



Review of the operation and impact of the Construction Products Directive in the UK through the Construction Products Regulations 1991

BD 2696



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European Unit of FBE Management Ltd

August 2008
Department for Communities and Local Government

The findings in this report are those of the authors and do not necessarily represent those of the Department for Communities and Local Government.

Project team for this report

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Chapter 1

Executive summary

1.1 Aims and objectives

The overall aim of this project was to:

- obtain feedback on the benefits and impacts so far associated with the implementation of the Construction Products Directive (CPD) in the UK
- establish the benefits or otherwise of non-obligatory CE marking
- provide evidence to underpin future policy development

The work has been focused to address:

- policy development as Communities and Local Government prepares for revision of the Directive, in particular, the possibility of compulsory CE marking
- the particular position of small and medium size enterprises (SMEs) insofar as they are relevant to each of the above

1.2 Methodology

The aims were achieved with three complementary approaches as follows:

- a historical review of the development of the CPD and its implementation in the UK, drawing on published sources and contacts with specialists in the field
- detailed consultations with 24 manufacturing stakeholders from 18 product groups
- a cost/benefit analysis based on data from 16 product families representing 40% of UK manufacturing output in the construction products sector

The study examines the position as it stands today but also looks back to the position at the inception of the CPD (c.1990), and takes a forward look at the implications of likely future developments.

1.3 Findings from the historical review

1.3.1 UK implementation of the CPD to date

The report illustrates how the UK has implemented the Directive in a timely manner as the Construction Products Regulations (1991), and has promptly developed mechanisms for smoothly incorporating CPD supporting documentation such as standards, into the UK regulatory systems for construction works, for example the Approved Documents. From the outset, the UK has made CE marked products from other MSs fully acceptable on the UK market and has taken other initiatives in support of the CPD.

1.3.2 Non-mandatory CE marking

The UK is one of four Member States which has not made CE marking compulsory. This is the only respect in which the Commission would claim that the UK has not fully implemented the Directive.

The UK position, as set out in the Construction Products Regulations 1991, is based on legal interpretation of the text of the Directive. However, this position also has the effect of protecting those SMEs who see no benefits of CE marking, from the regulatory and cost burdens that CE marking would entail.

The report explains the ways in which SMEs can be differentially affected. It also shows how, at senior policy level, the Commission and Member States recognise the importance of SMEs to the European economy and accord them a particular position in relation to regulations and other administrative measures.

This report also reviews three reports for the Commission on the operation of the CPD, written at different stages of its implementation. All identify the particular problems for SMEs and propose solutions, including non-mandatory CE marking.

Despite the Commission's general policy positions on SMEs, and anticipated burdens under the CPD, the Directive, as implemented in 1991, incorporated no special provisions to alleviate burdens on SMEs. In view of this, and taking into account the following sections 3.3 to 3.5, it could be argued that the UK's initial position on non-compulsory CE marking was compatible with Commission policy on SMEs.

1.3.3 Compulsory CE marking in other countries

The report explains that it is difficult to obtain information on the extent of CE marking in other countries. However, anecdotal evidence suggests that CE marking has not so far been proactively enforced in countries where it is mandatory and that the proportion of products with CE marking in the UK may not be much different from some countries with mandatory CE marking.

1.3.4 Reducing the burden – recent developments on the CPD

The first harmonised construction product standard (for cement) became available for CE marking only in 2001. At the present time over 70% of standards are now available out of a total programme of 450 standards. With practical experience of the application of standards, the Commission's Construction Unit has begun to acknowledge the problems faced by SMEs and to propose mechanisms to reduce burdens. The report shows later that these mechanisms will be helpful in improving the future acceptability of CE marking among SMEs, and for some may make mandatory CE marking acceptable.

1.4 Findings from the stakeholder consultation

1.4.1 A backward look

Upon introduction of the CPD in 1991, most manufacturers and other stakeholders in the UK either supported the basic aims of the CPD or were indifferent. But, for a number of reasons set out in this report, nearly all were very much against compulsory CE marking.

1.4.2 Present views on CE marking (voluntary)

Over the last four years or so, there has been a shift towards greater acceptance of CE marking. Those tending to favour CE marking include larger companies and multinationals, companies newly exporting to mainland Europe, and those facing competition from outside the EEA. However, many still tend to avoid CE marking including smaller companies, especially those operating only within UK markets, those without an existing certified factory production control system, those without heavy competition from developing countries, and those where customers see little value in CE marking.

1.4.3 Views of manufacturers on the possibility of compulsory CE marking in the UK

There is now an increasing acceptance among UK manufacturers and others of the possibility of mandatory CE marking being introduced in the UK. Indeed, some see it as inevitable. For example, the Construction Products Association (CPA) who in 2004 were equivocal in their views, are now expressing support for compulsory CE marking (subject to certain provisos).

Mandatory CE marking would be positively welcomed by some sectors, including wood-based panels, geo-textiles, structural steel hollow sections, and fire detection and alarm equipment, on the grounds that this may guard against the import of goods of alleged doubtful quality, or mis-selling further down the supply chain, or 'dumping' of low quality products on the UK market. (Note that none of these is the purpose behind the CPD.)

Some sectors would accept mandatory CE marking on the basis that 'we can live with it'. However, there are SMEs in some sectors (eg small aggregates producers and some stone quarries) who may still resist unless the UK regulatory framework and/or the CPR are formulated in such a way as to take care of their concerns.

Note, however, that the above opinions are based on the present CPD framework with which manufacturers have become familiar. Views may well change in the light of the proposed Construction Products Regulation (CPR).

1.5 Findings from the cost/benefit analysis

1.5.1 Findings regarding costs

The headline findings include the following:

- Eighty-six per cent of the UK construction product manufacturing market (by value of sales) has the potential for CE marking, ie mandated products. The sales value potentially subject to CE marking is £37.4bn p.a.
- It is believed, very approximately, that about one-third of all UK mandated construction products currently on the market are CE marked voluntarily, and this would rise to about four-fifths when all the prospective harmonised standards for mandated products come to the end of their co-existence period, ie without introducing compulsory CE marking.
- The mandated construction products sector, ie products potentially subject to CE marking, covers around 18,000 enterprises (93% of total construction sector), with average sales per enterprise of around £2.0m employing 19 staff.
- The total one-off cost for the UK construction products industry to move from 0% to 100% of mandated products being CE marked would be of the order of £66m, with an annual cost of £12m to maintain their CE marking.
- Any assessment of the cost of moving to compulsory CE marking at any particular point in time would need to take account of the proportion of mandated products already CE marked on a voluntary basis. It is estimated that this could be as high as 80% by value of sales by 2011 (the most likely date for mandatory CE marking to be introduced).¹
- One-off and annual costs per enterprise are estimated as £4,000 and £700, respectively. For a given product type, these costs will be similar irrespective of the size of the enterprise. The burden will therefore be proportionally heavier on SMEs.

¹ Those who are likely to be voluntarily CE marking in 2011 will be the larger companies (see section 9.2.3) but note that the majority of UK construction products enterprises are small (see section 6.3.1).

- The CE marking costs/sales ratio varies very much from one product sector to another. As a percentage of sales the costs are generally quite low, but as a percentage of profits for smaller enterprises they are more significant and can affect sales if there is price sensitivity.

1.5.2 Findings regarding benefits

Some benefits are difficult to quantify because they relate to many intangibles, including the value of enhanced competitiveness, etc. These types of benefits are beyond the scope of this report to quantify.

Under the present UK system there are no disbenefits to those who voluntarily CE mark as they could choose not to do so. In addition, they do not gain additional advantages over competitors (usually SMEs) who would otherwise be forced to CE mark when it is not to their advantage.

For the authorities and other non-manufacturing stakeholders (eg architects, builders and occupiers) there has hitherto been little reported benefit from CE marking so far and costs are considered marginal.

In a rapidly changing world market, the greater traceability arising from compulsory CE marking, will lead to a change in the benefit/cost balance for enforcement authorities (ie building control, trading standards and customs) and for many manufacturers. It is beyond the scope of this report to quantify this economically.

1.6 Concluding remarks

The costs and benefits above, and the views of stakeholders, relate to the current CPD under which the main costs of CE marking fall upon manufacturers. Early drafts of the Construction Products Regulation (CPR) which will replace the CPD suggest that costs to manufacturers of CE marking will remain generally similar, in that harmonised technical specifications and agreed attestation systems will continue largely unaltered. However, the CPR may well put greater responsibilities on other stakeholders such as those in the supply chain, enforcement agencies, and market surveillance authorities. The associated costs will need further assessment once the Commission's final proposal for the CPR is published.

Chapter 2

Background

This report relates to construction products, Construction Products Regulations, Regulation 7 of the Building Regulations and related Civil Engineering regulations, in particular Highways Agency Rules.

The Construction Products Directive (CPD) was adopted by the European Parliament and Council in 1989 (89/106/EEC). This was transposed into UK law with the Construction Products Regulations 1991 (SI 1620), subsequently amended with the Construction Products (Amendment) Regulations 1994 (SI 3051).

