors with a low priority in the EC mandate revision list are not blocked.

Ensuring the comprehensiveness of the CPR's Common Technical Language

Using the aforementioned empowerments to act against system failures, the Commission would complement the Common Technical Language where needed. Furthermore, it might become possible for other bodies than CEN to develop harmonised standards.

At least in cases where no harmonised standards exist or where these are insufficient, the Commission would be empowered to adopt Delegated or Implementing Acts in order to ensure the availability of complete assessment methods and criteria for essential characteristics related to the basic requirements for construction works listed in Annex I [1]. Such acts would contain Harmonised Technical Specifications or, where needed, normative references to existing standards or other documents containing technical specifications (e.g. EADs). When formulating technical specifications, the Commission would gather information from different actors, including industry, depending on the products and characteristics under consideration (e.g. CEN, private standardisation consortia, the Joint Research Centre, industry groups, Technical Assessment Bodies or Regulatory Advancement Bodies, Member States or groups of Member States), and all this in addition to the current mandatory consultation processes. The governance mechanisms

foreseen for the adoption of Delegated or Implementing Acts would guarantee control by Member States.

In addition to the development of technical content for Delegated or Implementing Acts, it is conceivable that other organisations than CEN would be charged with developing harmonised standards. Again we could think of private standardisation consortia, industry groups, Technical Assessment Bodies or their successors, the Regulatory Advancement Bodies [2], but also Notified Bodies or combinations of these actors. The harmonised standards' path would thus be enlarged. This would lead to a two-tier system of technical specifications, with Delegated or Implementing Acts on top and harmonised standards below, the first overruling the second if needed.

[1] For an example of such an empowerment, see e.g. the wording of Article 9(1) of Regulation (EU) 2017/745 on medical devices.

[2] Replacing the TABs, see below under 'Allowing manufacturers to obtain preliminary CE marking.'

What is your position on this?

I tend to disagree

Please explain your position:

The principle sounds reasonable, but it depends on what is called "deficient standard". Standards may be developed slowly because of technical difficulties, and in that case, other parties may probably not be more efficient.

Moreover, delegated and implementing act processes are long and painful. Some of them have been blocked for several years now, therefore the benefit of this approach is not evident. The possibility to really involve all stakeholders in that process is also highly questionable.

If you have technical suggestions, please provide them:

Keep going on with the CEN / EOTA approaches and improve the system. Creating another route will take time and the construction sector has already lost too many years since the entry into force of the current CPR.

Allowing manufacturers to obtain preliminary CE marking

Where a harmonised technical specification is in the pipeline, a revised CPR would allow manufacturers to have their products assessed by a Regulatory Advancement Body in order to obtain a preliminary right to CE mark their products. This option would replace the current EOTA/TABs route.

Assuming the Commission is empowered to ensure the completeness of the common technical language, the current EOTA/TABs route will become less relevant. Moreover, the EOTA/TABs route raises many systemic issues, the majority of which have been described in the EOTA report [1]. To close the loophole in case of its deletion and to advance the development of new harmonised technical specifications in particular for innovative products, the following procedure could be foreseen. The TABS would be replaced by Regulatory Advancement Bodies with the primary task to investigate the potential for new Harmonised Technical Specifications. Where the Commission assesses a draft Harmonised Technical Specification, of which the technical content was elaborated by a Regulatory Advancement Body, as likely to be cited as Harmonised Standard in the Official

Journal or to be transformed into a Delegated or Implementing Act within one year, this and other Regulatory Advancement Bodies would be allowed to issue certificates confirming the performance and the conformity of a construction product as requested in that draft Harmonised Technical Specification. The certificate would be valid until the actual citation or publication takes effect or, if no citation / publication takes place, for a maximum of 18 months. Once the certificate has been issued, a manufacturer could affix the usual marking followed by the letters "(pr)" and the date of expiry to its products.

Member States would be invited to designate Notified Bodies or authorities to fulfil the role of a Regulatory Advancement Body. The current TABs would become obsolete.

[1] Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN (COM/2019/800 final, 24.10.2019).

What is your position on this?

I fully disagree

Please explain your position:

Where a harmonised technical specification is in the pipeline, nothing else should be allowed to obtain CE-marking in advance. During the writing of the technical specification, the test methods may be modified in such a way that the preliminary CE-marking will no longer be valid. This means that the manufacturer will lose money, and that only big players will be able to request a preliminary CE-marking. The same big players may also find an interest in slowing down the standardisation process if they obtain a preliminary CE-marking.

Moreover, EADs are covering different realities: some cover products for which a standard may be the most relevant option while others concern a product from a single manufacturer, for which a standard is probably not necessary. Difficulties may also arise for systems and kits.

If the delivery is a harmonised standard, the writing of a standard through the traditional route is more democratic than allowing a single "regulatory advancement body" to write it alone. If the current procedure of writing and citing standard is maintained, then the 18 months' validity for the certificate seems very short.

Finally, if Regulatory Advancement Bodies can take the initiative of starting new Harmonised Technical Specifications by their own, some Member States may be tempted to use them to impose their national views.

If you have technical suggestions, please provide them:

There is no need for a preliminary CE-marking, this creates more problems than it solves.

Reducing the administrative burden for manufacturers

The CPR would strive to reduce the burden for manufacturers by offering simplification measures, empowering Member States to exempt certain micro-enterprises from the scope of the CPR, reducing overlap between CE marking and the Declaration of Performance, and establishing empowerments for the Commission to define conditions for reducing or lifting AVCP obligations in case of coverage by liability insurance.

In order to promote the uptake of simplification measures, current provisions could be considered to be redrafted with a view to clarification, though feasibility has not yet been completely ascertained. For example, a revised CPR might strive for a clearer difference between Article 5 and 38, clarify the content of Article 37 and 38, notably by defining more clearly what is understood as a 'non-series process.'

To further promote simplification, Member States will be offered the possibility to exclude from the CPR's scope enterprises, or at least SME or micro enterprises, individually producing construction products meant for direct final installation under their own responsibility. Alternatively, Member States could be allowed to exempt such enterprises from certain conformity assessment obligations. There would be a size-limit: to ensure that such a provision does not allow bigger manufacturers to circumvent their obligations, it would exclude cases where individual production is based on materials provided by another economic operator who manages a network of SMEs or craftsmen, e.g. under a franchising structure.

To reduce the administrative burden for all manufacturers, a revised CPR would aim to eliminate the current performance information overlap between the CE marking and the Declaration of Performance. Moreover, all viable possibilities for digitisation will be used.

Finally, a revised CPR might contain an empowerment for the Commission to adopt Delegated Acts determining conditions under which AVCP obligations can be reduced or lifted provided that the manufacturer has concluded a liability insurance which is proportionate to the maximum damages potentially caused by non-compliant or underperforming construction products. In cases where risks are not minimal, the exemption from AVCP obligations can be made subject to the application of a risk reduction scheme [1] that is established by the insurer or an association of insurers and verified by agents acting on their behalf.

[1] Covering both aspects of performance and aspects of inherent product safety.

What is your position on this?

