The Policy Options for Revision of Council Directive 89/106/EEC

ENTR/04/93/Lot 3

Final Report

RPA

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The Policy Options for Revision of Council Directive 89/106/EEC (ENTR/04/93/Lot 3)

Final Report

prepared for

DG Enterprise and Industry, Chemicals and Construction

by

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Executive Summary

1. Introduction

The objective of the Construction Products Directive (89/106/EEC)[1], referred to hereafter as the CPD, is to facilitate the free circulation and use of construction products in the Internal Market. It achieves this by promoting the use of a common technical language by manufacturers when placing products on the market and by public authorities when defining the technical requirements of works which affect either directly or indirectly the products used in those works. Only the fulfilment of this double obligation permits the objective of the CPD to be met such that CE-marking can play its role of being a passport for the product to be marketed and used in the single market without the need for any other additional requirement (although voluntary marks may be used for the purposes of product differentiation as part of marketing).

The objective is achieved through the development of harmonised technical specifications (harmonised European Norms - hEN), i.e. standards and, for certain products, European Technical Approvals (ETAs). CE marking is affixed when it can be demonstrated that all the provisions of the CPD have been satisfied.

Simplification of the CPD is one of the initiatives under the 'Better Regulation: Simplification Strategy', with the aim being "to clarify and reduce the administrative burden of the CPD, and in particular for small and medium-sized enterprises (SMEs), through increased flexibility in the formulation and use of technical specifications, lighter certification rules, and the elimination of the implementation obstacles that so far have hampered the creation of a full internal market for construction products"[2].

Under the Framework Contract on Impact Assessments (Entr/04/093), Risk & Policy Analysts Ltd (RPA) has been commissioned to identify the problems with the existing CPD, define options that could address these problems and undertake an assessment of the implications of the options that are available. The results of this study will feed into the Commission's Impact Assessment, with the ultimate aim being to improve the implementation of the CPD.

2. Approach to the Study

The study comprised five main tasks, which can be summarised as follows:

1. identifying the main problems arising with the existing CPD based on a review of responses to the internet consultation, industry position papers and previous studies;
2. examining the degree to which different policy options could address these problems;

[1] OJ L40 of 11.2.1989, p.12, as amended by Council Directive 93/68/EEC, OJ L220 of 30.9.1993, p.1

[2] EC MEMO/05/394 and MEMO/06/426

3. developing a series of more detailed measures to act as the basis for a comprehensive revision option;
4. assessing the implications of these different measures individually and in combination and identifying a preferred revision option; and
5. identification of the implications of the preferred option for the tools and instruments of the existing directive.

In assessing the impacts of the different revision options, we have considered the costs and benefits to: EU manufacturers (divided into micro, SME and large) and non-EU manufacturers of construction products; professionals involved in the design and construction of works (including engineers, architects, designers and contractors); Member States competent authorities; the European Commission; CEN as the standardization body; and the Notified Bodies and Approval Bodies.

The types of impacts that were identified as being the most relevant are:

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

3. The Main Identified Problems with the Existing Legislation

The main identified problems can be grouped under five headings:

- **CE marking related issues**:
  - confusion as to whether CE marking under CPD relates to safety (as for the New Approach Directives) as the content of CE marking is not precisely defined in the legislative text;
  - this leads to different interpretation of requirements by approval bodies and enforcement bodies and has also resulted in the testing of products that may not have needed testing, i.e. minor products (Article 4.5) and non-series products (Article 13.5);
  - there is an uneven playing field for manufacturers across the EU as CE marking is not mandatory in four Member States[3];
  - CE marking is not fully accepted either by authorities in the Member States (MS) or by private users (designers, contractors, building/works owners, etc.) with authorities in the MS still referring to national or voluntary marks in their national regulations; and
  - there is a lack of confidence in CE marking linked to a low level of market surveillance and (perceived) lack of consistency between the approaches and results from Notified Bodies resulting in reluctance of private users, in particular insurance companies, to accept CE marking as the only legal declaration of product characteristics.

[3] Finland, Ireland, Sweden and the United Kingdom

- **issues associated with the various implementing mechanisms within the CPD**:
  - the standardisation institutions – CEN/CENELEC – together with EOTA are given, de facto, a quasi regulatory capacity while, on the other hand, harmonisation of the Internal Market is postponed by the delays in the technical harmonisation work;
  - the on-going introduction of national regulations covering product characteristics additional to those covered by hENs affects companies' ability to place their product on certain national markets and leads to an administrative burden in creating the knowledge necessary to identify what additional requirements may have to be met;
  - an ETA may be treated as being mandatory in some MS in the absence of an hEN (or a national technical approval) leading to unfair competition for those trying to gain access to these markets;
  - ETA guidelines route to gaining an ETA is cumbersome and expensive. This has led to a shift towards the use of Common Understanding of Assessment Procedures (CUAPs, under Article 9.2) for obtaining ETAs, but again there are concerns over the bureaucracy involved in the process;
  - issues have also arisen over the commercial sensitivity of the information that has to be provided in order to obtain approval for an ETA and the potential for this to become known by competitors (or that those applying for a CUAP can be easily identified by those knowing the sector);
  - holding an ETA does not necessarily grant access to markets in all MS, as a result of varying national methods of verification and rules for the design and construction/execution of works resulting in manufacturers having to comply with several sets of requirements, which may include the duplication of testing requirements; and
  - the system of attestation of conformity (AoC) is considered too complex and imprecise.

- **issues with Notified Bodies (NBs) and Approval Bodies (ABs)**:
  - concerns have arisen over the technical competence and reliability of NBs and has resulted in a mistrust in the reliability of CE marking;
  - there is a problem of harmonising the selection criteria for Approval Bodies (ABs) specific to the CPD, at the European level; and
  - concerns over competency have led in the past to the non-recognition of one AB's tests by another AB.

- **issues with market surveillance**:
  - market surveillance is practically absent and is considered by some to be resulting in abuses of the system, with falsely CE marked low quality and low price imports entering the EU market.

- **issues with very small enterprises, individual, non-series or small series products**:
  - the obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products; and
  - the increased costs of CE marking may also make their products less price competitive compared with those of larger manufacturers, who through

economies of scale, face much lower costs per unit of production from meeting CE marking requirements.

4. The Potential Policy Options

The assessment considered four main policy options:

- **Business As Usual**: continuing with the CPD in its current form;
- **No legislation**: reversion to mutual recognition, taking into account current Commission proposals;
- **Move to an approach consistent with the common framework for marketing of products**: revision of the CPD such that it comes fully into line with the New Approach, including the provisions of current proposals; and
- **Revision of the existing CPD**: clarification, expansion and revision to address the identified problems.

It was concluded that revision of the existing CPD provided the only means of addressing all of the main identified problems. The objective of the CPD cannot be met by continuing with 'business as usual', while reversion to mutual recognition under a 'no legislation' option is likely to introduce new barriers. The key differences that exist between the basis for CE marking in the field of construction compared to the Common Framework means that full alignment is not possible. Certain of the elements of the proposals for a future common framework may, however, provide a means of addressing particular problems that have arisen with the implementation of the CPD.

5. Measures for Addressing the Main Problems

The next step was to identify a short-list of the types of measures that could be adopted to address the main problems. This short-list was developed based on a review of 65 possible different 'solutions' drawn from consultation responses, position papers, consultation undertaken specifically for this study and previous research.

The short-list of measures resulting from this process and examined in detail in the study is given in Table 1. It is important to note that for all of these measures there is the alternative of doing-nothing, i.e. making no changes to the relevant tools or instruments within the current legislation. This do-nothing alternative forms the baseline against which all measures are assessed; it is not a static baseline, however, as it reflects the expected situation between now and 2015 in terms of the availability of standards, the credibility of CE marking, etc. should no changes be made to the current legislation.

The expected implications of each of the short-listed measures on each of the stakeholder groups and across each of the impact categories listed above were assessed using a seven point rating system (-3 to 0 to +3), together with qualitative descriptions of the expected impacts.

Table 1: Short List of Measures	
Measure	**Sub-Measures**
A: Clarification of the objective and scope, including clarification of Article 4.2, Article 13.5 on the extent that the CPD applies to kits, systems and parts of works	No sub-measures
B: Clarification of definitions and concepts specific to the CPD such as 'no performance determined'	No sub-measures
C: CE marking against the ERs of products rather than works	No sub-measures
D: CE marking measures	**D1**: CE marking is made mandatory and national marks must be withdrawn **D2**: CE marking is mandatory for those products that fall within the scope of the legislation but this is defined more flexibly, CE marking remains the only legal means of declaring harmonised product characteristics, national marks must be withdrawn
E: Additional routes for CE marking	**E1:** CE marking against a Technical File **E2:** CE marking against mandates and supporting standards
F: Simplification of the routes for ETAs, with four alternatives	**F1:** no future use of ETAGs, simplification of process for obtaining CUAPs, strengthening of competency requirements for ABs **F2**: introduction of provisional and national ETAs **F3**: preparation of new ETAGs and introduction of a simplified information procedure
G: Simplification of the system of AoC	**G1:** reducing the number of levels from six to three **G2:** reducing the number of levels from six to four **G3:** moving to the NA modules as the basis for AoC
H: Increased promotion of conformity without testing methods	No sub-measures
I: Expanded use of IT systems	**I1:** Use of IT for provision of a limited amount of the CE marking information **I2:** Expanded use of IT to provide most of the CE marking information **I3:** Creation of an EU-wide database for registration of products and associated CE marking information
J: Improved market surveillance and notified body accreditation	No sub-measures
K: Introduction of stronger EU controls over harmonisation of standards	No sub-measures

6. The Comprehensive Revision Options

An examination of the impacts of the individual measures based on the ratings enabled the identification of: clearly preferred measures, measures for which no clear preference could be determine without further analysis and measures which were not preferred. This then provided the basis for the development of four comprehensive revisions options. These comprehensive options include all of the measures for which there was a clear preference but vary in terms of the measures for which there was no clear preference.

These comprehensive revision options were then analysed to determine the overall 'best' approach to revising the CPD. The main differences between the options are: whether CE marking is strictly mandatory or is mandatory but the scope of the legislation is more flexibly defined; whether attestation is through either a simplification of the AoC to four levels or through adoption of the New Approach modules; and the degree to which CE marking information can be provided through the use of IT systems. The four revision options are summarised in Table 2.

Table 2: Comprehensive Policy Options			
Policy Option 1	**Policy Option 2**	**Policy Option 3**	**Policy Option 4**
Clearly preferred measures: **A, B, F1, H, J and K included in all options**			
D2: CE marking is mandatory but the scope is flexibly defined **G1**: changing the AoC to four levels **I1 plus I3**: limited use of IT systems	**D2**: CE marking is non-mandatory but the scope is flexibly defined **G3**: changing the AoC to the New Approach modules **I2 plus I3**: expanded use of IT systems	**D1**: CE marking is mandatory **G1**: changing the AoC to four levels **I1 plus I3**: limited use of IT systems	**D1**: CE marking is mandatory **G3**: changing the AoC to the New Approach modules **I2 plus I3**: expanded use of IT systems

The analysis of the four comprehensive revision options concluded that Option 1 was preferred. Sensitivity analysis was undertaken to test the degree to which changes in the importance given to different stakeholder groups or to particular impact categories would change the ranking and hence preference for the different options. The conclusions of this sensitivity analysis are that disproportionate weights would have to be assigned to the interests of large manufacturers or professional users (e.g. six times more important than manufacturers) for Option 3 to be preferred over Option 1. Options 2 and 4 have much lower overall weighted scores and are not preferred under any of the sensitivity analyses.

7. Overall Impacts of the Preferred Comprehensive Revision Option

The absence of EC harmonisation and use of national rules was estimated to result in reduced trade in goods of up to 10% in 2000. This is equivalent to the cost of on-going barriers to trade for the construction sector of €100 billion per year. The proposed revision option would help remove these barriers through clarification and lead to reduction in the costs faced by manufacturers (from reduced testing costs, reduced costs of ETA and increased flexibility in how to demonstrate compliance) and, hence, in the costs of products placed on the market.

The total estimated savings of the measures that would be introduced under the proposed option are around €1.8 billion in present value terms over the 15 year period after the new legislation is introduced (medium scenario, starting in 2010 and discounted at 4%), with the majority of these representing savings to manufacturers. This equates to savings of around €160 million per annum, or some 0.08% of the value of annual production for this sector. These savings are offset by additional costs of around €190 million in present value terms (discounted over 15 years at 4%), or roughly €16 million per annum, again with the majority of these realised by

manufacturers. Thus, the net benefits are estimated at €140 million per annum (bearing in mind that it has not been possible to place estimates on all of the savings and additional costs that may arise from the proposed combination of measures).

Impacts on other stakeholders include:

- **professional users**: short-term increase in costs from loss of national marks, but increased confidence in CE marking should minimise these costs and provide benefits from a wider range of products to choose from, and potential savings. They may face increased liability if CE marking information is only available online/electronically, indicating the need for the use of IT to be accompanied by a product register and other safeguards.

- **Member States public authorities**: increased administrative costs associated with market surveillance, setting up accreditation schemes and revising building regulations (or equivalent). However, the use of IT accompanied by the inclusion in a database of products that are electronically labelled may be of benefit to Member States in undertaking desk-based market surveillance.

- **European Commission**: costs of revising the CPD and providing guidelines or explanatory information but reduced administrative costs due to a decrease in the number of complaints. There may also be costs of verifying that standards are appropriate for publication but there may be net savings from not having to withdraw standards later. The Commission is also likely to bear the costs of creating and managing the EU-wide product register.

- **CEN**: additional costs from having to revise standards (but could be done when standards are due for revision). Also CEN may incur additional costs with re-writing standards not accepted for publication (but should be short-term costs that may be minimised with clarification of the objective of the CPD).

- **Notified/Approval Bodies**: reduction in income from reduced testing (offset to some degree as new standards come into force or with greater uptake of ETAs). Other costs include costs of complying with the accreditation framework and increased competency requirements, and costs associated with need to learn the new system of AoC (including FPC based on the NA modules).

Overall, the proposed revision option should reduce the costs of construction works to end consumers, resulting in social benefits at the EU level.

8. Implications for Tools and Instruments

To identify the modifications that would be required to the existing CPD, the measures have been grouped into those which would require similar types of modifications to be made to the legislative text. Those that are more standalone are considered individually. Taken together, the preferred option would require modification to several Articles within the current legislation, as well as to the Annexes. The key changes would be to the following Articles:

- clarification of Articles 2.2 and 2.3 and the provisions for CE marking in relation to more than one piece of legislation;
- clarification of Article 4.2 and the meaning of 'fit for use';
- clarification of Article 13.5 on the extent that the CPD applies to kits, systems and parts of works;
- clarification of the potential to add new essential requirements (e.g. by adding a new ER to Annex I as it currently stands);
- addition of new definitions into the text, including a linkage to Article 6 of the proposed Decision on a common framework for the marketing of products;
- amendment of Articles 4, 6 and 13 to make it clear in the main legislative text that CE marking is mandatory and the only legal means of declaring harmonised product characteristics for products falling within the scope of the legislation, while at the same time defining the scope more flexibly; this may include reference to Article 16 of the proposed Decision on a common framework for the marketing of products;
- modification of the system of AoC and promotion of conformity without testing as currently set out in Article 13 and Annex III of the CPD, including a possible linkage to the modules set out in Annex I of the proposed Decision on a common framework for the marketing of products in relation to FPC;
- modification of Articles 8 and 10 to simplify the route to obtaining an ETA through the use of CUAPs and to strengthen the competency requirements for Approval Bodies;
- additions to Article 4.6 and the Annex ZAs in the hENs to enable the optional use of IT systems for the provision of information on product characteristics as part of the CE marking; modified adoption of Articles 15 to 17 of the proposed Decision;
- linkages to the proposed Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007) 37 final, 2007/0029); and
- changes to Articles 5.1 and 7.3 to enable the Commission to refuse to publish problematic standards.

It is also recommended that the future legislation takes the form of a regulation and not a directive. The advantage of a regulation over a directive is that all aspects of a regulation have to be implemented in the same manner across all Member States, thus reducing the potential for differing interpretations. This should increase consistency in application across the 27 Member States and help ensure that barriers to internal trade do not arise due to differences in national implementation. Amending a regulation also has lower administrative costs than amending a directive.

Responses to Commission's internet consultation suggest that most manufacturers (EU and non-EU) would be in favour of the revised legislation taking the form of a regulation. It is not clear that this is also the case for professional users, although increased consistency in implementation may increase the ability of this group of stakeholders to trade on the internal market. Member States may not, however, prefer a regulation if it would eliminate the scope they have for taking into account linkages to national codes and regulations (although this may also be the case in any revised directive depending on how it has been drafted).

CONTENTS

1. INTRODUCTION

1.1 Background

The Construction Products Directive (89/106/EEC)[1], referred to hereafter as the CPD, is aimed at ensuring the free circulation and use of construction products in the Internal Market through technical harmonisation. It achieves this by promoting the use of a common technical language by manufacturers when placing products on the market and by public authorities when defining the technical requirements of works which affect either directly or indirectly the products used in those works. This is achieved through the development of harmonised technical specifications (harmonised European Norms - hEN), i.e. standards and, for certain products, European Technical Approvals (ETAs). CE marking is affixed when it can be demonstrated that all the provisions of the CPD have been satisfied.

As defined in Article 4.2 of the Directive, CE marking indicates that a product:

- complies with the relevant national standards transposing the harmonized standards, references to which have been published in the Official Journal of the European Communities;
- complies with a European Technical Approval; or
- complies with the national technical specifications where harmonized specifications do not exist.

Member States are involved in the implementation of the CPD process through the Standing Committee for Construction (SCC), which is made up of two representatives appointed by each Member State (MS). The European Commission prepares mandates for the development of hENs and ETAs. It consults on these with the SCC and the agreed mandates are then sent to the European Committee for Standardisation (CEN) in the case of hENs and the European Organisation for Technical Approvals (EOTA) in the case of an ETA based on Guidelines. Both organisations may comment on these mandates to the Commission, prior to starting work on the harmonised technical specifications. The Commission also adopts decisions on the level of attestation of conformity to be applied by the manufacturer (and depending on the level of attestation foreseen may involve the intervention of a Notified Body).

In October 2005, the Commission launched a three year simplification rolling programme as part of its *Better Regulation: Simplification Strategy*[2]. The aim is to make legislation less burdensome, easier to apply and thus more effective, while also preserving EU policy objectives. This includes considering whether the approach

[1] OJ L40 of 11.2.1989, p.12, as amended by Council Directive 93/68/EEC, OJ L220 of 30.9.1993, p.1.

[2] EC (2005): **COM (2005) 535 final: Communication of the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions – Implementing the Community Lisbon Programme: A Strategy for Simplification of the Regulatory Environment**, Brussels.

originally chosen is the most effective one for meeting the objectives of the legislation.

Simplification of the CPD is one of the initiatives under the Strategy, with the aim being "to clarify and reduce the administrative burden of the CPD, and in particular for SMEs, through increased flexibility in the formulation and use of technical specifications, lighter certification rules, and the elimination of the implementation obstacles that so far have hampered the creation of a full internal market for construction products"[3].

1.2 Study Objectives and Approach

Under the Framework Contract on Impact Assessments (Entr/04/093), Risk & Policy Analysts Ltd (RPA) has been commissioned to identify the problems with the existing CPD, define options that could address these problems and undertake an assessment of the implications of the options that are available. The results of this study will feed into the Commission's Impact Assessment, with the ultimate aim being to improve the implementation of the CPD.

Our approach to the study comprises a number of tasks, building on those set out in the specification for the study. These are summarised in Table 1.1.

Table 1.1: Approach and Status by Study Task

Task	Comment
Task 1: Summary of problems and objectives	Responses to the Internet Consultation and findings of PRC study were reviewed, together with industry position papers
Task 2: Identification and screening of policy options	Information provided by the Commission was reviewed, as well as industry position papers. The proposals in relation to mutual recognition and strengthening the common framework for the marketing of products within the EU, including accreditation and market surveillance, have also been taken into account
Task 3: Analysis of economic, social and environmental impacts of options	A considerable amount of material has been collated and analysed. Some validation of impacts undertaken through consultation with industry, notified bodies, and MS authorities. Rating methods used to identify costs and benefits of alternative measures
Task 4: Comparative analysis of options	Ratings have been converted to scores in order to undertake the comparative analysis of different options. This has included the use of weighting techniques and sensitivity analysis to consider how differences in assumption affect preferences for the different options.
Task 5: Assessment of tools and instruments in relation to preferred option	For the preferred option, consideration has been given to its implications for the text of the current CPD. This includes discussion of possible safeguards and additional considerations arising from the overall analysis.
Task 6: Proposals for future monitoring and evaluation arrangements	Future monitoring and evaluation arrangements linked to proposed changes and their expected impacts
Task 7: Final Reporting	Comments received on the Draft Final Report were addressed and formed the basis for production of this Final Report

[3] EC MEMO/05/394 and MEMO/06/426

1.3 Organisation of the Report

This is the (draft) Final Report to the study and provides the detailed findings of the work undertaken for this study. Unfortunately, due to the complexity of the issues involved and the potential implications of revision of the Directive to a wide range of stakeholders, it has been necessary to provide a fairly lengthy discussion on some aspects. To the degree possible, the more detailed material is provided in Annexes.

The report is organised as follows:

- Section 2 provides a brief overview of the construction industry, including an indication of the importance of internal trade;
- Section 3 discusses the background to the CPD, its aims and the problems that have arisen since its implementation in 1989;
- Section 4 examines the policy alternatives to the current CPD, including a reversion to mutual recognition, and argues for the revision of the legislation with the aim of ensuring that it better meets its stated objective and to address the problems raised in relation to the need for simplification;
- Section 5 then looks at the fundamental principles and philosophy that should underlie the proposals for revision, identifies a short-list of possible measures, and presents the conclusions of our analysis of these measures. This Section is supported by a much more detailed discussion in Annex 2 of the report;
- Section 6 then presents a comparative assessment of alternative policy options based on different combinations of measures and identifies the preferred policy option;
- Section 7 examines the implications of the preferred policy option for the tools and instruments set out in the CPD;
- Section 8 puts forward proposals for the future monitoring and evaluation of the impacts arising from revision of the legislation; and
- Section 9 provides a summary of the conclusions of the study.

2. AN OVERVIEW OF THE CONSTRUCTION SECTOR

2.1 Overview

The construction sector, as a segment of the economy, plays a strategic role in providing the buildings and infrastructure underpinning the activities of the rest of the economy. However, it is important to be clear on the diversity of activities that fall under this heading for the purposes of this study. The construction sector as covered by this study includes:

- EU manufacturers of construction products, covering the wide range of different manufacturer types (from one person enterprises through to multi-nationals) and different product types, whether these be for professionals (as defined below) or 'do it yourself' applications sold to the general public;
- professionals involved in the design and construction of works, including the range of activities carried out by engineers, architects, and designers;
- professionals involved in the construction of works (i.e. contractors – the traditional concept of the construction industry); and
- international manufacturers of construction products, involved in the direct export of products to the EU, together with EU-based importers of products manufactured outside the EU.

The importance of the construction industry to the economy of the European Union is evident from its significance to total European gross domestic product (GDP) and employment. Information provided on the Council of European Producers of Materials for Construction (CEPMC) website indicates that the EU construction industry accounts for 11% of total European GDP, while FIEC quotes a figure of around 9.9% of GDP. The European Construction Federation (FIEC, 2006) identifies the construction industry (i.e. contractors) as the largest industrial employer in the EU, employing some 14 million operatives, or 7.1%, of Europe's workforce directly. Indirectly, the construction sector (products and professionals) is reported to add an additional 12 million workers to the above figures through related employment in support services, chemicals, consulting and other such related industries.

FIEC also provides information on turnover for the sector, reporting that it was in excess of €1,000 billion in 2004. This was divided between 2.4 million enterprises, the majority of which are SMEs[4] (97% of enterprises have less than 20 employees). These figures are consistent with those reported on the European Commission's website, which indicates that an estimated €910 billion was invested in construction works in 2003 within the EU-15, representing approximately 10% of GDP and more than 50% of the Gross Fixed Capital Formation. Construction is also an important sector within the economies of the new Member States. In Poland, the Czech Republic and Hungary alone, the turnover was about €38 billion in 2003 and the market is estimated to be growing at an average rate of 4% per year.

[4] FIEC (2004): The Sector in Figures, taken from website available at http://www.fiec.org.

2.2 The Markets for Construction Products

2.2.1 Overview

Information provided on the CEPMC website indicates that the manufacture of construction materials and building products accounts for about 3.5% of total European GDP. Similarly, the Atkins Report on the competitiveness of the Construction Industry notes that production of construction materials represents around 3% of total GDP. Eurostat estimates for European GDP are of the order of €10 817 billion in 2005 for the EU-25, suggesting that the value of production materials can be estimated at around €325 to €375 billion for 2005 (which represents around 15% of total manufacturing output[5]).

The CEPMC website also indicates that direct employment in the construction materials and building products industry is around 2.5 million.

2.2.2 Trade in Construction Products

Trade figures for the EU-25 for an indicative list of products identified on the Eurostat trade database are provided in Table 2.1 for 2005 (note that the figures do not include trade by non-EU Member states that are part of the EEA).

The calculations given in the table are based on data produced by PRC Bouwcentrum (2006) using Prodcom Codes. As noted in the PRC Report, such trade figures should be interpreted and used with caution, the main reasons being:

- the production sold data is less complete (because of gaps in the Prodcom database and confidentiality of the data);
- it was not viable to provide separate product codes for two of the 13 product families, namely chimneys and geotextiles, as no Prodcom or CN/HS codes used by Eurostat appeared to categorise these products families;
- it was not always possible to classify all products that fall within a product family; and
- production and trade data for a certain product do not specify the end use.

As it can be seen in the Table, the EU is a net exporter in 11 of the 14 products considered. This is more the case for metal structures, wood-based panels, ceramic tiles and pipes; where there seems to be more intra-community trade. More importantly, the figures given in Table 2.1 indicate that intra-EU trade accounts for around 18% of production within the EU. This highlights the fact that many markets remain local/national but also suggests that there are still likely to be barriers to trade within the internal market. However, these figures do not only account for all production and trade activities, representing about 65% of the estimated total production value.

[5] The manufacturing represents in turn around 22% of total EU GDP.

Table 2.1: Trade Statistics By Products in the EU 2005 (€million)					
Product	**Production EU-25**	**Consumption EU-25***	**Intra-EU trade**	**Imports (extra EU)**	**Exports (extra EU)**
Cement	14,400	14,769	1,198	745	376
Structural Steel Sections	6,000	4,518	3,938	427	1,909
Cold formed Structural Steel	3,100	2,942	619	33	191
Metal Structures	46,000	43,754	4,962	704	2,950
Reinforcing Steel	12,000	12,279	2,049	743	464
Prestressing Steel	3,100	2,952	817	160	308
Masonry Units	11,700	11,618	367	16	98
Thermal Insulation Products	11,700	11,079	3,843	594	1,215
Wood-based Panels	18,000	17,496	6,742	2,210	2,714
Ceramic Tiles	10,000	7,603	3,352	439	2,836
Windows and Doors	47,000	46,596	2,742	535	939
Sanitary Appliances	7,100	6,981	2,195	857	976
Pipes	19,900	17,558	5,366	1,112	3,454
Fire Systems	2,216	2,267	544	300	249

* Recalculated from the original figures as: Production + Imports - Exports

Source: PRC (2006) based on Prodcom

2.2.3 Characteristics of the Construction Product Sector

The construction products industry is highly variable in its structure and characteristics both across Member States and product markets. These differences will affect the impacts that revisions to the CPD will have on the different product markets and on individual producers. For example, a benefit to one manufacturer might be a cost to a competing manufacturer in the same product segment, due to differences in the size of the firm, the production processes employed and the degree to which a company relies on regional customs opposed to trade with customers inside and outside the rest of Europe.

Key differences that will affect the level of impact can be summarised as follows:

- **Company size:** Companies within the sector vary from those operating at the multinational level, to those operating regionally (more than one Member State) to those national company and then smaller companies largely focusing on domestic or regional markets. In particular, micro and Small and Medium Sized Enterprises (SMEs) comprise the majority of companies manufacturing construction products[6].

[6] Definition as published by the European Commission in: Commission Definition 2003/361/EC. Micro enterprises are those that employ less than 10 people and have a turnover below €2 million, small

- **Scale of Production:** for some product types, manufacturers can realise significant economies of scale and synergies in production activities, while for other product types, activities will be characterised more by made-to-measure or small series production.

- **Regional Differences:** at one extreme, products such as steel can be described as homogenous or commodity products, while at the other end products such as concrete or building blocks (AAC, calcium silicate, and brick) can vary in composition across Europe due to different climatic conditions or a preference for a particular building block type. Planning regulations may even enforce such differences by stipulating that the final works maintain a specified design or use a specified material.

PRC Bouwcentrum (2006) provides data on the number and size of manufacturers across different construction sectors. These data identify the number of small/micro enterprises, medium/large enterprises and multi-national companies and are summarised in Table 2.2. The table shows that there is a very different distribution of enterprises (small, medium, large and multinational) for different sectors. The masonry (clay), tiles, doors/windows, plastics and chemical products, and miscellaneous hardware sectors are dominated by micro/small enterprises. Conversely, the cement, masonry (AAC), and geotextiles sectors are dominated by multinationals.

Table 2.3 provides a summary of these data for the whole construction industry, including designers and contractors. The table shows that the vast majority of manufacturers are micro/small enterprises (60,000 out of a total of 65,000, or 92% by company size). Excluding self-employed, the distribution of designers and contractors is very similar. For designers, an estimated 91% are micro/small enterprises (36,500 out of 40,000, while for contractors the figure is 97% (2.57 million out of 2.66 million).

By turnover, however, the picture is very different, with 20% of the turnover of manufacturers from multinationals (compared with just 0.15% of enterprises). Turnover of micro/small manufacturers is 40% of the total. For contractors, turnover by multinationals is 16% (compared with 0.04% of enterprises). Turnover of micro/small contractors is 44% of the total. However, for designers, turnover by multinationals is just 2% (compared with 0.03% of enterprises). Turnover by self-employed, micro and small enterprises amounts to 54% of the total.

Note that the figures for turnover given in Table 2.3 suggest a much higher level for manufacturers of construction products than those quoted by CEPMC.

enterprises typically employ less than 50 employees and have an annual turnover below €10 million, while medium sized are less than 250 and €50 million.

Table 2.2: Number and Size of Manufacturers by Sector					
Sector	**Size of Enterprise**			**No. of Plants**	**No. of Products**
	Micro/Small	**Med/Large**	**Multi-Nationals**		
Cement	0	10	9	150	500
Steel		50	12	120	10,000
Steelwork fabrication		2,000	20	2,000	bespoke
Rebar, etc.		40	4	80	500
Masonry -Clay	400	200	5	1,000	10,000
Masonry - AAC		10	8	100	500
Masonry - Casi			in above	200	1,000
Wood panels		25		400	5,000
Tiles	600	50		700	20,000
Sanitary appliances		20	4	100	10,000
Doors/windows	50,000	500	10	60,000	100,000
Geotextiles		20	10	50	1,000
Plastics and chemical products	1,000	100	10	2,000	10,000
Misc. hardware	5,000	500		6,000	6,000
Other	3,000	1,500	8	5,000	5,000
TOTAL	**60,000**	**5,025**	**100**	**77,900**	**179,500**
Source: data based on PRC Bouwcentrum (2006) sector case studies					

Table 2.3: Summary Data on Number and Size of Enterprises in the Construction Industry						
Size of Enterprise	**No. of enterprises**			**Turnover €billion**		
	Manufac-turers	**Designers**	**Contrac-tors**	**Manufac-turers**	**Designers**	**Contrac-tors**
Self-employed		400,000	5,000,000?		25	
Small/micro	60,000	36,500	2,570,000	200	29	560
Med/large	5,000	3,490	89,000	200	44	520
Multinationals	100	10	1,000	100	2	200
Total enterprises	65,100	40,000	2,660,000	500	100	1,280
Source: Data for manufacturers is based on Table 2.2; data for designers is based on information from the ACE web-site (except self-employed which is estimated); data for contractors is taken from ProdCom Codes v11110 and v12110 from Eurostat, ECCE web-site, and CIRIA and SECTEUR studies						

3. OVERVIEW OF THE CPD AND MAIN IDENTIFIED PROBLEMS

3.1 Historical Background to the CPD

Member States have historically regulated construction products in different ways, leading to a duplication of conformity assessment procedures for European manufacturers. Because they have used different parameters or ways of expressing the performance characteristics or products, 'conformity' has been taken to mean conformity with particular national building regulations (or requirements). Although different national requirements could ideally be viewed as being 'equivalent', in actuality they are not. As a result, manufacturers have had to prove that their products conform to the requirements of each Member State, creating significant barriers to the free movement of goods across the EU.

Due to concerns that "market rigidity and barriers to mobility" were giving rise to persistent economic under-performance[7] across a range of product sectors, the Single Market Programme (SMP) was initiated by the European Commission to set out a strategy for achieving a single market. This resulted in publication of the White Paper on Completing the Internal Market [COM (85) 310 final], which was aimed at bringing down barriers and simplifying existing rules through the removal of technical barriers to the internal market. Although mutual recognition was acknowledged as an effective strategy for bringing about the common market in its early stages, the White Paper stated that mutual recognition "might well prove inadequate for the purposes of building up an expanding market based on the competitiveness which a continental-scale uniform market can generate".

The SMP stipulated that any legislative harmonisation (under Article 100 of the EEC Treaty, corresponding to Articles 94 and 95 of the EC Treaty) must be restricted to essential health and safety requirements (Article 30 of the EC Treaty) (taking into account WTO rules on technical barriers)[8] and that the promotion of European harmonised standards should be extended to the maximum extent. In this respect, the Commission identified the construction products sector as being one where national regulations relating to the products were excessive in relation to the mandatory requirements being pursued and, thus, that they constituted an unjustified barrier to trade according to Articles 30 to 36 of the EEC Treaty (Articles 28 to 30 of the EC Treaty).

The CPD was thus adopted in 1989 to harmonise and therefore remove technical barriers to trade in the area of construction products.

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[7] Communication COM(96)520, titled 'The Impact and Effectiveness of the Single Market' which notes that the mutual recognition principle established by the Cassis de Dijon case in 1979 did not go far enough in allowing access to the internal market.

[8] WTO (1994): *The WTO Agreement on Technical Barriers to Trade* available from http://www.wto.org.

3.2 The Objectives of the CPD

3.2.1 Introduction

The objective of the CPD is to make possible the free circulation and use of construction products in the Internal Market. It does this through the use of technical harmonisation, which places obligations on both manufacturers of construction products and on public authorities:

- manufacturers of construction products are obliged to express the performance characteristics of the product that they place on the European market using exclusively the harmonised technical language set in the technical specifications relevant to that product; and

- public authorities are obliged to use this harmonised language when defining the technical requirements of works, affecting directly or indirectly the products used in those works.

Only the fulfilment of this double obligation permits the objective of the CPD to be met such that CE marking can play its role of being a passport for the product to be marketed and used in the single market without the need for any other additional requirement (although voluntary marks may be used for the purposes of product differentiation as part of marketing).

3.2.2 The CPD as a 'Suis Generis' New Approach Directive

Where 'equivalence' between the levels of regulatory protection embodied in national regulations cannot be assumed (as is the case where mutual recognition is considered inadequate), the only viable way of achieving harmonisation is for Member States (MS) to reach agreement on a common set of binding principles. The Directives that have been developed to provide the frameworks for the development of harmonised technical standards can be grouped into three categories. 'Old Approach' Directives are based on detailed harmonisation at the product or in some cases component level, with a formal authorisation required before the product is placed on the market (e.g. motor vehicles, and pharmaceuticals). The 'New Approach' refers to a raft of legislation introduced since 1985 based on the division of responsibility between public authorities on the one hand and producers, testing and certification bodies, and standardisers on the other. The 'Global Approach' forms the third category and was based on the Council Resolution of 1989 which set out guiding principles for Community policy on conformity assessment. The Global Approach was replaced and brought up to date by Decision 93/465/EEC which lays down the general guidelines and detailed procedures for conformity assessment that are used in the New Approach directives.

Of most relevance to this study is the New Approach, which encompasses five key components:

1) it confines itself to prescription of essential requirements for guaranteeing a high level of protection for the general (public) interest;

2) standardisation bodies have the task of defining the detailed technical solutions, which remain voluntary in character;

3) application of these solutions (harmonised standards) endows a presumption of conformity with the 'essential requirements'; thus, the producer no longer has to demonstrate how the essential requirements have been satisfied if the product is compliant with the harmonised standards;

4) producers are legally responsible for ensuring that all marketed products comply with the essential requirements; and

5) conformity assessment is carried out by testing and certification bodies (or through a manufacturer's self declaration). These bodies are designated by MS and are their responsibility. MS must then mutually recognise the certifications issued by other MS through their 'notified bodies'.

The Construction Products Directive (CPD) was one of the first regulations to be labelled as a New Approach Directive, although it has a number of significant differences which also set it apart from the New Approach.

3.2.3 Key Differences Between the CPD and the New Approach

The New Approach (NA) directives are designed to cover all typical risks related to public interest and establishing essential requirements applicable to those products within their scope. In contrast, the essential requirements as defined in the CPD do not directly concern construction products, but relate to the construction works in which the products are to be used. As a result, the CPD is aimed at harmonising the technical language covering an intermediate product (i.e. the construction product) rather than a final product (which in this case would be the works). Interpretative documents are therefore required under the CPD in order to make the link between the essential requirements of works and the mandates to be applied to products. This has also led to an extension of the interpretative role of the Commission and the Standing Committee for Construction.

Because the CPD regulates the intermediate products incorporated into the works, the meaning of the associated CE marking is not the same as it is for the NA. Under the NA, CE marking is a means of attesting the conformity of a product with specified safety requirements; under the CPD, it is a means of declaring product characteristics but does not *per se* relate to the safety of that product itself. Instead, CE marking means that the products so marked have such characteristics that the works in which they are to be incorporated, assembled, applied or installed, can, if properly designed and built, satisfy the essential requirements of those works (Article 2.1).

Products placed on the market under New Approach directives must conform to the provisions of the Directive. Requirements have to be formulated in a manner which enables certification bodies to easily determine if products conform, even in the absence of standards. If attestation under a NA directive states that a product conforms with accepted harmonized European standards or (transitionally) national standards, MS shall assume the product is in conformity. If standards do not exist or

are not applied by manufacturer, attestation is to be provided by an independent body through direct assessment. Thus, the choice of means of conformity assessment is left to the manufacturer of the product being placed on the market (although this can be limited by the specific Directive and can include certificates and marks of conformity issued by a third party, the results of tests carried out by a third party and declarations made by the manufacturer, or other systems laid down in the Directive). CE marking means that a product is in conformity with the essential requirements and all applicable provisions of the relevant directive, and is compulsory under NA directives.

In contrast, under Article 4.2 of the current CPD, products are assumed 'fit for an intended use if they enable the works in which they are employed, provided the latter are properly designed and built, to satisfy the essential requirements' of those works. CE marking means that the declared performance characteristics of a product have been tested in conformity with the procedures of the CPD and demonstrating that the relevant conformity assessment procedures have been followed and, thus, that the product is in conformity with the requirements of a technical specification.

The technical specifications developed under the framework of the CPD can take the form of both harmonised standards (hENs) and of European Technical Approvals (ETAs); ETAs can be obtained in the absence of harmonised standards and for products which differ significantly from scope of the harmonised standards. The system for the attestation of conformity (AoC) under the CPD includes both Initial Type Testing (ITT) and Factory Production Control (FPC) requirements, which may or may not involve Notified Bodies. The system to be applied to a given product depends on a variety of factors relating to the product, its role and importance and whether it is the subject of individual or non-series production. A declaration or certificate of conformity enables a product to bear the CE marking.

The only means for affixing the CE marking under the CPD is through application of the hENs and the ETAs[9]. In contrast, standards are voluntary under the NA and a manufacturer can demonstrate that a product meets the essential requirements through other direct assessment approaches.

Guidelines[10] for implementing NA Directives provide general advice on appropriate surveillance systems and stronger conditions for 'foreseeable use' to protect workers and consumers can also be set. Details of national authorising bodies are to be communicated to Commission and other Member States and bodies are to be authorised in accordance with Decision 93/465/EEC[11]. The EN 45000 series of standards and accreditation are the current instruments establishing conformity with

9 The exception to this is through the use of Article 4.4 of the existing directive, which is limited in its potential application to products covered by AoC systems 3 and 4 and requires third party attestation.

10 CEC (2000): **Guide to the implementation of directives based on the New Approach and the Global Approach**, ISBN 92-828-7500-8, European Communities, 2000. http://ec.europa.eu/enterprise/newapproach/ legislation/guide/document/1999_1282_en.pdf.

11 COUNCIL DECISION of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives.

the requirements of the applicable directive. Proposals have recently been published, however, for a Regulation [COM(2007) 37 final] 'Setting out the requirements for accreditation and market surveillance relating to the marketing of products' and aimed at providing a common framework for existing infrastructures and agreed references for work on the revision of existing product related harmonised legislation. This proposed Regulation is also supported by a proposed Decision [COM(2007) 53 final] on 'a common framework for the marketing of products', which makes reference to the proposed Regulation.

There is no specific reference in the CPD, however, to surveillance by National authorities other than reporting on non-conformity and ensuring that CE marking is correctly used. Surveillance responsibilities are identified for inspection and certification bodies in Annex IV of the directive, but in general rather than specific terms. Annex IV to the CPD provides only a brief overview of minimum conditions to be met by testing laboratories, inspection bodies and certification bodies designated by Member States. The issue of confidence in bodies appointed by other member states is a significant one.

Finally, a Standing Committee set up under the New Approach would be chaired by the European Commission, composed of a single representative of each MS, and have its own rules of procedure. The equivalent committee under the CPD is also chaired by the Commission, operates under its own rules of procedure but is composed of two representatives from each Member State (Article 19). In this regard, there is no major difference between the NA and the CPD, although Council Decision 1999/468/EC referred to implies only one representative from each Member State. Under both the CPD and the NA, any questions regarding implementation can be directed to the Standing Committee. For NA Directives, the Committee's role is more focussed on looking at potential issues and objections to standards rather than undertaking systematic reviews. In contrast, the Committee's role under the CPD is more direct and includes involvement in establishment of classes of requirements (where they are not included in interpretative documents), and consulting with the Commission on mandates for establishing hENs standards and guidelines for ETAs.

3.3 The Main Identified Problems of the Current CPD

3.3.1 Overview

Although the focus of the above discussion is on the differences between the CPD and NA directives, it also provides a useful introduction to some of the problems that have been identified in relation to the functioning of the current CPD and whether or not it is meeting its objective of facilitating the free circulation and use of construction products through technical harmonisation.

Advice has been provided by the Commission as to what it sees as the main problems associated with the current CPD. This advice has been supplemented by a review of

responses to the Commission's consultation exercise[12], the PRC report (2006)[13], and industry position papers published on the internet.

The main identified problems can be grouped under three headings:

- CE marking related issues;
- issues associated with the various implementing mechanisms within the CPD; and
- other problems arising from a lack of clarity as to the scope and meaning of certain provisions and from developments in the sophistication and complexity of construction products.

The key problems falling under each of these headings are described below. Annex 1 presents a fuller list of the measures considered by this study as providing potential solutions or means of addressing these key problems and indicates those carried forward here and those not examined further.

3.3.2 CE Marking Issues

The Meaning of CE Marking is Unclear

Because the objective of the CPD is not made explicit within the legislative text and the content of the CE marking is not precisely predefined in the legislative text, there has been confusion in the past as to the meaning of the CE marking, with this magnified when a product falls under the scope of the CPD and one or more NA directives.

This confusion is exacerbated by the fact that some of the vocabulary or terms used in NA directives are also used in the CPD, but have a different meaning in the context of the CPD. Examples are terms such as 'essential requirements' and 'conformity' which have different meanings or interpretations. Similarly, the only definition given in the CPD is that of a 'construction product'. The lack of a clear definition as to what products are and are not captured by the CPD, and what is meant by a 'manufacturer', 'placing on the market', 'harmonised standard', etc. has led to divergent interpretations of what is required under the CPD and different views on who is responsible (e.g. assemblers, installers, distributors).

This lack of clarity mainly affects manufacturers of construction products and professional users, but has also led to different interpretations of the requirements by Notified Bodies and enforcement bodies. It would appear to be (or to have been) a particular source of confusion for those manufacturers who must apply CE marking under the CPD and NA Directives. It is also reported by respondents to the

[12] The stakeholder consultation was launched on 17.03.2006 and closed on 15.06.2006. A total of 319 replies were received. The industrial representation in the responses can be considered as good: 94 sector associations, both at European and at National level, and 102 individual manufacturers reacted to the questionnaire.

[13] PRC Bouwcentrum (2006): **Study to Evaluate the Internal Market and Competitiveness Effects of Council Directive 89/106/EEC (Construction Products Directive, CPD)**, Annexes to Final Report, 26 November 2006.

Commission's consultation to have resulted in the testing of products that may not have needed testing, i.e. minor products (Article 4.5) and non-series products (Article 13.5).

Status of CE Marking

In four Member States[14], CE marking is not mandatory and is treated as only one of the legally accepted means of expressing the performance characteristics of construction products. It is alleged by some industry representatives that this difference in labelling requirements results in an uneven playing field for manufacturers across the EU and can result in unfair competition between manufacturers based in different MS. This has led to confusion over the legal framework, as illustrated by responses to the Commission's consultation exercise:

- 'the differences in national interpretation relating to whether or not the CE marking is compulsory has…caused problems for our industry. It has also been noticeable that, in some countries where CE marking is compulsory, there have been difficulties reported with CE marking of non-series production. (Obviously, where CE marking is not compulsory, such producers generally decide not to mark the product); and

- 'it must be clearly formulated whether the CE marking of construction products is compulsory on principle after expiration of transition terms, or only in case of export. In Great Britain and some Scandinavian countries the view is taken quite officially that CE marking is generally voluntary and only compulsory for such products which are traded across the border. In contrast the German manufacturer is bound generally by the construction products law to apply CE marking, even though his delivery radius, as in the brick and tile industry, amounts to only a few hundred kilometres. The differing interpretation distorts the competition at present in several ways, which is not acceptable'.

In other cases, CE marking is not yet fully accepted either by some national authorities or by private users (designers, contractors, building/works owners, etc). In the past, some national authorities[15] have referred in their national regulations or in other information sources to national or voluntary marks, contrary to the aims of the Directive (which makes this illegal). This lack of confidence is linked to a low level of market surveillance and (a perceived or real) lack of consistency between the approaches and results from Notified Bodies, linked to the need for interpretation of many of the key aspects of the CPD and/or the standards. Thus, a fundamental step in the implementation of the CPD, the full acceptance of the harmonised technical tool, has not been accomplished by the MS. The reluctance of private users, in particular insurance companies, to accept CE marking as the only legal declaration of product characteristics also indicates that there is a problem of the reliability of the system.

This lack of acceptability leads in turn to product manufacturers having to comply with several sets of requirements, which may include the duplication of testing

[14] Finland, Ireland, Sweden and the United Kingdom.

[15] This is reported to have been the case in Spain.

requirements. For example, a ceramic tile manufacturer indicates that a savings of around 30% (around €10,000) in certification costs could be achieved if the French market accepted the CE marking, while two other ceramic tile companies report potential savings of around €21,000 each from the withdrawal of national requirements (PRC, 2006). These additional costs will not only increase the price of products but may also give rise to market barriers, making it more difficult for all manufacturers (and particularly SMEs) to place products on the market in more than one MS.

Market barriers are also likely to be affecting some product sectors due to the long delays that are occurring in developing the harmonised standards. The absence of hENs across all of the product types means that variations in national requirements continue to exist, adding to the testing and information requirements placed on manufacturers; in some cases, it is leading to manufacturers incurring the costs of gaining an ETA (under Article 9.2 – see below) for their products in order to affix CE marking.

3.3.3 Implementing Mechanisms

The implementation of the CPD relies on a number of different instruments, including: Interpretative Documents (transforming the six essential requirements (ERs) to product requirements); mandates from the Commission to specification writers to ensure that technical specifications meet the essential requirements of works; and the development of the technical specifications - the hENs or ETAs - by CEN/CENELEC or EOTA.

The complexity of the procedures involved has sometimes resulted in heavy and costly procedures, for instance, in the production of hENs, in obtaining ETAs and/or the attestation of conformity (even though the Commission has taken care to avoid such situations). CEN/CENELEC (as standardisation bodies) and EOTA are given, de facto, a quasi regulatory capacity yet there have been long delays in their finalising their work on hENs and ETAs and thus in harmonisation of the Internal Market. This has affected the extent to which manufacturers are able to apply the CE marking to their products and thus in the degree to which MS are also using a common technical language. There are also issues surrounding the current governance of the organisations involved in the different procedures for standards setting.

Harmonised Standards

As discussed in Section 3.2 the concept, configuration and role of harmonised standards under the CPD differs from the role of such standards in the New Approach directives. This difference (combined with the CPD being classified as a NA Directive) has led to confusion and misunderstandings. It is such differences that have led to expressions such as “conformity with the standard” being misinterpreted.

At a more practical level, problems have arisen due to:

- hENs being based on descriptive definitions or specifications based on material composition rather than performance in relation to particular characteristics.

Descriptive definitions can act as a market barrier, driving producers of those outside the standard definitions to gain marking through the more costly ETA route, or leading to the non-acceptance of products by professional users.

- hENs not always fitting well with the approaches adopted by MS for regulating works, leading to differences in interpretation across the MS. In addition, the incompleteness and low quality of some of the standards leads to them being interpreted differently by Notified Bodies, leading to either varying test requirements being placed on manufacturers or differences in the accuracy (perceived or real) of the declarations of performance characteristics. For example, one of the consultation responses argued the following in relation to the Annex ZAs: 'the problem with using harmonized standards is that most of the standards' users are confused over the Annex Z, what this entails and how it is interpreted. This has come about because of the drive by the EC and CEN to introduce harmonized standards without due consideration to individual materials. Thus, guidelines used have been very general guidelines which have tried to encompass all "construction products" and, as such, often need to be "interpreted" to apply to specific materials and standards'.

A related problem is the on-going introduction of national requirements or additional 'voluntary' requirements covering product characteristics or attributes additional to those covered by hENs. This can affect companies' ability to place their product on certain national markets and leads to an administrative burden in creating the knowledge necessary to know what additional requirements may have to be met.

Consultation responses on this issue include the following.

- The various users (manufacturers, notified bodies, national authorities for market surveillance) could not properly manage the various aspects of CE marking without this information provided by harmonised standards. Nevertheless, many of them are not as comprehensive as the old national standards which cause problems for some users and regulators. This leads to a number of different approaches by National Regulators and customers.

- Some Member States have implemented the CPD in a way that the requirements of the harmonised standards are supplemented by additional national requirements to allow the products to be used (marketed) for the intended application in construction works.

- The harmonised standards take care of most of the regulatory attributes, but client attributes ["voluntary" attributes] are, by and large, not being considered by CEN. As a result the industry is being left with a set of inadequate standards and each national standards body is developing its own sets of add-on standards.

ETA system

European Technical Approvals can be obtained under two different routes within the current CPD: through Article 11 or Article 9.2, with Article 8.2 setting out the conditions when an ETA may be appropriate. Where a Guideline for a European

Technical Approval (i.e. an ETAG) exists under Article 11, then CE marking of products falling within its scope is mandatory. Article 9.2 is considered to be the appropriate route for dealing with 'innovative products', assuming that an innovative product is any product which is not covered by (or only in part by) an existing or forthcoming standard. CE marking through an ETA under Article 9.2 is optional, although holding an ETA for such products may be treated as being mandatory in some MS but not in others (as Article 6.2 leaves this decision to MS). This is considered to lead to market distortion across the EU. In contrast, others argue that this creates a competitive advantage for those products that may be placed on the market without CE marking compared to other products in the same family that must apply the CE marking either in relation to an hEN or an ETAG.

There are complaints that the ETA guidelines route (an ETAG under Article 11) to gaining an ETA is cumbersome and expensive. It first requires that a mandate is developed by the Commission and that this is consulted upon with the SCC and CEN prior to work starting. This has led to a shift towards the use of CUAPs (under Article 9.2) for obtaining ETAs, but again there are concerns over the bureaucracy involved in the process (and in particular in the length of time involved in consultation) and, in particular, over the need for a 'green light' letter from the Commission. Issues have also arisen over the commercial sensitivity of the information that has to be submitted to the Commission and, when this is consulted upon by the Commission with the SCC and CEN, the potential during consultation for those applying for a CUAP to be easily identified by others with a knowledge of the sector).

Responses to the Commission's consultation exercise highlight stakeholders' concerns:

- 'the ETA route is unpopular because it is perceived to be as expensive and slow as writing a new EN standard'; and

- 'the existing procedures concerning ETAs are too time consuming and expensive for the manufacturers. Procedures must be simplified. ETA should be a possibility to the manufacturer, not an obligation'.

In addition, although an ETA legally grants access to markets in all MS, in practice it may not be due to varying national methods of verification and rules for the design and construction/execution of works[16]. As a result, manufacturers obtaining ETAs may also have to undertake further research to identify specific national 'application' requirements to ensure that a product can be considered fit for use in the types of works for which it is intended. However, EOTA (through its approval bodies) can help manufacturers in this regard by providing advice on which characteristics need to be declared to gain access to particular markets.

[16] This is not just a problem with ETAs but also in relation to hENs, with some commentators noting it is a greater problem for hENs.

Attestation of Conformity

The system of attestation of conformity (AoC) set out by the CPD is considered too complex and imprecise, with responses to the Commission's consultation exercise indicating a widely shared view that there is a need for simplification (although some of the sectors that have spent a lot of time and resources in implementing the existing system are less anxious for change, noting that the system of AoC is understandable once it has been explained).

Divergences in the AoC under the NA and CPD have led to confusion for a sub-set of manufacturers, professional users and Notified Bodies. More generally, respondents to the consultation have indicated that bad application of the legal text has meant that it is not always clear which tasks have to be performed, by whom, and for which declared characteristics. For example, there is a lack of clarity in some of the specifications on AoC requirements (i.e. in the Annex ZAs), leading to difficulties for SMEs and others in understanding the testing requirements and/or the factory production control requirements. The different approaches to AoC for technical characteristics and reaction to fire cause further confusion, as illustrated by a response to the Commission's consultation exercise: 'the combination of two different AoC systems for technical characteristics and fire behaviour (1 or 3 or 4) causes much complexity and has come to a point where it is barely understood'.

Responses to the Commission's consultation indicate differing positions on how these problems should be addressed. Some MS and industry associations show a clear preference for adopting the NA modules, while others are clearly opposed (based on the argument that construction products are significantly different from the product fields to which the NA modules are applied). A sizeable minority, however, believes that the systems are in reality interchangeable with some minor adaptations.

Notified Bodies

The problems identified in the framework of the revision of the NA apply, *mutatis mutandis*, to the CPD. Technical competence and reliability as well as coordination of the assessment criteria of the Notified Bodies are fundamental for a consistent and reliable implementation of the directive. Concerns over the current competency of Notified Bodies have resulted to a large degree in the current mistrust in the reliability of CE marking and, hence, in the failure of MS to remove national requirements. A key point raised in the Commission's consultation exercise is that: 'often, Notified Bodies are not recognised across borders, and manufacturers have to go to several Notified Bodies, one for each country where they want to sell. This clearly generates extra costs'.

Approval Bodies

Concerns over the competency of Approval Bodies, who are responsible for developing European Technical Approvals, has led in the past to some Approval Bodies not recognising the experience of other Approval Bodies and thus their ability to develop an ETA. This has resulted in delays in the development of ETAs, increasing the costs to manufacturers wanting to undertake intra-EU trade.

These problems stem from difficulties in harmonising the selection criteria for Approval Bodies (ABs) at a European level under the CPD. The selection criteria used at the EU level have to better account for the innovative character of the work undertaken by Approval Bodies when developing the tests to be carried out as part of the ETA and, thus, the decisive role of these bodies in the efficiency, and then reliability, of the ETA route to CE-marking.

Market Surveillance

Market surveillance is practically absent despite the fact that it is an integral part of the implementing mechanism of the CPD. The lack of enforcement at the national level is considered by some consultation respondents to be resulting in abuses of the system, with falsely CE marked, low quality and low price imports entering the EU market. If this is the case, it essentially translates to unfair competition, but also acts as another factor affecting the perceived reliability of CE marking more generally.

3.3.4 Other problems

Very Small Enterprises, Individual, Non-series or Small Series Products

CE marking obligations can raise significant costs issues for small manufacturers (e.g. artisans) and manufacturers having to deal with small series or even individual products. Although provisions exist within the current legislation to reduce the cost burden associated with CE marking, micro enterprises and SMEs have argued that the costs of the testing and factory production control requirements of many of the harmonised standards are too high. The increased costs of CE marking per unit of production may make their products less price competitive to those of larger manufacturers, who through economies of scale face much lower costs per unit of production.

Furthermore, some of these manufacturers argue that they realise no benefits of CE marking, as their customers do not require a declaration of product characteristics.