Communities and Local Government (ie the Department) has inherited from its predecessor Departments policy ownership and management responsibility for the CPD within the UK.

This responsibility has been discharged through a variety of activities including:

- representational activities such as
 - representing UK interests in the activities of the ‘comitology’ management committee, ie the Standing Committee on Construction (SCC), established under the Directive to assist the European Commission in managing activities to implement the Directive
 - providing a spokesperson to represent the UK Approvals Issuing Bodies to the European Organisation of Technical Approvals
- through the dissemination of advice and guidance delivered with presentations, printed and Web-based documents, and in response to telephone and written enquiries
- through participation in and sponsorship of standards making activities
- the organisation and management of a network of ‘Notified’ Approvals Issuing Bodies (ABs) and Conformity Assessment Bodies which under the CPD may only be Notified Bodies (NBs) for use by construction product manufacturers if they wish to follow the CE marking approach to demonstrating the performance of their products

Since the enactment of the European Directive and the corresponding UK Regulations, the Commission, with the participation of the SCC, has issued 32² mandates to CEN/CENELEC (the European standards organisations) to produce harmonised (pan-European and consistent) product standards (hENs) to overcome technical barriers to trade that were created by the previous (diverse and inconsistent) national standards. These have resulted in a programme of over 450 harmonised product standards and some 1,000 associated test methodology standards, of which about 75% have been delivered and only 5% have still to pass the enquiry stage and should be completed within about five years.³

The Commission and SCC have also issued 32 mandates to the European Organisation for Technical Approvals (EOTA) for the development of European technical approval guidelines (ETAGs), ie technical specifications for 'innovative' products; and approval for about 250 products for which European technical approvals (ETAs) can be written without guidelines, ie by following the common understanding of assessment procedure (CUAP).

As the Directive and the regulations have been in place for over 15 years the Department has commissioned this study to assess the operation and the impact on UK construction industry – specifically building control bodies (BCBs), trading standards bodies (TSBs), designers and constructors, UK NBs, and producers including SMEs. Therefore, the purpose of this work is to obtain feedback on the benefits and impacts associated with the Directive in the UK. In this the Department seeks to establish views on the costs and benefits of obligatory CE marking over voluntary CE marking at the time of legislation and currently – including the particular costs to SMEs.

² The 32 product mandates include the two most recent draft ones covering sealants and cables.

³ CEN snapshot 29 May 2008 gave the number of CEN approved standards as 372 out of an estimated 468 expected. Twenty-eight standards have still to pass the enquiry stage.

Chapter 3

Aims and objectives

The overall aim of the work is to:

- obtain feedback on the benefits and impacts so far associated with the implementation of the CPD in the UK
- establish the benefits or otherwise of non-obligatory CE marking
- provide evidence to underpin future policy development

The specific objectives of this work are:

- to propose an appropriate assessment methodology for capturing feedback from industry
- to carry out a stakeholder review and mapping exercise to identify stakeholders and ensure that their interests and influences are properly understood
- to conduct a thorough survey of producers of construction products to obtain feedback on the operation and impact of the CPD and the UK Regulations and the CE marking options (eg voluntary versus obligatory CE marking), with specific focus on different product sectors and different sizes of business – highlighting SMEs
- to investigate and assess compliance cost and related data as far as possible using the same categories as for the previous bullet point
- to provide stakeholder information and a network of contacts which will enable the Department to conduct, in a timely way, an impact assessment when the appropriate draft version of the CPR appears
- to produce reports (interim findings, draft final and final) on the findings

The work has been focused and prioritised to address policy development as the Department prepares for revisions to the Directive, probably to be a European Regulation. The draft revision was published in May 2008.

Chapter 4

Framework of this study

This study incorporates three different aspects which, in aggregate, are intended to provide a comprehensive picture of the implementation of the CPD in the UK and in Europe as a whole, taking into account all sectors whilst focusing on SMEs.

It includes:

- A review of the development of the CPD and its UK implementation, including non-mandatory CE marking, and the particular position of SMEs to date. The review is based on established documentation, websites, and on recent contacts with those with expert knowledge in trade associations, enforcement authorities, consultants, notified bodies and organisations with specialist knowledge of the CPD, such as APSR Consultants, PRC and other members of BRE/FBE itself
- Twenty-four manufacturing stakeholder consultations from 18 product groups, and supported by a review of relevant technical aspects, such as relevant standards, their states of readiness, and attestation procedures for CE marking purposes
- Qualitative and, where possible, quantitative cost/benefit analysis based on a review of previous studies in the UK and by the Commission, and original new work using most recent economic data

The study primarily examines the position as it stands today, ie 2007/2008, but importantly also considers the position at the inception of the CPD (ie around 1990) and a forward look at possible forthcoming changes and implications for the future.

The study also aims to provide a concise account and background material for those whose expertise may not be in the CPD, but who may be involved as advisers or representatives in the infraction proceedings (for example legal services, policy makers, and so on), and for those negotiating on the proposed Construction Products Regulation.

Chapter 5

UK implementation of the CPD to date

5.1 Legal implementation measures

The UK promptly transposed the Construction Products Directive (89/106/EC) in UK law under Section 2 of the UK's European Communities Act 1972 by means of the UK Construction Products Regulations 1991. The 1991 UK Regulation takes the text of the CPD and then elaborates on how the Directive is to be incorporated into the UK enforcement structure. For example, it sets out the different enforcement authorities responsible in England and Wales, Scotland, and Northern Ireland, and it delineates the enforcement procedures at their disposal and penalties, eg up to three months imprisonment and/or a fine and/or reimbursement of certain expenses.⁴ The 1991 UK Regulation gives CE marking a presumption of meeting UK regulations (provided declared values are appropriate to the intended use) which other methods of verification do not have.

Accompanying the Statutory Instrument was DOE Circular 13/91 to local authorities which further elaborated the responsibilities of local authorities, putting in place procedures closely modelled on sections of the Consumer Protection Act.

In 1995 the UK amended its Regulations⁵ with 'The Construction Products (Amendment) Regulations 1994' (SI 1994/3051) which took account of the CPD being amended by horizontal Directive (93/68/EEC), ie the so-called 'CE marking Directive' applicable to all New Approach Directives. This was fairly limited in scope and mainly clarified certain common provisions on CE marking. Contrary to some expectations, it did not explicitly make CE marking compulsory for construction products.

5.2 Link to Building Regulations

The Building Regulations for England and Wales are founded on the Building Act 1984. The present Regulations are a series of functional requirements as set out

⁴ §9.4 of Statutory Instrument N°1620 1991 refers to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale or both, whilst §23 addresses recovery of expenses of enforcement.

⁵ See Department of the Environment Circular 1/95 (24 February 1995).

in Schedule 1 of the Regulations. Since these functional requirements relate to health, safety and conservation of energy, it is not surprising that each matches closely one or other of the CPD's Essential Requirements for works which relate to: mechanical resistance and stability; safety in case of fire; health, hygiene and the environment; safety in use; protection against noise; and energy economy and heat retention.

5.3 Approved Documents

For the UK Building Regulations, each of the regulated functional requirements is supported by an Approved Document, providing guidance and example design solutions which, if adopted, would be accepted as enabling the functional requirements to be met. Hence we have, for example, Approved Document A 'Structure', Approved Document B 'Fire safety', and so on up to Approved Document P 'Electrical safety'.

Applying horizontally to all the functional requirements and to the Approved Documents A to P is Regulation 7 and the 'Approved Document to support Regulation 7'. This covers the required suitability of materials (including construction products) and workmanship. In this Approved Document, criteria are shown by which manufacturers can demonstrate that products are acceptable for allowing the building or built works to meet the functional requirements of the Building Regulations and hence the CPD Essential Requirements. CE marking is shown as one important way of establishing the fitness of materials, but other methods are allowed, such as past experience in long term use.

The Building Regulations Approved Documents are advisory and not mandatory. However, they are notified under Directive 98/34 (or previously Directive 83/189). Hence, when developing mandates under the CPD, the performance characteristics called up by the Approved Documents, and by their supporting standards and other documentation, were included as UK requirements in the mandates for harmonised ENs and ETAGs under the CPD.

In a similar way, performance characteristics required by Highways Agency specification rules have also been routinely included as UK requirements in the mandates. Highways Agency rules cover a number of products used in buildings, but also products specifically for civil engineering works such as crash barriers, road marking materials, road 'black-top', road signs, and so on.

The views of other UK agencies have been taken into account as products of specific interest have arisen, for example the Health and Safety Executive on the slipperiness of floorings and railway authorities for electrical cables.

5.4 Technical adjustments to UK Building Regulations

The UK Approved Documents often make reference to other technical documents, such as product standards or technical approvals. As harmonised standards and ETA Guidelines have been developed under the CPD, these national references have had to be replaced by the equivalent European Standards or ETAs. In some cases the process has been quite simple, for example editorial changes to accommodate the new European timber strength classes or changes to compressive strength requirements for masonry units to allow for the move to the new European test method.

But in other cases, much more wide ranging amendments have been needed. For example, Approved Document J 'Heat producing appliances' has needed complete revision to allow for the change from prescriptive product requirements in British Standards to performance requirements in the harmonised European Standards which replace them.