Neutral

Please explain your position:

Glass for Europe agrees with some of the ideas developed in this section, especially the avoidance of the overlap between CE-marking and DoP and the use of all viable possibilities of digitalisation. In the glass in building sector, each manufacturer can easily have several tenths of thousands DoPs and digitalisation is the only way to manage them.

Clarification of articles 5, 37 and 38 will be more than welcome, as well as a clear definition of non-series. The latter depending on the type of products and the type of industry, it should be the CEN TC role to elaborate a proposal applicable for each relevant product standard.

Glass for Europe is opposed to Member States being allowed to exempt enterprises from the scope of the CPR or from certain obligations.Such exemptions should be done at European level. SMEs are also exporting and not only when they are located next to an intra-EU border. Other rules may exist in the country where they export, leading to unfair competition in case of exemption.

Finally, the glass industry is totally against the idea of reducing or lifting AVCP obligations in case of coverage by liability insurance. There is a danger that the producer's commitment will wane over time, leading to an increased risk for the users of the concerned products. The possible compensations granted by the liability insurance may also be too low compared to the damages.

Moreover, one can doubt that a producer deliberately not fulfilling its legal obligations will meet the terms of liability insurance policies. These insurances will ask external bodies to make the control for them which means creating a new business opportunity for private, national certification schemes.

If you have technical suggestions, please provide them:

Reduce CE-marking information to the strict minimum allowing for an easy retrieve of the DoP (revise article 9.2)

Do not introduce market distortion by softening AVCP procedures for those who can afford liability insurances.

Improving access to Harmonised Technical Specifications

The revised CPR would improve access to Harmonised Technical Specifications by ensuring translation into all official languages and free availability. Under the current CPR, accessing the content of harmonised standards is sometimes made difficult or costly because they are not available in all official languages or because they are subject to copyright protection. If, under the future CPR, the Commission adopts Harmonised Technical Specifications by Delegated or Implementing Acts, such acts would have to be translated into all official languages, as is the case for all Union acts. Moreover, their content would be included in the Official Journal and would thus be freely available. Where Harmonised Technical Specifications contain normative references to other documents, the revised CPR would ensure that the pertinent content of the referenced documents is available in all languages and free of charge.

What is your position on this?

I tend to disagree

Please explain your position:

Although this sounds like a good idea, Glass for Europe doubts that it is realistic nor needed. To our industry's knowledge, there is no country in the world where standards are for free. In an ideal world, it would be great but other systems can be found, e.g. free or very cheap access for 24 hours online, etc. A good example is Estonia, (i.e. reasonable prices, and free preview of the table of content, the scope and the normative references, 24h full access for only 2 euros per standard) but most standards they sell are not translated.

Concerning the translation: some standards do not need to be translated as they concern very specific products not produced and not sold everywhere. Moreover, for some languages, competence is lacking to check that specific technical terms are correctly translated.

If you have technical suggestions, please provide them:

- *Give an upper limit to the price per page of the harmonised standards.*
- *Make free preview of the first pages and low-cost 24h consultation mandatory.*
- *Ask each country to establish a list of priorities for the translations, per sector. There is no need to spend public money to translate a standard that nobody will buy in a specific country.*

3. Improving effectiveness

Improving the use of the CPR's non-conformity procedures

By redrafting Articles 56 to 59, a revised CPR would aim to dispel interpretative confusion and facilitate the use of safeguard mechanisms, possibly even by creating a more streamlined procedural sequence for the different steps to be taken.

In its current form, Article 56(1) requires for the launch of the procedure both the inaccuracy of a product's declared performance and a risk to health and safety. This overly restrictive wording has led to the current situation where Article 56 is hardly used whilst Article 58 is not used at all. Article 58 deals with construction products that do achieve their declared performance but nevertheless present a risk to health and safety.

By removing the cumulative condition of a product's inherent safety and the accuracy of declared performance from Article 56(1), a revised CPR would therefore aim to unlock the use of the procedures defined in both articles.

What is your position on this?

I fully agree

Please explain your position:

Clarification of these articles is welcome although the glass in building sector has a different reading of article 56(1) than what is suggested in the consultation questionnaire. Risk to health and safety is not considered in 56(1) and the said " risk for the fulfilment of the BRCW covered by the regulation" may be other than for health and safety (e.g. BRCW 6 or 7…). The reason why it is not used is that market surveillance does not deal with such technical aspects.

Enhancing market surveillance

A revised CPR would enhance market surveillance by strengthening enforcement powers and aligning the performance of different market surveillance authorities. For the full list of envisaged measures regarding market surveillance, see Annex II (link below).

The strengthening of enforcement powers would entail the introduction of appropriate sector-specific provisions to supplement the horizontal provisions contained in Regulation (EU) 2019/1020 on market surveillance and compliance of products, which are already part of the Baseline scenario (Option A). Such provisions would include stronger empowerments for market surveillance authorities related to fact-finding (e.g. the right to confiscate samples or to seize documents related to presumably non-compliant products) and possible punitive measures (e.g. the right to impose financial sanctions or to exclude non-compliant operators from public tenders). Special focus will be put on internet trade. Surveillance would be further enhanced by allowing manufacturers to sue their competitors, and by allowing consumer and environment organisations to sue non-compliant operators, as well as by setting up a sector-specific EU-wide whistle blowing portal and a Member State forum to discuss and follow up on external complaints (using one of the fora provided for by Regulation 2019/1020 if possible [1]).

Aligning the performance of different market surveillance authorities would entail the introduction of absolute

[2] and parameter-based [3] minimum benchmarks for Member State authorities, for example in terms of the number of full-time equivalents dedicated to CPR-related surveillance, as well as the introduction of procedures designed to ensure the proper performance of market surveillance staff. To further improve alignment, appropriate and effective mechanisms would be set up to allow for communication, coordination and cooperation between market surveillance authorities and to make them mandatory even, in particular where this is necessary to align decision-making practice. For the whole package of measures envisaged to align decision-making, see Annex I (link below).

[1] See Chapter VIII of Regulation 2019/2011, OJ L 169, 25.6.2019, p. 1–44 (accessible at https://eur-lex.europa.eu/legal-content/EN/TXT

/PDF/?uri=CELEX:32019R1020&from=EN).

[2] Even the smallest Member State should have available three full-time equivalences for the enforcement of the CPR.

[3] Parameters could be the size of the market in terms of €, tonnes or numbers of products sold, inhabitants etc. Evidently, these parameters can be combined.

What is your position on this?

