



Conférence Européenne  
des Directeurs des Routes

Conference of European  
Directors of Roads

## **Contractor Report 2017-05**

# **Findings of an investigation into issues around the implementation and use of the Construction Product Regulation by NRAs**



**December 2017**



# Findings of an investigation into issues around the implementation and use of the CPR by NRAs

Contractor Report 2017-05 has been prepared by Maple Consulting Limited to support the work being undertaken by the CEDR Harmonisation and Standardisation Working Group.

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# 1 Overview

## 1.1 Understanding of the Issue

The Construction Products Regulation (CPR) which came into force in 2013 aims to create a single European market for construction products. Through Directive 89/106/EEC and Regulation 305/2011 it requires an elaboration of harmonised European standards (hEN) and the implementation of hENs in all EU Member States through approximation in their national regulations. With the use of the hEN by all parties, the aim to create a common European market using a technical language, and with Member States exercising market surveillance.

There are a number of areas in which CEDR and other parties have concerns or lack clarity regarding CPR, including where the divide lies between construction products which are covered by CPR and civil engineering works which are not.

Additional areas of interest to CEDR surround the interaction between the CPR and the Public Procurement directive in terms of what can or can't be requested or specified by an NRA in terms of asking for information or testing beyond what is provided in a hEN and clarity on voluntary CE marking and product assessments based on the European Assessment Document (EAD).

CEDR has requested a contractor to provide technical assistance and to work with the CEDR Working Group on Harmonisation and Standards to provide additional clarity on these matters.

## 1.2 Potential Changes to CPR

There has been a recent 'Inception Impact Assessment'<sup>1</sup> on review of the CPR, which seeks to examine the effectiveness of the CPR in achieving its aims. The inception study notes that studies have estimated costs to the EU28 of between €2.62 and €3.4 billion to comply with CPR obligations, accounting for between 0.6% and 1.1% of the total turnover of the construction section, but 1.3% for micro companies, albeit around the same cost as complying with the previous Construction Products Directive. At the same time, the CPR had not seemed to generate significant cost savings nor seem to have led in much increase in cross-border trade.

A separate confidential document provided by one NRA suggested that Article 5 should be redrafted so that derogations could be used, as in practice it is almost impossible to use. The document pointed out that the 'simplified procedures' in Articles 37 and 38 are not in active use and should be revised so that the principle of 'Think Small First' will actually function

Whilst a 2016 Implementation Report<sup>2</sup> suggested many challenges were due to implementation difficulties and delayed implementation by stakeholders, there were a significant number of issues that went beyond implantation that warranted investigation. These include:

*"need for clarification regarding simplification provisions, limited evidence of uptake of simplification provisions/lighter regimes by micro enterprises, link with Regulation 1025/2012 on standardisation and mandatory use of standards in the CPR triggering a call for a quicker and better streamlined standardisation process, sector-specific market surveillance and enforcement provisions, detailed rules*

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<sup>1</sup> Ares (2017)3070078 – 19/06/2017

<sup>2</sup> Report required by Article 67(2) CPR, COM (2016)445 final, 7.7.2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470658645697&uri=CELEX:52016DC0445>

*regarding Notified Bodies and streamlining of procedural rules for finalising European Assessment Documents by EOTA”*

Additionally, the complaints and infringement proceedings related to CPR were often due to additional verifications and processes being required by member states before products can be marketed by member states and the continued use of national marks in several member states. The document points out that, as the CPR is an existing piece of EU legislation, any revision or repeal will have to be undertaken at EU level.

The initiative aims to unlock the construction sector’s growth potential by improving the internal market with specific focus on micro, small and medium sized enterprises. It envisages three potential options of 1) no change; 2) revising the CPR subdivided into 3 options of limited revision only tackling the issues explicitly identified; wider revision also touching the basic principles of the CPR and; profound revision, shifting the balance in the present repartition of tasks between EU and Members States and; 3) Repealing the CPR.

A preliminary assessment of the expected impacts points towards revision of the CPR (option 2) of having the most positive economic benefits, although it did point out that options 2 and 3 would increase the administrative burden.

### 1.3 Work undertaken

Maple Consulting Ltd undertook three telephone interviews and a draft review of the issues and presented an outline to the CEDR Standardisation working group at a kick off meeting on March 21<sup>st</sup> 2017. A brief literature was also undertaken at this point.

Following this, two questionnaires were developed for NRAs and industry which were sent to CEDR members and members of the European Road Federation (ERF) respectively, with the ERF acting as an umbrella for industry. In addition to the questionnaires, telephone interviews were carried out with a number of NRAs and with the ERF.

The responses have been collected and summarised and are presented in this report along with recommendations for CEDR to consider as a means of improving the current situation.

## 2 Results of Consultation

### 2.1 Responses

A summary of the locations of the responses of those contacted is presented below.