Similarly, Approved Document B 'Fire safety' has been revised with a European Supplement to allow for the new European classes for fire.

In all these cases, the UK has carried out the changes promptly so as to be able to accommodate the new European technical specifications in a timely way.

5.5 Other UK initiatives in support of the CPD

Various initiatives and sources of information have been provided to inform stakeholders and encourage the take up of CE marking. These include:

- A Department website positioned alongside information on building regulations, providing information for stakeholders and including, for example, a simple guide to the CPD, a similar guide to Eurocodes, guidance to notified bodies and European Technical Approval Bodies, answers to frequently asked questions on the CPD, database of notified bodies (now superseded by NANDO) and relevant internet links.
- Full engagement with European and UK policy groups, expert committees and ad hoc groups, and with their equivalent UK consultative committees. The UK provides representatives to all these groups and is recognised as one of the main contributors.
- Proactive meetings with stakeholder groups to explain and promote the CPD and to identify and resolve practical and policy issues.

Chapter 6

Non-mandatory CE marking

6.1 General

In most Member States in the community, CE marking under the CPD is mandatory. This means that, if a harmonised standard is available for a particular product, then that product must be subject to CE marking, following the provisions of Annex ZA in the standard, before it can be placed on the market in that country. Until recently, it was assumed by many Member States that this was intended to apply to products subject to ETAGs as well, but legal opinion from the Commission in 2006 suggests that this is not the case.⁶

However, in the UK and three other Member States (Finland, Sweden and Ireland) CE marking is not mandatory. In effect, in these countries, manufacturers are free to place the product on the market without CE marking. The UK position, as set out in the Construction Products Regulations 1991, is based on legal interpretation of the text of the directive.

6.2 The CPD and the internal market

The purpose of the CPD is to break down technical barriers to trade. It does this by harmonising those elements which hitherto led to barriers by providing:

- a system of harmonised technical specifications
- agreed attestation systems, set out in the technical specifications
- a framework of recognised notified certification and test bodies
- CE marking as a passport to the market of any member state

The UK authorities have always promoted the CPD as an opportunity for manufacturers to place products on the European market. For those wishing to do so, the CPD provides a transparent system and a cost effective investment in such matters as product modification, engagement of test and/or certification bodies, and CE marking documentation and administration to satisfy Member States' regulations in new markets. But manufacturers within a Member State

⁶ SCC paper CONSTRUCT 06/761 16 October 2006 Commission Services position regarding specific provisions of Council Directive 89/106/EEC (CPD) and related issues.

with established home markets, who do not wish to export, and have a satisfied customer base not wanting CE marked products, are likely to see no extra value in CE marking, and generally consider themselves outside the aims of the CPD.

For the UK, and other countries on the edge of mainland Europe, particularly where these countries have regions of poor accessibility, this argument applies more strongly since the costs of transport are higher and the proportion of products exported is likely to be much less. This is particularly so for low value products including a large number of 'traditional' construction products. In such cases, to insist on CE marking may be difficult to explain to manufacturers otherwise disinclined to do so.

6.3 The special position of SMEs

6.3.1 General

The UK's Department for Business Enterprise and Regulatory Reform (BERR) and the European Commission both use the definitions based on number of staff employed as below. Additionally, the European Commission attaches financial turnovers as shown in the third column.

- | | | |
|---------------|---------------------------------|-------|
| • micro firm | 0-9 employees | <2m€ |
| • small firm | 0-49 employees (includes micro) | <10m€ |
| • medium firm | 50-249 employees | <50m€ |
| • large firm | over 250 employees | |

SMEs are of major importance for the economy of Europe and are recognised as:

- major sources of employment
- important agents for innovation and growth
- training vehicles and sources of labour for larger companies
- agents for greater competition (ie countering large local monopolistic suppliers).

In the EEA⁷ there are about 19.3 million enterprises which employ almost 140 million people – of which SMEs employ 70%. The breakdown by size of EEA enterprises is:

- 92% of all EEA enterprises have less than 10 employees (micro enterprises)
- 7% are small (ie 10 to 49 employees)

⁷ European Commission supported report on *Observatory of European SMEs 2003*, N°7 – *SMEs in Europe 2003* http://ec.europa.eu/enterprise/enterprise_policy/analysis/doc/smes_observatory_2003_report7_en.pdf

- 1% are medium sized (50 to 249 employees)
- 0.2% are large (ie 250 employees)

A recent press release stated that fewer than one in ten SMEs do business outside their own country, despite the abolition of national barriers.⁸

In the UK, the construction products industry has an estimated total value of almost £44bn and accounts for 40% of total construction output. There are estimated to be a total of 19,300 enterprises (92% producing mandated products under the CPD), with a total of 378,000 employees, ie an average of about 20 employees per enterprise. Hence, a large majority of UK construction products enterprises can be classified as SMEs and many fall into the sub-classification 'micro' and 'small'.

6.3.2 Position of SMEs in the construction sector

It is widely recognised that regulatory measures may impact differently on SMEs than on larger enterprises. The arguments in relation to SMEs operating in the construction sector are well rehearsed. The merits of each may vary widely from one case to another, but they include:

a) *Costs of involvement in standards making*

Large manufacturers are better able to afford representation on standards committees. SMEs are much less able to absorb the costs of travel/hotels and time away from their business. Whilst membership of trade associations may help them to have a say, many SMEs do not belong to trade associations and doubt their value.

b) *Costs of demonstrating compliance*

The test methods called up in harmonised standards are frequently complex and expensive. This benefits large companies and test houses who are often those writing the standards. The costs of standards documents alone can be substantial for SMEs.

c) *Unacceptably high costs for certification procedures (where required)*

Larger manufacturers are more likely to already have in place quality marks or ISO 9000 certification such that the marginal costs for CE marking are less significant. Some of the larger SMEs have also found for some time that to have a quality management system in place has given them a commercial advantage over competitors, irrespective of CE marking. But for micro-sized enterprises a written factory production control (FPC) is intrinsically less useful and therefore more of a burden to prepare and maintain.

⁸ European Commission press release *Enterprise Europe Network, one stop shop for business and innovation support services* (7 February 2008) <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/78&format=HTML&aged=0&language=EN&guiLanguage=en>

d) Poor information flow

SMEs, and in particular micro-enterprises are difficult to reach with information about the CPD as they are generally not members of a trade association and work in local markets in situations where customers and local enforcement authorities are perfectly content with their products. Operating their business fully occupies their time which means that the CPD is looked at purely as yet another extra financial and administrative burden and given a low priority – especially if they consider there is no benefit which is likely to be the case.

6.3.3 Commission and government initiatives

The European Commission and Member State governments recognise the important role of SMEs in the economy, including their role in fostering innovation, and accord them a particular position in relation to regulations and other administrative measures. For example, specific consideration is given to SMEs when carrying out impact assessments. The overall thrust of present policy is to seek better regulation by minimising unnecessary burdens on industry. Within the UK, the Enterprise Directorate in BERR is the expert policy unit on small business issues throughout government and provides information specifically tailored to SMEs.

The Commission is particularly active in taking account of the interests of SMEs, and has developed and implements a range of policy measures specifically to assist SMEs in Europe. For example, the Commission supports a website portal for SMEs. In 2007 DG Enterprise published a number of promotional style documents including 'Putting SMEs first' and 'Models to reduce the disproportionate regulatory burdens on SMEs'. Among the arguments put forward 'in defence' of SMEs are those set out in paragraph 6.3.2. More specifically, to focus on the implications of standardisation for SMEs, the European Commission supports NORMAPME, the 'European Office of Crafts, Trades and Small and Medium – Sized Enterprises for Standardisation'. NORMAPME recognises that standards are essential for SMEs, but aims to ensure that they are proportionate in their effect. In the construction sector, they have a presence on 11 CEN TCs producing standards under the CPD, and their website reports the particular SME issues on each.

6.3.4 Reducing the burden – recent developments on the CPD

The Commission's Construction Unit have more recently begun to acknowledge the particular difficulties for SMEs. For example, in May 2005, the Commission introduced Guidance Paper M (GP M) 'Conformity assessment under the CPD'. In order to reduce the potential costs of initial type testing (ITT), often the greatest cost for SMEs, GP M introduced the concepts of 'cascading ITT', where a system house can pass its ITT results on to companies assembling its products and 'shared

ITT', where several manufacturers may share the results of testing provided they can show that their products satisfy the same product specifications. The revision to the CPD is expected to try to provide simplified routes for SMEs.

6.3.5 The position in countries with mandatory CE marking

It is difficult to be certain of the extent to which CE marking is actually applied in countries where it is mandatory, and the extent to which the enforcement authorities are proactive. In European CPD committees such as the Administrative Cooperation Group for Market Surveillance, Member States inevitably present their market surveillance measures in the most positive light possible. Anecdotal evidence based on remarks in the margins of meetings leads FBE to conclude that CE marking has so far not been proactively enforced across all product sectors by Member States where it is mandatory, but several Member States have taken initiatives and are only just beginning to look seriously at the issue.