I fully agree

Please explain your position:

Glass for Europe is supportive of an efficient market surveillance as we believe that the current surveillance is not sufficient. Most of the time, only administrative compliance is checked, and no control is done to check whether declared performances are correct. There are several important aspects overlooked by Annex II:

- *Most of the time, possible non-conformities are unintentional and should not immediately be considered as deliberate intention of misleading or cheating. This can be the case for SMEs not having sufficiently skilled personnel.*
- *The sanctions shall remain proportional to the fault, as for any judicial sanction.*
- *From our experience, it can happen that the market surveillance authority is incorrectly identifying "non-conformity" by lack of competence. Admittedly it may be difficult for them to have sufficient expertise for the full range of construction products. Our industry has also witnessed market surveillance officers confusing national voluntary marks with CE-marking compliance. The measures proposed in Annex I will help overcome this. An appeal procedure against inappropriate decisions should also be part of the CPR.*

If you have technical suggestions, please provide them:

- *Select the most appropriate measures of Annex II.*
- *A harmonisation of the penalties throughout Europe will be helpful.*
- *Ensure that market surveillance officers are sufficiently trained and do not impose their personal interpretation of the CPR or of the standards. To that respect, measures proposed in Annex I to this survey are welcome.*
- *Ensure the presumption of innocence and add appeal procedure for the manufacturer.*

Improving the efficacy of Notified Bodies

A revised CPR would improve the efficacy of Notified Bodies by strengthening the designation process and introducing control mechanisms for after designation.

In order to moderately strengthen the Notified Bodies' system, a revised CPR would introduce a mandatory qualification matrix (matching staff to product groups and technologies), to be used by Member States when designating Notified Bodies. Member States would also be asked to provide the accreditation or another assessment report for revision by peers and the European Commission. It would further grant the Commission the explicit right to block the registration of a Notified Body in NANDO where there is a lack of evidence of its competence.

To strengthen the work of Notified Bodies towards manufacturers, Notified Bodies would be asked to apply clear pass-fail criteria in their certification practice, thus avoiding that the Notified Body becomes by repetitive feed-back on non-conformities a consultant on the way to certification. Furthermore, a revised CPR would require Notified Bodies to change the staff responsible for deciding on certification as regards products of a given manufacturer every 3 years. In addition, structured reporting obligations for Notified Bodies to their respective Notifying Authority would be introduced and control of subcontracting would be made stricter.

Notified Bodies and Notifying Authorities would, together with market surveillance authorities also be affected by a package of measures enhancing harmonised decision-making, outlined in Annex I (link below).

What is your position on this?

Neutral

Please explain your position:

Glass for Europe is in favour of measures ensuring and enhancing the competence of notified bodies.

Nevertheless, the suggestion to "change the staff responsible for deciding on certification as regards products of a given manufacturer every 3 years" is not realistic if Europe wants to keep a high level of qualification of the notified body staff. Some notified bodies are too small to ensure such a rotation and some tests need highly experienced people.

The EC also needs to be aware that "European Accreditation" has its own rules, sometimes in contradiction with CPR rules. An example of this is the recent problem with the reissuance of test reports in case of new commercial denomination without any change to the product. This was forbidden by European Accreditation while implicitly allowed by the CPR.

If you have technical suggestions, please provide them:

Glass for Europe is in favour of any measure that can increase the quality and the reproducibility of assessments between notified bodies, for instance by peer review or by regular round robin, where relevant.

Supplementing Notified Bodies with special bodies in charge of BWR7

The current Notified Bodies are not necessarily competent to assess whether the calculation of environmental impacts by manufacturers is correct or, subject to the AVCP system, to make such calculations from scratch. The customary notification procedures are not appropriate to assess these competences either. As these calculations are a science of their own, it might be necessary to

complement the current Notified Bodies' system by designating specialised bodies or creating a responsible sub-group.

Today, only very few, namely extremely big, Notified Bodies designated under the CPR would also be able to obtain the competences for assessing these calculations. These extremely big Notified Bodies would have a disproportionate, unjustified competitive advantage if the verification of environmental impact calculations were to be done by the ordinary Notified Body in charge. Also to keep the small and medium Notified Bodies which are geographically close to the SME manufacturers alive, it might be useful to split the verification functions for BWR 1 to 6 and the one for BWR 7. In addition, it is questionable whether the current few big Notified Bodies able to calculate environmental aspects suffice, capacity-wise, to cover all (manufacturers of) construction products. Hence, it might be commendable to integrate other organisations that have specialised in calculating environmental impacts, hereafter called environmental verification organisations (EVOs). Such EVOs could either work separately from the current system or function as a sub-group within the current system, like for example the existing sub-group of Notified Bodies in charge of fire safety aspects.

EVOs would in particular be called upon to scrutinise whether the methodology applied by the manufacturer or his suppliers is aligned to best available techniques, to verify samples of particular calculations, and to assess the plausibility of the overall results or, subject to the AVCP obligations, to undertake themselves such calculations.

The designation and supervision mechanisms of the environmental verification organisations (EVOs) in charge of BWR 7 might differ from those of the current Notified Bodies because a much closer alignment of practices across different product sectors must be reached. It cannot be that steel (intended to be) used for cars is to be evaluated differently from steel (intended to be) used for construction products, and the same goes for all other materials or intermediate products. To reach this cross-sector alignment of calculation practices, no designation of an EVO should happen without a methodologically competent entity (be it the Commission Joint Research Centre or an external, entrusted service provider) having reviewed the qualification of the candidate EVO. The form of designation might also vary from that of normal Notified Bodies.

Comparability of environmental impact calculations can only be ensured if there is a more intense control and alignment in day-to-day decision-making, the more so as the same material or intermediate product might find its way both into construction and other products. This will imply the need for some knowledgeable supervisory body, e.g. the Commission Joint Research Centre, or peer review or both.

Where these mechanisms become unsustainable due to a high number of manufacturers and assessments, a two-level supervisory hierarchy could be envisaged. The top-level supervisory body would entrust certain experienced and reliable EVOs to become supervisory bodies for less experienced EVOs. When developing further concepts on the verification of environmental aspects, it has to be borne in mind that there is an inherent tension between the goal of alignment of practices across all product sectors on one side and the goals of minimising the burden specifically for the construction products industry and adapting to the specificities of the construction sector on the other side. The two sides cannot be fully served at the same time. But many questions must stay open at this point in time as the development of concepts regarding these questions happens also in other products sectors or at a cross-sector level. The final proposal for a new CPR cannot create a construction products island, but must be in harmony [1] with concepts used across other products sectors. Moreover, it cannot be excluded that harmony must be sought in light of the different potential uses of environmental impact calculations. In Member States, these calculations are

starting to play a role in very different contexts, namely in fiscal policy and for public tenders. Also for manufacturers of construction products it would not be wishful to have to calculate the environmental impact in several different ways depending on the context. Hence, a consensus needs to be found which goes beyond the field of product regulation.

[1] „Harmony" does not necessarily mean full alignment. Full alignment should not be strived for because construction products need specific environmental read-outs for the environmental assessment of construction works. These read-outs are not needed in most other product sectors.

What is your position on this?

I fully agree

Please explain your position:

This is a very good proposal as, indeed, most current Notified Bodies are not necessarily competent to perform the tasks relevant to BRCW 7.

If you have technical suggestions, please provide them:

The most pressing matter today is to define the AVCP level for BRCW 7 and to harmonise the way to declare this characteristic at European level. TCs need to implement it in standardisation requests and in new or revised hENs.

Evaluating the role of PCPCs

The Commission will investigate how Product Contact Points for Construction are currently being used.

