

Manufacturers Guideline to the Construction Product Regulation and its Implementation

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1 General / Introduction

1.1 The Objectives of the CPR

On 9 March 2011 the European Parliament and the Council of the European Union adopted the Regulation (EU) No 305/2011. The regulation was published on 4 April 2011 in the Official Journal of the European Union¹ and came into force 20 days later. Better known as the Construction Product Regulation (CPR), it lays down harmonised conditions for the marketing of construction products and consequently replaces the Council Directive 89/106/EEC² – the Construction Product Directive (CPD), which still forms the basis for marketing construction products on the common market. Building upon existing achievements, the CPR replaces the Construction Product Directive for the purpose of simplifying and clarifying the existing framework and improving the transparency and effectiveness.

The overall goal of the CPR is removing technical barriers to trade³ of construction products to achieve a proper functioning of the internal market in this field. Technical barriers existed and still exist due to different product & test standards as well as different systems for attestation and demonstration of conformity in the Member States for the same products. Key elements for removing existing technical barriers to trade are therefore harmonised technical specifications⁴, being either harmonised (product) standards or European Technical Assessments. As the necessary level of harmonisation of technical specifications cannot be effectively and efficiently achieved at national level it is justified to adopt measures at Union level⁵ which follow the principal of subsidiarity according to article 5 of the Treaty on the European Union⁶. Consequently the measures at Union level must not affect the exclusive competence of Member States to specify the requirements they deem necessary for achieving their national health, safety and protection goals. Rarely such requirements are defined at product level, in general they are defined at works level (e.g. a specific resistance to fire to ensure rescue and escape) but nonetheless do architects and engineers require corresponding product information to design the work accordingly. For this reason and for removing technical barriers to trade the CPR focuses on establishing harmonised rules on how to express the performance of construction products⁷ and on the use of CE marking.

1.2 The Meaning of CE

Unlike the other New Approach Directives the CE marking under the Construction Product Directive does not signify that constructions products fulfil the Essential Requirements, simply because the Essential Requirements address construction works and not construction products. Hence it does not signify that construction products bearing the CE mark are e. g. safe. While it is comprehensible that for construction products the CE marking cannot stand for compliance with the Essential Requirements, the CPD lacks clarity about the meaning of

¹ Official Journal L 88, 4.4.2011, p. 5

² Recital (8) of the CPR

³ Recital (6) of the CPR

⁴ Recital (10) of the CPR

⁵ Recital (58) of the CPR

⁶ Official Journal C 83, 30.3.2010

⁷ Article 1 of the CPR

the CE marking of construction products. Consequently the meaning of the CE marking has been a permanent cause for enquiry and interpretation, ever since the first construction products were CE marked.

The CPR puts an end to the uncertainties on the one hand by clearly stating that for construction products the CE marking has a different meaning⁸ compared to the general principles laid down in Regulation (EC) No 765/2008 and on the other hand by clearly describing this different meaning⁹: the CE marking under the CPR expresses conformity of the construction product with the declared performance in relation to the essential characteristics and its compliance with applicable requirements relating to Union harmonisation legislation. By means of the CE marking the manufacturer indicates that he takes the responsibility for this conformance and compliance. The CE marking shall be the only marking expressing this conformity as well as compliance. Member States cannot prohibit or impede the making available of CE marked construction products. Even more, Member States can also not prohibit or impede the use of a CE marked product in its territory or under its responsibility, as long as the declared performances correspond to their requirements - provided there are specific product requirements – for such use.

1.3 Basic Requirements for Construction Works & Essential Characteristics

The CPR considers that construction works as a whole must be fit for their intended use and must satisfy a series of basic requirements¹⁰. This has to be understood as a general principal and not a specific legal obligation resulting from the CPR. This understanding is founded in articles 4 and 5 of the Treaty on the European Union whereby “competences not conferred upon the Union in the Treaties remain with the Member States”¹¹. The CPR pays tribute to the fact that the legal competence for the design and execution of construction works has not been conferred to the European Union at the very beginning of its recitals¹² clarifying in particular, that it is not the intention of the Regulation to “affect the right of Member States to specify the requirements they deem necessary to ensure the protection of health, the environment and workers when using construction products” – implying that it is also the right of Member States not to specify requirements. Still the CPR lists and describes seven basic requirements for construction works (BWRs) that “must” be fulfilled:

- BWR 1: Mechanical resistance and stability
- BWR 2: Safety in case of fire
- BWR 3: Hygiene, health and the environment
- BWR 4: Safety and accessibility in use
- BWR 5: Protection against noise

⁸ Recital (30) of the CPR

⁹ Recital (33), article 8(2)-8(4) of the CPR

¹⁰ First paragraph of Annex I of the CPR

¹¹ Article of the „Common Provisions“

¹² Recitals (1) and (3)

BWR 6: Energy economy and heat retention

BWR 7: Sustainable use of natural resources

Despite recognising the Member States' sole powers for specifying requirements applying to construction works, the purpose of listing and describing these BWRs in the CPR is that legal requirements which apply to works – and remain in the competence of Member States – have a direct influence on the requirements of construction products¹³. This means, that in order to design and execute e.g. a building in such a way that it fulfils the national required minimum structural stability, architects, engineers and contractors need to know the strength of the products to be used. So in order to avoid or fight barriers to trade it is important to identify those product characteristics which need to be communicated for works to be designed and executed in accordance to the existing national requirements. To this the CPR uses the BWRs as auxiliary reference and introduces the term essential characteristics, which are "those characteristics of the construction product which relate to the basic requirements for construction works"¹⁴. This definition implies that products may have other, "non-essential" characteristics, which may nevertheless be important (e.g. the colour of a façade element), but are not of public legal concern and can therefore not be subject to legal barriers to trade. Hence the CPR and consequently the Declaration of Performance as well as the CE marking is strictly limited to the essential characteristics.

1.4 Placing vs. Making Available on the Market

The CPR introduces and defines the terms "placing on the market" and "making available on the market". These terms mark specific points in time in the supply of construction products and are repeatedly used throughout the CPR to assign i. a. responsibilities.

"Making available on the market means any supply of a construction product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge"¹⁵. Making available on the market in other words marks any moment in time, when the construction product's ownership changes.

"Placing on the market means the first making available of a construction product on the Union market"¹⁶. This means, that stipulations which apply to the moment a product is made available on the market also apply to the moment it is placed on the market, but not vice versa.