Kits and Systems

Building methods are increasingly relying on the use of concepts such as kits and systems, creating complex relationships between manufacturers which can be affected by the provisions related to the CE-marking. Guidance Paper C includes definitions of kits, assembled systems and components and notes that 'it is up to specification writers…to decide whether or not components are currently, or are likely to be, placed on the market as a kit, and hence that a specification is required'.

Thus, many of the issues associated with kits and systems are to be addressed in hENs or ETAs. For example, Guidance Paper C also notes that 'harmonised specifications shall cover kits in which the number and type of components are pre-defined and remain constant…They shall also cover an entire "design system"…Some "kits" contain optional components…Such optional components form part of the kit. If their use changes the performance of the "assembled system", this change in performance

should be assessed and stated with the CE marking. Matters such as this need to be covered in the technical specifications'.

The key issue for revision of the CPD is related to when a product is placed on the market and who therefore assumes liability for the CE marking. A manufacturer is currently required to apply CE marking when placing products onto the market. The assembler of kits is also required to apply CE marking if the kit is placed on the market (but not if the assembler is combining a number of products together on site). Thus, some products may be CE marked individually (i.e. as 'naked' products) and also be CE marked as part of a kit. The manufacturer of the 'naked' product may not believe that he/she should be responsible for the CE marking because the declared product characteristics for the naked product may not reflect the characteristics of that product in the works; similarly, an assembler may believe that he/she should not be responsible for demonstrating conformity with the CPD as he/she is combining products that are already CE marked.

In addition, some products may be commonly used in kits such that the manufacturers may declare the performance characteristics to reflect when the product is assembled within a kit (to reflect its use in the works). Such characteristics are of limited use to those assembling kits, since they may be unable to determine whether the product can be used in combinations other than those that have been tested by the manufacturer of the naked product. There also appears to be a failure for manufacturers of naked products to understand the flexibility that the "no performance determined" clause gives them in only declaring those characteristics relevant to their products. It would then be left to the installer of the kit to declare the full range of performance characteristics. In any event it is clear that if installers modify a kit, then they are responsible for CE marking.

4. POTENTIAL FUTURE LEGISLATION OPTIONS

4.1 Introduction

The previous section described the main problems that have been identified in relation to the current CPD. In essence, the objective of the CPD – the free circulation and use of construction products throughout the Internal Market by the means of technical harmonisation – is only being partly achieved. Given this conclusion, it is important to consider what policy options are available at a general level to achieve the Internal Market objective.

This assessment considers four main policy options:

- **Business As Usual**: continuing with the CPD in its current form;
- **No legislation**: reversion to mutual recognition, taking into account current Commission proposals;
- **Move to an approach consistent with the common framework for marketing of products**: revision of the CPD such that it comes fully into line with the New Approach, including the provisions of current proposals; and
- **Revision of the existing CPD**: clarification, expansion and revision to address the identified problems.

Each of these main policy options is assessed below with reference to the problems identified in Section 3 and the objective of the CPD, which is the free circulation and use of construction products throughout the Internal Market by the means of technical harmonisation.

4.2 CPD Continuing Unchanged - Business As Usual

4.2.1 Overview of the Business as Usual Option

The baseline for this assessment is the CPD as it currently exists, continuing to be in force **unchanged** into the future. In other words, implementation is characterised as 'business-as-usual', with this forming the baseline option in terms of the future legislation for the CPD. Under this option, no clarification or simplification of the requirements of the Directive would take place, other than those that are related to the natural evolution of the legislation in its current form.

Looking into the future, it is expected that existing divergences in national requirements and in testing and certification regimes will be reduced through on-going implementation, with greater convergence expected over the period from now to 2015. More specifically, the baseline is assumed to be characterised by the following (for the period from 2007 to 2015) under the business as usual option.

1. For the reference year 2006, the development of a critical mass of harmonised standards has only just begun to take effect, with CE marking beginning to be taken seriously. The present programme of hENs will be complete over the next 3

to 5 years, with coexistence periods ended by 2010. As of January 2007, CEN reports that 319 standards have been approved out of a total of 463 'concerned' standards[17]. Existing hENs will be revised under a rolling programme of work, usually every 5 years.

2. The EOTA system of European Technical Approvals (ETAs) has begun to be used more widely, although these generally become based on Article 9.2 and the use of CUAPs (Common Understanding of Assessment Procedures). There will be very few or no new European Technical Approval Guidelines (ETAGs) developed under mandate from the Commission.

3. National marks and approval systems have begun to be withdrawn but with increasing pressure there is an expectation that they are removed by the end of 2015. This includes a cessation of the use of national marks in relation to restnorms and the use of insurance related marks. Voluntary marks are only allowed where products may have additional characteristics which are not related to the essential requirements of works as set out in Annex 1 of the CPD or in the mandates that translate these to product characteristics, for example, characteristics related to sustainability or to disabled access.

4. CE marking continues to be mandatory in some countries and voluntary in others. There continues to be some differences in interpretation across Member States with regard to when CE marking is required and for what products. As a result, the current issues regarding the potential lack of a level playing field remain.

5. New quality marks continue to develop to enable product differentiation in relation to characteristics or performance levels (e.g. environmental performance) not covered by hENs. Voluntary application marks or national technical approvals continue to be used for new, innovative products or traditional products with specific characteristics of interest to the market.

6. An EU system of coordinated market surveillance is gradually put in place, based on the work of the Administrative Co-operation (AdCo) Groups and as a result of the introduction of legislation aimed at addressing the general issues surrounding the need for more uniform enforcement of technical harmonisation legislation across Member States. Increased confidence in the competency of Notified Bodies (NBs) is developed through introduction of increased accreditation requirements[18]. If possible, this legislation would also be used to introduce increased competency requirements for Approval Bodies (ABs).

7. Action by the Commission shifts from managing the process of developing standards and guidance to involving a greater level of enforcement of and investigation of complaints concerning the obligations of public authorities under the CPD.

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[17] CEN (2007): Snapshot of the current situation, 11 January 2007.

[18] Based on the assumption that proposals for a regulation 'Setting out the Requirements for Accreditation and Market Surveillance Relating to the Marketing of Products' [COM(2007) 37 final], or some variation thereof are introduced into legislation.

4.2.2 Will the Business As Usual Option Meet the Objective of the CPD?

Table 4.1 provides a summary list of the main identified problems as discussed in Section 3. It then provides an analysis of whether or not continuing with the CPD in its current form – business as usual – would address these problems and, if not, what else would need to be done to do so and to ensure that the CPD achieves its objective.

From the analysis presented in Table 4.1, it is clear that without further clarification of key aspects of the CPD – such as its objective, the meaning of CE marking, and the obligations of both manufacturers and public authorities - the specified objective of the CPD cannot be fulfilled. It is also clear that further measures need to be taken if the other identified problems are to be addressed.

Table 4.1: The Implications of the Baseline Option

The issue	Will issue be addressed by Option?	What issues remain?	Can this be done without revising the CPD?
CE Marking			
Meaning of CE marking is unclear	No	Business as usual will not affect this issue. There is a need for clarification	No
CE marking is not compulsory in all MS	No	Business as usual will not affect this issue. There is a need for common, consistent approach	No
CE marking is not fully accepted by National authorities or by users	No	There is a need for improved confidence in CE marking – requires clarification, market surveillance, etc. Need for greater enforcement of CPD by EC, action against MS not allowing products to be put onto their market	Partly (e.g. market surveillance from NA)
CE marking is resulting in long delays because of its dependence on harmonised standards	Yes	Business as usual assumes all harmonised standards will be in place by 2010	Yes
Necessary definitions, like manufacturer, placing on the market, are missing in the present CPD	No	Business as usual will not address these problems. Need for clear definitions, potentially linked to common framework. EC could release more guidance papers (but these do not have a legal basis)	Partly (linking to NA definitions)
Implementing Mechanism			
Incorrect understanding of what CPD standards are intended for	No	There is a need for clarification. The Business as usual will not address this	No
ETA route is slow, bureaucratic and expensive	Partly	ETAs will only apply to those products not covered by hEN (number should be reduced). Need for simplification of route, removal of bureaucracy, etc.	No

Table 4.1: The Implications of the Baseline Option			
The issue	**Will issue be addressed by Option?**	**What issues remain?**	**Can this be done without revising the CPD?**
System of attestation of conformity set out by the CPD is too complex and imprecise	No	Business as usual will not address this issue	No
The problems associated with Notified Bodies identified in the framework of the revision of the NA applies, mutatis mutandis, to the CPD	No	Link to Regulation setting out requirements for market surveillance and accreditation	Yes
There is a problem harmonising the selection criteria for approval bodies specific to the CPD, at the European level. Furthermore, there is a problem of competence and work organisation	Partly	Link to Regulation setting out requirements for market surveillance and accreditation	Yes
Market surveillance is practically absent	No	Link to Regulation setting out requirements for market surveillance and accreditation	Yes
Other Problems			
The obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products	No	Business as usual will not affect this issue. Need for clarification over what is required, by whom and how conformity can be determined Need for more flexible approaches to demonstrating conformity (i.e. not just testing)	No
Very complex competition relations in the market for kits and systems in which the provisions related to CE-marking can directly or indirectly interfere	No	Need for clarification over what is required and by whom (e.g. assemblers and installers) and clear definitions	No

4.2.3 What Could be Done to Improve the Business As Usual Option (without revising it)?

Table 4.1 provides an indication of some of the steps that could be taken to address the current problems with the CPD. These include using definitions from the Common Framework on the Marketing of Products[19] and making links to the proposed forthcoming legislation on the accreditation of notified bodies and on market surveillance. This could help to address issues surrounding confidence in the CE marking, but would not necessarily make the meaning of CE marking clearer or ensure that the dual obligations of manufacturers and public authorities were fulfilled. The EC could also take a stronger enforcement role against Member States and the standardising bodies, as appropriate.

Consequently, many of the current problems, such as the unclear meaning of CE marking, different approaches to CE marking in different MS (mandatory, non-mandatory), the complexity of the system of attestation of conformity, etc., would continue to exist. Thus, the CPD would continue to fail to meet its objective of the free circulation and use of the construction products in the Internal Market through technical harmonisation.

This suggests that continuing with the CPD in its current form, even with the changes that are predicted to occur between now and 2015, would not be sufficient to address all of the problems that have been identified. As a result, it is necessary to consider other policy options.

4.3 No Legislation Option – Reversion to Mutual Recognition

4.3.1 Overview of the No Legislation Option

No Legislation as Reversion to Mutual Recognition

Option 2 reflects a 'no legislation' alternative, which in practice means a reversion to the principle of mutual recognition (Articles 28 to 30 of the EC Treaty[20]), born out of the Cassis de Dijon case in 1979[21]. The principle of mutual recognition is essentially as follows: a product lawfully marketed in one Member State should be allowed to be marketed in any other Member State, even when the product does not fully comply with the technical rules of the Member State destination. It guarantees free movement of goods and services without the need to harmonise Member States' national legislation.

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19 For example, the proposed Decision of the European Parliament and of the Council on a common Framework for the Marketing of Products [COM(2007) 53 final] sets out definitions for key concepts such as 'placing on the market', and 'manufacturer'. Some of these are relevant to the existing CPD, while the differences identified in Section 3.2 between the CPD and the NA would make adoption of the proposed definitions concerning a harmonised standard and a technical specification inappropriate.

20 Articles 28 to 30 of the EC Treaty correspond to Articles 30 to 36 of the EEC Treaty.

21 Case 120/78 (Cassis de Dijon), OJ C 256 of 3 October 1980.

The only exception to the requirements of Articles 28 to 30 is an 'obstacle' to placing products on the market which can be justified for public interest reasons (e.g. protection of health and life of humans, protection of industrial and commercial property). When the Member State of destination refuses to allow the marketing of a product, it must be able to justify any such 'obstacles' on a sound technical or scientific basis, by proving that it is absolutely necessary and demonstrating that a measure giving rise to an obstacle is in proportion to the public interest objective.

The Historic Context

The mutual recognition principle has contributed significantly to the development of the single market for goods and services in the EU. It applied to construction products prior to the introduction of the CPD and, *de facto*, has applied during the transition period between mandates being issued and harmonised standards or ETAs being issued.

The difficulty in the context of the construction sector is that mutual recognition on its own does not address the issues that arise due to the widely varying technical language, and design and constructions practices that apply in different MS. These variations arise for a range of reasons, including differences in "geographical and climatic conditions or in ways of life as well as different levels of protection that may prevail at national, regional or local level" (Article 3.2).

The Single Market Review of 1996 [SEC(96) 2378] identified three factors which preclude the mutual recognition principle from delivering the desired degree of freedom in the movement of goods and services across the EU. These are as follows [SEC(96) 2378]:

1) National approaches to technical regulation are so divergent as to preclude smooth application of the principle, e.g., where consumers are directly exposed to the underlying risk, the mutual recognition principle can only play a limited role in providing free circulation. Progress would therefore require a substantial harmonisation of permissible products, their composition and possible labelling.

2) Where mutual recognition has been applied, health and safety inspectorates in the importing country may be unable to assess the reliability of the proof of conformity of products with the corresponding specifications of the exporting country where relevant. In this example, the problem is one of information, which mutual recognition does not require. Development of universally recognised accreditation systems for authorisation of testing and certification bodies, in addition to greater information exchange relating to national regulations and conformity assessment procedure is therefore required.

3) Customer preference constitutes an additional barrier for imported products with no legal force. Only through convergence of national standards, markets or conformity assessment arrangements can national or regional perceptions and preferences be remedied. This is something the mutual recognition principle is not capable of delivering.

Proposals for Strengthening Mutual Recognition

In April 2006, the Commission launched a public consultation on the future of the Internal Market, which identified that, although many stakeholders are pleased with the achievements that have been made, difficulties still exist. In particular, national technical rules are still considered to constitute important barriers to free trade, due to the weak application and enforcement of the Treaty rules, in particular in the non-harmonised product sectors [SEC(2006) 1215]. SMEs, in particular, indicated that national technical rules lead to substantial obstacles to the free movement of goods within the EU.

In order to address these difficulties, the Commission has developed a proposal for a regulation aimed at strengthening the day to day implementation of the principle of mutual recognition[22]. The proposed Regulation sets out rules and procedures to be followed by Member States when taking decisions regarding the free movement of products lawfully marketed in another Member State. Fundamental to the proposal is that it places the burden of proof on national authorities in denying market access to a particular product. Article 4 of the proposal [COM(2007) 36 final] sets out the process by which the national authority must justify the imposition of a technical rule on the grounds of public interest as listed in Article 30 of the EC Treaty (Article 36 of the EEC Treaty) by providing evidence to the economic operators concerned (e.g. importer and exporter). Following receipt of comments and any amendments (including specifying any remedies available), a decision can then be made at the national level and communicated by the national authority. Notice of the technical rule must then be communicated via the packaging, labelling or similar means as stipulated in Article 5.

The other key element in the proposal is the creation of product contact points in each Member State. Their function is to collate and communicate all the technical rules and associated remedies existing within a Member State to economic operators in other Member States. In essence, the proposal requires each Member State authority to justify any technical rule to economic operators, while suggesting remedies where possible before a rule can be introduced.

However, the proposal [COM (2007) 36 final] together with the Commission's impact assessment [SEC (2007)112] point to the failure of the mutual recognition principle, "specifically for technically complex products or products which can pose safety or health problems". This includes construction products if not already covered by existing harmonisation regulations.

4.3.2 Assumptions on the Impacts of Reversion to Mutual Recognition

To assess the impacts of this option, assumptions are required on how industry and Member States would respond to revocation of the current CPD and the cessation of CE marking for construction products. This essentially depends on the degree to

[22] European Commission [COM(2007) 36 final]: Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, 14 Feb 2007.

which the existing harmonised standards and ETAs agreed under the CPD would continue to be used, as opposed to countries returning to alternative national specifications. It also depends on the degree to which Member States adhere to the principle of mutual recognition in relation to construction products.

Although the CPD entered into force in 1989, due to the complexity of the construction sector and the standardisation process, the first harmonised standards relating to cement, fire fighting and insulation were only completed in 2001. Consequently, mutual recognition was maintained over the transition period from 1989 to 2001. Events during this period provide an indication of the likely effects of a reversion back to mutual recognition.

- The 'Second Biennial Report on the Application of the Principle of Mutual Recognition in the Single Market' [COM (2002) 419 final] focusing on road safety equipment, pipes and masonry products within the construction sector, states that 54% of businesses which replied to its questionnaire had problems with mutual recognition, affecting their ability to trade construction goods across Europe. 80% of the replies criticised different testing methods as a major problem, in addition to compulsory testing by third parties under a compulsory conformity assessment procedure (73% of replies).

- The Communication 'Impact and Effectiveness of the Single Market' [COM (96) 520] reported that between 1985 and 1993 the coefficient of variation between prices (including taxes) between Member States for identical goods and services shrank for many products (consumer goods and services). Conversely, for construction, the coefficient of variation increased from 22% to 27%. This is put down to market fragmentation due to the non-harmonisation of national requirements.

- COM (99) 395 on improving the application of the principle of mutual recognition in the Single Market identified construction in the top five sectors for infringements of mutual recognition between 1996 and 1998 under Articles 30 to 36 of the EEC Treaty. By the time of COM (2002) 419 final, the number of infringements in the construction sector had increased marginally over the period 1998-2001 to rank in the top four industry sectors.

Based on the above, and for the purposes of this assessment, the following assumptions have been made as to the implications of movement to a 'no legislation' option for the period from 2007 to 2015:

1. There could be a limited reversion in some countries to national standards and certification requirements, including the use of lists of approved products. The level of reversion should be minimised by the fact that standards set at a European level (i.e. European standards) should take precedence over existing national ones and European standards are recognised in key legislation such as the Public Procurement Directive[23].

[23] Under the Public Procurement Directive, when drawing up its technical specifications, a contracting entity is able to refer to: 1) national standards transposing European standards; 2) European technical approvals; and 3) international standards. It can also determine performance and functional

2. Some ETAs would no longer be accepted, with national technical approvals required in their place. In contrast, most existing hENs would continue to be used by industry (in particular, this is likely to be the case for those hENs that have already come into force, are well accepted within a given sector and which are linked to Eurocodes). In some sectors, voluntary industry-led self-regulation may lead to the further development/completion of harmonised standards.

3. Where reversion to national standards takes place, attestation requirements across countries and products may diverge over time.

4. Despite the above, there would be an increase in the number of national approvals and in the number of national or characteristic based quality marks.

5. Depending on the degree to which countries revert to national standards, there may also be a re-focusing by some manufacturers on local and regional markets, resulting in a reduction in intra-EU trade.

4.3.3 Will the No Legislation Option Meet the Objective of the CPD?

Table 4.2 provides an analysis of whether or not the 'no legislation' option would address the problems identified in Section 3.3. Unsurprisingly, given the above discussion, the conclusion is that this option would not fulfil the objective of free circulation of construction products in the Internal Market. Although some of the problems associated with the current CPD could be addressed by withdrawing the Directive and replacing it with an approach based on mutual recognition, this analysis highlights the fact that reliance on mutual recognition would generate other problems that would be detrimental to the free circulation of construction products in the Internal Market, and would not be in accord with the EC Treaty. This option is not therefore considered further.

Table 4.2: The Implications of the No Legislation Option

The issue	Will issue be addressed by Option?	What issues remain?	Can this be done without affecting free circulation of construction products in the Internal Market?
CE Marking			
Meaning of CE marking is unclear	Yes	There will be no CE marking. Requires mutual recognition of test results to allow products to be placed on the market of MS	No – mutual recognition involves reversion to national legislation and is likely to result in increased divergence
CE marking is not compulsory in all MS			
CE marking is not fully accepted by National authorities or by users			

requirements, particularly in the environmental domain. A tender is valid if the tenderer manages to prove that it meets the requirements defined by the technical specifications in an equivalent fashion. An appropriate means may be constituted by the submission of a technical dossier or a test report from a recognised body (laboratory, certification and inspection body).

Table 4.2: The Implications of the No Legislation Option			
The issue	**Will issue be addressed by Option?**	**What issues remain?**	**Can this be done without affecting free circulation of construction products in the Internal Market?**
CE marking is resulting in long delays because of its dependence on harmonised standards	Yes	No need for standards, although may be continued use of some hENs	Partly – some hENs may continue to be used, other sectors may revert to national requirements
Implementing Mechanism			
Incorrect understanding of what CPD standards are intended for	Yes	No CPD, therefore, no potential for misunderstanding	Yes – no longer relevant
ETA route is slow, bureaucratic and expensive	Yes	No need for ETA. Requires mutual recognition of test results to allow products to be placed on the market of MS	No – might be impacts for innovative products that could have used an ETA and those products outside of recognised standards where there is no mutual recognition
System of attestation of conformity set out by the CPD is too complex and imprecise	No	No need to modify EU systems of attestation of conformity but problem supplanted by reversion to varying national systems	No - problems associated with different MS having different systems of conformity assessment will have impacts on the free circulation of products
The problems associated with Notified Bodies identified in the framework of the revision of the NA applies, mutatis mutandis, to the CPD	No	Reverts to national systems (although could be linked to the Regulation setting out requirements for market surveillance and accreditation)	No – mutual recognition requires agreed test methods which might be compromised by lack of confidence in Notified Bodies
There is a problem harmonising the selection criteria for approval bodies specific to the CPD, at the European level. Furthermore, there is a problem of competence and work organisation	No	Reverts to national systems (although could be linked to the Regulation setting out requirements for market surveillance and accreditation)	No – mutual recognition requires recognition of technical approvals and the tests used in these. Issues over competence and varying approaches would remain
Market surveillance is practically absent	No	Reverts to national systems (although could be linked to the Regulation setting out requirements for market surveillance and accreditation)	Yes – can be linked to community market surveillance framework under the Regulation setting out requirements for market surveillance and accreditation

Table 4.2: The Implications of the No Legislation Option			
The issue	**Will issue be addressed by Option?**	**What issues remain?**	**Can this be done without affecting free circulation of construction products in the Internal Market?**
Other Problems			
The obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products	Partly	No CE marking, therefore, no issues related to the obligations of CE marking. However, these could be supplanted by the potential need to meet varying national requirements	Partly – will depend on extent that small manufacturers and manufacturers producing small series are putting their products on the market in other MS and if mutual recognition imposes other costs
Very complex competition relations in the market for kits and systems in which the provisions related to CE-marking can directly or indirectly interfere	Partly	No CE marking, therefore, no issues related to the obligations of CE marking. However, these could be supplanted by the potential need to meet varying national requirements	Partly – will depend on extent that manufacturers of kits and systems are putting their products on the market in other MS and if mutual recognition imposes other costs
Necessary definitions, like manufacturer, placing on the market, are missing in the present CPD	Yes	No CPD, therefore, no need for definitions	Yes – mutual recognition is based on tests not the areas that require clearer definitions

4.4 Move to the New Approach

4.4.1 Commission Proposals

Following an extensive period of consultation with stakeholders, the Commission is in the process of presenting a proposal for a Decision of the European Parliament and the Council on a common framework for the marketing of products [COM(2007) 53 final] and a proposed Regulation on accreditation and market surveillance [COM(2007) 37 final]. The Decision and Regulation represent a horizontal legislative approach to harmonisation. It is stated that "The proposals complete the different existing legislative tools by putting forward reinforced Community policies on market surveillance and accreditation; to bring coherence to existing sectoral instruments and to examine how these horizontal instruments can be applied to all sectors regardless of whether they are "old" or "new" approach."

The need for the Decision arises from problems in the implementation of the existing legislation aimed at ensuring the free circulation of products. These include distortions to competitiveness due to different practices in the designation of conformity assessment bodies by national authorities; a lack of trust in conformity marking and a lack of coherence in its implementation and enforcement. Thus, some of the main problems identified in relation to the CPD are more commonly shared by

other similar legislation. The key legal elements of the proposed decision, as summarised in the Explanatory Memorandum, are given in Box 4.1.

Of particular relevance to this study is whether the provisions of the proposed Decision would remove the differences between the CPD and the NA. In our view, it would not because of the need to make a link between products and the works that they are used in, which is special to the CPD. In contrast to the types of products regulated under the NA directives, construction product users require information on product characteristics and performances to be able to select and use products appropriately. As a result, the future legislation cannot readily become fully aligned with the NA (see also the discussion provided in Section 3.2), and moving to the NA as a whole is unlikely to solve the problems identified in Table 3.3.

Box 4.1: Legal Elements of proposed Decision on a Common Framework for the Marketing of Products

The proposed Decision is considered to [COM(2007) 53 final]:

- set the general framework for future sectoral legislation and give guidance on how to use the common elements to ensure as much coherence in future sectoral legislation as can be politically and technically possible.
- set out harmonised definitions, common obligations for the economic operators, criteria for the selection of the conformity assessment bodies, criteria for the national notifying authorities and rules for the notification process. These elements are supported by the provisions on accreditation. It also sets out the rules for the selection of conformity assessment procedures as well as the harmonised range of procedures.
- provide a single definition for the CE marking and rules of responsibility for those who affix it and provide for its protection as a Community collective mark, for those directives which already provide for it.
- provide harmonised provisions for the future safeguard mechanisms as a complement to those for market surveillance.

This does not mean, however, that some of the proposals set out in the Decision could not be adopted in the revised CPD legislation in order to address the main identified problems of the current CPD. In particular, the following aspects of the proposed Decision may provide a means of addressing the current problems:

- the conformity assessment criteria set out in Article 3 and procedures given in the Annex;
- a subset of the definitions provided under Article 6;
- the clearer definition of the obligations of manufacturers, their authorised representatives, importers and distributors based on Articles 7 to 10;
- the general principles of and rules and conditions for CE marking as set out in Articles 16 and 17;
- the provisions concerning the notification of conformity assessment bodies (Chapter 4); and

- the provisions concerning safeguard procedures in relation to products that may present a risk at the national or Community level and in relation to non-compliance with the requirements of the legislation.

The proposed Regulation on Accreditation and Market Surveillance is intended to [COM(2007) 37 final]:

- organise accreditation at the national and European levels; irrespective of the different sectors of activity in which accreditation is used. The proposal insists on the public authority nature of accreditation in order for it to be the last level of public authority control, and sets the framework for the recognition of the existing organisation, the European co-operation for Accreditation (EA), so as to ensure the proper functioning of a rigorous peer evaluation.

- ensure, when not foreseen in other applicable Community legislation, that national authorities are given equivalent means of intervention and the necessary authority to intervene in the market to be able to restrict or withdraw non compliant or unsafe products. It ensures cooperation between the internal authorities and the customs authorities controlling products entering the market from third countries and sets the framework for the exchange of information between national authorities and cooperation between them in the case of products on the markets of more than one Member State.

Because the proposed Regulation is aimed at addressing the general failure in the confidence of Notified Bodies and poor enforcement of CE marking legislation, it provides a potential means of addressing these issues as part of a revision to the CPD.

4.4.2 What Problems Could be Addressed by the Proposed Decision and Regulation

Although full alignment with the NA may not be feasible in the field of construction, it may be appropriate to draw on elements of the proposed Decision and the proposed Regulation as means of addressing some of the problems arising from the current CPD. Table 4.3 provides an analysis of what issues could be addressed by drawing on these proposed legislative instruments, based on a modified version of the template used for the Business as Usual and No Legislation policy options.

Table 4.3: Alignment with the New Approach				
The issue	**Comparison of NA with the CPD**	**What is the problem, what needs to be changed?**	**Can this be done by adopting the Decision or Regulation?**	**What are the possible consequences?**
CE Marking				
Meaning of CE marking is unclear	Contrary to the NA directives, CE-marking is not precisely predefined in the CPD. Also, some NA vocabulary, like "essential requirements" or "conformity" are used differently in the CPD	These inconsistencies have created ambiguities and confusion around the real meaning of the CE-marking. The inconsistencies and ambiguities need to be removed	Will require redrafting of CPD using terminology of NA as it is used in NA. Would also require that ERs relate to products rather than works	Issues likely to arise in making translation of ERs from works to products. It will be critical that designers and other users of products can make the links between what is needed to meet national building regulations and declared product characteristics
CE marking is not compulsory in all MS	CE marking is compulsory under the NA (but application of standards is not)	Inconsistency across MS	Would make CE marking compulsory everywhere. Would require modification of the role of hENs and of ETAs and open up methods for demonstrating conformity (i.e. direct assessment)	Impacts on those not currently applying CE marking and for those products that are not covered by an hEN or an ETAG
CE marking is not fully accepted by national authorities or by users	Revised NA includes community market surveillance framework	Need to improve acceptance of CE marking in place of national marks	Strengthening of accreditation and market surveillance requirements should improve acceptance of CE mark. Proposed Decision makes removal of national marks mandatory	Possible impacts in the short term as national marks are removed
CE marking is resulting in long delays because of its dependence on harmonised standards	CE marking can be undertaken under NA through direct assessment in relation to ERs. Standards are not mandatory under NA	Delays in standards lead to only part of the Internal Market being achieved. May require ability to carry out direct assessments of conformity	Yes - by allowing direct assessment against ERs	Possible benefits to those not currently able to apply CE marking

Table 4.3: Alignment with the New Approach				
The issue	**Comparison of NA with the CPD**	**What is the problem, what needs to be changed?**	**Can this be done by adopting the Decision or Regulation?**	**What are the possible consequences?**
Necessary definitions, like manufacturer, placing on the market, are missing in the present CPD	Revised NA includes solutions for most of the needs of the future legislation for construction products	Key definitions need to be set out in the legislation	Yes – definitions included in revised horizontal legislation	None – providing terminology differences noted above are addressed
Implementing Mechanism				
Incorrect understanding of what CPD standards are intended for	The concept, configuration and role of the harmonised standards in the CPD differ from those of the NA directives	Created inconsistencies, ambiguities and misleading terminology (e.g. "conformity with the standard"), which needs to be corrected	Move to product based ERs may clarify role of standards, but may also lead to confusion in short term given the large number of standards in place or soon to be completed	Potential problems during transition may lead to considerable confusion for designers and other users of products
ETA route is slow, bureaucratic and expensive	NA does not include an ETA route, it is focused on a risk assessment in relation to the ERs applicable to products.	Simplified and more flexible approaches for obtaining ETAs	Would modify the role of ETAs and treat them more as a method of direct assessment	None
System of attestation of conformity set out by the CPD is too complex and imprecise	NA uses modules, CPD uses levels of AoC. Differences in terminology (e.g. conformity)	Creates confusion, inconsistencies, ambiguities and misleading terminology. This should be corrected through changes in terminology or mapping across of NA modules to CPD AoC	Yes – the systems of AoC could be expressed by means of conformity to the NA modules although may require some adaptation to apply to the CPD, in particular in relation to ITT	Possible knock-on impacts from those who have implemented the CPD – need to 're-learn' what is required; plus potential costs of conforming with the NA modules when AoC has already been achieved
The problems associated with Notified Bodies identified in the framework of the revision of the NA applies, mutatis mutandis, to the CPD	Problems NA and CPD are very similar	Technical competence and reliability as well as coordination of assessment criteria of the NB are fundamental for an even and reliable implementation of the directive	Yes - link directly to revised NA Regulation and Decision	None

Table 4.3: Alignment with the New Approach				
The issue	**Comparison of NA with the CPD**	**What is the problem, what needs to be changed?**	**Can this be done by adopting the Decision or Regulation?**	**What are the possible consequences?**
There is a problem harmonising the selection criteria for approval bodies specific to the CPD, at the European level. Furthermore, there is a problem of competence and work organisation	NA refers to conformity assessment bodies, therefore, covers approval bodies as well as NBs	Need to provide harmonised selection criteria through the Regulation setting out requirements for market surveillance and accreditation	Not clear that the Regulation is applicable to approval bodies, whose role is different from that of notified bodies	None
Market surveillance is practically absent	Problems NA and CPD are very similar	Market surveillance is practically absent despite the fact that it is integral part of the implementing mechanism of the CPD	Yes - link directly to the Regulation setting out requirements for market surveillance and accreditation	None
Other Problems				
The obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products	Problems NA and CPD are very similar in terms of small manufacturers, but construction sector includes a large proportion of small/ micro businesses	Need to avoid placing undue costs on SMEs/small manufacturers where no benefits realised; requires flexible approach	Partly – the increased flexibility for use of direct assessment methods may help, but similar problems arise under the NA	Mandatory CE marking under NA may increase cost burden for small manufacturers
Very complex competition relations in the market for kits and systems in which the provisions related to CE-marking can directly or indirectly interfere	Links with Guidance Paper C under CPD	Need to deal more satisfactorily with the issue of kits and systems to minimise potential for repeat testing, costs, etc. This may require simplification of the ETA route	No – NA is unable to deal with this issue directly – will need to draw on Guidance Paper C of CPD	None

4.5 Revision of the CPD

From the above assessment, it is clear that the objective of the CPD can only be met through revision of the existing legislation in a way that enables the main identified problems to be addressed in a cost-effective manner. The objective would not be met by continuing with the current legislation as part of a 'business as usual' option, nor would it be met through a reversion to mutual recognition under a 'no legislation' option. The significant differences that exist between the basis for CE marking in the field of construction compared to the NA Directives means that a shift to the NA is not fully feasible, although elements of the NA and proposals for a future common framework may provide a means of addressing some of the problems that have arisen with the implementation of the CPD.

The most appropriate basis for revision of the CPD and the individual measures that could be adopted as part of any comprehensive revision option are discussed in the next Section.

5. OPTIONS FOR THE REVISION OF THE CPD

5.1 Introduction

The analysis presented in Section 4 concluded that the most appropriate policy option is the revision of the CPD so as to better address the main problems that were identified in Section 3 of this report. Before identifying the measures that could be adopted as part of the revision of the CPD, it is essential to first determine:

1. whether the objective of the revised legislation should remain the same, should be modified or should be added to;
2. whether the basic philosophy underlying the CPD, linked to the subsidiarity principle, should be retained or modified; and
3. whether the general mechanism through which the Directive works should be maintained or modified.

A stepped approach has been adopted to the consideration of these issues. Section 5.2 provides conclusions to these questions. Section 5.3 outlines the more detailed measures that we have identified as addressing individual problems identified in relation to the existing CPD. Section 5.4 then discusses how these individual measures have been assessed, with Section 5.5 presenting the conclusions of that assessment (supported by Annex 2 which provides a more detailed discussion of the individual measures and expected impacts).

5.2 The Objective and Philosophy of the Current CPD

5.2.1 The Objective of the CPD

The CPD relies on Article 100A[24] of the Treaty establishing the European Economic Community (EEC) as its legal basis:

> *"The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."*

Reference to this Article clearly identifies the functioning of the Common Market as being the primary objective of the Directive. This objective remains relevant today, and achievement of it through technical harmonisation legislation is still considered to be an appropriate means for ensuring the free circulation of products, as it provides both for a high level of protection and for economic operators to demonstrate conformity [COM(2007) 53 final]. Retaining the existing objective as the basis for the revised legislation is therefore appropriate.

[24] Corresponding to Article 95 of the current EC Treaty.

5.2.2 The Philosophy of Subsidiarity Underlying the CPD

The Treaty establishing the European Community also establishes the requirement for Community legislation to respect the principles of subsidiarity and proportionality, as indicated in Article 5 which is reproduced below:

> *"The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.*
>
> *Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."*[25]

Similarly, the Treaty of the European Union reinforces the principle of subsidiarity in Article 2:

> *"The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community."*[26]

As the legal basis for the CPD is Article 100A of the Treaty establishing the EEC, it is within the context of ensuring the functioning of the Common Market that the principles of subsidiarity and proportionality should be applied[27].

Although the current CPD lays down the essential requirements (ERs) applicable to works, the legal status of these is ambiguous as MS have the ability to determine how they are fulfilled. In other words, Member States remain free to regulate, or not to regulate, construction works based on the subsidiarity principle. However, the development of a common (harmonised) technical language for expressing the performances of the products helps make the use of construction products possible throughout the EU. This free circulation of goods can only be achieved if national building requirements are expressed in a way which is compatible with the common technical language.

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25 Consolidated version of the Treaty establishing the European Community C 321E/36 Official Journal of the European Union 29.12.2006.

26 Article 2, Title I Common Provisions of the Consolidated Version of the Treaty on European Union published 24.12.2002 Official Journal of the European Communities C 325/3.

27 The Commission Action plan "Simplifying and improving the regulatory environment" Communication From The Commission COM(2002) 278 final, requires all impact assessments for new legislative and policy instruments to explicitly address the issues of subsidiarity and proportionality. In addition, under the Protocol on the application of the principles of subsidiarity and proportionality, the Commission is required to include details in the explanatory memoranda accompanying legislative proposals justifying the relevance of its proposals with regard to the principle of subsidiarity.

These specific aspects of the CPD would therefore appear to be consistent with the Protocol on the application of the principles of subsidiarity and proportionality[28] which includes a series of guidelines which are to be used in examining whether or not action should be taken at the Community or Member State level.

Thus, although the CPD defines the potential regulatory domains for buildings and civil engineering works (with these being the six essential requirements), it does not explicitly harmonise the way in which Member States regulate against these. Member States are given responsibility for ensuring the safety of buildings and civil engineering works and set provisions, including requirements, relating to building safety at the national level. These requirements can be expressed in terms of the performance of the works, taking into account a range of factors including climate, geology, etc., and may therefore vary significantly across Member States. Member States may also decide to regulate different aspects of works.

In revising the CPD, there is the potential to modify this basic philosophy. Three potential options have been identified:

- continue with the current philosophy unchanged (i.e. continue with business as usual in this regard);
- move away from the subsidiarity principle to an approach based on the total harmonisation of the Essential Requirements for works. In other words, building requirements would be harmonised across all of the EU; or
- harmonise product characteristics at European level, with this involving the movement to a philosophy similar to that adopted by the other New Approach Directives which address the safety of products.

Member States would be highly unlikely to accept the Community taking on responsibility for developing harmonised standards[29] for building works as they would not wish to give up their responsibility for their citizens' safety. There may be benefits from harmonization to certain manufacturers of construction products, but generally one could expect this to lead to the 'gold plating' of requirements. In other words, the most stringent requirements (driven by climatic or geological conditions for example) would have to be met by all products, increasing costs to manufacturers and thus to society unnecessarily.

Thus, the basic philosophy of the present Directive should be retained. However, to ensure that it is more clearly understood, it should be stated more explicitly in the revised legislation.

[28] Protocol on the application of the principles of subsidiarity and proportionality, Annexed to Treaty establishing the European Community.

[29] In contrast to technical specifications developed under the CPD, Eurocodes are harmonised but are not mandatory, thus, they do not shift responsibility away from MS.

5.2.3 A Performance Based Approach

The indirect approach of the CPD is based on the premise that because products contribute to the fulfilment of requirements on works, they have to have certain characteristics related to those requirements. A product's level of performance in relation to those characteristics determines whether a product is fit for a given use or not (with fitness for use also depending on other factors such as design, climatic and geological conditions, etc.). The approach adopted by the CPD is therefore predominantly a performance based one, rather than a descriptive one (as has been used in some national legislation).

In revising the CPD, there are therefore two options:

- retain a performance based approach (i.e. continue with business as usual); or
- adopt a descriptive approach to defining product characteristics.

As highlighted in Section 3, however, national methods (national standards or national approvals) of expressing product performances constitute one of the main obstacles to the functioning of the single market under the current CPD. This is because the use of products within a given Member State is dependent on the fulfilment of national technical specifications, which can vary significantly across Member States in terms of the required performance characteristics and associated test methods (with this being one of the reasons that mutual recognition has been found to be impracticable in the past).

The free circulation and use of construction products necessitates the development of a common (harmonised) technical language for expressing the performances of the products, thereby making their use possible throughout the EU. This can only be achieved through the establishment of performance based standards, rather than descriptive standards that are open to different interpretations in practice. Indeed, where descriptive standards have been adopted, difficulties have arisen for manufacturers whose products have characteristics that fall outside those descriptions but whose products may deliver an equivalent level of performance.

Thus, the current performance based approach should be retained and its implications should be strengthened. The obligation for MS to adapt the way of expressing national building requirements so that they are consistent and compatible with the agreed harmonised technical specifications should be emphasised, and MS should be required to ensure this compatibility through technical adaptations wherever necessary.

5.2.4 The General Mechanisms Underlying the CPD

The two key mechanisms underlying the CPD are as follows:

- Article 6.1 states that Member States shall not prohibit, restrict, or impede the making available on the market and the use within their territories of a product which complies with all applicable provisions and bears the corresponding marking, showing that applicable provisions have been followed; and

- Article 13.1 states that manufacturers will place products on the market under their responsibility. The only means for declaring product performances (related to building requirements) is through the relevant harmonised technical specifications (hENs and ETAs). The marking shall be affixed after all relevant procedures will have been accomplished.

The discussion provided above also addresses the question of whether there are any alternatives to the first of these two mechanisms. The conclusion is that there are not, if the intention is to continue to achieve the objective of the CPD in relation to the free circulation of goods. If Member States regulate works, and the regulations have an impact on construction products, then Member States must comply with the provisions of the Directive and, as a result, adapt their national regulations.

With regard to the obligations placed on manufacturers, alternatives to the business as usual option can be identified as:

- mandatory CE marking across all products placed on the market and all Member States; and

- increased flexibility resulting in non-mandatory CE marking requirements. This would be aimed at opening up the choice to manufacturers of whether or not to fall within the scope of the legislation to those manufacturers who do not want, or need, to declare the characteristics of the products that they put on the market.

The latter two options cannot be dismissed without more detailed analysis and are therefore carried forward. Making CE marking mandatory is aimed at ensuring a more consistent application of the legislation across Member States and ensuring that all manufacturers face a level playing field in this regard. In contrast, increasing the flexibility for manufacturers to choose whether or not to fall within the scope of the legislation may reduce the costs faced by those who are currently forced to apply CE marking with no associated benefits.

5.3 Potential Measures for Addressing the Main Identified Problems

5.3.1 Introduction

From the above discussion, options related to making CE marking mandatory or making it non-obligatory, by opening up the choice of whether or not to declare product characteristics, must be examined. Furthermore, the elements of the NA identified in Section 3.4 which may provide a means for addressing problems arising under the CPD should be examined.

In addition, we have considered a long list of possible solutions to the main identified problems (or related issues or aspects of these problems). These are approaches that have been suggested by the European Commission, by consultees responding to the internet consultation, by other research (e.g. PRC report, 2006), and in industry and stakeholder discussion/position papers.

A total of 65 possible solutions (or measures) for revising particular elements of the CPD were identified and included in a long list (provided in Table A1.1 in Annex 1 to this report). Some of these measures cover similar issues, while others relate to issues associated with areas falling outside the scope of the legislation. These solutions were therefore screened to identify those relevant to this study. The criteria used in this screening were as follows[30]:

- does the proposed solution address one of the key problems listed above in relation to the objectives of the legislation (effectiveness)?
- would the proposed solution reduce the administrative burden of the legislation (efficiency and versatility/flexibility)?
- does the proposed solution represent an appropriate delivery mechanism; is it consistent with the implementation to date (consistency)?
- is the proposed solution technically feasible?
- will the proposed solution assist in the aim of creating a common European technical language?

The output of this screening exercise is a list of feasible solutions. Table A1.1 in Annex 1 identifies those measures that were screened out with a justification as to why. It also indicates those solutions that are to be carried forward into the assessment.

This long list of feasible solutions has been consolidated to generate the more detailed measures which could provide the basis for revision of the CPD. Table A1.2 in Annex 1 provides details of this consolidation, including reasons why some solutions have been combined and where they are considered to cover the same or very similar issues.

5.3.2 Short-Listed Measures for Detailed Assessment

The result of the above exercise is the set of measures that is analysed in more detail for this study. This short-list of measures is described below. In all cases, these measures are alternatives to the 'business as usual' (i.e. the baseline or do nothing) situation of retaining the current legislation as it is. In other words, there is a choice as to whether or not any of the measures listed below are adopted and, thus, the advantages and disadvantages of including each in any comprehensive revision option must be considered[31]. In some cases, the choice considered here is only between

[30] With these criteria based on those identified in the Impact Assessment Guidelines of: the most appropriate delivery mechanism; technical and other constraints; effectiveness; efficiency; consistency and versatility.

[31] The need to consider the 'do nothing' option as part of the assessment is made clear in the Impact Assessment Guidelines. Although the business as usual (or baseline) was dismissed as an overall policy option in Section 4, in relation to any given measure retention of the baseline requirements may be the preferred choice in some cases.

'business as usual' and one proposal for modification of the legislation as part of a particular measure. In other cases, more than one alternative may exist or more than one type of action may be relevant under a given measure. Where this is the case, alternatives are identified within the list given below.

Measure A: Clarification of the objective and scope, including clarification of Article 4.2, Article 13.5 on the extent that the CPD applies to kits, systems and parts of works;

Measure B: Clarification of definitions, including the concept of conformity, terms such as placing on the market, and concepts specific to the CPD such as 'no performance determined';

Measure C: CE marking against the ERs of products rather than the ERs of works;

Measure D: CE marking options, where this involves consideration of two alternatives:

- **D1**: CE marking is mandatory, is the only legal means of declaring product characteristics, and national marks must be withdrawn;
- **D2**: CE marking is mandatory for those products that fall within its scope but the scope is defined more flexibly, CE marking remains the only legal means of declaring product characteristics, and national marks must be withdrawn;

Measure E: Additional routes for CE marking:

- **E1:** CE marking against a Technical File**;**
- **E2:** CE marking against mandates and supporting standards;

Measure F: Simplification and additional routes for ETAs:

- **F1**: no future use of ETAGs, simplification of process for obtaining CUAPs, strengthening of competency requirements for ABs;
- **F2**: introduction of provisional and/or national ETAs;
- **F3**: preparing new ETAGs plus introduction of a simplified information procedure where experience with ETAs exists;

Measure G: Simplification of the system of AoC, which may be based on:

- **G1:** reducing the number of levels from six to four;
- **G2:** reducing the number of levels from six to three;
- **G3:** moving to the NA modules as the basis for AoC;

Measure H: Increased promotion of conformity without testing methods;

Measure I: Expanded use of IT systems, with two alternatives considered:

- **I1:** Use of IT for provision of a limited amount of the CE marking information;
- **I2:** Expanded use of IT to provide most of the CE marking information;

- **I3:** Creation of an EU-wide database for registration of products and associated CE marking information to increase traceability for professional users;

Measure J: Adoption of the Community market surveillance framework and European accreditation infrastructure and, if necessary, increased competency requirements for Approval Bodies;

Measure K: Introduction of stronger EU controls over harmonisation of standards.

The short listed measures are mapped against the issues that they address in Table 5.1, and the degree to which there are potential linkages to the proposed Decision and Regulation for strengthening the New Approach, as discussed in Section 4.4. Each of these individual measures are described in detail in Annex 2 of this report, which also explains further the problems that they are intended to address. Annex 2 also presents the assessment of the impacts associated with each of the measures (or alternatives or components to a measure).

5.4 Analysis of the Individual Measures

5.4.1 The Approach

An approach comprising the following five steps was adopted in analysing the impacts of each of the individual measures (or alternatives within these):

1. identifying which impact categories (from those included in the Impact Assessment Guidelines) are expected to be relevant to the revision of the CPD;

2. screening the impacts by identifying the types (positive and negative) that may result from each option for each stakeholder group(s);

3. describing the impacts of each option qualitatively using matrices of option versus impact category (e.g. competitiveness, trade, administrative burden, etc.);

4. validating preliminary assessments of impacts through consultation with a select number of organisations and individuals and cross-checking against responses to the Commissions consultation exercise; and

5. quantifying impacts, where possible using the net administrative cost model and other approaches as appropriate.

The information on the impacts of the individual options will then feed into identification of the preferred combination of options.

Table 5.1: Options for Addressing the Main Identified Problems		
The issue	**Relevant Options**	**Linkages to NA Proposals**
CE Marking		
Meaning of CE marking is unclear	Clarification of objective of CPD and scope; clarification of definitions	Depends on whether CE marking is based on ERs of works or products
CE marking is not compulsory in all MS	Clarification of obligations and CE marking options	As in Decision, CE marking would be only legal means for declaring product characteristics with national marks withdrawn
CE marking is not fully accepted by national authorities or by users	Clarification of definitions and obligations. EU-wide database aimed at increased traceability of CE marking information	Potentially based in part on the common framework for the marketing of products
CE marking is resulting in long delays because of its dependence on harmonised standards	Introduction of CE marking against mandates or technical files, simplification of ETA route	CE marking through technical files is consistent with NA modules
Necessary definitions, like manufacturer, placing on the market, are missing	Clarification of definitions	Potentially based in part on the common framework for the marketing of products
Implementing Mechanism		
Incorrect understanding of what CPD standards are intended for	Clarification of objectives and scope; clarification of definitions and obligations	None
ETA route is slow, bureaucratic and expensive	Simplification of ETA procedures; potential introduction of provisional or national ETAs	May not be as critical if move to ERs of products and direct assessment methods are opened up
System of attestation of conformity set out by the CPD is too complex and imprecise	Simplification of AoC	Potentially based on NA modules, adjusted as necessary
The problems associated with Notified Bodies identified in the framework of the revision of the NA applies to the CPD	Adoption of proposed NA Decision and Regulation fully or in part	Link to the Regulation setting out requirements for market surveillance and accreditation
There is a problem harmonising the selection criteria for approval bodies specific to the CPD, at the European level, of competence and work organisation	Strengthened competency requirements for ABs	If possible, link to the Regulation setting out requirements for market surveillance and accreditation
Market surveillance is practically absent	Adoption of proposed NA Decision and Regulation fully or in part	Link to the Regulation setting out requirements for market surveillance and accreditation
Other Problems		
The obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products	CE marking mandatory if in scope; clarification of definitions; use of IT systems; conformity without testing; stronger EU control over standards, CE marking through technical files	CE marking through technical files is linked to NA direct assessment
Very complex competition relations in the market for kits and systems in which the provisions related to CE-marking can directly or indirectly interfere	Modification of CE marking obligations; clarification of definitions; promotion of conformity without testing	None

5.4.2 Identifying the Appropriate Impact Categories

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

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

The definitions of these categories are given in Annex 2 which presents the detailed assessment. Justification for the inclusion and exclusion of particular impact categories is given in Annex 3. Of particular note is that the environmental impact category has been excluded from this analysis. This is because the main objective of the CPD is to establish an internal market through technical harmonisation. The provisions included within the Directive or under the alternative options do not, therefore, in themselves have social or environmental implications. This is not to say that the standards developed under the auspices of the CPD may not have such implications; the nature of such effects should, however, be considered as part of the standard setting process.

In addition, social impacts are not considered as part of the detailed assessment. Instead, social impacts together with potential economic impacts at the level of the macro-economy are considered together in the light of the final combination of measures identified as being the preferred policy option for the revised legislation.

5.4.3 Screening of Impacts and Stakeholders

A first screening of impacts against different stakeholder groups was undertaken to identify those that might be affected by a particular option (either incurring costs or benefiting from cost savings). This screening provides the basis for the more detailed assessment of impacts. The stakeholder groups considered in this screening and the subsequent impact assessment have been defined as follows:

- **EU manufacturers** of construction products, subdivided into micro business, small and medium sized enterprises (SMEs) and larger manufacturers;
- **professionals users** involved in the design and construction of works, including the range of activities carried out by engineers, architects, and designers. Note that for the purposes of this assessment, contractors are also included under this heading;
- **public sector bodies** where these are Member State authorities and the European Commission;
- **standardisation bodies** of CEN and CENELEC;

- **notified bodies and approval bodies**; and
- **international stakeholders**, where these are considered here to be manufacturers of construction products.

Note that the above impact categories are not all relevant across all stakeholder groups.

5.4.4 Analysis of the Impacts of Options

Many of the predicted impacts of the options can only be assessed qualitatively, due to the lack of the more detailed information that would be necessary to provide quantitative estimates. Where possible, the impacts are linked to the types of obligations and required actions given in Steps 1 and 2 of Annex 10 of the Impact Assessment Guidelines (reproduced here as Annex 3).

Due to the paucity of quantitative data, impacts are described in qualitative terms and are assigned a rating according to the expected magnitude of the effect, taking into account the likely duration of the effect (short term versus longer-term and ongoing). A seven point rating scale has been applied for these purposes:

---	may have a major negative impact (>30% change)
--	may have significant negative impact (>10% change)
-	may have slight negative impact (<10% change)
0	may have no/negligible impact
+	may have a slight positive impact (<10% change)
++	may have a significant positive impact (>10% change)
+++	may have a major positive impact (>30% change)
(+)/(-)	potential slight positive/slight negative impact due to uncertainty

To the degree possible, we have tried to link the rating to a notional percentage change in impacts. So, for example, a rating of 'major negative impact' is associated with a notional 30% increase in the costs associated with a particular requirement of the CPD or its administrative implications more generally. A slight positive impact indicates that an option is likely to produce some level of savings but these are likely to be less than 10% of current costs. Linking the ratings to percentage changes in this way helps ensure some equivalence of significance of impacts regardless of the size of organisation, turnover, value, etc. Note that no quantitative estimates of the likely value of such changes were available to provide the basis for the ratings.

When comparing options that have been assigned ratings, it is commonplace to assume equal weighting. This means that the option with the greatest number of positive impacts (indicated by the number of plusses) and the lowest number of negative impacts (indicated by the number of crosses) would be considered to have the greatest net benefit (lowest net costs). Such an assumption has been made for the base case analysis. The sensitivity of this base case to the adoption of different weighting systems is examined when bringing together the different measures into combinations of measures to act as a comprehensive revision option.

Note that based on the ratings, and taking into account the fact that impacts may arise from the combined effect of individual measures, we have only estimated the change in administrative and other costs after combining individual measures into potential revision options. To the degree possible, we have applied the net administrative costs model for these purposes, drawing on data from a range of published sources and from responses to the Commission's consultation exercise. The approach is described in more detail in Section 6 and Annex 4.

5.4.5 Consultation to Validate Impact Assessment

Table 5.2 sets out the number and types of organisations contacted as part of the work undertaken to validate the impact assessment and the number of responses received. The focus of the consultation was to verify the impacts on SMEs, professional users, Member States and Notified Bodies and to validate the descriptions of impacts under the measures being considered (as given in Annex 2). Thus, consultation was used to supplement information from the Commission/s consultation and from position papers. As a result, the number of questionnaires and telephone discussions was limited to those sectors where there was particular uncertainty over the potential costs and benefits; in some cases, the organisations circulated the questions to their members. There was also only limited time for responses such that widespread consultation was not possible within the timeframe for the study.

Table 5.2: Consultation Undertaken as Part of the Study

Sector Consulted	Number of Organisations Contacted	Number of Responses from Members/Organisations
Manufacturers/trade associations	4	10
Professional users/user associations	1	4
Public authorities	5	4
Notified bodies	2	3

5.5 Results of the Analysis of Individual Measures

Table 5.3 sets out the individual revision measures examined in detail, and summarises our conclusions as to the preferred sub-measure for each of these (see also Annex 2). It also highlights any significant trade-offs in choosing the preferred sub-measure over the others analysed in detail. As can be seen from the table, there is a clear preference for the following sub-measures.

- **Measure A**: Clarification of the objective and scope, including clarification of Article 4.2, Article 13.5 on the extent that the CPD applies to kits, systems and parts of works;
- **Measure B**: Clarification of definitions;
- **Measure E1:** CE marking against a Technical File**;**
- **Measure F1**: No further ETAGs, a simplified CUAP procedure and a strengthening of competency requirements for ABs;
- **Measure H**: Promotion of conformity without testing;

- **Measure J**: Adoption of the Community market surveillance framework and European accreditation infrastructure and, if necessary, increased competency requirements for Approval Bodies; and
- **Measure K**: Stronger EC controls over harmonisation of standards.

Measures that fall out of the analysis because the business as usual or baseline situation is preferred are **Measure C** (CE marking against the ERs or products rather than of works) and **Measure E2** (CE marking against mandates and supporting standards).

For a sub-set of the possible measures (or actions within a measure), no clear preferences could be derived from the assessment provided in Annex 2. As a result, a more detailed analysis is required. This applies to the following:

- **Measures D1 and D2**: the choice between making CE marking mandatory **or** allowing it to be non-mandatory;
- **Measure G1 and G3**: the choice between changing the system for AoC to four levels **or** moving to the NA modules;
- **Measure F2** (as an addition to F1): introduction of provisional and/or national ETAs; and
- **Measure I1 and I2**: the choice between whether to allow as an option the limited use of IT systems for provision of some of the accompanying information to the CE marking on products **or** to allow the expanded use of IT, minimising the information provided on the product. Note that in both cases, **Measure I3** is considered mandatory.

Mandatory (D1) or Non-mandatory CE Marking (D2)

The main trade-offs in this case are between the cost impacts that mandatory CE marking could have on micro/craft enterprises and SMEs in those cases where the declaration of performance characteristics is not required versus the potential negative effects that non-mandatory CE marking may have on competition within the internal market and for the credibility of CE marking.

Simplifying AoC to Four Levels (G1) or Move to New Approach Modules (G3)

The key issue associated with choosing between simplifying the current system of AoC to four levels (i.e. 1, 2+, 3 and 4) and moving to the NA modules relates to the need for manufacturers and professional users to familiarise themselves with the changes. In addition, there would be the need for those manufacturers currently applying level 2 to incur additional expenditure in moving to level 2+ (although there would be savings in a move from level 1+ to level 1). The manufacturers of products also covered by NA Directives may benefit from a move to the NA modules, as they will already be familiar with the requirements, but this only applies to a few product categories (e.g. cables, fire systems, garage doors, flue liners, etc.).