On its website, NORMAPME shows three SMEs in France making 'industrial, commercial and garage doors and gates'. Only one is fully applying CE marking, at what it considers considerable cost and complexity. The second SME has chosen not to apply CE marking due to a perceived poor fit of standards to his products. And the third is selling these products while being oblivious of the need for CE marking or its meaning. CE marking under the CPD has been considered compulsory by the Commission, France and others for these products since 30 April 2005 in accordance with harmonised standard E13241-1:2003. Three other New Approach Directives also apply to these products and these too are being ignored by this manufacturer.

There are other clues that reinforce the impression that CE marking may not be uniformly applied in countries where it is mandatory. For example, at a time when ETAGs (Guidelines on European Technical Approvals for innovative products) were also accepted as leading to compulsory ETAs, only two ETAs were issued against the ETAG for Structural Sealant Glazing systems, despite the fact that many such systems are on the European market. Similar comments apply to harmonised standards, eg roofing membranes.

Chapter 7

Review of previous impact assessments on the effects of the CPD

7.1 Europe-wide studies

7.1.1 The Atkins report, September 2000

*Effects of Regulation and Technical Harmonisation on the Intra-Community Trade in Construction Products*⁹

The purpose of the Atkins study was to assess the practical impact of obstacles to trade in construction products in the EU and the benefits of harmonisation. Case studies were carried out on six product families, namely sanitary ceramics, sandwich panels, curtain walling, windows, reinforcement steel and anchor bolts. The exercise included interviews with relevant companies in Belgium, France, Germany, Spain, Sweden and the UK.

The study was very much predictive in that the first harmonised standard for cement only became available on 21 June 2000, with a date of 'applicability' April 2001. Therefore there was no practical experience of CE marking for any of the product groups except for anchor bolts for which an ETAG had been in place for two years.

Nevertheless, the study found overall support from industry for the principles of the CPD and optimism that barriers to trade would be removed. Overall, it was anticipated that the volume of testing and certification would probably increase because most Member States did not need third party certification, but these costs were thought to be insignificant compared with the potential benefits, estimated at 10bn € per year, mainly arising from trade, competition and restructuring benefits.

However, reflecting early concern for SMEs, one of the main recommendations was that, to minimise the impact of mandatory testing and certification, self declaration should be adopted wherever possible and there should be appropriate exclusions of special purpose products and craft/site activities.

⁹ A study for the Commission: DG Enterprise <http://ec.europa.eu/enterprise/construction/internal/atkins/atsatkins.htm>

7.1.2 The PRC report, 6 April 2007

*Study to Evaluate the Internal Market and Competitiveness Effects of Council Directive 89/106/EC (Construction Products Directive, CPD)*¹⁰

The PRC report is the most recent and most comprehensive report on the CPD. It is based on 150 interviews, approximately 100 questionnaires, and three consultative meetings (total 300 delegates) from a wide cross-section of stakeholders across Europe. The PRC report can be considered authoritative in its methodology and general conclusions. PRC analysed and drew conclusions about the CPD with particular reference to 12 product family case studies, and based on three scenarios or '*mondes*', ie the world if:

- the CPD did not exist – the '*anti-monde*'
- the CPD continues as it has done and into the future – the '*monde*'
- all remaining faults in the CPD were corrected – the '*meta-monde*'

The terms of reference for PRC stressed the importance of considering the cost and burden of CE marking for SMEs. Overall, the costs to apply CE marking (ie 10,000€ to 100,000€ per enterprise per product type) are largely independent of size of enterprise. They are generally not large with respect to turnover for a whole sector. However, when considered per enterprise, then:

- multinationals and those exporting with third party intervention a feature of their market have the most to gain, eg costs for steel are 0.0002% of turnover
- SMEs in UK, Ireland, etc can face possibly crippling costs, eg small fire-alarm system manufacturers 10% of turnover

The PRC report highlights the importance of, and benefits from, enhanced competition which do not require there to be enhanced actual trade. If the costs and bureaucracy of CE marking leads to a set of suppliers being driven out of the market (eg SMEs serving a local market) and being replaced by multinationals and/or major local monopolistic suppliers (often owned by multinationals) then local competition is diminished/removed with a consequent drop in overall competitiveness. This can give rise to a situation where CE marking increases cross-border trade, but decreases overall competition. Local/regional monopolies are helped by removing the competition from SMEs who are over burdened with regulatory requirements and driven out of the market.

¹⁰ A study for the Commission: DG Enterprise http://ec.europa.eu/enterprise/construction/cpdrevision/study_evaluate_int_market-compet_effects.pdf

Amongst the report's conclusions are the following:

- *"... the findings of the case studies so far do not support the view that the procedures are in general 'very burdensome' or that they necessarily require 'heavy technical tests'."*
- *"... This study shows that trade should increase and prices and production costs reduce as a consequence of CE marking, but in some sectors and in some countries many small enterprises which do not trade across borders will be caught by more costly attestation and/or by new certification requirements."*
- *"... stricter product regulation [than optimal] ... creates protection for the established market leaders ... [but] ... SMEs and new entrants would lose, consumers would get less choice and higher costs – but society might not get safer buildings and lower environmental, health and civil protection costs."*
- One of the most commonly expressed benefits of CE marking, ie the reduction in attestation costs with only one mark now necessary (ie CE marking), is perhaps of least benefit overall with the losers being SMEs generally, producers with innovative products, and those with a particularly wide product range.
- SMEs in the UK and Ireland, and certain products in some Nordic countries, are ones which are most likely to be adversely affected by compulsory CE marking as they will have new attestation procedures and have to do something (to remain in the market) with no savings. This also applies to innovative products where CE marking costs can exceed turnover in the first few years.
- *"... Reducing the burden for enterprises however does not necessarily mean changing the provisions of the CPD, or simplifying the text of the CPD. The burden is caused by... the fact that the CPD CE – marking and the use of the technical specifications is mandatory"*.
- GP M does provide savings (for SMEs) with its introduction of cascading and sharing, and products not placed on the market so not requiring they are addressed by CE marking.

Regarding the matter of voluntary versus mandatory CE marking, then the PRC report supports voluntary CE marking providing no other mandatory mark is allowed.

7.1.3 RPA report, May 2007

*The Policy Options for Revision of Council Directive 89/106/EEC*¹¹

This report was in effect the Commission's impact assessment of policy alternatives for revision of the CPD/CPR. In common with many such reports, the information is highly qualitative and no quantitative data are given, but the report observes the following in respect of existing legislation:

"...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 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."*

7.2 Impact assessments at UK level

7.2.1 FBE European Unit 2004 Revision of the CPD

UK Perspective and Initial Regulatory Impact Assessment

At the beginning of 2004, the Commission suggested that it was time to consider seriously revising the CPD. In order to be ready with proposals, the ODPM initiated consultation within the UK. Accordingly, UK stakeholders were alerted and invited to comment via:

- two open consultation meetings
- an FBE interactive website in which 20 issues were identified on which stakeholders were invited to comment
- telephone and face-to-face interviews with key players, as part of an impact assessment for the Department on UK experience to date on implementation of the CPD, undertaken by FBE

A practical finding was to discover how difficult it is to acquire reliable financial information. Many industry sectors simply do not have the relevant data. Those companies and trade associations which do have such information are often very reluctant to release it on the grounds of commercial confidentiality. Nevertheless sufficient data were available for this study to reach several helpful conclusions.

¹¹ http://ec.europa.eu/enterprise/construction/cpdrevision/study_policy_revision_directive.pdf

One notable finding of the work was that, at that time, CE marking costs impinged almost solely on manufacturers. Against perceived wisdom, the marginal costs to other stakeholders were shown to be quite small. For example, familiarisation costs to enforcement agencies, practitioners and distributors were little more than the usual 'continuing professional development' type costs arising from the need to keep up with latest technical developments. However, it should be remarked that this situation may significantly change if CE marking is made compulsory in the UK, or if other stakeholders in the supply chain have some responsibility for checking the validity of the CE marking.

In the event, revision of the Directive in 2004 was postponed, but several aspects of the work carried out then are very relevant to this report. Much of the information gathered then is relevant to the present situation and will be referred to again in the new work for this report.

7.2.2 FBE European Unit, January 2007

Preliminary Results of Regulatory Impact Assessment to Determine Effect of Compulsory CE Marking under the CPD

At the beginning of 2007, the Department requested that FBE take soundings on the current position on CE marking in the UK and the prevailing view on the possibility of compulsory CE marking.

Accordingly, a straw poll was carried out on a sample of 20 industries. It was found that the strong views against compulsory CE marking held for some years after introduction of the Directive were beginning to soften for several product sectors. The reasons for this will be discussed in section 9 under Stakeholder consultation for this report. However, the survey found that strong feeling against compulsory CE marking remains in some sectors eg small aggregates producers and small stone quarries.

Chapter 8

New work for this study – overview

New work undertaken for this study was both:

- qualitative (including a stakeholder consultation) – which sought to find out the attitude of stakeholders, particularly manufacturers of construction products falling within selected product groups
- quantitative – which sought to determine the costs and benefits to manufacturers to CE mark in the UK for specific product case studies.