Consequently only manufacturers or importers can place a product on the market, whereas any other economic operator down the supply chain makes it available to the next economic operator or the final client. Under the CPR an "economic operator means the manufacturer, importer, distributor or authorised representative"¹⁷ of the manufacturer.

¹³ Recital (2)

¹⁴ Article 2(4) of the CPR

¹⁵ Article 2(16) of the CPR

¹⁶ Article 2(17) of the CPR

¹⁷ Article 2(18) of the CPR

1.5 Transitional Arrangements¹⁸

Although published and in force since April 2011 the greater part of the CPR articles, last but not least those relating to the obligations of the economic operators, apply only as of 1 July 2013. A co-existence period during which products may be placed on the market either under the CPD or the CPR is not foreseen. However, the European Commission and Member States have expressed that an anticipation of the CPR would be tolerated. Although neither the European Commission nor Member States have been specific about the tolerated period of anticipation, 1 January 2013 is generally being regarded as an appropriate start for anticipating the CPR but seemingly some manufacturers will start applying the CPR even earlier.

Construction products that are placed on the market by a manufacturer or importer in accordance with the CPD before 1 July 2013 are deemed to comply with the CPR. This means that economic operators which have been supplied with products from manufacturers or importers before 1 July 2013 in accordance with the Directive can distribute these even after 1 July 2013, when the Directive is fully replaced by the CPR, without further ado.

The CPR has no influence on the technical content of the methods for assessing the performances. Therefore type tests or type calculations do not need to be repeated as long as the test or calculation methods laid down resp. referred to in the harmonised product standards do not change. The same applies to the technical content/background of European Technical Approvals: Guidelines for European Technical Approvals that have been published before 1 July 2013 in accordance with the CPD may further be used as European Assessment Documents, also European Technical Approvals which have been issued before 1 July 2013 in accordance with the CPD can be used as European Technical Assessments until the validity of the approval expires.

Manufacturers can therefore draw up their Declarations of Performance for their products on the basis of certificates resp. declarations of conformity which have been issued before 1 July 2013.

2 Obligations and Responsibilities of the Economic Operators

2.1 Obligations and Responsibilities of Manufacturer

Manufacturers are natural or legal persons who manufacture construction products or have these manufactured and place them on the market under their name or trademark¹⁹. The obligations of manufacturers are laid down in detail in article 11 of the CPR.

As a general rule the manufacturer is obliged to draw up a Declaration of Performance (DoP) for his construction products before placing them on the market, provided the products are covered by a harmonised (product) standard or a European Technical Assessment (ETA) has been issued for them²⁰. The exceptions to this general rule are very few and to be found in article 5 of the CPR. Where the rule applies, the manufacturer (or his authorised

¹⁸ Article 66 of the CPR

¹⁹ Article 2(19)

²⁰ Recital (24), article 4(1)

representative) shall furthermore affix the CE marking to those construction products for which he has drawn up a Declaration of Performance.

The importance of the Declaration of Performance (DoP) in the context of the CPR is underlined by article 4(2) which states that product performance information which is related to the essential characteristics as defined in the applicable harmonised (product) standard or ETA may only be given in any (other) form (e.g. in technical or advertising brochures, on a website, etc.) if it is included and specified in the DoP. The importance of the CE marking is stressed by reference to article 30 of Regulation (EC) No 765/2008²¹ which states, that the CE marking shall be the only marking which attests the conformity of the product with the applicable requirements of the relevant Community harmonisation legislation providing for its affixing. Other markings than the CE markings may be used provided they help to improve the protection of the users of the construction product and they provide added information not covered by the CE marking²².

While the CE marking shall be affixed to the construction product or to a label attached to it or to the packaging or to the accompanying documents, the manufacturer can choose between two principal options of providing copies of the DoP to the economic partner or end user he delivers the products to. He may (actively) supply a copy of the DoP in paper form or by electronic means (fax, e-mail, on a data carrier, etc.)²³, yet may the recipient of the products insist on a paper copy²⁴. In contrast to this option the manufacture may instead passively supply a copy of the DoP by making it available on a website in accordance with conditions to be established by the European Commission²⁵.

For construction products which are considered a substance or a mixture according to Regulation (EC) No 1907/2006²⁶ (REACH) and for which according to article 31 of REACH the supplier has to provide a safety data sheet, this sheet has to be provided together with the DoP. Also in case of products which are considered articles according to REACH and contain substances of very high concern in a concentration above 0,1 %, the information required in accordance to article 33 of REACH shall be provided together with the DoP.²⁷ Supplying information with the DoP means, that the information according to REACH is not part of the DoP but is a separate document that may be attached to the DoP or supplied with it (at the same time) as a separate document. Manufacturers of such concerned construction products should consider this when making the choice for supplying the DoP (see above).

In addition to drawing up and supplying the DoP and affixing the CE marking, manufacturers shall ensure that the construction products which they make available on the market are accompanied by instructions and safety information²⁸. The CPR is not specific which type of instructions and safety information it refers to, but it may be interpreted as any information

²¹ Official Journal L 218, 13.8.2008, p. 30

²² Recital (33)

²³ Article 7(1)

²⁴ Article 7(2)

²⁵ Article 7(3)

²⁶ Official Journal L 396, 30.12.2006, p. 1

²⁷ Article 6(5)

²⁸ Article 11(6)

the manufacturer considers necessary to communicate for his products to be adequately and safely stored, transported and installed.

Except for the CE marking, the manufacturer is not free in choosing the language for providing afore mentioned information. As a general rule the information is to be supplied in the language of the Member State in which the products are made available, however particularity may exist do to the specific wording of the relevant articles and the specific legislation in the relevant Member State. According to the stipulation both of the CPR and REACH, the

- Declaration of Performance (DoP) shall be supplied in the language or the languages required by the Member State where the product is made available²⁹. While in most cases the DoP will only need to be supplied in one language, in some cases it may have to be provided in several languages.
- instructions and safety information according to article 11(6) of the CPR shall be supplied in a language determined by the Member State concerned which can be easily understood³⁰.
- REACH safety data sheets shall be supplied in an official language of the Member State(s) where the substance or mixture, which also happens to be a construction product under the CPR, is placed on the market, unless the Member State(s) concerned provide otherwise³¹. Due to a deviating definitions, “placing on the market” as defined by the REACH corresponds to “making available on the market” as defined by the CPR.