In case they are not or hardly used for their main purpose, i.e. providing information about Member States' building regulations relevant to the intended use of construction products, a different purpose could be envisaged. Namely, they could be put in charge of providing information on the harmonised system created by and under the CPR. To some extent, they do this already today, we learnt.

What is your position on this?

No view

Please explain your position:

The glass in building industry has no experience with PCPCs and therefore no opinion on this clause.

Better covering information needs

In order to better cover Member States' and stakeholders' information needs, a revised CPR would allow, in certain specified cases, additional information to be included in the Declaration of Performance as well as empower the Commission to make mandatory the declaration of certain characteristics. Manufacturers can declare additional performances and characteristics.

To better cover information needs of architects and users, a revised CPR would include a positive list of additional information that manufacturers are allowed to include in their Declaration of

Performance (additional to a product's performance in relation to the essential characteristics covered by Harmonised Technical Specifications). Examples might include

- information on the presence or absence of certain chemical components [1],
- the product's conformity with Member State regulations,
- durability in the sense of usability endurance of the product, or
- a link to instructions for use and installation.

The Commission would be empowered to modify this positive list by means of Delegated Acts in light of information needs or other developments.

Currently, manufacturers only have to declare performance for one essential characteristic of a construction product in order to obtain CE marking. While it is not intended to oblige manufacturers to declare performance related to all product characteristics covered by Harmonised Technical Specifications, a revised CPR would, similar to its current Article 3(3), empower the Commission to lay down mandatory characteristics by Delegated or Implementing Acts where necessary, most frequently in the context of having such a specification cited or adopted. Thus the revised CPR would start with the current situation where only one of the characteristics needs to be declared. However, based on a more precise analysis of the respective product group, regulatory needs, safety and environmental aspects, certain characteristics can be gradually made mandatory.

[1] In line with, but not duplicating REACH (OJ L 396, 30.12.2006, p. 1–849, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX: 32008D0768) and other legislation on chemicals such as Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures (OJ L 353, 31.12.2008, p. 1–1355, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R1272).

What is your position on this?

Neutral

Please explain your position:

Although the glass industry is not requesting to have new characteristics added to our products' DoPs, Glass for Europe has no objection to the idea expressed as far as the list remains reasonable. It must be noted however that declaring that the product comply with Member States' regulation is not possible in practice for most regulations. In the case of EPB regulation for example, the requirements depend on the type of building and the location. When it comes to acoustic regulations, criteria depend on the type of occupancy, etc…These elements are not known by the manufacturer when the DoP is established.

Please note that the assumption that only one characteristic is necessary to CE-mark is not correct in most cases as the declaration of several characteristics may be mandatory to comply with Article 6 (3)(e), as is the case for most glass in building products.

True claims or no claims

Wherever performance information or a product characteristic is declared, whilst there is not yet any Harmonised Technical Specification, the manufacturer would be obliged to ensure the correctness of the declared information by using at least "state of the art" methodology. This brings standards into play in an additional (third) way.

To avoid misleading claims, the manufacturer should be obliged to assess the performance or the characteristic in accordance with a methodology that fulfils the quality notion “state of the art” or “best available technique” (the latter being more severe). The “state of the art” or “best available technique” is to be determined on a case-by-case basis in the light of available methodological documents, namely but not exclusively international and EU standards. Thus, in addition to the incorporation of the content of standards into Commission acts (1st path) and harmonised standards becoming harmonised technical specifications (2nd path), there would be a third, more remote and indirect way of using the valuable content of standards (3rd path). This third path would not be subject to the same legal and formal constraints as the other two. It might resuscitate some of the advantages of the “New Approach” in its initial stage, meaning before full legal control of harmonised standards became obviously mandatory through Regulation (EU) 1025/2012 on European Standardisation and rulings of the European Court of Justice.

What is your position on this?

I fully disagree

Please explain your position:

This clause is not clear particularly whether the claim will lead to CE-marking or not. As it seems to be the case, Glass for Europe disagrees as it will be confusing for the market. The practical ways to apply this are unclear. If this third path is not subject to the same legal and formal constraints as the Commission Acts or harmonised technical specifications paths, any manufacturer self-declaring performances which were assessed following self-designated "best practice" will be allowed to CE-mark its product.. This will create confusion and chaos.

Moreover, the best available technique shall be implemented in the standard when recognised by the experts as being really the best one.

If you have technical suggestions, please provide them:

Don't open the door to uncontrolled and uncertain ways to obtain CE-marking. Products not (yet) covered by a hEN or by an ETA shall be placed on the market without CE-marking. This is clearer for the market and for the authorities.

Better coverage of Member States’ needs by determining the “harmonised zone”

Following a given procedural order, Member States would, after a fair standstill period, become free to establish national requirements where EU provisions do not yet satisfactorily cover the relevant aspects.

In order to better cover Member States’ regulatory needs, a revised CPR would allow the Commission to determine by Delegated or Implementing Acts the exact borderlines of the “harmonised zone” [1], the sphere effectively covered by EU law. This clarification would work with product lists and lists of aspects covered. This would bring the legal concept of “exhaustiveness” (hindering Member States to regulate or otherwise interfere) in line with the de facto degree of “completeness” of the CPR Acquis. It would also reduce a good part of the legal uncertainty of the current CPR.

The procedure upstream to the determination of the “harmonised zone”, together with the procedure for the development of technical specifications, would give Member States the right and obligation

to communicate needs for technical aspects to be covered. If, after determination of the "harmonised zone", Member States discover additional regulatory needs, they have to communicate them first to the Commission so as to give opportunity to cover them at EU level. Only after a standstill period of e.g. 4 years Member States would be authorised to establish additional national requirements, provided there is evidence of the relevant Member State's regulatory need and if the claimed needs are legitimate. In order to avoid the establishment of protectionist trade hurdles through the back-door, some acceptability criteria for Member States' needs should be developed – not every need, even when well documented, might be legitimate.

A variant for the above mentioned standstill period could be that, after obtaining a formal [2] or implicit [3] validation, any Member State could introduce a national assessment method, to be used in relation to essential characteristics still lacking a harmonised EU method, for the duration of that standstill period. Notified Bodies across the EU could also apply that method and issue certificates on the basis of it. Other Member States would be obliged to recognise the respective assessment methods and certificates.

[1] The expression "harmonised zone" has been chosen on purpose because the expression "harmonised sphere", referred to in the context of rulings of the European Court of Justice, is broader and also encompasses aspects that are not covered by harmonised technical specifications in reality.

[2] By a decision of the European Commission.

[3] No objection by other Member States or the European Commission.

What is your position on this?

I tend to agree

Please explain your position:

The procedure described in this article is interesting. Indeed, new regulatory needs shall be taken into account as far as they are really legitimate. To Glass for Europe, this clause means the EC would have the right to prevent a Member State to legislate on needs that are not considered as legitimate by the EC and/or other Member States. This will be a good way to prevent protectionist measures.