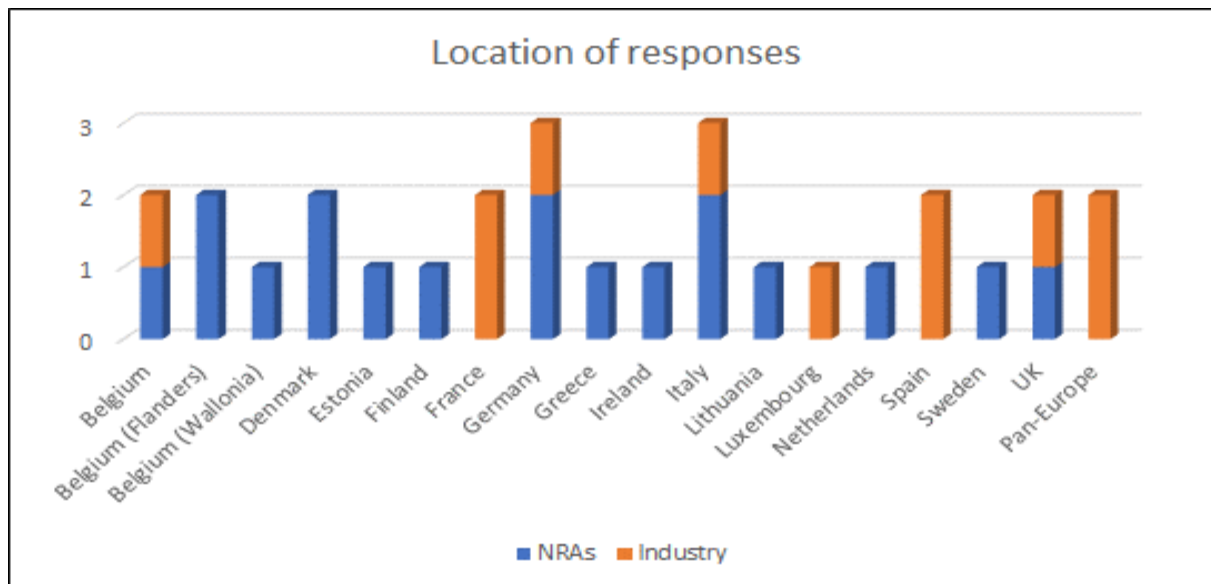


Figure 1 Location of responses from NRAs and industry

There were 29 responses in total from a wide range of European countries covering Scandinavia, Baltic states, western and southern Europe as well as from organisations covering pan-European organisations. Belgium (including Flanders and Wallonia) responded 5 times in total (4 road authority and one industry), Italy 3 and Germany 3 times each, both comprising 2 departments of the road authority and one industry response.

### 2.2 Status of NRA

The NRAs contacted were asked whether they were a regulator, a customer or both, and this was followed up with a question as to whether they procured construction products, with the results presented in Figure 2 and Figure 3. Of the eighteen NRAs that responded, two were customers only, three were regulators only and the remainder were regulators and customers. Fifteen of the eighteen NRAs reported that they acquired construction products, although in some cases this was reported to be indirectly through the procurement of construction and maintenance works.