By drawing up the Declaration of Performance, the manufacturer assumes responsibility for the conformity of the construction products with any level or class of performance declared within the DoP³². As a basis for drawing up the DoP and assuming this responsibility he shall draw up technical documentation describing the relevant elements related to the system of assessment and verification of constancy of performance³³ (AVCP), which he must keep for a period of in general 10 years after the product has been placed on the market³⁴. The system of assessment and verification of constancy of performance is what is known under the CPD as the system of attestation of conformity (AoC). It has basically remained unchanged except for necessary adaptations of terms and a clearer description of the known systems 1+, 1, 2+, 3 and 4³⁵. As today under the CPD, the applicable AVCP system(s) are laid down in the harmonised (product) standards resp. the product specific ETA. All four systems have a factory production control in common, which shall be carried out and documented by the manufacturer³⁶.

By affixing the CE marking to his products the manufacturer indicates that he has drawn up a DoP for that product and that he takes the responsibility for its conformance with (each of) the declared performance as well as its compliance with all applicable requirement in the CPR as

²⁹ Article 7(4)

³⁰ Article 11(6)

³¹ Article 31(5) of Regulation (EC) No 1907/2006 (REACH)

³² Article 4(3)

³³ Article 11(1)

³⁴ Article 11(2)

³⁵ Annex V

³⁶ Articles 11(2) and 11(3), Annex V

well as other Union harmonisation legislation which require a CE marking (e. g. products which fall under the CPR as well as the Low Voltage Directive)³⁷.

When a manufacturer considers or has reason to believe a product he has placed on the market does not fulfil the conformity and compliance expressed by its CE marking, he is obliged to take immediate action. This action may comprise corrective measures to bring the product in conformity resp. compliance or – if appropriate – withdraw or recall it from the market. If the relevant product presents a risk, the manufacturer shall immediately inform the competent national authorities of the Member States in which the product has been made available³⁸. This means he has to inform not only the Member State in which he has placed the product on the market, but also those Member States to which it may have been delivered by an economic operator along the supply chain.

To be able to recall or withdraw a product from the market manufacturers shall indicate their name or trade mark and their contact address on the construction product, its packaging or accompanying documents³⁹. They shall furthermore ensure that their construction products bear or are accompanied by an element allowing the products' identification, such as a type, batch or serial number⁴⁰. In addition a manufacturer – but also any other economic operator – must be able to identify any economic operator to whom he has supplied or by whom he was supplied with a product, for a period of in general 10 years after the product has been made available⁴¹.

In contrast to his active role of informing national authorities in case he has reason to believe the product poses a risk, a manufacturer has also to react on a reasoned request from a competent national authority, i.e. when the authority has reason to believe the product does not fulfil the conformity and compliance expressed by its CE marking. In that case the manufacturer is obliged to provide the respective authority with the necessary information and documentation to prove the product's justified CE marking. He shall provide this information and documentation in language which can be easily understood by the requesting authority and on request by that authority co-operate to eliminate the risks their products may pose⁴².

A manufacturer may pass most of his afore mentioned obligations by a written mandate onto a natural or legal person established with the European Union. In this mandate the manufacturer shall specify the tasks for which the authorised representative shall act on his behalf⁴³. While article 12 of the CPR specifies which tasks the authorised representative shall at least perform, namely tasks related to co-operating with the competent national authorities and supplying them with the necessary information and documentation in case of a reasoned request, it explicitly excludes only one task the manufacture cannot pass on to his authorised representative: the drawing up of the technical documentation, which naturally includes the factory production control.

³⁷ Article 8(2)

³⁸ Article 11(7)

³⁹ Article 11(5)

⁴⁰ Article 11(4)

⁴¹ Article 16

⁴² Article 11(8)

⁴³ Articles 12 and 2(22)

The obligations of a manufacturer pass on to importers or distributors, when the latter place the products on the market under their name or trademark. The responsibilities rather than the obligations pass on to an importer or distributor when any of the latter modifies a construction product which already has been placed on the market by its original manufacturer in such a way, that the conformity with the declaration of performance may be affected.⁴⁴ This includes last but not least an inappropriate storage or transport of the construction product while it is under the responsibility of an importer or distributor.

Depending on his economic activity a manufacturer may act as a distributor or importer for one or more of the construction products he makes available on the market.

2.2 Obligations and Responsibilities of Distributors

Distributors are natural or legal persons, other than manufactures or importers, who make construction products available on the market⁴⁵ under the original manufacturers' names or trademarks. Their obligations are laid down in detail in article 14 of the CPR.

The distributor shall ensure that a construction product, where required, bears

- the CE marking,
- the name or trade mark of its manufacturer as well as its
- identification element

and is accompanied by

- the relevant documents,

before making it available on the market. The relevant documents being: the DoP (unless it is made available on a website), if applicable the requested information with regards to REACH (safety data sheets resp. information on relevant substances) as well as the manufacturer's product instructions and safety information. As to the languages in which the documents are to be delivered by the distributor the same stipulations apply as for the manufacturer of the product (see afore).⁴⁶ While the CPR does not address it, it is important to note, that since the documents and in particular the DoP which shall accompany the construction products are legal documents, the distributor must not alter the documents as supplied by the manufacturer. Consequently, when a product is made available on the market of another Member State which requires the documents to be provided in another or different language(s) the distributor should contact the manufacturer (or his authorised representative) or the importer for the relevant language versions of the documents.

While a construction product is under the responsibility of the distributor, he shall store and transport the product adequately, i.e. in a way that does not endanger its conformance with the DoP and compliance with other applicable requirements in the CPR.⁴⁷

The obligations and actions to be taken by a distributor in case he considers or has reason to believe a construction product – whether still under his responsibility or already made

⁴⁴ Article 15

⁴⁵ Article 2(20)

⁴⁶ Article 14(2)

⁴⁷ Article 14(3)

available on the market – does not fulfil the conformity and compliance expressed by its CE marking are very similar to those of a manufacturer, i. e.:

- Distributors shall refrain from making such construction products available on the market.⁴⁵
- Where such a construction products presents a risk, the distributor shall inform the manufacturer or the importer as well as the market surveillance authorities.⁴⁶
- When such a construction product has already been made available on the market the distributor shall make sure that corrective measures are taken to bring the product in conformity resp. compliance or – if appropriate – withdraw or recall it from the market.⁴⁸
- If the relevant product has already been made available on the market and presents a risk, the distributor shall immediately inform the competent national authorities of the Member States in which the product has been made available (also those of Member States to which the construction product may have been delivered by others).⁴⁸

Further to a reasoned request from a competent national authority the distributor shall provide the respective authority with the necessary information and documentation to prove the justification of the product's CE marking. He shall provide this information and documentation in a language which can be easily understood by the requesting authority and on request by that authority co-operate to eliminate the risks which may be posed by the products they have made available on the market.⁴⁹ Naturally most of the information and documentation which may prove that the product duly bears the CE marking is held by the manufacturer. Hence the obligation to provide this information and documentation translates into establishing contact between the authorities and the manufacturer.