Glass for Europe is not in favour of the variant described in the last paragraph of this clause. Indeed, if countries can develop their own test methods during the stand-still period, they will not be keen to abandon it later. This would lead to the same situation than that faced today with the classification on emission of dangerous substances... In the meantime, the industry will have to perform tests according to all methods, knowing that they will be valid for 4 years only. It is a waste of time and money for an item not deemed legitimate by most.

If you have technical suggestions, please provide them:

New regulatory needs, when legitimate, shall be introduced as amendment to the standardisation request.

Improving legal certainty

A revised CPR would improve legal certainty by addressing interpretation issues and clarifying the validity of Commission acts adopted prior to the application date of a revised CPR.

Many of the sections above deal also with legal uncertainty. In addition, the revised CPR could contain the following elements:

Under the current CPR, several ambiguous definitions have led to divergent interpretations. A revised CPR would seek to address such interpretation issues as far as possible. This would include making more specific existing definitions (e.g. for 'construction product', 'construction work' and 'placing on the market') as well as introducing new definitions where necessary (e.g. for 'assembly', 'module' and 'building').

An internal analysis showed that under the current CPR, substantive legal uncertainty exists regarding the validity of acts adopted under the CPD, its predecessor, in particular where their content is not fully in line with the CPR. To prevent this from occurring again, a revised CPR would lay down clear rules on the validity of Commission acts adopted prior to its application date. This is evidently also part of the smooth phasing-in of the revised CPR.

What is your position on this?

I fully agree

Please explain your position:

Clarification is always welcome.

4. Transition

Ensuring a smooth phasing-in of the revised CPR

For a variety of legal reasons, only very few of the current Harmonised Technical Specifications, Commission Delegated and Implementing Acts could be used immediately and as such under the future CPR. Hence, clear transitional provisions would provide for a multiannual phase-in period, during which a large part of the CPR Acquis would be readopted, whilst the old CPR remains applicable.

Almost the entirety of the current CPR Acquis has to be rebuilt and readopted. This will not happen overnight. Given the size of the current Acquis (444 Harmonised Standards and 157 EADs), the entire exercise will take at least 5 to 10 years. In the meantime, transitional provisions would provide, where appropriate and for a limited time, for the continued application of the current CPR's Acquis for those product groups not yet covered by Harmonised Technical Specifications that are fit for the future CPR. Both regimes would thus exist in parallel for many years to come. This would trigger the need for authorities and economic operators to distinguish between products placed on the market under the old CPR and those placed on the market under the new CPR, possibly even with a distinct marking. A distinct marking would also make sense in so far as, contrary to other sectors, the CE marking on construction products refers to performance declaration, not to conformity. To shift to a distinct marking on the occasion of the introduction of the new CPR could thus kill two birds with one stone.

To organize this process, transitional provisions would lay down priorities according to which the development of the future CPR Acquis could be planned. Priority would be given to product groups that are of high importance to Member States (in view of the safety of buildings), that are most relevant for the internal market, or that raise problems regarding inherent product safety, consumer protection and the environment (see the CPR's legal basis Article 114 TFEU).

As it is likely that the harmonised technical specifications adopted under the CPD and the CPR cannot be transferred into the future CPR, there is a need to adopt a high number of technical specifications in very short time, that is to say much less than the previously mentioned 5 to 10 years. As the first wave of technical specifications will mainly consist of technical content already included in current Harmonised Technical Specifications, major impacts for economic operators are not to be expected. Therefore we expect the acts to be adoptable without impact assessments.

Lastly, the transitional provisions would stipulate the continuation of the legal validity of certificates and other documentation issued under the current CPR or before, or clarify that certain document types have to be reissued, either by the end of the general transition period or by the respective ends of the “coexistence” periods between the current and the new CPR regimes per product family.

What is your position on this?

I tend to disagree

Please explain your position:

Although this clause contains interesting ideas, there are some weaknesses in the reasoning. A new CPR will not modify the characteristics declared, but only the legal context. For the users, only the content of the DoP is of some interest, and our industry hopes that a modified legal framework will not impact this.

Glass for Europe understands the intention to define priorities, but it shall only concern the legal aspects of the hENs and not the technical ones. There is no reason to prevent experts to work on standards for the only reason that the products they are experts in have a low priority. Standardisation work can be done in parallel for different product families. In this respect, answers to mandate and citation shall be possible until the Mandate is revised and converted into a standardisation requests in accordance with the future CPR.

Glass for Europe is firmly against the replacement of the "CE" mark by another mark. Indeed, the CE-mark is now well established on the market and it will take years to bring another mark at the same level of awareness. Moreover, the CE-mark has a good reputation also outside Europe. In some other regions of the world, bearing the CE marking is a condition imposed by private building contractors. It clearly gives an advantage to EU producers that should not be lost for semantic reasons.

If you have technical suggestions, please provide them:

The EC priorities shall not prevent CEN TC to issue harmonised standards and have them cited, especially when the priority given to their product is low.

Correctly prepare the transition by providing guidance and templates to the TCs. This is the main reason of failure of hENs to comply with the current CPR.

Keep the CE-label. All stakeholders in the building sector know it and accept it.

Option C - Focusing the CPR

The CPR would be focused, freeing up capacity to improve the quality and comprehensiveness of the remaining harmonised sphere. This option builds on the “Repairing CPR” option, meaning that it would, to the extent that there is compatibility, include all the elements described in Option B. The three elements presented here could be combined:

Element 1: Limiting the CPR's scope to assessment methods

The Common Technical Language would be limited to assessment methods.

Harmonised Technical Specifications would include only assessment methods for performance calculation. No performance threshold levels or classes would be laid down at EU level. No other requirements or “characteristics” would be established at EU level.

Assessment methods would be developed as set out under Option B.

As a primary root, the Commission would adopt Delegated or Implementing Acts containing Harmonised Technical Specifications indicating which assessment methods apply to certain identified essential characteristics of a specific product family. In doing so, the Commission would base itself on the assessment methods included in existing standards. The result would be a list of assessment methods specifying the range of product families and the essential characteristics they address, published in the OJEU.

National construction regulation would refer to these harmonised assessment methods. Member States would be obliged to refer to harmonised assessment methods when setting up product-related requirements in their construction regulation and to list the product families to which a particular assessment method should be applied. Indirectly, therefore, manufacturers of products covered by harmonised assessment methods will be obliged to use those methods when selling on the EU market.

Entire product groups for which no harmonised assessment methods have been provided would fall outside the harmonised sphere and would be covered freely by national legislation, including national assessment methods, and EU rules on mutual recognition. The Member States would have the same freedom with regard to the essential characteristics of a certain product group which have not been covered by a harmonised assessment method.

What is your position on this?

I fully disagree

Please explain your position:

Several difficulties will emerge with this option:

- *"No performance threshold or classes would be laid down at EU level": if the one defined in the standard are not accepted by the Member States, it will be an issue when drawing up the DoP, as several systems of national classes will have to be taken into account. Moreover, in some testing procedures, classes are defined by themselves (example: bulletproof glass, where the combination weapon/ammunition defines the class).*

- *"In case some essential characteristics of certain product group have not been covered by a harmonised assessment method, the Member States would have the freedom to cover it freely by*

national legislation, including national assessment methods". This sub-clause is not in line with the system described in Option B, sub-clause entitled "Better coverage of Member States' needs by determining the harmonised zone". Moreover, it will open the door for protectionist measures.