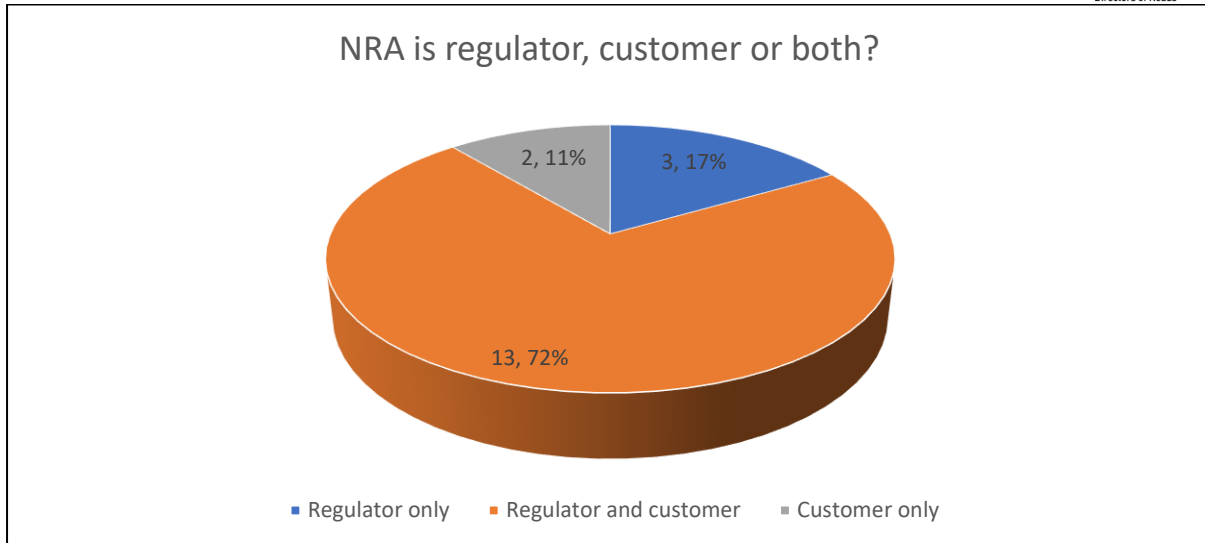


Figure 2 Breakdown of NRA status

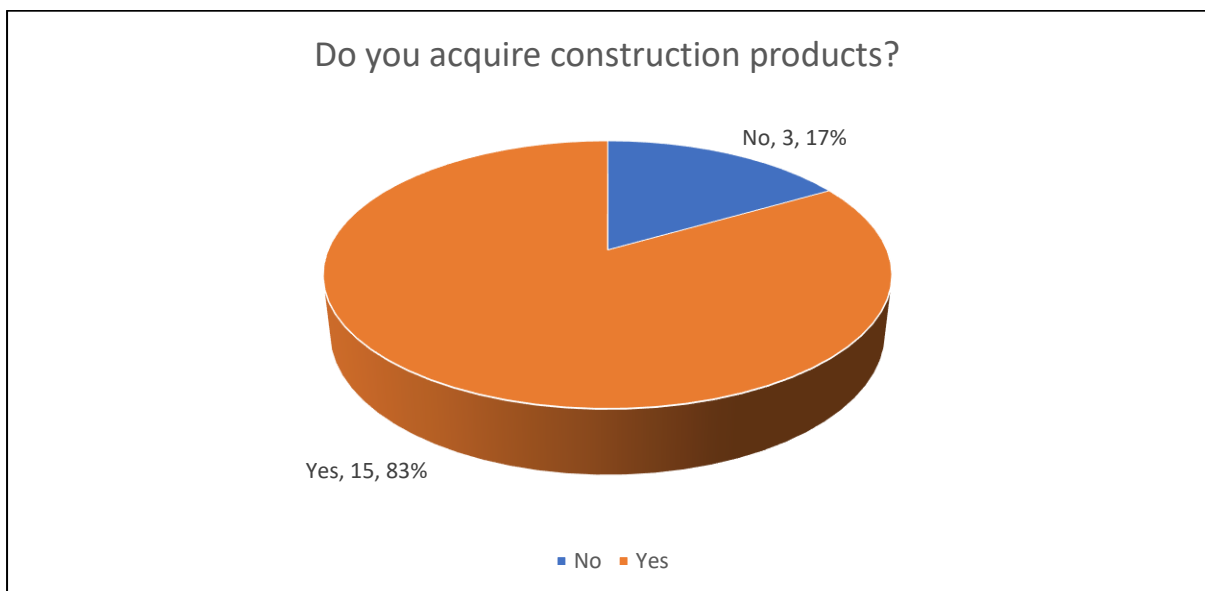


Figure 3 Percentage of NRAs who acquire construction products

### 2.3 General Opinion on CPR

Both NRAs and industry were asked for their general opinion on the CPR, with five options, ranging from very much in favour of it, mostly in favour of it, no strong opinion either way, slightly negative feelings towards it and strong negative feeling towards it, with the results presented in Figure 4 and Figure 5. The eighteen NRA responses are likely to be reasonably representative of the CEDR position, as it represents a large proportion of the membership, whilst the similar number of responses from industry might be less representative, even though several responses were from industry associations, and hence would tend to strike a balance of the views of the membership.

With the caveat of the limited number of industry views mentioned above, it seems that NRAs are slightly more in favour of the regulations than industry. Unlike NRAs, no industry respondent reported that they were strongly in favour of the CPR and there was almost double the number of industry than NRAs who felt slightly negative towards the CPR, with the results for other areas broadly similar. There

were some common views that the CPR was generally good in principle but the practice was somewhat different in part due to the lack of guidance and clear standards in some areas.