To fulfil the obligations in case a non-conform or non-compliant product has been made available on the market - just as the manufacturer - also the distributor must be able to identify any economic operator to whom he has supplied or by whom he was supplied with a product, for a period of in general 10 years after the product has been made available⁵⁰

A distributor is considered a manufacturer if he places a construction product under his own name or trade mark or if he modifies a construction product, which has already been placed on the market by its original manufacturer, in such a way, that the conformity with the declaration of performance may be affected.⁵¹

2.3 Obligations and Responsibilities of Importers

Importers are natural or legal persons established within the European Union, who place a construction product from a third country on the Union market⁵². Their obligations are laid down in detail in article 13 of the CPR and range between those of a manufacturer and a distributor. The main difference to the obligations of a manufacturer is that importers cannot

⁴⁸ Article 14(4)

⁴⁹ Article 14(5)

⁵⁰ Article 16

⁵¹ Article 15

⁵² Article 2(21)

perform and document the required tasks under the applicable AVCP system and cannot draw up a DoP, but have to ensure that these tasks have been accomplished by the manufacturer.

3 Obligations and Responsibilities of Member States

In the context of the internal market Member States play an important role as legal requirements can hinder or impede the making available of a construction product. Balancing the right of Member States to specify the requirements they deem necessary to ensure the protection of health, the environment and workers when using construction products⁵³ on the one hand and its objective of making the internal market for construction products functioning, the CPR clarifies that Member States shall not use or make reference to markings that express the same as the CE mark⁵⁴. They shall also not prohibit or impede the making available of a CE marked construction product on the market or its use, if the declared performances of the product correspond to the requirements for its use⁵⁵. In practice there are only few national regulations that address construction products directly, as usually the necessary level of product performance is determined by the function of the specific structural component of the specific construction work they are to be used in. However particularly in relation to the environmental performance of products there are a few national legal requirements in force which limit e.g. the content of certain substances (e.g. PCP) in products.

Further to ensuring that construction products can be made available on the market, Member States shall ensure that public bodies - whether directly or indirectly - do not impose rules or conditions which impede the use of CE marked products if their performances correspond to the requirements for its use⁵⁶.

Last but not least, Member States have to use the "common language", i.e. they shall only use or refer to methods in their requirements for construction works, which are in line with the harmonised product standards. This means, that construction products must be assessed on the basis of their performances, which have been determined using the test or calculation methods laid down in the respective harmonised product standard.⁵⁷

In addition to afore mentioned obligations, Member States fulfil two important roles: providing information necessary to making products successfully available on the market and assuming their responsibilities for ensuring a level playing field.

3.1 National Product Contact Point

An important lesson learnt from marketing products under the current Construction Product Directive is that successfully placing products on the market in Member States other than one's own is not primarily related to properly CE marking the product, but to knowing which provisions exist in the respective Member State in relation to a product's use. This experience is obviously not proprietary to construction products marketed under CPD but also common to

⁵³ Recital 3

⁵⁴ Recital (33), article 8(2)

⁵⁵ Article 8(4)

⁵⁶ Article 8(5)

⁵⁷ Recital (12), article 8(6)

other New Approach Directives, as Regulation (EC) 764/2008 - as part of the horizontal so called "Goods Package" - introduces Product Contact Points in answer to this problem.

In connection with the CPR, regulation (EC) 764/2008 obliges Member States to designate national Product Contact Points which on request of an economic operator or an authority shall provide i. a. information on the technical rules and requirements applicable to a specific construction product, the contact addresses of the competent authorities⁵⁸, as well as on provisions aimed at fulfilling the BWRs applicable to the product's intended use using transparent and easy understandable terms⁵⁹. This information shall be provided within 15 working days after its request and it shall be free of charge.⁵⁸

Member States have to communicate the contact details of their national Product Contact Points to the European Commission which shall publish a regularly updated list of Product Contract Point both in the Official Journal and on a web site.⁶⁰ With regards to CPR the list of Product Contract Points has yet not been published.

3.2 Market Surveillance

To ensure an equivalent and consistent enforcement of Union harmonisation legislation and in particular the CPR, Member States shall operate an effective market surveillance.⁶¹ The market surveillance authorities shall act

- in cases of formal non-compliance of construction products⁶²,
- when they have sufficient reason to believe a construction product does not comply with the declared performances⁶³ (technical non-compliance) or
- when construction products are in formal and technical compliance, but nevertheless present a risk to health and safety.⁶⁴

For these three cases, the CPR specifies proportionate steps and measures to be taken by the relevant market surveillance authority resp. the relevant Member State. These measures are aimed at removing or limiting the risk and may comprise informing the Commission and other Member States and if necessary having the product withdrawn or recalled from the market.

The CPR itself does not mention penalties in case of non-compliance, i.e. penalties in case the CE marking has been unduly or wrongly affixed to a construction product. However as part of the horizontal "Goods Package" Member States are obliged by articles 30 and 41 of Regulation (EC) No. 765/2008 to provide for penalties for infringements, which shall be proportionate to the seriousness of the offence and constitute an effective deterrent. To the latter, Member States may also consider including criminal sanctions for serious infringements.

It is also the responsibility of Member States in accordance with article 17 of Regulation (EC) No. 765/2008 to inform the public inter alia on how to contact the relevant market

⁵⁸ Article 10(2)

⁵⁹ Article 10(3)

⁶⁰ Article 10(1)

⁶¹ Recital (46)

⁶² Article 59

⁶³ Article 56

⁶⁴ Article 58

surveillance authorities. Unlike the list of Product Contact Points a similar list of market surveillance authorities is not foreseen to be published by the European Commission. However, the relevant market surveillance authorities may be found out through the relevant national Product Contact Point.