Glass for Europe is against this option, which does not give enough guarantee of effective harmonisation at European level.

Element 2: Limiting the CPR's scope to core areas

Core areas would be identified during the legislative process.

The CPR's scope would be redefined to focus on core areas, and this would be done at the level of the CPR itself so that an amendment of the CPR would be needed to go beyond the boundaries of that scope. The core areas would be identified according to three criteria: the coherence of Member States' regulatory needs [1], the relevance for the environment or for citizens in terms of safety [2] and market relevance.

These criteria are thus not only applied by the Commission when setting priorities for formulating Harmonised Technical Specifications as could be the case under Option B, but already by the legislator when determining the overall scope of the CPR.

This approach would permit a better focusing on the regulatory needs of the Member States. It would give Member States the certainty that the EU cannot quickly extend the harmonised zone beyond what is laid down as the scope of the CPR. It would also to some extent "legalise" the de facto market fragmentation that already exists in some areas. On the other hand, it would deprive the Commission and the Member States to react quickly on new harmonisation, safety or environmental needs.

[1] Thus excluding areas where Member States' regulatory expectations and needs differ so much that a harmonised approach barely makes sense.

[2] "Safety" in a broad sense, including e.g. harmful emissions.

Outside core areas mutual recognition would apply.

For essential characteristics and products outside the resulting core areas, Member States could lawfully regulate performance assessment and communication (subject to Articles 34-36 TFEU). National requirements subject to notification under Directive 2015/1535 would be notified through TRIS (Technical Regulation Information System [1]), allowing the Commission to follow up by initiating amendments to harmonised technical specifications if appropriate. If the Commission does not, mutual recognition rules would apply (to the limited extent they are effective in the construction sector [2]). For all other aspects, Option B would apply, but evidently limited to the reduced scope.

[1] The (EU) 2015/1535 procedure aims to stop barriers before they materialize in the internal market. Through TRIS, Member States notify their legislative projects regarding products and Information Society services to the Commission which analyses these projects in the light of EU legislation. Member States participate in this procedure on an equal footing with the Commission and they can also provide their opinions on the notified drafts.

[2] See the analysis of the effectiveness below at the end of Option E (the repeal option).

What is your position on this?

I fully disagree

Please explain your position

The disadvantages of this approach are provided in the consultation document itself:

"It would also to some extent "legalise" the de facto market fragmentation that already exists in some areas. On the other hand, it would deprive the Commission and the Member States to react quickly on new harmonisation, safety or environmental needs."

In addition, Glass for Europe does not believe that mutual recognition will work in practice. Indeed, our industry has observed in some Member States that type test reports coming from other Member States are not accepted. Moreover, some Member States have set up "applicability rules" that create new barriers to trade.

Glass for Europe is strongly against this option.

Element 3: Making the Common Technical Language optional for manufacturers

Manufacturers could choose whether they use the Common Technical Language.

In case manufacturers choose not to use the common technical language to assess and communicate performance, they would not be allowed to affix CE marking or deliver any document that could be mistaken for a Declaration of Performance.

Member States would remain obliged to offer market access to manufacturers that choose to use the Common Technical Language.

Member States would continue to be required to offer a path to market access based on national requirements referring to the Common Technical Language. Manufacturers would thereby have the certainty of access to the European market if they use the Common Technical Language. Thus, the free circulation of products, which is the CPR's goal, would be ensured for these products.

Member States would be allowed to regulate for an alternative path to market access not based on the Common Technical Language.

Member States may wish to take into account in their national requirements the possibility of manufacturers not using the Common Technical Language. Such deviating requirements would constitute an alternative path to market access, so that manufacturers have a choice. More leeway would thus be given to the use of national marks, to the extent that these do not hinder market access based on the Common Technical Language [1].

Evidently, such an alternative national path might lead to higher performance requirements and subsequent marketing advantages, although free circulation is not ensured. Alternatively, an alternative national path might also lead to lower requirements than in the Common Technical Language path, e.g. by allowing test methods which are less severe than the ones foreseen at EU level or by refraining from minimum threshold levels. Therefore, the EU regulation would no more achieve the goal of establishing minimum environmental or safety requirements. Accordingly, Element 3 might not be in line with the obligation of Article 114 TFEU to pursue a high level of protection of these values.

[1] However, unless deliberately decided otherwise by the legislator, ECJ ruling C-227/06 would apply, limiting the room for national marks.

What is your position on this?

I fully disagree

Please explain your position:

This is probably the worst option with Option E…

Having two different ways to access the market, one based on the Common Technical Language, and the other based on national requirements and national marks will sign the end of the EU single market for construction products.

Some Member States and national marks will not resist bashing the Common Technical Language, influencing the market to request only national marks. At the end, there will be no choice left for the manufacturer to privilege national certifications and marks, which means Europe will revert to the pre-CPD situation of fragmented markets.

To Glass for Europe, this option should not be considered.

Option D - Enhancing the CPR

Under this option, a revised CPR would introduce product requirements, dealing with product inherent aspects [1], in order to protect health, safety and the environment. It builds on Option B "Repairing CPR", which in turn includes the Baseline scenario outlined under Option A. Such product requirements could follow two different approaches, which are outlined under D1 and D2. The elements common to both approaches are outlined here:

[1] Thus not with aspects that become relevant for health, safety and the environment via the construction works.

Product requirements would be gradually introduced into the CPR system.

A revised CPR would gradually introduce product requirements for certain specific product inherent aspects of selected products or products families. Going beyond the provision of a common technical language for the assessment of performance, such requirements would prescribe the products' mandatory minimum requirements. [1] The current common technical language approach would thus be complemented by proper product requirements aimed at ensuring the health and safety of citizens and protection of the environment. The degree to which health and safety of citizens and protection of the environment can be improved would determine priorities.

[1] These requirements can go beyond threshold levels as they might also touch upon non-scalable characteristics, labelling, instructions for use etc. They might relate to physical characteristics like (absence) of sharps, mechanisms or other characteristics protecting users, IT safety, electrical and mechanical safety etc., but also to environmental characteristics like easy disposability or recyclability.

Tailor-made product requirements would in particular ensure inherent product safety.

This option would allow for the introduction of effective product safety requirements and obligations in order to guarantee inherent product safety in the standards (see D1) or in the technical specifications (see D2).

Inherent product safety should be distinguished from construction work's safety, which is framed by national legislation. Manufacturers of the products concerned would have to comply with such requirements and obligations even if their products are not covered by national regulation on construction works, for example in the case of products sold directly to consumers in DIY (do-it-yourself) shops. [1] They would not have the possibility to refrain from CE marking and thereby avoid EU regulation. A similar logic could apply to environmental product requirements.

[1] European Commission services took note of the fact that some national regulation on construction works also covers DIY products. However, they are also aware that this is anything but systematic. Furthermore, the application and in particular the market surveillance varies strongly. In view of all this there is a regulatory loophole.