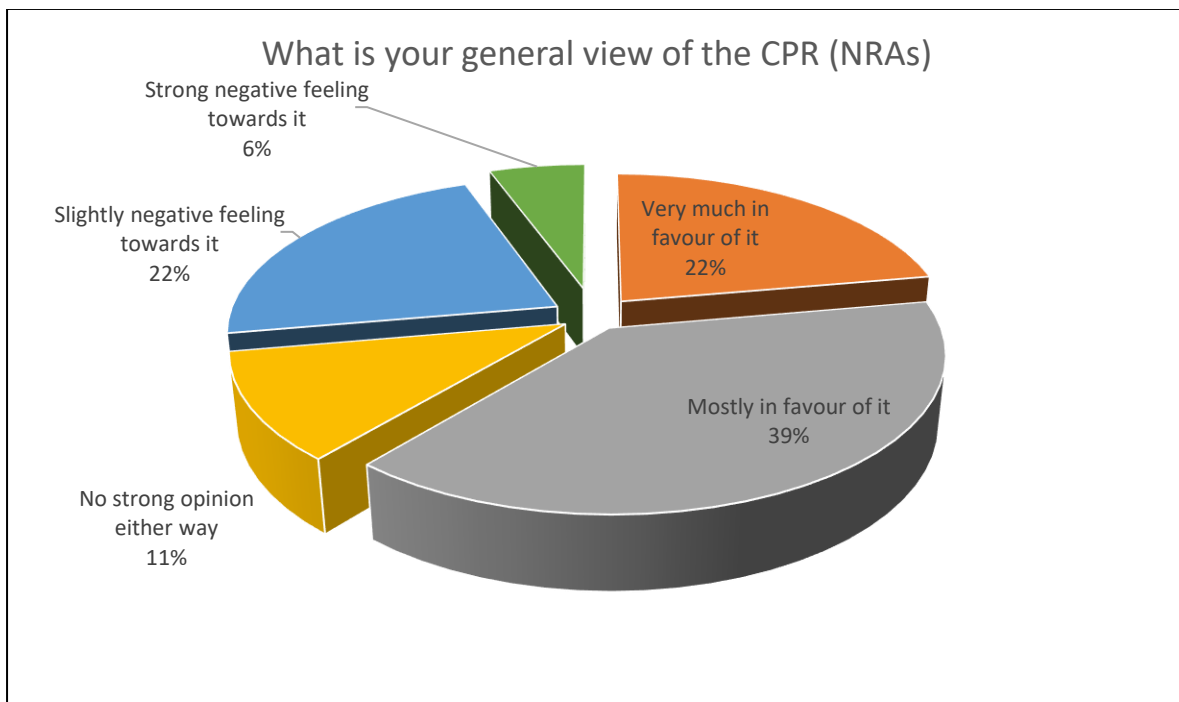


Figure 4 General opinion on CPR - NRAs

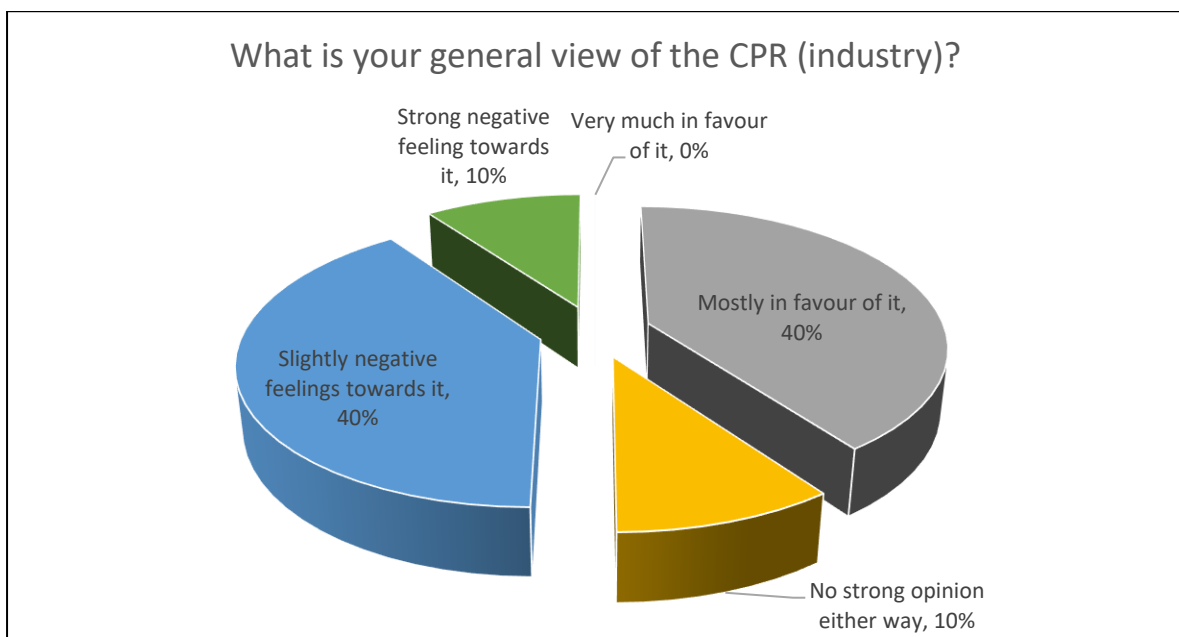


Figure 5 General opinion on CPR - industry

## 2.4 Interpretation and understanding of CPR

One NRA explicitly made the point that their answers refer to CPR in the context of road equipment products, which might not be regarded as construction products in the classical sense, e.g. a brick. Further, they stated that road equipment is complex and shows characteristics of construction works. Whilst this was only stated by one NRA, it is probably fair to say that most NRAs answered from the

perspective of the CPR in the context of their expertise on road construction and road equipment, rather than their views in general on the CPR.

Both NRAs and industry were asked for their interpretation of the CPR. Most agreed it was to promote harmonisation to one degree or another. One mentioned that an increase in quality might result from improved harmonisations, although others said it was concerned consistent quality, not *actual* quality, or at least that quality could not be guaranteed based on the testing and Declaration of Performance (DoP), and that it could be quite difficult to choose an appropriate product. Others felt it was to promote a legal basis to trade and promoting a common technical language.

One NRA felt that in order to ensure the free movement of goods within the single market, the CPR has very restrictive provisions concerning the declaration of product information and the characteristics which can be referred to by Member States to create their national provisions. As such, the lack of flexibility where there is an incomplete hEN for road equipment can have a negative effect on the quality and use of the products. This NRA also felt, in the case of road equipment this could imply a reduction in traffic-safety in the worst-case scenario. Their opinion is that the CPR sets a higher priority on marketing than on the safety of works / quality of products, which they consider critical.

There was one view from a NRA that it had an aim of levelling the playing field between smaller and larger manufacturers, whilst another had a completely opposite view that it was not for harmonisation but rather for unification of major national and corporate interests, who interpret the range of possible options in hENs as final requirements, with nothing more to be demanded, beyond what is included in a particular hEN. Another NRA pointed out that the number of independent companies is reducing, with many of them being subsidiaries of large conglomerates, who can pay for the testing once and then use local factory control to ensure compliance.

In general, the views of industry and NRAs were broadly similar in their understanding of the basis of the CPR and there were no answers that showed any fundamental misunderstanding of the aims of the principles behind it. With the exception of one industry response that it was ‘typical European bureaucratic overregulation’, there was more general harmony amongst industry answers, although a couple pointed out that some of the issues faced generally were related to the wrong interpretation of CPR rather than the CPR itself, a lack of consistency and reliability in hENs and the lack of real market surveillance by Member States as well as certain Member States still applying restrictions and requesting additional testing.

#### 2.4.1 Unclear areas in CPR

Both industry and NRAs were asked whether there were still areas in CPR that they unclear about.

There were a wide range of responses from NRAs, summarised below.

- One NRA notes uncertainty regarding the Declaration of Performance in Article 4, although the text seems fairly unambiguous regarding the responsibilities of the manufacturer.
- Article 5 was mentioned by four different road authorities. This allows a manufacturer to refrain from drawing up a DoP in the ‘absence of Union or national provisions’ or ‘manufactured in a traditional manner or in a manner appropriate for heritage conservation’.
- One also mentioned Article 5b, covering the derogation for in-situ products.
- Three NRAs reported confusion on Article 36, which deals with ‘Appropriate Technical Documentation’ and another NRA on simplified procedures for microenterprises in Articles 37

and 38. A report<sup>3</sup> for DG Grow specifically covers issues with Articles 5 and 36 – 38 and it recommended that NRAs read it to gain clarity. Some specific points that are worth mentioning are the it states that whilst there is some legal uncertainty regarding Article 5, it was written such that it would only fulfil a handful of cases and as of publication of the report in 2015, there was no evidence it had been used, although a NRA reported that article 5b is used in Germany for slurry surfaces and surface treatments. Regarding Articles 36 to 38, the report noted that awareness was low but there was some evidence the member organisations had used it to share the costs of testing, although it was also noted that in some cases the ‘appropriate technical documentation’ ended up being actual testing of all components.

- Two NRAs noted difficulty of using historical test data and of old standards, especially those pre-2000, which were not written for use with either CPR or CPD in mind. It was noted that this was an issue for CEN, but would take time, first for standardisation then CE marking.
- Another NRA questioned whether for Article 15, the importer always has the right to become a manufacturer? The Article clearly states ‘An importer or distributor shall be considered a manufacturer for the purposes of this Regulation and shall be subject to the obligations of a manufacturer.
- **Another NRA noted** the difficult situation of piloting new or innovative products as part of the construction works, where the products may not be CE Marked, but their declared intended use may include incorporation into the works in a permanent manner. It was felt they were trapped by the CPR and PPD, and manufacturers could refuse to declare a product for incorporation into the works in a permanent manner, effectively removing their product from the scope of the CPR and leaving the NRA to carry the risk for the use of the product. It could be useful to seek the opinion of the EC or industry body on this. For a trial product, it might be appropriate for the client and manufacturer to share the risk (and reward), although it seems likely that if a new material were to be used extensively, then it should be CE marked if there was a harmonised standard for it.
- A couple of NRAs had specific issues regarding manufacturers not CE marking or providing a DoP as well as poorly completed DoPs. Another asked how values declared in the DoP could be checked?
- The relationship between CPR and Public Procurement Directive was also mentioned, and has been discussed earlier. Finally, there was some concern that some producers and resellers are taking advantage of loosely stated requirements included in the standards, and major producers have undue influence on decisions during the preparation of standards that ignore the needs of smaller states.