This new work included:

a) *Initial brainstorming/focus-group meeting*

A brainstorming/focus-group meeting, held between the FBE/BRE project team and two CPD experts independent of current stakeholders, ie a former CEN consultant on the CPD and the main author of the Commission's PRC study. This was conducted early on in the study and informed both the qualitative and quantitative work.

b) *Desk research/literature search*

Extensive desk research was undertaken to identify and review appropriate official published reports and unpublished reports and websites (eg the Commission's Europa website) to evaluate the information as a possible resource for this report.

c) *Contacts with stakeholders on specific issues*

Contacts were made to obtain specific information, eg costs to undertake specific tests or other conformity tasks from notified bodies, background to the writing of the CPD and its introduction into UK law, etc.

d) *Cost/benefit analysis*

A new cost analysis for the UK, based where possible on more recent statistics and UK specific sources, was carried out:

- following the same basic methodology of the PRC report using the same product families for its case studies (as far as possible) and supporting data, but applied to the UK market only and using the most recent and relevant available figures
- updating and extending the scope of the 2004 impact assessment work

e) Stakeholder consultation

Much of the new work concentrated on 24 structured telephone and face-to-face interviews with manufacturers and associations of manufacturers which built on previous contacts. Consultation with non-manufacturers is based on less structured contacts using FBE's continuing regular contact with the Construction Products Association (CPA), the UK EOTA spokes body (currently BBA), notified bodies (NBs), Commission, etc. A stakeholder analysis was undertaken to put the current consultations in the context of a fuller consultation.

The interviews with manufacturers were combined into product groups and supplemented with information on the state of play of standards, and, where appropriate, with extracts from the PRC report summarising their findings on a Europe-wide basis.

Chapter 9

Stakeholder consultation

9.1 Methodology of the stakeholder consultation

9.1.1 Stakeholder mapping

A stakeholder mapping exercise was undertaken to show the relative interest and influence of the different stakeholders affected by the CPD. This provided a wider context for the stakeholder consultation described below.

9.1.2 Consultation process

The 2004 FBE study showed that the costs to non-manufacturing stakeholders (eg architects, building control, etc) of the CPD, as presently formulated, were quite small (see section 7.2.1). This study's stakeholder consultation process therefore sought to provide greater detail on those who are impacted most by the cost of the CPD, ie the cost to CE mark for manufacturers, particularly the smaller enterprises.

The interviews, whether by telephone or face to face, were structured to seek views and information relevant to the aim of the study. For each of the 17 product groups selected, the interview information was supplemented by:

- Information on the 'State of play of hENs and ETAGs' to indicate how mature and experienced the product group is regarding CE marking. Although the CPD was adopted in 1989, there are many sectors where harmonised standards have only recently become available so that experience of CE marking is limited.
- Information on level(s) of attestation which indicate the extent of third party involvement. This affects directly the CE marking costs which are largely independent of size of enterprise for similar product ranges.
- Information from the PRC report, where available, to provide a picture at Community level for the sector.

Regarding stakeholders other than manufacturers, the European Unit is in regular contact with representatives of regulatory and enforcement authorities, the professions, and other organisations such as the CPA, BSI, UK notified bodies, UKAS, NHBC, BBA and BSI when their views and concerns on the workings of the CPD are often discussed. These bodies were also sources for provision of specific information used, eg construction product statistics from the CPA, costs to test and certify from relevant NBs, etc.

9.1.3 Selection of product groups for consultation

The selection of 24 organisations for the qualitative stakeholder consultation consisted mainly of trade associations and was based on:

- matching the product groups used in the UK quantitative study of cost to CE mark – which were selected to match as far as possible the PRC case studies
- complementing the PRC case study product groups with the following six product groups:
 - aggregates
 - natural stone
 - curtain walling
 - pipes
 - industrial doors
 - commercial and domestic doors

The selection of the supplementary product groups was to ensure that the consultation covered the following types of enterprises:

a) *Small and micro-sized enterprises*

Small and micro-sized enterprises are the dominant manufacturers/fabricators in the product groups for curtain walling, industrial doors, and specialist commercial and domestic door manufacturers.

b) *Large manufacturing conglomerates*

Large companies may operate internationally with a uniform identity and strong central management. However, some operate as individual companies within conglomerates (eg Lafarge). These behave in many ways no differently from similar sized independent companies, ie like SMEs. Examples of such sectors are aggregates and natural stone products.

c) *Important sectors not already represented and not easily disaggregated in official statistics*

Official statistics do not provide disaggregated data for all important sectors and hence some were overlooked in the quantitative case studies, eg plastic pipes. The plastic pipe sector is an important product group associated with two mandates (M/131 and M/136) each with wide scope and are presumably contained in the scope of the very general SIC 2523 *Manufacture of Builder's Ware in Plastic* along with other products.

d) *Construction products also falling under several directives*

It is helpful to include in the stakeholders consulted further examples of construction products where CE marking is compulsory under other New Approach Directives, ie industrial doors, which also falls under the machinery directive.

e) Greater coverage by product mandate

The cost/benefit case studies covered a minority of mandates, ie 13 out of 32 possible CEN product mandates. The additional product groups consulted as part of the stakeholder consultation increased the coverage by seven mandates to a total of 20 mandates.

9.2 Findings of the stakeholder consultation

9.2.1 A backward look to CE marking in the early 1990s

Industry groups are well able to recall that when the CPD and the UK Construction Products Regulations were first introduced, most UK manufacturers and trade associations were either indifferent or supported the aims of the CPD insofar as it would open up opportunities for manufacturers to more easily trade across the Community. But nearly all were very much against compulsory CE marking. This view arose against a background where, in those early days:

- The quality of forthcoming European Standards was uncertain and industry opinions were that they were going to be of poor quality compared with the existing British Standards they were to replace.
- Attestation procedures were not required in the UK and future costs were uncertain. At that time a widespread regulatory mark for construction products was novel and there were fewer quality marks than at present, although certification of quality management systems (then according to BS5750) was becoming quite widespread.
- The tradition in the UK was that there were few technical requirements for the placing of construction products on the market. 'Fitness for purpose' was voluntarily declared by the manufacturer, usually based on British Standards, with enforcement through building control and trading standards.
- Because of the nature of construction products, many manufacturers did not intend to export outside the UK and saw no point in CE marking.
- Later cost-saving measures for manufacturers had not then been envisaged. Measures developed since the early days include:
 - The Decision for 'products offering no contribution to fire'. This removed the need to test (homogeneous) products made from materials widely accepted as non-combustible in 1996.
 - The first Decision for classified without further testing (CWFT), ie regarding wood-based panels, was not adopted until 2003.

- The Commission adopting GP M which encouraged specification writers to introduce cascading and sharing, where possible and appropriate, was only adopted in May 2005. This measure is most useful for SMEs and only now are the first few standards beginning to incorporate these provisions.
- Modern communication facilities were very basic and/or not available to most, ie email and the Web. The development of the Web and other improvements have enabled consultation and the provision of and access to guidance easier – so making implementation less burdensome for manufacturers and the authorities.

9.2.2 Present views on the value of CE marking (voluntary)

Opinions are largely governed by the costs and benefits for individual companies and dominant groups in associations, but some correlation is found between size and sector.

9.2.3 Those tending to be in favour of CE marking

a) *Larger companies*

CE marking costs per product family are broadly similar for the largest and smallest companies irrespective of turnover. Hence the cost per product type tends to be higher the smaller the enterprise.

b) *Companies newly exporting to mainland Europe*

For these companies the costs of CE marking are justified by the widening of their market to the majority of the EEA countries where CE marking is compulsory. The CPD and CE marking will be seen as a distinct benefit for them.

c) *Multinationals*

There is evidence from some that CE marking has removed the need for a multitude of national and voluntary marks, creating significant savings for multinational manufacturers, eg cement (AoC 1+).

This benefit can be overstated as several of the UK sectors have found. For example, manufacturers of curtain walling (AoC 3) and of pipes (AoC 4) in the UK and Europe believe the AoC levels for CE marking are too low. For these and other products CE marking is at best irrelevant as the market in the UK and Europe still demands their former quality marks (eg BSI Kitemark) or similar with their higher AoC levels – even though the regulators cannot require these voluntary marks.

d) Companies facing competition outside of the EEA from imports of doubtful quality

Those sectors most vociferous in wanting obligatory CE marking tend to be those who are facing competition from imports from outside of the EEA, eg timber, geo-textiles/geo-membranes, fire fighting systems/components. In the absence of proactive market surveillance, they consider that the UK is being targeted with cheaper low quality products since, without compulsory CE marking, market entry is easy.