4 Tasks of Manufacturers in the Course of Implementing the CPR

Except for the derogations specified in article 5 of the CPR, as of 1 July 2013 construction products which are covered by a harmonised standard or for which a European Assessment has been issued can only be placed on the market if

- the manufacturer has drawn up a Declaration of Performance for his respective product(s) and
- the products for which a DoP has been drawn up are CE-marked and to this
- the constancy of performance of the products has been verified and attested.

The Declaration of Performance (DoP), the CE mark and the Attestation and Verification of Constancy of Performance (AVCP) are therefore the three tasks manufacturers have to accomplish at the latest by 1 July 2013.

4.1 Declaration of Performance

4.1.1. Content of the DoP

The DoP shall be drawn up using the model given in annex III of the CPR and in particular contain the information listed in article 6(2) of the CPR. Figure 1 shows an example by which the content of the DoP is explained.

DECLARATION OF PERFORMANCE

No.12345 **(A)**

- Unique identification code of the product-type:
Identical to the DoP No. **(B)**
- Type number:
CS 30-1,8 248x175x248 T3 F2 **(C)**
- Intended use or uses of the construction product, in accordance with EN 771-2:2011 **(D)**
Load bearing and non-load bearing internal and external elements.
- Name and contact address of the manufacturer: **(E)**
Any Company Ltd
Production Plant A
Any Street 1
1234 Anywhere
- System of assessment and verification of constancy of performance :
2+ **(F)**
- The Notified Body **(G)**
Master Inspection Ltd
(NB CPR 99999)
has performed an initial inspection of the manufacturing plant and of the factory production control, continuously surveys, assesses and evaluates the factory production control under system 2+ and has issued the certificate of conformity of the factory production control.
- Declared performance

Essential characteristics (H)		Performance (I)	Harmonised technical specification (J)
Dimensions	length	248 mm	EN 771-2:2011
	width	175 mm	
	height	248 mm	
Dimensional tolerances		T3	
Configuration	percentage of voids	= 15 %	
	width of grip holds	≤ 120 mm	
	height of grip holds	≤ 50 mm	
	area of single grip hold	= 80 cm ²	
	distance to surface of grip holds	= 40 mm	
Compressive strength	mean compressive strength	= 26,5 N/mm ²	
	normalised compressive strength	= 34,0 N/mm ²	
	direction of testing	perpendicular to bed faces	
Characteristic initial shear strength		tabulated values according to DIN EN 998-2:2010-12, Annex C	
Reaction to fire		Class A1	Commission Decision 2000/605/EC
Water absorption		NPD	EN 771-2:2011
Water vapour permeability		NPD	
Gross dry density	min	= 1810 kg/m ³	
	max	= 2000 kg/m ³	
Frost resistance		F2	

- The performance of the product identified in points 1 and 2 is in conformity with the declared performance in point 7. This declaration of performance is issued under the sole responsibility of the manufacturer identified in point 4.

Signed for and on behalf of the manufacturer by **(K)**


 Anywhere 01.07.2013 John Q. Public (manager)

Figure 1a: Example of a DoP (explanation of letter symbols used in fig. 1b)

A:	While article 6 of the CPR does not mention the reference number, each DoP shall be numbered as it is implied by article 9(2) and recital (26). The reference number serves for identifying the DoP which belongs to a specific product-type and thereby to allocate the corresponding set of product performances which define the product-type ⁶⁵
B:	The unique identification code (reference) of the product-type serves for identifying the product for which the specific DoP was drawn up ⁶⁶ . An obvious choice would be to use the reference number of DoP also as unique identification code of the product, which is explicitly allowed ⁶⁷
C:	In this point Annex III refers to article 11(4) by which a manufacturer shall ensure that his construction products bear a type, batch or serial number or any other element allowing their identification. Even if not explicitly mentioned in the CPR this element could be the same as the identification code mentioned under B. In the given example however a designation code is used, to indicate, that it may be sensible to reproduce the designation code that may be printed on a product for its practical (technical) identification by the user.
D:	In accordance with article 6(3) (a) the intended use or uses of the products have to be given in accordance with the harmonised technical specifications. To this, the technical specifications should define one or more intended uses to which they assign relevant essential characteristics. At present not all harmonised products standards define intended uses and assign essential characteristics as distinct as expected by the CPR and some CEN TCs may decide to amend the standards accordingly as is the case for the masonry unit standards. Where harmonised standards lack a distinct definition of intended uses as well as an assignment of relevant essential characteristics and where an amendment is not planned before 1 July 2013, manufactures can deduce this information from the table(s) ZA1 in the Annex ZA of these harmonised product standards.
E:	In this point Annex III refers to article 11(5) by which the manufacturer shall indicate his name, registered trade name or registered trade mark and his contact address on the construction product or where that is not possible, on its packaging or in a document accompanying it. Even if the reference to article 11(5) is not logical it is nevertheless evident that the manufacturer of the product has to be named in the DoP to know who assumes the responsibility for the conformity of the product with the declared performances ⁶⁸ . Where an authorised representative has been mandated to act on behalf of the manufacturer, also the name and contact address of his representative has to be given in the DoP.
F:	The manufacturer has to indicate which AVCP system(s) he has applied ⁶⁹ . Depending on the confidence level of one or more essential characteristics, some harmonised product standards often allow choosing between 2 systems for the AVCP of all essential characteristics. In these cases the manufacturer has to indicate which of the two systems he chose to apply. For some products however the applicable AVCP system depends on the essential characteristic itself (e.g. system 1+ for "reaction to fire" and system 2+ for all other essential characteristics), in which case the manufacturer has to indicate the systems he has applied.
G:	Where the applied AVCP system requires involving a Notified Body, its name and identification number as well as the tasks he has performed and the document he has issued as a result of its tasks has to be indicated. For products for which an ETA has been issued, also the name of the Technical Assessment Body, as well as the reference numbers of the ETA and the European Assessment Document have to be given.
H, I, J:	In accordance with article 6(3) (b) the (full) list of essential characteristics as determined in the harmonised technical specification for the declared intended use or uses has to be given, irrespective of the manufacturer declaring a class or level of performance for a specific essential characteristic or making use of the "No Performance Determined" (NPD) option. Where the manufacturer declares a performance he shall indicate the reference number and date of issue of the harmonised product standard or the European Technical Assessment ⁷⁰ which has been used for the assessment of each essential characteristic or – where applicable – the reference number of the Specific Technical Documentation (STD) ⁷¹ . In the given example, with regard to "reaction to fire", reference is made to a Commission Decision, which – in this case - may be considered a STD.
K:	Each DoP (the original) has to be signed by person in charge which has been appointed by the manufacturer for drawing up the DoP, indicate his name and function as well as the place and date of issue.