Table 5.3: Results of Detailed Assessment of Alternative Sub-Measures				
Revision Measure	**Alternative Sub-Measures**	**Preferred sub-measure**	**Most significant tradeoffs across stakeholders?**	**Most significant tradeoffs across impact categories?**
A) Clarification of objective and scope	**A:** Clarification of Objective, Scope and Articles 4.2 and 13.5	**A**: Clarification preferred over business as usual	No significant tradeoffs in relation to clarification option – although may have some negative impacts on turnover for NBs.	No significant tradeoffs across impact categories associated with clarification, although likely to increase competition in the internal market to a significant degree.
B) Clarification of definitions	**B:** Clarification through inclusion of new definitions	**B**: Clarification through inclusion of new definitions preferred over business as usual baseline	Clarification would be of benefit to manufacturers and professional users but may negatively affect NBs. SME and micro product manufacturers may benefit more than large manufacturers	Clarification likely to increase the relative competitiveness of micro and SMEs compared to larger companies (EU and non-EU)
C) CE marking against the ERs of products	**C**: CE marking against the ERs of products rather than the ERs of works	Business as usual baseline preferred – CE marking through the ERs of works	Micro / craft enterprises may benefit the most from this measure, although they could also be negatively affected by the need to provide customers with additional information on performance of products in different end-use conditions. SMEs and larger companies may suffer the most from a waste of investment on CE marking activities to date and the need to provide end-use data on a customer by customer basis.	The trade-offs in this case are between changes in costs (operating and administrative) and innovation and research. Costs are likely to increase as manufacturers have to change basis of CE marking in the short term and then provide customers with specific end-use performance information in the longer term. However, innovation in relation to new products may increase due to less burdensome CE marking requirements
D) CE Marking Options	**D1**: Mandatory CE marking **D2**: CE marking is mandatory for those products that fall within its scope, but the scope is defined more flexibly	**D1 or D2**: Non-mandatory CE marking appears preferred but significant uncertainties	Most significant tradeoffs are between cost savings to SMEs and concerns over competition effects for large companies	In terms of impacts, the tradeoffs relate to measures having an opposite effect on competition in the internal market versus costs and potentially innovation

Table 5.3: Results of Detailed Assessment of Alternative Sub-Measures				
Revision Measure	**Alternative Sub-Measures**	**Preferred sub-measure**	**Most significant tradeoffs across stakeholders?**	**Most significant tradeoffs across impact categories?**
E) Additional routes for CE marking	**E1**: CE marking against a Technical File	**E1:** CE marking against a Technical File	Net benefits expected to all manufacturers and also likely for professional users (although they may also incur increased costs of familiarisation and the need to understand and check technical files). May increase cost of market surveillance to MS if they need to check details of technical files and test methods	No significant trade-offs; potential reductions in the costs of doing business which would be offset by potential increases in administrative costs (due to greater emphasis placed on contents of technical file)
	E2: CE marking against mandates and supporting standards	Business as usual baseline preferred – CE marking through the ERs of works	Considered likely to be of most benefit to SME and large manufacturers, but with increased costs to professional users and MS in relation to responding to queries, responding to complaints and undertaking market surveillance in period up to the availability of hEN	Possible gains in conduct of business to SME and large manufacturers set against increased costs of conducting business to other stakeholders. Note that may also result in a decrease in the relative competitiveness of micro/craft and SME enterprises compared to large companies
F) Changes to the Routes for ETAs	**F1**: Abolish further use of ETAGs, simplify CUAP route through modification to Articles 8.2 and 8.3. No change in the requirements for ABs	**F1**: Abolish further use of ETAGs, simplify CUAP route through modification to Articles 8.2 and 8.3 plus a strengthening of the requirements that must be satisfied by ABs in order to ensure that all members of EOTA have the competency required for the proposed simplification **F2**: Introduction of provisional and national ETAs but significant issues concerning consistency with aim of creating a harmonised EU market	No significant tradeoffs in impacts across stakeholders from simplification, with the exception that large companies may be able to take better advantage of the simplified procedures. Note that MS public authorities may feel that they have lost an important input to the system, unless their ability to raise national objections is retained. With provisional/national ETAs, there may be gains to manufacturers at the expense of professional users and the credibility of CE marking	No significant tradeoffs between impact categories.
	F2: Introduction of provisional and national ETAs			
	F3: Prepare new ETAGs, making them less rigid; for existing ETAGs where there is considerable experience in delivering ETAs introduce an information based consensus procedure			

Table 5.3: Results of Detailed Assessment of Alternative Sub-Measures				
Revision Measure	**Alternative Sub-Measures**	**Preferred sub-measure**	**Most significant tradeoffs across stakeholders?**	**Most significant tradeoffs across impact categories?**
G) Changing system for AoC	Link AoC to products and not characteristics (rejected) **G1**: Simplify AoC to four levels **G2**: Simplify AoC to three levels **G3**: Move to the NA modules	**G1 or G3**: Simplify AoC to four levels or move to NA modules	Most significant tradeoffs relate to reductions in costs to product manufacturers with variations in impact between SMEs and large companies and to professional users (benefits or costs)	Across impact categories, impacts move in the same direction for all manufacturers. For professional users, shift from benefits to costs between the two options
H) Increased Promotion of Conformity Without Testing	**H**: Promotion of conformity without testing methods	**H**: Promotion of conformity without testing methods preferred over the business as usual baseline	Potential decreases in demand for ITT and costs of agreeing acceptable WFT methods set against benefits to product manufacturers	Reductions in operating costs for manufacturers may be offset by increases in administrative costs associated with changes in systems (training, new forms, etc.)
I) Expanded Use of IT Systems	**I1**: CE marking on products or accompanying documents as at present and with optional limited use of IT systems **I2**: Expanded use of IT systems **I3**: Creation of an EU-wide database for registration of products and associated CE marking information to increase traceability for professional users	**H1** or **H2 (both including H3)**: No clear preference in moving from baseline to expanded IT systems; inclusion of traceability not preferred	Large manufacturers may gain the most from the use of IT systems, but they may also provide significant benefits to MS from ability to undertake desk based market surveillance (albeit there may also be the need for MS to introduce new legislation). Potential significant impacts to manufacturers associated with a product database, offset by savings to MS in terms of market surveillance research; which may also be offset by costs of managing such a database	Most significant tradeoffs are between savings in administrative and operating costs to manufacturers and potential increases in such costs to MS; although the latter may be offset by potential savings in research cots. Possible impacts on the relative competitiveness of SMEs compared to large companies with database
J) Market Surveillance and Accreditation	**J**: Adopt the Community market surveillance framework and European accreditation infrastructure	Clear preference for adopting the Community market surveillance framework and European accreditation infrastructure over the business as usual baseline	Significant benefits to all manufacturers in terms of the costs of business, but these are set against the increased costs to NBs of meeting accreditation requirements	Tradeoffs between changes in costs of CE marking and its perceived reliability and implications for international competitiveness and competition within the internal market

Table 5.3: Results of Detailed Assessment of Alternative Sub-Measures				
Revision Measure	**Alternative Sub-Measures**	**Preferred sub-measure**	**Most significant tradeoffs across stakeholders?**	**Most significant tradeoffs across impact categories?**
K) Stronger EC Controls	**K**: Stronger EC controls over harmonisation of standards	Stronger EC controls over harmonisation of standards over the business as usual baseline	All stakeholders (except CEN) are considered to gain from stronger EC controls	Significant potential reductions in operating and administrative costs to SMEs by the Commission preventing the introduction of standards that go beyond ERs / mandates.

Introduction of Provisional and National ETAs (F2)

Provisional ETAs may provide some benefits to both manufacturers and users by enabling innovative products to be placed on the market or be tested in use more quickly. It may be of particular relevance should CE marking become mandatory. However, in our view, this type of option would appear to contradict the purpose of the CE marking: there would be products with a CE marking which have not been properly tested and whose performance has not been declared by the manufacturer. This could lead to confusion in the market and a lack of credibility in the ETA process more generally. There is also the potential for designers to not understand the limitations of the ETA, particularly as it assumes that users and public authorities would understand the limitations included in the CE marking information. Therefore, it should not be introduced unless CE marking is made mandatory and then unless special conditions are included to avoid abuse of the use of such ETAs.

National ETAs may benefit those manufacturers that only want to place a product on the market in a limited number of MS and, therefore, do not want to have to undertake the level of testing that may be required if the ETA were to be EU-wide in applicability. Thus, it may not only reduce costs to these manufacturers but also lead to increases in innovation. However, there is the risk that designers would not fully understand the limitations of the ETA (i.e. the national basis of the underlying testing). There may also be the potential for an unscrupulous manufacturer to market the product for applications outside the intent of the original ETA (i.e. in other MS). It could also be argued that allowing ETAs to effectively become national marks defeats the purpose of the legislation in creating a harmonised internal market and could create an uneven playing field across manufacturers. There is also the danger that, because a product which can be placed on the market in one country it could also be placed on the market in another country, this could provide a low cost route to placing goods on the EU market.

CE Marking with Limited Use of IT Systems (I1 plus I3) or Expanded Use of IT Systems (I2 plus I3)

Moving from the optional, limited use of IT systems to provide information on product characteristics to the optional, expanded use of IT systems is predicted to result in benefits to manufacturers, particularly large manufacturers, with some potential costs to professional users. There may also be benefits to Member States as it offers them the opportunity to check the characteristics of products on-line, which may increase efficiency of market surveillance work (although testing of products to verify the characteristics would still require products to be purchased so such savings may be limited). Since the use of IT systems would remain optional, it is expected that only those manufacturers whose costs would reduce would publish their characteristics electronically.

However, in tandem with allowing the use of IT for the provision of information on product characteristics, all manufacturers would be required to submit CE marking information for inclusion in a products database to avoid concerns over the lack of guarantees that information on a web-site will be available and accurate, as well as the difficulty of relating a specific product to a particular web-site entry. The database

would help to address the key trade-off when making electronic labelling available to manufacturers, i.e. where professional users would no longer have the product characteristic information accompanying the product such that enforcement bodies may find it impossible to take effective action should problems arise. This may affect contractors (e.g. when undertaking site verification of products) but have only a limited impact on designers and architects, as they are likely to prefer to have information on characteristics in advance of ordering the products.

The requirement that all manufacturers using electronic labelling provide information for inclusion in a database helps address the legal status of characteristics provided only in electronic form. Expanded use of IT could require manufacturers to submit additional information to be included in the product database, increasing costs to manufacturers and the body responsible for upkeep of the database. It would also pass additional costs onto professional users, where the information with the product is now minimal.

6. COMPREHENSIVE REVISION OPTIONS

6.1 Development and Assessment of Comprehensive Revision Options

6.1.1 The Approach

The detailed assessment of the individual revision measures (and the sub-measures within these) provides the basis for identifying the comprehensive policy options for revision of the construction products legislation. These comprehensive options are based on varying combinations of the ten different measures discussed in Sections 5.4 and 5.5. These combinations have then been assessed to determine their relative advantages and disadvantages for the different stakeholder groups and across the main impact categories.

The process that has been undertaken in carrying out this comparative assessment of the comprehensive options is as follows:

- the assessment for each measure has been reviewed to identify whether there is a clear preference for one sub-measure over another. Where a clear preference has been found, then the sub-measure is carried forward as a component of each comprehensive revision option (as discussed in Section 5);

- if there is no a clear preference, then all of the sub-measures have been carried forward as alternatives to be considered as providing the basis for the different combinations of measures making up the comprehensive revision options (again, as discussed in Section 5);

- development of the combinations of measures to act as the final comprehensive policy options. This has considered whether they are internally consistent and would provide for a coherent set of modifications, taking into account whether or not there are synergies or conflicts between the measures;

- the ratings assigned to the impacts arising under the individual measures have then been combined to generate an overall score for each of the comprehensive policy options. These scores assume an equal weight is assigned to impacts on the different stakeholder groups and to the different impact types;

- sensitivity analysis has then been undertaken to determine the effect that different weighting systems would have on the ranking of the policy options in terms of the total weighted impact scores; and

- based on the results of the sensitivity analysis, a conclusion is reached on the 'preferred' comprehensive revision option.

6.1.2 Conflicts and Synergies Between Measures

Section 5.5 presented the conclusions as to whether or not there were clear preferences for particular measures/sub-measures. The next step is to identify any conflicts or synergies that exist between those measures/sub-measures that are **clearly preferred** and those where **no clear preference yet** has emerged. Conflicts and synergies are defined as follows:

- conflicts would be those cases where two actions could not both be taken as one invalidates another or they would result in inconsistent requirements; and

- synergies are those cases where adoption of two sub-measures together strengthen the end outcome (i.e. the sum of the whole is greater than the sum of the parts).

Interestingly, although there was the potential for conflicts between measures amongst those in the full set assessed in detail (see Annex 2), there would appear to be no conflicts between the preferred measures and those for which there is still no clear preference. Thus, any combination of the different sub-measures still being considered at this stage remains valid (although there was the potential for conflicts to arise between certain of the sub-measures that have been discarded and some of the current sub-measures).

With regard to synergies, there are sub-measures that can be classed as always being desirable in terms of simplification of the current CPD, regardless of whatever measures are considered. These are therefore those measures that should be included in any combination; they are:

- **Measure A**: clarification of the objective, scope and Articles 4.2 and 13.5;
- **Measure B**: clarification of definitions;
- **Measure E1**: CE marking against a technical file maintaining the business as usual and IDs in their current form;
- **Measure F1**: no further ETAGs, simplification of CUAPS and strengthening of the requirements for competency of ABs;
- **Measure J**: adoption of the Community market surveillance framework and European accreditation infrastructure.

There is then a further set of measures which are always desirable but which become more important when combined with mandatory CE marking (**Measure D1**), as they should help mitigate the potential for significant costs and other negative impacts arising under this measure. These measures are:

- **Measure H**: promotion of conformity without testing;
- **Measure K**: stronger EC controls over harmonisation of standards.

In addition, the arguments supporting **Measure F2** increase in strength when combined with mandatory CE marking (**Measure D1**).

6.1.3 Development of the Revision Options

Based on the above discussion we have identified four comprehensive policy options for the final comparative assessment. The main drivers of these options are whether CE marking is mandatory or non-mandatory and whether attestation is through either a simplification of the AoC to four levels or through adoption of the New Approach modules. The options can be summarised as follows:

Non-Mandatory CE Marking:

1) **Policy Option 1:** Clearly preferred measures (A, B, E1, F1, H, J and K) plus:
   - CE marking is non-mandatory (**D1**);
   - changing the AoC to four levels (**G1**); and
   - limited use of IT systems (**I1 plus I3**).

2) **Policy Option 2:** Clearly preferred measures (A, B, E1, F1, H, J and K) plus:
   - CE marking is non-mandatory (**D1**);
   - changing the AoC to the New Approach modules (**G3**); and
   - expanded use of IT systems (**I2 plus I3**).

Mandatory CE Marking:

3) **Policy Option 3:** Clearly preferred measures (A, B, E1, F1, H, J and K) plus:
   - CE marking is mandatory (**D2**);
   - changing the AoC to four levels (**G1**); and
   - limited use of IT systems (**I1 plus I3**).

4) **Policy Option 4:** Clearly preferred measures (A, B, E1, F1, H, J and I) plus:
   - CE marking is mandatory (**D2**);
   - changing the AoC to the New Approach modules (**G3**); and
   - expanded use of IT systems (**I2 plus I3**).

The effect of combining 'changing the AoC to four levels' with 'expanded use of IT' and 'moving to the NA modules' with 'limited use of IT systems' is investigated in the sensitivity analysis. The sensitivity analysis is also used to examine the implications of no use of IT systems being included in the revision options and of allowing the use of provisional and national ETAs as part of the options.

6.2 Comparative Assessment of the Revision Options

6.2.1 Base Case Analysis

The ratings assigned to the impacts of the individual sub-options were combined to generate overall ratings for each of the four policy options. In combining the ratings, negative and positive ratings were added together; each plus/minus was given a value of 1 or -1. 'Not applicable' ratings were assigned a value of zero. Where ratings were marked by uncertainty (e.g. (+)), this was treated as equal to one half point (i.e.

0.5 or -0.5). Similarly, where the rating was '+/++' or '-/--', then this was assigned a score of 1.5 or -1.5 (for example).

Table 6.1 sets out the results of this exercise for the base case assessment. This assessment assumes that equal weights should be assigned to the different stakeholder groups and to the different impact categories. In other words, impacts on SME manufacturers are given equal weight to those on professional users, MS, Notified Bodies, international stakeholders, etc. In terms of the impact types, changes in costs are given as much weight as impacts on competitiveness and trade, competition and the internal market, and innovation. In considering these impacts, it is important to note that Approval Bodies are only considered separately for changes to the procedures for ETAs (Measure F); for all other measures, there is assumed to be an overlap between the Notified Bodies and Approval Bodies so as to minimise the potential for double counting of impacts.

As can be seen from Table 6.1, the resulting ranking of the options in terms of their end weighted scores is: Option 1 (having the highest score, thus being identified as the 'best' option), Option 2, Option 3 and then Option 4. Option 1 is clearly preferred for this base case (with a score of almost 109 compared with the next best option – Option 2 - which has a score of around 102). This is mainly due to the greater net benefits expected to arise to micro/craft enterprises and SMEs under Option 1. In relation to Option 2, Option 1 also delivers greater net benefits to professional users but has a lower net effect on the notified bodies. In contrast, MS would appear to be better off under Options 2 and 4, while professional users are likely to gain the greatest net benefits from Option 3 (together with the European Commission due to mandatory CE marking).

These findings give rise to the first key question for examination in the sensitivity analysis: how would the option rankings change if more or less weight were given to particular stakeholder groups?

The other key question is why Option 4 performs so badly compared to the other options. It suggests that the combination of the two sub-measures that include a move to the New Approach modules for attestation of conformity and the expanded use of IT systems is inferior to their alternatives. But, this finding also gives rise to another key question: would either of these sub-options individually improve the performance of the revision options, if they replaced their alternative (i.e. if a move to the New Approach Modules was included in Option 1 rather than changing the AoC to four levels). A follow up question is whether Options 3 and 4 would be improved relative to Options 1 and 2 if Measure F2, the introduction of provisional and national ETAs, were included.

6.2.2 Sensitivity Analysis on Stakeholder Weightings

Several different weighting systems have been examined to determine the sensitivity of the end ranking of the policy options to the level of importance assigned to the different stakeholder groups.

Table 6.1: Option Scoring Results – Base Case (equal weighting across stakeholder groups and impact categories)											
	Stakeholder Group										Total Net Scores
	Manufacturers			Professional Users	Public Sector Organisations		Standardisation, Notified & Approval Bodies			International Stakeholders	
	Micro/ Craft	SMEs	Large		MS	EC	CEN	NBs	ABs		
Option 1	33.25	35.25	24.5	13.25	2.5	3	-5.5	-3.5	-0.5	6.5	108.75
Option 2	31.75	35.25	24.5	9.75	4	3	-5.5	-6	-0.5	6	102.25
Option 3	23.75	26.75	24.5	14.25	2.5	4.5	-5.5	-0.5	-0.5	5	94.75
Option 4	22.25	26.75	24.5	10.75	4	4.5	-5.5	-3	-0.5	4.5	88.25

The first stakeholder sensitivity analysis examined the implications of modifications to the base case: manufacturers as a whole were given equal weight to the other stakeholder groups. This involved totalling the scores assigned to the impacts for manufacturers and dividing the totals by 3 (this is required as scores are given for micro/craft businesses, SMEs and large manufacturers separately such that the total score for all manufacturers is effectively three times the total for professional users solely due to the separation of manufacturers by size).

The second stakeholder sensitivity analysis looked at the impact of giving different categories of manufacturer different levels of importance, within the total scores for this stakeholder group. This analysis tested several different weighting systems being assigned to micro/craft enterprises, SMEs and large enterprises. The first system was based on turnover: with 20% assumed to be micro/craft enterprises, 60% assumed to be other SMEs and 20% to be large companies (see also Table 2.3). The second system reversed the relative importance assigned to these different groups and calculated the weight that would have to be assigned to large manufacturers for Option 3 to be preferred. This weighting system is based on a minimum of 57% of the weight being placed on large companies, 17% on SMEs and 26% on micro/craft enterprises. This second exercises provides important information on the robustness of the choice of Option 1 in relation to the level of importance given to impacts on SMEs versus larger manufacturers. We then examined the weight that would have to be assigned to professional users (designers and contractors) compared to manufacturers for the net benefits to this group to result in Option 3 being preferred to Option 1. In this sensitivity analysis, only the impacts on manufacturers, professional users, MS and international stakeholders were considered.

The results of these sensitivity analyses are presented in Table 6.2 below. As can be seen from the Table, Option 1 remained the highest ranking option in terms of its total weighted score for the first and second sensitivity analysis. It is not until a disproportionate level of importance is given to large companies (compared to their share of turnover) that Option 3 outperforms Option 1. With regard to professional users, they have to be given six times more weight than manufacturers (as a group) for Option 3 to be preferred to Option 1. Option 1 would therefore appear to be clearly preferred to Option 3. Interestingly, Option 2 does not perform as well as Option 3 under any of these sensitivity analyses and Option 4 would appear to be the least preferred option.

Table 6.2: Sensitivity Analysis of Weights Assigned to Stakeholder Groups

	Sensitivity 1: testing of weight given to manufacturers	**Sensitivity 2**		**Sensitivity 3: professional users x 6, manufacturers x 1**
		Manufacturer groups weighted by turnover	**Large manufacturers x 57%, SMEs x 17% micro/craft x 26%**	
Option 1	**46.8**	**48.5**	44.4	110.5
Option 2	41.3	43.2	39.0	89.0
Option 3	44.8	45.5	**44.4**	**110.5**
Option 4	39.3	40.2	39.0	89.0

6.2.3 Sensitivity Analysis on the Sub-Measures Included in the Options

The second type of sensitivity concerns the measures included within Options 1 and 3, as these two options are the highest ranking across the four sensitivity analyses as to stakeholder weighting. In this second type of sensitivity analysis, the implications of changing the sub-measures for which there is no clear preference included within each of the revision options are examined.

We have retained non-mandatory CE marking as the core component for Option 1 and mandatory CE marking as the core component of Option 3. The sensitivity analysis has therefore involved changing the other measures related to AoC system, the use of IT systems (including no increased use of IT), and introduction of provisional and national ETAs.

AoC System

The base case for Options 1 and 3 assumes that changes are made to the AoC system to simplify it to four levels (Measure G1). The implications of alternatively moving to the New Approach modules (Measure G3) were, therefore, investigated. The conclusions from this analysis are that this would reduce the net benefits of both Options 1 and 3. There would be a reduction in net benefits to SME manufacturers associated with the need to familiarise themselves with a new system and the potential advantages that moving to the New Approach would have for larger companies (including non-EU) who are more likely to be able to take advantage of savings in costs due to linkage of FPC with ISO management systems. Professional users would face an increase in the costs of conducting business due to the need to familiarise themselves with the new system compared to the existing system (although this would only be a short-term cost). Thus, there would appear to be a preference from this analysis for simplifying the AoC to four levels rather than a wholesale move to the New Approach modules.

IT Systems

The base case for Options 1 and 3 assumes the optional use of IT systems to provide a limited part of the CE marking information (i.e. information on product characteristics only) together with the creation of an EU-wide product register (Measures I1 plus I3). Sensitivity analysis was run to determine whether allowing the expanded use of IT systems (Measure I2 plus I3) would increase the total net weighted scores of these options.

The inclusion of optional expanded use of IT to provide CE marking information decreased the overall scores for both Option 1 and Option 3. Professional users were considered to be worse off due to increased liability risks and the costs of gathering information. Manufacturers are worse off due to the requirements of Measure I3 to submit information to the product register. The potential for such a register to be used for market research purposes by professional users, together with the likelihood that large manufacturers can take better advantage of the provision of data on the internet, may lead to SMEs and micro enterprises being competitively disadvantaged.

Interestingly, including no ability to use IT for provision of some part of the CE marking information leads to a small reduction in the net benefits of Options 1 and 3 (i.e. 1.5 points). In this case, the reduced ability for professional users to do research on products using the internet reduces their rate of innovation, which is offset by reductions in the costs of conducting business (related to legal liability issues) and the costs of ensuring that they hold the right information in files, etc. Costs to large manufacturers are also higher due to their inability to take advantage of savings through the use of IT systems for provision of some of the CE marking information.

Provisional and National ETAs

The addition of the capability to gain either a provisional or national ETA (Measure F2) would also not appear to increase the net benefits associated with Option 1, although it does lead to a slight improvement in Option 3. Although large manufacturers are expected to gain from this new possibility, this is offset by the potential for misuses and confusion within professional users (leading to a lack of credibility). It may also put the smallest manufacturers at a competitive disadvantage, although it could also lead to net gains in innovation and research activities.

6.2.4 Sensitivity Analysis on Weights Assigned to Impact Categories

The third set of sensitivity analysis examines the implications of giving different weights to impacts arising under the different impact categories. In this case, we analysed three different sets of weights:

- Set 1 places the greatest weight on the sum of operating and administrative costs compared to the other impact categories;
- Set 2 places the greatest weight on the competitiveness and trade and competition within the internal market; and
- Set 3 place the greatest weight on innovation and R&D.

As can be seen from Table 6.3, under Set 1 operating and administrative costs account for 200 out of the 325 possible points, indicating that they have almost 62% of the total weight[35]. In order to compare these end weighted impact scores to those for the unweighted base case, the weighted scores were normalised by dividing by the maximum weight that would be assigned if all five impact categories were weighted equally, at 100 (i.e. divided by 500).

[35] Calculated as 200 ÷ 325 = 0.615. This indicates that operating costs and administrative costs take 31% each of the total weight (i.e. 31% out of 100%). Impacts on competitiveness, trade and investment flows and competition in the internal market are each weighted at 15%, with innovation weighted at 8%.

Table 6.3: Sensitivity Analysis of Weights Assigned to Impact Categories			
Impact Category	**Category Weights**		
	Set 1	**Set 2**	**Set 3**
Operating costs and conduct of business	100	50	60
Administrative costs on businesses	100	40	40
Competitiveness, trade and investment flows	50	100	50
Competition in the internal market	50	100	60
Innovation and research	25	25	100
	325	315	310

Table 6.4 presents the weighted impact scores by stakeholder group and the totals for each option for Sets 1, 2 and 3. As can be seen from this table, Option 1 remains the preferred option under all three sets, based on an equal weighting being given to all stakeholder groups.

Applying the stakeholder sensitivity analysis discussed in Section 6.2.2 gives the results presented in Table 6.5 (note that comparisons across the Sets are not valid, nor are comparisons across the sensitivity analyses). These results indicate that Option 1 is generally preferred, unless a disproportionate level of weight is given to large manufacturers or to professional users (Sets 2 and 3). The differences between Option 1 and Option 3 are smaller, however, than for the base case.

Table 6.5: Sensitivity Analysis of Weights Assigned to Stakeholder Groups				
	Sensitivity 1: testing of weight given to manufacturers	**Sensitivity 2**		**Sensitivity 3: professional users x 6, manufacturers x 1**
		Manufacturer groups weighted by turnover	**Large manufacturers x 72%, SMEs x 17% micro/craft x 11%**	
Set 1: Greater weight to operating and administrative costs				
Option 1	**45.7**	**47.1**	**43.6**	124.0
Option 2	40.3	41.9	38.4	91.3
Option 3	41.8	42.5	41.6	**126.2**
Option 4	36.4	37.3	36.4	93.5
Set 2: Greater weight to competitiveness and trade, and competition in the internal market				
Option 1	**31.2**	**32.7**	29.0	**56.7**
Option 2	26.8	28.5	24.5	46.9
Option 3	30.2	31.1	**29.2**	55.8
Option 4	25.8	26.8	24.8	46.0
Set 3: Greater weight on innovation				
Option 1	**31.2**	**32.2**	29.9	72.8
Option 2	28.6	29.7	27.3	62.2
Option 3	30.3	30.6	**30.3**	**72.9**
Option 4	27.7	28.1	27.8	62.4

Table 6.4: Sensitivity Analysis of Option Scoring Results – Weighting of Impact Scores based on Sets 1 to 3											
	Stakeholder Group										
	Manufacturers			Professional Users	Public Sector Organisations		Standardisation, Notified & Approval Bodies			International Stakeholders	Totals
	Micro/ Craft	SMEs	Large		MS	EC	CEN	NBs	ABs		
Set 1: Greater weight to operating and administrative costs											
Option 1	35.2	36.3	26.9	15.2	1.0	4.6	-7.7	-8.7	-2.1	5.2	**106.0**
Option 2	33.7	36.3	27.3	9.8	2.7	4.6	-7.7	-10.6	-2.1	4.8	98.8
Option 3	24.0	27.7	25.8	16.7	1.0	6.9	-7.7	-4.8	-2.1	2.5	90.0
Option 4	22.5	27.7	26.2	11.3	2.7	6.9	-7.7	-6.7	-2.1	2.1	82.9
Set 2: Greater weight to competitiveness and trade, and competition in the internal market											
Option 1	22.7	24.0	14.1	6.1	0.7	1.2	-2.9	-0.2	0.3	5.8	**71.7**
Option 2	21.5	24.0	13.8	4.5	1.3	1.2	-2.9	-2.7	0.3	5.3	66.2
Option 3	16.9	18.5	13.8	6.6	0.7	2.0	-2.9	1.8	0.3	5.4	63.0
Option 4	15.7	18.5	13.5	5.0	1.3	2.0	-2.9	-0.7	0.3	4.9	57.5
Set 3: Greater weight on innovation											
Option 1	20.4	21.9	15.9	8.9	2.6	1.2	-2.8	-1.6	0.1	3.5	**69.9**
Option 2	19.5	21.9	15.8	7.2	3.7	1.2	-2.8	-3.0	0.1	3.2	66.7
Option 3	14.7	16.7	16.4	9.5	2.6	2.1	-2.8	0.2	0.1	2.7	62.1
Option 4	13.8	16.7	16.3	7.8	3.7	2.1	-2.8	-1.2	0.1	2.5	58.8

6.3 The Preferred Comprehensive Revision Option

6.3.1 Summary of the Measures Comprising the Preferred Option

From the above analysis, Option 1 has been identified as being the preferred revision option. To summarise, this revision option comprises the following measures:

- **Measure A**: clarification of the objective and scope, and of Articles 4.2 and 13.5.
- **Measure B**: clarification of definitions;
- **Measure D2**: CE marking is mandatory for those products that fall within the scope of the legislation but the scope is defined more flexibly, CE marking remains the only legal means of declaring product characteristics , a manufacturer is able to decide whether or not to declare performance characteristics for his products; however, should a manufacture declare any characteristics, and national marks must be withdrawn;
- **Measure E1:** CE marking against a Technical File;
- **Measure F1:** abolishment of ETAGs, simplification of the CUAP route, and strengthening of competency requirements for ABs;
- **Measure G1**: changing the system for AoC to four levels;
- **Measure H**: increased promotion of conformity without testing;
- **Measures I1 plus I3**: option to make use of IT systems for the provision of product characteristic data rather than on product or in accompanying information together with the development of an EU-wide product register;
- **Measure J**: adoption of the Community market surveillance framework and European accreditation infrastructure; and
- **Measure K**: stronger EC controls over harmonisation of standards.

Table 6.6 provides an assessment of the degree to which this revision option address the main identified problems set out in Section 3 of this report. It is based on the same format as for the other policy options assessed in Section 4, for consistency purposes. Table 6.6 highlights where there are issues that remain that may affect the realisation of the benefits identified for each measure individually and the revision option as a whole. These benefits could be realised earlier with information campaigns to inform manufacturers, users, NBs, ABs, etc. of the changes. This could be undertaken by the EC initially, but is likely to require uptake by trade associations and Member States.

Table 6.6: The Implications of the Preferred Revision Option

The issue	Measure(s) addressing the problem?	What issues remain?
CE Marking		
Meaning of CE marking is unclear	Measure A: Clarification of objectives, scope, and Articles 4.2 and 13.5 Measure B: Clarification of definitions	Likely to be time lag for familiarisation with new CPD before meaning of CE marking is clear

Table 6.6: The Implications of the Preferred Revision Option		
The issue	**Measure(s) addressing the problem?**	**What issues remain?**
CE marking is not compulsory in all MS	Measure D2: CE marking is not mandatory	None – more detailed requirements of CE marking should result in level playing field
CE marking is not fully accepted by National authorities or by users	Measure J: Adoption of the Community market surveillance framework and European accreditation infrastructure	Likely to be time lag between beginning of market surveillance and accreditation and acceptance of CE marking
CE marking is resulting in long delays because of its dependence on harmonised standards	Measure D1, E1 and K: Stronger EC controls over harmonisation of standards	May be some short term impacts if standards are not published by the EC
Necessary definitions, like manufacturer, placing on the market,…are missing in the present CPD	Measure B: Clarification of definitions	Need for agreement of appropriate definitions for benefits to be realised
Implementing Mechanism		
Incorrect understanding of what CPD standards are intended for	Measure A: Clarification of objectives, scope, and Articles 4.2 and 13.5	Likely to be time lag for familiarisation with new CPD before meaning of CE marking is clear and, thus, what standards are intended for becoming more widely understood
ETA route is slow, bureaucratic and expensive	Measure F1: Abolishment of ETAGs, simplification of the CUAP route, and strengthening competency of ABs	Likely to be time lag for familiarisation with new ETA requirements before benefits are fully realised
System of attestation of conformity set out by the CPD is too complex and imprecise	Measure G1: Changing the system for AoC to four levels (although a move to the New Approach may be equally preferred)	Likely to be time lag for familiarisation with new AoC systems (for those products affected by change)
The problems associated with Notified Bodies identified in the framework of the revision of the NA applies, mutatis mutandis, to the CPD	Measure J: Adoption of the Community market surveillance framework and European accreditation infrastructure	Likely to be time lag between beginning of accreditation and acceptance of results from NBs in other MS
There is a problem harmonising the selection criteria for approval bodies specific to the CPD, at the European level. Furthermore, there is a problem of competence and work organisation	Measure F1 and J: strengthening of competency of ABs	Likely to be time lag between increase in requirements and improved competence
Market surveillance is practically absent	Measure K: Adoption of the Community market surveillance framework and European accreditation infrastructure	Likely to be time lag between beginning of market surveillance and increased confidence in CE marking

Table 6.6: The Implications of the Preferred Revision Option		
The issue	**Measure(s) addressing the problem?**	**What issues remain?**
Other Problems		
The obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products	Measure A: Clarification of objectives, scope, and Articles 4.2 and 13.5 Measure B: Clarification of definitions Measure H: Promotion of conformity without testing Measure I1and I3: Limited use of IT systems	Likely to be time lag for familiarisation with new CPD before new requirements are fully understood
Very complex competition relations in the market for kits and systems in which the provisions related to CE-marking can directly or indirectly interfere	Measure A: Clarification of objectives, scope, and Articles 4.2 and 13.5 Measure B: Clarification of definitions	Need for agreement of appropriate definitions for benefits to be realised Likely to be time lag for familiarisation with new CPD before new requirements are fully understood

6.3.2 Overall Implications of the Revision Policy Option

Data on the costs associated with the different steps involved in demonstrating conformity with a harmonised standard and estimates of the administrative and other costs associated with CE marking under the CPD and NA Directives (e.g. the Medical products Directive) have been used to provide estimates of the potential change in costs arising under Option 1. This has been based on the specification of low, medium and high scenarios in order to reflect the uncertainties underlying the assumptions that have had to be made on:

- **for manufacturers**:
  - the change in costs, in other words the savings per product or the additional costs per product;
  - the number of products that would be affected (generally expressed in terms of percentages);
  - whether all products would be affected, only new products, etc.;
  - and whether the costs are once-off or annual.
- **for professional users**: the change in costs, in other words the savings or the additional costs per annum; and
- **for the European Commission**: the change in costs, in other words the savings or the additional costs per annum.

It has not been possible to estimate the potential change in costs to MS competent authorities. Note that we have also not placed any estimates on the implications for CEN or on the changes in revenues to Notified Bodies or Approval Bodies, as these reflect increases in costs to the other stakeholders.

Table 6.7 provides details of the changes in costs associated arising under Option 1, based on the implications of the measures comprising this option. It also indicates those aspects which it has not been possible to assess in this manner.

Table 6.7: Implications (Costs and Savings) of the Measures Comprising Option 1						
	SAVINGS			**COSTS**		
Description	**LOW**	**MED**	**HIGH**	**LOW**	**MED**	**HIGH**
Costs and Savings for Manufacturers						
Reduction in familiarisation costs for manufacturers with attempting to enter a new market	€ 19,000,000	€ 75,000,000	€ 140,000,000	-		
Reduction in testing costs as CE marking alone is accepted as being sufficient	€ 19,000,000	€ 190,000,000	€ 420,000,000	-		
Increase in number of products traded between MS	**Not quantified – to avoid double counting**			-		
Reduction in familiarisation costs where standards are revised	€ 3,600,000	€ 7,200,000	€ 14,000,000	-		
No requirement for CE marking of individual, made-to-measure, craft or non-series products	€ 4,500,000	€ 90,000,000	€ 650,000,000	-		
Conformity without testing as a method of demonstrating compliance	€ 83,000,000	€ 420,000,000	€ 830,000,000	-		
Potential to use CE marking against a technical file	€ 5,200,000	€ 62,000,000	€ 420,000,000	-		
Reduced confusion for manufacturers and savings from not buying standards that will be withdrawn	**Not quantified - no data**					
Reduction in time to obtain ETA	€ 42,000,000	€ 500,000,000	€ 2,100,000,000	-		
Manufacturers currently applying AoC 1+ that would move to AoC 1	€ 68,000,000	€ 290,000,000	€ 680,000,000	-		
Manufacturers currently applying AoC 2 that would move to AoC 2+ (building limes)	-			€ 23,000,000	€ 52,000,000	€ 52,000,000
Reduction in labelling costs from use of electronic labelling	€ 52,000,000	€ 150,000,000	€ 500,000,000	-		
Costs to manufacturers of providing information on products for inclusion in product database	-			€ 18,000,000	€ 36,000,000	€ 72,000,000
Costs to manufacturers of providing information on products for inclusion in product database-'new' products	-			€ 38,000,000	€ 76,000,000	€ 150,000,000
Costs and Savings to Professional Users						
Costs to professional users of finding labelling information	-			**Not quantified – too uncertain and no data**		

Table 6.7: Implications (Costs and Savings) of the Measures Comprising Option 1						
	SAVINGS			**COSTS**		
Description	**LOW**	**MED**	**HIGH**	**LOW**	**MED**	**HIGH**
Costs and Savings for Member States						
MS revising building regulations and disseminate	-			**Not quantified - no data**		
Costs of increased market surveillance	-			**Not quantified - no data**		
Costs and Savings for the European Commission						
EC produces guidelines to help explain revision to CPD	-			€ 5,000,000	€ 5,000,000	€ 5,000,000
Administrative cost savings from not having to withdraw standards once published				-		
Costs to the European Commission (or designated body) to set up the product database	-			€ 200,000	€ 400,000	€ 400,000
Costs to the European Commission (or designated body) of maintaining the product database	-			€ 420,000	€ 640,000	€ 850,000
Administrative cost savings for EC from reduction in number of complaints	€ 230,000	€ 930,000	€ 9,300,000	-		
Costs and Savings for Standardisation Bodies, Notified Bodies and Approval Bodies						
Costs of accreditation scheme for Notified Bodies-accreditation	-			€ 3,100,000	€ 5,400,000	€ 7,800,000
Costs of accreditation scheme for Notified Bodies-reviews and check-ups (year 0, 5, 10)	-			€ 7,800,000	€ 16,800,000	€ 25,500,000
Comparison testing by Notified Bodies	-			€ 1,000,000	€ 1,000,000	€ 1,000,000
Loss of income to Notified Bodies and Approval Bodies	-			**Not quantified – to avoid double counting**		
TOTAL	€ 300,000,000	€ 1,800,000,000	€ 5,800,000,000	€ 97,000,000	€ 190,000,000	€ 310,000,000
Annualised (over 15 years at 4%)	€ 26,000,000	€ 160,000,000	€ 500,000,000	€ 8,400,000	€ 16,000,000	€ 27,000,000
Annualised as % of annual production (€212,000 million)	0.01%	0.08%	0.24%	0.00%	0.01%	0.01%

As can be seen from Table 6.7, the total estimated savings of the measures that would be introduced under the proposed option are around €1.8 billion in present value terms over the 15 year period after the new legislation is introduced (medium scenario, starting in 2010 and discounted at 4%). This equates to savings of around €160 million per annum, or some 0.08% of the value of annual production for this sector. These savings are offset by additional costs of around €190 million in present value terms (discounted over 15 years at 4%), or roughly €16 million per annum. Thus, the net benefits are estimated at €140 million per annum (bearing in mind that it has not been possible to place estimates on all of the savings and additional costs that may arise from the proposed combination of measures).

Summary of Implications and Underlying Assumptions

Clarity over the meaning of CE marking and the objective of the CPD means that manufacturers and users will become more aware that CE marking alone may not always be sufficient to show that a product is fit for purpose. It will also clarify the role of voluntary national marks so that there is greater acceptance of CE marking based on product characteristics. This has knock-on benefits in terms of the translation of national requirements into a common technical language, making the requirements in each Member State much easier to identify and understand.

Potential cost savings (benefits):

- reduction in familiarisation costs for manufacturers associated with attempting to enter a new market. Impacts assumed to relate to 20% (range 10%-25%) of 'new' products coming onto the market each year that may benefit from this savings, assuming that 18% of products being traded between Member States[36], giving a potential for savings to be realised across 4% of products per year. The cost savings per new product are estimated at €1,000 (range €500 to €1,500), with this being an annual saving as 'new' products become available each year; and

- reduction in testing costs as CE marking alone is accepted as being the only legal means of declaring harmonised product characteristics. It is assumed that of the 20% of 'new' products (range 10%-25%) and 18% of products traded between Member States each year, 25% will benefit from no longer having to apply national marks, resulting in savings in testing costs for 1% of new products. Cost savings could be as much as 30% or €10,000 for each product line[37] (range €5,000 to €15,000). The cost savings would apply annually (as 'new' products become available each year and it is assumed that the 1% would otherwise have faced multiple testing).

Potential additional costs:

- requirements for Member States to revise national building regulations (or equivalent) and to disseminate these changes to public authorities/bodies responsible for enforcement/verification that building regulations and codes have been followed correctly. These costs have not been quantified; and

[36] Based on percentage of intra-EU trade of production (EU-25) from Prodcom data for 2005, i.e. €38,734 million of €212,216 million (see also Table 2.1).

[37] Based on reported potential cost savings in France from removal of national certification requirements for ceramic tiles (from PRC, 2006).

- European Commission produces guidelines or explanatory information showing how the CPD has changed and why. The costs are expected to be in the order of €5 million[38].

Accreditation of Notified Bodies and strengthening the competency requirements and establishing some form of accreditation requirements for Approval Bodies, and market surveillance improves confidence in CE marking such that it is more acceptable to manufacturers, users and Member States. Furthermore, the accreditation system increases confidence in the tests undertaken by Notified Bodies, such that tests carried out by NBs in one Member State are more likely to be accepted by authorities in other Member States. This results in a reduction in requirements for multiple testing and the opening up of the internal market for products that are CE marked (NPD continues to be used where there is no regulatory requirement to determine a particular performance characteristic).

Potential cost savings (benefits):

- reduction in testing costs as CE marking alone is accepted as being sufficient where a national mark does not require any further information – as described above; and

- potential increase in number (percentage) of products being traded between Member States. This could lead to a cost savings for professional users (and hence end consumers) as they are able to select from a wider range of products available on their national market. This reduction in costs is assumed to be reflected in the savings made by manufacturers (e.g. from reduced familiarisation or testing costs) and is not quantified here to avoid double counting.

Potential additional costs:

- costs of undertaking market surveillance. The additional administrative costs are estimated to be around 5% to 10%[39] and are associated with an initial visit (i.e. one-off costs). There are no data available to allow this estimate to be quantified in total money terms;

- costs of accreditation scheme for Notified Bodies. These costs may be €6,000[40] to €15,000[41] for accreditation and €6,000 to €20,000 for reviews and check-ups[42] per Member State and would apply to 519 Notified Bodies[43]. The reviews and check-ups are assumed to be undertaken initially and then repeated every five years. Additional costs may be incurred in ensuring the competency of Approval Bodies;

38 Based on assumed figures to reach a 'broad public', from SEC(2007) 173 Impact Assessment.

39 Based on costs for market surveillance authorities in SEC(2007) 173 Impact Assessment.

40 Based on figures from the UK Accreditation Service (UKAS) for a two-day site visit by two personnel.

41 Based on figures from the Dutch Ministry of Economic Affairs (2002) by PWC for a 7 day accreditation.

42 Commission Staff Working Document (2007): **Executive Summary of the Impact Assessment on the proposal for a Regulation…setting out the requirements for accreditation and market surveillance relating to the marketing of products**, SEC(2007) 174, 14 February 2007. The range given is dependent on the interval between check-ups of 1 to 4 years.

43 The number of Notified Bodies under the CPD from Nando in March 2007.

- costs of comparison testing across Notified Bodies to comply with the accreditation framework could be €1 million[44]. Dividing this figure by the number of Notified Body (with Nando showing 519 NBs under the CPD) suggests a cost of around €2,000 each.
- some less competitive manufacturers may see a reduction in market share.

Reduced testing requirements leads to reduced operating and administrative costs for manufacturers, with these representing proportionally greater savings (as percentage of turnover) to SMEs than to large companies. The reductions in operating costs for manufacturers are experienced as a cost to Notified and Approval Bodies, as their incomes from testing reduce (although this will be offset by more standards coming into force over time).

Potential cost savings (benefits):

- reduction in familiarisation costs for manufacturers associated with attempting to enter a new market – as described above;

- reduction in familiarisation costs for manufacturers where standards are revised in line with the revised policy option (compared to the baseline option where standards are revised in line with the current CPD). Assumed that 20% of hENs are revised per year[45] and that this relates to 20% of products means that 20% of products would benefit from these familiarisation costs. It is assumed that two hours familiarisation time would be saved (range 1 to 4 hours). At a cost of €100 per hour, the savings would be €200 (range €100 to €400) per product. Such savings would be one-off as, once the hENs have been revised in line with the new policy option, further revision of the hENs would not result in familiarisation cost savings that can be attributed to the revision of the CPD itself; and

- reduction in testing costs as CE marking alone is accepted as being the only legal means of declaring conformity with the harmonised product characteristics.

Clarification of key definitions helps to identify which products are covered and when, reducing the need for CE marking where product characteristics do not need to be declared. This excludes some of the micro/craft products and individual/non-series products from the requirement to comply with the CPD, hence, CE marking is not mandatorily affixed to these products should manufacturers of these products decide to remain outside the scope of the new legislation. This helps reduce costs to micro/craft businesses and SMEs, where there is no demand for product characteristics to be declared.

[44] Based on COM(2007) 53 final (Proposal on a common framework for the marketing of products) and reflects costs across all industrial products.

[45] Based on data from CEN (2007): Snapshot of the current situation, January 2007. The 20% of hENs to be revised each year reflects the revision of hENs over a rolling programme of work every five years and is equivalent to review of 93 of the 463 'concerned' standards being reviewed per year.

Potential cost savings (benefits):

- no requirement for CE marking of individual, made-to-measure, craft and non-series products. The percentage of products that are made-to-measure (etc.) is likely to vary significantly by sector (potentially being very high for windows, motorised doors, fire protection systems, but very low for cement, for example). An overall estimate is very difficult because of the high degree of variation between product types but the assumption is made here that 5% of all products would no longer fall under the scope of the CPD (range 1% to 20%). These 5% of products would no longer have to include CE marking and would incur no future testing or labelling costs. However, some manufacturers may wish to apply CE marking and this route will remain available to them, e.g. through use of CE marking against a technical file (see below). It is assumed that manufacturers of these products would no longer affix the CE marking to 80% of these products, (range 50% to 90%) i.e. 80% of the 5% which could no longer fall within the scope of the CDP. The savings are estimated at €5,000 to €20,000 per product[46] and are one-off savings; it is assumed that they include any savings from no longer having to apply CE marking and labelling requirements.

Potential additional costs:

- none identified.

Promotion of conformity without testing provides installers and assemblers with greater potential to utilise test results from manufacturers to reduce their compliance costs. This would require revision of standards, to include other approaches of demonstrating compliance, but this could be done as standards are reviewed and revised rather than as an additional task on CEN. The roles and requirements of those manufacturing products that can be used/installed in kits is clarified, with the continued need for CE marking of both 'naked' products and the kits themselves when these are placed on the market, but where manufacturers/installers of these products could make increased use of conformity without testing.

Potential cost savings (benefits):

- potential to use conformity without testing once standards are revised to include the other approaches of demonstrating compliance. It is assumed that conformity without testing approaches would apply to 20% of products (range 10% to 25%) and that the standards to allow use of conformity without testing would be revised over a five year period, such that 5% of products would benefit per year. The savings would be one-off since, once conformity without testing has been applied, there would be no future potential for applying it again. The savings from not having to test products are estimated at €5,000 to €20,000 per product[46] and are one-off savings.

[46] Based on estimated third party testing costs for individual/non-series production of windows from the European Builders Confederation.

Potential additional costs:

- none identified, providing the revision of standards is undertaken during the rolling programme of hEN revisions, as is already programmed and has been described above.

CE marking against a technical file should also reduce testing costs and would apply to individual, non-series and made-to-measure products. It could also provide those manufacturing/installing kits with a further alternative approach to CE marking.

Potential cost savings (benefits):

- potential to use CE marking against a technical file as an alternative method for demonstrating compliance. It is assumed that this would apply to the 20% of 'new' products[47] and that CE marking against a technical file would save 25% of the costs of obtaining an ETA (with the other 75% being spent in providing the information for inclusion in the technical file and having the file verified by a Notified Body). Current costs of ETAs range from around €2,000 for the renewal of an ETA for a simple product to €40,000 for a new complex product excluding testing costs. The simple mean value was €12,000 per product, giving an estimated saving of €3,000 (range €500 to €10,000); such savings would be realised annually across 'new' products be placed on the market each year. These figures exclude the human resource costs incurred by the company applying for the ETA[48]. These savings would be made by those manufacturers of individual, non-series or made-to-measure products that choose to undertake CE marking (for the internal market benefits). For consistency with the estimated cost savings associated with individual, non-series and made-to-measure products falling outside the scope of the revised CPD, it is assumed that 20% of manufacturers of these products wish to apply CE marking (range 10% to 50%).

Potential additional costs:

- none identified, providing the technical file is accepted by professional users as sufficient to provide them with the information they need to use of product, although professional users may incur increased costs in understanding the details of the technical file.

The European Commission is given powers to refuse to publish a harmonised standard that it believes goes beyond the objective of the CPD, thus, reducing the potential that standards include requirements over and above regulatory requirements (although voluntary standards can continue to be included provided they are clearly identified as voluntary and do not form part of the requirements for CE marking). This may result in increased costs to CEN (e.g. from having to re-agree standards) but these should only arise in the short-term.

47 This does not result in a double counting with the savings made from reduced need for testing with national marks, as the savings included for CE marking against a technical file relate to CE marking testing costs.

48 PRC (2006): **Study to Evaluate the Internal Market and Competitiveness Effects of Council Directive 89/106/EEC (Construction Products Directive, CPD)**, Final Report, November 2006.

Potential cost savings (benefits):

- administrative cost savings for the European Commission from being able to refuse publication of a standard rather than having to withdraw it after it has been published. The cost savings that may be realised are unknown but could be substantial; and
- reduced confusion for manufacturers, professional users and MS where a standard is published and then withdrawn. This may also result in cost savings where manufacturers purchase the standard before it has been withdrawn. There are no data available to allow these cost savings to be quantified.

Potential additional costs:

- costs to CEN of having to re-agree and revise the standard.

Simplification of the ETA route by removing the bureaucracy associated with the 'green-light' letter and increasing flexibility as to when a manufacturer may obtain an ETA speeds up the ability to apply CE marking where there is not an hEN and may encourage an increased demand for ETAs (although holding an ETAs would not become mandatory for innovative products). This may result in a win-win effect, where increased confidence in CE marking encourages take-up of ETAs, which itself further increases confidence in and acceptance of CE marking. Ensuring that ABs have the competency to deliver robust ETAs under this more flexible system may also increase confidence in CE marking and hence the demand for ETAs by SMEs and larger companies. This in turn should give companies an incentive to innovate.

Potential cost savings (benefits):

- reduction in time to obtain an ETA, with reduced time to market for products applying CE marking through the ETA route. Overall, it is expected that this route would apply to the 20% of 'new' products and that savings could be around 10% of the costs of obtaining an ETA. However, as CE marking would not be mandatory. As above, current costs of ETAs range from around €2,000 for the renewal of an ETA for a simple product to €40,000 for a new complex product excluding testing costs. The simple mean value was €12,000 per product, giving an estimated saving of €1,200 (range €200 to €4,000).

Potential additional costs:

- none identified.

The system of attestation of conformity is simplified to four levels (1, 2+, 3 and 4), reducing costs for those products currently in AoC 1+, but increasing costs to those products currently in AoC 2. The simplification better aligns the systems of AoC for technical characteristics with the AoC for reaction to fire, making this easier for manufacturers to understand and apply. However, while this simplification works well for the Initial Type Testing (ITT) part of the attestation, it is not linked to ISO and so misses some of the benefits that could be obtained by moving to the New Approach modules (there would also be further benefits from moving to the NA modules for those products covered by other CE marking Directives). These benefits can be maximised by combining the ITT part of the AoC with the Factory Production

Control (FPC) being covered by the NA modules (or further linkages being made between the hENs and ISO as the standards are revised). To clarify the terminology, it may be beneficial to move from 'ITT' to another term, e.g. type examination (as is used in the NA), while FPC could be called design examination to again fit with the NA wording.

Potential cost savings (benefits):

- cost savings for those manufacturers of products currently complying with AoC 1+ as these would move to AoC 1 under the simplified system (as shown in Table 6.8). These products represent 14% of total production (by value)[49]. Savings could occur to these 14% of products due to random surveillance checks no longer being required. The estimated cost savings resulting from the reduction in surveillance checks is €3,000 (range of €1,000 to €5,000). It is assumed that surveillance checks take place once every three years on average, such that 33% of the 14% of products would be affected each year.

Potential additional costs:

- costs to manufacturers of building limes that would have to comply with AoC 2+ rather than 2, relating to the need to use a notified body for FPC. These costs may be around €10,000 per year for each product line[50] (range €5,000 to €10,000). There are an estimated 450 kilns (range 400 to 450) in the EU producing limes (based on industry data). It is assumed that all of these produce building limes and that each would require a Notified Body for on-going third party verification of FPC (annual costs).

Table 6.8: Products Included in AoC 1+ that would move to AoC 1
Kits (piping and storage systems) Pipes Tanks Valves, taps, pumps, water meters, protection and safety devices Fittings, adhesives, joints, joint sealings and gaskets Membranes, resins Coatings Lubricants, greases
Couplings and sleeves for standardised reinforcing bars (for reinforcing uses)
Post tensioning kits (for the prestressing of structures)
Reinforcing steel products (bars, rods, coils, welded fabrics, lattice girder, indented strips) (used for the reinforcement of concrete)
Prestressing steel products (used for the prestressing of concrete): - wires (stress relieved cold drawn wires, smooth wires, indented wires) - strands (multi-wire strands, multi-wire compacted strands, indented and high bond strands) - bars (hot rolled and processed bars, threaded bars, ribbed or plane or smooth bars) - prestressing cables

[49] Estimated by taking 100% of cement, prestressing steel and reinforced steel products plus 5% of pipes to give total production of €30,495 million out of total production of €212,216 million (see also Table 2.1).

[50] Based on costs for two sets of annual inspections per product line would be required per year. Costs taken from WS Atkins (2000): **Effects of Regulation and Technical Harmonisation on the Intra-Community Trade in Construction products**, Case Studies Report, September 2000.

Table 6.8: Products Included in AoC 1+ that would move to AoC 1
Common cements including Portland cements, Portland composite cements (Portland slag cement, Portland silica fume cement, Portland pozzolana cement, Portland fly ash cement, Portland burnt shale cement, Portland limestone cement, Portland composite cement), blastfurnace cements, pozzolanic cements, composite cements (in preparation of concrete, mortar, grout and other mixes for construction and the manufacture of construction products)
Special cements, including low heat cements, sulphate resisting cements, white cements, sea water resisting cements, low alkali cements) (in preparation of concrete, mortar, grout and other mixes for construction and the manufacture of construction products)
Calcium aluminate cements (in preparation of concrete, mortar, grout and other mixes for construction and the manufacture of construction products)
Masonry cements (in preparation of concrete, mortar, grout and other mixes for construction and the manufacture of construction products)

Manufacturers are given the option of providing some of the legally required information that currently accompanies CE marking electronically to reduce labelling and packaging costs. They will still be required to include the following information on the product or documents accompanying the product:

- CE marking;
- name or brand of company;
- two digit of year when CE marking is affixed;
- number/code of any Notified Body used (although there may be advantages in not providing this information as it may be used in a discriminatory manner);
- identification number of product; and
- web-site address where the remaining information can be found.