9.2.4 Those tending to be against CE marking

a) Smaller companies

As well as the reasons outlined above regarding testing and certification (section 9.2.3.a), there are additional problems and costs whose impact is far greater on smaller companies. These include familiarisation with new legislation and standards, CE marking documentation, changes to promotional literature and delivery notes, etc.

b) Companies operating within the UK market only

Companies whose markets are regional or national and have no intention to export to Europe see little benefit to them for the significant direct costs and management time to CE mark their products.

c) Companies without a certified factory production control system

Many (smaller) companies see no market demand to have ISO 9001 certification or voluntary quality mark(s). Such companies are faced with significant internal management costs to have a written FPC and to CE mark – irrespective of the system of AoC. Even for products with attestation system 4 there are likely to be extra costs to manufacturers of testing by a commercial laboratory as they generally do not have the facilities themselves.

d) Companies not (currently) faced with heavy competition of imports from developing countries

Sectors who are not facing competition from outside the EEA, and are not themselves exporting, see no advantage in CE marking, eg insulated glazing units (IGUs), doors and windows, aggregates, etc.

e) Companies with little demand for product marking from customers

For some construction products (eg certain natural stone products, specialist/ small clay brick manufacturers, etc) aesthetic considerations are critical and CE marking of declared values is of little value.

9.2.5 Evolving views on the advantages of CE marking

Whilst this study found many views which were similar to those in 2004, the results of the 2007/08 stakeholder survey confirmed increasing support for

compulsory CE marking or at least its acceptance from UK manufacturers and associations. Several sectors are beginning to see advantages in CE marking. This change in view is not only at sector level, but is also being reflected by:

- the Construction Products Association (CPA) who in 2004 were equivocal in their views on compulsory CE marking, but are now expressing support for compulsory CE marking (subject to provisos)
- the Institute of Building Control (IBC), part of the Royal Institution of Chartered Surveyors (RICS), who are now in favour of compulsory CE marking

A number of factors have influenced this change:

a) *Quality of standards*

Manufacturers report that they have found the quality of European Standards to be much higher than earlier expectations indicated. Some sectors have commented that the new standards have provided a structured set of technical documentation which, overall, has been an advance on the British Standards that they have now replaced.

b) *Expectation of specifiers*

Even though the CE marking is not a quality mark, some specifiers are beginning to expect to see the CE marking on products. Their question to manufacturers is "*why not just do it?*"

c) *Public procurement*

In the public procurement arena, some manufacturers see CE marking as a means to provide structure and transparency to the requirements of specifiers in areas where these do not exist at present.

d) *Reduction in mystery and confusion over CE marking – no longer the unknown*

Over the years, the mystery and uncertainty over CE marking has been reduced due to:

- realisation that the standards are a comprehensive and self-contained source of information about how to CE mark
- better advice more easily communicated by email, the Internet, and websites from the Department and others (eg trade association, FBE, etc).

e) *Communities and Local Government guidance*

In contacts with industry groups, the UK authorities, in particular Communities and Local Government and its predecessor Departments, have

promoted CE marking as an important option for meeting Regulation 7 of the England and Wales Building Regulations on fitness for purpose, and the equivalent provisions for Scotland and for Northern Ireland.

f) CE marking costs

In some instances individual companies have seen that the actual CE marking costs are not as high as at first feared. For example, the testing of IGUs where the investment by the relevant NBs has resulted in a near halving of the testing costs in the last year. Also, for commercial reasons, increasing numbers of manufacturers are opting for quality marks or for ISO 9000 certification, so that often it is only a marginal extra cost to achieve CE marking.

g) New efficiency measures by the Commission

It was made clear earlier in this report that the Commission has recognised for some time the particular issues relating to regulatory cost burdens, particularly as they affect SMEs. However, it should be noted that, counter to these points are concerns that relaxing the present requirements may damage the credibility of CE marking and lead to reversion to the more costly and divisive 'national' quality marks accompanying CE marking.

Some issues around fire testing began to be eased for all sizes of enterprise in 1996 (see section 9.2.1). But it was only after May 2005, with the publication of Guidance Paper M, that smaller enterprises (eg window fabricators) were offered procedures particularly helpful to them. GP M offers the following options to standard writers:

- sharing of test results could reduce the costs for SMEs, eg EN 1317-5:2007 for mandate M/111 'Circulation fixtures' where it is possible to share the test reports of very expensive crash barrier tests to a national design amongst fabricators (who are largely SMEs in the UK),
- cascading of test results could reduce the costs for SMEs, eg for mandate M/108 'Curtain walling' where the fabricators (ie façadiers) are SMEs employing mostly <100; similarly in mandate M/101 'Doors and windows', and M/135 'Glass' (and insulated glass units (IGUs) in particular).
- Clarification/extension of the principle of non-series production.

Other Commission provisions also have the potential to reduce costs. For example, the Commission's internal legal view (CONSTRUCT 06/761) produced in October 2006, should assist manufacturers by establishing the principle of product characteristic certification as opposed to whole product certification.

9.2.6 Views of UK manufacturers on the possibility of compulsory CE marking in the UK

In parallel with an increasing acceptance of CE marking by UK industry, there appears to be an increasing acceptance of the possibility of mandatory CE marking being introduced in the UK. Indeed, some see it as inevitable. This judgement is based on the present framework with which manufacturers have now become familiar, ie the present CPD as it has turned out to operate in practice with the possibility of cost-reducing measures introduced in the last five years being incorporated into technical specifications. Views may well change and will need to be sought and re-evaluated when the proposed CPR becomes available.

For some sectors, mandatory CE marking would be positively welcomed and for others it would be accepted on the basis 'we can live with it'. SMEs in some sectors (eg small aggregates producers and quarries) may still resist unless the regulatory framework and the CPR is formulated in such a way as to accommodate their concerns.

Some sectors, including wood-based panels, geo-textiles, (structural) steel hollow sections, and fire detection and alarm equipment have indicated strong support for mandatory CE marking, suggesting that this may guard against the import of products of alleged doubtful quality or mis-selling further down the supply chain. There are also concerns that low quality products which fail to gain CE marking in other Member States will be 'dumped' on the UK market.

Companies facing imports, possibly of doubtful quality, from developing countries believe that mandatory CE marking offers some protection. This is not the purpose of the CPD, which is to eliminate barriers to trade within the Community and not to erect new ones to products from outside. But in a time of rapidly expanding world trade it has become a significant factor for several product sectors. For at least one sector (ie fire detection and alarm equipment) this is such an important factor that even SMEs strongly support CE marking and have both lobbied Communities and Local Government and written directly to the Commission asking them to make CE marking compulsory.

Generally there is little evidence that there is widespread demand by UK industry that others within the UK who decide not to CE mark should be compelled to do so. In the past, it was anticipated that those who voluntarily CE mark at present may see a benefit from making their SME competitors incur unnecessary costs, but there are few calls for mandatory CE marking for these reasons.

The introduction of compulsory CE marking, starting in the early 1990s, would have been a major change for much of the construction product manufacturing sector and would have been very contentious, despite:

- requirements in the mandates, Council statements for entry into the minutes, and recitals in the CPD that existing products should not be removed from the market place by the introduction of CE marking or be penalised when CE marked
- the Commission seeking to reduce the burden of third party certification and testing in more recent years – as these have still to take effect in the majority of standards and their incorporation seems to be taking rather a long time

Whilst almost any change will have a cost associated with it, for manufacturers change is a common experience and they well recognise that legislative and technical specifications do change over time, even without the CPD. A move to compulsory CE marking 'overnight' sometime in the future (eg after 2010) from its current voluntary status should be reasonably unproblematic for much of industry and the authorities. In effect they will have had an average co-existence period of about five years to introduce CE marking, compared with the default of nine months which would have applied had CE marking been mandatory in the UK from 1991. In addition, after 2010 nearly all the harmonised standards will have undergone amendment and correction arising from practical experience of them, and many should have incorporated the cost-reducing measures in GP M, eg cascading and sharing.

9.2.7 Views of UK authorities on compulsory CE marking

Building Control authorities have been largely neutral on the issue of compulsory CE marking of construction products as any risk assessment of building control work would have placed the performance of products well down the priority list compared with design and installation issues. Similarly, Trading Standards authorities have traditionally viewed construction products as a low risk area (compared, for example, with toys).

However, Building Control authorities are now of the opinion that, despite specific problems, compulsory CE marking would now be an overall benefit for them. The change in view arises from concerns that:

- imports from third countries that are now beginning to pose threats not met before (at least on the same scale as in the past)
- relatively recent changes to the structure and type of personnel in building control has resulted in a loss of corporate, institutional and individual experience in building control compared with 10 or more years ago.

A move to mandatory CE marking for products on the market will require the UK to adopt robust market surveillance processes, but Trading Standards note that this should also be in line with the principles of better regulation, and allow for enforcement based on risk assessment, especially in a climate of increasing pressure on local authority resources.

Chapter 10

Cost and benefit analysis

10.1 Methodology of the cost analysis

10.1.1 General

The methodology adopted was similar to that used in the previous study for the Department by FBE in 2004 (see section 7.2.1) and the report prepared for the European Commission by PRC in 2007 (section 7.1.2) which looked at Europe as a whole.

The methodology can be summarised as a 'bottom-up' approach based on 12 product family case studies that matched where possible those used in the PRC report. Using UK sales figures for the sector as a whole and UK sales for the product family case studies, cost figures for the UK as a whole were arrived at. The 12 case studies had an annual turnover of some £15.4bn which represented 40% by value of mandated products on the UK market and were drawn from a wide range of mandates.