Figure 1b: Explanation of letter symbols used in fig. 1a

⁶⁵ See definition of product-type in article 2(9)

⁶⁶ Article 6(2) a)

⁶⁷ Recital (26)

⁶⁸ Article 4(3)

⁶⁹ Article 6(2) (b)

⁷⁰ Article 6(2) (c)

⁷¹ Article 6(2) (d)

Apart from providing information identifying

- the manufacturer,
- the product,
- the relevant harmonised technical specification and - where applicable - the Specific Technical Documentation used,
- the applied system of attestation and verification of constancy of performance along – where applicable – with the Notified Body involved

the most important content of the DoP is the information on

- the intended use(s) of the product
- the essential characteristics related to the product and its intended use(s) as well as
- the construction product's performances in relation to its essential characteristics.

The DoP may only refer to the essential characteristics, as identified in Annex ZA of the relevant harmonised product standard or given in the European Technical Assessment of the product concerned. This means that performances of characteristics which are addressed by the European product standard in its voluntary (= not harmonised) part, are not part of the DoP and cannot be covered by the CE mark.

The harmonised technical specifications – i.e. the harmonised product standards resp. the European Technical Assessments – shall define the intended uses for which products according to that specific harmonised technical specification are being placed on the market and assign to these the relevant essential characteristics. A manufacturer of a construction product may choose to declare one or more of these defined intended uses for the product he places on the market. In the DoP corresponding to that product the manufacturer shall then list those essential characteristics which according to the harmonised technical specification are related to the declared intended use or uses. For at least one of these listed essential characteristic he shall declare the performance by level (a minimum or maximum value of performance achieved by the product) or class. The manufacturer is in principal free to decide for which of the listed essential characteristics to declare a level or class and for which to declare no performance by declaring “NPD” instead of a level or class, unless

- the European Commission, on the basis of a delegated act, has specified for which essential characteristics performances are compulsory to be declared or
- a European Technical Assessment has been issued for the concerned product, in which case the performance of all essential characteristics are to be declared.

While apart from these two exemptions in principal being free to decide which performances to declare, the manufacturer however needs to consider the provisions in relation to the intended use or uses which may apply where he intends the product to be made available on the market, to ensure the product can in fact be used.

4.1.2. Accompanying Information

For construction products which are considered a substance or a mixture according to Regulation (EC) No 1907/2006 (REACH) and for which according to article 31 of REACH the supplier has to provide a safety data sheet, this sheet has to be provided together with the DoP. Also in case of products which are considered articles according to REACH and contain

substances of very high concern in a concentration above 0,1 %, the information required in accordance to article 33 of REACH shall be provided together with the DoP.⁷²

Irrespective of afore mentioned REACH related information manufacturers, importers and distributors shall also ensure that the construction products which they make available on the market are accompanied by instructions and safety information⁷³. The CPR is not specific which type of instructions and safety information it refers to, but it may be interpreted as any information the manufactures considers necessary to communicate for his products to be adequately and safely stored, transported and installed. In that respect the obligation to provide such information may therefore be understood as “where relevant”.

4.1.3. Drawing up a DoP for products that are already being placed on the market under the CPD

The following explanation refers only to products of a type

- that were first manufactured and (first) placed on the market before 1 July 2013 in accordance with the CPD bearing a CE mark,
- for which consequently the manufacturer has received a certificate of conformity or has issued a declaration of conformity in accordance with the CPD,
- which (unlike previous samples of the same product type) have yet (physically) not been placed on the market but
- shall (physically) be placed on the market after 1 July 2013, irrespective of whether the product type continues being manufactured or manufacturing of that type has ceased.

Prior to placing afore described products on the market the manufacturer has to draw up a DoP for the product type and CE mark the products in accordance with the CPR. Type tests or type calculations are not required as the manufacturer may draw up the DoP on the basis of the certificate of conformity resp. the declaration of conformity which was issued under the CPD.⁷⁴

(Note: Products which have (physically) been placed on the market before 1 July 2013 in accordance with the CPD, can continue to be made available on the market by distributors without any changes even after 1 July 2013.⁷⁵)

4.1.4. Drawing up a DoP for products that will first be placed on the market under the CPR

The following explanation refers only to products of a type

- that have not and will not be placed (physically) on the market before 1 July 2013 in accordance with the CPD bearing a CE mark but
- shall (physically) be placed on the market after 1 July 2013, irrespective of whether the manufacturing of the product type started before or will start after 1 July 2013 or

⁷² Article 6(5)

⁷³ Articles 11(6), 13(4) and 14(2)

⁷⁴ Article 66(2)

⁷⁵ Article 66(1)

- that have not been placed (physically) on the market in accordance with the CPD bearing a CE mark but may be placed before 1 July 2013 in anticipation of the CPR.

Just as customary under the CPD, prior to declaring any product performance, manufacturers need to assess the performance of those essential characteristics they intend to declare (see also “Content of the DoP”). The general approach for assessing the respective essential characteristics is applying the methods for type-testing or type-calculation given in the harmonised technical specification. However, to avoid unnecessary testing of construction products for which the performance has already been sufficiently demonstrated⁷⁶, the CPR allows replacing type-testing or type-calculation by an Appropriate Technical Documentation (ATD). ATDs may be used by all manufacturers and are applicable in 3 cases⁷⁷:

1. for given performances of one or more essential characteristic(s) one’s product is deemed to satisfy without testing, on the basis of conditions given in the relevant harmonised technical specification or by a Commission Decision,
2. if one’s own construction product is covered by a harmonised standard, is of the same product-type as a product of another manufacturer and were the latter permits using his type-testing resp. type-calculation results for one’s own product performance declaration (cascading use of type-testing or type-calculation results)
3. if the construction product is covered by a harmonised technical specification and is a system made of components provided by another manufacturer, who has tested the system or the components and permits using these for one’s own system (typical products are e.g. windows)

The ATD is drafted by the manufacturer of the product that is being placed on the market and needs only to be verified by a Notified Body in case the applicable attestation and verification of constancy of performance (AVCP) system is 1 or 1+.