For industry, there seemed to be less ambiguity, with one response saying that they felt the text was clear and another felt that NRAs don’t fully understand CE marking. There were a couple of responses seeking to clarify the position on in-situ concrete barriers and giving guidelines to allow European citizens to report anonymously if NRAs are not using products covered by a hEN when it should do. Perhaps the most pertinent response came from an industry association which stated that ‘the CPR may have had some issues in its practical implementation, but that does not mean we are in favour of repealing it. Instead we encourage the European Commission and CEN to work towards pragmatic improvements in the implementation, including simplifying the process to revise mandates and revise and cite harmonised standards’. In the light of the document on loosening or repealing the CPR, this view should be raised.

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<sup>3</sup> Nwaogu, T and Marshall, S. 2015. Analysis of implementation of the Construction Products Regulation. Topical Report #4. Experiences with CPR Derogations (Article 5) and Simplified Procedures (Chapter VI)

#### 2.4.2 Mechanism for gaining clarity

NRA were asked if there was anything in CPR that was previously unclear, but which was now clear, specifically to understand the mechanism used for gaining clarity.

One NRA had broken a situation on demolition waste down by ownership to determine responsibilities, another reported that the Belgian Road Research Centre provides advice and information, whilst the EC had clarified the definition of competent national authorities for another and EC FAQs had been useful for one respondent too. Market surveillance has mentioned previously and is covered in more detail in a later section, but one NRA said they felt that the need for strong market surveillance was not well understood previously under CPD, but CPR has clarified this, although the market surveillance now needs to catch up.

#### 2.5 NRA issues with acting as a regulator and customer.

NRA were asked whether they experienced any specific issues from wearing ‘different hats’, as customers on the one hand and regulators on the other. Around half of those who responded do have some issues, with two NRAs pointing out that they are underrepresented in the setting of standards, which can mean the standard is unsuitable for them or is vague, making it difficult to procure a good works design. One NRA said they did not as they felt the various roles were clearly set out in the CPR.

The answer from Highways England (HE) is perhaps the most comprehensive in detailing the issue road authorities can face and is presented below:

##### *“Research vs Procurement vs Policy*

1. *HE as a public procurer for the motorway and trunk road network (public procurement hat). If a product falls within the scope of a harmonised standard, we can only specify in terms of essential characteristics, and accept products which have a CE mark that meet our stated requirements (CPR & PPD). This includes our designers and anyone working (acting under mandate) for us.*
2. *HE as a research procurer (research hat) – we can procure anything we like in the name of research. However, we are limited by research section of the HE licence and the Highways Act on the public highway, and the manufacturers are limited by the Construction Products Regulations, CE Marking and “placing / making available on the market” in what they can offer us. Even if the research is successful, the research hat cannot preferentially promote an innovative product or family of products to the public procurement hat, or change our regulations (technical requirements) in such a way to preferentially select that innovative product.*
3. *HE as a policy setter (policy hat) – The policy that can say whatever s/he wants, but all policies must be compatible with the Construction Products Regulations, “New Approach” Directives and the Public Procurement Directives, otherwise we either don’t deliver it or it must be ignored when writing our technical regulations / requirements.*

*The only person with any wiggle room when it comes to choosing products is the constructor, and he is free to choose anything he likes provided that it meets our specified requirements (essential characteristics). However, any attempt by either the research hat, public procurement hat or policy hat to add additional requirements which might direct the constructor to a specific product or family of products is not permitted.”*

## 3 Testing

### 3.1 Additional testing

NRAs were asked if they had asked for additional testing for geographic or other reasons, with the results shown below?

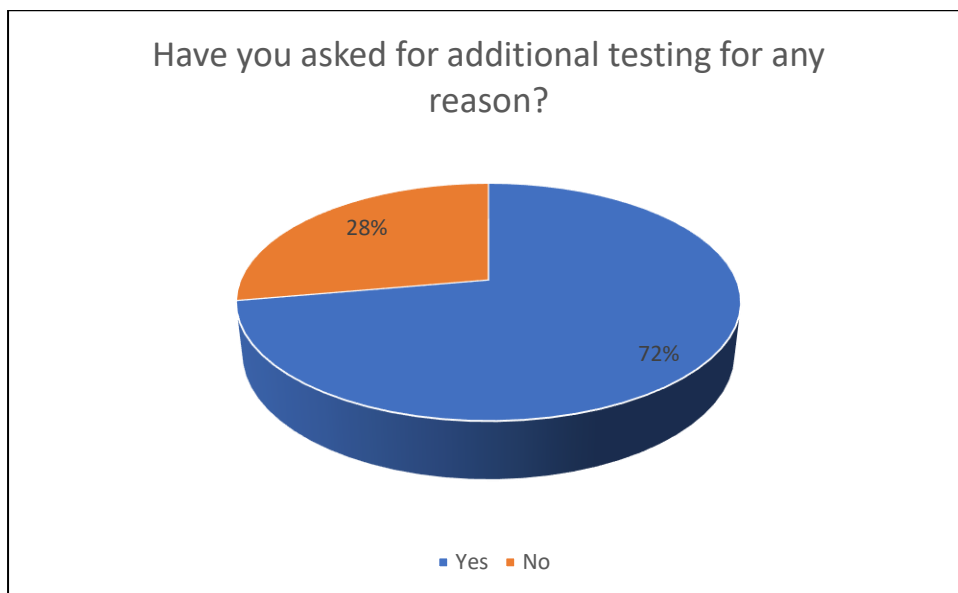


Figure 6 Proportion of NRAs that have / have not asked for additional testing

Of the eighteen responses, five had not, two had requested additional testing for Scandinavian climate requirements and various other reasons (not related to climate) such as rubber block bridge supports in the Netherlands, hot rolled asphalt issues in Denmark and testing of road markings in Ireland.

Industry were also asked the equivalent testing, on whether they had been asked to undertake additional testing for any reason, as show below.