The approach is considered robust for the current purposes, and good agreement (ie within a factor of two) was achieved between the current study and the PRC study using alternative assumptions and data.

As well as data from the two previous studies, further information was obtained from:

- Eurostat website for trade statistics on construction products
- ONS (Office of National Statistics) data on turnover, number of enterprises and number of employees in the construction products industry – these figures were obtained from the CPA (Construction Products Association) who use them for their own reporting purposes
- Discussions with BERR (formerly the DTI) officials

10.1.2 Case studies used for the cost/benefit analysis

As stated above, the choice of product families to be studied was matched to those used by the PRC report and equates to about 40% of the total mandated construction products market by sales that would be captured by the requirements of the CPD.

The product families selected and the associated mandate for the quantitative cost analysis of this report were:

– cement	M/114	– chimneys and flues	M/105
– ceramic tiles	M/119 and M/121	– fire fighting systems	M/109
– geo-textiles	M/107	– masonry products	M/116
– reinforcing etc steels	M/115	– sanitary appliances	M/110
– structural steel	M/120	– thermal insulation	M/103
– windows	M/101	– wood panels	M/113

This choice of 12 product family case studies, sampling 13 mandates, enabled a wide spectrum of the industry and most major variables to be covered, ie:

a) Products covering the full spectrum of attestation of conformity (AoC) (except system 2)

Several of the case study products have multiple systems of attestation (eg because of declaring fire characteristics), but the predominant attestation system(s) found for the case study products for the UK market are:

- 1+ – cement, and reinforcing and prestressing steels
- 1 – fire fighting systems
- 2+ – structural steel, chimneys and flues, wood-based panels and geo-textiles (as fluid/gas barriers)
- 2 – NO CASE STUDY – only building lime is at system 2 and it is set to be 2+
- 3 – windows and most thermal insulation products
- 4 – ceramic tiles, sanitary appliances and (most) masonry products

b) Products covering the full range of manufacturers

Whilst most of the product families studied include some very large manufacturing companies and a larger number of small companies, they can be roughly classified as follows with respect to manufacturing size:

- very large (multinationals) – cement, structural steel, and reinforcing and prestressing steels
- broad size distribution – thermal insulation, wood panels, geo-textiles, windows, chimneys and flues, masonry, ceramic tiles and sanitary appliances.
- predominantly small manufacturers – windows (except for a few very large companies)

c) **Products covering the full range of distance from point of manufacture to works**

The range of distance from place of manufacture to works varied from products traded locally to products traded globally. Although there are always exceptions, the case study products can be roughly categorised as products traded from point of manufacture to works:

- globally/internationally
- widely imported/exported into UK
- nationally/regionally/locally
- cement, structural steel, and reinforcing and prestressing steels, and wood panels
- geo-textiles and ceramic tiles
- windows, masonry, sanitary fittings, chimneys and flues, and thermal insulation products

10.2 Findings regarding costs

10.2.1 Proportion of construction products industry subject to the CPD

Ninety-two per cent of the UK construction product manufacturing sector by enterprise is mandated, ie has the potential for CE marking, representing 86% of total value of sales in 2005,¹² see Table 1 below.

Construct. product type	Sales		Enterprises		Employed		Per enterprise	
	Value	%	N°	%	N°	%	Sales	Empl.
Mandated products	£37,350m	85.9	17,862	92.4	332,000	87.8	£2.091m	19
Non-mandated	£6,152m	14.1	1,479	7.6	46,000	12.2	£4.160m	31
All const. products	£43,502m	100	19,341	100	378,000	100	£2.249m	20

10.2.2 Approximate CE marking costs by case study sector

The CE marking costs to sales varies significantly from one sector to another. The figures in Table 2 are approximate; they should be considered only as illustrative of what the cost would be if all currently mandated products were actually CE marked in 2007. They should be regarded as the marginal extra cost to CE mark over current practice (eg quality marks) – hence the marginal extra cost for CE marking for cement is insignificant compared with the BSI Kitemark scheme which it replaced.

¹² Figures were based on ONS data as interpreted by the Construction Products Association (CPA) and sorted to identify mandated products.

Table 2 Approximate breakdown of costs to CE mark by case study sector

Case study sector	UK sector sales ¹³	Initial one-off costs		Ongoing annual costs	
		Sector costs	% of sales	Sector costs	% of sales
Cement	£720m	£0.58m	0.08	£0.00m	0.00
Ceramic tiles	£44m	£0.13m	0.30	£0.06m	0.14
Chimneys and flues	UK data not available	£0.00m	–	£0.05m	–
Fixed fire fighting	£350m	£2.46m	0.70	£0.19m	0.05
Geo-textiles	UK data not available	£0.05m	–	£0.11m	–
Insulation	£956m	£2.36m	0.25	£1.67m	0.17
Masonry	£1,189m	£4.76m	0.40	£0.19m	0.02
Reinforcing bar	£354m	£0.02m	0.01	£0.00m	0.00
Sanitary appliances	£524m	£1.45m	0.28	£0.00m	0.00
Structural steel	£5,386m	£0.33m	0.01	£0.01m	0.00
Windows	£5,181m	£14.49m	0.28	£2.74m	0.05
Wood panels	£703m	£0.59m	0.08	£0.00m	0.00
All 10 case studies	£15,407m	£27.22m	0.18	£5.02m	0.03

Whilst the above costs are relatively low relative to UK sales for all the product groups studied, however for the small and particularly micro-sized enterprises in the sectors these costs could be significant as a proportion of their profit if there are many product types to be tested.

10.2.3 CE marking costs in the UK

As stated earlier, the 12 product families studied represent a substantial sample (40%) of the total mandated construction products market by sales and they cover a wide range of mandates. The UK costs for mandated products and non-mandated products can be reasonably estimated by grossing up the total costs from the 10 case studies in Table 2 using total UK sales in Table 1 – the results are shown in Table 3.

¹³ Data source is 'PRODCOM'

Table 3 Approximate breakdown of costs to CE mark for the construction sector

Construction product type	UK sales ¹⁴	Initial one-off costs		Ongoing annual costs	
		Costs	% of sales	Costs	% of sales
All mandated products	£37,350m	£66m	0.18	£12m	0.03
Non-mandated products	£6,152m		0.00		0.00
All construction products	£43,502m	£66m	0.15	£12m	0.03

As CE marking costs are largely independent of size of manufacturer, at least for the same product, then Table 4, which analyses the UK costs using data from Table 1 and 3 to give an average cost per enterprise and per employee, shows the situation more realistically.

Table 4 Approximate CE marking cost data for mandated UK construction product manufacturing

Type of cost	CE marking costs for mandated products	Cost for the average UK manufacturer <i>ie sales of ~£2m and employing 19 staff</i>	
		Cost per UK enterprise	Cost per employee
One-off	£66m	£3,695	£199
Annual	£12m	£672	£36

The various data sets from different sources show good agreement when aggregated, ie 10%. This suggests that the approach adopted is robust for aggregated data. At individual case study level, agreement is far less and can vary by a factor of nearly five. The reasons for this variation arise from:

- survey sampling errors in the studies
- difficulties for survey respondents estimating unit costs
- difficulties in ensuring that each of the sectors in the two studies are being compared on a 'like for like' basis
- inaccuracies in the production data, etc

¹⁴ Data source is 'PRODCOM'

10.2.4 Estimates of products carrying the CE mark voluntarily in the UK

Based on comments and information from the stakeholder consultations, the figures given in Table 2 above, and occasional visits to building sites, builders merchants, etc, it is believed that:

- about one third (ie between 25% and 40%) of mandated products in the UK by value of sales are currently being CE marked **voluntarily**. That is, out of all products where CE marking is possible at present and in the future, about 33% are believed to bear the CE mark at present.
- about four-fifths (ie between 70% and 85%) of mandated products in the UK by sales would be CE marked **voluntarily** if **all** the proposed harmonised standards were now past their date of end of co-existence period (DECP). In other words, in about three to five years time and without mandatory CE marking, about 80% of the UK market would bear the CE mark.

These estimates will need to be revisited in the impact assessment work on the CPR. For now, it should be noted that the cost of moving from voluntary to mandatory CE marking by 2011 (when the CPR is expected to come into effect) is likely to be considerably less overall than the figures quoted in sections 10.2.1 to 10.2.3, but any cost is likely to be disproportionately borne by the smaller manufacturers.

Note: Not all construction products in the UK have to meet regulations, eg doors for internal communication, and the same products may be regulated for some uses/applications and not in others; eg bricks for use in pathways are not regulated, whilst those in structural applications are regulated. Similarly, the same glass may be used in windows (regulated) and in furniture (not necessarily regulated). The scope of the CPD extends only to regulated uses.