The CPR itself would include a first thin layer of horizontal product requirements.

A first thin layer of "horizontal" environmental and product safety requirements and obligations would be laid down in an Annex to the CPR itself. Currently, the European Commission and the Member States are assessing which types of requirements and obligations are necessary or at least useful for the vast majority of construction products. In order to avoid repetition in each individual Harmonised Technical Specification, these requirements and obligations could already be laid down

horizontally. A certain number of these horizontal requirements and obligations are likely to be identified in particular with regard to instructions for (safe and environmentally friendly) use and environmental information [1]. Some of them might also be of such fundamental character (e.g. the obligation to disclose chemical components) that it is legally preferable, if not necessary, to establish them at the level of the CPR itself.

The establishment of such a thin layer of horizontal requirements and obligations would establish a kind of minimum protection of the three goals prescribed by the CPR's legal basis (Article 114 TFEU) besides ensuring the functioning of the internal market: environmental protection, safety and (in our case: indirectly) consumer protection. It would have this role wherever Harmonised Technical Specifications are incomplete. In particular, in the first phase of the applicability of the new CPR, it is likely that some Harmonised Technical Specifications will be incomplete.

[1] Which could well go beyond the information needed under BWR 3, 6 and 7, namely in view of chemicals legislation.

Background: One has to distinguish between the safety of construction works and the inherent safety of construction products as such. Article 114 TFEU, the CPR's legal basis, requires a "high level of protection". The Commission's proposal therefore must be oriented towards this goal. The Commission has an obligation to investigate possibilities to enhance citizens' health and safety by establishing requirements for the inherent safety of construction products. It should also be remembered, however, that Option D is only an enhancement option, an add-on. It builds on the CPR as "repaired" under Option B and still has the Common Technical Language approach at its core. It is thus aims at enhancement and does not propose a radical system change.

What is your position on this?

I tend to agree

Please explain your position:

Glass for Europe is supportive of the introduction of mandatory minimum requirements for construction products, where relevant, in order to protect consumers, to safeguard environment and to enhance safety. This is the only way to guarantee a minimum quality level, especially in countries where no or only a few national regulations are in force.

The glass industry also welcomes the reintroduction of the concept of "conformity", understood as "conformity with the standard", i.e. durability, tolerances, acceptable defects, etc..., all characteristics that are hard to describe in a DoP.

If you have technical suggestions, please provide them:

Allow the definition of mandatory minimum requirements for durability.

Re-establish the concept of "durability of the product" instead of "durability of characteristic X", where relevant.

Reintroduce the concept of conformity with the standard for all aspects that cannot be described in a DoP, like visual defects, dimensional tolerances, etc., where relevant.

Option D1 - New Legislative Framework approach for product requirements

Beyond the initial thin layer of horizontal environmental and product safety requirements and obligations laid down in an Annex of the CPR, Option D1 would formulate product requirements based on the New Legislative Framework approach. In case the resulting requirements address certain aspects covered by the CPR's horizontal requirements in a more specific manner, these more specific requirements would supersede the relevant horizontal requirements.

Essential requirements would be laid down in standardisation requests.

For the products or product families concerned, essential requirements would be laid down in standardisation requests addressed to CEN.

What is your position on this?

No view

Please explain your position:

Implications of such an approach based on the New legislative Framework are not clear to us.

If you have technical suggestions, please provide them:

CEN would be requested to develop voluntary standards.

CEN would be mandated to develop standards providing technical detail. These voluntary standards would be harmonised by referencing in the OJEU.

What is your position on this?

I fully agree

Please explain your position:

This seems to be the same as today's system. The system is properly designed and could function well provided slight adaptations. The main problem to address is the lack of advices / templates to help TCs to write standards acceptable for citation.

Compliance with standards would provide presumption of conformity.

Compliance with the voluntary standards would lead to the presumption of a product's conformity with the relevant essential requirements, but other means to prove conformity would remain possible.

What is your position on this?

I tend to disagree

Please explain your position:

This needs clarification. The words "essential requirements" are CPD's terminology and are not used in the current CPR. For our response, Glass for Europe assumes you mean "basic requirements of construction works". It is important to know whether you speak about products requirements or work requirements.

Conformity with the standard doesn't lead to the presumption of conformity to the relevant basic requirement of construction work since the level of performance requested depends on the national legislation, the intended use, etc. Moreover, some products are only components and will achieve the requested level of performance by adequate combination with other construction products (glazing in a window, insulation of a wall, etc…)

If you have technical suggestions, please provide them:

The only conformity that can be claimed when a product is compliant with a standard is the conformity with this standard and with the performances declared, not more. More specifically, the durability shall not be assessed as the durability of one specific characteristic, but as the durability of the product. Very often, durability tests cover several characteristics. The concept of compliance "with the standard", applied to the durability of the product, may solve this.

The Declaration of Performance [1] would, depending on the case, be complemented by a Declaration of Conformity and both would be combined in one document.

[1] One and the same product may fall under the classic Common Technical Language Approach (triggering the need for a Declaration of Performance) and the newly introduced product requirements, triggering the need for a Declaration of Conformity e.g. for inherent aspects of product safety.

What is your position on this?

Neutral

Please explain your position:

The assumption that if a product conforms with the relevant standard, it is safe by itself is not correct for many products. For example, an annealed glass can break in pieces that are sharp and can cause injuries to people. When used in a small window placed at a certain height from the ground, it is safe, when used in a balcony, it is not safe. The possible declared conformity can only be the conformity to the standard, mainly with aspects such as durability, tolerances, acceptable defects, etc…

Nevertheless, it may be relevant for some products, like fire alarms to give only one example. The proposed approach may be possible but cannot become a rule applicable to all construction products.

Option D2 - Technical Specifications Approach for product requirements

Beyond the initial thin layer of horizontal environmental and product safety requirements and obligations laid down in an Annex of the CPR, Option D2 would formulate product requirements based on the Technical Specifications Approach. In case the resulting requirements address certain aspects covered by the CPR's horizontal requirements in a more specific manner, these more specific requirements would supersede the relevant horizontal requirements.

Detailed requirements would be included in Harmonised Technical Specifications.

Considering the problems experienced with the quality of the harmonised European standards at the core of the current CPR system [1], it appears appropriate to envisage the possibility for reconsidering the Technical Specifications Approach for product requirements (the "Old Approach"). For the products concerned, the relevant Commission acts would lay down technically detailed product requirements.

[1] In most cases, harmonised standards

do not cover all the essential characteristics impacting the Basic Work Requirements listed in Annex I to the CPR;

certain draft standards remain blocked by industry representatives to protect national markets;

most harmonised standards offered by CEN for citation in the OJ contain legal and other formal deficiencies (this is the reason for a high rejection rate by the COM services and cumbersome repair exercises, all delaying the timely adoption and subsequent OJ listing of harmonised standards);

harmonised standards quite often contain content which aims at the protection of certain major companies and thus turn out to be SME-unfriendly;

finally, EADs are often cast in such a way that they cannot be used for a broad range of products (hence they cannot always serve as substitutions for missing harmonised standards).