This may increase costs to some professional users, but may have benefits to others (e.g. those requiring information on product characteristics during design phases, before purchasing products). Member States undertaking market surveillance may also be able to make use of electronic information to reduce their costs, but would require a products database to be developed to avoid issues over the legality of information posted on web-sites and to ensure that the information is available if a problem arises or when surveillance activities are being undertaken.

Potential cost savings (benefits):

- reduction in labelling costs for those manufacturers that choose to use electronic labelling. It is assumed that 90% (range 60% to 95%) of multinational, large and medium companies plus 45% of micro/craft and SMEs (range 30% to 50%) would take up the option of using electronic labelling. Based on turnover, the total number of products using electronic labelling would be 70%[51] (range 50% to 80%). This is expected to result in annual cost savings (due to the need to include the two-digit reference to the year when the CE marking was affixed) of around 10%. The estimated costs per products of CE marking are €1,000 (range €500 to €3,000), giving potential cost savings of €100 (€50 to €300) per product per year.

[51] Based on 45% of small/micro enterprises with 40% of total turnover (i.e. 18% of products), plus 90% of medium/large enterprises with 40% of total turnover (i.e. 36% of products) and 90% of multinational companies with 20% of total turnover (i.e. 18% of products), giving 72%, rounded to 70% to highlight that estimate is only accurate to one significant figure.

Potential additional costs:

- costs to manufacturers of having to provide information on their products for inclusion in the CPD product database. It is assumed that each manufacturer would have to complete a form for each product, taking an estimated two hours at €100 per hour gives costs of €200 per product (range 1 hour to 4 hours). This will apply to 100% of products since all those using electronic labelling will be required to submit product information for inclusion in the database. This would be a one-off cost per product with on-going costs for 'new' products;

- costs to the European Commission (or designated body) of setting up and maintaining the product database. If the database has similar costs to the Medical Devices database, the set-up costs could be €220,000. This may be low due to the number of products affected by the CPD, such that costs of €400,000 for set-up may be more realistic (i.e. similar to costs of the Database of Origin and Registration, DOOR). The costs of maintaining the database are likely to be in excess of the €40,000 per year costs of the Medical Devices database (potentially as high as €80,000 per year); and

- costs to professional users of having to find the information (but this should be minimised where the product database is freely available). These costs are not quantified due to the uncertainty over whether they would be incurred (and if so, to what extent).

The overall result of the proposed revisions to the CPD is fewer complaints from manufacturers and trade associations to the European Commission, resulting in less time and resources being required in developing guidance papers and holding meetings with representatives of the construction industry and specification writers. Thus, the administrative costs to the European Commission should be reduced.

Potential cost savings (benefits):

- administrative cost savings for the European Commission from having to deal with a smaller number of complaints, based on an average of 8 hours per complaint (range 4 hours to 40 hours) at €100 per hour and a reduction of 100 complaints per year (range 50 to 200), giving administrative costs saved of €800 per complaint (range €400 to €4,000). These figures obviously exclude an savings in the costs of litigation that could arise from the increased clarify of the legislation and its requirements;

- manufacturers would also benefit by spending less time making complaints as would trade associations. These savings are not quantified as the reduction in time spent complaining may be captured in one or more of the other benefits described above.

Potential additional costs:

- none identified.

Directive versus a Regulation

The above analysis has not yet addressed the question as to whether the revised legislation should take the form of a regulation rather than a directive. The advantage of a regulation over a directive is that all aspects of a regulation have to be implemented in the same manner across all Member States, thus reducing the potential for differing interpretations. This should increase the consistency in application across the 27 Member States and help ensure that barriers to internal trade do not arise due to differences in national implementation. A second advantage is that amending a regulation has lower administrative costs than amending a directive. This is because a regulation directly applies whereas a directive has to be transposed into national laws, which would each have to be amended if changes are made to the directive.

It would appear from responses to the internet consultation that most manufacturers (EU and non-EU) would be in favour of the revised legislation taking the form of a regulation. It is not clear that this is also the case for professional users, although increased consistency in implementation may increase the ability of this group of stakeholders to trade on the internal market. Member States may not, however, prefer a regulation if it would eliminate the scope they have for taking into account linkages to national codes and regulations (although this may also be the case in any revised directive depending on how it has been drafted).

6.3.3 Summary of Key Impacts on Manufacturers

This section highlights particular impacts on specific stakeholders that are included within Table 6.7 but are emphasised here to illustrate how benefits are distributed between the different groups.

Manufacturers

Micro enterprises may particularly benefit from the proposed revisions to the CPD where they manufacture products which are no longer under the scope of the Directive (i.e. individual or non-series production). They may also fall outside the scope of the legislation where their customers do not require them to declare any performance characteristics. Promotion of conformity without testing will increase flexibility in how to comply with the requirements of the Directive. This may also benefit assemblers/installers where cascading of test results could be promoted. These savings may be significant for micro enterprises as testing costs are likely to represent a larger proportion of turnover than for larger companies.

Like micro enterprises, SMEs may benefit from the proposed revisions to the CPD where they manufacture products which are no longer covered by the scope of the Directive (i.e. individual or non-series production) and where they are able to use promotion of conformity without testing to comply with the requirements of the Directive.

Large companies will also benefit from a reduction in the scope of the CPD. For larger enterprises, the benefits may be more associated with innovative products than current product lines. Promotion of conformity without testing and the potential for use of IT systems will both add flexibility to how a manufacturer can demonstrate compliance and should help further reduce costs. In some cases, the costs of ITT may move from micro businesses and SMEs to larger manufacturers to allow cascading.

Impacts on non-EU manufacturers are likely to be similar to those for larger manufacturers. Thus, they are likely to include:

- reduced costs of conducting business and of administration due to the increased clarity of and flexibility allowed within the legislation;
- reduced testing costs due to promotion of conformity without testing;
- reduced costs from the flexibility added by the potential for use of IT systems;
- reduced costs where ETAs are obtained more quickly and at lower cost from simplification of the process; and
- reduced need for multiple testing from increased confidence in CE marking and greater acceptance of tests by national authorities.

Professional Users

Professional users may experience an increase in costs in the very short term from the loss of in national marks as CE marking is confirmed as the only legal means of declaring harmonised performance characteristics. These short term costs may include more time investigating products (which could be helped by use of electronic information on performance characteristics). Although they may spend more time finding the information needed to determine if a product can be used, they should be able to locate the details they need so as to be able to make up their own minds as to the fitness for use of the product. Other potential costs include familiarisation with changes in AoC or with the details of manufacturers' technical files, where CE marking of made to measures or non-series products is against these.

There may be some concern from professional users over the potential for increased liability that they are assuming should the CE marking information only be available online (rather than with/on the product). This may lead to increased administrative costs in collecting and maintaining the CE marking information, but could be minimised where a product database is available.

Conversely, there would be potential benefits of having a wider range of products to choose from as CE marking becomes more acceptable, and potential cost savings as a result (more products being put onto market due to fewer national marks acting as a barrier to trade). Other benefits include the potential for manufacturers to bring new, innovative products to the market more quickly, thus, bringing advantages to designers and contractors.

Member States

There would be increased market surveillance costs (from the current level), but these are predicted (in the European Commission's impact assessment on the community market surveillance framework) to result in significant cost savings in comparison with the present non-coordinated costs of national market surveillance, and savings of 90% of the costs if all safeguard clause cases were to lead to inter comparison testing (potentially as much as €9 million)[52]. There may be an increase in administrative costs of 5% to 10%[53], associated with initial visit costs (although these will depend on the sector and degree of co-operation). However, the use of IT accompanied by the inclusion in a database of products that are electronically labelled may be of some benefit to Member States in undertaking desk-based market surveillance and research activities.

Member States would also incur costs associated with setting up accreditation schemes for Notified Bodies, through the accreditation body or similar competent authority. Additional costs may be incurred in ensuring the competency of Approval Bodies.

There may also be benefits to Member States if the revised system of AoC can be better aligned with the basic requirements currently applied. They may, however, be unhappy with the changes made to the system for gaining ETAs, if they feel that there concerns are no longer taken into account.

Member States would also face costs associated with the need to revise building regulations (or equivalent) to take into account obligations to adopt the common technical language being created by the CPD at the national level. There may be many other issues with the practicalities of revising national legislation, which are not addressed by revision to the legislation alone.

European Commission

The European Commission will incur costs associated with revising the CPD. These costs are likely to include meetings and consultation exercises (e.g. to agree definitions) but also the need to produce guidelines or explanatory information showing what has changed and why. These costs may be of the order of €5 million.

The Commission may also face short-term costs associated with the need to verify that standards are appropriate for publication, but there may be an overall benefit due to reduced costs associated with having to withdraw inappropriate standards once they have been published.

Costs to the European Commission (or designated body) of setting up and maintaining the product database maybe **around €400,000 for set-**up and in excess of the €40,000 per year to add new entries and maintain it.

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52 Commission Staff Working Document (2007): **Executive Summary of the Impact Assessment on the proposal for a Regulation…setting out the requirements for accreditation and market surveillance relating to the marketing of products**, SEC(2007) 174, 14 February 2007.

53 Based on costs for market surveillance authorities in SEC(2007) 173 Impact Assessment.

Conversely, the European Commission should benefit from a reduction in complaints and lobbying from manufacturers, trade associations, etc. as the requirements of the legislation are clarified and misunderstandings reduced (or removed). This will result in a reduction in administrative costs associated with responses to complaints. These savings may be of the order of €930,000.

CEN

CEN would face additional costs from the need to revise the standards to include information on conformity without testing, the simplified levels of AoC, inclusion of guidelines on how to use IT systems, etc. However, these costs should be minimised as the revisions can be undertaken when the standards would have been reviewed/revised anyway, thus not adding greatly to costs

There may be additional costs to CEN if standards are not published by the Commission. Again, these costs should be minimised as the objective of CPD will have been clarified so it should be easier for those drafting the standards to understand what is required.

Notified Bodies

Notified bodies would face a reduction in income from reduced testing (partly due to a loss of testing associated with national marks that only cover CE marking requirements, but also due to greater use of conformity without testing and the change in scope of the Directive). These reductions would be offset to some degree by new standards coming into force.

Notified Bodies may also face costs associated with the need to comply with the accreditation framework. As indicated in Table 6.7, the costs of comparison testing across Notified Bodies could be €1 million, or around €2,000 each.

Notified Bodies will also incur costs associated with the need to learn new AoC, particularly if changes are made so as to allow reliance on the use of ISO management systems to meet FPC requirements (at least in part or for some products). The extent of these familiarisation costs will depend on whether the bodies are only notified for the CPD or whether they also test for other CE marking Directives. Nando shows that 117 NBs are notified for more than one Directive; this is equivalent to almost 23% of the 519 NBs notified under the CPD.

Approval Bodies

Approval Bodies could realise either an increase in income if there is greater uptake of ETAs or a decrease if manufacturers decide to no longer apply the CE marking to the more innovative products under the increased flexibility that would be available under this option. There are 43 Approval Bodies for the CPD (from 26 EEA countries), of which at least 26 are also Notified Bodies, and net impacts are likely to be minimal.

6.4 Summary of Impacts by Category

6.4.1 Operating and Administrative Costs

To recap, the total estimated net savings in operating and administrative costs range from €77 million per annum to €140 million per annum to €470 million per annum under the low, medium and high scenarios respectively. These equate to net present value savings of €200 million, €1,600 million and €5,500 million respectively for the three scenarios (all estimates given to two significant figures).

These numbers appear very large, however, they should be considered within the more general context of the markets being affected. The value of annual production for the construction products sector is around €212 billion, thus, even the net savings for the high scenario represents only 0.22% of the value of annual production, with the low net savings estimates representing less than 0.01%.

The level of potential net savings is high in general given that there are an estimated 65,000 product manufacturers, manufacturing some 179,500 different products. On top of this, there are an estimated 40,000 designers and a further estimated 2.66 million contractors.

6.4.2 Competitiveness, Trade and Investment Flows

The absence of EC harmonisation and use of national rules was estimated to result in reduced trade in goods of up to 10% in 2000. Applying this figure to construction products would imply that the cost of on-going barriers to trade could be as high as €100 billion[54] per year.

The proposed revision option should help remove these barriers through clarification and simplification of the current legislation, and should negate many of these current costs. As indicated above, it should also lead to reduction in the costs faced by manufacturers and, hence, in the costs of products placed on the market. This in turn should reduce the costs of construction works to end consumers, resulting in social benefits at the EU level.

The proposed changes are also likely to increase the ability of international stakeholders to enter the EU market and compete on a level basis with EU manufacturers.

6.4.3 Competition in the Internal Market

Within the internal market, the savings that will be realised by small and micro /craft enterprises, in particular, should lead to an increase in their relative competitiveness

[54] Based on assumptions of 10% reduction in trade in goods given in Commission Staff Working Document (2007): **Accompanying Document to the Proposal for a Regulation…Laying Down Procedures Relating to the Application of Certain National Technical Rules to Products Lawfully Marked in Another Member State and Repealing Decision 3052/92/EC**, Executive Summary of Impact Assessment, SEC(2007) 113, 14 February 2007 and data on trade in construction products from FIEC (2004).

vis a vis the larger manufacturers. The option is expected to lead to much higher gains for smaller companies in this regard than for the larger companies, due to the greater significance of cost savings in terms of relative costs per unit of production.

There may be some increase in the level of competition between professional users due to a greater harmonisation of product characteristics across the EU and the more ready availability of information on the performance characteristics of products at the design stage.

The strengthening of accreditation and competency requirements across the Notified Bodies and Approval Bodies should also lead to an increased level of competition in the provision of their respective services, as manufacturers increasing move to those offering the best value for money services.

6.4.4 Innovation and Research

Several of the measures included in the preferred option should help spur innovation and research activities by manufacturers and professional users. For example, the greater ease and speed in obtaining an ETA should lead to an increase in the number of more innovative or novel products being brought to the market and taking advantage of the benefits of CE marking. Similarly, clarification of the objectives and scope of the legislation should also have a positive impact on innovation and research, as should promotion of conformity without testing and the increased flexibility given to manufacturers in relation to the need to affix the CE marking.

7. IMPLICATIONS FOR THE EXISTING TOOLS AND INSTRUMENTS

7.1 Introduction

The previous section identified the combination of measures that comprises the preferred option for revision of the CPD. The adoption of these various measures will have implications for the tools and instruments that the CPD currently relies upon. This section summarises these implications in terms of the modifications that would be required of the current legislative text.

For the purposes of this discussion, we have grouped the measures which would require similar types of modifications to the legislative text. Those that are more standalone are considered individually. Taken together, the preferred option would require modification to several Articles within the current legislation, as well as to the Annexes.

In determining what modifications may be necessary, we have also given consideration to the draft provisions of the proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products [COM(2007) 54 final] and on the proposal for a Regulation of the European Parliament and of the Council setting out the Requirements for Accreditation and Market Surveillance Relating to the Marketing of Products [COM(2007) 37 final].

7.2 Clarification Requirements

7.2.1 Clarification of the Objective, Scope and Relationship to Other Directives

Of paramount importance is clarification of the objective of the CPD (Measure A). It should be clearly stated in the preamble to the legislation that this is to facilitate the free circulation and use of construction products in the Internal Market through the use of technical harmonisation, by placing obligations on both manufacturers of construction products and on public authorities to use this harmonised language.

Measure A also includes clarification of the scope of the CPD including:

- clarification of the definition of a construction product (Article 1.2) and what is meant by the term 'permanent' in establishing the scope of the legislation;
- clarification of Articles 2.2 and 2.3 and the provisions for CE marking in relation to more than one piece of legislation;
- clarification of Article 4.2 and the meaning of 'fit for use';
- clarification of Article 13.5 on the extent that the CPD applies to kits, systems and parts of works;
- clarification of the scope of the legislation in relation to individual / made-to-measure products, non-series products and artisanal products; and
- there may be value in clarifying the relationship between the CPD and the Drinking Water Directive, in particular, the potential for developing a European acceptance scheme.

7.2.2 Clarification of Definitions

The only definition in the CPD is for a construction product, with other key terms (such as 'placed on the market', 'manufacturer' and 'individual (and non-series) production') not given. This has led to confusion over who is responsible for conformity and the specific requirements for particular product types. There is also confusion as to the meaning of 'conformity' under the CPD in comparison to its meaning under the New Approach Directives. Finally, other possibilities under the CPD, such as use of 'no performance determined' (NPD), are not referred to in the CPD, leading to confusion as to what it actually means and when it can be used. Thus, there is a need for clarification of the definitions (Measure B).

The revision of the New Approach Directives also highlighted that there is a need for clear definitions, indicating that this is not just a CPD issue. Indeed, it stresses the importance of greater consistency in the terms used across all legislation on the free movement of goods to minimise future difficulties in the interpretation and correct implementation of the legislation. As a result, Article 6 of the proposed Decision [COM(2007) 54 final] provides a series of definitions which could be adopted in the revised legislation. However, this does not include definitions for the following, which this study suggests should also be included in the revised legislation:

- the concept of 'conformity' in relation to the CPD;

- clarification of:
  - installer;
  - made to measure products;
  - minor products and handcrafted products;
  - small series;
  - non-series; and
  - individually manufactured product.

- the concept of 'no performance determined' (NPD) using the same term or renamed to (for example) 'not regulated characteristic' or 'performance not tested' and clarification that this is to be determined by the manufacturer.

In particular the flexibility offered by NPD should be stressed as this helps manufacturers avoid performing unnecessary, costly tests when a characteristic is not regulated in a particular country. It allows the manufacturer to choose whether to assess and declare the performance of a product or not to declare. In our view, this should be made clear in the legislation, potentially supported by guidance indicating how it could be applied for example to the CE marking of 'naked products' that act as components of kits or systems. Although it may also be important that the harmonised standards indicate which product characteristics must be determined and therefore cannot be marked as NPD.

7.3 CE Marking

The CE marking should cover all of the aspects of a product which are currently regulated in Member States and should provide all of the elements which are necessary for MS to develop their new regulations. Furthermore, MS should develop new regulations only using the technical instrument provided in the harmonised technical specification and should not add, or allow any local authorities to add, additional requirements which would reintroduce unjustified barriers to trade.

In addition, the issue of late notification (or non notification) by MS of new characteristics causes severe delay to the implementation of hENs and should be constrained through the introduction of limits on the period of time available for such notification. In this regard, consideration should be given to including an obligation on MS to inform the Commission of those characteristics that should be considered in the development of harmonised standards.

The assessment concluded, that on the basis of the costs savings that could be realised by micro and craft businesses, as well as other SMEs, CE marking should be made mandatory but that the scope is defined more flexibly so that manufacturers are able to decide whether or not to affix the CE marking (Measure D2). However, if a manufacturer does want to declare the performance characteristics of his products, CE marking is the only legal means of so doing.

Adoption of this option in full would require modification of Articles 4 and 6 of the current CPD. Article 16 of the proposed Decision [COM(2007) 54 final] sets out the general principles for CE marking across the legislation aimed at the free circulation of goods. These principles would appear to also be relevant to the CPD and to be generally consistent with the option proposed here. These include two important requirements which are relevant given the main identified problems of the CPD and the conclusions of the assessment:

- Article 16.2: The CE marking shall be the only marking which attests conformity of the product with the applicable requirements. Member States shall refrain from introducing into their national regulations or shall withdraw any reference to a conformity marking other than the CE marking in connection with conformity to the provisions contained in the legislation on CE marking; and

- Article 16.3: The affixing on a product of markings, signs and inscriptions which are likely to mislead third parties as to the meaning or form of the CE marking, or both, is prohibited. Any other marking may be affixed to the product provided that the visibility, legibility and meaning of the CE marking are not thereby impaired.

Based on the findings of this assessment, it is recommended that Articles 4, 6 and 13 of the CPD could be amended to make it clear in the main legislative text that CE marking is not mandatory for:

- building elements made on the works (including custom-made or made-to-measure products), currently referred to in Guidance Paper M;

- single application/individual, non-series production (currently referred to in Article 13.5);
- where there is no national requirement to declare performance characteristics (further modification of Article 6.2); and
- the option for CE marking against 'no performance determined' remains open.

However, the assessment carried out here would indicate that allowing manufacturers of made-to-measure, single/application and non-series production products to apply the CE marking against a Technical File may be of benefit to both the manufacturers and professional users (Measure E1). This type of approach could be similar to that allowed under the NA Directives; in this case, third party certification may be necessary for some products but for other well defined products such Notified Body involvement may not be necessary. In addition, as discussed in Section 7.5 below, the assessment would recommend that increased flexibility is introduced to the use of ETAs for CE marking.

Finally, the research carried out for this study and the responses to the Commission's consultation would suggest that increased emphasis should be given to the harmonised standards being based on performance characteristics rather than descriptive characteristics.

7.4 Conformity Assessment and Attestation

7.4.1 Attestation of Conformity

Article 13 of the CPD identifies that the manufacturer (or his authorised representative in the Community) is responsible for attestation that products are in conformity with the requirements of a technical specification, and this should remain the case under the revised legislation. However, the assessment suggests that the systems set out in Annex III of the CPD should be simplified to four levels for the Initial Type Testing (ITT) part of the attestation (Measure G1). To clarify the meaning of this phase, it may be beneficial for the terminology to switch from 'ITT' to another term, e.g. type examination (as is used in the NA) or Initial Determination of Performance Characteristics when testing has not been carried out.

It is proposed that attestation in relation to the production phase is based on the New Approach modules, or at least borrows from these in terms of the reference to the ISO quality assurance systems. This would be of benefit to both those manufacturers who apply CE marking for more than one directive and to those manufacturers who have based their quality assurance systems on the EN ISO 9000 series or other approved quality assurance systems (as described in Module H of the proposed Decision).

The proposed Decision [COM (2007) 53 final] on a common framework for the marketing of products sets out some general principles in relation to conformity assessment procedures for CE marking legislation. These are aimed at ensuring inter-sectoral coherence. In particular, Article 3.2 states:

> "*Where a product is subject to several Community acts within the scope of this Decision, coherence in the conformity assessment procedures shall be ensured.*"

Although it is not proposed here that full coherence is realised, due to the differences between the CPD and the NA directives, there are considered to be significant benefits from partial convergence.

Annex 1 of the Decision sets out proposals for revisions to the current NA conformity assessment procedures. For example, under the Decision, manufacturers may use an accredited in-house body for third party verification rather than a Notified Body. Although this possibility was not analysed in detail in this study, it is believed that it should be considered for the revised CPD.

Some of the procedures set out in the proposed Decision may have to be modified slightly to be applicable to the revised construction products legislation. For example, the reference to 'an assessment of risks' as part of the technical documentation is not applicable here, with it being more important that the documentation covers other factors such as the required performance characteristics, and level of AoC applied. Similarly, requirements on the information to be affixed as part of the CE marking may need to be adapted to be consistent with the proposals set out above.

Thus, there would need to be a mapping of the proposed NA modules for the production phase against the current CPD factory production control requirements, to establish any variations or changes in definition necessary in relation to construction products (e.g. the meaning of conformity, changes to the references to EC type examination and testing, etc.).

7.4.2 Promotion of Conformity Without Testing

The assessment highlights the benefits to be gained from greater reference to, and hence promotion of, conformity without testing methods within the hENs (Measure H). Although Article 13.2 of the current CPD refers to the potential use of "testing or other evidence…in accordance with Annex III" (Article 13.2), this potential is not emphasised further. Instead, Annex III (Attestation of Conformity with Technical Specifications) focuses only on testing and does not indicate how or where 'other evidence' could be used.

In order to further promote the inclusion of conformity without testing methods into the hENs, a specific reference to alternative approaches should be made within the legislative text. In other words reference should be made to 'classified without further testing' and 'deemed to satisfy' and how these can be demonstrated, for example, through the use of calculation methods, conventionally accepted performance, shared ITT and cascaded ITT in either a new Annex III or in the main text of the legislation.

This should help increase the degree to which these types of approaches are applied in standards that are not yet agreed, or during the revision of existing standards, resulting in significant savings in the costs associated with conformity assessment.

7.5 European Technical Approvals

The recommendation with regard to the current procedures for obtaining European Technical Approvals is that they are simplified (Measure F1). This includes:

- no development of new ETA Guidelines;
- all future ETAs to be based on use of the CUAP route;
- simplification of the CUAP route through removal of the 'green light' procedure which has led to long delays and the release of commercially sensitive product information;
- increased flexibility regarding the products for which an ETA can be obtained; and
- a strengthening of the requirements placed on Approval Bodies in terms of their competency.

Adoption of these proposals would require modification of Article 9 (removing the reference to Article 11), and may require some modification of Article 8 (e.g. Article 8.3 to take into account the current/expected availability of harmonised specifications). Article 11 would be removed from the legislation.

Note that manufacturers would be free to decide whether or not to apply for an ETA; i.e. CE marking through an ETA via the CUAP route should be voluntary.

These proposals are not without their drawbacks and it may be important that steps are taken to address these through modification of the measure assessed in the previous sections. In particular, Member State authorities may have a preference for ETAs based on guidelines as opposed to the CUAP procedure, as they are consulted on the mandates for the ETA guidelines. It may therefore be important to ensure that MS are adequately consulted on a CUAP based ETA within the overall process to enable them to highlight national concerns. For both MS authorities and the European Commission, it will be important that there is also some form of safeguard mechanism that will enable protection against misuse of this more flexible system.

In relation to CUAPs, it is proposed that fewer details would be passed to the Commission on the technical characteristics of the product and that the 'green light' letter process would cease to exist. Under this revised process, EOTA would take responsibility for examining whether or not the product is covered by an hEN and whether the terms and methods laid down in an hEN or existing ETAG are appropriate for assessment of the product. EOTA would then refuse the ETA application if the ETA would be the same as an initial type-testing according to an hEN.

With regard to strengthening the competency of Approval Bodies, this would require the inclusion of more detailed or additional requirements under Article 10, or as an Annex to the legislation. Because Approval Bodies may not fall under the scope of the proposed Regulation, it is important that requirements concerning their competency are introduced into the revised legislation.

Building on the principles of the proposed Regulation, it is suggested that there is some kind of European accreditation or agreement which involves checks on the competency of Approval Bodies to carry out direct assessment of performance characteristics of products. The aim should be to reduce the potential for variation in the proposed technical specifications being developed by different Bodies. As part of demonstrating competency, it is recommended that Approval Bodies are:

- involved in R&D relevant to the product performance;
- are competent in construction techniques;
- are involved in European standardisation for the construction sector.

In addition, consideration should be given to the potential for the Commission to take action (in agreement with the MS) should problems arise with a given Approval Body. In our view, EOTA should not be treated as a self-regulating body, particularly as there are potential conflicts of interests between the interests of the Approval Bodies who also act as Notified Bodies.

7.6 Expanded Use of IT

Based on the views of manufacturers and professional users collected for this study, there would appear to be advantages in allowing the greater use of IT systems for the provision of CE marking information, but on condition that this is accompanied by the creation of an EU-wide electronic database of products, which will guarantee that the interests of professional users are safeguarded and that accurate and reliable information is available on a given product. All manufacturers would be required to submit details of their products to this database, including their declaration of conformity and details of all declared product performances and those characteristics for which NPD is being declared.

Creation of such a database would help to address the key trade-off in allowing manufacturers to rely on the electronic supply of CE marking information, i.e. it would ensure that information on product characteristics was available and would allow enforcement bodies to take effective action should problems arise.

In the first case, the recommendation stemming from this study would therefore be to allow manufacturers to be able to provide some of the information required as part of CE marking electronically (note this does not preclude those who wish to continue to provide information with the product from so doing) (Measure I1). The information included on the product (or in its packaging, etc.) would be:

- the CE marking;
- the name or brand of the manufacturer, importer or distributor as appropriate;
- the last two digits of the year when the CE marking is affixed;
- the identification number of product; and
- the web-site address where the remaining information can be found.

If a decision is made not to create the supporting product database, then any provisions allowing the use of IT could be subject to explicit review requirements. If

problems arise in the use of IT for these purposes, for example in relation to the provision of information on the performance characteristics of individual batches etc., then additional safeguards could be added or the possibility of electronic labelling could be removed. In particular, legal obligations would need to be placed on manufacturers to keep data archives of CE marking information for those products that are withdrawn from the market over time due to either shifts in a manufacturer's production activities or their being replaced by a newer model. This would help ensure that professional users had guaranteed access to documents providing the CE marking information that may be needed as part of any legal defence or for insurance purposes. Legal obligations could also be placed on manufacturers relying on IT to notify all customers of a product where a table of performances has been altered, the harmonised standards have changed, or a Notified Body has removed its verification of FPC being in accordance with the harmonised standard.

Another possibility is for a decision to be taken on a standard by standard basis as to whether it would be appropriate for information to be provided electronically. This possibility could be used to ensure that, for example, information on reaction to fire was provided with the product, or that information for products falling under AoC level 1 or 2+ (for example) was always provided with the product.

Enabling manufacturers to take advantage of the use of IT systems in this way would need to be included in Article 4.6 of the current legislation and in the Annex ZA to the hENs. It is also of note that the proposed Decision [COM (2007) 53 final] on a common framework for the marketing of products defines the obligations of manufacturers in relation to CE marking of products. The above proposal would not be in line with the requirements as set out in the proposed Decision. It would therefore require an explicit opt out from the requirements. The key Articles in this regard are as follows.

Article 7.6 of the proposed Decision states that manufacturers shall indicate their name and address at which they can be contacted on the product, or where the size or nature of the product does not allow it, on its packaging or in a document accompanying the products; similar provisions relate to importers (Article 9.3) and for distributors (Article 10.2 and 11).

Article 15 of the proposed Decision sets out the purpose of the EC declaration of conformity and indicates that this demonstrates that the requirements of the legislation have been met. It also sets out a framework for stating the minimum information that must be contained in the declaration and that the declaration shall be continuously updated (with details of this given in Annex II). The above proposal is not consistent with the requirements of this Article and its supporting Annex.

Article 16 sets out the general principles of the CE marking, indicating that that the affixing on a product of any markings that are likely to mislead third parties as to the meaning or form of the CE marking is prohibited. It also sets out the manufacturer's responsibilities in relation to the CE marking and the fact that by affixing the CE marking he assumes responsibility for the conformity of the product with the requirements of the legislation. It also places a duty on MS to refrain from introducing any national regulations which make reference to conformity marking

other than the CE marking where there would be overlap between the national requirements and the CE marking legislation.

Article 17 of the proposed Decision sets out the rules and conditions for affixing the CE marking. Of key relevance here are the following requirements [COM (2007) 53 final]:

- Article 17.4: The CE marking shall be affixed visibly, legibly and indelibly to the product or to its data plate. Where this is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents, where the legislation concerned provides for such documents;

- Article 17.5: The CE marking shall be affixed before the product is placed on the market. It may be followed by a pictogram or any other mark indicating a special risk or use; and

- Article 17.6: The CE marking shall be followed by the identification number of the notified body where such body is involved in the production control phase. The identification number of the notified body shall be affixed by the body itself or under its instructions, by the manufacturer or his authorised representative established within the Community.

7.7 Strengthened Market Surveillance and Accreditation Requirements

Surveillance responsibilities are identified for inspection and certification bodies in Annex IV of the directive, but in general rather than specific terms. Annex IV to the CPD provides only a brief overview of minimum conditions to be met by testing laboratories, inspection bodies and certification bodies designated by Member States. The issue of confidence in bodies appointed by other Member States is a significant one.

It is clear from the discussion provided in Section 3 and the assessment set out in and Annex 2, that the current level of market surveillance and the system for accreditation of Notified Bodies (and Approval Bodies) are leading to widespread problems affecting the credibility of CE marking under the CPD and other directives.

It is therefore recommended that requirements under the future CPD legislation are linked to the proposed Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007) 37 final, 2007/0029 (COD) (Measure J). This would involve a continued reliance on decentralised competence assessment and monitoring under the responsibility of each Member State, but would also introduce a legal framework for accreditation and co-ordination at EU level. The existing organisation of the European cooperation for Accreditation (EA) is to be used for this accreditation and co-ordinating role. This

will provide the EA with public recognition and the authority it currently lacks. It will also ensure that all Member States use accreditation as a means to notification[55].

To ensure an equivalent level of market surveillance throughout the Community, the proposal is for a common legal framework, which allows flexibility of organisation at the national level, while establishing specific minimum requirements for operation and organisation. This framework foresees the extension of existing co-operation mechanisms, improves the traceability of products, and clarifies the obligations for all economic operators.

In addition, specific reference should be made to Chapter 5 (Articles 35 to 38) of the proposed Decision [COM (2007) 53 final], which sets out safeguard procedures for dealing with products considered to be presenting risks at the national and Community level, in relation to products that comply with the legislation but are considered to present a risk to health and safety, and in relation to formal non-compliance with the legislation.

Although not examined in this study and potentially outside its scope, a recurring issue that has arisen from the research undertaken here is the need for the future implementing mechanisms to address the potential conflicts of interest that currently exist in the roles played by the Notified Bodies and the Approval Bodies within the CPD in both the development of standards and then undertaking the necessary testing and FPC. This includes giving consideration to the fact that the Approval Bodies may also be Notified Bodies.

7.8 Stronger Controls over the Harmonisation of Standards

In order to avoid the type of problems that have arisen in the past when a standard goes beyond the requirements of the mandate, it is proposed that the grounds for refusal by the Commission to harmonise an hEN are strengthened (Measure K).

The European Commission is currently limited as to when it can act, with Article 7.3 stating that once 'the standards have been established by the European standards organisations, the Commission *shall* publish the references of the standards in the 'C series of the Official Journal of the European Communities' (emphasis added). This means that the standard has to be published and then withdrawn, leading to administrative costs and a delay in the eventual publication of an agreed, appropriate hEN.

To address this, it is suggested that the grounds for refusal to publish an hEN are expanded to include:

- excessive testing requirements;
- requirements that go beyond the objective of the CPD;

[55] CEC (2007): Setting out the Requirements for Accreditation and market Surveillance Relating to the Marketing of Products, Executive Summary of the Impact Assessment, Commission Staff Working Document, SEC(2007) 174, 14 February.

- additional characteristics not required in any MS; and
- standards based on composition rather than performance that would result in competitiveness issues.

This may require changes to Article 5.1 to cover all standards that are problematic because they are not in accordance with the mandate. Furthermore, it would require a revision of the wording of Article 7.3 such that it reads '*may* publish' rather than '*shall* publish'.

Article 14 of the proposed Decision [COM (2007) 53 final] on a common framework for the marketing of products would appear to provide an appropriate means of addressing the formal objections against harmonised standards. Article 14.1 is very similar in wording to the first half of Article 5.1. However, Article 14.2 varies in a key respect from the second half of Article 5.1, which covers the withdrawal of the standards or approvals of concern from publication in the Official Journal of the European Union. Article 14.2 gives greater decision making freedom to the Commission, allowing it to "decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw" references to a standard in the Official Journal.

It may also be appropriate to set out conditions for Member States to object to the publication of a standard and for the consultation that should take place between the Commission and the Standing Committee on Construction where the Commission wishes to defer publication of a standard.

8. MONITORING AND EVALUATION

This study sets out to assess the options available for revising the Construction Products Directive with the aim of improving implementation of the CPD. The potential options (and measures comprising the recommended option) have been assessed above against a suite of different impact categories and for a range of stakeholders. The monitoring proposals made here relate to the performance of the comprehensive revision option.

Table 8.1 is structured around the main objective of the CPD (i.e. to facilitate the free circulation and use of construction products in the Internal Market), plus the more general aims of the Commission in terms of simplification under the *Better Regulation: Simplification Strategy*[56]. The table also presents a set of general indicators and possible means of verification which can be utilised to track performance. The indicators will need to be adapted to whichever solution is finally selected but cover the main areas which will need to be monitored and evaluated over time.

Table 8.1: Monitoring and Evaluation Indicators

Objective	Indicators	Means Of Verification
Objective and Aims of CPD		
To facilitate the free circulation and use of construction products in the Internal Market	• Uptake of CE marking • Reduction in number of national marks	• Questionnaire distributed to manufacturers to investigate whether cross-border trade has increased • Number of national marks withdrawn or replaced by voluntary marks
Promoting the use of a common technical language for use when placing construction products on the market	• Reduction in number of national marks • Reduction in number of different ways of expressing the same performance characteristics • Reduction in time taken to agree harmonised standards • Reliance on hENs in specifying public procurement requirements	• Number of national marks withdrawn or replaced by voluntary marks • Changes made to national building regulations/ requirements in line with common technical language • Change in (average) time to publication of harmonised standards

[56] EC (2005): **COM (2005) 535 final: Communication of the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions – Implementing the Community Lisbon Programme: A Strategy for Simplification of the Regulatory Environment**, Brussels.

Table 8.1: Monitoring and Evaluation Indicators		
Objective	**Indicators**	**Means Of Verification**
Objectives/Aims of Better Regulation: Simplification Strategy		
To make legislation less burdensome, easier to apply and thus more effective, while also preserving EU policy objectives	• Change in number of complaints made to/through trade associations to the Commission • Change in costs and time required to obtain ETA	• Change in number of meetings held • Change in time spent replying to written complaints • Time taken for ETA to be obtained from when the manufacturer makes a request to an AB • Number of ETAs developed per annum
To clarify and reduce the administrative burden of the CPD, and in particular for SMEs	• Uptake of CE marking by micro enterprises and SMEs	• Questionnaire distributed to SMEs to obtain their experiences (e.g. through NORMAPME/UEAPME)
Increased flexibility in the formulation and use of technical specifications	• Inclusion within standards of other evidence to demonstrate conformity (i.e. conformity without testing/without further testing)	• Number of standards including other means of demonstrating compliance than testing
Lighter certification rules	• Reduction in costs of demonstrating compliance • Change in uptake of ETAs	• Questionnaire/consultation with manufacturers to identify if cost savings have been achieved • Number of ETAs produced
Elimination of the implementation obstacles	• Greater confidence in CE marking	• Resources put into market surveillance of construction products • Questionnaire to professional users to assess their confidence in CE marking as the only marking

9. SUMMARY AND CONCLUSIONS

9.1 Summary of Work Undertaken

The aim of this study has been to provide an assessment of the different policy options which could act as a basis for revision of the existing Construction Products Directive, as background information to the Commission's Impact Assessment. This has involved:

- identifying the main problems arising with the existing CPD,
- examining the degree to which different policy options could address these problems;
- developing a series of more detailed measures to act as the basis for possible revision options;
- assessing the implications of these different measures and identifying a preferred revision option; and
- identifying the implications of the preferred option for the tools and instruments underlying the existing legislation.

The above work has relied on a range of information sources, with the key ones being responses to the Commission internet consultation, industry position papers, the outputs of the PRC (2006) report and a more targeted consultation of selected organisations to validate the assessment of the detailed measures. A more extensive consultation on the different measures and options has not been undertaken as part of this study due to the Commission's plans to consult fully on its Impact Assessment.

9.2. The Main Identified Problems with the Existing Legislation

The main identified problems can be summarised as follows:

- **CE marking related issues**: confusion over the meaning of the CE marking, a lack of confidence in its reliability, a failure of some authorities to accept it in place of national requirements, and an uneven playing field in terms of whether it is mandatory or not;

- **issues associated with the various implementing mechanisms within the CPD**: long delays in the technical harmonisation work and thus the availability of harmonised standards, the on-going introduction of national regulations covering product characteristics additional to those covered by hENs, the routes for obtaining ETAs being cumbersome and expensive, and potentially involving the release of commercially sensitive information, and the complexity of the system of attestation of conformity (AoC);

- **issues associated with Notified Bodies (NBs) and Approval Bodies (ABs)**: concerns over the technical competence and reliability of NBs, which has resulted in a mistrust in the reliability of CE marking, and difficulties in harmonising the selection criteria for ABs specific to the CPD, at the European level;

- **issues with market surveillance**: market surveillance is practically absent and is considered by some to be resulting in abuses of the system, with falsely CE marked, low quality and low price imports entering the EU market; and

- **issues with very small enterprises, individual, non-series or small series products**: the obligation of CE-marking poses important cost problems to small manufacturers (e.g. artisans) and to manufacturers having to deal with small series or even individual products, which may make their products less price competitive compared to those of larger manufacturers.

9.3 Potential Policy Options

The assessment has considered four main policy options:

- **Business As Usual**: continuing with the CPD in its current form;
- **No legislation**: reversion to mutual recognition, taking into account current Commission proposals;
- **Move to an approach consistent with the common framework for marketing of products**: revision of the CPD such that it comes fully into line with the New Approach, including the provisions of current proposals; and
- **Revision of the existing CPD**: clarification, expansion and revision to address the identified problems.

Of these four options, only revision of the existing CPD was considered able to meet the objective of the CPD – that is harmonisation of the internal market through creation of a common technical language. Certain of the elements of the proposals for a future common framework were, however, considered to provide feasible means of addressing particular problems that have arisen with the implementation of the CPD.

9.4 Options for Revision of the CPD

A series of detailed measures has been identified as potentially providing the basis for revision of the CPD, adapting particular tools and instruments within the existing legislation. A short-list of measures was developed from a long list of 65 possible solutions. The short-list of measures examined in detail is summarised in Table 9.1. In all cases, these measures are compared against the alternative of doing-nothing, i.e. no revision of the current CPD in relation to that particular tool or instrument, with this forming the baseline against which all measures are assessed. In this regard, it is important to note that the baseline reflects not only the situation with regard to the availability of harmonised standards, etc. today, but also what is expected to be the case from now to 2015 assuming that the legislation is unchanged from its current form.

The expected impacts of each measure have been assessed in qualitative terms (based on likely size, timing and duration of impacts). From this assessment, a series of four comprehensive revision options were developed. These are given in Table 9.2. The comprehensive revision options include all of the sub-measures for which there was a

clear preference but varied in terms of the measures for which there was no clear preference. In addition, some sub-measures were dropped from the analysis as being non-preferred.

Table 9.1: Short List of Measures	
Measure	**Sub-Measures**
A: Clarification of the objective and scope, including clarification of Article 4.2, Article 13.5 on the extent that the CPD applies to kits, systems and parts of works	No sub-measures
B: Clarification of definitions and concepts specific to the CPD such as 'no performance determined'	No sub-measures
C: CE marking against the ERs of products rather than works	No sub-measures
D: CE marking measures	**D1**: CE marking is made mandatory and national marks must be withdrawn **D2**: CE marking is mandatory for those products that fall within the scope of the legislation but this is defined more flexibly, CE marking remains the only legal means of declaring harmonised product characteristics, national marks must be withdrawn
E: Additional routes for CE marking	**E1:** CE marking against a Technical File **E2:** CE marking against mandates and supporting standards
F: Simplification of the routes for ETAs, with four alternatives	**F1:** no future use of ETAGs, simplification of process for obtaining CUAPs, strengthening of competency requirements for ABs **F2**: introduction of provisional and national ETAs **F3**: preparation of new ETAGs and introduction of a simplified information procedure
G: Simplification of the system of AoC	**G1:** reducing the number of levels from six to three **G2:** reducing the number of levels from six to four **G3:** moving to the NA modules as the basis for AoC
H: Increased promotion of conformity without testing methods	No sub-measures
I: Expanded use of IT systems	**I1:** Use of IT for provision of a limited amount of the CE marking information **I2:** Expanded use of IT to provide most of the CE marking information **I3:** Creation of an EU-wide database for registration of products and associated CE marking information
J: Improved market surveillance and notified body accreditation	No sub-measures
K: Introduction of stronger EU controls over harmonisation of standards	No sub-measures

The options were then analysed to determine the overall 'best' approach to revising the CPD. The main differences between the comprehensive revision options are: whether CE marking is strictly mandatory or is mandatory but the scope of the legislation is more flexibly defined; whether attestation is through either a simplification of the AoC to four levels or through adoption of the New Approach modules; and the degree to which CE marking information can be provided through the use of IT systems. The four revision options are summarised in Table 9.2.

Table 9.2: Comprehensive Policy Options			
Policy Option 1	**Policy Option 2**	**Policy Option 3**	**Policy Option 4**
Clearly preferred measures: **A, B, F1, H, J and K included in all options**			
D2: CE marking is mandatory but the scope is flexibly defined **G1**: changing the AoC to four levels **I1 plus I3**: limited use of IT systems	**D2**: CE marking is non-mandatory but the scope is flexibly defined **G3**: changing the AoC to the New Approach modules **I2 plus I3**: expanded use of IT systems	**D1**: CE marking is mandatory **G1**: changing the AoC to four levels **I1 plus I3**: limited use of IT systems	**D1**: CE marking is mandatory **G3**: changing the AoC to the New Approach modules **I2 plus I3**: expanded use of IT systems

The analysis of the four comprehensive revision options concluded that Option 1 was preferred. Sensitivity analysis was undertaken to test the degree to which changes in the importance given to different stakeholder groups or to particular impact categories would change the ranking and hence preference for the different options. The key conclusions of the sensitivity analysis are that:

- Option 1 is preferred over the other options unless large manufacturers are assigned a disproportionate level of importance compared with SME manufacturers; similarly, professional users would have to be given six times more importance than manufacturers as a whole for Option 3 to be preferred to Option 1;

- in terms of variations in the sub-measures assumed within Options 1 and 3 (as the two most preferred options), a shift to the New Approach modules (G3) was found not to perform as well as AoC based on four levels (G1). Allowing the expanded use of IT systems for the provision of CE marking information (I2 plus I3) was not preferred compared to more limited use of IT (I1 plus I3), while allowing no use of IT also appeared to be less favourable. Adding the potential for obtaining a provisional or a national ETA also did not improve the performance of the two options.

- with regard to the weights assigned to different impact categories, Option 1 is generally preferred (and particularly if the greatest weight is assigned to operating and administrative costs, while Option 3 is only preferred if professional users are given six times the weight of manufacturers). Where more weight is given to competition issues and to innovation, then Option 3 outperforms Option 1 under the two stakeholder weighting sets that disproportionately favour large manufacturers and professional users.

9.5 Overall Impacts of the Preferred Comprehensive Revision Option

The absence of EC harmonisation and use of national rules was estimated to result in reduced trade in goods of up to 10% in 2000. This is equivalent to the cost of on-going barriers to trade for the construction sector of €100 billion per year. The proposed revision option would help remove these barriers through clarification and lead to reduction in the costs faced by manufacturers (from reduced testing costs, reduced costs of ETA and increased flexibility in how to demonstrate compliance) and, hence, in the costs of products placed on the market.

The total estimated savings of the measures that would be introduced under the proposed option are around €1.8 billion in present value terms over the 15 year period after the new legislation is introduced (medium scenario, starting in 2010 and discounted at 4%), with the majority of these representing savings to manufacturers. This equates to savings of around €160 million per annum, or some 0.08% of the value of annual production for this sector. These savings are offset by additional costs of around €190 million in present value terms (discounted over 15 years at 4%), or roughly €16 million per annum, again with the majority of these realised by manufacturers. Thus, the net benefits are estimated at €140 million per annum (bearing in mind that it has not been possible to place estimates on all of the savings and additional costs that may arise from the proposed combination of measures).

Impacts on other stakeholders include:

- **professional users**: short-term increase in costs from loss of national marks, but increased confidence in CE marking should minimise these costs and provide benefits from a wider range of products to choose from, and potential savings. They may face increased liability if CE marking information is only available online/electronically, indicating the need for the use of IT to be accompanied by a product register and other safeguards.

- **Member States public authorities**: increased administrative costs associated with market surveillance, setting up accreditation schemes and revising building regulations (or equivalent). However, the use of IT accompanied by the inclusion in a database of products that are electronically labelled may be of some benefit to Member States in undertaking desk-based market surveillance and research activities.

- **European Commission**: costs of revising the CPD and providing guidelines or explanatory information but reduced administrative costs due a decrease in the number of complaints. There may also be costs of verifying that standards are appropriate for publication but there may be net savings from not having to withdraw standards later. The Commission is also likely to bear the costs of creating and managing the EU-wide product register.

- **CEN**: additional costs from having to revise standards (but could be done when standards are due for revision). Also CEN may incur additional costs with re-writing standards not accepted for publication (but should be short-term costs that may be minimised with clarification of the objective of the CPD).

- **Notified/Approval Bodies**: reduction in income from reduced testing (offset to some degree as new standards come into force or with greater uptake of ETAs). Other costs include costs of complying with the accreditation framework and increased competency requirements, and costs associated with need to learn the new system of AoC (including FPC based on the NA modules).

Overall, the proposed revision option should reduce the costs of construction works to end consumers, resulting in social benefits at the EU level.

9.6 Implications for Tools and Instruments

To identify the modifications that would be required to the existing CPD, the measures have been grouped into those which would require similar types of modifications to be made to the legislative text. Those that are more standalone are considered individually. Taken together, the preferred option would require modification to several Articles within the current legislation, as well as to the Annexes. The key changes would be to the following Articles:

- clarification of Articles 2.2 and 2.3 and the provisions for CE marking in relation to more than one piece of legislation;
- clarification of Article 4.2 and the meaning of 'fit for use';
- clarification of Article 13.5 on the extent that the CPD applies to kits, systems and parts of works;
- clarification of the potential to add new essential requirements (e.g. by adding a new ER to Annex I as it currently stands);
- addition of new definitions into the text, including a linkage to Article 6 of the proposed Decision on a common framework for the marketing of products;
- amendment of Articles 4, 6 and 13 to make it clear in the main legislative text that CE marking is mandatory and the only legal means of declaring harmonised product characteristics for products falling within the scope of the legislation, while at the same time defining the scope more flexibly; this may include reference to Article 16 of the proposed Decision on a common framework for the marketing of products;
- modification of the system of AoC and promotion of conformity without testing as currently set out in Article 13 and Annex III of the CPD, including a possible linkage to the modules set out Annex I of the proposed Decision on a common framework for the marketing of products in relation to FPC;
- modification of Articles 8 and 10 to simplify the route to obtaining an ETA through the use of CUAPs and to strengthen the competency requirements for Approval Bodies;
- additions to Article 4.6 and the Annex ZAs in the hENs to enable the optional use of IT systems for the provision of information on product characteristics as part of the CE marking; modified adoption of Articles 15 to 17 of the proposed Decision;
- linkages to the proposed Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007) 37 final, 2007/0029); and
- changes to Articles 5.1 and 7.3 to enable the Commission to refuse to publish problematic standards.

9.7 Directive versus a Regulation

The advantage of a regulation over a directive is that all aspects of a regulation have to be implemented in the same manner across all Member States, thus reducing the potential for differing interpretations. This should increase consistency in application across the 27 Member States and help ensure that barriers to internal trade do not arise due to differences in national implementation. A further advantage is that amending a regulation has lower administrative costs than amending a directive. This is because a regulation directly applies whereas a directive has to be transposed into national laws, each of which would have to be amended if changes are made to the directive.

Responses to Commission's internet consultation suggest that most manufacturers (EU and non-EU) would be in favour of the revised legislation taking the form of a regulation. It is not clear that this is also the case for professional users, although increased consistency in implementation may increase the ability of this group of stakeholders to trade on the internal market. Member States may not, however, prefer a regulation if it would eliminate the scope they have for taking into account linkages to national codes and regulations (although this may also be the case in any revised directive depending on how it has been drafted).