10.3 Findings regarding benefits

The benefits arising from CE marking are far less easy to quantify and the PRC study is not transparent in how it arrived at its benefit figures. For the 13 PRC case studies, 11 had a net positive benefit for Europe, whilst thermal insulation and windows had a negative to neutral net benefit for Europe arising from CE marking.¹⁵

¹⁵ In §4 of the final PRC report structural steel was sub-divided into structural steel products and structural steel structures and components making 13 case studies in this section

In this study and in previous UK studies there has been no quantification of the benefits because they are by their very nature harder to quantify than costs, and they relate to many intangibles for manufacturers, enforcement authorities, administrators, clients, etc. For the UK some very general comments, confirmed in the stakeholder consultation, can be made regarding the benefits of CE marking:

a) *Manufacturers*

As the UK has adopted voluntary CE marking the decision to CE mark is left to individual manufacturers to decide whether the benefits (eg cheaper costs to export to new markets in Europe) outweigh the costs for them. It can therefore be assumed that:

- those that have CE marking did so to achieve a net benefit
- those who have no CE marking avoided the disbenefit of being compelled to CE mark

There is synergy between certification to ISO 9000 and CE marking, and manufacturers do gain a cost benefit if they go for both over the cost of each one individually – especially if the NB can also certify to ISO 9000 and the product is at AoC 2+, 1 or 1+.

b) *Building Control authorities*

The UK gives presumption of conformity to CE marked products and leaves it to Building Control to require manufacturers of non-CE marked products to demonstrate suitability of their product for safe use in the works. There has been no feedback to FBE that CE marked products are more or less safe/reliable in use than non-CE marked products in recent years. However, enforcement authorities now foresee that CE marking might help in the future against ‘rogue importers’ for whom the UK is seen as an easier market and is targeted for sale of these non-CE marked products. Consequently, RICS Building Control Faculty is now in favour of compulsory CE marking appropriately applied.

c) *Others*

Architects and clients overall are probably neutral/indifferent regarding CE marking and have yet to be seen to capitalise on its benefits as a procurement tool. The drawbacks of CE marking for these stakeholders is that in certain instances the CE marking only addresses regulatory requirements and fails to remove the need for further testing and/or voluntary marks to cover other important aspects, eg appropriate and realistic testing of curtain walling systems and plastic pipes.

10.4 Findings regarding cost to benefits for voluntary CE marking as at present

From the above it can be concluded that, up to the present, the UK has optimised benefits from CE marking by keeping it voluntary. That is, allowing building control the discretion to take into account alternative evidence for safety in use, including experience of the product in the intended use.

A specific question generally raised regarding voluntary CE marking is:

Whether those manufacturers who voluntarily CE mark, or are compelled to CE mark in the country of origin, are disadvantaged in the UK because others do not have to CE mark?

If they are disadvantaged, then:

Are the additional benefits they are denied from mandatory CE marking legitimate and socially beneficial, and if so are they greater than the costs of forcing CE marking on those who don't want to CE mark?

The answer to the above is probably “no”. Within the UK there is no benefit denied to those that voluntarily choose to CE mark over those that do not. It is considered that this is because there is no established national mark ‘competing’ with the CE mark, and the UK gives presumption of conformity with the harmonised technical specification in its legislation to CE marked products.

The one area where this may not be true is regarding fire classification. There is not a direct equivalence in fire classes for those who CE mark compared with those who classify to the old BS system currently permitted in the UK. But this by itself is unlikely to affect the net balance of costs and benefits to the UK as a whole.

In the UK, products that are not CE marked are generally not marked at all, whereas in many other EU states, manufacturers with a CE marked product entering the market would be faced by an existing national mark. In a voluntary CE marking scenario in these Member States this existing national mark would have the same meaning as CE marking in the Member State for regulatory purposes, but there would be an in-built market preference for it creating a barrier to trade for CE marked products.

10.5 Findings regarding cost to benefits for compulsory CE marking for the future

The net balance between costs and benefits under compulsory CE marking would alter:

- as the enforcement authorities increasingly take on board the positive benefits of compulsory CE marking for enhancing the traceability of products in a rapidly changing world market
- manufacturers gain the benefits from Commission initiatives to reduce the burden of CE marking, ie cascading and sharing, etc – see sections 6.3.4, 7.1.2 and 9.2.1.

Quantifying these effects is outside the scope of this report.

Chapter 11

Summary and conclusions

The purpose of this section is to summarise the main findings and the conclusions that can be drawn from this and previous studies. To complement this, the executive summary highlights focuses on material to support the UK position in the forthcoming infraction proceedings and in consultation on the proposed Construction Products Regulation.

11.1 Findings regarding costs

The headline findings include the following:

- Eighty-six per cent of the UK construction product manufacturing market (by value of sales) has the potential for CE marking, ie mandated products. The sales value potentially subject to CE marking is £37.4bn p.a.
- It is believed very approximately that about one third of all UK mandated construction products currently on the market are CE marked voluntarily, and this would rise to about four-fifths when all the prospective harmonised standards for mandated products come to the end of their co-existence period, ie without introducing compulsory CE marking.
- The mandated construction products sector, ie products potentially subject to CE marking, covers around 18,000 enterprises (93% of total construction sector), with average sales per enterprise of around £2.0m employing 19 staff.
- The total one-off cost to CE mark for the UK construction products industry is estimated at £66m, with an annual cost of £12m to maintain their CE marking.
- Any assessment of the cost of moving to compulsory CE marking at any particular point in time would need to take account of the proportion of mandated products already CE marked on a voluntary basis. It is estimated that this could be as high as 80% by value of sales by 2011 (the most likely date for mandatory CE marking to be introduced).
- One-off and annual costs per enterprise are estimated as £4,000 and £700, respectively. For a given product type, these costs will be similar irrespective of the size of the enterprise. The burden will therefore be proportionally heavier on SMEs.

- The CE marking costs/sales ratio varies very much from one product sector to another. As a percentage of sales the costs are generally quite low, but as a percentage of profits for smaller enterprises they are more significant and can affect sales if there is price sensitivity.

11.2 Findings regarding benefits

Some benefits are difficult to quantify because they relate to many intangibles, including the value of enhanced competitiveness, etc. These types of benefits are beyond the scope of this report to quantify.

11.2.1 Findings regarding benefits for voluntary CE marking as at present

Under the present UK system there are no disbenefits to those who voluntarily CE mark as they could choose not to do so. In addition, they do not gain additional advantages over competitors (usually SMEs) who would otherwise be forced to CE mark when it is not to their advantage.

For the authorities and other non-manufacturing stakeholders (eg architects, builders and occupiers) there has hitherto been little reported benefit from CE marking so far and costs are considered marginal.

11.2.2 Findings regarding benefits for compulsory CE marking for the future

In a rapidly changing world market, the greater traceability arising from compulsory CE marking, will lead to a change in the benefit/cost balance for enforcement authorities (ie building control, trading standards and customs) and for many manufacturers. It is beyond the scope of this report to quantify this economically.

11.3 Present views on the value of CE marking (voluntary) from the stakeholder consultation

Over 70% of harmonised standards have become available, and although not all can be CE marked at present as their dates of applicability have yet to pass, there is still significant experience of practical CE marking in a number of sectors. This has been accompanied by a number of other changes in technology and in the world trade environment.

Presently, those tending to choose CE marking include:

- large companies and multinationals for whom the costs per unit of production are low compared with SMEs

- companies newly exporting to mainland Europe
- companies facing competition from imports from outside the EEA

Those tending not to choose CE marking include:

- small companies (where costs of familiarisation and documentation are also highly significant)
- companies operating within the UK market only (who 'do not see the point')
- companies without an existing market demand for a certified factory production control system
- companies not (currently) faced with heavy competition of imports from developing countries
- companies with little demand for product marking from customers, or where CE marking is regarded as insufficient by the market, eg curtain walling

11.4 Evolving views on the advantages of CE marking

This study has shown increasing support for CE marking among manufacturers. Indeed the Construction Products Association has now moved to supporting CE marking, from an equivocal position as recently as 2004.

The reported reasons for increased industry support include:

- increasing confidence in the quality of European Standards
- greater clarity in standards as a one-stop source on what is needed for CE marking
- expectations of CE marking from specifiers
- providing a basis for transparency in public procurement rules
- increasing availability of advice from websites, email, etc
- active promotion of the CPD and CE marking by Communities and Local Government
- reduction of attestation costs for some sectors
- Commission cost cutting proposals, aimed at SMEs, eg cascading and sharing of ITT, non-series production and product characteristic certification
- rapid changes in world trade leading to competition from cheap, possibly substandard, unmarked products from unmonitored sources

11.5 Views on the possibility of compulsory CE marking in the UK

a) Views of manufacturers

- There is an increasing acceptance of CE marking by UK industry of the possibility of compulsory CE marking.
- Some sectors will positively welcome it, or even insist on it, usually in the context of guarding against imports of 'cheap' untraceable products or 'dumping' on the UK market.
- Some sectors, particularly their SMEs, may still resist unless the UK regulatory framework and the CPR accommodates their concerns.
- By adopting voluntary CE marking, the UK authorities have allowed manufacturers an extended transition period in which to move 'painlessly' towards compulsory CE marking.
- The above views are based on the CPD as currently implemented in practice. They may change depending on the significance of changes in the CPR.

b) Views of the authorities

Building Control authorities now support compulsory CE marking arising from concerns about the provenance of imports from third countries coupled with loss of experience in building control departments compared with 10 years ago.

Trading Standards point out the need for enforcement based on risk assessment.

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