What is your position on this?

I fully disagree

Please explain your position:

Glass for Europe does not share the dark picture made of the current difficulties encountered by TCs to have their standard cited. Most of the time, the origin of the problem was the ever-changing directives and the lack of guidance. If standardisation requests are correctly written and updated, if guidance is provided on how to write a good harmonised standard, no major problem should be expected.

Glass for Europe does not believe that the Commission laying down technically detailed product requirements in legal Acts will improve the situation. Technical knowledge is at CEN TCs level. An improvement of the system through reliable and stable guidance is the best way forward.

Requirements would be developed in line with Option B.

Like under Option B, the Commission would be empowered to adopt Delegated or Implementing Acts containing, alongside the technical specifications pertaining to the Common Technical Language approach, detailed product requirements. When formulating technical specifications, the Commission would gather information from different actors depending on the products and characteristics under consideration (e.g. CEN, private standardisation consortia, the Joint Research Centre, industry groups, Regulatory Advancement Bodies, Member States or groups of Member States). Such Commission Acts would be developed step by step and in accordance with clear priority setting, in particular by Member States.

What is your position on this?

I fully disagree

Please explain your position:

It is doubtful that the EC has the resources and the technical expertise to perform this work. It will be a loss of time for all parties. Experience has shown that the adoption of delegated acts is also a lengthy process and the multiplication of such acts will not improve efficiency.

The different actors cited do not have competitive advantages compared to CEN as they are not organised to consult all stakeholders. The risk is also high that they will compete with each other or that they will propose subjects to get funding and not because it is relevant for the sector.

Harmonised standards would continue to play a role.

Harmonised European standards would have a new role because the technical specifications adopted by the Commission would partly refer to such standards, e.g. for test methods contained in the standards.

Other content of the harmonised European standards could simply be integrated into Harmonised Technical Specifications.

What is your position on this?

I tend to disagree

Please explain your position:

What is the meaning to call these standards "harmonised European standards" if they are overtaken by harmonised technical specifications written by EC? They will be nothing more than supporting standards.

If you have technical suggestions, please provide them:

The Declaration of Performance [1] would, depending on the case, be complemented by a Declaration of Conformity and both would be combined in one document.

[1] See footnote 28.

What is your position on this?

I tend to disagree

Please explain your position:

Same comment as for the equivalent question in D1. This assumption is based on the idea that if a product conforms to the relevant standard, it is safe by itself. But this is not the case for most products. The possible claimed conformity can only be the conformity to the standard, mainly with aspects such as durability, tolerances, acceptable defects, etc…

Option E - Repealing the CPR

The CPR would be repealed without any substitute.

There would be no harmonisation, i.e. no common technical language, no mandatory harmonised standards, no voluntary harmonised standards either, no basic work requirements for construction works, no obligation to draw up a Declaration of Performance or communicate it, no CE marking, no classes or thresholds, no AVCP systems and no conditions for classification determined at EU level.

What is your position on this?

I fully disagree

Please explain your position:

This option means the end of the single market for construction products and a step backward in terms of quality, safe construction works, consumer and environmental protection. The arguments against this option are contained in the consultation document itself. The industry cannot afford such a step backward.

Relying on mutual recognition would likely fragment the construction products market.

Based on experience outside the sphere for which requirements are set under the CPR, doubts must be raised as to the effectiveness of the principle of mutual recognition. The main reason for the supposedly weak effectiveness of the principle is that Member State regulations on construction works (and thus implicitly the product requirements derived therefrom) differ very much, as is also proven by the fact that national regulation requires very different performance levels. Hence little conclusion [1] can be drawn from the acceptance of a certain product with regard to Criteria list A in Member State X for the Criteria list B in Member State Y, the Criteria list B reflecting other construction work needs that are easily explained by natural factors. A strategy based on mutual recognition thus becomes particularly risky in the field of construction products. These elements may explain why, in reality, manufacturers mostly seem to adapt to the different national requirements in all the different Member States where they wish to market their products, without relying on mutual recognition. Repealing the CPR is likely to compel manufacturers of ever more construction products to go down this road.

Equally, the current CPR-imposed criteria on the design of public tenders would cease to apply. The diversity of requirements established in public tenders would widen even more.

[1] Regarding the likelihood of acceptance or matching.

What is your position on this?

I fully agree

Please explain your position:

Glass for Europe fully agrees that mutual recognition is an illusion. Countries will find a way to hinder the free circulation of goods through national marks and certifications.

If you have technical suggestions, please provide them:

The repeal would not contribute to the European Green Deal.

It must be noted that a repeal without replacement would not, contrary to a CPR as revised as outlined in Options B and D, provide a substantial contribution to the European Green Deal (e.g. by providing harmonised information on construction products' environmental performance or introducing environmental product requirements).

What is your position on this?

I fully agree

Please explain your position:

A repeal will restrain the implementation of any global measures form the CE, among others those linked to environmental protection and the EU Green Deal.

Annex III - Harmonised Technical Specifications under Options A and B

Whereas Annex I and II link clearly to particular elements of Option B, Annex III sets out more generally the differences between the current standardisation system and the proposed Harmonised Technical Specification system under Option B. It describes the current problems, the proposed changes and their pros and cons. You are invited to share your thoughts on this text.

What is your position on this?

Neutral

Please explain your position:

1. Issues of the current HTS system

A first comment to this annex is that the specification writers, members of CEN technical committees, have probably not realised that they indirectly became regulation writers as a consequence of the CPR. It has taken some time for these experts to understand their new status and to learn how to deal with the new expectations. It is still not completely understood today. It must be underlined that new templates have been delivered extremely late (JIS action 5 documents, delivered end of 2019) considering the date of entry into force of the CPR (July 2013). Of course, in the meantime, mistakes have been done, which led to a very low number of citations. It should be noted that these templates have not yet been endorsed by the EC, therefore uncertainties remain for the specification writers.

Concerning the 3 lists of issues: Glass for Europe agrees with some of them, other seem exaggerated (overgeneralisation of singular cases). For instance, Glass for Europe believes that the CEN system with national mirror groups that may comment and vote on standards is more democratic than alternatives suggested in this consultation document. Concerning the involvement of authorities: it is their own decision. They are sometimes members of national mirror committees, but usually they are active only in a few of them and in a few countries.

2. Outline of the HTS / standardisation system under Option B

Sub-clause b: Glass for Europe believes that CEN remains the best option to develop standard: the system of enquiry followed by a formal vote is for us the guarantee of a democratic process. Our experience with (national) certification bodies or with EOTA is not as good: stakeholders are not represented, and no system is in place to organise a consultation of the interested parties.

Sub-clause c: The fear is that this system will lead to a chaotic situation. Indeed, who will decide what is "the best available technique"? How can dialogue take place and a democratic choice be made in such a system? There is also a risk of overbidding to the "most expensive technique" instead… Glass for Europe is not in favour of this option.

3. Outlook

As a final comment, Glass for Europe would like to reiterate our support to the standardisation process. For us, it is the best way to cope with the diversity and often the complexity of technical standards.