ANNEX 1:
SCREENING OF POLICY OPTIONS

ANNEX 1: SCREENING OF POLICY OPTIONS

Table A1.1: Screening of Solutions under Option 3		
Possible Solutions	**Screened out?**	**Justification for Screening**
Simplification of the CUAP route such that an ETA is unnecessary	Y	This option is not considered technically feasible as there is then no guarantee that the ERs are being met
Limitation of NPD so it cannot be used for those requirements that are important for health and safety	Y	Removing the ability to use NPD against health and safety criteria would mean that testing would be required against all health and safety requirements even when these are not required for the particular product (or use) and would reduce flexibility. This is expected to increase the administrative burden of the legislation
Allowance of other ways to demonstrate that a product can be used to satisfy the regulatory requirements of works	N	This option is carried forward as part of 'promotion of shared/cascaded testing', and 'use of IDPC based on calculation rather than testing'
Market surveillance should be targeted at verifying that CE marking information is correct – not requiring manufacturers to have to go to court	Y	An option on market surveillance is included in the impact assessment, based on the New Approach community market surveillance framework
ETAs should not be allowed to go beyond national regulatory requirements (i.e. should not be allowed to include national customs and practice)	Y	This option should already be happening in ETAs, therefore is an implementation problem rather than a revision problem. Options are included to abolish the ETAG route in favour of CUAPs
There needs to be an awareness campaign highlighting the benefits of applying the Directive	Y	This is an implementation option not related to revision of the CPD. However, it will be important that a future CPD, particularly where it has been revised, is adequately promoted
Procedure for obtaining European Technical Approvals needs to be undertaken without having to wait for reference documents	Y	This option is considered to be covered by the move to CUAPs
No change should be made to the AoC due to the costs and resources already incurred to implement the current system	N	This option is carried forward as 'leave the AoC as it is'
Components such as motorised doors should be excluded from the CPD	Y	The issue is related to who is having to undertake CE marking and should be clarified with changes to definitions and scope, including a definition of 'installer'. Thus, this option is screened out as being covered through clarification
There needs to be a more flexible approach to conformity assessment to reduce the costs of ITT	N	This option is carried forward as part of 'promotion of shared/cascaded testing', and 'use of IDPC based on calculation rather than testing'
The EOTA procedures need to be simplified and made more transparent. This requires bureaucratic controls (green light letter) to be deleted	N	This option is carried forward as part of the 'simplification of the CUAP process' and includes removal of the need for a green light letter
Overlaps between ETAs and hENs need to be avoided (there are currently overlaps between CEN product standards and EOTA guidelines)	N	This option is carried forward through 'abolish ETAGs' with the CUAP route being used only where there are innovative products that vary significantly from the hEN (or where there is no hEN)
The procedures for innovative products need to be changed with inclusion of a period of grace (e.g. 6 months) after which ITT test results could be verified	Y	This option is covered by 'changes to ETAGs, ETAs and CUAPs', with a focus on simplifying the CUAP process so it can be better applied to innovative products

Table A1.1: Screening of Solutions under Option 3		
Possible Solutions	**Screened out?**	**Justification for Screening**
Notified Bodies (and test results) should be recognised in different Member States	N	This option is carried forward as part of the inclusion of the European accreditation infrastructure under the New Approach
The given test methods in the hEN need to be clear and avoid the use of different testing standards for the same product characteristic. The Annex ZAs need to be made simpler and easier to understand and less open to interpretation	N	This option is carried forward as part of 'involvement in process' for 'procedures for standard setting'. Greater involvement of industry, SMEs and MS in standard setting should help minimise complexities in the standard and promote better understanding
There is a need to review what happens at the end of the co-existence period to avoid having to dispose of stocks after expiry of the co-existence period	N	This option is carried forward as part of 'involvement in procedures for standard setting'
Many of the harmonised standards are not as comprehensive as old national standards. There is a need to make the standards more comprehensive	N	This option is carried forward as part of 'involvement in process' for 'procedures for standard setting'. Greater involvement of industry, SMEs and MS in standard setting should help ensure that the standards are more comprehensive (where necessary)
Need for linkages to be made between FPC and ISO 9000	N	This option is carried forward and considered as part of the option to 'link the approach to conformity assessment with the New Approach modules'
Essential Requirements that are covered by other Directives should not be included in the CPD	N	This option is carried forward as part of 'modify scope to ensure better linkages with other Directives'
The CPD needs to be implemented correctly	Y	This is an implementation option not revision of the CPD
CE marking should not include the last two digits of the year in which the marking was affixed – use of IT should be promoted as a way of obtaining information about the product	N	This option is carried forward as part of 'increased us of IT systems'
The approach to preparation and revision of hENs needs to be developed to encourage MS to participate more actively, to avoid where hENs are modified afterwards at the request of the MS	N	This option is carried forward as part of 'involvement in process' for 'procedures for standard setting'
There is a need for a database of all the relevant regulations in all MS	N	This option is carried forward as part of 'increased us of IT systems'
The CPD needs to allow a degree of 'self-certification'	N	This option is carried forward as part of 'self-regulation'
Notified Bodies (and manufacturers that are testing their own products) need to show that their test methods are calibrated European wide to give confidence that test results are reliable	N	This option is carried forward as part of the inclusion of the European accreditation infrastructure under the New Approach
There is a need to differentiate between manufacturers and assemblers/installer	N	This option is carried forward as part of the 'change in scope' of the CPD
There is a need for a regulation to avoid different interpretations of the Directive in different MD	N	This option is carried forward as 'change to Regulation'
The Annex ZAs and text/tables referred to should be provided free of charge	N	This option is carried forward as part of 'revision to the standard setting process' and is linked with 'SME funding'

Table A1.1: Screening of Solutions under Option 3		
Possible Solutions	**Screened out?**	**Justification for Screening**
The Declarations of Conformity should be provided in only the relevant languages	Y	This option is not technically feasible as it could introduce new barriers to trade (product unable to be sold in those MS whose languages are not included)
The definition of manufacturer needs to be made more precise	N	This option is carried forward as part of the 'change in scope' of the CPD
The CUAP procedure needs to be made more confidential so it can be better used for innovative products	N	This option is carried forward as part of 'simplification of the CUAP route'
There needs to be clarification of the responsibilities for CE marking through the distribution chain	Y	This is an issue of implementation but is also linked to definitions, which are to be clarified under 'change in scope'
Manufacturers should be allowed to undertake tests according to supporting standards before the final version of the harmonised standard is available	N	This option is carried forward as part of 'promotion of shared/cascaded testing', and 'use of IDPC based on calculation rather than testing'
CE marking should be made mandatory	N	This option is carried forward as 'mandatory CE marking'
ITT needs to be retitled to give a better indication of what it is doing, e.g. examination type	N	This option is carried forward as part of 'promotion of shared/cascaded testing', and 'use of IDPC based on calculation rather than testing'
The works not the products should not be CE marked as with the Pressure Equipment Directive. The problem of how to demonstrate that materials are in accordance with the ERs can be dealt with through 'sound engineering practice' (included in the CPD); consideration of works could be put into an annex	N	This option is carried forward as 'link ER to products and not works'
Need for a different (intermediate) approach between FPC and ITT for non-series production	Y	Non-series production is excluded from the CPD (Article 13(5))
The mandates need to include clearer reasoning as to why ITT testing, etc. is required for particular product types	N	This option is carried forward as part of 'rely on mandates' in place on the interpretative documents
The number of AoCs should be reduced, e.g. merging 1+ and 1 and 2+ and 2	N	This option is carried forward as part of 'reduce number of AoC levels'
Clarity is needed as to the extent that the CPD applies to products created in situ	Y	The CPD already excludes these products (Article 13(5))
Clarity is needed as to the extent that the CPD applies to kits	N	This option is carried forward and is considered under 'exclusion of product types from the scope of the CPD' for clarification of definitions
Products that have complex performance characteristics are difficult to define in a harmonised standard – for such products a process similar to the Machinery Directive may be more appropriate	Y	The issue is related to having full industry involvement during the standard setting process to ensure that appropriate approaches are included. It is therefore covered under 'involvement in the standard setting process'
The content of the CPD needs to be clarified to limit or avoid interpretation	N	This option is carried forward as part of 'change to regulation'
ITT should be replaced by continuous monitoring of the product by the manufacturer with regular tests by Notified Bodies (e.g. every 5 years)	Y	This option is expected to reduce flexibility for manufacturers and could increase the burden. Furthermore, simplification of the levels of AoC should help address this issue

Table A1.1: Screening of Solutions under Option 3		
Possible Solutions	**Screened out?**	**Justification for Screening**
European uniform criteria should be developed on which the approach to market surveillance should be based	N	This option is carried forward as part of 'the New Approach community market surveillance framework'
The EC needs to set deadlines for implementation of the (revised) CPD	Y	This is not an option for revision of the CPD, but for implementation
CE marking should be based on a voluntary scheme (except for important health and safety reasons)	N	This option is carried forward as part of 'non-mandatory CE marking'
There is a need to assume conformity of products without prior attestation, with proof of conformity to be proved in case of dispute	N	This option is carried forward as part of 'promotion of shared/cascaded testing', and 'use of IDPC based on calculation rather than testing'
The system of AoC should be limited to three (1: NB for ITT and FPC; 2: NB for ITT, 3: auto-declaration by the manufacturer)	N	This option is carried forward as part of 'reduce number of AoC levels'
SMEs need to be encouraged to attend the CEN Technical Committee and working group meetings	N	This option is carried forward as part of 'SME funding' and 'procedures for standard setting'
The number of AoC levels should be reduced to four: 1+, 2+, 3 and 4	N	This option is carried forward as part of 'reduce number of AoC levels'
Products included under other Directives should be excluded from the CPD	Y	This option covered under better links with other Directives are also covered through 'modify scope to ensure better linkages with other Directives'
The CPD should only be revised once the revisions to the New Approach have been agreed	Y	Revision of the CPD includes options to move further from the New Approach (as well as closer to it), thus it is not necessary to have full agreement on the New Approach to undertake the impact assessment
The number of guidance and position papers needs to be controlled and reduced	Y	This is an implementation issue rather than revision of the CPD
Electrodomestic/household products such as doors, gates, windows, shutters, blinds should be excluded from the CPD, as the Machinery Directive, Low Voltage Directive, EMC Directive and R&TTE when a remote control are used are more suitable	Y	The issue is related to who is having to undertake CE marking and should be clarified with changes to definitions and scope, including a definition of 'installer'. Thus, this option is screened out as being covered through clarification. Better links with other Directives are also covered through 'modify scope to ensure better linkages with other Directives'
Need for harmonisation between hENs and Eurocodes	Y	This is an ongoing part of implementation of the CPD and is not related to revision of the Directive itself (the extent of harmonisation is also limited by Eurocodes, therefore, is not controlled by revision of the CPD)
Need for accreditation system for NBs and ABs	N	This option is carried forward as part of the inclusion of the European accreditation infrastructure under the New Approach
ETAs need to be made publicly available	N	This option is linked to the promotion of use of IT systems
Need to avoid use of own style agrément type agreements required by some Approval Bodies that results in repeat testing	Y	This option is linked to the need for Notified Bodies to recognise and accept test results from other NBs (particularly those in other MS) – this is covered under 'European accreditation system for NBs'. This issue is also linked to the need to better communicate fitness for purpose (and the need to revise Article 4(2), which is covered by options to 'link ERs to products' and 'use of IT systems' to include a database of MS regulations

Table A1.1: Screening of Solutions under Option 3		
Possible Solutions	**Screened out?**	**Justification for Screening**
Need to remove national marks that are often required in addition to CE marking causing a barrier to trade	Y	This is an implementation issue, but also related to the (apparent) lack of confidence in the CE marking and the issue of fitness for use (and the need to revise Article 4(2), which is covered by options to 'link ERs to products' and 'use of IT systems' to include a database of MS regulations
There is a need for definitions of 'a made to measure product', 'a minor product', 'a small series' and 'an individually manufactured product'	N	This option is carried forward as part of the 'change in scope' of the CPD
There should be classes to allow the development of 'deemed to satisfy' when appropriate	N	This option is carried forward as part of 'promotion of shared/cascaded testing', and 'use of IDPC based on calculation rather than testing'
Change the CPD into multiple legislation considering different product families	N	This option is carried forward as 'multiple regulation of product families'
Revision of Article 4(2) on fitness for use. This is misleading and suggests that a product which is CE marked is assumed to be fit for use in any MS, which is not the case	N	This option is carried forward as 'revision of Article 4(2)'
The standards need to include an indication of the uses of products or national provisions must only be linked to characteristics set out in the standards; if other characteristics are needed to determine fitness for use, there must be a revision of the standard	N	This option is carried forward as part of 'procedures for standard setting'

Table A1.2: Summary of Feasible Solutions Taken Forward as part of Option 3		
Alternative	**Feasible Solutions**	**Taken Forward as Option?**
Self-Regulation	The CPD needs to allow a degree of 'self-certification'	Y – as part of Option 2 (no CPD)
Regulation versus Directive	There is a need for a regulation to avoid different interpretations of the Directive in different MD	Y – as 'single Regulation' (option to retain a 'Directive' is also included)
	The content of the CPD needs to be clarified to limit or avoid interpretation	Y – covered by move to 'single Regulation'
	Change the CPD into multiple legislation considering different product families	Y – as 'multiple Regulations'
Link ERs to Products not Works	The works not the products should not be CE marked as with the Pressure Equipment Directive.	Y – as two options: 'direct' or 'indirect' links between ER and products. However, direct links between ER and products is not possible since the final use of the product is not known, hence, the relevant characteristics cannot be laid down in the standards. Without this clear link, it is not possible to develop standards. Therefore, 'direct links between ER and products' only is taken forward
Rely on Mandates (in place of Interpretative Documents)	The mandates need to include clearer reasoning as to why ITT testing, etc. is required for particular product types	Y – as three options: 'revise and update Interpretative Documents'; 'rely on mandates'; and 'incorporate IDs into an annex of the CPD'. However, the IDs are now very out of date and are not used. Therefore, no cost savings would occur from updating the IDs and two options only are taken forward ('rely on mandates' and 'incorporate IDs into annex of CPD')
Exclusion of Product Types from the Scope of the CPD	Clarity is needed as to the extent that the CPD applies to kits	Y – covered by 'clarification of scope and definitions'
Modify Scope to Ensure Better Linkages with other Directives	Essential Requirements that are covered by other Directives should not be included in the CPD	Y – as part of 'modify scope to ensure better linkages with other Directives'
Change in Scope through Clearer Definitions	There is a need to differentiate between manufacturers and assemblers/installer	Y – covered by 'clarification of scope and definitions'
	The definition of manufacturer needs to be made more precise	Y – covered by 'clarification of scope and definitions'
	There is a need for definitions of 'a made to measure product', 'a minor product', 'a small series' and 'an individually manufactured product'	Y – covered by 'clarification of scope and definitions'
Revision of Article 4(2) on fitness for use	Revision of Article 4(2) on fitness for use. This is misleading and suggests that a product which is CE marked is assumed to be fit for use in any MS, which is not the case	Y – covered by 'revision of Article 4(2)'

Table A1.2: Summary of Feasible Solutions Taken Forward as part of Option 3		
Alternative	**Feasible Solutions**	**Taken Forward as Option?**
Involvement in Procedures for Standard Setting	The given test methods in the hEN need to be clear and avoid the use of different testing standards for the same product characteristic. The Annex ZAs need to be made simpler and easier to understand and less open to interpretation	Y – covered by 'greater involvement of NBs, ABs, industry, MS and SMEs in the procedures for standard setting'
	There is a need to review what happens at the end of the co-existence period to avoid having to dispose of stocks after expiry of the co-existence period	Y – covered by 'move to multiple Regulations'
Reduce AoC	No change should be made to the AoC due to the costs and resources already incurred to implement the current system	Y – as 'leave AoC as it is'
	The number of AoCs should be reduced, e.g. merging 1+ and 1 and 2+ and 2	N – time restrictions and difficulty of considering small differences between options means four levels of AoC is not assessed; issues are covered under 'reduce AoC to three levels'
	The system of AoC should be limited to three (1: NB for ITT and FPC; 2: NB for ITT, 3: auto-declaration by the manufacturer)	Y – as 'reduce AoC to three levels'
	The number of AoC levels should be reduced to four: 1+, 2+, 3 and 4	N – time restrictions and difficulty of considering small differences between options means four levels of AoC is not assessed; issues are covered under 'reduce AoC to three levels'
Link with Conformity Assessment Modules in New Approach	Need for linkages to be made between FPC and ISO 9000	Y – as 'link with NA modules'
Promotion of Conformity Assessment without Testing	Allowance of other ways to demonstrate that a product can be used to satisfy the regulatory requirements of works	Y – as 'promotion of conformity without testing' – covers shared testing results, cascading, calculations, etc.
	There needs to be a more flexible approach to conformity assessment to reduce the costs of ITT	Y – as 'promotion of conformity without testing' – covers shared testing results, cascading, calculations, etc.
	Manufacturers should be allowed to undertake tests according to supporting standards before the final version of the harmonised standard is available	Y – as 'promotion of conformity without testing' – covers shared testing results, cascading, calculations, etc.
	There is a need to assume conformity of products without prior attestation, with proof of conformity to be proved in case of dispute	Y – assumed to be covered by 'deemed to satisfy' as 'promotion of conformity without testing' – covers shared testing results, cascading, calculations, etc.
	There should be classes to allow the development of 'deemed to satisfy' when appropriate	Y – as 'promotion of conformity without testing' – covers shared testing results, cascading, calculations, etc.
	ITT needs to be retitled to give a better indication of what it is doing, e.g. examination type	Y – as part of 'promotion of conformity without testing', a new title for the approach will be required; the actual name is not considered as part of the impact assessment
Revision to Standard Setting Process	Many of the harmonised standards are not as comprehensive as old national standards. There is a need to make the standards more comprehensive	Y – as 'involvement in procedures for standard setting'

Table A1.2: Summary of Feasible Solutions Taken Forward as part of Option 3		
Alternative	**Feasible Solutions**	**Taken Forward as Option?**
	The approach to preparation and revision of hENs needs to be developed to encourage MS to participate more actively, to avoid where hENs are modified afterwards at the request of the MS	Y – as 'involvement in procedures for standard setting'
	The standards need to include an indication of the uses of products or national provisions must only be linked to characteristics set out in the standards; if other characteristics are needed to determine fitness for use, there must be a revision of the standard	Y – as 'involvement in procedures for standard setting'
	SMEs need to be encouraged to attend the CEN Technical Committee and working group meetings	Y – as 'SME funding' as part of 'involvement in procedures for standard setting'
	The Annex ZAs and text/tables referred to should be provided free of charge	Y – as part of 'SME funding'
Changes to ETAGs, ETAs and CUAPs	Overlaps between ETAs and hENs need to be avoided (there are currently overlaps between CEN product standards and EOTA guidelines)	Y – as part of 'abolish ETAGs and use (simplified) CUAP route'
	The CUAP procedure needs to be made more confidential so it can be better used for innovative products	Y – as part of 'abolish ETAGs and use (simplified) CUAP route'
	The EOTA procedures need to be simplified and made more transparent. This requires bureaucratic controls (green light letter) to be deleted	Y – as part of 'abolish ETAGs and use simplified CUAP route'
Changes to CE Marking	CE marking should be made mandatory	Y – as part of 'mandatory CE marking'
	CE marking should be based on a voluntary scheme (except for important health and safety reasons)	Y – as part of 'non-mandatory CE marking'
Increased use of IT Systems	CE marking should not include the last two digits of the year in which the marking was affixed – use of IT should be promoted as a way of obtaining information about the product	Y – as part of 'increased use of IT systems'
	There is a need for a database of all the relevant regulations in all MS	Y – as part of 'increased use of IT systems'
	ETAs need to be made publicly available	Y – as part of 'increased use of IT systems'
Link to European Accreditation Infrastructure for Notified Bodies	Notified Bodies (and test results) should be recognised in different Member States	Y – as part of 'European accreditation infrastructure' as proposed under the revision to the New Approach
	Notified Bodies (and manufacturers that are testing their own products) need to show that their test methods are calibrated European wide to give confidence that test results are reliable	Y – as part of 'European accreditation infrastructure' as proposed under the revision to the New Approach
	Need for accreditation system for NBs and ABs	Y – as part of 'European accreditation infrastructure' as proposed under the revision to the New Approach
Link to Community Market Surveillance Framework	European uniform criteria should be developed on which the approach to market surveillance should be based	Y – as part of 'community market surveillance framework' as proposed under the revision to the New Approach

ANNEX 2:
DETAILED ASSESSMENT OF ALTERNATIVE REVISION MEASURES

A2.1 Overview of the Alternative Measures

The short-list of measures examined in detail is as follows (note that for all measures there is also the alternative of doing-nothing, i.e. no revision of the current CPD, which forms the baseline against which all measures are assessed):

Measure A: Clarification of the objective and scope, including clarification of Article 4.2 and Article 13.5 on the extent that the CPD applies to kits, systems and parts of works;

Measure B: Clarification of definitions, including the concept of conformity, terms such as placing on the market, and concepts specific to the CPD such as 'no performance determined';

Measure C: CE marking against the ERs of products rather than the ERs of works;

Measure D: CE marking options, where this involves consideration of two alternatives:

- **D1**: CE marking is mandatory, is the only legal means of declaring product characteristics, and national marks must be withdrawn;
- **D2**: CE marking is mandatory for those products that fall within its scope but the scope is defined more flexibly, CE marking remains the only legal means of declaring product characteristics, and national marks must be withdrawn;

Measure E: Additional routes for CE marking:

- **E1**: CE marking against a Technical File;
- **E2**: CE marking against ERs and mandates;

Measure F: Simplification and additional routes for ETAs:

- **F1**: no future use of ETAGs, simplification of process for obtaining CUAPs, strengthening of competency requirements for ABs;
- **F2**: introduction of provisional and/or national ETAs;
- **F3**: preparing new ETAGs plus introduction of a simplified information procedure where experience with ETAs exists;

Measure G: Simplification of the system of AoC, which may be based on:

- **G1:** reducing the number of levels from six to four;
- **G2:** reducing the number of levels from six to three;
- **G3:** moving to the NA modules as the basis for AoC;

Measure H: Increased promotion of conformity without testing methods;

Measure I: Expanded use of IT systems, with three alternatives considered:

- **I1:** Use of IT for provision of a limited amount of the CE marking information;
- **I2:** Expanded use of IT to provide most of the CE marking information;

- **I3:** Creation of an EU-wide database for registration of products and associated CE marking information to increase traceability for professional users;

Measure J: Adoption of the Community market surveillance framework and European accreditation infrastructure and, if necessary, increased competency requirements for Approval Bodies; and

Measure K: Stronger EC controls over harmonisation of standards.

The assessment of each measure is given, below, in turn, using the approach described in Section A2.2.

A2.2 The Approach to Assessing the Impacts of the Measures

The long list of potential impacts set out in the Commission's Impact Assessment Guidance was reviewed to identify those types of impacts that would be relevant to this assessment. This led to identification of five key impact types, with these defined in Table A2.1.

Expected impacts to each stakeholder group and for each impact type are assessed through a qualitative description of the impacts (including the size, timing and duration of impacts). They are then assigned a rating according to the expected magnitude of the impact, with a seven point scale applied for these purposes:

---	may have a major negative impact (>30% change)
--	may have significant negative impact (>10% change)
-	may have slight negative impact (<10% change)
0	may have no/negligible impact
+	may have a slight positive impact (<10% change)
++	may have a significant positive impact (>10% change)
+++	may have a major positive impact (>30% change)
(+)/(-)	potential slight positive/slight negative impact due to uncertainty

Percentage change is used in assigning these ratings rather than absolute change, as this gives some equivalence of impact regardless of product family size, turnover, value, etc.

A limited number and types of organisations have been contacted to verify the impacts on stakeholders (e.g. manufacturers, professional users, Member States and Notified Bodies) and to validate the descriptions of impacts under the measures being considered below. This consultation exercise was used to supplement information from the Commission's consultation and from position papers. As a result, the number of questionnaires and telephone discussions was limited to those sectors where there was particular uncertainty over the potential costs and benefits; in some cases, the organisations circulated the questions to their members. There was also only limited time for responses such that widespread consultation was not possible within the timeframe for the study.

Table A2.1: Economic Impacts	
Impact Type	**Definition**
Competitiveness, trade and investment flows	Does the option have an impact on the competitive position of EU firms in comparison with their non-EU rivals? Does it provoke cross-border investment flows (including relocation of economic activity)? Are the proposed actions necessary to correct undesirable outcomes of market processes in European markets?
Competition in the internal market	Does the option affect EU competition policy and the functioning of the internal market? For example, will it lead to a reduction in consumer choice, higher prices due to less competition, the creation of barriers for new suppliers and service providers, the facilitation of anti-competitive behaviour or emergence of monopolies, market segmentation, etc?
Operating costs and conduct of business	Will it impose additional adjustment, compliance or transaction costs on businesses? Does the option affect the cost or availability of essential inputs (raw materials, machinery, labour, energy, etc.)? Does it affect access to finance? Does it impact on the investment cycle? Will it entail the withdrawal of certain products from the market? Is the marketing of products limited or prohibited? Will it entail stricter regulation of the conduct of a particular business? Will it directly lead to the closing down of businesses? Are some products or businesses treated differently from others in a comparable situation?
Administrative costs on businesses	Does the option impose additional administrative requirements on businesses or increase administrative complexity? Do these costs weigh, in relative terms, heavily on SMEs (Small and Medium Enterprises)?
Innovation and research	Does the option stimulate or hinder research and development? Does it facilitate the introduction and dissemination of new production methods, technologies and products? Does it affect intellectual property rights (patents, trademarks, copyright, other know-how rights)? Does it promote or limit academic or industrial research? Does it promote greater resource efficiency?

A2.3 Clarification of Objective and Scope (Measure A)

A2.3.1 The Problems

A misunderstanding of the objective of the CPD, i.e. that compliance with the CPD proves that a product is fit for purpose, has resulted in the perception that products have to be tested specifically so that they can be placed on the market in a particular Member State (MS). This has led to the perception (identified from the consultation responses) that the CPD has significant compliance costs but has only limited benefits. The result is that manufacturers within one Member State (MS) may have preferential access to that country's market. Where there is uncertainty over what is fit for use, there is the potential that imports (especially from non-EU countries) are perceived as being of lower quality[57]. This can have knock-on impacts on users of the products, e.g. by reducing the range of products available to them or requiring them to spend considerable time investigating the potential fitness for use of new products.

Misunderstandings over what is fit for use may also lead to increased lobbying by MS to ensure that all of their regulated characteristics are included in the standards and this may result in delays in the agreement of standards.

Box A2.1 presents some comments from the consultation responses which highlight the type of problems resulting from a lack of clarity in the objective and scope of the CPD.

Box A2.1: Case Studies: Problems Related to the Objective and Scope of the CPD

The CPD has achieved little in the bathroom products sector and very few manufacturers believe it ever will. It has taken an unbelievable amount of time and money to get to where we are today. Better and earlier explanation of Member States' regulatory requirements and of how they are satisfied plus firmer management of the process by CEN would have saved a lot of time and expense.

The need for particular products to come under the scope of the CPD should be considered rigourously. Are there real barriers to trade in the first place and is there a more flexible way in which products can enter the market. In the case of bathroom products the market operated perfectly well for 40 to 50 years despite a UK regulatory requirement for 'cleanability'. When the CPD required the CEN/TC to formalise the UK requirement for 'cleanability' the committee descended into years of ill-informed discussion and argument which wasted considerable time and money.

Source: consultation response from the Bathroom Manufacturers Association (Great Britain)

CE marking based on the CPD should also include free use within the EU, in order to eliminate additional use regulations at national level. So far - at least in Germany - CE marking harmonises only placing on the market and trading in goods. Additionally, national provisions are introduced for the use of CE marked construction products. This is rejected by Deutsche Bauchemie.

In many Member States – and in particular in Germany – extensive additional rules for product use are bindingly introduced when nationally implementing specifications for construction products that are harmonised at European level. This leads to excessive financial and administrative burdens for manufacturers and to unmanageable complexity for planners/architects and users. A 'genuine' opening of a European single market is frustrated.

Source: consultation response from the Deutsche Bauchemie (Germany)

[57] Although this will also depend on other factors, particularly market surveillance.

Article 4.2 states that "*Member States shall presume that products are fit for use if they enable works in which they are employed, provided the latter are properly designed and built, to satisfy the essential requirements…*". In other words, a construction product is presumed fit for its intended use if it bears the CE marking which attests the conformity of the product to technical specifications (hENs, ETAs or national technical specifications recognised through Community procedures).

However, this wording leads to confusion as a product can only be assumed fit for use in relation to a specific intended use. Thus, determining fitness for use requires information on the declared performance characteristics of a product and information on the national regulations relevant to that product in its intended use. Where the performance characteristics of the product fulfil the national requirements, then the product is deemed fit for that intended use.

Confusion over the scope of the Directive means that articles such as 13.5 (dealing with individual/non-series production) are not being fully used. This is likely to result in additional costs to manufacturers placing these products on the market and may be prohibitively expensive for smaller companies such as micro/craft businesses and SMEs. Article 13.5 states that "*a declaration of conformity in accordance with Annex III (2) (ii), third possibility, shall suffice, unless otherwise provided by the technical specifications for products which have particularly important implications for health and safety*". This requires initial type testing by the manufacturer and factory production control and, thus, avoids the need to involve Notified Bodies. However, this does not appear to be understood, with some of the consultation responses stating that:

- "*testing and attestation of items manufactured individually or by non-series methods continue to cause difficulty. Generally, test standards have been written for series production and may be difficult to apply in other situations*"; and

- "*the cost of testing (between €5,000 and €20,000) is obviously disproportionate to the cost of production of products made to measure or in non-series. The risk is that thousands of craftsmen and SMEs will be excluded from the market if they are obliged to apply CE marking to their products*".

In addition, clarification of kits and systems could be based on the approach set out in Guidance Paper C, which is intended to clarify the difference between these. The major problems with kits and systems relate to when the product is considered to have been placed on the market, who assumes liability for CE marking, potential for CE marking to be applied more than once and how the performance characteristics of the products are declared.

A2.3.2 The Measure

Measure A is related to clarification of the objective and scope to make it easier to determine what is (and what is not) covered by the CPD and includes (note there are no alternatives in this case, with Measure A compared to the 'business as usual' baseline):

- clarification that the objective of the CPD is to facilitate operation of the internal market for construction products;
- clarification of Article 4.2 to avoid confusion over when a product is fit for use;
- clarification of Article 13.5 and relevance of the CPD to individual and non-series products; and
- clarification on the extent to which the CPD applies to kits, systems and parts of works (i.e. products and kits in end use conditions).

A knock-on benefit of the above clarifications would be a reduction in the level of confusion over the apparent overlaps between the CPD and other Directives (e.g. New Approach directives, REACH, etc.).

Future changes in policy or new agreements may result in a desire for new essential requirements of works to be specified within the legislation for CE marking purposes (and hence of the products that are used in their construction). There is currently a methodology for this, and the intention is to ensure that this remains (i.e. confirmation of the baseline status quo).

A2.3.3 Implications of the Measure

Tables A2.2 to A2.6 discuss the impacts likely to arise for the different stakeholders identified as being affected by these measures, and for the relevant impact categories. Table A2.7 provides an indication of whether the overall impact of the measure, for each stakeholder, is expected to be negative (-) and result in net costs, or positive (+) and result in net benefits.

Table A2.2: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Clarification of Objective, Scope and Articles 4.2 and 13.5			
Operating costs and conduct of business	Clarification should reduce the potential for multiple testing to meet additional MS requirements to occur. Clarification of the objective, scope and Articles 4.2 and 13.5 will identify what is required and when, and emphasise that NPD should only be used when a characteristic does not need to be declared for the markets where the product is being sold. Such clarification should help stakeholders better understand the requirements of the CPD and what CE marking means.		
Administrative costs on businesses	Manufacturers will still need to find out what is required in the MS where they sell their products (although much of this information should be included in the hENs or through ABs as part of development of ETAs). Clarification on what CE marking means should help reduce the need for multiple testing and information provision that should improve the efficiency of firms, reducing their administrative costs.		
Competitiveness, trade and investment flows	This measure alone will not address the issue of (perceived) low quality imports, but it will address many of the issues faced by manufacturers in terms of their own products. This may reduce their sensitivity by improving the competitiveness of EU-based firms.		

Table A2.2: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competition in the internal market	Clarification of when CE marking is and, importantly for micro/craft and SMEs, is not required should help micro/craft businesses and SMEs comply with the CPD. This could open up new markets such that competition would be increased.		Clarification of 'fit for use' should help manufacturers identify what they have done and what else needs to be done (rather than misleading them into thinking that CE marking is sufficient). There may be increased competition from micro/craft and SMEs, but large manufacturers may also be able to sell their product in more MS, thus increasing the overall level of competition and the functioning of the internal market.
Innovation and research	Clarifying the objective, scope and definitions makes the requirements and roles much easier to understand so could help to reduce the costs and delays involved in putting products onto the market. The full benefits to innovation are unlikely to be achieved from this measure alone and other actions (e.g. changes to ETAGs/CUAPs, promotion of other means than testing, etc.) are likely to be required if innovation and research is to be stimulated.		

Table A2.3: Economic Impacts: PROFESSIONAL USERS	
Clarification of Objective, Scope and Articles 4.2 and 13.5	
Operating costs and conduct of business	Clarification of the objective and scope of the CPD should assist professional users of construction products by making the meaning of CE marking more evident. The increase in number of products available will improve product choice and should reduce costs.
Administrative costs on businesses	Clarification of the objective and scope may increase confidence in the meaning of the CE marking and may help to reduce the need to collect a lot of information on any new products such that a user is satisfied that the product is fit for its intended use.

Table A2.4: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
	Member States	**European Commission**
Clarification of Objective, Scope and Articles 4.2 and 13.5		
Operating costs and conduct of business	Clarification of the scope and definitions of the CPD should make it easier for Member States to identify whether a product is fit for use and, hence, whether any further characteristics need to be determined. This may be reflected in reduced time spent objecting to the Commission about certain CPD related issues.	Reduced need for guidance papers as objective, scope and Article 4.2 are clarified.
Administrative costs on businesses	Reduction in time spent lobbying European Commission for inclusion of all MS regulated characteristics once objective of CPD is clarified (no longer a need to include everything in the standards since fitness for use is not the meaning of CE marking).	Reduction in time spent clarifying specific points raised by MS, trade associations, etc. and dealing with issues raised (leading to a reduced need for guidance papers, etc.).

Table A2.5: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Clarification of Objective, Scope and Articles 4.2 and 13.5			
Operating costs and conduct of business	No impacts expected	Clarity of objective and scope may help to reduce extent of multiple testing, thus may reduce income to some NBs.	Clarity of objective and scope may help to reduce extent of multiple testing, thus may reduce income to some ABs.
Administrative costs on businesses	No impacts expected	Clarification of objective, scope and Articles 4.2 and 13.5 may reduce need for NBs to provide expert advice, thus may reduce their income.	Clarification of objective, scope and Articles 4.2 and 13.5 may reduce need for ABs to provide expert advice, thus may reduce their income.

Table A2.6: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
Clarification of Objective, Scope and Articles 4.2 and 13.5	
Competitiveness, trade and investment flows	Clarification of the objective, scope and definitions alone will not address the issue of the perception of low quality imports, but it will help to clarify what CE marking means. This may reduce the sensitivity of users and MS such that any barriers to trade for non-EU firms could be reduced or removed. This may increase competition within the EU and improve functioning of the internal market.

Table A2.7: Impacts: Clarification of Objective, Scope and Articles 4.2 and 13.5 (Measure A)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Clarification of Objective, Scope and Articles 4.2 and 13.5										
Operating costs and conduct of business	+	+	+	+	+	++	0	-	-	N/a
Administrative costs on businesses	+	+	+	+	++	+	0	0	0	N/a
Competitiveness, trade and investment flows	+	+	+	N/a	N/a	N/a	N/a	N/a	N/a	+ to ++
Competition in the internal market	++	++	++	N/a	N/a	N/a	N/a	N/a	N/a	N/a
Innovation and research	0 to +	0 to +	0 to +	N/a	N/a	N/a	N/a	N/a	N/a	N/a

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.4 Clarification of Definitions (Measure B)

A2.4.1 The Problems

The only definition in the CPD is for a construction product, which is "*any product which is produced for incorporation in a permanent manner in construction works, including both buildings and civil engineering works*". Definitions are not given for other key terms mentioned in the CPD, with these including terms such as (with the Article where they are first mentioned):

- placed on the market: Article 2.1;
- manufacturer: Article 2.2b; and
- individual (and non-series) production: Article 13.5.

This has led to confusion over who is responsible for conformity and the specific requirements for particular product types (particularly individual and non-series products). The revision of the New Approach Directives also highlighted that there is a need for clear definitions, emphasising that this is not just a CPD issue. Box A2.2 provides some responses from the EC's consultation exercise highlighting these problems.

Box A2.2: Case Studies: Problems Related to Lack of Definitions

The phrasing of the definition of manufacturer according to 14.2 and 13.1 of the CPD seems to be not very precise.

Consultation response from ANFACESA (Spanish Association of Sanitary Appliances Manufacturers)

The nature of awnings, doors and gates sees the installer cast in the role of the manufacturer but in the true sense he is an 'assembler'. There is a need to differentiate between these two roles. Only the suppliers of drives electric or manual can be considered as manufacturers. This industry is composed of assemblers either large or small who may be installers.

Consultation response from the British Blind and Shutter Association

An (in our opinion) unnecessary burden has been created for an installer of drives and doors from different manufacturers, who becomes a manufacturer in terms of the CPD. Consequently, economic strain is imposed on installers or assemblers, which are mostly SMEs.

Consultation response from Somfy (Germany)

What is putting on the market and what is putting into service? Is there an enforceable definition in the CPD that allows determination of who should take the responsibility for affixing CE-marking? What about products with different brands produced by the same manufacturer. Who affixes CE-marking? The manufacturer or the owner of the brand? Is a product (e.g. pre-cast concrete element) that is produced by a contractor in his own manufactory for his own works put on the market? What if that manufactory has a different legal identity from the contractor, who owns it? Is the product then put on the market thus subject to CE-marking? What if part of a production is subcontracted by one manufacturer to another? Who is responsible for the affixing the CE-marking?

Consultation response from a company producing concrete products (Belgium)

The main issue in terms of a lack of definition is the lack of clarity as to who is responsible for what, as highlighted by responses in Box A2.2. This leaves the CPD open to interpretation over who is responsible for compliance (see also the discussion on kits and systems in the measure to clarify the objective and scope of the CPD). This situation can be exploited by particular parties to avoid compliance costs (e.g. manufacturers of products leaving testing, etc. to those who are assembling or installing products, or notified bodies requiring testing and CE marking of the individual products, but also the assembled products). Professional users will be impacted either by a lack of information on the declared characteristics for some products on their own (characteristics may instead be given for the product as part of an assembled product) or an increase in costs passed down from manufacturers/assemblers/installers where multiple testing has been required.

The lack of clear responsibility makes market surveillance much more difficult, unless the default position is that all products require CE marking. For example, responses from representatives of the motorised door industry suggest that they are also responsible for ensuring compliance, thus, there may be some savings that could be made if the roles and responsibilities are made clear, through the inclusion of additional definitions.

There is also confusion as to what is meant by conformity under the CPD in comparison with what is meant by conformity under the New Approach Directives. The CPD relates to conformity with procedures, rather than to a technical specification (as in the case for the New Approach). This has led to some confusion over why products that are covered by the Low Voltage Directive, the Machinery Directive and/or the Electromagnetic Compatibility Directive (for example) are also included under the CPD.

Finally, there is the potential to use 'no performance determined' where a characteristic does not need to be declared for a product to be placed on the market in a particular Member State (MS). However, this term is not included in the CPD itself. There is considerable confusion over what NPD actually means and where it can be used, with the potential implications of increased testing costs. There is also the perception that it may mean 'no performance declared', i.e. where a manufacturer chooses to keep the results of testing on a particular characteristic secret. This has resulted in suspicion over the use of NPD and the inference that a product with NPD may be somewhat inferior. For example, consultation responses state:

- "*there is uncertainty about the applicability of the NPD clause. Manufacturers are unaware that by using the NPD measure, CE marking can be tailored to particular target markets. While this measure should be retained it depends on a detailed knowledge of national regulations in each Member State*";

- "*there is much confusion about when "NPD" can or cannot be declared. The content of Annexes ZA is not the same on this matter for all hENs*";

- "*to list all declared characteristics on the CE marking and to show NPD against many is sometimes interpreted by the market as showing that the product is*

inferior whereas the characteristic may simply not be needed for its intended Member State or use"; and

- "*the NPD clause is often confused with "class 0". The problem is the minimum value of the characteristic*".

A2.4.2 The Measure

Measure B involves clarification of definitions to make it easier to understand what is meant by the CPD (note there are no alternatives in this case, with Measure B compared to the 'business as usual' baseline):

- clarification on the concept of conformity in terms of the CPD (i.e. linked to conformity with procedures rather than with technical specifications, as is the case under the common framework on the marketing of products);

- clear definitions of:
  - placing on the market (taken from the common framework for the marketing of products);
  - manufacturer (taken from the common framework for the marketing of products);
  - distributor (taken from the common framework for the marketing of products);
  - installer;
  - made to measure products;
  - minor products and handcrafted products;
  - small series;
  - non-series; and
  - individually manufactured product.

- define the concept of 'no performance determined' (NPD) in the legislation (using same name or renamed to (for example) 'not regulated characteristic' or 'performance not tested') and clarification that this is to be determined by the manufacturer.

A2.4.3 Implications of the Clarification of the Definitions

Tables A2.8 to A2.12 discuss the implications of adopting this measure against the baseline and in relation to the key impact categories. Table A2.13 provides an indication of whether the overall impact of the measure, for each stakeholder, is expected to be negative (-) and result in net costs, or positive (+) and result in net benefits.

Note that there is obviously uncertainty surrounding the assessment of impacts set out here as clear definitions for some of the terms are not developed here (although a basis for such definitions exists in the Guidance Papers if not in the proposed Regulation for a common framework for the marketing of products). Instead, this assessment is based on the view that clarifying what these terms means will reduce the level of confusion and the degree to which varying interpretations currently exist.

Table A2.8: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Clarification of Definitions			
Operating costs and conduct of business	Clarification of conformity should help manufacturers to understand why they are required to comply with the CPD and could reduce complaints, although on its own, this is unlikely to significantly affect operating costs. The provision of new definitions will make the responsibilities for CE marking clear. This may in itself not reduce testing costs (unless some stakeholders are no longer required to apply CE marking), but should help to reduce conflicts between manufacturers and assemblers to some extent. Clarification of NPD could make it more acceptable (not just to users, but also to manufacturers) and could reduce testing costs for some products being placed on some markets. Greater use of NPD could be of particular benefit to micro/craft businesses and SMEs.		
Administrative costs on businesses	Time will be required for manufacturers to familiarise themselves with the new definitions and their implications. There may also be a need to adjust existing data, e.g. where there is the potential for increased use of NPD. Such costs are likely to be negligible. There may be a cost reduction from the clarification, as a result from reductions in confusion and uncertainty.		
Competitiveness, trade and investment flows	Any cost savings will apply to all manufacturers currently complying with the CPD, thus, this measure should have limited impacts on competitiveness of both EU and non-EU firms. The potential for increased use of NPD may increase cross-border investment flows, but this will be limited to where particular characteristics are not required in a particular MS.		
Competition in the internal market	There is the potential that increased use (and acceptance) of NPD could be of particular benefit to micro/craft businesses and SMEs, although the extent of the benefits is likely to be linked to the MS where they are placing products on the market.		Greater use of NPD will also assist large manufacturers, although they may face greater competition from smaller companies in some markets.
Innovation and research	Clarification of conformity and definitions is unlikely to have significant impacts on innovation and research but use of NPD could reduce the testing costs of innovative products, reducing their time to the market. Such benefits may be limited according to the type of product, MS where the product is being placed on the market and user requirements.		
Specific regions or sectors	Clarity on NPD is likely to be of less benefit to manufacturers placing products on the German market, due to their stricter requirements.		

Table A2.9: Economic Impacts: PROFESSIONAL USERS	
Clarification of Definitions	
Operating costs and conduct of business	Clarification and provision of the definitions should assist professional users of construction products by clearly stating the roles of the manufacturer, installer, etc. This should reduce confusion over whether a particular product, assembly, system, etc. should be CE marked or not. Greater use of NPD may reduce the amount of information available to professional users, although where this information is needed (e.g. where it is required in the building regulations), it would still have to be declared; thus impacts should be negligible.
Administrative costs on businesses	Clarification and provision of definitions may increase confidence in the meaning of the CE marking and may help to reduce the need to collect a lot of information on any new products such that a user is satisfied that the product is fit for its intended use. There may be a short-term increase in administrative costs if products include greater use of NPD, but such impacts should be limited.

Table A2.10: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
Clarification of Definitions		
	Member States	**European Commission**
Operating costs and conduct of business	Clarity on what conformity means under CPD should reduce national conflicts concerning what is covered by CPD and why and what is covered under other Directives. Similarly clarity of the definitions will make it easier to identify who is responsible for particular products, etc. facilitating market surveillance. Clarity on NPD should also reduce wrong use, again facilitating market surveillance and reducing the potential that NPD is used in a particular MS that requires it to be declared.	Reduced need for guidance papers and additional clarification activities as definitions are set and the potential for wide ranging definitions to be adopted is reduced.
Administrative costs on businesses	There will be short-term costs for MS to familiarise themselves with the definitions and assess the implications for their work. This may require some training/retraining of market surveillance staff.	Reduction in time spent clarifying specific points raised by MS, trade associations, etc. and dealing with issues raised (leading to a reduced need for guidance papers, etc.).

Table A2.11: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Clarification of Definitions			
Operating costs and conduct of business	May be an additional requirement for new standards to take account of all responsibilities (e.g. installers). This would increase the workload on CEN	Better understanding of NPD may result in greater use by manufacturers, potentially reducing income to NBs	Clearer responsibilities and roles may lead to greater demands for ETAs (where standards covering manufacturers, installers, etc. are not available). This may increase income to Abs (at least until standards are developed)
Administrative costs on businesses	Small cost in terms of familiarisation and identifying what changes may be needed	Clarification and provision of definitions may reduce need for NBs to provide expert advice, thus may reduce their income	Clarification and provision of definitions may reduce need for ABs to provide expert advice, thus may reduce their income

Table A2.12: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
Clarification of Definitions	
Competitiveness, trade and investment flows	Any cost savings will apply to all manufacturers currently complying with the CPD, thus, this measure should have limited impacts on competitiveness of both EU and non-EU firms. The potential for increased use of NPD may increase cross-border investment flows and could help non-EU firms enter the market, but this will be limited to where particular characteristics are not required in a given MS.

Table A2.13: Impacts: Clarification of Objective, Scope and Definitions (Measure B)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Clarification of Definitions										
Operating costs and conduct of business	0 to +	0 to +	0 to +	0 to +	+ to ++	- to --	- to --	--	-	N/a
Administrative costs on businesses	+	+	- to +	- to 0	-	+ to ++	0	0	0	N/a
Competitiveness, trade and investment flows	+ to ++	+ to ++	+	N/a	N/a	N/a	N/a	N/a	N/a	+ to ++
Competition in the internal market	0 to +	0 to +	0 to +	N/a	N/a	N/a	N/a	N/a	N/a	N/a
Innovation and research	+	+	+	N/a	N/a	N/a	N/a	N/a	N/a	N/a
Impacts on specific regions or sectors				N/a	N/a	N/a	N/a	N/a	N/a	N/a

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.5 Essential Requirements of Products not Works (Measure C)

A2.5.1 The Problem

Under the current CPD, products are assumed 'fit for an intended use' if they have the performance characteristics necessary for the works in which they are to be incorporated to satisfy its essential requirements (when properly designed and constructed). The interpretative documents are used to give concrete form to the essential requirements (ERs) of works (Articles 3 and 12) and to create the links between these and the mandates for the harmonised product standards (hENs) and guidelines for ETAs (and the recognition of other technical specifications under Articles 4 and 5).

The fact that the ERs relate to works and not to the construction products is one of the aspects of the CPD that has led to some confusion in the past, but more importantly it also represents an important area of divergence with the NA Directives.

In responding to the Commission's consultation exercise, there were calls for a change to the indirect nature of the CPD. Respondents indicated that the meaning of CE marking would be better understood if it applied directly to the ERs of products. As this would also bring it closer in line with the NA, it may make it easier to adopt other aspects of the NA, including the use of direct assessment methods (i.e. CE marking against a technical file) and the use of the NA modules as part of attestation of conformity.

A2.5.2 The Measure

Measure C involves a shift to the ERs of products as the basis for CE marking (note there are no alternatives in this case, with Measure c compared to the 'business as usual' baseline which is a continuation of CE marking against the ERs of works):

This measure would involve the development of essential requirements relevant to intrinsic characteristics of products rather than works (with this based on the existing mandates and technical specifications). One would expect that these would be related to the ERs for works, and that this link would have to be maintained to ensure that products were fit for their intended use. For example, product ERs may relate to 'safety in case of fire', 'safety in use', 'hygiene, health and the environment' and 'energy economy', drawing on the current requirements in relation to works. Additional ERs could include 'safe disposal at the end of life' (i.e. upon demolition of the works), 'lifecycle energy requirements', 'recyclability', etc.

Either hENs or Eurocodes could provide the basis for defining what characteristics are needed for a particular product, with these specified perhaps in terms of the intrinsic characteristics of the product (those which are not influenced by the other products with which the product is assembled or those not substantially depending on mounting and fixing, etc.). However, it would also be possible to move closer to the NA by making the hENs voluntary and not mandatory by opening up the possibility for the use of direct assessment methods such as CE marking against a technical file (see also Measure E).

A2.5.3 The Implications

This measure would essentially place a burden on manufacturers to determine what information is needed by users of their products and would require that designers and contractors use that information to design the works so that it meets its essential requirements. In other words, there would be a shift in responsibility for product selection to architects, designers and contractors (and away from those developing the standards).

The advantages of this measure are that it would be more compatible with the NA and thus open up some of the flexibility provided by the NA. This includes enabling manufacturers to apply direct assessment methods to a greater extent, and reducing the reliance on hENs being available to act as the basis for CE marking. This also suggests that the role of ETAs would have to become that of a 'direct assessment'. There would be no scope for ETAGs and the Article 9.2 procedure would also no longer be relevant in its current form. In addition, the meaning of CE marking may become clearer and would be more easily explained. There would no longer be a need for the interpretative documents and the fact that these are out of date would present no issues concerning the need for them to be updated so as to be more consistent with the contents of the mandates.

However, the disadvantage of this measure is that it may not provide architects, designers and contractors with the information that they need: that is information on the final performance of the product in the conditions of use in the works. As this is what users of the products are interested in, then it is also what manufacturers want to provide, as part of the client and supplier relationship. From discussions with the limited number of individuals contacted for this study, the general view is that unless the CE marking provides this information, then its value to its target group of users is severely limited.

One consultee suggested that the calls for product based ERs arise from problems that have arisen in relation to ETAs and what is or is not a kit. The issue is essentially as follows. It may not always be possible to know where or how (according to what conditions of fixing and mounting) a product will be used and, in some cases, other products could influence its final performance (e.g. when a product is to be used as part of a kit). In particular, problems have arisen in relation to ETAs where the definition of a kit has been extended to go wider than a 'group of products intended to be assembled together' and have interpreted a 'system' as being similar to 'parts of works' or 'works'. Thus, the calls for product based CE marking are aimed at avoiding the need to apply CE marking to systems or parts of works.

The additional fear of manufacturers is that unless the CE marking conveys information on a product's performance in relation to its end use in a works, then there is the danger that final users (designers, contractors) would require additional assessments on the performances of the product in end use conditions in relation to national requirements. This would lead to the creation of a double system of assessment: first in relation to the CE marking of the intrinsic characteristics of the product and then in relation to gaining a form of 'application approval'. Although not suggested by consultees, there is the potential for this measure to result in a plethora

of voluntary marks (presumably in the short term based on the hENs and ETAs developed under the current legislation) aimed at providing designers and architects with information on the performance of a product in different intended uses.

The implication of these comments is that the real need is for the revised legislation to include provisions which would prevent CEN or EOTA from forcing manufacturers of "systems" or "parts of works" to submit these to the CE marking. This could include restrictions being incorporated into the mandates the Commission gives to CEN and to the controls that the Commission places on the activities of EOTA.

It must also be remembered that making such a change has to be assessed against a baseline under which the development of the critical mass of harmonised standards has only just begun to take effect, with the present programme of hENs expected to be complete over the next 3 to 5 years, with 319 standards having been approved out of a total of 463 'concerned' standards[58].

The results of the assessment for this measure are summarised in Tables A2.14 to A2.19 below. As can be seen from the Tables, construction product manufacturers, professional users, Member State authorities, the European Commission and international stakeholders could all be affected depending on the measure.

Table A2.14: Economic Impacts: MANUFACTURERS

Impact Category	Micro/Craft	SMEs	Large
CE Marking against ERs of Products			
Operating costs and conduct of business	This measure may reduce the costs of CE marking to micro /craft enterprises compared to the baseline, however, it is unclear whether they would also face the longer term increase in costs associated with the need to provide information on performance in end use to clients. In this regard, the effects may be less significant given the difference in the types of products and markets for these companies (e.g. made to measure, artisanal).	Although the intention of the measure is to simplify the basis for CE marking, in the short term it will lead to an increase in costs related to education and training, modification of CE marking equipment, modification of declarations and labels, etc. It may also result in past expenditure becoming redundant. More significantly, it may increase the costs to manufacturers of providing information to clients, including the potential for having to undertake application specific testing (or calculations).	
Administrative costs on businesses	There would be a short-term increase in administrative costs associated with the need to change to the new system for CE marking. In the medium to longer term there should be no significant effect.		

[58] CEN (2007): **Snapshot of the current situation**, 11 January 2007.

Table A2.14: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competitiveness, trade and investment flows	The potentially reduction in operating costs could improve the relative competitiveness of micro-craft enterprises but is unlikely to put them at a significant advantage compared to non-EU companies given differences in target markets.	The potentially significant increases in operating costs associated with the need to provide application related information may impact on the relative competitiveness of SME enterprises, although these increases may be offset by cost savings if the requirements for placing products on the market become less onerous.	The measure is unlikely to disadvantage large companies vis a vis their non-EU rivals although large EU manufacturers may be better able to keep up to date with works-specific application requirements in different MS.
Competition in the internal market	Given the differences in end markets, this measure may not affect the relative competitiveness of micro /craft enterprises, particularly if they are making made to measure or artisanal products.	SMEs are likely to be put at a significant disadvantage compared to large companies if the measure means that they have to respond to large numbers of client queries regarding performance in end use.	Large companies are likely to gain a competitive advantage vis a vis other EU companies due to a greater ability to respond to queries regarding performance in end use and to undertake any related testing and a greater ability to maintain a knowledge of building regulations across MS.
Innovation and research	May result in an increase in products being placed on the market due to a reduction in the cost burden associated with the current requirements/ processes for obtaining ETAs. If this results in users only using products that they already know (e.g. due to concerns over other products' fitness for use), then this could stifle innovation.	May result in an increase in products being placed on the market due to a reduction in the cost burden associated with the current requirements/ processes for obtaining ETAs. If this results in users only using products that they already know (e.g. due to concerns over other products' fitness for use), then this could stifle innovation.	May result in an increase in products being placed on the market due to reduction in the burden associated with the current requirements/processes for obtaining ETAs. If this results in users only using products that they already know (e.g. due to concerns over other products' fitness for use), then this could stifle innovation .

Table A2.15: Economic Impacts: PROFESSIONAL USERS	
CE Marking against ERs of Products	
Operating costs and conduct of business	In the medium to longer term is likely to increase costs associated with finding out details of product performance in end use applications and in increased liaison with product manufacturers. Increases the responsibility placed on designers and thus their level of liability, as they will have to select the correct products for a given set of end use conditions. This could include undertaking their own testing of products.
Administrative costs on businesses	In the short term, likely to lead to considerable confusion and hence in familiarity and learning costs.
Competitiveness, trade and investment flows	No significant impacts.

Table A2.15: Economic Impacts: PROFESSIONAL USERS	
Competition in the internal market	No significant impacts.
Innovation and research	May reduce the range of products considered by designers, with them returning only to a set of companies whose products they are familiar with and which they will not have to test themselves or have tested specifically for their application.

Table A2.16: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
	Member States (MS)	**European Commission (EC)**
CE Marking against ERs of Products		
Operating costs and conduct of business	Likely to lead to a significant increase in costs to MS authorities, particularly in the short term, associated with the need to respond to queries and to revise national regulations. Unclear whether there would be a net increase in costs over the longer term – this is likely to depend on the systems in place in the different MS. Also unclear whether surveillance and building control activities become easier or more difficult; this is likely to be linked to variations in the requirements of national building codes and the degree to which architects and designers are used to fixed formulations or developing own designs.	The EC would incur significant costs in revising mandates and overseeing the introduction of new/modified hENs based on product characteristics.

Table A2.17: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
CE Marking against ERs of Products			
Operating costs and conduct of business	CEN's workload would increase with the need to revise mandates and then the associated hENs. Given the delays that have occurred to date, it is not clear over what time frame this increase in workload would take place.	There would be short term increase in work for NBs in relation to the introduction of the new standards, with the volume of this work depending on the level of third party verification required under the new standards.	It is likely that there would be a slight increase in work for ABs associated with the new standards. The change in workload over the longer term is likely to be more significant in response to the need of manufacturers to provide information on product performance in end use to designers. Not clear overall whether role of ABs would have to change.
Administrative costs on businesses	No significant impact.	Would require changes to administrative systems.	Would require changes to administrative systems.
Competitiveness, trade and investment flows	No significant impact.	May make it easier for non-EU NBs to enter the market.	May make it easier for non-EU ABs to undertake testing activities.

Table A2.17: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Competition in the internal market	No significant impact.	Impact unclear as NBs may have to change activities to reflect changes in the basis of CE marking. Unlikely to be a significant impact, unless NBs are more able to expand the range of products over which they are considered competent.	Competition may be negatively affected as ABs become more focused on undertaking tests specific to certain MS building regulations.
Innovation and research	No significant impact.	No significant impact.	No significant impact.

Table A2.18: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
CE Marking against ERs of Products	
Operating costs and conduct of business	In the short term it will lead to an increase in costs related to education and training, modification of CE marking equipment, modification of declarations and labels, etc. It may also result in past expenditure becoming redundant. In the medium to longer term it should reduce costs of placing products on the EU market, although this is likely to be offset by the need for manufacturers to maintain an understanding of the requirements of building regulations in different MS in order to provide information on performance in end use conditions to clients, including the potential for having to undertake application specific testing (or calculations).
Administrative costs on businesses	There would be a short-term increase in administrative costs associated with the need to change to the new system for CE marking. In the medium to longer term there should be no significant change in costs.
Competitiveness, trade and investment flows	The measure may give an advantage to large non-EU companies as the requirements for placing products on the market will become less onerous. However, if designers begin to limit their purchasing decisions to products which are more locally produced and are better known to them, this may impact on the ability of non-EU companies to retain their market share within the EU. Non-EU SMEs are most likely to be negatively affected.
Innovation and research	May result in an increase in products being placed on the market due to reduction in the burden associated with the current requirements/processes for obtaining ETAs, however, this depends on the willingness of designers to use products they do not know in order to avoid future liability.

Table A2.19: Impacts: CE Marking against ERs of Products (Measure C)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
CE Marking against ERs of Products										
Operating costs and conduct of business	+	--	--	--	--	--	++	+	+	--
Administrative costs on businesses	-	-	-	-	0	0	0	0	0	--
Competitiveness, trade and investment flows	0	--	-/+	0	0	0	0	-	-	-/+
Competition in the internal market	+	-	-/+	0	0	0	0	+	+	-/+
Innovation and research	0	+	+	0	0?	0	0	0	0	0

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.6 CE Marking Measures (Measure D)

A2.6.1 The Problem

This set of measures is aimed at addressing three different identified problems in relation to CE marking:

- the first is the different status given to CE marking under the CPD across MS. In some MS, CE marking is treated as being mandatory for all products placed on the market, while in other MS it is not required. Where the principle of mutual recognition is respected, this results in cases where a CE marked product competes with a non-CE marked product, as a result of trade across the internal market. This is in turn can lead to confusion as to the meaning of the CE marking and is argued by some manufacturers as resulting in an uneven playing field;

- the second issue relates to the cost burden to micro businesses and SMEs arising from mandatory CE marking requirements, particularly where the customers of these manufacturers do not require that product characteristics are declared; and

- the third issue is the huge number of products for which there are no standards (or those that fall slightly outside the harmonised standard). Mandatory CE marking in some MS currently forces such products to obtain an ETA, even though this is not required for placing the product on the market in other MS.

Box A2.3 summarises some of the key issues raised in the Commission's consultation exercise on CE marking.

Box A2.3: Case Studies: Problems with CE Marking

CE marking of construction products does not assure public safety but instead provides just one means of showing that products have characteristics that can enable works when properly designed and built to satisfy the Essential Requirements. UPEC considers that confidence in the CE marking of construction products is strongly dependent on (1) effective market surveillance bodies accredited and controlled at EU level rather than by individual Member States and (2) the inclusion of the level of Attestation in the CE marking information and declaration. The latter should also be coupled with the freedom to offer full product conformity certification covering all product performance information declared for the product.

Consultation response from the European Union of Developers and House Builders

The CPD will be a success when a single assessment of a product will be sufficient to place this product on the market (making a product available in the market) and to use it according to the wishes and the needs of the final client (designer, architect, owner of work) everywhere in Europe, without any regulatory additional test or audit at the national or local level either direct (*de jure*) or indirect (*de facto*). While CE marking remains insufficient for a product to be sold and used, it will be considered by the manufacturers as an additional burden and cost, without any added value.

Consultation response from CEPMC

CE marking is a method of control of all the products prior to placing them on the market. This has important practical and financial implications, as this method requires systematic application of conformity attestation procedures for any product placed on the market. This system is particularly inadequate for enterprises that produce 'made to measure' or non series products or only few numbers

Box A2.3: Case Studies: Problems with CE Marking
of a particular product or manufacture in situ (example of concrete). The costs and procedures are disproportioned and dissuasive. They will lead to the exclusion of a large number of small enterprises from the market and to a uniformisation of products and eventually to a very restricted choice of products available to the consumer.

Consultation response from the European Builders Federation

A2.6.2 The Measures

Two basic measures have been identified as alternatives to the baseline situation as possibilities for overcoming the identified problems in relation to CE marking[59]:

- **Measure D1**: make CE marking mandatory and enforce this as the only legally acceptable method of expressing performance characteristics of products – national marks must be withdrawn; and

- **Measure D2**: CE marking is made mandatory for those products that fall within the cope of the legislation but the scope is defined more flexibly, CE marking remains the only legal means of declaring product characteristics, and national marks must be withdrawn.

In relation to the second measure, there are further considerations. For example, flexibility could be given to specific product types (e.g. very local products and artisanal or handcrafted products, non-series production, individual or made to measure products) or to those Member States where product use (and fitness for use) is defined by the professional user. Flexibility by product type would be consistent with the current CPD as CE marking is not mandatory for:

- building elements made on the works (including made to measure products); and
- single application / individual (non-series production).