In addition to afore explained simplified procedures article CPR lays down simplified procedures which may only be used by micro enterprises (article 38) and simplified procedures which may be used for individually manufactured or custom-made products in a non-series process (article 39). Due to the very restrictive nature of these procedures they not further described, for details please refer to the respective article itself.

The manufacturer has to draw up a DoP for each product type, i.e. for each product manufactured in a specific manner, using a given combination of raw materials and which is represented by a specific set of performances (in other words: products of the same making having the same declared performances are of the same product type). In general each product type will require its individual DoP, however, there may be cases where one DoP may apply to more than one product type, provided the product types can be uniquely identified and the declared performances can unambiguously be assigned to the relevant product type.

4.1.5. The language of the DoP and the accompanying documents

The DoP and - where applicable – the safety data sheet in accordance with article 31 of REACH as well as – where relevant – the instructions and safety information that shall accompany the

⁷⁶ Recital (33)

⁷⁷ Article 36

construction have to be provided in language versions which depend on the information itself, the regulation concerned and the Member State the products are delivered to:

- Declaration of Performance (DoP) shall be supplied in the language or the languages required by the Member State where the product is made available.⁷⁸
- REACH safety data sheet shall be supplied in an official language of the Member State(s) where the construction the construction product is made available unless the Member State(s) concerned provide otherwise.⁷⁹
- Instructions and safety information according to article 11(6) of the CPR shall be supplied in a language determined by the Member State concerned which can be easily understood.

While each economic operator is responsible for providing the information in the requested language, distributors must not alter the information – which includes its translation - and hence have to refer to the manufacturer (or his authorised representative) or the importer for further language version of the received information.

4.1.6. Providing the DoP

The copy of the original DoP, which remains with the manufacturer, may either be (actively) supplied in paper form or by electronic means (fax, e-mail, on a data carrier, etc.). However, when the DoP is (actively) supplied by electronic means, the recipient of the products may (in addition) request to receive a paper copy.

In contrast to actively supplying a copy of the DoP it may be made available on a website in accordance with conditions to be established by the European Commission.

Where a safety data sheet for a construction product has to be provided according to article 31 of REACH or where information on contained substances of very high concern has to be given in accordance to article 33 of REACH the safety data sheet resp. the information has to be provided together with the DoP. This means, if the copy of the DoP is supplied in paper form, the safety data sheet resp. information related to REACH has to be given physically, together with the DoP (at the same time) as a separate document, either as printed information (e.g. attached to the paper copy of the DoP) or as electronic information on a physical data carrier (e.-g. CD ROM). If the DoP is provided by non-physical electronic means (e.g. by fax) or is made available on a website, the safety data sheet resp. information related to REACH has to be given in the same way.

4.2 CE Marking

The CE marking may only be affixed to products for which the manufacturer has drawn up a DoP. With the CE marking the manufacturer indicates his responsibility for the product's conformity with the declared performances in relation to the essential characteristics and its

⁷⁸ Article 7(4)

⁷⁹ Article 31(5) of Regulation (EC) No 1907/2006 (REACH). Note: Due to diverging definitions, “placing on the market” as defined in REACH corresponds to “making available on the market” as defined in the CPR.

compliance with the CPR and other Union harmonisation legislation⁸⁰. It shall be affixed visibly, legibly and indelibly to the construction product or to a label attached to it or – where this is not possible or not warranted due to the nature of the product - to the packaging or to the accompanying documents.⁸¹ The given order of places for affixing the CE marking indicates the priority as seen by the European Commission and Member States yet allows flexibility for the manufacturer to choose the most suited place.

4.2.1. What is new about the CE marking?

Apart from its new and clear meaning as a symbol of conformity and compliance, also its content has been revised. According to article 9(2) of the CPR the CE marking consist of the symbol CE, which shall be followed by

- the two last digits of the year in which the CE marking was first affixed,
- the name and registered address of the manufacturer or his mark, if the latter easily and unambiguously allows identifying his name and address,
- the unique identification code of the product-type,
- the reference number of the DoP,
- the level or class of the performance declared,
- the reference to the harmonised technical specification,
- the identification of the Notified Body (if the applied AVCP system foresees involving a Notified Body) and
- the intended use(s) of the construction product as declared in the DoP on in accordance with the definitions laid down in the applied harmonised technical specification.

As the CE marking under the CPD was not as clearly defined as under the CPR, it has led to a variety of interpretations which makes it difficult to highlight the differences between the current and the future CE marking in a general way. However, the following is worth highlighting

- The CE marking signifies the conformity of a particular product with its declared performances and its compliance with Union harmonisation legislation and may only be affixed if this conformity and compliance is in fact given for that particular product. The common understanding of the two last digits of the year in which the CE markings was *first* affixed is therefore, that it does not refer the year it was affixed for the very first time to a product of a specific product-type, but to the year it was affixed to the particular product. The consequence of it is, that for a product-type which is being manufactured for several years the two last digits are not the same for all products.
- When comparing the stipulations regarding the content of the DoP and of the CE marking it becomes apparent, that the manufacturer does not have to list (name) the essential characteristics in the CE marking, but that it is sufficient to only provide the level or class of the performance declared. "NPD" does not resemble a performance and does not have to be indicated in the CE marking. It goes however without saying

⁸⁰ Article 8(2)

⁸¹ Article 9(1)

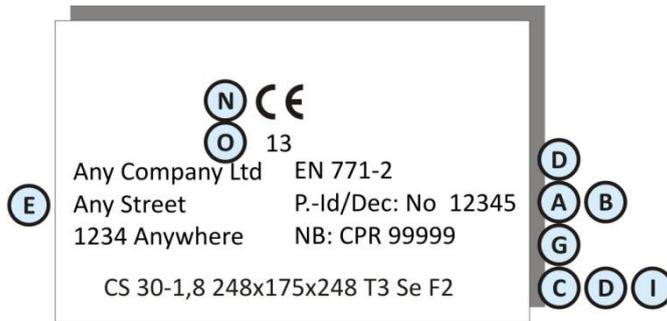


Figure 2b: Example of CE marking, short version using a designation code (explanation of letter symbols used in fig. 2c)

For the explanation of the CE marking examples the same letters are used as far as possible as for the DoP example to show which information is contained both in the DoP and the CE marking.

