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EXECUTIVE SUMMARY OF THE EVALUATION

of

Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC

{SWD(2019) 1770 final}

Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products (the Construction Products Regulation or the CPR)[1] was adopted in 2011 and has applied in full since July 2013.

The main objective of the Regulation, like the earlier Construction Products Directive (the CPD)[2], is to make the internal market work properly for construction products in the EU by laying down harmonised conditions for their marketing. In relation to the CPD, the CPR has three specific objectives:

1) legal clarity,
2) simplification and
3) reinforcing the credibility of the harmonised system.

The CPR diverges from the 'new approach' internal market regulations due to a combination of the following key factors: (i) the fact that construction products are intermediate products; (ii) the national competence on construction works; and (iii) the mandatory nature of harmonised standards.

The CPR does not set any product requirements for construction products. Instead, it sets harmonised rules on how to assess and express the performance of these products in view of their essential characteristics[3] (e.g. reaction to fire, thermal conductivity or sound insulation) and on their European conformity (CE) marking. Member States remain fully responsible for the safety, environmental and energy requirements applicable to buildings and civil engineering works.

The purpose of this evaluation is to assess to what extent the CPR has met its objectives and actually helped reduce obstacles to the internal market for construction products.

The evaluation has made full use of the 2018 external supporting study and various relevant studies and reports. It has also been informed by consultation activities, including the public consultation that took place between January and April 2018 and the dialogue that was launched with Member States and relevant stakeholders in 2016, in particular under the CPR review platforms. Other sources, such as the European Parliament's Committee on Internal Market and Consumer Protection and the REFIT platform, have also contributed to the assessment.

The analysis of effectiveness (the extent to which the CPR has achieved its objectives) has shown that, despite the absence of a proven causality link, cross-border trade of construction products has grown in the EU since the introduction of the CPR. Stakeholders consider that the CPR has contributed positively to this development.

However, obstacles to the smooth functioning of the internal market remain, notably the continued use of national marks and certification. Although market surveillance structures

[1] Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive, 4.4.2011, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0305.

[2] Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, 11.2.1989, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31989L0106.

[3] The categories of essential characteristics are defined in Annex I of the CPR.

have been set up and cooperation has improved, market surveillance and enforcement are generally considered to be uneven and ineffective, undermining the system's credibility. Harmonised technical specifications, in particular standardisation, have not delivered the expected benefits in terms of delivery time and quantity due to unresolved quality issues of both technical and legal nature. The common language created under the CPR seems to have met most information needs and to have partly improved users' product choice. The expected level of legal clarity has not been achieved and several of the shortcomings identified stem from unclear or inconsistent rules. This includes, for example, the insufficient uptake of simplification provisions, particularly those aimed at micro-enterprises, which represent 82% of the sector.

Investigating efficiency was limited by the absence of quantified data, in particular on the benefits of the CPR. The costs for complying with the Regulation are estimated at a significant €2.6 to €3.4 billion per year. They appear to mainly affect manufacturers (as these costs are not always passed on to clients), and their impact is particularly significant for micro-enterprises that do not sell cross-border. These compliance costs are mostly to cover product testing and labelling, and setting up factory production control. Benefits in terms of an increase in market opportunities in other Members States are difficult to quantify and only concern the companies that trade cross-border. Nevertheless, evidence shows that cross-border trade has increased (by €15 billion between 2013 and 2017). Other benefits are more intangible. For example, the CPR is an important tool to ensure the full implementation of the Public Procurement Directive[4] as it sets limits to diverging specifications in public tenders for construction works and construction products.

The relevance of the CPR seems largely undisputed despite the call for product safety and environmental sustainability to be given greater consideration. The CPR does not seem to have either a positive or negative effect on innovation. Innovation is therefore not deemed to be a specific objective of EU legislation on construction products.

Internal coherence is hampered by the weaknesses of the standardisation process and the lack of clarity of simplification provisions. The external consistency of the CPR is an unresolved issue as construction products are also covered by eco-design[5] and energy labelling[6] legislation. Further confusion is caused by duplication with other internal market legislation on specific products and gaps with legislation on product safety[7]. The mandatory nature of harmonised standards on construction products also causes confusion on the link with the Standardisation Regulation, as standards are optional under other product regulations[8].

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4 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0024-20180101.

5 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of eco design requirements for energy-related products, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0125.

6 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU, https://eur-lex.europa.eu/eli/reg/2017/1369/OJ.

7 Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0095.

8 Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025.

Finally, there are conflicts with national legislation, in particular where it sets additional requirements outside of the harmonised system[9].

In terms of EU added value, there is strong support for maintaining EU legislation on construction products by public and private stakeholders. This is due to a preference for legal stability, strengthening the internal market, and also - to some extent - stakeholders' potential reluctance to change.

In conclusion, the main shortcomings identified by this evaluation are: (i) the insufficient performance and output quality of the standardisation system under the CPR; (ii) the less than effective role of Member States in market surveillance; and (iii) the low uptake of simplification provisions. These factors have resulted in a lack of legal clarity and would require an analysis of all possible options to address them, including a repeal.

In the event of a revision, there would also be a need for improvement regarding: (i) consistency with other product legislation; (ii) the relevance of the alternative route to standardisation; (iii) the cost/benefit ratio; (iv) the duplication of information requirements[10]; and (v) certain testing and information requirements, notably environmental ones and the sustainable use of natural resources, safety and health.

[9] See ECJ ruling (C-100/13, 16 October 2014, European Commission v Federal Republic of Germany) and ongoing ECJ procedure (T-229/17, T-53/18).

[10] Between the declaration of performance and the CE marking.