These provisions are highlighted by the European Builders Confederation[60] (EBC) as being of considerable importance to SMEs and makers of handcrafted products. The EBC refers to Guidance Paper M which it considers as clarifying the CE marking requirements for the above types of products (although the Commission has placed a disclaimer on Guidance Paper M indicating that it does not represent a legal interpretation of the Directive and is not binding). It notes that:

> *"Member States are not obliged to take measures for applying CPD provisions and CE marking to building elements made on the works and to those construction products that are manufactured off the works but incorporated in them without beforehand having been placed on the market, i.e. directly by the manufacturer as part of a service comprising more than just manufacturing and delivering the product."*

[59] Note that it has been suggested that one could abolish the use of the CE marking and introduce a special CPD mark. This measure has been screened out as it appears to have little support amongst manufacturers at this late stage in the implementation of the current CPD.

[60] EBC (2005): *CE marking not compulsory and of easier access*, European Newsletter, No 3/2005.

Requirements for CE marking of such products are therefore at the discretion of the individual MS, but the potential is for such CE marking to be mandatory. However, it is clear from some consultation responses that it is more likely to be treated as non-mandatory, as there are also requests for such products to require CE marking in the future in order to ensure a more level playing field.

Individual (and non-series) production is referenced in Article 13.5 of the CPD. Guidance Paper M defines these as being products which are:

- individually designed and manufactured, upon request and for specific purposes, needing to readjust the production machines for their manufacture in order to be used in the work concerned; or

- custom-made for a specific order to obtain one or several end use performances different from products manufactured in series, even if produced according to the same manufacturing process/system design.

In most cases it is assumed that individual (and non-series) production products can be CE marked based on a manufacturer's declaration of conformity. However, Guidance Paper M suggests that MS could authorise the use of products which fall under the first definition, even if they do not "*comply with the provisions of the Directive*" as long as the product is not CE marked and it is manufactured for one single specific case of application that requires one or several individual end use performances.

No specific exemptions have been identified for artisan and handcrafted products, although in those MS where CE marking is currently treated as being mandatory, manufacturers of such products may take advantage of the ability to declare no performance determined.

For the purposes of this assessment, it is assumed that mandatory CE marking involves:

- CE marking becoming mandatory across all MS, ensuring a more level playing field in this regard;
- the discretion currently open to MS in relation to products manufactured on site and made to measure products is maintained;
- the current provisions regarding individual (non-series) production are also maintained;
- CE marking is not mandatory for products not covered by a mandate (i.e. by a harmonised EN or an ETA guideline), although the ETA route to CE marking remains open;
- CE marking of traditional products becomes mandatory unless they fall into one of the above categories; and
- the measure for CE marking against 'no performance determined' remains open.

The key difference between this (Measure D1) and Measure D2 measure is that under the second sub-measure manufacturers would be allowed to decide whether or not to declare performance characteristics for the products he/she manufacturers. Where a

product is placed on the market without CE marking, the client either takes responsibility himself for the use of the product or defines the responsibility of the manufacturer of the product through a contractual agreement between the two parties. However, should a manufacture declare any characteristics, then he/she would be obliged to apply CE marking. These requirements would apply across all MS to ensure a level playing field.

Under both of the measures, CE marking would be the only legal means of declaring the performance characteristics of products, where these have been harmonised at the EU level.

A2.6.3 The Implications

Organisations such as CEPMC and EOTA have produced position papers that argue for CE marking to be made mandatory. CEPMC[61] believes that mandatory CE marking is important to avoiding confusion in the market and ensuring that market distortions do not arise from the presence of CE marked and non-marked products being placed on the same market in MS. Any product covered by a technical specification should be subject to CE marking. CEPMC notes the need for explicit exemptions from CE marking, with this identified as being necessary for innovative products diverging from an hEN and for handcrafted and non-series products. In addition, products intended for one specific, single client and produced under contract could be exempted from CE marking. However, CEPMC is not in favour of industrialised, tailor made products being exempted. Conversely, organisations such as NORMAMPE argue that SMEs want to have the opportunity of CE marking but, in many situations, would be unable to afford the costs associated with ITT and FPC.

EOTA[62] argues that harmonisation for construction products "should have the objective that the characteristics and performance of the products are *defined, evaluated,* and *declared* all over Europe in the same way", and that this should be possible for any relevant product characteristic. It states that CE marking conveys the following benefits:

- product characteristics and performances as declared by a manufacturer can be understood by users, market surveillance authorities, regulators and other stakeholders throughout the EU;
- products of varying origins can easily be compared in terms of their characteristics and respective performances;
- multiple testing for the same characteristics but using different national test methods can be avoided; and
- that CE marking establishes a level playing field for all manufacturers and prevents market distortions arsing from different requirements being applied to local manufacturers than to manufacturers in other Member States.

However, EOTA also notes that mandatory CE marking gives rise to inconvenience and additional costs for both manufacturers (in terms of investing in new testing, new

61 CEPMC (2007): **Draft CEMPC position paper**, ref TG CPD Revision 07-006 rev2.

62 EOTA (2006): **Key issues to be considered in the revision of the CPD**, doc ref 58211.06, October.

documentation, new marking, etc.) and to professional users (who have to adapt existing technical rules, codes of practice, etc.), including to who will gain no advantage from the CE marking.

This last aspect is the key driver behind Measure D2, which is aimed at reducing the costs to those manufacturers whose clients do not require the performance characteristics of the product to be declared. Although this may include some industrialised, tailor made products (which is equated here to individual / non-series production), it will also include products manufactured by micro businesses, handcrafted products and some products sold only to very local markets. From strictly an efficiency perspective, if there are no benefits from CE marking in relation to these products to either the manufacturers or their users, then the costs involved in undertaking the ITT, ensuring FPC, preparing technical documentation, etc. represent a 'waste' of scarce financial resources for these companies.

Responses to the internet consultation have also suggested that CE marking is required to ensure the circulation of new products. These arguments are based on the view that the ability to declare performance characteristics through CE marking helps ensure a market for new products and, thus, provides an incentive for innovation and product development. In our view, these arguments do not mean that CE marking has to be mandatory, only that those who wish to gain from the market benefits that it will provide to them are able to apply it.

Furthermore, due to the huge number of products for which there is no hEN, or which fall slightly outside the hEN, there is the risk that making CE marking mandatory would force manufacturers to seek marking through an ETA. In other words, CE marking for these products would become *de facto* mandatory, as it currently is in two of the MS.

The argument can also be made that, with a few exceptions, CE marking would become de facto mandatory under the third measure. As the hEN are translated into national building regulations and codes, then professional users will refer to these standards in specifying and purchasing building materials. Manufacturers will therefore have to be able to attest conformity with the standards through CE marking if they wish their products to compete in the market. Under this scenario, as further hENs come into force, CE marking for the majority of product manufacturers will become *de facto* mandatory.

Our assessment of CE marking measures, presented in Tables A2.20 to A2.25, is based on the above arguments, the responses to the Commission's internet consultation more generally and the findings of the PRC report (2006).

Table A2.20: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
CE Marking Made Mandatory			
Operating costs and conduct of business	Increase in costs to those not currently applying CE marking or equivalent national marks. May be disproportionately affected as costs per unit production are likely to be higher. Costs may confer no benefits to this group where declaration of product characteristics is not currently demanded (e.g. in relation to traditional or handcrafted products).	Increase in costs to those not currently applying CE marking or equivalent national marks. May be disproportionately affected as costs per unit production are likely to be higher. Savings in relation to enforcement of CE marking being the only legal form of declaration.	Increase in costs in those MS where CE marking is not currently required. Savings in relation to enforcement of CE marking being the only legal form of declaration.
Administrative costs on businesses	Could lead to an increase in costs from the need to retain information and records not previously held (i.e. documents to demonstrate compliance and details of ITT and FPC). Costs may disproportionately affect this group. Savings in relation to enforcement of CE marking being the only legal form of declaration.	Could lead to an increase in costs, associated with the need to retain information and records not previously held (i.e. documents to demonstrate compliance and details of ITT and FPC). Costs may disproportionately affect this group. Savings in relation to enforcement of CE marking being the only legal form of declaration.	Increase in costs for companies operating nationally in those countries where CE marking is not currently required. Savings in relation to enforcement of CE marking being the only legal form of declaration.
Competitiveness, trade and investment flows	Unlikely to have a significant effect on these companies.	May impact on the competitive position of these firms vis a vis larger non-EU companies due to disproportionate increase in per unit costs associated with mandatory marking; however, it should also ensure that SMEs have equal access to markets.	May improve the competitive position of these firms vis a vis larger non-EU companies by ensuring that CE marking requirements are met.
Competition in the internal market	Increased costs from mandatory CE marking may be disproportionate per unit of production (due to a lack of economies of scale) for micro/craft businesses. The costs of mandatory marking may be prohibitively expensive for certain traditional and handcrafted products, where CE marking would not normally be demanded.	Increased costs from mandatory CE marking may be disproportionate per unit of production (due to a lack of economies of scale) for SMEs. This may reduce their competitiveness vis à vis larger EU companies due to the need to charge higher per unit prices for their products (or take lower margins).	Those manufacturers already CE marking their products will face no additional costs from this sub-measure. Manufacturers in countries not currently requiring CE marking will face increased costs of production. However, this may lead to a more level playing field and increase the level of competition within these MS.

Table A2.20: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Innovation and research	Impacts on innovation and research are less likely to be a concern for this group of companies than for the others.	Increases in the costs of production in general due to mandatory CE marking may reduce the level of resources available to fund product innovation and research activities. However, the development of innovative products could still continue, taking advantage of the various exemptions. If CE marking through ETAs became mandatory for non-standard products, this may reduce levels of innovation due to the costs and time involved.	Increases in production costs may affect the level of resources available for research and development activities. Again, the degree to which innovation is stymied will depend on the ability of companies to take advantage of the exemptions available for non-series production. If CE marking through ETAs became mandatory for non-standard products, this may reduce levels of innovation due to the costs and time involved.
Impacts on specific regions or sectors	May have a particular impact on companies operating in Finland, Ireland, Sweden and the UK where CE marking is not currently mandatory; and on companies in countries where there are currently are other de facto mandatory requirements for declaring product characteristics.	Will have a particular impact on companies operating in Finland, Ireland, Sweden and the UK where CE marking is not currently mandatory; and on companies in countries where there are currently are other de facto mandatory requirements for declaring product characteristics.	Making CE marking mandatory in all MS could result in significant cost increases to companies operating in the four MS where it is not currently required; however, enforcement of CE marking as the only legal means for declaring product performance should reduce costs in those MS where there are currently are other de facto mandatory requirements for declaring product characteristics.
CE Marking Made Mandatory but Scope of Legislation is Defined Flexibly			
Operating costs and conduct of business	As manufacturers are able to decide whether or not to apply the CE marking, manufacturers within this group may benefit from cost savings, in particular in those countries where CE marking has been mandatory to date even though customers do not require characteristics to be declared. These savings may be disproportionately high compared to other SMEs and large companies, where production involves traditional or handcrafted products; although CE marking may still be de factor mandatory in order to gain client acceptance		Those manufacturers already CE marking their products are unlikely to cease such marking as costs associated with ITT are sunk; on-going FPC may also be viewed as essential to meet the demands of professional users. It is likely that CE marking will still be de facto mandatory in order to gain client acceptance
Administrative costs on businesses	Savings in administrative costs associated with record keeping, etc. in proportion to reduction in CE marking by this group of companies	Could lead to a decrease in costs in line with reduction in level of CE marking across the EU as whole	No significant change in costs expected as companies are likely to continue CE marking

Table A2.20: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competitiveness, trade and investment flows	Unlikely to have a significant affect on these companies	For certain product types, where clients do not require characteristics to be declared, this may result in a decrease in the costs faced by SMEs, increasing their competitiveness vis à vis non-EU companies	Unlikely to have a significant impact on the competitive position of large firms vis a vis non-EU importers. Both types of companies would be able to decide whether or not to apply CE marking
Competition in the internal market	It is unlikely that the cost savings realised by this group would significantly affect their competitiveness vis a vis the larger product manufacturers due to their smaller levels of production or differences in the markets to which they are selling (i.e. traditional and handcrafted products rather than more mainstream markets)	The potential decrease in the costs faced by SMEs may increase their competitiveness vis à vis larger EU companies. However, as more standards are translated into national rules/codes, not marking products may have the perverse effect of reducing the acceptability of products to some customers, increasing the extent of market segmentation.	No significant impacts expected on the relative competitive position of most large companies, although there may be some impacts at the local/regional level as SMEs become more competitive in relation to products where clients do not demand CE marking. However, as hENs become nationally applied, any such impacts should be minimised
Innovation and research	Impacts on innovation and research are less likely to be a concern for this group of companies than the others	Decreases in the costs associated with CE marking of certain products may increase the level of resources available to fund product innovation and research activities. More importantly, it may encourage the development of innovative products if ETAs are not mandatory for placing non-standard products on the market	The degree to which innovation is affected will depend on the degree to which large companies no longer feel there is a need to obtain ETAs for non-standard products as contractual agreements could be reached instead with customers. This could have the effect of spurring rates of development and uptake of more innovative products. But it could also have the opposite effect as CE marking no longer acts to distinguish one new product from another
Impacts on specific regions or sectors	Allowing manufacturers to decide whether or not to declare characteristics through CE marking should be of significant benefit for micro enterprises	May have a particular impact on companies operating in Finland, Ireland, Sweden and the UK where CE marking is not currently mandatory; and on companies in France, Spain where there are other de facto legal requirements	May have a particular impact on companies operating in Finland, Ireland, Sweden and the UK where CE marking is not currently mandatory; and on companies in France, Spain where there are other de facto legal requirements

Table A2.21: Economic Impacts: PROFESSIONAL USERS IN THE CONSTRUCTION INDUSTRY	
CE Marking Made Mandatory	
Operating costs and conduct of business	Mandatory CE marking may increase the costs of products that did not previously have CE marking, thus, having knock-on impacts to professional users and end customers. However, there may be benefits to users since they will have confidence that characteristics declared have been determined in a standard way. Increased confidence in products may effectively create increased price competition to the advantage of professional users and other consumers.
CE Marking Made Mandatory but Scope of Legislation is Defined Flexibly	
Operating costs and conduct of business	May increase costs if it results in increased research requirements / discussions with manufacturers to ensure that products have particular performance characteristics. However, as standards are translated into national regulations/codes/rules, then there will be the de facto demand from designers etc. for CE marked products

Table A2.22: Economic Iimpacts: PUBLIC SECTOR ORGANISATIONS		
CE Marking Made Mandatory		
	Member States (MS)	**European Commission (EC)**
Administrative costs on businesses	Potential increases in surveillance and enforcement requirements compared to the baseline. This will be particularly true for those countries where CE marking is not currently mandatory or for countries allowing other legal means to be applied.	Should reduce the level of enforcement related actions that may have to be addressed in the future by clarifying CE marking requirements.
CE Marking Made Mandatory but Scope of Legislation is Defined Flexibly		
Administrative costs on businesses	Net effect not clear as increased flexibility may result in an increase in the number of complaints concerning poor product quality, etc.	Net effect compared to the baseline not clear.

Table A2.23: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
CE Marking Made Mandatory			
Operating costs and conduct of business	No significant impact.	Will increase the number of manufacturers requiring ITT and FPC in those countries where CE marking not previously required. May reduce demands for testing according to national requirements where other legal means of declaring characteristics currently exist.	Although CE marking of products falling outside of mandates would not be necessary, market pressures may increase demands for ETAs through Article 9(2) route and, hence, demand for the services provided by this group of organisations. Net effect will depend on whether increases in costs faced by companies impacts on levels of innovation.
Competition in the internal market	No significant impact.	Likely to result in an increase in demand for ITT and FPC related services in particular MS and for specific sectors.	Expected increase in demand for ETAs likely to lead to an increase in the level of competition between ABs, as new bodies enter the market or existing bodies expand the types of products that they can cover.

Table A2.23: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
CE Marking Made Mandatory but Scope of Legislation is Defined Flexibly			
Operating costs and conduct of business	No significant impact	May reduce demand for ITT and FPC related services from SMEs and micro-enterprises. May reduce demands for testing according to national requirements in relation to other legal means of declaring characteristics exist	Unlikely to impact significantly on ETA related activities, although there may be some reduction in demand in certain MS where CE marking was de facto mandatory, as companies take greater advantage of ability to make contractual agreements
Competition in the internal market	No significant impact	No significant impact expected, although NBs servicing particular sectors may be affected	No significant impact expected

Table A2.24: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
CE Marking Made Mandatory	
Operating costs and conduct of business	Mandatory CE marking in all EU countries may increase the costs faced by importers of placing products on the market.
Administrative costs on businesses	Administrative costs may increase due to expanded CE marking requirements, and in particular in relation to those countries where such marking is not currently mandatory.
Competitiveness, trade and investment flows	Making CE marking mandatory should create a more level playing field across the EU market, and improve the confidence of professional users and others in the reliability of CE marking as a means of declaring product characteristics. This should improve the competitive position of non-EU product manufacturers vis a vis EU companies (however this is also likely to be contingent upon strengthened market surveillance and accreditation requirements).
CE Marking Made Mandatory but Scope of Legislation is Defined Flexibly	
Operating costs and conduct of business	Not making CE marking mandatory is unlikely to result in significant cost savings to non-EU manufacturers as they are less likely to produce the types of non-standard products that may most benefit from the increased flexibility
Administrative costs on businesses	Administrative costs unlikely to vary significantly from the baseline
Competitiveness, trade and investment flows	CE marking being recognised as the only legal means to declare product characteristics may help ensure a more level playing field evolves (but achieved to a large extent under the baseline). The implications for non-EU manufacturers will depend on the level of confidence that develops in the reliability of CE marking and whether increased flexibility limits this compared to mandatory marking requirements

Table A2.25: Impacts: CE Marking Measures (Measure D)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standards, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
CE Marking Made Mandatory										
Operating costs and conduct of business	--	-	0	+	-	+	n/a	+	+	-
Administrative costs on businesses	-	-	0	n/a	n/a	n/a	n/a	0	0	-
Competitiveness, trade and investment flows	0	-	-	n/a	n/a	n/a	n/a	0	0	+
Competition in the internal market	--	-	+/0	n/a	n/a	n/a	n/a	+	+	n/a
Innovation and research	(-)	(-)	+							
CE Marking Made Mandatory but Scope of Legislation is Defined Flexibly										
Operating costs and conduct of business	+/++	+	+	-	-	0/-	n/a	-	-	0
Administrative costs on businesses	+	(+)	0	n/a	n/a	n/a	n/a	-	0	0
Competitiveness, trade and investment flows	0	+	0	n/a	n/a	n/a	n/a	0	0	(+)
Competition in the internal market	+	(+)	(-)	n/a	n/a	n/a	n/a	0	0	n/a
Innovation and research	(+)	+	0							

Key:

---	implementation of Measure may have major negative impact (>30% change)
--	implementation of Measure may have significant negative impact (>10% change)
-	implementation of Measure may have slight negative impact (<10% change)
0	implementation of Measure may have no/negligible impact
+	implementation of Measure may have a slight positive impact (<10% change)
++	implementation of Measure may have a significant positive impact (>10% change)
+++	implementation of Measure may have a major positive impact (>30% change)
(+)/(-)	potential slight positive/slight negative impact due to uncertainties on actual impact

A2.7 Additional Routes for CE Marking (Measure E)

A2.7.1 The Problem

One of the main identified problems arising from implementation of the current CPD is the long delays that have occurred in the final harmonised standards becoming available from CEN. For example, it has taken years in some cases for the final standard to be made available, following agreement of the supporting test standards. These delays have severely restricted the degree to which the CE marking can be affixed to products and, thus, the degree to which harmonisation of the internal market has been achieved. This in turn has resulted in the on-going use of national marks, and duplicate testing and marking costs for manufacturers of some products.

In addition, as discussed in Sections 3 and 4 of this Report, one of key aspects in which the CPD varies from the NA is in relation to the possibilities for CE marking. Under the NA, manufacturers are able to CE mark using direct assessment methods rather than through application of a harmonised standard. There is interest therefore in providing a similar flexibility within the CPD to enable more rapid application of CE marking. Thus, the intention of the measures considered here is to open up the possibilities for CE marking in the absence of hENs being available.

A2.7.2 The Measures

The baseline for the assessment is to maintain the current situation, which allows CE marking against an hEN or an ETA only. In identifying alternatives to this baseline, it must be remembered that introduction of these measures has to be assessed against a baseline under which the development of the critical mass of harmonised standards has only just begun to take effect, with the present programme of hENs expected to be completed over the next 3 to 5 years.

The two alternatives measures considered here are:

- **Measure E1**: CE marking against a Technical File; and
- **Measure E2**: CE marking against mandates and supporting standards.

Note that these measures are not alternatives to each other but could both be adopted as alternatives to the baseline.

CE Marking against a Technical File

The first sub-measure would open up the possibility of CE marking against a technical file (as is possible under the NA directives). In this case, the intention would be to allow those who manufacture 'made-to-measure' products or small series products (rather than products that are characterised by series production) to be able to apply the CE marking to these products should they wish to do so.

In this case, the CE marking would be linked to the manufacturer's technical file for the product, which would be produced specifically to support the conformity assessment of the product. As currently required, this file would need to contain:

- a general description of the product;
- conceptual design and manufacturing drawings (including of components, etc. where relevant);
- any descriptions and explanations necessary for understanding the above drawings;
- a list of the harmonised standards or European test and calculation methods that have been applied in part;
- results of design calculations, tests or other examinations, etc. that demonstrate the performance of the products; and
- details of factory production control as relevant to the product.

Based on Article 13.5 of the CPD, if the product met the definition of a well defined product manufactured individually and not in series, the manufacturer would be entitled to determine the characteristics of the product without any involvement of a notified body (NB). For products not falling within this definition, the file would then be checked by a NB and would serve as a declaration of conformity. The NB would verify that any EN test or calculation methods which exist have been applied. Where no supporting standards exist, then the technical files would include historical data or results of testing that demonstrate the performances of the products. Where no relevant hEN or ETA exists, then the product characteristics which would need to be determined and verified by the NB are those that the manufacturer identifies as being required by the designer, with these based on Eurocodes where they exist or on national building regulations/provisions/codes where they do not (as these will describe the characteristics required for the intended use). The validity of the declared performances would then be demonstrated through the CE marking, and mutual recognition would apply.

CE Marking against Mandates and Supporting Standards

The intention of the second sub-measure is to allow CE marking against mandates when the supporting test standards are available but the full harmonised standard is not yet available from CEN. This sub-measure may be particularly important if CE marking is made mandatory for all products, whether or not they fall under the scope of an hEN or an ETAG. For this to be feasible and appropriate, it is assumed here that CE marking prior to the availability of the full hEN would only be allowed when:

- the mandate identifies the relevant performance characteristics;
- the mandate sets out the AoC to be applied; and
- there are supporting standards setting out the test methods to be applied.

It would also require that once the coexistence period for the full harmonised standard ended, then CE marking against the hEN would be obligatory.

A2.7.3 The Implications

The predicted implications of these measures are discussed below, and summarised in Tables A2.26 to A2.31. These predictions are against the baseline set out in the main Report and take into account the current and expected future availability of harmonised technical specifications.

CE Marking against a Technical File

The benefits of this type of approach are that it would allow manufacturers of made to measure and small series products to place them on the market on equal terms with those that fall within the scope of an hEN or ETA. This may be particularly important for manufacturers of particular types of goods (e.g. stairs, non-Portland types of cement). As long as CE marking in this manner is not mandatory, this measure would appear to meet the needs expressed of some respondents to the Commission consultation exercise, but would not create a new burden for those currently not required to apply the CE marking.

It is not clear, however, whether this type of option would lead to a more 'level playing field' in certain product sectors or would lead to a competitive advantage for those producing such products. However, a consultee also suggested that there may be a danger that allowing CE marking in this manner could lead to confusion in the market and a lack of credibility in CE marking. Both of these possibilities could be limited by requiring the CE marking information to indicate the reliance on a technical file and the involvement of a NB where relevant (as is currently the case).

More generally, allowing this type of approach to be adopted would appear to require that the interpretation of 'fitness for use' was expanded to include fitness of use for very specific applications.

CE Marking against Mandates and Supporting Standards

With regard to Measure E2, although the Commission asked questions in relation to this option in their consultation exercise, many of the respondents did not appear to understand the question. Amongst those that did appear to understand, the opinion was generally against providing this type of flexibility. To a degree, these responses would appear to reflect the fact that many of the hENs are now becoming available, suggesting that the real problems cause by the length of time that it has taken CEN to deliver some hENs are being removed as a result.

However, numerous respondents also indicated that the information provided in the full hEN was essential to ensuring reliable CE marking, and to both manufacturers and users having confidence in it. For example, it is argued that the final hEN stabilises and harmonises the technical vocabulary, provides definitions of the mandated characteristics, provides details of the ITT and FPC requirements, and describes how the CE marking and accompanying information has to be provided. These aspects are needed to ensure that the CE marking is understandable and usable, and that there is fair competition across the internal market. An example highlighting the potential difficulties has been quoted by a consultee to this study in relation to insulation products, which were originally covered by 33 mandates (later consolidated into one mandate) and each of these were divided into at least two different product groups in the Annexes specifying product characteristics.

Concern was also raised over the potential for such flexibility to lead to market distortions because it assumes that all manufacturers are aware of the supporting standards (that are relevant to their products) are available. Yet, only those that are

well represented at the trade association level are likely to know this and to be aware of the implications of the standards for attestation of conformity (although this should be indicated in the mandate from the Commission). It also assumes that each manufacturer has access to the relevant mandates, which may be a real problem where several mandates cover a particular product (e.g. a complex product), all of which could give rise to requirements of some sort in the later harmonised standard. This on its own has the potential for creating an uneven playing field within a particular product sector.

Furthermore, it is argued that neither the manufacturer nor the notified body would know, for certain, whether to: just declare a value for performance; declare performance within some 'classification system'; or declare performance with respect to a 'threshold level' of performance (as these, if relevant, would not be laid down until the full product standard is available which may also narrow down the appropriate test methods). Thus, a harmonised standard or an ETA must be available in an officially recognised form before a manufacturer is permitted to affix the CE marking to his product(s). If this is not the case, then the many different approaches that may be taken to cope with the inherent uncertainties could further affect the credibility of CE marking. In addition, the hENs are often referenced in application documents, manuals, databases, design aids and other tools for users. Consequently, the responses of manufacturers indicate that it is worth waiting for the harmonised standards, which represent a key stage in the practical implementation of the CPD.

Others argue though that, if the required characteristics are clearly defined in the Directive [e.g. in an Annex based on the mandates (with this having to cover at a sufficient level of detail groupings or sub-groupings reflecting different end-use conditions for the estimated 200,000 construction products current placed on the market)], it could be possible to have the CE marking without the full hEN provided that this does not lead to any market distortions. In particular, this was highlighted as being important when the product(s) in question is (are) part(s) of a kit and the hENs of the other constituents are already available (and their coexistence period has ended). In such cases, allowing manufacturers/assemblers of the kit to affix the CE marking to such products prior to the availability of the hEN(s) may be both helpful to the manufacturer/assembler of the kit and enable the kits to be placed on the market more quickly. It may also be of benefit to those products that do not fully fall under an existing hEN and would otherwise be forced to obtain an ETA in order to apply CE marking.

Table A2.26: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
CE Marking against a Technical File			
Operating costs and conduct of business	Should increase the ability of these companies to declare the characteristics of their products and thus market them on a more equal footing with other CE marked products. This should have a positive effect on the activities of these businesses, although the level of effect is likely to be small. It may also reduce costs due to an increased flexibility in determining how to demonstrate conformity.		May have a slight positive impact on these companies, by increasing the options for enabling them to declare characteristics.

Table A2.26: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Administrative costs on businesses	Those wishing to take advantage of this option may realise an increase in administrative costs, but these should be minimal as technical files are currently required. Cost increase are likely to be outweighed by the market advantages that they would gain (as otherwise such companies would not apply the CE marking).		No significant change expected for larger companies who are likely to be familiar with the administrative requirements and already incur administrative costs across most products placed on the market.
Competitiveness, trade and investment flows	No significant effects expected.	No significant effects expected.	No significant effects expected.
Competition in the internal market	May improve the relative competitive position of this group of companies by increasing the opportunities for CE marking.		May improve the competitive position of made to measure and non-series products relative to series production, but unlikely to have a significant effect on this set of manufacturers as a whole.
Innovation and research	May lead to small increases in the number of innovative products brought to market by providing a quicker and less expensive route to CE marking.		No significant impact as it is considered unlikely that most companies in this group would focus on innovation in made to measure or non series products.
CE Marking against Mandates and Supporting Standards			
Operating costs and conduct of business	It is likely to be much more difficult for this group of companies to take advantage of this flexibility due to the increased knowledge that it requires. Thus, this measure may little effect on their costs or conduct of business.	The net effect is difficult to determine. The ability to affix the CE marking sooner may be of benefit to businesses in terms of the marketing of products, depending on whether or not the early CE marking is accepted by designers, etc.; however, when the standards become available, companies may be required to retest their products.	
Administrative costs on businesses	As above.	CE marking early is likely to result in some modification of declarations, labels etc. when the full standard becomes available. This will lead to a duplication of administrative costs, although the end impact is unlikely to be significant across companies (but may be more important for those producing particular product types such as kits).	

Table A2.26: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competitiveness, trade and investment flows	This group of companies may be disadvantaged should large non-EU companies take advantage of this option to place a greater number of products on the EU market, but effect not likely to be significant due to the nature of the products produced by these companies.	This group of companies may be disadvantaged should large non-EU companies take advantage of this option to place a greater number of products on the EU market.	The ability of non-EU companies to take advantage of this measure is only likely to have a slight effect on large EU manufacturers, although the impacts may vary by product sector.
Competition in the internal market	This group of companies may be disadvantaged by larger companies using this option to place competing products on the market sooner.		Large companies are likely to be more interested and more capable of taking advantage of this measure and, thus, may be able to gain a competitive advantage by being able to affix the CE marking to their products sooner than other manufacturers.
Innovation and research	No significant impact expected.	The ability to CE mark products against mandates and supporting standards may encourage companies innovate and bring products to the market sooner.	

Table A2.27: Economic Impacts: PROFESSIONAL USERS	
CE Marking against a Technical File	
Operating costs and conduct of business	The ability of manufacturers of made to measure and non-series products to apply the CE marking may reduce the costs of works, where insurance requirements for example demand that CE marked products are used (and these are of higher costs). It would also provide greater assurance to this group that a product was fit for use, potentially opening up the range of products available for use.
Administrative costs on businesses	Professional users may need to increase their familiarity with the contents of technical files. However, being able to demonstrate to insurance companies and others that products used in a works are CE marked may reduce other administrative burdens.
Competitiveness, trade and investment flows	No significant impacts.
Competition in the internal market	No significant impacts.
Innovation and research	No significant impacts.
CE Marking against Mandates and Supporting Standards	
Operating costs and conduct of business	The greatest disadvantage with this option is the potential for it to lead to confusion amongst designers and other professional users and misunderstanding as to the basis for the CE marking and thus the reliability of the declared characteristics. This may increase the level of research which this group of stakeholders feels it must undertake. It is also unclear what the implications would be for this group should the ITT and FPC requirements for CE marking under the final standard be significantly different from those applied by the manufacturer. Overall this group may wait until full hEN is available and in the interim only use products that they know and trust.
Administrative costs on businesses	No significant impacts.

Table A2.27: Economic Impacts: PROFESSIONAL USERS	
Competitiveness, trade and investment flows	No significant impacts.
Competition in the internal market	No significant impacts.
Innovation and research	No significant impact as any unwillingness to rely on products marked against mandates should be short-lived once they are then CE marked in conformity with the final hEN.

Table A2.28: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
	Member States (MS)	**European Commission (EC)**
CE Marking against a Technical File		
Operating costs and conduct of business	Market surveillance may become more difficult as it would require MS to review technical files; there will also be uncertainty as to what they are verifying these files against. However, increased CE marking of these products may facilitate market surveillance activities, although these could be offset by increased complaints as to the potential reliability of CE marking.	In the short term, this may lead to an increase in the number of complaints received by the Commission concerning misuse of the CE marking, but these should reduce over time.
CE Marking against Mandates and Supporting Standards		
Operating costs and conduct of business	CE marking against mandates is likely to increase the level of market surveillance required at the MS level and the number of queries raised by manufacturers and designers and increased complaints as to the potential reliability of CE marking MS may have to provide information on supporting standards that are relevant in their country to each mandate plus details on the characteristics that have to be declared to ensure acceptability of CE marking information.	In the short term, this may lead to an increase in the number of complaints received by the Commission concerning misuse of the CE marking.

Table A2.29: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
CE Marking against a Technical File			
Operating costs and conduct of business	No impacts on CEN activities are expected.	NBs may have a small increase in turnover, where third party verification is sought on the verity of the CE marking declaration.	No impacts on AB activities are expected.
Administrative costs on businesses		No significant impact.	
Competitiveness, trade and investment flows		No significant impact.	
Competition in the internal market		New demand for services in relation to checking of technical files may increase competition across NBs.	
Innovation and research		No significant impact.	

Table A2.29: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
CE Marking against Mandates and Supporting Standards			
Operating costs and conduct of business	In the short-term, there may be an increase in pressure on CEN to complete harmonised standards or to clarify the mandates for those unlikely to be available in the near future. In the longer term, the implications are uncertain, for example, in terms of whether it results in greater periods of time spent on reviewing mandates and developing supporting standards.	New demand for third party verification services is likely to occur, as manufacturers are likely to err on the side of caution unless it is clear that self-declaration will be adequate given the nature of the product. Increases in turnover are therefore likely.	No significant impacts.
Administrative costs on businesses	No significant impact.	No significant impact.	No significant impact.
Competitiveness, trade and investment flows	No significant impact.	No significant impact.	No significant impact.
Competition in the internal market	No significant impact.	New demand for services may increase competition across NBs.	No significant impact.
Innovation and research	No significant impact.	No significant impact.	No significant impact.

Table A2.30: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
CE Marking against a Technical File	
Operating costs and conduct of business	It is unlikely that the majority of international stakeholders are importing products that would fall under the definition of made to measure or small series production on a significant scale; impacts likely to be negligible.
Administrative costs on businesses	
Competitiveness, trade and investment flows	
Innovation and research	
CE Marking against Mandates and Supporting Standards	
Operating costs and conduct of business	The net effect is difficult to determine. The ability to affix the CE marking sooner may be of benefit to businesses in terms of the marketing of products, depending on whether or not the early CE marking is accepted by designers, etc.; however, when the standards become available, companies may be required to retest their products.
Administrative costs on businesses	May lead to a repetition of some administrative costs in terms of preparing product declarations, certificates and labels.
Competitiveness, trade and investment flows	Large international manufacturers may have the ability to take advantage of this measure and affix CE marking to their products sooner, thereby gaining a competitive advantage over smaller EU companies. However, designers may also be unwilling to accept the CE marking, minimising any market advantage.
Innovation and research	The ability to CE mark products against mandates and supporting standards may encourage companies to innovate and bring products to the market sooner.

Table A2.31: Impacts: Additional Routes for CE Marking (Measure E)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
CE Marking against a Technical File										
Operating costs and conduct of business	+	+	(+)	+	-/+	(-)	0	(+)	0	0
Administrative costs on businesses	(-)	(-)	0	-/0	0	0	0	0	0	0
Competitiveness, trade and investment flows	0	0	0	0	0	0	0	0	0	0
Competition in the internal market	+	+	(+)	0	0	0	0	(+)	0	0
Innovation and research	(+)	(+)	0	0	0	0	0	0	0	0
CE Marking against Mandates and Supporting Standards										
Operating costs and conduct of business	0	-/+	-/+	-/--	--	-	-	(+)	0	+/-
Administrative costs on businesses	0	(-)	(-)	0	0	0	0	0	0	0
Competitiveness, trade and investment flows	(-)	-	(-)	0	0	0	0	0	0	(+)
Competition in the internal market	-	-	+	0	0	0	0	(+)	0	0
Innovation and research	0	(+)	(+)	0	0	0	0	0	0	(+)

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.8 Changes to Procedures for Obtaining ETAs (Measure F)

A2.8.1 The Problem

A European Technical Approval (ETA) is the result of a favourable assessment of a particular product by an approval body based on examinations and tests according to harmonised assessment criteria (Articles 8.1 and 9.1); this assessment involves the evaluation of the characteristics and performances of the product. ETAs are therefore individual technical specifications of the assessed product set up on request of the manufacturer[63]. ETAs can be sought by a manufacturer when his/her products are 'innovative' or non-standard, in that they fall outside the scope of a harmonised European (hEN) standard or the requirements or test methods included in a hEN or in a European Technical Approval guideline are not appropriate for the assessment of that product.

ETAs can be issued on the basis of a guideline (an ETAG provided for by Article 9.1) or without a guideline (Article 9.2), where the assessment of the products is adopted by the approval bodies acting jointly within EOTA. Under the first route, a mandate is developed by the Commission and consulted upon with MS (through the Standing Committee) prior to being passed to EOTA, which sets up a working group to develop the ETAG in a procedure similar to the development of a standard, but without the consultation of stakeholders. When the ETAG is agreed, Approval Bodies may start work on developing individual ETAs under the guidelines. EOTA have reported that 826 ETAs and 233 amendments, revisions, renwals have been issued based on ETAGs[64]

The second route is the issuance of an ETA through a CUAP (Common Understanding of Assessment Procedure) which sets the assessment criteria to be adopted for a given product (as there is no relevant mandate). The CUAP is prepared by the issuing approval body and then circulated to the other members of EOTA for consultation and endorsed by the EOTA Technical Board. In practice ETAGs and CUAPs are similar documents (although ETAGs are mandatory while CUAPS are not). CUAPS are developed within EOTA at the request of a single manufacturer and involves gaining what is referred to as a 'green light' letter from the Commission. The green light letter is issued by the Commission following consultation with CEN and the Standing Committee for Construction (SCC). The green light letter confirms that there is no applicable hEN or ETAG and provides an instruction on the level of AoC to be applied. EOTA indicate that the green light process has been sought for 222 Art 9.2 ETAs, with 89 CUAPs finalised and others in the finalisation stages, while 22 items have been withdrawn. 138 ETAS issued in relation to these CUAPs and a further 187 draft ETAs or amendments, revisions or renewals are in the process of being issued (see footnote).

The key problems identified in relation to ETAs surround the processes involved, the length of time that they take, the costs to manufacturers, and the manner in which the

63 EOTA (2006): Key Issues to be Considered in Revision of the CPD.

64 EOTA (2007): State of Play No 21 of Work in Relation to European Technical Approvals, Situation 05, Construct 07/778

different elements are implemented. In particular, there are complaints that the ETAG route to gaining an ETA is cumbersome and expensive. For example, NORAPME also note concerns over the ETAG route due to the disproportionate testing requirements that have been included in some of the guidelines compared to the testing required under an hEN.

Factors such as this have led to a shift towards the use of CUAPs for obtaining ETAs, as the process is considered simpler and less costly. It is also more applicable to truly innovative (rather than non-standard) products. However, there are also concerns that the current procedure, which includes consultation prior to the Commission issuing a 'green light' letter, can lead to commercially sensitive information being made available to competitors. In the case of truly innovative products, this may erode the applicant's ability to capitalise on any competitive advantages from placing a new product on the market. It can also take up to two years for the consultation process involved in gaining the green light letter to be completed, leading to long delays in the process.

The Commission's consultation exercise elicited numerous views on the current approaches to obtaining ETA. Box A2.6 presents an overview of some of these comments to illustrate the problems that manufacturers are experiencing.

Box A2.6: Case Studies: Problems with Procedures for Obtaining ETAs

There seems to be a strong tendency for ETAGs/ETAs to go beyond national regulatory requirements and to include national customs and practice among specifiers, respective national customs and practice of specifying authorities rather than restricting them to regulatory requirements. This adds to costs and time-scales.

Consultation response from the UK Department for Communities and Local Government

The existing procedures governing the task of EOTA are very heavy and excessively costly. In addition, many of manufacturers note a lack of transparency on these procedures and cost.

Consultation response from CEPMC

The existing procedures concerning ETAs are too time consuming and expensive for the manufacturers. The EU Commission, EOTA and Approval Bodies have put a lot of funding and resources for the preparation and revision of ETA Guidelines. In many cases only few manufacturers have asked ETA based on these ETA Guidelines. This clearly shows that preparation of ETA Guidelines is often a waste of money and resources.

Consultation response from the Federation of Finnish Industries

At present the ETA-route is the same for the most simple and the most complex cases, for the lowest and the highest risk for safety and health and other essential requirements, and therefore adapted to the most difficult case and therefore too heavy for the simpler cases.

Consultation response from the Belgian Ministry of Economy

The ETA route is unpopular because it is perceived to be as expensive and slow as writing a new EN standard.

Consultation response from the European Fire Sprinkler Network

In contrast to the problems raised in Box A2.6, the European Tool Committee (ETO) (Anchor Fixings Section) commented that 'the ETA system for anchors has proven to be very successful as is demonstrated by the award of in excess of 300 ETAs to more than 58 companies, large and small, in almost all Member States of the EU. The demand from manufacturers for approvals arises only out of the demand from users. The CEO believes that the ETA is fundamental to this success because it gives the user confidence in the product and provides all necessary information for its use'.

Proposals have also been put forward by associations and companies responding to the Commission consultation exercise for introducing additional options in relation to ETAs. These are the introduction of provisional time limited ETAs and national ETAS. It is understood that these are being sought in response to the de facto mandatory requirement for products to have the CE marking in some MS and to the costs that can be involved in gaining an ETA which is EU applicable.

A2.8.2 The Measures

Changes to the Procedures

Discussions with the Commission have indicated a desire to simplify the ETA procedures in response to the above problems. In particular the Commission sees no further development of ETAGs and would like to see a simplification of the CUAP procedure.

Similarly, EOTA in its own position paper and in one produced together with the CEPMC[65] (2006) have proposed that the ETA procedure is simplified and that they are made more flexible to enable manufacturers to have the free choice of whether or not to apply a harmonised standard. In particular, it is suggested that Articles 8.2 and 8.3 of the CPD (or their use) could be better brought in line with the NA, to simplify and accelerate the route to CE marking route. It is of note that consultation undertaken specific to this study found that organisations such as NORMAPME support such proposals for the simplification of the CUAP route, better protection of commercially sensitive information and the use of more direct assessment approaches (NORMAPME, pers. comm., 2007).

Under EOTA's proposals for CUAPs, a manufacturer would have the right to apply through his AB to EOTA for an ETA where he does not believe that an existing hEN is applicable, where he applies an hEN only in part, or where an hEN is not yet available. EOTA would examine whether or not the product is covered by a hEN and whether the terms and methods laid down in the hEN are appropriate for assessment of the product. EOTA could then refuse the ETA application only if the ETA would be identical to an initial type-testing according to an hEN.

EOTA would then inform the Commission of the product family concerned (without disclosing technical details of the product for which the ETA is requested). The Commission, with consultation of the SCC, would decide whether or not a standard

[65] CEPMC & EOTA (2006): An appropriate route to CE marking for innovative and new products, CPD WG 06-054B-EOTA (FWG 06-055), May.

can be elaborated for the product family or a mandate can be given to CEN and informs EOTA on the outcome of this examination. Where a product significantly deviates from an existing standard or where a harmonised standard is not yet available, then the decision on whether or not an ETA can be issued would be left to the manufacturer and EOTA. Essentially this simplification would remove the need for the 'green light' procedure, ensure that manufacturers were able to apply CE marking, but would also mean that a manufacturer was not obliged to disclose technical details of his/her product in order to demonstrate that it is not covered by an existing or future hEN.

In making these suggestions, EOTA and CEPMC refer to Articles 8.2 and 8.3 of the CPD (see footnote). Article 8.2 b of the CPD provides that "European technical approval may be granted to products which differ significantly from harmonized standards". The position paper notes that the current CPD does not envisage an involvement of the Commission, the Standing Committee and/or CEN in order to check the deviations from the standard or their significance and/or make decisions in this respect. Thus, where a product does deviate significantly from or is not entirely covered by the existing hEN, the 'green light' procedure can be avoided, by allowing the manufacturer to submit the product to a direct assessment procedure by an AB based on harmonised criteria agreed by EOTA. This would have the effect of bringing the CPD more in line with the general principles of the New Approach, where the choice of applying an existing harmonised standard or submitting the product to a direct assessment with regard to the fulfilment of the essential requirements is left to the manufacturer.

Article 8.3 would also be amended so as to further open up the potential for CE marking through an ETA, even where a product will be covered in the future by a hEN. The aim in this case is to ensure that those manufacturers who wish to apply CE marking to a product, in order to compete with other CE marked products, do not have to wait long periods of time until an hEN becomes available.

In consulting on the impacts of such proposals, an alternative suggestion has been made by a public authority (pers. comm. 2007). This suggestion is based around the preparation of more ETA guidelines, but with these made less rigid, so that products which deviate somewhat from the guidelines could still be CE marked. This suggestion is based on the view that the first generation of ETAGs had to be very detailed because of a lack of experience amongst EOTA members and the need to ensure consistency and reliability across the EU.

Provisional and National ETAs

It has been proposed that the ETA route could be opened up to allow CE marking against a provisional ETA, which would be granted for a limited period of time (say 1 year). We have identified two cases where such an option may be justified. In defining these cases, we have tried to identify other than purely commercial reasons for having such a facility which are based on more than just having a facility for determining whether or not there may be a market for an innovative product. These are the following cases:

- a provisional ETA could be granted where the only feasible means of testing a product is during use. In this case, the ETA would be granted on the condition that certain characteristics are measured from actual applications and that these data are then taken into account in the specification of the full ETA; or

- in cases where the ITT would require several separate production runs it may take a long time to build up the number of production line results in order to generate statistically reliable results (related to the number of test results). A provisional ETA could be granted for a short period of time, to allow the manufacturer to build up a statistically valid sample for verification of claims as to performance characteristics.

It is assumed that, in both cases, development of the ETA would be subject to a modified version of the procedures that would apply to gaining a full ETA. However, in order to ensure that the market understands that this ETA has a different legal standing than the full ETA, some modification to the CE marking information would be required to ensure that designers and others were aware of this difference in status.

The second possible option for opening up the use of ETAs is to allow the development of national ETAs, which would be developed specifically to meet the requirements of one or two countries, thereby simplifying the potential number of characteristics that need to be declared and the associated test requirements[66]. In this case, it is assumed that the AB would identify the requirements that apply in the particular MS of concern and develop the ETA based on the testing and FPC required in that MS. The CE marking would need to indicate that the ETA was only valid in limited markets and did not have the same legal status across the EU as a full ETA.

Concerns Over Competency

Concern has been raised by many consultees to the Commission's internet consultation that not all ABs have an adequate level of competency. This has led to suggestions that the revised legislation should strengthen the requirements (Article 10) placed on organisations authorised to act as approval bodies. In this regard, it is of note that the designation of Approval Bodies and the existence of the EOTA reflect an area where the CPD differs from the NA Directives. Under the NA Directives, all Notified Bodies are presumed to be capable of delivering a direct assessment. In contrast, under the only members of EOTA are considered sufficiently competent for these purposes due to the indirect nature of the link between the ERs and construction products.

As an alternative, in line with the suggestion that more ETAGs are prepared, it has been suggested that where sufficient experience has now been gathered by the EOTA members, ETAs under an ETAG could be replaced by an information procedure amongst the members of EOTA, which would allow any member to oppose an ETA for national regulatory reasons. Inexperienced EOTA members would be bound by the need for a consensus and networks would be established for handling particular

66 This is the case for example with national approvals such as BBA, KOMO, Zulassung, which do this already.

national end conditions as part of testing and evaluation programmes. However, it is not suggested that the same information procedure be extended to ETAs under CUAPs due to challenges involved in such work.

Proposed Measures

Based on the above, the alternative measures considered here are as follows:

- **Measure F1**: Abolish further use of ETAGs, simplify CUAP route through modification to Articles 8.2 and 8.3. Plus strengthening of the requirements that must be satisfied by ABs in order to ensure that all members of EOTA have the competency required for the proposed simplification; or
- **Measure F2**: introduction of provisional and/or national ETAs;
- **Measure F3**: Prepare new ETAGs, making them less rigid; for existing ETAGs where there is considerable experience in delivering ETAs introduce an information based consensus procedure. No change in the requirements for ABs.

All of these measures are compared against the baseline of business as usual.

A2.8.3 The Implications

General Cost Data

The PRC report (2006, draft final) presents data from an EOTA survey of its member ABs on the costs of obtaining ETAs through both the ETAG and CUAP routes as currently implemented. These costs ranged from around €2000 for the renewal of an ETA for a simple product to €40,000 for a new complex product excluding testing costs. The simple mean value was €12,000 per product. These figures exclude the human resource costs incurred by the company applying for the ETA, which will include the time required of technical staff in providing information to the ABs and helping to develop test methods (although for a innovative product a manufacturer would in any event have to develop its own test procedures). They would also appear to exclude the costs associated with the time spent by the AB in consulting with the other ABs in EOTA. The PRC report (2006) also notes that, where ETAs relate to innovative or proprietary products, these are likely to be subject to rapid change, requiring frequent renewal of the ETA. Furthermore, some of these products may have a relatively short life before they are replaced by a better product.

Abolishing Further Use of the ETAG Route in the Future

EOTA argue that there is little difference between an ETA issued via the CUAP and ETAG routes, as a CUAP has essentially the same implications as a guideline for other ETA requests covered by it; in essence, it is argued that a CUAP can be viewed as an ETAG of more limited scope. On this basis, the distinction between ETAGs and CUAPs could be abandoned within the revised CPD, provided that the general conditions to be fulfilled by hENs and ETAs are specified in the legislation. EOTA add that this would also require that harmonised assessment criteria are set up by the approval bodies acting jointly in EOTA (possibly also involving representatives of

manufacturers at the national and European levels). It is also understood that there should be no risks to the existing ETAs in terms of their status or potential for renewal should the further use of the ETAG route be abolished in the future.

Minimal use of ETAGs would also appear to be welcomed by industry, with this supported by both CEPMC and NORMAPME due to the length of time involved and the potential for disproportionate testing requirements to be incorporated into the guidelines.

However, Member States will lose their ability to have a significant input into the ETAs if the ETAG process is no longer used. They are consulted in the development of the mandates preceding the ETAGs but are not similarly consulted on the harmonised criteria for CUAPs.

Simplification of CUAPs and Modification of Articles 8.2 and 8.3

The simplification of the CUAP route essentially translates to a change in the level of information transmitted on the technical details of the product of concern and on the need for a 'green light' letter from the Commission. Assuming that safeguards are put in place to protect against misuse, this streamlining of the process and increased flexibility under Articles 8.2 and 8.3 may have important benefits to certain manufacturers of construction products from:

- reducing the length of time required to gain an ETA and to place products on the market with a CE marking; and

- protecting against the dissemination of a manufacturer's confidential product information to others producing similar products.

Reducing the length of time that a product takes to get to the market can have significant 'first mover' advantages, resulting in an increased share in sales of innovative or next generation products. First mover advantage is important because it helps defines the manner in which a market will develop and other future products are compared to those entering the market first. However, this advantage is only significant if the first mover is able to gain a critical mass in terms of sales and if there are costs from moving to a competitor's products). Such benefits to the first mover essentially translate to a competitive advantage; if they are only able to be realised by large companies due to the overall costs involved in gaining an ETA and in generating the critical mass of sales, then they may essentially result in barriers to trade to SME companies.

With regard to the protection of confidential product information, this is likely to be of benefit to any company seeking an ETA for an innovative product. It ensures that they are able to capitalise on the human resources and other expenditure put into R&D; without adequate protection of such information, there may be a reduced incentive for companies to innovate or bring forward changes in design. The key issue here, however, may be in insuring that there are checks within the system to allow competitors to either become involved in the development of an ETA or to

allow the Commission to act should competitors be able to make the case that they will be disadvantaged by an ETA.

Strengthened Requirements for ABs

Strengthening requirements on the expertise and knowledge that ABs must satisfy in order to be authorised by MS would be likely to both increase the credibility of CE marking through the ETA route, and to increase competition across the internal market for the services of these bodies. Anecdotal evidence suggests by one organisation contacted as part of the research undertaken for this study that most of the ETAs are produced by a small subset (i.e. around 4) of the 43 Approval Bodies.

Provisional and National ETAs

Provisional ETAs may provide some benefits to both manufacturers and users, by enabling innovative products to come to market or be tested in use more quickly. However, in our view, this type of option would appear to contradict the purpose of the CE marking: there would be products with a CE marking which have not been properly tested and whose performance has not been declared by the manufacturer. This could lead to confusion in the market and a lack of credibility in the ETA process more generally. There is also the potential for designers to not understand the limitations of the ETA, particularly as it assumes that users and public authorities would understand the limitations included in the CE marking information.

This type of measure could be important, however, if CE marking was to become mandatory across all products (thereby potentially impacting on the development and marketing of innovative products). If CE marking is mandatory for products that fall outside the scope of hENs or ETAGs and a manufacturer voluntarily wants an ETA, then he may well have to undertake such trials and wait a long time before getting an ETA. It may also be the case that several batches are necessary to provide the data needed for ITT purposes. Both of the above arguments, however, are more a reason as to why CE marking should not be mandatory for such products than a reason for introducing provisional ETAs.

National ETAs would also risk the loss of transparency, of misunderstanding, and of misuse, and there would be a risk that designers would not fully understand the limitations of the ETA (i.e. the national basis of the underlying testing). As for provisional ETAs, there may also be the potential for an unscrupulous manufacturer to market the product for applications outside the intent of the original ETA (i.e. in other MS).

It could also be argued that allowing ETAs to effectively become national marks defeats the purpose of the legislation in creating a harmonised internal market. Thus, national ETAs would go against the aim of the CPD which is to make one assessment valid throughout Europe without any additional requirements. It therefore suggests that to allow national marking could create an uneven playing field across manufacturers. There is also the danger that, because a product which can be placed on the market in one country, it could also be placed on the market in another EU country, providing a low cost route to placing goods on the EU market.

An E-business Watch report (2006) indicates that out of those companies in the construction sector that do innovate (with the statistics relating to architects, material suppliers and sub-contractors and focusing on IT but also covering other innovations), the main market for innovations is regional (70% for small companies, 59% for medium sized companies and 48% for large companies) or then national customers (28% for small companies, 38% for medium companies and 46% for large companies). Assuming that the same is true for product manufacturers, this suggests that if national ETAs reduce the costs of placing new innovative products on the EU market and these cost savings are passed to users of the products, then this may result in significant savings to the end consumers of the works. However, these statistics should be considered in the context of the overall rate of innovation within the construction sector, which is low (compared to the other sectors surveyed) with only 17% of all firms bringing forward a new product in 2005.

Preparing New ETAGs and Introducing an Information Procedure

The preparation of new ETAGs for products not current covered by an ETA or a hEN may result in significant benefits for product manufacturers by reducing the need for individual or product specific ETAs under the CUAP procedure, assuming that the costs of an ETA under an ETAG can be reduced. SMEs in particular may benefit, as long as the ETAGs are made more flexible in terms of test methods, etc. and through the creation of an information procedure for those where there is already considerable experience in delivering ETAs.

However, such benefits are likely to take a long time to be realised, given the length of time that it has taken to prepare the current ETAGs. If this leads to delays in manufacturers being able to obtain an ETA and thus apply CE marking, then this may have negative effects on competition within the internal market and innovation. This would not only affect product manufacturers but also professional users who have commented that the slowness of the current processes can delay reductions in costs and adoption of new construction and engineering practices (pers. comm., 2007).

This measure is also likely to give rise to significant administrative costs to the Commission, the SCC, CEN and EOTA in developing and agreeing the mandates for the ETAGs. Because the concept underlying the information procedure is based on experience and expertise, this measure may not improve the level of competition across the ABs, as it would be in the applicant's interest to reduce risks by going to a more experienced AB. However, this proposal may have the advantage of delivering a higher level of credibility in the CE marking than the simplified process proposed by EOTA.

Tables A2.32 to A2.37 provide the results of the impact assessment. Note that this assessment is based on a comparison of each of the alternative measures to the business as usual or baseline situation.