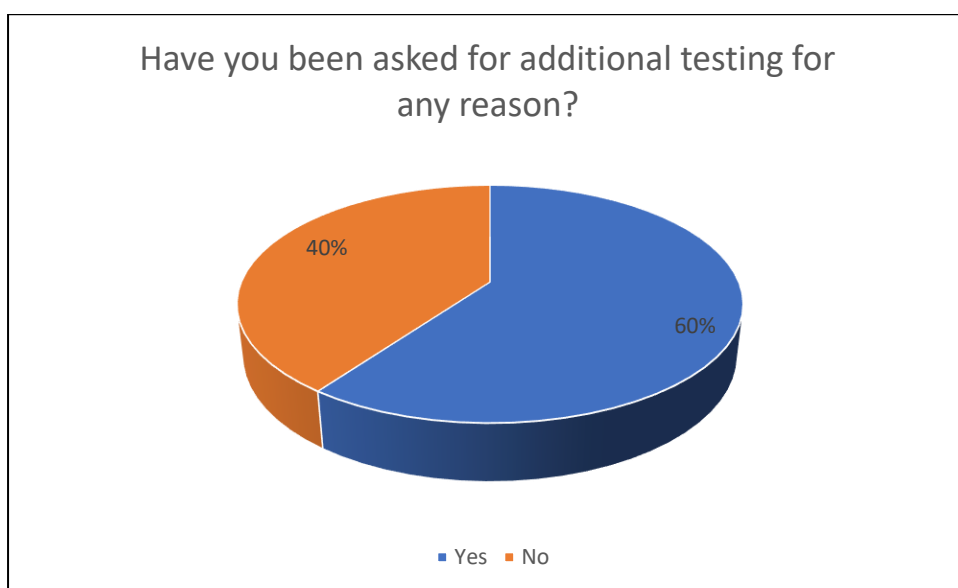


Figure 7 Proportion of industry interviewees requested to undertake additional testing

For industry, of the ten responses six had been asked for additional testing but the reasons given were somewhat different to those of the NRAs. There is something of a grey area around asking for additional testing where in some situations it is not only acceptable for NRAs to ask this, but also welcomed or at least accepted by industry, whilst in others it could potentially be construed as protectionism. Testing a product for performance in a Scandinavian environment would seem to be acceptable, and the testing of all rubber bridge block supports (rather than a percentage) by RWS was welcomed by the contractor to avoid any expensive remedial work, not least as RWS paid for the additional testing.

However, many the responses to the question from industry were negative and suggested that a number of countries are asking for testing to deter imported products and/or provide income for test houses.

### 3.2 Are NRAs constrained by the CPR?

NRAs were asked whether there were any issues encountered where they felt constrained by the CPR, and for those that do, what the reasons were.

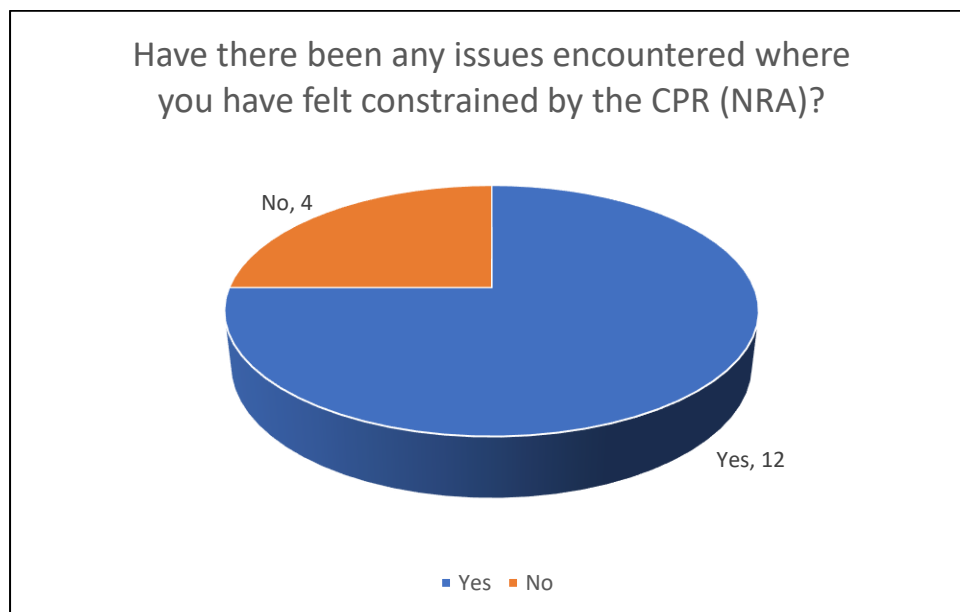


Figure 8 Proportion of NRAs who feel constrained by the CPR

As shown in Figure 8, threequarters of those asked had felt constrained to some degree or other. Five of the responses regarded additional requirements, comprising one general question, one focussed on innovation, one on contractors pointing to only complying with minimum or essential characteristics and two (from the UK and Sweden) related to a lack of understanding as to whether sustainability / green requirements would be allowable under CPR and PPD, or whether they would be considered a barrier to trade.

Other answers considered false or dubious certificates, issues around products being placed on site that did not comply with the rules of CE marking, but not being able to purchase CE marked product of that type, CPR restricting the revision of existing hENs when new classes or thresholds are introduced, the mandating process being too slow and inflexible and excessive retesting requirements for even minor modifications to the testing standards.

### 3.3 The use of additional testing as a basis for a standard?

NRAs were asked if they had used additional testing as the basis for a standard. Eight reported that they had, three that they hadn't and seven that it was not applicable for them.