- A: The CE marking shall be followed by the reference number of the DoP.
- B: The CE marking shall also be followed by the unique identification code (reference) of the product-type. In the examples shown in figures 2a and 2b the reference number of the DoP and the identification code are the same.
- C: According to article 11(4) a manufacturer shall ensure that his construction products bear a type, batch or serial number or any other element allowing their identification. Unlike Annex III with regards to the DoP, article 9(2) does not require this information to follow the CE mark. Therefore it is not contained in figure 2a. However in the given example shown in figure 2b a designation code is used which both represents the level or class of the performance declared and– if printed on the product – can serve the user to identify the product not only by its identification code (see B) but also by its performance.
- D: According to article 9(2) information on the intended use as laid down in the applied harmonised technical specification has to follow the CE mark. And also the applied harmonised technical specification itself has to be indicated, yet unlike in the DoP⁸² (see figure 1a), article 9(2) does not require a dated reference to the harmonised technical specification. While in figure 2a the information on the intend use is given explicitly, in figure 2b this information is part of the designation code used (see also explanation given under C).
- E: The CE mark shall be followed by the name and the registered address of the manufacturer or the identifying mark allowing the identification of his name and address easily and without any ambiguity.
- F: (not used, as the related information in the DoP is not required to follow the CE mark)
- G: Where the applied AVCP system requires involving a Notified Body, his identification number shall be indicated following the CE mark. Unlike required with regards to the DoP, the Notified Body's name, his performed task and the document he has issued as a result of its tasks is not part of the information following the CE mark. For products for which an ETA has been issued, also the name of the Technical Assessment Body is not part of the information to follow the CE mark.
- H, I: Article 9(2) does not require the manufacturer to indicate the essential characteristics (H) for which he has declared performances by levels or classes following the CE mark. It only requires that the declared performance (I) itself, by level or class, shall follow the CE mark. While not being required, in the example shown in figure 2a this information is given in order to distinguish the given performances. In the example given in figure 2b the performances are expressed by means of a defined designation code from which the performance can be distinguished without explicitly naming the related essential characteristic. It is important to note, that only performances are to be given, i.e. when no performance was determined (NPD option) it cannot be given.
- J: (not used, as the related information in the DoP is not required to follow the CE mark)
- K: (not used, as the related information in the DoP is not required to follow the CE mark)
- N: The CE marking symbol has to follow the general principles set out in Article 30 of Regulation (EC) No 765/2008, which by reference to Annex II of the same Regulation also defines its shape.
- O: The CE marking shall be followed by the two last digits of the year in which it was first affixed. The wording of article 9(2) is not unambiguous and allows different interpretations.

Figure 2c: Explanation of letter symbols used in fig. 2a and 2b

⁸² Article 6(2) (c)

4.3 Attestation and Verification of Constancy of Performance (AVCP)

As a basis for drawing up a DoP and consequently CE marking products, manufacturers shall draw up a technical documentation describing the relevant elements related to the system of assessment and verification of constancy of performance (AVCP)⁸³. The elements last but not least include the factory production control procedures which are applied to ensure that series production meets the performances declared for the relevant product⁸⁴. Manufacturers need to keep this technical documentation for a period of 10 years (unless otherwise decided by the European Commission by means of a delegated act) after a product has (physically) been placed on the market⁸⁵. The technical documentation serves for demonstrating the conformity of a construction product with its declared performances. It is part of the information manufacturers may have to provide when requested by a competent national authority, in which case it has to be provided in a language which can be easily understood by that authority.⁸⁶

4.3.1. What is new about the AVCP systems?

The Attestation of Conformity systems 1+, 1, 2+, 2, 3, 4 are now named Attestation and Verification of Constancy of Performance systems and by deleting system 2, have been reduced to five systems. Apart from that and adaptations of terminology, the elements of the AVCP systems and the assignment of tasks remains as already known under the CPD. Manufacturers can therefore use their existing technical documentation and amend it in relation to the CPR. Manufacturers do not have to repeat existing type testing resp. calculations, unless the relevant methods in the technical specification change.

4.3.2. Which chapters of the technical documentation need to be amended?

In order to align the existing technical documentation with the CPR those chapters need to be amended which:

- make reference to the CPD and now need to refer to the CPR
- deal with the Certification of Conformity (system 1+ and 1) resp. the Declaration of Conformity (system 2+, 3 and 4) and need to be aligned to the terminology of Annex V of the CPR
- relate to the CE marking (only if CE marking is at all addressed in the technical documentation)
- address the designation of products

4.3.3. How to deal with stocked products after 1 July 2013

There are two types of products on stock which need to be considered:

- Products which are on the manufacturer's stock

⁸³ Article 11(1)

⁸⁴ Article 11(3)

⁸⁵ Article 11(2)

⁸⁶ Article 11(8)

Construction products which are still on stock of the manufacturer after 1 July 2013 and have not been made available for the first time on the market - i.e. which have not been supplied for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge - require a DoP and need to be CE marked in accordance with the CPR prior to being placed on the market.

- Products which are on stock at distributors
Construction products which have been marketed under CPD before 1 July 2013 - i.e. which have been supplied for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge – can continue to be made available on the market, without the need of a DoP and in particular without the need of a new CE marking

4.4 Checklist

In the course of implementing the CPR a manufacturer should

- In case of AVOC system 1+, 1 or 2+, contact the Notified Body and ask for (an) updated Certificate(s) of Constancy of Performance (only for products under AVCP systems 1+ or 1) resp. an updated Certificate of Conformity of the Factory Production Control (only for products under AVCP system 2+).
- Amend the technical documentation, i.e. inter alia
 - replace references to CPD and by references to the CPR
 - align the chapters dealing with the Certification of Conformity (system 1+ and 1) resp the Declaration of Conformity (system 2+, 3 and 4) to the wording of Annex V of the CPR
 - if CE marking is part of the Factory Production Control procedures, update e.g. copies of the CE marking resp. the CE marking template
 - adapt – if necessary – the chapter on designation
- Draw up DoPs for each product type in the language(s) required
- Where applicable, compile the information related to REACH, that has to be provided together with the DoP in the required language(s)
- If DoPs are to be made available on a website: set up a website which complies with the conditions to be established by the Commission.
- Adapt the current CE marking to the stipulations of the CPR.
- Where applicable, compile the necessary product instructions and safety information in the required, easy understandable language.
- Foresee procedure for identifying any economic operator to whom he has supplied or by whom he himself has been supplied with specific products.