Table A2.32: Economic impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Abolish ETAGs and Simplification of CUAPs			
Operating costs and conduct of business	Simplification of CUAP procedures on their own should only have a marginal impact on the costs of obtaining an ETA. Biggest benefits associated with any decrease in time to market although these are likely to be less relevant to this group of companies	Simplification of CUAP procedures on their own should only have a marginal impact on the costs of obtaining an ETA. Biggest benefits associated with any decrease in time to market for new products	Simplification of CUAP procedures on their own should only have a marginal impact on the costs of obtaining an ETA. Biggest benefits associated with a reduction in time to market which may have significant benefits in terms of increased market share for a new product
Administrative costs on businesses	Removal of the need to wait for a green light letter may simplify administration of the CUAP process		
Competitiveness, trade and investment flows	Not likely to be a significant impact on EU companies vis a vis their non-EU rivals, as all manufacturers will benefit similarly		
Competition in the internal market	These companies may be negatively affected by simplification of the procedures should this confer significant first mover advantages to larger companies. However, increased protection of commercially sensitive information may be of significant value in giving these companies the confidence to capitalise on new innovations. This should help create a more dynamic market in the EU leading to an increase in the level of competition		Reductions in the time taken to obtain an ETA may confer first mover advantages on particular companies, reducing the level of competition across companies. However this should be mitigated by the introduction of safeguards. Increased protection of confidential information should act to increase the rate at which new products are put on the market, increasing the level of competition between larger companies in. This should help create a more dynamic market in the EU leading to an increase in the level of competition
Innovation and research	Impacts on innovation and research may arise but are likely to be less significant than for SMEs and larger companies	Proposed measures should encourage additional investment in R&D, although for SMES this may be limited by the availability of funds to support such activities	Reductions in the costs and time of gaining CE marking for more innovative products should encourage additional investment in R&D and increase the number of ETAs being sought
Strengthened Requirements for ABs			
Operating costs and conduct of business	Potential reduction in testing requirements and hence costs if there is a general improvement in competency and a minimisation of possible conflicts of interest. Increased credibility in meaning of CE marking		
Administrative costs on businesses	None above those for simplify CUAP proposal		
Competitiveness, trade and investment flows	Not likely to be a significant impact on EU companies vis a vis their non-EU rivals, as all manufacturers could benefit similarly		

Table A2.32: Economic impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competition in the internal market	These companies relative competitive position is not likely to be significantly affected	Increased credibility of CE marking through ETAs may aid the relative competitive position of the more innovative SMEs or those with non-standard products	Increased credibility of CE marking should improve the relative competitive position of companies with non-standard or innovative products
Innovation and research	Increased credibility in CE marking through ETAs may result in more ETAs being sought and hence an increase in new products coming to market		
Introduction of Provisional / National ETAs			
Operating costs and conduct of business	The introduction of provisional ETAs may reduce the costs faced by these companies in the short-term although the intention would be for them to have to move to a full ETA after one year. National ETAs may result in significant savings in test costs, allowing companies to bring products onto particular markets more quickly		
Administrative costs on businesses	No significant impact on administrative costs are expected		
Competitiveness, trade and investment flows	No significant impacts expected		
Competition in the internal market	Some manufacturers are likely to gain a competitive advantage from the ability to gain either a provisional or national ETA and possibly to bring their products to market sooner. However, the national ETA may also be an advantage to some SMEs		
Innovation and research	Enabling CE marking against provisionsal or national ETAs may lead to small increases in the innovation and research activities of companies across all sizes based on the E-business report statistics		
Preparing New ETAGs and Introducing an Information Procedure			
Operating costs and conduct of business	If costs of obtaining an ETA are reduced through changed procedures than may provide a significant benefits, but only if ETAGs are made more flexible. Benefits realised in the medium to longer term		If costs of obtaining an ETA are reduced through changed procedures than may provide a significant benefit. Benefits realised in the longer to medium term
Administrative costs on businesses	Administrative costs not likely to be significantly affected, compared to costs of resources put into gaining an ETA		
Competitiveness, trade and investment flows	Not likely to be a significant impact on EU companies vis à vis their non EU rivals, as all manufacturers could benefit similarly		
Competition in the internal market	These companies relative competitive position is not likely to be significantly affected	Increased credibility of CE marking may aid the relative competitive position of the more innovative SMEs or those with non-standard products	Increased credibility of CE marking should improve the relative competitive position of companies with non-standard or innovative products
Innovation and research	Increased credibility in CE marking through ETAs may result in more ETAs being sought and hence an increase in new products coming to market		

Table A2.33: Economic impacts: PROFESSIONAL USERS IN THE CONSTRUCTION INDUSTRY	
Abolish ETAGs and Simplification of CUAPs	
Operating costs and conduct of business	As the time taken for ETAs to be developed decreases, it is assumed that any reduction in prices will be passed from manufacturers to professional users. This will benefit both end consumers and engineering practices more generally

Table A2.33: Economic impacts: PROFESSIONAL USERS IN THE CONSTRUCTION INDUSTRY	
Innovation and research	Increased credibility and any decreases in the costs of non-standard products should encourage professional users to adopt non-standard or more innovative products in their works
Strengthened Requirements for ABs	
Operating costs and conduct of business	Increases in the competency of ABs may help ensure that ETAs properly address application requirements under different national conditions. This may open up the potential for downstream users to take advantage of non-standard and innovation products, reducing costs by being able to select from a wider array of products
Innovation and research	Increased credibility in meaning of CE marking and the availability of a wider array of products may encourage designers to become more innovative in engineering and construction terms
Introduction of Provisional / National ETAs	
Operating costs and conduct of business	Because this measure contradicts the intention of CE marking (harmonisation across Europe and CE marking against untried and untested products), it could lead to a misunderstanding amongst designers and misuse in MS should the product be assumed to meet national requirements when it does not. This could have significant repercussions for designers in terms of their responsibilities and liabilities
Administrative costs on businesses	No significant impacts
Competitiveness, trade and investment flows	No significant impacts
Competition in the internal market	No significant impacts
Innovation and research	Where designers have a proper understanding of the limitations of the CE marking, and provisional or national ETAs allow products to be brought to the market sooner, there may spin-off benefits on the rate of innovation and research across designers, etc.
Preparing New ETAGs and Introducing an Information Procedure	
Operating costs and conduct of business	If the procedure leads to manufacturers being able to obtain an ETA more quickly and at lower cost, then this should led to price reductions to professional users and consumers. However, such benefits may only be realised in the medium to longer term and are contingent on ETAGs becoming less rigid in terms of testing requirements
Innovation and research	Increased credibility in reliability of CE marking may increase designers willingness to try new products

Table A2.34: Economic impacts: PUBLIC SECTOR ORGANISATIONS		
Impact Category	**Member States (MS)**	**European Commission (EC)**
Abolish ETAGs, Simplify CUAPs		
Operating costs and conduct of business	Will reduce the costs to MS associated with consultation on ETAGs, relying on their representatives in EOTA to represent national concerns. Abolishing future use of ETAGs would have implications for the ability of MS to influence the mandates (i.e. criteria) underlying the development of ETAs	Should reduce the costs faced by the Commission in processing queries regarding ETAs. Will mean that there is no longer the need to draw up mandates for ETAGs and reduce the administrative costs associated CUAPs. However, safeguards may be essential to enable the Commission to ensure that system is not abused

Table A2.34: Economic impacts: PUBLIC SECTOR ORGANISATIONS		
Strengthened Requirements for ABs		
Operating costs and conduct of business	Repercussions for authorisation requirements	None expected above those for simplify CUAP proposal
Introduction of Provisional / National ETAs		
Operating costs and conduct of business	There is the potential for these provisions to increase the level and costs of surveillance required of MS authorities and for them to respond to an increased number of queries and complaints. For example it will be more difficult to verify compliance with a provisional ETA – what is provision and may change what is unlikely to change, etc.	There is the potential for these provisions to increase the number of complaints coming before the Commission and the need to respond to an increased number of queries. The Commission would also need to respond to an increased number of ETA requests
Preparing New ETAGs and Introducing an Information Procedure		
Operating costs and conduct of business	Will retain MS involvement in drawing up mandates for ETAGs. May have repercussions for authorisation of ABs if there is a perceived need to ensure their expertise in order to take advantage of information procedures	Costs to the Commission in preparing mandates for ETAGs and in consultation on these Safeguards may be essential to enable the Commission to ensure that the information procedure is not abused

Table A2.35: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Abolish ETAGs and Simplify CUAPs			
Operating costs and conduct of business	Not significant	Not applicable	Increase in demand for ETAs through simplified CUAP process and, hence, demand for the services provided by this group of organisations. This should increase the turnover of this group of organisations as a whole
Competition in the internal market	Not applicable	Not applicable	Increase in demand for ETAs may lead to an increase in competition among existing ABs and new entrants to the market
Strengthened Requirements for ABs			
Operating costs and conduct of business	Not applicable	Not applicable	Increased confidence should result in an increase in demand for ETAs and hence in revenues to this group under this measure
Competition in the internal market	Not applicable	Not applicable	Increased confidence in ABs carrying out ETAs should lead to an increase in the level of competition across ABs; this may lead to 'new entrants' to the market (i.e. group with appropriate competency) in the longer term
Introduction of Provisional / National ETAs			
Operating costs and conduct of business	No impact	No impact	The expected increase in the number of ETAs being sought would lead to an increase in turnover for these bodies.
Administrative costs on businesses	No impact	No impact	No significant impact

Table A2.35: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Competitiveness, trade and investment flows	No impact	No impact	No significant impact
Competition in the internal market	No impact	No impact	The increased level of activity may lead to greater competition across these bodies, with particular benefits to Abs in certain MS
Innovation and research	No impact	No impact	No significant impact
Preparing New ETAGs and Introducing an Information Procedure			
Operating costs and conduct of business	Potential increases in the costs of consultation in relation to mandates and guidelines	Not applicable	Potential increase in demand for ETAs in the medium to longer term could result in an increase in demand for ETAs and hence in revenues
Competition in the internal market	Not applicable	Not applicable	May result in a decrease in competition as information procedure would benefit those ABs with the most experience

Table A2.36: Economic impacts: INTERNATIONAL STAKEHOLDERS	
Abolish ETAGs and Simplify CUAPs	
Operating costs and conduct of business	Reduction in the financial costs and human resource costs of gaining ETAs
Competitiveness, trade and investment flows	Reducing the costs and time involved in gaining ETAs may result in an increase in the number sought by non-EU manufacturers. This in turn could increase their relative competitiveness within the EU market through the ability to promote a greater range of products
Innovation and research	Reduction in costs should lead to an increase in innovation and research efforts vis à vis the EU market
Strengthened Requirements for ABs	
Operating costs and conduct of business	Reduction in the financial costs and human resource costs of gaining ETAs
Competitiveness, trade and investment flows	Reducing the costs and time involved in gaining ETAs may result in an increase in the number sought by non-EU manufacturers. This in turn could increase their relative competitiveness within the EU market through the ability to promote a greater range of products
Innovation and research	Increased credibility in CE marking through ETAs may result in more being sought and hence an increase in new products sold onto the EU market
Introduction of Provisional / National ETAs	
Operating costs and conduct of business	The introduction of provisional ETAs may reduce the costs faced by these importing companies in the short-term although the intention would be for them to have to move to a full ETA after one year. National ETAs may also result in savings in test costs.
Administrative costs on businesses	No significant impact on administrative costs are expected
Competitiveness, trade and investment flows	Large non-EU companies may take advantage of this measure (and in particular provisional ETAs) to place a greater number of non-standard products on the market to test demand for them. This may increase their relative competitive position relative to EU rivals, although it is also likely to be constrained by designers concerns, for example, as to whether products with a provisional ETA are really fit for use.
Innovation and research	Enabling CE marking against provisional or national ETAs may lead to small increases in the innovation and research activities of SMEs

Table A2.36: Economic impacts: INTERNATIONAL STAKEHOLDERS	
Preparing New ETAGs and Introducing an Information Procedure	
Operating costs and conduct of business	Potential reduction in costs of obtaining an ETA through the information procedure
Competitiveness, trade and investment flows	Reducing the costs and time involved in gaining ETAs may result in an increase in the number sought by non-EU manufacturers, but only be of benefit in the medium to longer term
Innovation and research	Increased credibility in CE marking through ETAs may result in more being sought and hence an increase in new products sold onto the EU market in the medium to longer term

Table A2.37: Impacts of Changes to Procedures for Obtaining ETAs (Measure F)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Abolishing ETAGs and Simplifying CUAPs										
Operating costs and conduct of business	(+)	+	+ / ++	(+)	-	+	-?	n/a	+	+
Administrative costs on businesses	(+)	+	+	n/a	n/a	n/a	n/a	n/a	n/a	(+)
Competitiveness, trade and investment flows	0	0	0	n/a	n/a	n/a	n/a	n/a	0	+
Competition in the internal market	(+)	(+)	+	n/a	n/a	n/a	n/a	n/a	+	n/a
Innovation and research	(+)	+	+	(+)	n/a	n/a	n/a	n/a	n/a	+
Strengthened Requirements for ABs										
Operating costs and conduct of business	(+)	+	+/++	+	-	+	-?	n/a	+	+
Administrative costs on businesses	(+)	+	+	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Competitiveness, trade and investment flows	0	0	0	n/a	n/a	n/a	n/a	n/a	0	+
Competition in the internal market	(+)	+	+	n/a	n/a	n/a	+	n/a	+	n/a
Innovation and research	(+)	+	++	+	n/a	n/a	n/a	n/a	n/a	+

Key:

---	implementation of Measure may have major negative impact (>30% change)
--	implementation of Measure may have significant negative impact (>10% change)
-	implementation of Measure may have slight negative impact (<10% change)
0	implementation of Measure may have no/negligible impact
+	implementation of Measure may have a slight positive impact (<10% change)
++	implementation of Measure may have a significant positive impact (>10% change)
+++	implementation of Measure may have a major positive impact (>30% change)
(+)/(-)	potential slight positive/slight negative impact due to uncertainties on actual impact

Table A2.37: Impacts of Changes to Procedures for Obtaining ETAs (Measure F)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Introduction of Provisional and/or National ETAs										
Operating costs and conduct of business	(+)	(+)	(+)	--	-	-	0	0	+	(+)
Administrative costs on businesses	0	0	0	0	0	0	0	0	0	0
Competitiveness, trade and investment flows	0	0	0	0	0	0	0	0	0	(-)/(+)
Competition in the internal market	(-)	-	-/+	0	0	0	0	0	+	0
Innovation and research	0	(+)	(+)	(+)	0	0	0	0	0	+
Preparing New ETAGs and Introducing an Information Procedure										
Operating costs and conduct of business	(-)/(+)	(-)/(+)	+	(+)	-/+	-	-	n/a	+	+
Administrative costs on businesses	(+)	(+)	(+)	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Competitiveness, trade and investment flows	0	0	0	n/a	n/a	n/a	n/a	n/a	0	(+)
Competition in the internal market	(+)	(+)	+	n/a	n/a	n/a	n/a	n/a	+/-	n/a
Innovation and research	(+)	(+)	+	(+)	n/a	n/a	n/a	n/a	n/a	(+)

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.9 Simplification of AoC Procedures (Measure G)

A2.9.1 The Problems

Article 13 of the CPD identifies that the manufacturer (or his authorised representative in the Community) is responsible for attestation that products are in conformity with the requirements of a technical specification. Conformity is to be established by means of testing and/or other evidence, where preference is given to the application of two procedures of conformity attestation:

i) certification of the conformity of the product by an approved certification body (on the basis of two alternative systems: systems 1 and 1+); and

ii) declaration of conformity of the product by the manufacturer (on the basis of four alternative systems: systems 2 and 2+, 3 and 4).

Consultation responses indicate a very mixed attitude towards the AoC, with some wanting it to remain as is and others wanting simplification. An issue for the assessment is the degree to which any changes in AoC would have a negative impact on those products for which hENs or ETAs have already been adopted and introduced. In these cases, there may need to be some transition period to ensure that there is not either a wasting of resources or a significant additional cost. However, where problems have been identified, they are due to the current system of attestation of conformity set out by the CPD being too complex and imprecise, in particular as to whether it relates to products or characteristics and what the various levels of AoC mean. This is emphasised by the consultation responses; a selection of which is provided in Box A2.4.

Box A2.4: Case Studies: Problems with the Attestation of Conformity

Most industries have already implemented the system(s) of AoC, as agreed by the SCC and as mandated under the CPD for their products…All this having taken place over a protracted period of time. Implementing these mandated systems has occasioned considerable expense and the (unproductive) deployment of resources on the part of industry and notified certification bodies.

Consultation response from the British Cement Association

There is too much confusion: Content and extent of AoC-systems (1+, 1, 2, 2+, 3 and 4) is often not clear to manufacturers and notified bodies. There is no logic in the choice of AoC-systems. It is very confusing to the market that AoC-system for CE-marking differs from product to product, and, in some cases, from application to application of the same product (masonry units AoC system 4 or 2+, aggregates AoC system 4 or 2+ ...). Similar products should be treated in similar ways. Similar can mean: products for the same intended use (e.g. clay bricks and concrete masonry blocks) but also products produced in a similar way (e.g. concrete paving blocks and concrete masonry units).

Consultation response from a Company producing Concrete Products (Belgium)

Attestation of conformity has certainly needed clarification and, arguably, simplification. It has produced endless arguments in CEN committees working on hENs and is a major cause of delay in the standards writing process.

Consultation response from the Door and Hardware Federation (UK)

Box A2.4: Case Studies: Problems with the Attestation of Conformity
The combination of two different AoC systems for technical characteristics and fire behaviour (1 or 3 or 4) causes much complexity and has come to a point where it is barely understood.

Consultation response from the Deutsche Bauchemie (Germany)

The higher levels of Attestation of Conformity introduce unnecessary burdens on manufacturers and will in many cases add to the cost of products without adding value. It is appropriate that manufacturers should carry out initial type testing and operate factory production control but it is not necessary to have the involvement of third parties (i.e. Notified Bodies). Users do not see the merit of the different levels and, according to their national traditions, they tend either to accept manufacturer's declarations alone or, alternatively, to seek full product certification.

Consultation response from the European Union of Developers and House Builders

Box A2.4 highlights the confusion that exists, but also the time delays that have been caused due to protracted discussions in CEN committees. This is likely to result in knock-on costs to manufacturers who may be waiting for the hEN to be agreed so they can undertake CE marking. When an hEN is expected, little would be gained from obtaining an ETA, so manufacturers may be restricted in the extent to which they can place their products onto the markets of other MS. This raises issues in terms of the functioning of the Internal Market.

Professional users will face knock-on costs, either due to not being able to use products from outside their MS or arising from their manufacturer's difficulties in complying with the appropriate levels of AoC. Linked to the lack of confidence in CE marking (see also the discussion on market surveillance and accreditation of conformity assessment bodies) is confusion amongst professional users as to what the different levels of AoC mean in terms of the reliability of the performance data accompanying the product.

The six levels of AoC may also make it easier for standardisation and testing bodies (and large manufacturers) to request a higher level of AoC than may necessarily be required to achieve the objective of the CPD. This may increase the costs of testing for manufacturers and result in a greater level of income to Notified and Approval Bodies.

A2.9.2 The Measures

A possible alternative to the current system is to link AoC to products not to characteristics. This approach is problematic because of the different requirements for fire characteristics to those for the technical characteristics (where the AoC is already applied to the product). Aspects related to reaction to fire are treated in a similar manner in most Commission Decisions laying down the systems of AoC[67]. These Commission Decisions result in systems of AoC that vary according to the Euro-classification and the potential for a product's actual fire performance to vary across production runs/methods. The Euro-classification includes seven classes[68].

[67] Guidance Paper G

[68] A1: no contribution to fire; A2: almost null contribution to fire; B: very limited contribution to fire; C: limited contribution to fire; D: acceptable contribution to fire; E: acceptable contribution to fire; E: acceptable reaction to fire and F: no performance determined.

This approach cannot always be aligned with the system of AoC set for the technical characteristics of the product because the AoC for reaction to fire relates to where there is a clearly identifiable stage in the production process that results in an improvement of the reaction to fire classification (e.g. addition of fire retardants or a limiting organic material). Where this occurs, AoC 1 is required, where not AoC 3 applies. The only exception is for those materials that do not require a test for reaction to fire (and which are set out in Commission Decision 96/603/EC, as amended). This means it is often not possible to compare the AoC for the technical characteristics with the AoC for reaction to fire and prescribing one single AoC to cover both would not be efficient. Thus, this measure is not considered further. It is clear from the comments, however, that clarification is needed on how the AoC for the technical characteristics and the AoC for reaction to fire differ. As a result, there may be benefits in promoting system 1 over system 1+ for technical characteristics to better align these requirements with the system of AoC for reaction to fire.

A separate issue relates to those products that are commonly tested together (e.g. boilers and chimneys) or which are intended for the same application or end use. Having different systems of AoC for each part can cause testing issues and appear illogical. However, this issue would have to be addressed by either amending the appropriate Commission Decisions that set the AoC (which may in itself raise further issues in terms of increased testing costs, etc. and is unlikely to be able to effectively deal with all of the problem products). The alternative is to reduce the number of levels of AoC, to minimise the potential that products that are tested together are assigned to different levels of AoC.

From the above, we have identified three possible measures for simplifying the system of AoC:

- **Measure G1**: simplify the AoC to four levels;
- **Measure G2**: simplify the AoC to three levels; and
- **Measure G3**: move to the New Approach modules.

Measure G1 would reduce the number of levels of AoC to the four most commonly used levels, where these are:

- system 1;
- system 2+;
- system 3; and
- system 4.

Thus, this measure involves simplifying the AoC to reduce the number of available levels to these four levels only. There is only a limited number of products currently using level 2[69] and these would be moved to 2+. System 1 is selected (rather than system 1+) to make it easier to align the requirements for reaction to fire with the technical characteristics (since reaction to fire uses classes 1, 3 and 4).

[69] Building limes including calcium limes, dolomitic limes, hydraulic limes (in preparation of concrete, mortar, grout and other mixes for construction and the manufacture of construction products) in Commission Decision 97/555/EC.

Measure G2 would reduce the number of levels of AoC to three based on the recommendations of EOTA (i.e. levels 1, 3 and 4)[70]:

- AoC system 1 (replacing the existing AoC 1+):
  - factory production control by manufacturer;
  - tests of specific aspects of the product by notified body;
  - approval of factory production control system by notified body;
  - certificate of conformity for product by notified body;
  - surveillance of factory production control by notified body;
  - product checks and tests at random intervals by notified body; all to be
  - performed in accordance with the hEN or ETA.
- AoC system 3:
  - factory production control by manufacturer;
  - tests of specific aspects of the product by notified body; to be
  - performed in accordance with the hEN or ETA.
- AoC system 4:
  - factory production control by manufacturer;
  - tests on specific aspects of the product by manufacturer; to be
  - performed in accordance with the hEN or ETA.

Measure G3 would involve a move to the New Approach systems. Under the New Approach, conformity assessment is subdivided into modules. The modules relate to the design phase of products and the production phase. There are eight basic modules which can be combined with each other in a variety of ways to establish complete conformity assessment procedures applicable to the widest range of products. In most cases, a product is subject to conformity assessment during both the design and production phases. One of the main advantages of the modules is that they are based on quality assurance techniques derived from the EN ISO 9000 series (which the CPD systems of AoC are not)[71].

Work has been undertaken by various organisations to attempt to map the modules onto the CPD AoC. For example, EOTA states that 'the systems of attestation of conformity…could without modification of their content be expressed by means of the conformity assessment modules A, B, C, D and E provided some elements of the modules are slightly adapted to the needs of the CPD'[72].

A2.9.3 Implications of the Simplification of AoC

Tables A2.38 to A2.41 provide the summary of the impact assessment results for the three measures carried forward here. Table A2.42 provides an indication of whether the overall impact of the measure, for each stakeholder, is expected to be negative (-) and result in net costs, or positive (+) and result in net benefits.

70 EOTA (2006): Key Issues to be Considered in the Revision of the CPD.

71 CEC (2000): **Guide to the Implementation of Directives Based on the New Approach and Global Approach**.

72 EOTA (2006): *Key Issues to be Considered in the Revision of the CPD*, EX C 06/57/5.2.1A.

Note that EOTA foresees few problems with omitting system 2 as its role in the AoC decisions taken to date has been negligible. It is assumed here that products currently applying system 2 or 2+ would move to system 1, as this would retain declaration of conformity of the product by the manufacturer as the procedure of conformity attestation (moving to system 1 would require certification of the conformity by an approved certification body, thus, could lead to increased costs for the manufacturer).

<table>
<tr><th colspan="4">Table A2.38: Economic impacts: MANUFACTURERS</th></tr>
<tr><th>Impact Category</th><th>Micro/Craft</th><th>SMEs</th><th>Large</th></tr>
<tr><td colspan="4">Simplification of AoC to FOUR levels</td></tr>
<tr><td>Operating costs and conduct of business</td><td colspan="3">Moving from 1+ to 1 will reduce costs (as random surveillance checks will no longer be required as part of conformity assessment. It is assumed that such random checks will become undertaken through strengthened market surveillance). This will also reduce confusion with regard to reaction to fire by better aligning the systems of AoC. Those products currently assigned to system 2 (i.e. building limes, etc.) will move to system 2+, with a slight increase in costs due to the need for a notified body to undertake surveillance of the FPC</td></tr>
<tr><td>Administrative costs on businesses</td><td colspan="3">There will be some familiarisation costs due to revisions to the levels for those products affected by the change, but there will be an overall simplification. This needs to be communicated effectively to avoid manufacturer's being confused as to the change in requirements. Such familiarisation costs are likely to be short-term only</td></tr>
<tr><td>Competitiveness, trade and investment flows</td><td colspan="3">Simplification to four systems of AoC should reduce confusion, but the impacts will be the same for all companies, such that competitiveness should not be affected (also the four levels are the most commonly used levels, such that for many products, there will be no impacts). Thus, competitiveness of non-EU and EU-based firms should not be significantly affected. However, trade could increase if more products are CE marked</td></tr>
<tr><td>Competition in the internal market</td><td colspan="2">A reduction in confusion over which system of AoC to apply may help micro/craft businesses and SMEs to understand what is required, such that they may see the benefits of CE marking in terms of gaining access to wider markets. The simplification proposed would result in increased costs for those currently applying AoC 2 (moving to AoC 2+), this could affect micro/craft businesses and SMEs more since they are less able to spread the costs, so could affect their share of the internal market – but this only applies to building limes, which is dominated by large companies. There would be a slight reduction in costs for those products moving from 1+ to 1, which again could benefit micro/craft businesses and SMEs more</td><td>A reduction in confusion over which system of AoC to apply may large manufacturers better understand what is required, thus reduce confusion. The simplification proposed would result in increased costs for those currently applying AoC 2 (moving to AoC 2+) – but this only applies to building limes. There would be a slight reduction in costs for those products moving from 1+ to 1, which again would benefit large manufacturers, but this will affect all products specified as AoC 1, so should not affect the functioning of the internal market (unless it were to increase market share slightly at the expense of micro/craft businesses and SMEs)</td></tr>
</table>

Table A2.38: Economic impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Innovation and research	The revision of the system of AoC will not, itself, affect innovation and research. This will depend more on the testing, etc. that is required and how easy it is to determine which AoC should be applied. The reduction to four systems of AoC rather than six, reduces the number of possible alternatives but will not in itself clarify what is required		
Specific regions or sectors	Manufacturers of concrete products and construction chemicals may welcome the simplification. The cement and ceramic tile sectors may face additional costs from the system (although this will depend on the levels of AoC that currently apply). These costs could be reduced by allowing time to adjust to the revision and/or only making the changes to the levels of AoC the next time the standards are revised		
Simplification of AoC to THREE levels			
Operating costs and conduct of business	Any change in operating costs will depend on whether there is any change in the appropriate AoC systems, thus impacts will be sector/product dependent. Moving to AoC 1 (from 2 or 2+) will result in cost increases, as will moving from 1 (now) to 1 (revised) (from the need for a NB to undertake random product checks)		
Administrative costs on businesses	Need for familiarisation with the revised requirements, but this should be simpler than with the baseline AoC systems so should result in cost savings overall. Those manufacturers that have implemented the existing system may face short-term additional costs to familiarise themselves with the revised system		
Competitiveness, trade and investment flows	Simplification to three systems should reduce confusion, but the impacts will be the same for all companies, such that competitiveness should not be affected. There would be an increase in trade if more products are CE marked		
Competition in the internal market	A reduction in confusion over which system to apply may help micro/craft businesses and SMEs to understand what is required, such that they may see the benefits of CE marking in terms of gaining access to wider markets. The simplification proposed would result in increased costs for those currently applying AoC 1 (moving to the revised AoC 1) or AoC 2 or 2+ (also moving to the revised AoC 1), this could affect micro/craft businesses and SMEs more since they are less able to spread the costs, so could affect their share of the internal market		Reduction in the levels will depend upon the sector involved and whether they have already applied the existing systems. The simplification proposed would result in increased costs for those currently applying AoC 1, 2 or 2+ (moving to the revised AoC 1), but this will affect all products specified as AoC 1, 2 and 2+, so should not affect the functioning of the internal market (unless it were to increase it slightly at the expense of micro/craft businesses and SMEs)
Innovation and research	The revision of the system of AoC will not, itself, affect innovation and research. This will depend more on the testing, etc. that is required and how easy it is to determine which AoC should be applied. The reduction to three systems rather than six, reduces the number of possible alternatives but will not in itself clarify what is required		
Specific regions or sectors	Manufacturers of concrete products and construction chemicals may welcome the simplification. The cement and ceramic tile sectors may face additional costs from the system (although this will depend on the levels of AoC that currently apply). These costs could be reduced by allowing time to adjust to the revision and/or only making the changes to the levels of AoC the next time the standards are revised		

Table A2.38: Economic impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Move to New Approach Modules			
Operating costs and conduct of business	A move to the New Approach modules would be a change for all manufacturers. However, the NA modules are better aligned with ISO requirements so would benefit those manufacturers who are compliant with ISO (more likely to be larger companies). The operating costs of manufacturers should be reduced for some, i.e. through the link with ISO (although links to ISO are included in some standards)		
Administrative costs on businesses	There will be some familiarisation costs involved, even where mapping across and co-existence periods are allowed. There may be some resistance from some sectors that have already invested in complying with the AoC (often at significant costs) as they perceive that they have had to spend additional costs which others (potentially competitors) have not. These may lead to some short-term complaints over the changes, but careful management of the change could minimise this. Administrative costs could be reduced for those manufacturers whose products have to comply with NA Directives and, hence, who are already familiar with the NA modules (but likely to be limited to complex products only)		
Competitiveness, trade and investment flows	There may be some increase in competitiveness of those complying with ISO as this would replace the FPC requirements, where appropriate. This is more likely to affect larger manufacturers so could increase the competitiveness of large non-EU firms potentially at the expense of EU-based micro/craft businesses and SMEs. There may also be benefits to those manufacturers whose products have to comply with more than one NA Directive as there would be greater consistency and, potentially, reduced costs (but likely to be limited to complex products only). However, this is likely to affect manufacturers of the same products in the same way, such that competitiveness at the sub-sector level is not significantly affected		
Competition in the internal market	Changing to the NA modules may make it easier for some micro/craft businesses and SMEs, but may be more confusing for others, depending on how familiar they are with the existing system of AoC. Any increase in costs may affect the competitiveness of micro/craft businesses and SMEs, which, if significant, could force them out of the market, thus reducing competition		Changing to the NA modules may reduce costs (i.e. due to inclusion of ISO requirements) such that competitiveness of large companies may be improved over that of smaller companies. This may help large companies to increase their market share at the expense of smaller companies
Innovation and research	Moving to the NA modules will not, alone, affect innovation and research. This will depend more on the testing, etc. that is required and how easy it is to determine which module should be applied		
Specific regions or sectors	Manufacturers already implementing the NA modules (e.g. to comply with NA Directives) are likely to benefit more than those that are not (but likely to be limited to complex products only). Similarly, those currently using ISO systems will also benefit from a reduction in compliance costs		

Table A2.39: Economic impacts: PROFESSIONAL USERS	
Simplification of AoC to FOUR levels	
Operating costs and conduct of business	Simplification of the AoC to four levels could make it easier for manufacturers to explain to professional users that their products comply and may, as a consequence, improve confidence in the CE marking (although this may also require stronger market surveillance), although the impacts are likely to be marginal since the four most used levels are maintained. There is small potential benefits if the simplification results in an increase in the range of products that professional users are willing to consider and, hence, could reduce operating costs

Table A2.39: Economic impacts: PROFESSIONAL USERS	
Administrative costs on businesses	The simplified system of AoC may require a professional user to spend some time on familiarisation. However, this is likely to only be a short-term cost and limited to just those products previously falling into system 1+ or 2. Time may still be required to assess a product's fitness for use, but this is likely to depend on changes made elsewhere (e.g. to ETAGs/CUAPs)
Simplification of AoC to THREE levels	
Operating costs and conduct of business	Simplification of the AoC could make it easier for manufacturers to explain to professional users that their products comply and may, as a consequence, improve confidence in the CE marking (although this may also require stronger market surveillance). This could increase the range of products that professional users are willing to consider and, hence, could reduce operating costs. Manufacturers of products in systems 1, 2+ and 2 (now) may pass on any increase in testing costs
Administrative costs on businesses	The simplified system of AoC may require a professional user to spend some time on familiarisation. However, this is likely to only be a short-term cost. Time may still be required to assess a product's fitness for use, but this is likely to depend on changes made elsewhere (e.g. to ETAGs/CUAPs)
Move to New Approach Modules	
Operating costs and conduct of business	Moving to the NA modules may have little benefit for professional users that are not already familiar with the modules. Their knowledge of the modules is likely to be limited since CE marking in relation to NA Directives confirms that the product is safe, thus, there is no need to understand how this has been proven (providing there is confidence in CE marking, which may not always be the case). Thus, a move to the NA modules may require professional users to familiarise themselves with a new system before deciding which products they are confident will be fit for use
Administrative costs on businesses	The familiarisation costs are likely to be short-term but may be significant over that period. This could lead to some delays in works , which may have knock-on impacts for the end user of the works

Table A2.40: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Simplification of AoC to FOUR levels			
Operating costs and conduct of business	Need for revision of mandates and technical specifications, thus, additional work. The amount of work is limited since the number of products affected has been minimised by the systems of AoC chosen as part of the four level approach	Simplification of the AoC may reduce the testing requirements (e.g. 2 to2+), but the move from 1+ to 1 would reduce the need for random product checks such that income may decrease (such impacts may be reduced where NBs are used by market surveillance bodies to undertake random checks)	Simplification of the AoC may reduce the testing requirements (e.g. 2 to2+), but the move from 1+ to 1 would reduce the need for random product checks such that income may decrease (such impacts may be reduced if ABs are used by market surveillance bodies to undertake random checks – but this may be less likely than for NBs). This applies under ETA as well as hEN
Administrative costs on businesses	Some time may be required for familiarisation, but this is likely to be negligible since the four most commonly used systems are retained		
Competitiveness, trade and investment flows	No impacts expected	Simplification of AoC may benefit non-EU based NBs such that they may become more competitive	Competitiveness impacts on ABs may only occur if a MS has authorised an AB that has laboratories outside of the EU (i.e. large labs)

Table A2.40: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Competition in the internal market	No impacts expected	Reduction in complexity of AoC may increase competition across the EU between NBs as what is required is more widely understood	Reduction in complexity of AoC may increase competition across the EU between ABs as what is required is more widely understood
Simplification of AoC to THREE levels			
Operating costs and conduct of business	Need for revision of mandates and technical specifications, thus, additional work	Simplification of the AoC would result in products currently under 1, 2 and 2+ (current) moving to 1 (revised) and would require more random product checks such that overall income may increase	Simplification of the AoC would result in products currently under 1, 2 and 2+ (current) moving to 1 (revised) and would require more random product checks such that overall income may increase. This applies under ETA as well as hEN
Administrative costs on businesses	Some time may be required for familiarisation, but this is likely to be negligible	Some short-term familiarisation costs are likely to be incurred, but the simplified system should mean that these are negligible	Some short-term familiarisation costs are likely to be incurred, but the simplified system should mean that these are negligible
Competitiveness, trade and investment flows	No impacts expected	Simplification of AoC may benefit non-EU based NBs so that they may become more competitive	Competitiveness impacts on ABs may only occur if a MS has authorised an AB that has laboratories outside of the EU (i.e. large labs)
Competition in the internal market	No impacts expected	Reduction in complexity of AoC may increase competition across the EU between NBs as what is required is more widely understood	Reduction in complexity of AoC may increase competition across the EU between ABs as what is required is more widely understood
Move to New Approach Modules			
Operating costs and conduct of business	Need for revision of mandates and technical specifications, thus, additional work to map across the NA modules to the existing AoC	Moving to NA modules would require NBs to become familiar with the revised system. This may reduce their income while they learn what is required. NBs already testing for the NA Directives will not incur such costs	Moving to NA modules would require ABs to become familiar with the revised system. ABs already carrying out direct assessments for the NA Directives will not incur such costs
Administrative costs on businesses	Some time may be required for familiarisation, but this is likely to be negligible	Some short-term familiarisation costs are likely to be incurred, which may be significant. NBs already carrying out verification activities for the NA Directives will not incur such costs	Some short-term familiarisation costs are likely to be incurred, which may be significant.

Table A2.40: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Competitiveness, trade and investment flows	No impacts expected	Moving to the NA modules is likely to benefit larger NBs that are also carrying out verification activities under the NA Directives, as they will not incur the costs of familiarisation	Moving to the NA modules is likely to benefit larger ABs that are also working with the NA Directives (and potentially those which are also NBs), as they will not incur the costs of familiarisation
Competition in the internal market	No impacts expected	Competition may be increased if NBs familiar with the NA Directives gain an advantage	No significant impacts expected

Table A2.41: Economic impacts: INTERNATIONAL STAKEHOLDERS	
Simplification of AoC to FOUR Levels	
Competitiveness, trade and investment flows	Simplification to four systems of AoC should reduce confusion, but the impacts will be the same for all companies, such that competitiveness should not be affected (also the four levels are the most commonly used levels, so for many products there will be no impacts). Thus, competitiveness of non-EU firms with EU firms is unlikely to be affected. If more products apply CE marking, there could be some trade benefits
Simplification of AoC to THREE Levels	
Competitiveness, trade and investment flows	Simplification to three systems should reduce confusion, but the impacts will be the same for all companies, such that competitiveness should not be affected. If more products apply CE marking, there could be some trade benefits
Move to New Approach Modules	
Competitiveness, trade and investment flows	There may be some increase in competitiveness of those complying with ISO as this would be replace the FPC requirements, where appropriate (although links to ISO are already made in some standards). This is more likely to benefit larger manufacturers so could increase the competitiveness of large non-EU firms potentially at the expense of EU-based micro/craft businesses and SMEs. There may also be benefits to those manufacturers whose products have to comply with NA Directives as there would be greater consistency and, potentially, reduced costs. However, this is likely to affect both EU-based and non-EU manufacturers of the same products in the same way, such that competitiveness is not significantly improved

Table A2.42: Impacts: Simplification of AoC (Measure G)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Simplification of AoC to FOUR Levels										
Operating costs and conduct of business	+	+	+	0 to +	N/a	N/a	0	- to --	- to --	N/a
Administrative costs on businesses	-	-	-	0 to +	N/a	N/a	0	0	0	N/a
Competitiveness, trade and investment flows	0	0	0	N/a	N/a	N/a	N/a	+	0 to +	0 to +
Competition in the internal market	+	+	+	N/a	N/a	N/a	N/a	+	+	N/a
Innovation and research	0	0	0	N/a	N/a	N/a	N/a	N/a	N/a	N/a
Measure: Simplification of AoC to THREE Levels										
Operating costs and conduct of business	- to --	- to --	- to --	- to +	N/a	N/a	-	+ to ++	+ to ++	N/a
Administrative costs on businesses	+	+	+	- to +	N/a	N/a	0	0	0	N/a
Competitiveness, trade and investment flows	0	0	0	N/a	N/a	N/a	N/a	- to +	(- to +)	0 to +
Competition in the internal market	- to +	- to +	0 to +	N/a	N/a	N/a	N/a	+	+	N/a
Innovation and research	0	0	0	N/a	N/a	N/a	N/a	N/a	N/a	N/a

Table A2.42: Impacts: Simplification of AoC (Measure G)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Move to New Approach Modules										
Operating costs and conduct of business	0 / +	+	+	- to --	N/a	N/a	- to --	--	--	N/a
Administrative costs on businesses	-	-	- to 0	- to --	N/a	N/a	0	0	0	N/a
Competitiveness, trade and investment flows	0	0	0	N/a	N/a	N/a	N/a	- to +	- to +	0
Competition in the internal market	0	+	0 / +	N/a	N/a	N/a	N/a	- to 0	N/a	N/a
Innovation and research	0	0	0	N/a	N/a	N/a	N/a	N/a	N/a	N/a

Key:

---	implementation of Measure may have major negative impact (>30% change)
--	implementation of Measure may have significant negative impact (>10% change)
-	implementation of Measure may have slight negative impact (<10% change)
0	implementation of Measure may have no/negligible impact
+	implementation of Measure may have a slight positive impact (<10% change)
++	implementation of Measure may have a significant positive impact (>10% change)
+++	implementation of Measure may have a major positive impact (>30% change)
(+)/(-)	potential slight positive/slight negative impact due to uncertainties on actual impact

A2.10 Conformity Without Testing (Measure H)

A2.10.1 The Problems

The level of Attestation of Conformity (AoC) determines the extent to which third parties are involved in verifying the ITT and FPC. Guidance Paper M and a position paper from the GNB has resulted in other approaches such as sharing of test results, cascading of test results and 'classified without further testing (CWFT)' being identified as possible ways that could be used to demonstrate conformity.

The CPD already includes reference to the potential use of 'testing or other evidence…in accordance with Annex III' (Article 13.2). However, this is not emphasised further such that Annex III (Attestation of Conformity with Technical Specifications) focuses only on testing and does not indicate how or where 'other evidence' could be used. Without further discussion on these concepts it is difficult for them to be used in practice.

The current approach to reducing the costs of ITT is an issue to be considered by the specification writers. Thus, with the lack of emphasis on alternative approaches in Annex III of the CPD, the potential for inclusion of such approaches may not be taken advantage of fully or be adequately promoted.

Furthermore, there are issues in terms of what ITT means and what it refers to, particularly where tests have been carried out over a long period of time (thus 'Initial' may not be the most appropriate term), or where conformity can be shown by other means (hence 'Testing' may not be the correct term in all cases).

Box A2.5 summarises some of the issues and problems raised in responses to the Commission's consultation exercise.

Box A2.5: Case Studies: Problems with Testing

The Directive should clearly mention the concept of sharing, cascading and non-series production of [Guidance] Paper M, in order to reduce costs of test for smaller producer/installer and to have legal power. The Directive should include provision in order to simplify conformity demonstration of installer.

Consultation response from BFT SPA (Italy)

Though very useful for some products, ITT is not indispensable, and sometimes even a little bit artificial, for some products. ITT is useful if the cost of the verification of essential characteristics tests is very high (e.g. crash tests on a safety barrier) and if during production in FPC it satisfactory to verify the essential characteristics by indirect methods (e.g. by comparing some characteristics like geometrical characteristics, material, production technique, ... of produced product with those of the sample originally submitted to ITT).

ITT is less useful for simple products for which the essential characteristics can be determined easily where the inspections and test during FPC are very similar, if not the same, as the ITT. What is the use of the initial determination of strength of a masonry bloc, if strength is checked regularly during production?

Consultation response from Probeton (Belgium)

Box A2.5: Case Studies: Problems with Testing

Initial Type Testing is in many ways a poor expression in English as it does not truly reflect the way that materials are manufactured or produced. Steel products will continue to be produced in the same way as they always have, despite the application of a new standard. There is thus little need for a complete set of new tests to prove that nothing has changed. The fact that products have been produced in the same way, and successfully and in accordance with previous standards for many years can readily be demonstrated by any manufacturer through his test results. That these results also meet the requirements of the new standard can also be clearly shown. Thus the need for ITT at "first application" and the confusing wording of the guidance document in respect of previously existing data, which talks about such testing and assessment having to be in accordance with the new standard, is unsatisfactory.

Consultation response from Corus Tubes (UK)

Initial Type testing is restrictive as the components used to manufacture the product can be slightly modified over time. Individually the modification of a component can not have a significant influence but the addition of the slight modifications may conduct to a significant impact on the final product (notion of variability of the product). A continuous monitoring of the product by the manufacturer in conjunction with regular (every 5 years) test by Notified laboratories will be less confusing and will give more confidence. This approach has been used since a lot of time in various MS for fire safety of product and it as proved to be reliable and helpful for the safety of products.

Consultation response from CTICM (France)

The current lack of emphasis on alternative ways of demonstrating conformity (e.g. through calculation, or 'deemed to satisfy') or on the potential to share/cascade test results reduces the flexibility open to manufacturers, and thus, imposes higher testing costs. Many of these higher costs are likely to be incurred by SMEs, although larger companies have also highlighted such issues (as shown in Box A2.5).

Some of the issues could be addressed without modification of the CPD by including reference to Without Testing (WT) or Without Further Testing (WFT) in mandates, as has been done for example in Mandate M/366[73]. The aim of this approach is to minimise the burden of testing and avoid the need for repeat testing of those construction products that have already been demonstrated as being safe for health and the environment (Rheinberger & Bunke, 2006[74]). Mandate M/366 describes the concepts of WT and WFT and includes an example flowchart for a step-by-step approach for products/materials to be assessed and clarified as WT, WFT or no performance determined (NPD). This flowchart indicates that a product/material that does not contain and/or does not release a Dangerous Substance (above an EU or national limit) in its intended use could be classified WT/WFT for intended use[75]. The final draft version of the Technical Report developing a methodology for

[73] Horizontal Complement to Mandates CEN/CENELC, Concerning the Execution of Standardisation Work for the Development of Horizontal Standardised Assessment Methods for Harmonised Approaches Relating to Dangerous Substances under the Construction Product Directive (CPD)

[74] Rheinberger U & Bunke D (2006): **Safe Construction Products for Health and the Environment: How Much Testing is Necessary to Implement the EC Construction Products Directive?**, Report for the Umweltbundesamt, Ref No. (UFOPLAN) 202 95 384, March 2006.

[75] CEC (2005): **Development of Horizontal Standardised Assessment Methods for Harmonised Approaches Relating to Dangerous Substances under the Construction Products Directive (CPD)**, Horizontal Complement to the Mandates to CEN/CENELEC, M/366 EN, 16 March 2005.

identifying products as WT and WFT is due at the end of March 2007 (with publication scheduled for the end of September 2007).

A2.10.2 The Measure

This measure involves the inclusion of a specific reference to alternative approaches (e.g. classified without further testing, conventionally accepted performance, shared ITT and cascaded ITT in Annex III of the CPD), with definitions or clarification of what is required to apply the different approaches. This should help encourage increased use of the 'deemed to satisfy provisions' within harmonised ENs; and promotion of other CWFT methods to encourage their greater use in harmonised ENs, including the use of calculation methods (which is already a possibility in some standards).

Further promotion of the use of such methods should also increase the degree to which these types of approaches are applied in standards that are not yet agreed, or during the revision of existing standards. In turn, it could result in significant savings in the costs associated with conformity assessment. The measure could include the use of an alternative term, e.g. Initial Determination of Performance Characteristics (IDPC) when testing has not been carried out[76]. The term 'Initial Type Testing' could also be revised to reflect that testing is not always required.

It may also facilitate the use of supporting standards or CE marking against mandates before the final version of a harmonised standard is available.

Only one possible alternative to the baseline or business as usual case is considered here:

- **Measure H**: increased promotion of conformity without testing methods.

A2.10.3 Implications of Promotion of Conformity Without Testing

Tables A2.43 to A2.46 discuss what the implications of the measures may be against the economic impact categories as set out in the European Commission's Impact Assessment Guidelines. Table A2.47 provides an indication of whether the overall impact of the measure, for each stakeholder, is expected to be negative (-) and result in net costs, or positive (+) and result in net benefits.

[76] This may be similar to Initial Type Calculation (ITC) described in Annex 3 of Guidance Paper K: 'The Attestation of Conformity Systems and the Role and Tasks of the Notified Bodies in the Field of the Construction Products Directive' (CEC, 2004).

Table A2.43: Economic impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Promotion of Conformity without Testing			
Operating costs and conduct of business	As standards are revised that include alternative approaches, the costs of compliance should decrease		As standards are revised that include alternative approaches, the costs of compliance should decrease. This is likely to reduce the overall operating cost of large manufacturers. Manufacturers producing the same products at different sites may be able to make better use of shared results depending on conditions for sharing
Administrative costs on businesses	Will be a need to understand what is required and provide documentation on the approaches used for the ITT. This is likely to require familiarisation, producing new data, filling forms and tables, inspecting and checking and submitting the information. The documentation is likely to be prepared by the person who is the manufacturer (for micro businesses) such that training is not needed	Will be a need to understand what is required and provide documentation on the approaches used for the ITT. This is likely to require familiarisation, producing new data, filling forms and tables, inspecting and checking and submitting the information. Training, meetings and additional filing of forms may also be required by SMEs	Will be a need to understand what is required and provide documentation on the approaches used for the ITT. This is likely to require familiarisation, producing new data, filling forms and tables, inspecting and checking and submitting the information. Training, meetings and additional filing of forms may also be required by large manufacturers. It may also be beneficial to copy information to send to other company sites to take advantage of shared test results (where appropriate/ feasible)
Competitiveness, trade and investment flows	Providing increased flexibility in how to conform with the CPD should reduce costs, thus, may reduce the competitiveness effects on micro/craft businesses and SMEs when compared with their non-EU rivals		Impacts on the competitive position of larger firms are likely to be limited, since the impacts will be similar for (large) non-EU firms, although there may be benefits from increased flexibility to both EU and non-EU firms

Table A2.43: Economic impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competition in the internal market	Increased flexibility may encourage micro/craft businesses to comply with CE marking, thus, could increase the number/type of products on the market. This would improve functioning of the internal market – it also increases the opportunity for the micro/craft businesses to expand their market	Increased flexibility may encourage SMEs to comply with CE marking, thus, could increase the number/type of products on the market. This would improve functioning of the internal market – it also increases the opportunity for the SMEs to expand their market	Large manufacturers may face increased competition from micro/craft businesses and SMEs if compliance is made less costly
Innovation and research	Potential for micro/craft businesses and SMEs to make non-standard / innovative products more widely available (although this may be limited by other factors such as production capacity)		ITT will still be required but alternative approaches may make it less costly to first put the product into the markets so could help to stimulate innovation
Specific regions or sectors	Potential benefits to those sectors where use of alternative approaches is currently limited		

Table A2.44: Economic impacts: PROFESSIONAL USERS	
Promotion of Conformity without Testing	
Operating costs and conduct of business	Potential that reduction in costs associated with CE marking are passed onto professional users
Administrative costs on businesses	May be some concerns that conformity without testing is not as reliable as the demonstration of conformity through testing (particularly if notified bodies are not involved). This may be addressed to some extent by stronger market surveillance and the inclusion within the hENs on when conformity without testing (or shared, cascading, etc.) are considered appropriate

Table A2.45: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Promotion of Conformity without Testing			
Operating costs and conduct of business	Potential need for revision of standards to include use of alternative approaches, particularly where there is lobbying from trade associations	Potential for reduction in income from testing, but may be offset to some degree by income from verifying approaches to conformity without testing (overall income may reduce slightly)	No impacts expected
Administrative costs on businesses	Costs associated with additional meetings to agree acceptable alternative approaches and to ensure that the approaches would provide the same results (or results within acceptable limits) from those that would be derived from testing	May be a need to attend additional meetings (impacts will depend on whether they are paid to attend). May be costs associated with providing a range of services to verify/check compliance rather than just testing (impacts will depend on level of expertise)	No impacts expected

Table A2.45: Economic impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Competitiveness, trade and investment flows	Not relevant	May be only limited impacts on competitiveness. Alternative approaches could assist non-EU firms (but it could also make it more difficult for them to verify conformity approaches used by manufacturers, depending on their expertise)	No impacts expected
Competition in the internal market	Not relevant	Promotion of conformity without testing may make it more difficult for MS to impose their test methods – it may be more difficult to not accept calculation results where these are supported by all workings (as required), thus competition may increase	No impacts expected
Innovation and research	Not relevant	Potential for NBs to become involved in identifying new (non-testing) ways of showing conformity to gain advantage in the market	No impacts expected

Table A2.46: Economic impacts: INTERNATIONAL STAKEHOLDERS	
Promotion of Conformity without Testing	
Competitiveness, trade and investment flows	Impacts on the competitive position of non-EU firms are likely to be limited, since the impacts will be similar to those for (large) manufacturers; although there may be benefits from increased flexibility to non-EU firms

Table A2.47: Impacts: Promotion of Conformity without Testing (Measure F)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Promotion of Conformity without Testing										
Operating costs and conduct of business	+ /++	+ / ++	+ / ++	+	N/a	N/a	-	-	N/a	N/a
Administrative costs on businesses	-	-	(-)	- to --	N/a	N/a	0	0	N/a	N/a
Competitiveness, trade and investment flows	++	++	+	N/a	N/a	N/a	N/a	- / 0	N/a	+
Competition in the internal market	++	++	-	N/a	N/a	N/a	N/a	+	N/a	N/a
Innovation and research	0 / +	0 / +	+	N/a	N/a	N/a	N/a	0 / +	N/a	N/a

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.11 Expanded Use of IT Systems (Measure I)

A2.11.1 The Problems

The main problem identified in relation to affixing CE marking is the cost and occasionally the difficulty of including all of the information required either on the product or in the accompanying documentation. Although this is not a major problem of the same nature as a lack of clarity in the meaning of CE marking, discussions with manufacturers have indicated that allowing the use of more modern forms of communication such as the internet, may be of benefit to both product manufacturers and to designers of works.

Discussions with an individual representing a large aggregates company estimated the benefits of reduced documentation and the need to reproduce such documentation in several languages at around €20,000 per year. Additional benefits that have been highlighted by consultees include:

- as innovation drives changes to the characteristics of a specific product over time, so the technical information, standards and documentation must be updated. This is easier to achieve and more efficient when the information is computerised. Crucially, time taken to market is also much quicker, as internet material can be produced while the product is in transit or entering the market through European wide distribution networks; and

- greater information can be provided to the customer or end user through a website in comparison to the limited space available on a label affixed to the product. Indeed, designers contacted as part of this study indicated that they would prefer to have the information available in advance of product supply on websites as this would help them during the design phase. Contractors would then be responsible for ensuring that they were delivered and using the correct products. However, the system would need to remain flexible to allow those manufacturers who chose to do so to supply information directly with the products. Manufacturers would also have to make sure that the information was kept up to date.

Amending the CPD to allow for the increased use of IT systems and a clarification that this applies to all Member States would therefore be a significant advantage in improving the efficiency of the existing system. However, designers did indicate that there should be some standardisation in the presentation of the information, for example, through the use of a template and that the information would need to be provided in multiple languages.

Other detailed problems from the consultation responses and the annexes to the PRC Report[77] are provided in Box A2.7.

[77] PRC Bouwcentrum (2006): **Study to Evaluate the Internal Market and Competitiveness Effects of Council Directive 89/106/EEC (Construction Products Directive, CPD)**, Annexes to Final Report, 26 November 2006.

Box A2.7: Case Studies – CE Marking Information and Labelling Requirements

The CE marking should be simplified by allowing the use of information technology. In this way the mark itself represents a declaration of conformity and all the necessary information about the product can be accessed and downloaded from the manufacturer's website.

Consultation response from the Brick Development Association Limited (UK)

CE-marking of construction products includes the last two digits of the year in which the marking was affixed. IT should be investigated: is this information really needed in the CE-marking. It will often mean considerable additional costs to the manufacturers. The existing principle means considerable additional costs to the manufacturers caused by administration and discarded packaging.

Possibility to use manufacturers web-pages in the CE-marking of construction products is needed urgently. Often it is the designer of the construction works who mostly needs the CE-marking accompanying information on the product. He normally needs the information before the product is manufactured. He does not see the product. That is why the CE-marking information delivered with the product does not satisfy practical needs.

Consultation response from the Confederation of Finnish Construction Industries/Maxit Group (Sweden)

There is a large administrative burden associated with the accompanying documents (labels, DoC) as these need to be replicated for each variety and delivery. The documents also have to be translated into all EU languages.

Retailers and distributors have to check that the CE marking and documents are passed down to the end user (manufacturer cannot guarantee this).

From the PRC Report Annex on Ceramic Tiles

A2.11.2 The Measures

One proposal is to make better use of IT systems to provide users with the information they need on a product. It is understood that there is currently an agreement between the European Commission and CEN to allow use of IT systems to a limited extent under the current Directive but there are proposals (e.g. from CEPMC) to allow the use of websites to provide even more of the information required for CE marking. This needs to be included in clauses in the Annex ZA and changes have been made by CEN to the template of Annex ZA that will allow the use of IT systems to complement CE marking. There are therefore two possibilities within this measure:

- **Measure I1**: to allow use of IT systems to a limited extent (aligning with the recent agreement between the European Commission and CEN); or
- **Measure I2**: to allow expanded use of IT.

Under Measure I1, the use of IT systems to a limited extent, manufacturers would be able to present some of the labelling requirements electronically. (Note that this would be optional and would not preclude those who wish to continue to provide information with the product from so doing). The information included on the product (or its packaging, etc.) would be:

- CE marking;
- name or brand of company;
- two digit of year when CE marking is affixed;
- number/code of any Notified Body used;
- identification number of product;
- website address where the remaining information can be found; and
- any essential performance specifications set out in mandates.

Under Measure I2, the expanded use of IT systems, the amount of information included on (or with) the product would be further reduced to:

- CE marking;
- identification number of product; and
- website address where the remaining information can be found.

Again, this measure would be optional and manufacturers would not be forced to use IT systems, it would instead offer more flexibility in how the information could be provided to professional users. There are also issues with regard to the inclusion of the two digits of the year when CE marking is affixed and removal of the requirement for this information (particularly on packaging, etc.) could result in cost savings in terms of reduction in wasted packaging or the implications for stock that is stored for long periods of time.

A third measure (**Measure I3**) has also been considered here, with this required where the use of IT is proposed. The database would be used to provide some degree of liability protection for users of products and would include information on:

- the name or brand of the company;
- the type of product (with name as appropriate);
- the intended use;
- the performance characteristics;
- whether the performance characteristics have been determined through use of an hEN or ETA (or other measures discussed above);
- number/code of any Notified Body used; and
- website address where the information is stored.