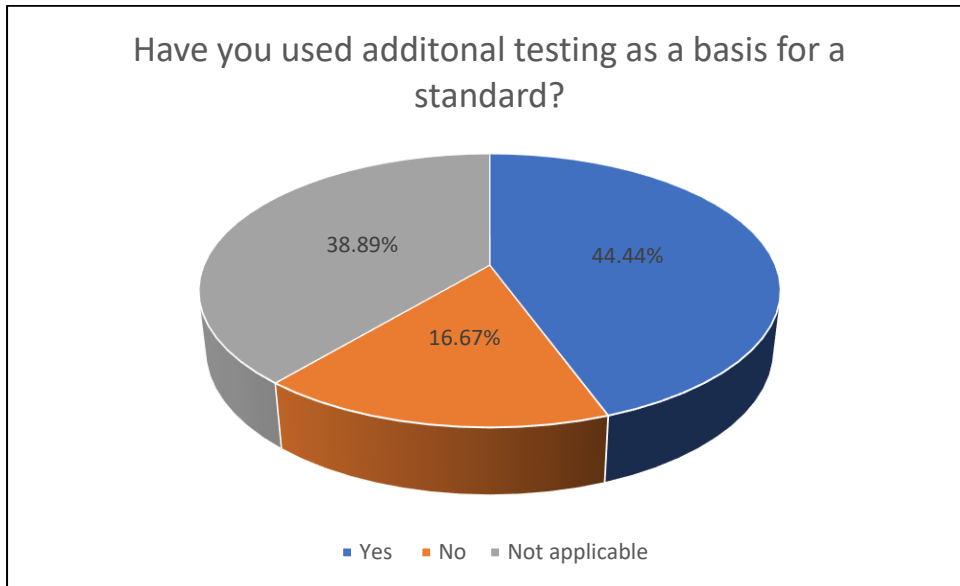


Figure 9 Additional testing as the basis for a standard



## 4 hEN and CE marking

### 4.1 Opinion on hENs

NRAs and industry were asked their opinions on hENs. An industry group felt that whilst they were not perfect, they were a tool to allow Europe to develop World class standards, which has allowed Europe to compete globally and given choice to NRAs. Their view was also that hENs were only questioned in relation to CPR.

The general consensus of both NRAs, apart from a few exceptions was positive, with one NRA feeling generally positive to the extension of regulated standardisation throughout Europe, although there was criticism that they were not easy to implement, the lack of citing by the EC on new standards and the number of areas where hENs weren't available. It was also noted that they weren't applicable for a number of products.

The applicability to road markings and paint was one issue mentioned by both NRAs and industry as being inapplicable across the EU, particularly regarding road markings, in terms of the method of application, characteristics changing when applied and different test methods.

There were a number of comments regarding the timeline for the harmonisation procedure, mostly in terms of the process taking too long, so it is impossible to know when they will be available to be used, although it was also mentioned that in some cases CEN had a tight timeline which resulted in a hEN being released with errors.

One NRA felt that whilst there may have been a noble aim to create a system where all standards would be applicable in all situations with a single test regime, in reality, there are only a few hENs which take into account all requirements, and classes and levels, and as such they generally don't reflect the needs of all market participants. Another, felt that in the case of road equipment, they are either incomplete or do not cover all their national requirements.

Another NRA raised some concerns about CE marking through the European Organisation for Technical Assessments (EOTA) route via European Technical Assessments (ETAs), which is a voluntary scheme for manufacturers to obtain CE marking for a product not covered by a hEN<sup>4</sup>. Specifically, some of the concern was a product being assessed through this route when work on developing a hEN is already in progress.

There was an industry view that the current hENs are often too open and should be much more specific, therefore enabling all countries to require the same conditions for all CPR products and then all companies had the same opportunities to sell across Europe. This was somewhat in line with the view of an NRA who was generally positive towards, but felt it would be better if they were written in a way that was in line with CPR, so useful but open to interpretation.

Another issue was that manufactures are unable to CE mark construction products based on latest developments because the EC is not citing most of the new or revised harmonised standards. A specific example was mentioned where due to the lack of interaction between the CEN WG and EC to clarify some doubts and verify some standpoints, the release of a new version is facing a huge delay, to the detriment of product quality that are still put on the market according to the old standard version.

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<sup>4</sup> <http://www.bbacerts.co.uk/product-approval/european-technical-assessments/>

## 4.2 Possible improvements to hENs

NRAs and industry were asked whether there was anything obviously missing with hENs and what improvements they would like to see. There were a wide range of views from both NRAs and industry with no obvious split of opinions. A summary of the key responses is presented below.

One view was that whilst hENs were generally good, there uncertainties and misunderstandings in some, with different actors having different interpretations. It would be useful if there could be an explanation on occasion but it is not obvious who should provide it. Two other answers related to having practical guidance for their use.

There were several points raised regarding out of date mandates and standards, with one NRA pointing out that some of their national requirements are not covered by hEN, for example missing essential characteristics and test procedures, and most mandates are more than 20 years old and have to be modified. Another NRA also had this point that some early harmonised standards need bringing up to date with an Annex ZA.

There were other points on Annex ZA in that the DoP model is missing in the Annex and so DoPs of the different manufacturers are not therefore comparable. Another point was that it can be difficult to identify the base document against which product requirements should be specified. Some documents are in many parts but only one has the Annex ZA, the rest is informative.

In addition to mandates that were out of date, the use of historical test data was mentioned, and it was stated that it would be welcome if the EC would issue product related rules for dealing with historical tests results and modifications within the certification. Specifically, it was pointed out that if the use of historical test data was not allowed, it might become hard to accept the revised hEN for road restraint systems.

Linked to the above points, one answer stated that faster adoption of hENs by the EC would be welcome, and that a number of important and well used construction products in the road sector are still not published or published but not quoted in OJEU (e.g. the revised versions of EN 13108 series and EN 13242 - published and later cancelled. This generates tension in the market; for example, EN 13108 series standards have been published and manufacturers are preparing for certification based on the new version, however certification bodies have no right to undertake this until the revised version of the hEN is quoted in the OJEU.

There were also two comments specifically regarding road restraint systems, pointing out that EN1317 was not harmonised about terminals, transitions and motorcycle road restraint systems and another on a lack of clarity on the process to repair existing road restraint systems. Another point raised was that there are lots of levels and classes in barriers which causes confusion amongst road workers.

There were a few answers focussed on the point of national requirements versus EU regulations, generally on the basis that it might not be possible to have hENs that cover all characteristics of member states, such as climatic and geotechnical conditions. One suggestion was to state very clearly which standards should be established by member state regulations and which by EU regulations. Another point raised around this was that it was felt member states are lacking opportunities to object to the hENs in case all legislative needs of a Member State have not been considered, whilst two NRAs complained that there was no possibility to set up additional requirements in hENs. Another felt that either the CPR is modified or in the long term, hENs are to be completed in view of covering the national requirements of all member states, if that is a realistic goal. If so, a fast procedure to complete

the underlying mandate (standardisation request) is missing. Further, the standardisation process should be discussed in order to meet the CPR demand in view of covering all national requirements.