Manufacturers wishing to make use of IT systems to present labelling information electronically would be obliged to submit a form containing the above information so it could be recorded in a database. The same information would be required whether limited or expanded use of IT is proposed, hence, this measure is assessed separately.

It is expected that the database would be used as a registration of products, similar to the approach used for the Medical Products Directive (albeit on a larger scale). It is expected that the database would provide both users and Member States with a source from which they can obtain performance characteristics of products without the potential that information could be lost (e.g. as products become obsolete), updated (e.g. as new raw materials are used in later batches) or where a manufacturer becomes bankrupt such that their website containing the product data is no longer available.

However, this may be considered to be creating electronic bureaucracy. If this database were to also include information on product characteristics it could be perceived as affecting competition (where, for example, the database is used when professional users are making purchasing decisions). Such an approach may disadvantage SMEs, who may only have a small number of entries in the database compared with many tens or even hundreds by large manufacturers (i.e. those with wider product ranges).

Interestingly, those contacted as part of this study expressed mixed views on the creation of such a database. Some were in favour, while others thought that it should not be a priority as it did not address the key issues surrounding the credibility of CE marking, while placing an additional burden on manufacturers. There were also concerns over the cost implications of setting up, populating and maintaining the database.

A2.11.3 Implications of Use of IT Systems

The ultimate success and impact of CE marking as an indication of compliance against set technical standards depends on the information that stakeholders, specifically professional users of construction products, have at their disposal. For example, CE marking on its own might indicate compliance to a standard, but the architect or installer of that product may need to know more information on the characteristics to determine if the product is fit for use for the purpose that they require. Thus the key issue with this measure is whether the information is provided to professional users at the right time and in the right form.

The type of database referred to above can be compared in some respects to the type of database that is to be created under the REACH Regulation and the European database for Medical Devices. This REACH database involves the development of IT to make information available to the public on the classification and labelling of chemicals and on the non-commercial aspects from their registration dossiers submitted for individual chemicals. In this case, the scale of the exercise is comparable in that the REACH database will need to be able to manage classification and labelling data and registrations for an estimated 30,000 marketed substances and for a similar number of intermediates. It will require on-going updating as registrations will be completed over an 11 year time period, and into the future as new substances are developed and placed on the market. The database for Medical Devices is to be used for exchanging information relating to the application of the European Directives on medical devices. It is intended to be web-based, accessible to competent authorities and would be used to register manufacturers, certificates and incident reports in a common database.

The CPD database would need to be able to handle data from 60,000 manufacturers of almost 180,000 products, and would need to be capable of continuous updating and modification as manufacturers changed product characteristics and place new products on the market. It would therefore have to be of a similar scale (if not of greater capacity) to the REACH database, but would not be required to include as much information for each manufacturer and product as is required under REACH. For REACH, it is estimated that the costs of developing the systems will be around

€8.5 million, with the costs of the personnel to operating the system being around €8.4 million over 11 years[78]. The database for medical devices is predicted to cost around €220,000 in set-up costs and €40,000 per year maintenance and operation costs.

Tables A2.48 to A2.52 set out the conclusions of the assessment.

Table A2.48: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Allow Limited Use of IT Systems			
Operating costs and conduct of business	Use of IT may make it easier and quicker to put products onto the market, but benefits may be limited for micro/craft businesses compared with large manufacturers since they are less likely to use IT. There would also be costs associated with ensuring information is updated, but that an archive of information on older products is also readily available	Use of IT may make it easier and quicker to put products onto the market, but benefits may be limited for SMEs compared with large manufacturers (although savings could be greater for SMEs, in proportion to turnover, than for large manufacturers if they were able to make use of this measure). There would also be costs associated with ensuring information is updated, but that an archive of information on older products is also readily available	Use of IT may make it easier and quicker to put products onto the market, and benefits may be greater for large manufacturers than for SMEs and micro/craft businesses since they are more likely to use the Internet to promote their products. There would also be costs associated with ensuring information is updated, but that an archive of information on older products is also readily available
Administrative costs on businesses	Benefits will only accrue where the additional costs in terms of preparing and uploading the labelling information onto company web-sites are outweighed by savings from reducing the costs of labelling associated with CE marking		Benefits of the baseline IT measure are expected to outweigh the additional costs, particularly with the clarification of requirements for providing the last two digits of the year in which the product was produced
Competitiveness, trade and investment flows	Reductions in costs associated with labelling using IT would help make all manufacturers using IT systems more efficient and, hence, more competitive (but is unlikely to affect the competitive position of EU firms in comparison with their non-EU rivals)		

[78] CEC (2003): **Proposal for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restrictions of Chemicals (REACH)**, COM(2003)644, Volume VI – containing amended Financial Statement, 29 October.

Table A2.48: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competition in the internal market	The impacts will depend upon the extent that users of construction products would use the databases and online information. Other factors such as design, accessibility, and ease of use of the manufacturer's web-site may have greater influence on competition. Micro/craft businesses may not be able to benefit as much as larger manufacturers since they are less likely to use IT – there could be negative impacts if large manufacturers are able to take the market previously supplied by micro/craft businesses	The impacts will depend upon the extent that users of construction products would use the databases and online information. Other factors such as design, accessibility, and ease of use of the manufacturer's web-site may have greater influence on competition. SMEs may not be able to benefit as much as larger manufacturers since they are less likely to use IT (although savings could be greater for SMEs, in proportion to turnover, than for large manufacturers if they were able to make use of this measure) – there could be negative impacts if large manufacturers are able to take the market previously supplied by SMEs	The impacts will depend upon the extent that users of construction products would use the databases and online information. Other factors such as design, accessibility, and ease of use of the manufacturer's web-site may have greater influence on competition. Large manufacturers may benefit more than SMEs and micro/craft businesses since they are more likely to use the Internet to promote their products (potential to increase market share at expense of micro/craft/SMEs)
Innovation and research	Use of IT systems could facilitate the provision of information on new products, such as through links to additional information – this may be limited to only those micro/craft businesses and SMEs that are using the Internet to provide labelling information but also product information/ marketing.		Use of IT systems could facilitate the provision of information on new products, such as through links to additional information
Expanded Use of IT Systems			
Operating costs and conduct of business	Benefits would be increased by further reducing the costs associated with applying CE marking (but only where IT systems are used)		Benefits would be increased by further reducing the costs associated with applying CE marking
Administrative costs on businesses	Expanded use of IT may make it even easier and quicker to put products onto the market compared with the baseline, but (again) benefits may be limited for micro/craft businesses compared with large manufacturers since they are less likely to use IT	Expanded use of IT may make it even easier and quicker to put products onto the market compared with the baseline, but (again) benefits may be limited for SMEs compared with large manufacturers (although savings could be greater for SMEs, in proportion to turnover, than for large manufacturers if they were able to make use of this measure)	Expanded use of IT may make it even easier and quicker to put products onto the market compared with the baseline, benefits may greater for large manufacturers than for SMEs and micro/craft businesses since they are more likely to use the Internet to promote their products
Competitiveness, trade and investment flows	Expanded use of IT systems, including on-line databases, is likely to result in greater cost savings, but impacts on EU and non-EU firms are likely to be similar		

Table A2.48: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competition in the internal market	Expanded use of IT systems, including on-line databases, is likely to result in greater cost savings. These benefits will be related to the extent that users of construction products would use the databases and online information. Benefits are likely to be less for micro/craft businesses than for large manufacturers since they are less likely to use IT – potential for negative impacts from large manufacturers taking market share from micro/craft businesses likely to increase	Expanded use of IT systems, including on-line databases, is likely to result in greater cost savings. These benefits will be related to the extent that users of construction products would use the databases and online information. Benefits are likely to be less for SMEs than for large manufacturers since they are less likely to use IT (although savings could be greater for SMEs, in proportion to turnover, than for large manufacturers if they were able to make use of this measure) – potential for negative impacts from large manufacturers taking market share from SMEs likely to increase	Expanded use of IT systems, including on-line databases, is likely to result in greater cost savings. These benefits will be related to the extent that users of construction products would use the databases and online information. Benefits are likely to be greater for large manufacturers than for micro-craft and SMEs, since they are more likely to use the Internet to promote their products (potential to increase market share at expense of micro/craft/SMEs)
Innovation and research	Expanded use of IT systems could further facilitate the provision of information on new products. This may be limited to only those micro/craft businesses and SMEs that are using the Internet to provide labelling information but also product information/ marketing		Expanded use of IT systems could further facilitate the provision of information on new products
Inclusion of Database of Construction Products			
Operating costs and conduct of business	Increased costs from having to provide information to a third party (could add considerably to costs for some micro/craft businesses and SMEs). Would require a flexible database that could take account of performance characteristics determined through hENs, ETAs or other measures proposed here. Could reduce costs on the business itself if it is not required to keep its own web-site up to date and would only apply to those using IT such that if costs are greater than benefits, firms can continue to provide hard copies		Some increased costs from having to provide information, but unlikely to be significant (since information already has to be made available to users, and only applies to those using IT)
Administrative costs on businesses	Additional costs with sending information for inclusion in database. Also, would require on-going update of information as products change, and the need to ensure that the database is comprehensive as new products are developed and marketed, but non-series products would be exempt. Information would also have to be submitted in a consistent manner. SMEs may require training and IT support if they are to provide the information without incurring excessive administrative costs		Additional costs with sending information for inclusion in database (but unlikely to be significant compared with other costs, except for those involved in a high degree of non-series production)
Competitiveness, trade and investment flows	All firms undertaking CE marking would be required provide the product information. This may have a greater impact on micro/craft and SMEs as they are less able to spread the costs of providing the information (but they could continue to provide hard copies of labelling information if the costs are considered excessive)		

Table A2.48: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Competition in the internal market	If the database improves confidence in CE marking, the internal market may function better, but where the database includes information on the performance characteristics it could have competition effects (e.g. distort the market where professional users are able to use the database to make purchase decisions)		Impacts likely to be negligible. If the database improves confidence in CE marking, the internal market may function better. There may be problems with databases that include information on performance characteristics since a professional user may make purchase decisions based on the database alone, which not be appropriate for some products and is unlikely to be accepted by manufacturers
Innovation and research	Could hinder research and development of micro/craft businesses if information is required on product before it can be marketed	Could hinder research and development of SMEs if information is required on product before it can be marketed	Unlikely to affect research and development by large manufacturers

Table A2.49: Economic Impacts: PROFESSIONAL USERS	
Allow Limited Use of IT Systems	
Operating costs and conduct of business	Under this measure, the product (and its packaging) would still include the name or identifying mark of the producer, the last two digits of the year in which the product was affixed, the number of the CE certificate of conformity (where appropriate), and the European standard reference number with the relevant date and version. The manufacturer also has to supply a web-site address for the location of the information on characteristics. The professional user would have to refer to the manufacturer's web-site to obtain information on the relevant performance characteristics. The professional user would also incur additional costs if they have to spend time locating information that would otherwise have accompanied the product and they may also face increased liability where they are considered responsible for ensuring a product's fitness for use. Some professional users may find it beneficial to have information on performance characteristics available before ordering, while others may find it more difficult to verify that what is supplied is what was ordered. Manufacturers could also use the web-site to provide additional useful information that could assist the user and could pass on cost reductions. Overall, however, it is expected that professional users would incur costs from having to locate the information on characteristics, but that these costs should not be extensive and may be offset to some degree by having all of the required information in one, easily accessible location (assuming the web-site link is maintained). There may be language barrier issues for some professional users if web-site information is not made available in all EU languages, which could reduce product choice in some Member States Only around 13% of firms and 25% of employees had remote access to a company network (according to a survey undertaken as part of the e-business watch study on construction[79]), although the value if higher for general construction (31% of employees, 13% of firms) than for installers (20% of employees, 12% of firms)

[79] e-Business-Watch (2006): **ICT and e-Business in the Construction Industry**, Sector Report No. 7/2006, European Commission.

Table A2.49: Economic Impacts: PROFESSIONAL USERS	
Administrative costs on businesses	Professional users may face uncertainty over the reliability and availability of the data, particularly if products are superseded by newer versions/models, although the use of IT could be used to encourage direct contact between users and manufacturers to address any needs for additional information
Competition in the internal market	There may be some competitive advantage for those professional users in whose languages the web-sites are based, potentially benefiting large companies working in several MS, unless the required information is provided in all languages
Innovation and research	Professional users would have the opportunity of searching the Internet to identify which products may be fit for their particular requirements. This may allow them to identify and order lower cost products from other Member States. Any costs saved would have to be greater than the time taken in the research activities to make this beneficial
Expanded Use of IT Systems	
Operating costs and conduct of business	Under the expanded use of IT, more of the product information would only be available on-line. The professional user would have to refer to the manufacturer's web-site to obtain information on the relevant performance characteristics. The professional user would incur additional costs if they have to spend time locating information that would have accompanied the product under the baseline and they may also face increased liability where they are considered responsible for ensuring a product's fitness for use. However, manufacturers could use the web-site to provide additional useful information that could assist the user and could pass on cost reductions. Overall, however, it is expected that professional users would incur costs from having to locate the information on characteristics, but that these costs should not be extensive and may be offset to some degree by having all of the required information in one, easily accessible location (assuming the web-site link is maintained). There may be language barrier issues for some professional users if web-site information is not made available in all EU languages, which could reduce product choice in some Member States
Administrative costs on businesses	Professional users may face uncertainty over the reliability and availability of the data, particularly if products are superseded by newer versions/models, although the use of IT could be used to encourage direct contact between users and manufacturers to address any needs for additional information
Competition in the internal market	The competitive advantage for those professional users in whose languages the web-sites are based would be increased under the expanded use of IT systems since much more information would only be available electronically (unless the required information is provided in all languages)
Innovation and research	The extra information provided under the expanded use of IT measure could make searching the Internet to identify which products may be fit for their particular requirements a worthwhile exercise for professional users in the EU. As for the baseline, this may allow them to identify and order lower cost products from other Member States. Any costs saved would have to be greater than the time taken in the research activities to make this beneficial
Inclusion of Database of Construction Products	
Operating costs and conduct of business	Database would protect professional users from loss of data should products change, no longer be produced or the manufacturer go bankrupt. This will allow them to make use of IT information with the legal implications
Administrative costs on businesses	No obligation on professional users to provide information, such that there are no administrative costs. Professional users may benefit be being able to obtain information on all products being used in one place
Competition in the internal market	No impacts on professional users
Innovation and research	No impacts on innovation and research – professional users are more likely to research products using manufacturers' web-sites as database will only contain essential CE marking information

Table A2.50: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
Allow Limited Use of IT Systems		
	Member States (MS)	**European Commission (EC)**
Operating costs and conduct of business	Market surveillance may be more difficult if information needed to verify that CE marking has been applied appropriately has to be found on the Internet (rather than with products bought). This will only apply to product performance characteristics and the product should include a web-site address, reducing the cost implications. However, a key issue may arise with the potential to (legally) use international languages for regulatory use. This means that information will have to be provided in the language of the location where the product is being used	No impacts expected
Innovation and research	Potential to include desk study as part of market surveillance work (rather than just having to buy products or visit manufacturers). This could reduce the costs of market surveillance or make it more efficient, but will depend on market surveillance bodies having the expertise to undertake the required checks	No impacts expected
Expanded Use of IT Systems		
Operating costs and conduct of business	Expanded use of IT systems may make market surveillance even more difficult where information is only provided on the Internet, but the impacts are expected to be limited due to the need for users to be able to find information easily; thus, market surveillance bodies should also be able to find it easily	No impacts expected
Innovation and research	If more information is included in one place, the potential for desk study based market surveillance could increase, but will depend on market surveillance bodies having the expertise to undertake the required checks	No impacts expected
Inclusion of Database of Construction Products		
Operating costs and conduct of business	Impacts depend on who is responsible for setting up and maintaining database (Member States, EU or independent body). Costs could be considerable for an EU-wide database, particularly in terms of keeping it up to date and logging all received Declarations of Conformity. The database will also need to be readily accessible if the information contained within it is to have any value (e.g. for market surveillance). However, there may be considerable benefits for MS for market surveillance	
Innovation and research	A well designed and accessible database could help MS with market surveillance by allowing rapid checks of a product's conformity as it is put onto that country's market	No impacts expected

Table A2.51: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
Allow Limited Use of IT Systems	
Competitiveness, trade and investment flows	Impacts likely to be similar to those for EU manufacturers, although the marketing value of web-site based information may be greater for non-EU firms, particularly those looking to gain entry to the market or increase their market share. This may benefit low cost producers in countries such as China
Expanded Use of IT Systems	
Competitiveness, trade and investment flows	Impacts likely to be similar to those for EU manufacturers, although the marketing value of web-site based information could be even greater under the expanded use of IT
Inclusion of Database of Construction Products	
Competitiveness, trade and investment flows	Inclusion of their Declaration of Conformity in a database could assist non-EU firms selling their products on the EU market (but this may be limited as the databse would only include essential CE marking information). It may make it easier for MS to verify that non-EU firms are correctly applying CE marking, which would help ensure that all manufacturers are competing on a level playing field. Non-EU firms would face costs in terms of supplying information on their products, but this is not expected to be significant

Table A2.52: Impacts: Use of IT Systems (Measure I)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Allow Limited Use of IT Systems										
Operating costs and conduct of business	(+)	(+)	+	- / 0	- to 0	n/a	n/a	n/a	n/a	n/a
Administrative costs on businesses	+ / ++	+ / ++	+	-	n/a	n/a	n/a	n/a	n/a	n/a
Competitiveness, trade and investment flows	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a	+
Competition in the internal market	(-) / +	(-) / +	+	+	n/a	n/a	n/a	n/a	n/a	n/a
Innovation and research	0	0	0	+	0 to +	n/a	n/a	n/a	n/a	n/a
Measure: Expanded Use of IT Systems										
Operating costs and conduct of business	(+)	(+)	+	- / 0	- to 0	n/a	n/a	n/a	n/a	n/a
Administrative costs on businesses	+ / ++	+ / ++	++	-	n/a	n/a	n/a	n/a	n/a	n/a
Competitiveness, trade and investment flows	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a	+ / ++
Competition in the internal market	(-) / +	(-) / +	+	+	n/a	n/a	n/a	n/a	n/a	n/a
Innovation and research	0	0	0	+	0 to ++	n/a	n/a	n/a	n/a	n/a

Table A2.52: Impacts: Use of IT Systems (Measure I)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Inclusion of Database of Construction Products										
Operating costs and conduct of business	- to 0	- to 0	- to 0	+	(--) to ++	(--)	n/a	n/a	n/a	- to 0
Administrative costs on businesses	- to 0	- to 0	- to 0	+	--		n/a	n/a	n/a	- to 0
Competitiveness, trade and investment flows	- to 0	- to 0	0	n/a	n/a	n/a	n/a	n/a	n/a	0
Competition in the internal market	- to 0	- to 0	0	0	n/a	n/a	n/a	n/a	n/a	n/a
Innovation and research	- to 0	- to 0	- to 0	0	+	n/a	n/a	n/a	n/a	n/a

Key:

---	implementation of Measure may have major negative impact (>30% change)
--	implementation of Measure may have significant negative impact (>10% change)
-	implementation of Measure may have slight negative impact (<10% change)
0	implementation of Measure may have no/negligible impact
+	implementation of Measure may have a slight positive impact (<10% change)
++	implementation of Measure may have a significant positive impact (>10% change)
+++	implementation of Measure may have a major positive impact (>30% change)
(+)/(-)	potential slight positive/slight negative impact due to uncertainties on actual impact

A2.12 Market Surveillance and Accreditation of Notified Bodies (Measure J)

A2.12.1 The Problems

The consultation responses, the PRC report, position papers from industry, etc. all highlight a number of issues related to the lack of confidence in and acceptance of CE marking. There are also problems in terms of inconsistency between different Notified Bodies (NBs) and a lack of trust in the results. Furthermore, some NBs are considered to lack competence. Such issues are reported here in association with the CPD, but it is clear from the proposal for a Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007) 37 final, 2007/0029 (COD) that this is a much more widespread problem. For example, the proposal for a Regulation (in the explanatory memorandum) states that:

- "*experience in the implementation of all this legislation* [Community technical legislation ensuring the free circulation of products] *has shown, however:*

  - *a certain risk of distortion to competition because of differing practices in the designation of conformity assessment bodies by national authorities and unequal treatment in the case of non complying or dangerous products on the market, through very different national market surveillance infrastructures, rules and means;*

  - *a certain lack of trust in conformity marking;*

  - *a certain lack of coherence in its implementation and enforcement*".

Furthermore, the Commission's impact assessment[80] identifies that technical harmonisation has contributed to eliminating some barriers to trade, but that there are still weaknesses which prevent consumers and enterprises from fully exploiting the benefits of the internal market. These include:

- burdensome, uncertain and/or inconsistent rules;
- problems with uniform enforcement of the legislation;
- the image and value of CE marking; and
- lack of confidence in conformity assessment bodies.

The impact assessment goes on to note that "*while some of the problems ... are specific to the New Approach directive, most of them concern the whole framework of free movement of goods*".

More specific issues identified in the impact assessment include:

[80] Commission Staff Working Document (2007): **Executive Summary of the Impact Assessment on the proposal for a Regulation…setting out the requirements for accreditation and market surveillance relating to the marketing of products**, SEC(2007) 174, 14 February 2007.

- not all Member States identify which of their conformity assessment bodies fulfil the necessary (minimum) criteria;
- NBs are in competition with each other, which is a benefit for manufacturers but can lead to some NBs cutting corners to provide competitive prices to attract or keep customers; and
- different NBs may take different approaches meaning that the same product may be assessed in a completely different way by two different NBs. This may be as a result of unfair practices or less rigorous implementation of costly procedures such that certificates can be issued at significantly lower costs. This can result in a distortion of competition within the manufacturing industry.

These issues are reflected in the responses to the Commission's consultation on the CPD, with typical comments being:

- 'market surveillance should be enhanced to foster trust in the system';
- 'the directive should address market surveillance more effectively. Currently, to police or challenge CE marking, aggrieved parties e.g. manufacturers have to go to court which is highly unlikely to happen';
- 'the current arrangements for notifying bodies allows a large number of diverse organisations to compete for the available business with virtually no effective way of controlling their activities. While responsible organisations are co-operating to develop and apply equivalent procedures the remainder do not add to the confidence in products and it would be better to revert to a system which relies on manufacturer's declarations and market surveillance to discipline rogue manufacturers';
- 'often, Notified Bodies are not recognised across borders, and manufacturers have to go to several Notified Bodies, one for each country where they want to sell. This clearly generates extra costs'; and
- 'different approval procedures are leading to unequal position of different Notified Bodies on the market, and the states with simpler and faster notifying procedure give fairly high advantage to their Notified Bodies on the market of services'.

A2.12.2 The Measure

Measure J links to the proposed approaches on the Community market surveillance framework and European accreditation infrastructure included in the Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007) 37 final, 2007/0029 (COD). This states that:

"*The Regulation should:*

- *organise accreditation at the national and European levels; irrespective of the different sectors of activity in which accreditation is used. The proposal insists on the public authority nature of accreditation in order for it to be the least level of public authority control, and sets the framework for the recognition of the existing organisation European co-operation for Accreditation (EA) so as to ensure the proper functioning of a rigorous peer evaluation.*

– *ensure, when not foreseen in other applicable Community legislation, that national authorities are given equivalent means of intervention and the necessary authority to intervene in the market to be able to restrict or withdraw non compliant…products. It ensures cooperation as between the internal authorities and the customs authorities controlling products entering the market from third countries and sets the framework for the exchange of information between national authorities and cooperation between them in the case of products on the market of more than one Member State*".

The proposal, therefore, is to continue with the decentralised competence assessment and monitoring under the responsibility of each Member State, but to introduce a legal framework for accreditation and co-ordination at EU level. The existing organisation of EA is to be used for this accreditation and co-ordinating role. This will provide EA with public recognition and the authority it currently lacks. It will also ensure that all Member States use accreditation as a means to notification (Commission Staff Working Document, 2007).

To ensure an equivalent level of market surveillance throughout the Community, the proposal is for a common legal framework, which allows flexibility of organisation at the national level, while establishing specific minimum requirements for operation and organisation. This framework foresees the extension of existing co-operation mechanisms, improves the traceability of products, and clarifies the obligations for all economic operators (Commission Staff Working Document, 2007).

A2.11.3 Implication of Market Surveillance and Accreditation of Notified Bodies

The Commission's impact assessment on the proposal for a Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products highlights the following key benefits of the accreditation infrastructure and market surveillance framework:

- use of the EA, an already established infrastructure, "*represents a more efficient use of resources, will lead to fewer additional costs and resource requirements and will have the advantage of building upon the vast depth of existing knowledge and experience acquired over time. It also successfully combines the two levels involved – national and European. This measure respects the subsidiarity principle, whilst reinforcing the existing structures*"; and

- the proposed market surveillance framework "*seeks to build upon the existing national structures. Modification costs will only arise where an existing national market surveillance system does not yet reach the general standard. Enhanced information and co-operation obligations will require additional resources but this will be offset by significant savings from more effective controls and efficient pooling of resources*".

The measure is predicted (in the Commission's impact assessment) to result in significant cost savings in comparison with the present non-coordinated costs of national market surveillance and savings of 90% of the costs if all safeguard clause cases were to lead to inter comparison testing (potentially as much as €9 million).

Costs of ensuring proper operation of the European peer evaluation system are estimated at €75,000 (Commission Staff Working Document, 2007).

Tables A2.53 to A2.58 provide the results of the impact assessment. Note that it is not clear that the proposed Regulation can also be extended to cover Approval Bodies. This is one of the reasons why measures to strengthen their competence were included in Measure F1. Thus, although the assessment presented below mainly addresses the impacts in relation to accreditation of Notified Bodies, because the Approval Bodies are linked to the Notified Bodies in reality they are also considered.

Table A2.53: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
European Accreditation Infrastructure and Community Market Surveillance Framework			
Operating costs and conduct of business	Manufacturers will benefit from the accreditation infrastructure and market surveillance through increased certainty and confidence in the results of testing and, hence, in CE marking. There may be some additional costs passed on from notified and bodies (from their costs of having to meet the accreditation requirements), but these should be small in comparison with the benefits. There may also be a move towards more consistent use of a common technical language across MS to ensure consistency, which will be of significant benefit to manufacturers in terms of understanding what is required in different MS and reducing the potential for multiple testing.		
Administrative costs on businesses	There will be no administrative costs for manufacturers from this measure.		
Competitiveness, trade and investment flows	Greater confidence in CE marking may have benefits for EU firms over their non-EU rivals (at least in the short-term). Over the longer-term it is likely that impacts will be equal onto all firms, thus there would be no competitiveness advantage. The perception that products placed onto the market by non-EU firms are of lower quality would be addressed, such that manufacturers no longer perceive unfair competition.		
Competition in the internal market	Increased confidence in CE marking may increase competition as national marks become less significant. This is likely to affect all manufacturers, although some sectors/markets may be more affected than others.		
Innovation and research	No impacts expected.		
Specific regions or sectors	Products currently relying on national marks (due to a lack of confidence in CE marking) may see greater competition, the same will be true of those MS where national marks are still used but which would be superseded by CE marking (i.e. where the national mark involves declaration of the same characteristics, although perhaps in a different way).		

Table A2.54: Economic Impacts: PROFESSIONAL USERS	
European Accreditation Infrastructure and Community Market Surveillance Framework	
Operating costs and conduct of business	Confidence in CE marking will be of significant benefit to professional users as it will allow them to identify products that are fit for use from a wider range. This will increase choice and should help reduce costs.
Administrative costs on businesses	There may be some short-term costs in terms of familiarisation with the meaning of CE marking and some of the characteristics declared (mainly where these differ from the national approach), but these impacts are expected to be negligible.
Innovation and research	Professional users will be able to research products that they may be able to use such that is should stimulate research into different product types, etc.

Table A2.55: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
European Accreditation Infrastructure and Community Market Surveillance Framework		
	Member States	**European Commission**
Operating costs and conduct of business	Costs associated with changing the way that market surveillance and accreditation are carried out to be in line with the community approaches. A common approach will allow MS to accrue benefits from shared information, etc. and should facilitate market surveillance.	The impact assessment identifies only minor costs associated with this measure, with Commission having a overseeing role, but with much of the power delegated to the European co-operation for Accreditation and to Member States.
Administrative costs on businesses	MS will need to familiarise themselves with the new requirements and modify their approaches accordingly. This is likely to require meetings and training.	The appropriate functioning of market surveillance and accreditation may reduce the number of complaints that the Commission has to deal with.
Innovation and research	Potential for MS to use the new systems to identify where there may be particular problems (e.g. with specific product types or specific testing bodies). This could improve resource efficiency.	No impacts expected.
Specific regions or sectors	Those countries that do not undertake any surveillance at present or do not utilise accreditation of conformity assessment bodies (i.e. Notified Bodies) will face greater costs - this is to be expected to provide the required levels of surveillance and accreditation.	No impacts expected.

Table A2.56: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
European Accreditation Infrastructure and Community Market Surveillance Framework			
Operating costs and conduct of business	Stricter control on member associations and bodies may have some short-term impacts, but these are expected to be negligible.	There may an increased cost for Notified Bodies to comply with the requirements of the accreditation infrastructure. These may be compensated for by increased testing under market surveillance (where MS use NBs to undertake the testing). Some NBs may be forced to close if they are unable to meet the accreditation requirements – this may be significant for small companies if the costs of showing compliance with the requirements are significant (this is unlikely to be the case, however, given the cost estimates suggested in the Commission's impact assessment).	
Administrative costs on businesses	No impacts expected.	NBs will need to provide data showing that they comply with the accreditation requirements (where they are not already doing so). This may require the production of new data (or adjustment of existing data), inspecting and checking costs and submitting information to the national accreditation body.	
Competitiveness, trade and investment flows	No impacts expected.	There will be a level playing field for all NBs such that 'corner cutting' on test procedures will not be possible. This should make those NBs and ABs already testing 'correctly' to become more competitive against those NBs/ABs that may be less scrupulous.	
Competition in the internal market	No impacts expected.	Consistency across the EU is likely to increase competition between NBs. This may force NBs to reduce their costs and, hence, their incomes may be more difficult to sustain.	

Table A2.56: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Innovation and research	No impacts expected.	There will be incentives for NBs to provide innovative approaches to keep costs of testing low, although the potential for innovation is likely to be limited according to what is required by the standards.	
Specific regions or sectors	No impacts expected.	There will be greater impacts on those NBs that may not be following the rules at present. As the measure is implemented, some NBs may be forced to close which may affect manufacturer choice related to testing of some product types in some MS.	

Table A2.57: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
European Accreditation Infrastructure and Community Market Surveillance Framework	
Competitiveness, trade and investment flows	Greater confidence in CE marking may have benefits for non-EU firms as the perception that products placed onto the market by non-EU firms are of lower quality would be addressed. This may increase the market(s) available to non-EU firms. The competitiveness of non-EU firms compared with EU firms is unlikely to be significantly affected.

Table A2.58: Impacts: European Accreditation Infrastructure and Community Market Surveillance Framework (Measure J)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs****	
Measure: European Accreditation Infrastructure and Community Market Surveillance Framework										
Operating costs and conduct of business	++ / +++	++ / +++	++ / +++	++	- / +	- / 0	- / 0	- / ---	?	N/a
Administrative costs on businesses	0	0	0	- to 0	-	+	0	- / --	?	N/a
Competitiveness, trade and investment flows	+	+	+	N/a	N/a	Na	N/a	+ / ++	?	++
Competition in the internal market	-	-	-	N/a	N/a	N/a	N/a	- / --	?	N/a
Innovation and research	0	0	0	+ / ++	+	N/a	N/a	0 / +	?	N/a

** Note that ABs are linked to the NBs so may also be affected, even though the proposed Regulation may not strictly speaking apply to them.

Key:

--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

A2.13 Stronger EC Control over Harmonisation of Standards (Measure K)

A2.13.1 The Problems

There are problems that occur where the standard goes beyond the requirement of the mandate as this increases the testing requirements and, hence, the costs of compliance. This occurs where the CEN Technical Committees can propose that additional characteristics or requirements be included in the standard, or where the level of AoC is increased to beyond that included in the mandates. There are already checks and balances in place to reduce the potential that this can occur, e.g. with stakeholder (industry) involvement in the standard setting process. However, it is not always possible to involve all stakeholders (particularly SMEs) such that all interests may not be represented. In addition, the EC has little resources to discover where there may be problems.

The EC is also limited in when it can act, with Article 7.3 stating that once "*the standards have been established by the European standards organizations, the Commission shall publish the references of the standards in the 'C series of the Official Journal of the European Communities*" (emphasis added). This means that the standard has to be published and then withdrawn. This creates considerable administrative burden and delays the eventual publication of an agreed, appropriate hEN.

Box A2.8 highlights some of the problems raised with the standards, etc. from responses to the Commission's consultation exercise.

Box A2.8: Case Studies – Problems Raised with Harmonised Standards

If one considers the now harmonised product standards completed according to the performance concept, one will determine very quickly that strictly speaking most of the European standards are not product standards at all. As a rule most of the European harmonised product standards describe performance values and properties including the appropriate test methods in a completely isolated form and without reference to the structural application. The allocation of the construction product, for example masonry bricks, to the different performance areas (fire, sound, thermal properties, structural stability, etc.) is missing as information in the European standards and is left to the user.

Consultation response from Association of the German Brick and Tile Industry

National legislation has to be implemented into harmonised standards word by word. This led to additional classes of products. In this case should be found a way to avoid the implementation word by word. Target is to improve the the harmonisation inbetween the countries.

The formal part of the implementation of a harmonised standard should be shortened from our point of view whereupon a national reaction should be possible earlier (i.e. after the publishing of the standardisation institutes) and not only after the publication in the EOJ.

Further on, the position of the CEN TCs has to be strengthened to allow reactions during the voting and publication process. This is because we have had already existing problems during this above mentioned process. It has to be stated that the guidance rules for TCs are changing during the elaboration of the harmonised standards. This is hindering (and slowing down) the standardisation processes.

Consultation response from ANFACESA (Spanish Association of Sanitary Appliances Manufacturers)

Box A2.8: Case Studies – Problems Raised with Harmonised Standards

The problem with using harmonised standards is that most standards users are confused over the Annex Z, what this entails and how it is interpreted. This has come about because of the drive by the EC and CEN to introduce harmonised standards, without due consideration to individual materials. Thus guidelines used have been very general guidelines which have tried to encompass all "construction products" and, as such, often need to be "interpreted" to apply to specific materials and standards. This had led to situations where different CEN consultants have interpreted things in different ways.

The rigid application of the CEN guidelines has also meant that the Standards are more complicated than they need to be, since the need for interpretation and clarification, coupled with a general lack of understanding by the individual standardisers concerned, has led to documents being produced with the CEN example for CE marking (related to suspended ceilings) being inserted word-for-word into other standards where specific parts are not relevant. In such cases it has been left to the users of the Standards to interpret this part of the document and when they try to do so, they invariably encounter guideline documents written in "Eurospeak", rather than in clear English, which themselves are almost impossible to decipher and understand. It is thus hardly surprising that such Standards are identified as over-complicated and difficult to use and that users may prefer to employ more straightforward alternatives. We will never get things to move forward until the whole matter of Standards and documentation is simplified and presented in a way that the average person using the Standard can easily understand.

Consultation response from Corus Tubes (UK)

We find many of the harmonised standards unnecessarily complex. It is difficult to comprehend what they are saying when one is on site and away from a reference library.

The harmonised standards take care of most of the regulatory attributes, but client attributes ["voluntary" attributes] are, by and large, not being considered by CEN. As a result the industry is being left with a set of inadequate standards and each national standards bodies are developing their own sets of add-on standards.

Consultation response from the Royal Institution of Chartered Surveyors (UK)

Unfortunately, the harmonised standard currently applicable to power-operated doors, EN 13241-1, is not clear enough and even misleading for the installation of drives and doors from different manufacturers. This has created a situation of different conformity assessment procedures in the different Member States. In addition, an (in our opinion) unnecessary burden has been created for an installer of drives and doors from different manufacturers, who becomes a manufacturer in terms of the CPD. Consequently, economic strain is imposed on installers or assemblers, which are mostly SMEs.

Consultation response from Somfy GmbH (Germany)

A2.13.2 The Measure

Measure K would increase the grounds for the Commission to refuse publication of an harmonised hEN. Grounds for refusal would be extended to include issues that would affect the extent to which the objective of the CPD could be met. Thus, inclusion within the standard of excessive testing requirements, requirements that go beyond the objective of the CPD, additional characteristics not required in any MS or standards based on composition rather than performance (giving rise to competitiveness issues) could form the basis for the EC not publishing an hEN. This may require changes to Article 5.1 to cover all standards that are problematic because they are not in accordance with the mandate. Furthermore, the measure would revise the wording of

Article 7.3 such that it reads '*may* publish' rather than '*shall* publish'. Note though that this measure needs to be verified in terms of the framework between the EC and CEN.

A2.13.3 Implications of Stronger EU Control over Harmonisation of Standards

Tables A2.59 to A2.63 discuss the implications of the measures against the economic impact categories as set out in the European Commission's Impact Assessment Guidelines. Table A2.64 provides an indication of whether the overall impact of the measure, for each stakeholder, is expected to be negative (-) and result in net costs, or positive (+) and result in net benefits.

Table A2.59: Economic Impacts: MANUFACTURERS			
Impact Category	**Micro/Craft**	**SMEs**	**Large**
Stronger EC Control over Harmonisation of Standards			
Operating costs and conduct of business	Potential to reduce compliance costs as testing requirements are linked only to the objective of the CPD and avoid potential that specification writers can include additional requirements. The benefits may be (relatively) greater for micro/craft businesses and SMEs than for the larger manufacturers.		
Administrative costs on businesses	There will be a need for familiarisation with any new/revised standards as would occur under the baseline, but the potential for complaints, etc. should be reduced.		
Competitiveness, trade and investment flows	Reduction in (perceived) over-specification of standards and ETAs should reduce the cost burden. This may benefit the competitiveness of micro/craft business and SMEs more than larger companies (either EU or non-EU).		
Competition in the internal market	The reduction of costs associated with complying with the CPD as a result of a reduction in over-specification should aid competition by increasing the potential that micro/craft businesses and SMEs would be able to sell their products more widely on the internal market. There may be some short-term impacts on manufacturers if standards are not harmonised that could result in some barriers to trade for some products – however, these are expected to be limited. Conversely, there may be benefits where MS no longer require all of their requirements to be included allowing technical specifications to be agreed sooner.		There may be some short-term impacts on manufacturers if standards are not harmonised that could result in some barriers to trade for some products – however, these are expected to be limited. Conversely, there may be benefits where MS no longer require all of their requirements to be included allowing technical specifications to be agreed sooner. There may be an increase in competition from micro/craft businesses and SMEs.
Innovation and research	Reduction in requirements included in ETAs may assist innovation and research, by reducing the costs of complying before if it known if the product will sell. However, there will still be costs for innovative products, such that the benefits may be small from this measure alone.		
Specific regions or sectors	The magnitude of the benefits described above will depend on the extent to which the issues perceived with over-specified standards are relevant to the various product sectors.		

Table A2.60: Economic Impacts: PROFESSIONAL USERS	
Stronger EC Control over Harmonisation of Standards	
Operating costs and conduct of business	Reduced testing costs could be passed onto professional users, reducing their costs. Similarly, the reduced testing costs may open the market to smaller firms such that product choice could increase.
Administrative costs on businesses	Administrative costs may increase if professional users need to verify if they are able to use a 'new' product but these are likely to be outweighed by cost savings that can be made in terms of product price.

Table A2.61: Economic Impacts: PUBLIC SECTOR ORGANISATIONS		
Stronger EC Control over Harmonisation of Standards		
	Member States	**European Commission**
Operating costs and conduct of business	MS may perceive increasing power of the Commission as a step to reducing their influence/input into the standards – although this may be minimised where the objective, scope, etc. of the CPD is made clear such that their concerns are also reduced.	EC's power to refuse to publish a standard would be increased such that the (perceived) controlling power of the standardisation bodies over implementation/compliance with the CPD would be reduced. The EC will also have to work closely with CEN and EOTA to avoid a breakdown in the working relationships between the organisations.
Administrative costs on businesses	Any reduction in the perceived need to influence the specification writers is likely to result in a reduction in administrative costs to MS (even if just in terms of a reduction in the number of meetings attended).	More time may need to be spent by the EC in reviewing proposed standards and assessing them against the CPD objective. This may relate more to a change in the administrative obligations rather than a reduction in costs, as such (although there may be a need for an increase in resources to undertake this task).

Table A2.62: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Stronger EC Control over Harmonisation of Standards			
Operating costs and conduct of business	CEN may experience a (perceived) loss of power and flexibility in how they write the technical specifications. Care is needed to avoid a breakdown in the relationship with the EC, particularly in the short-term. This is important to avoid the potential that many standards may not be harmonised, which would have knock-on impacts on manufacturers.	The potential for non-harmonisation of standards may mean that over-specification reduces over time, with knock-on reductions in income to NBs and ABs.	

Table A2.62: Economic Impacts: STANDARDISATION, NOTIFIED AND APPROVAL BODIES			
Impact Category	**CEN**	**NBs**	**ABs**
Administrative costs on businesses	There may be no change in the way that the technical specifications are written. The number of meetings and costs will depend on many factors, including whether MS still wish to include particular requirements, etc. CEN may be forced to play a pseudo-arbiter role between MS and the EC if standards are to be harmonised. This may increase their administrative costs (although the extent of any increase is very difficult to determine).	Administrative costs associated with lobbying the specification writers may diminish as the potential to include new test methods reduces. This may reduce costs if the overall income of NBs/ABs is reduced. This could affect the extent to which NBs are involved in standard setting and with the GNB, which could have negative impacts.	

Table A2.63: Economic Impacts: INTERNATIONAL STAKEHOLDERS	
Stronger EC Control over Harmonisation of Standards	
Competitiveness, trade and investment flows	Reduction in (perceived) over-specification of standards and ETAs should reduce the cost burden. This may benefit the competitiveness of micro/craft business and SMEs more than larger companies (either EU or non-EU), such that the competitiveness of non-EU firms may be slightly reduced in comparison with EU-based micro/craft businesses and SMEs.

Table A2.64: Impacts: Stronger EC Control over Harmonisation of Standards (Measure K)										
Impact	**Stakeholder**									
	Manufacturers			**Professional Users**	**Public Sector Organisations**		**Standardisation, Notified & Approval Bodies**			**International Stakeholders**
	Micro/ Craft	**SMEs**	**Large**		**MS**	**EC**	**CEN**	**NBs**	**ABs**	
Measure: Stronger EU Control over Harmonisation of Standards										
Competitiveness, trade and investment flows	+	+	0	N/a	N/a	N/a	N/a	N/a	N/a	- to 0
Competition in the internal market	++	++	-	N/a	N/a	N/a	N/a	N/a	N/a	N/a
Operating costs and conduct of business	++	++	+	+	- to 0	++	--	--	--	N/a
Administrative costs on businesses	+	+	+	0	0 to +	- to +	-	-	-	N/a
Innovation and research	+	+	+	N/a	N/a	N/a	N/a	N/a	N/a	N/a

Key:
--- implementation of Measure may have major negative impact (>30% change)
-- implementation of Measure may have significant negative impact (>10% change)
- implementation of Measure may have slight negative impact (<10% change)
0 implementation of Measure may have no/negligible impact
+ implementation of Measure may have a slight positive impact (<10% change)
++ implementation of Measure may have a significant positive impact (>10% change)
+++ implementation of Measure may have a major positive impact (>30% change)
(+)/(-) potential slight positive/slight negative impact due to uncertainties on actual impact

ANNEX 3:
SCREENING OF IMPACT ASSESSMENT CATEGORIES

ANNEX 3: SCREENING OF IMPACT ASSESSMENT CATEGORIES

Table A3.1: Economic impacts		**Impact included?**
Competitiveness, trade and investment flows	Does the option have an impact on the competitive position of EU firms in comparison with their non-EU rivals? Does it provoke cross-border investment flows (including relocation of economic activity)? Are the proposed actions necessary to correct undesirable outcomes of market processes in European markets?	Yes
Competition in the internal market	Does the option affect EU competition policy and the functioning of the internal market? For example, will it lead to a reduction in consumer choice, higher prices due to less competition, the creation of barriers for new suppliers and service providers, the facilitation of anti-competitive behaviour or emergence of monopolies, market segmentation, etc?	Yes
Operating costs and conduct of business	Will it impose additional adjustment, compliance or transaction costs on businesses? Does the option affect the cost or availability of essential inputs (raw materials, machinery, labour, energy, etc.)? Does it affect access to finance? Does it impact on the investment cycle? Will it entail the withdrawal of certain products from the market? Is the marketing of products limited or prohibited? Will it entail stricter regulation of the conduct of a particular business? Will it directly lead to the closing down of businesses? Are some products or businesses treated differently from others in a comparable situation?	Yes
Administrative costs on businesses	Does the option impose additional administrative requirements on businesses or increase administrative complexity? Do these costs weigh in relative terms heavily on SMEs (Small and Medium Enterprises)?	Yes
Property rights	Are property rights affected (land, movable property, tangible/intangible assets)? Is acquisition, sale or use of property rights limited? Or will there be a complete loss of property?	No, included under innovation and research
Innovation and research	Does the option stimulate or hinder research and development? Does it facilitate the introduction and dissemination of new production methods, technologies and products? Does it affect intellectual property rights (patents, trademarks, copyright, other know-how rights)? Does it promote or limit academic or industrial research? Does it promote greater resource efficiency?	Yes
Consumers and households	Does the option affect the prices consumers pay? Does it impact on consumers' ability to benefit from the internal market? Does it have an impact on the quality and availability of the goods/services they buy, and on consumer choice? (cf. in particular non-existing and incomplete markets – see Annex 2) Does it affect consumer information and protection? Does it have significant consequences for the financial situation of individuals / households, both immediately and in the long run? Does it affect the economic protection of the family and of children?	No, as CPD not intended for consumer but professional users
Specific regions or sectors	Does the option have significant effects on certain sectors? Will it have a specific impact on certain regions, for instance in terms of jobs created or lost? Does it have specific consequences for SMEs?	Yes

Table A3.1: Economic impacts		**Impact included?**
Third countries and international relations	Does the option affect EU trade policy and its international obligations, including in the WTO? Does it affect EU foreign policy and EU/EC development policy? Does the option affect third countries with which the EU has preferential trade arrangements? Does the option affect developing, least developed and middle income countries?	Yes
Public authorities	Does the option have budgetary consequences for public authorities at different levels of government, both immediately and in the long run? Does the option require significant establishing new or restructuring existing public authorities?	Yes
The macroeconomic environment	What are the overall consequences of the option for economic growth and employment? Does it contribute to improving the conditions for investment and for the proper functioning of markets? Does the option have direct or indirect inflationary consequences?	Yes

Environmental impacts		**Impact included?**
Air quality	Does the option have an effect on emissions of acidifying, eutrophying, photochemical or harmful air pollutants that might affect human health, damage crops or buildings or lead to deterioration in the environment (polluted soil or rivers etc)?	No; the main objective of the CPD is to establish an internal market through technical harmonisation. The provisions included within the Directive or under the alternative options do not, therefore, in themselves have environmental implications
Water quality and resources	Does the option decrease or increase the quality or quantity of freshwater and groundwater? Does it raise or lower the quality of waters in coastal and marine areas (e.g. through discharges of sewage, nutrients, oil, heavy metals, and other pollutants)? Does it affect drinking water resources?	
Soil quality or resources	Does the option affect the acidification, contamination or salinity of soil, and soil erosion rates? Does it lead to loss of available soil (e.g. through building or construction works) or increase the amount of usable soil (e.g. through land decontamination)?	
The climate	Does the option affect the emission of ozone-depleting substances (CFCs, HCFCs, etc.) and greenhouse gases (e.g. carbon dioxide, methane etc) into the atmosphere?	
Renewable or non-renewable resources	Does the option affect the use of renewable resources (freshwater, fish) more quickly than they can regenerate? Does it reduce or increase use of non-renewable resources (groundwater, minerals etc)?	
Biodiversity, flora, fauna and landscapes	Does the option reduce the number of species/varieties/races in any area (i.e. reduce biological diversity) or increase the range of species (e.g. by promoting conservation)? Does it affect protected or endangered species or their habitats or ecologically sensitive areas? Does it split the landscape into smaller areas or in other ways affect migration routes, ecological corridors or buffer zones? Does the option affect the scenic value of protected landscape?	
Land use	Does the option have the effect of bringing new areas of land ('greenfields') into use for the first time? Does it affect land designated as sensitive for ecological reasons? Does it lead to a change in land use (for example, the divide between rural and urban, or change in type of agriculture)?	

Environmental impacts		**Impact included?**
Waste production / generation / recycling	Does the option affect waste production (solid, urban, agricultural, industrial, mining, radioactive or toxic waste) or how waste is treated, disposed of or recycled?	
The likelihood or scale of environmental risks	Does the option affect the likelihood or prevention of fire, explosions, breakdowns, accidents and accidental emissions? Does it affect the risk of unauthorised or unintentional dissemination of environmentally alien or genetically modified organisms? Does it increase or decrease the likelihood of natural disasters?	
Mobility (transport modes) and the use of energy	Does the option increase or decrease consumption of energy and production of heat? Will it increase or decrease the demand for transport (passenger or freight), or influence its modal split? Does it increase or decrease vehicle emissions?	
The environmental consequences of firms' activities	Does the option lead to changes in natural resource inputs required per output? Will it lead to production becoming more or less energy intensive? Does the option make environmentally un/friendly goods and services cheaper or more expensive through changes in taxation, certification, product, design rules, procurement rules etc.? Does the option promote or restrict environmentally un/friendly goods and services through changes in the rules on capital investments, loans, insurance services etc? Will it lead to businesses becoming more or less polluting through changes in the way in which they operate?	
Animal and plant health, food and feed safety	Does the option have an impact on health of animals and plants? Does the option affect animal welfare (i.e. humane treatment of animals)? Does the option affect the safety of food and feed?	

Social Impacts		**Impact included?**
Employment and labour markets	Does the option facilitate new job creation? Does it lead directly to a loss of jobs? Does it have specific negative consequences for particular professions, groups of workers, or self-employed persons? Does it affect the demand for labour? Does it have an impact on the functioning of the labour market?	Partly; demand for labour included under economic impacts (i.e. macroeconomic environment)

Social Impacts		**Impact included?**
Standards and rights related to job quality	Does the option impact on job quality? Does the option affect the access of workers or job-seekers to vocational or continuous training? Will it affect workers' health, safety and dignity? Does the option directly or indirectly affect workers' existing rights and obligations, in particular as regards information and consultation within their undertaking and protection against dismissal? Does it affect the protection of young people at work? Does it directly or indirectly affect employers' existing rights and obligations? Does it bring about minimum employment standards across the EU? Does the option facilitate or restrict restructuring, adaptation to change and the use of technological innovations in the workplace?	No; as CPD not intended for workers' protection
Social inclusion and protection of particular groups	Does the option affect access to the labour market or transitions into/out of the labour market? Does it lead directly or indirectly to greater in/equality? Does it affect equal access to services and goods? Does it affect access to placement services or to services of general economic interest? Does the option make the public better informed about a particular issue? Does the option affect specific groups of individuals, firms, localities, the most vulnerable, the most at risk of poverty, more than others? Does the option significantly affect third country nationals, children, women, disabled people, the unemployed, the elderly, political parties or civic organisations, churches, religious and non-confessional organisations, or ethnic, linguistic and religious minorities, asylum seekers?	No; as CPD not addressed to any particular groups
Equality of treatment and opportunities, non -discrimination	Does the option affect equal treatment and equal opportunities for all? Does the option affect gender equality? Does the option entail any different treatment of groups or individuals directly on grounds of e.g. gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation? Or could it lead to indirect discrimination?	No
Private and family life, personal data	Does the option affect the privacy of individuals (including their home and communications) or their right to move freely within the EU? Does it affect family life or the legal, economic or social protection of the family? Does the option involve the processing of personal data or the concerned individual's right of access to personal data?	No; category of no relevance to CPD
Crime, Terrorism and Security	Does the option improve or hinder security, crime or terrorism? Does the option affect the criminal's chances of detection or his/her potential gain from the crime? Is the option likely to increase the number of criminal acts? Does it affect law enforcement capacity? Will it have an impact on the balance between security interests and the rights of suspects? Does it affect the rights of victims of crime and witnesses?	No; category of no relevance to CPD

Social Impacts		**Impact included?**
Governance, participation, good administration, access to justice, media and ethics	Does the option affect the involvement of stakeholders in issues of governance as provided for in the Treaty and the new governance approach? Are all actors and stakeholders treated on an equal footing, with due respect for their diversity? Does the option impact on cultural and linguistic diversity? Does it affect the autonomy of the social partners in the areas for which they are competent? Does it, for example, affect the right of collective bargaining at any level or the right to take collective action? Does the implementation of the proposed measures affect public institutions and administrations, for example in regard to their responsibilities? Will the option affect the individual's rights and relations with the public administration? Does it affect the individual's access to justice? Does the option make the public better informed about a particular issue? Does it affect the public's access to information? Does the option affect the media, media pluralism and freedom of expression? Does the option raise (bio)ethical issues (cloning, use of human body or its parts for financial gain, genetic research/testing; use of genetic information)?	No; not of direct relevance to CPD
Access to and effects on social protection, health and educational systems	Does the option have an impact on services in terms of their quality and access to them? Does it have an effect on the education and mobility of workers (health, education, etc.)? Does the option affect the access of individuals to public/private education or vocational and continuing training? Does it affect the cross-border provision of services, referrals across borders and co-operation in border regions? Does the option affect the financing / organisation / access to social, health and education systems (including vocational training)? Does it affect universities and academic freedom / self-governance?	No; category of no relevance to CPD

ANNEX 4:
NET ADMINISTRATIVE COSTS MODEL INFORMATION

A4.1 INTRODUCTION

The calculation of net administrative costs is based on the model set out in Annex 10 of the EC document 'Annexes to Impact Assessment Guidelines'. This model is intended to assess the net cost of information obligations imposed by EU legislation, where net costs are equal to the costs introduced by a proposal if adopted, minus the costs it would eliminate at EU and/or national level. Administrative costs are identified as 'the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties'. The CPD is intended mainly to provide information on products to professional users (designers, contractors, architects, etc.), therefore, impacts on citizens are not considered relevant and are not assessed in quantitative or money terms.

Impacts are identified as being either recurring or one-off, with the timing of costs (and cost savings) noted wherever possible. In many cases, the costs/savings assessed include operating costs as well as administrative costs, although the approach to estimating both types of costs is the same. In line with Annex 10 of the Impact Assessment Guidelines, average costs are used (although a range from low to high is also used to illustrate uncertainty in the data). In many cases, the data that are readily available for use in this study are limited such that 'overall' costs only can be used; there is little or no readily available data on the different cost parameters, hourly rates of pay, time required, etc. This minimises the extent to which the costs can be broken down into the elements of average cost per required action, total number of actions per year and time required per action. As a result, it becomes difficult to follow Step 5 of Annex 10 of the 'Annexes to the Impact Assessment Guidelines' and to complete the EU cost model report Excel sheet. However, hourly rates and estimated number of hours have been used to estimate some of the costs and savings (e.g. number of hours required for the European Commission to deal with complaints, familiarisation costs for manufacturers following revision of the CPD and its particular implications, costs for manufacturers filling forms and tables for CE marking and associated labelling requirements).

In line with the recommendation in Annex 10 that the effort of assessment is proportionate to the scale of the administrative costs, the focus of the assessment for the CPD is on those impacts that are considered most significant, i.e. those rated as being of major positive or major negative impact. All assumptions made during the estimation of money costs and benefits (cost savings) are included for transparency and auditability. Where number of products, firms or other entities affected and cost/cost saving figures have been used, the source and ranges (low to high) used are also included.

A4.2 NET ADMINISTRATIVE COST MODEL INFORMATION

Box 12: Types of Obligation (from Annex 10 of the Annexes to the Impact Assessment Guidelines)		
No.	**Obligation**	**Relevance to CPD, Example for CPD**
1	Notification of (specific) activities	Not relevant
2	Submission of (recurring) reports	Manufacturer providing information proving compliance for market surveillance
3	Information labelling for third parties	CE marking and associated labelling requirements
4	Non labelling information for third parties	Information related to ETA
5	Application for individual authorisation or exemption (i.e. authorisation required each time a particular task has to be carried out)	Application for CUAP
6	Application for general authorisation or exemption	Application for ETAG/ETA
7	Registration	Notification of notified bodies
8	Certification of products or processes	ITT, FPC costs
9	Inspection	Market surveillance
10	Co-operation with audits	Manufacturer assisting Notified Body with audits/sampling under AoC1+, 1 and 2+
11	Application for subsidy or grant	Not relevant
12	Other	Other obligations

Box 14: Types of Required Action (from Annex 10 of the Annexes to the Impact Assessment Guidelines)	
1	Familiarising with the information obligation
2	Training members and employees about the information obligations
3	Retrieving relevant information from existing data
4	Adjusting existing data
5	Producing new data
6	Designing information material (e.g. leaflet conception)
7	Filling forms and tables
8	Holding meetings (internal and external with an auditor, lawyer, etc.)
9	Inspecting and checking (including assistance to inspection by public authorities)
10	Copying (reproducing reports, producing labels or leaflets)
11	Submitting the information (sending it to a relevant authority, etc.)
12	Filing the information
13	Other