A number of answers covered levels and classes, one pointing out there are no different levels of classes like CPR, and others mentioning inconsistencies, such as that concrete cannot be CE marked, but the aggregates and cement are, but there is a CE mark for asphalt, which is also a mix of aggregates and a binder. The issue of the distinction between construction works and products was also raised.

There were several answers which detailed various delays to standards, such as reinforcement bars and preformed road markings or standards that should be improved, such as noise barriers.

The European Road Federation stated that they think it has become very political. There is deadlock so standards are not being revised, but if selling to USA, they want a product that is up to data (in terms of the standard it is tested against) and in this regard Europe is falling behind and there is a need to decouple politics from science.

In a position paper<sup>5</sup>, CEN / CENELEC stated that there is no clearly defined timeframe for the process of the EC to respond to revised answers to mandates/standardisation requests, which has an adverse impact on the development of standards. They recommend a maximum timeframe of 4 – 6 months for the acceptance of a revised mandate/standardization request is recommended.

The same report states that there is a requirement to accelerate the acceptance of threshold levels or classes and that CEN / CENELEC would like to work with the EC to consider alternative approaches around the uses of classes and thresholds in candidate hENs.

Other specific points for improvement were:

- To make it compulsory to complete more than 1 essential characteristic in the declaration of performance.
- To increase market surveillance.
- More legal documents and freely available.
- The role of Notified Bodies more clearly regulated.

### 4.3 Labelling of products

According to CPR Article 8(3)<sup>6</sup> regarding the Single Market for Construction Products on labelling, only CE marks should be used as outlined below:

*“The CE marking shall be the only marking which attests conformity of the construction product with the declared performance in relation to the essential characteristics, covered by the corresponding hEN or the ETA.*

*Member States shall not introduce any references (and shall withdraw any existing references) in national measures to markings attesting conformity with the declared performance in relation to the essential characteristics covered by a hEN other than the CE marking...”*

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<sup>5</sup> CEN / CENELEC Position Paper on the implications of the Construction Products Regulation (Regulation (EU) No 305/2011) on the European Standardization System. September 2016

<sup>6</sup> From BPVO Symposium Presentation by Georgios Katsarakis

NRA were asked whether they only required CE marking of products or whether an additional label was required. Of the seventeen responses, fourteen only required CE marking at least for a product covered by a hEN. Of the three who did not, one asked for labelling on road restraint systems, one asked for an additional national certification and one asked for an extra quality label for most products.

NRA and industry were also asked whether additional voluntary labels had been added, with the results presented below.

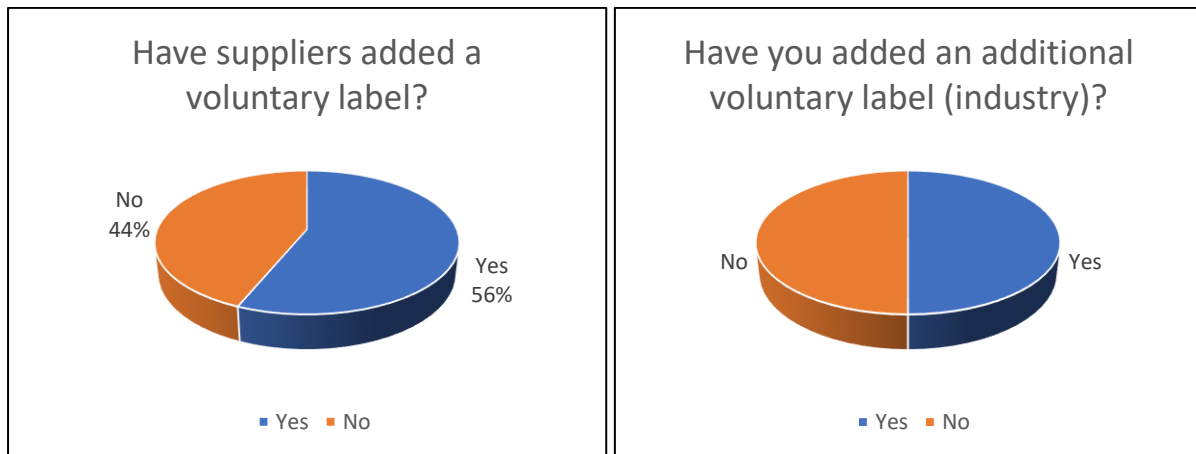


Figure 10 Addition of voluntary labels

For the NRAs where their suppliers had added voluntary labels, the reasons covered quality assurance, durability and practical issues. Other reasons were legacy certification for a product, certification for installation where installation not covered by CE Mark and suppliers seeing it as a selling point / marketing tool when selling to other non-CPR/PPD constrained specifiers. Some suppliers added marking to go with an extended warranty period, for ecological reasons and for retroreflective sheeting for vertical signs, covered by an EAD.

For industry, of the four responses, they were added for sustainability issues such as the French NF label and national labels such as 'blue angel'.

Some of the responses seem reasonable, such as for things not covered by a CE mark, where things were covered by a EAD and as part of a warranty rather than marking on the product, but there were occasions it was added for more conformity and for quality assurance and durability which seems to go against the CPR.

## 5 Products and kits

One of the issues identified by NRAs as being of interest is the definition of whether a construction material is a product, a kit or civil works. According to the CPR, the definitions for each are as follows:

### Construction Product:

A product or 'kit' which is produced and placed on the market for permanent incorporation in construction works, and whose performance influences at least one of the basic requirements for works.

### Kit:

A construction product placed on the market as a set comprising at least two separate components which need to be put together so that the kit can be incorporated into the construction works.

### Construction Works:

A building or civil engineering construction.

Six diverse road items were identified and both NRAs were asked their opinions on each, with the results below.

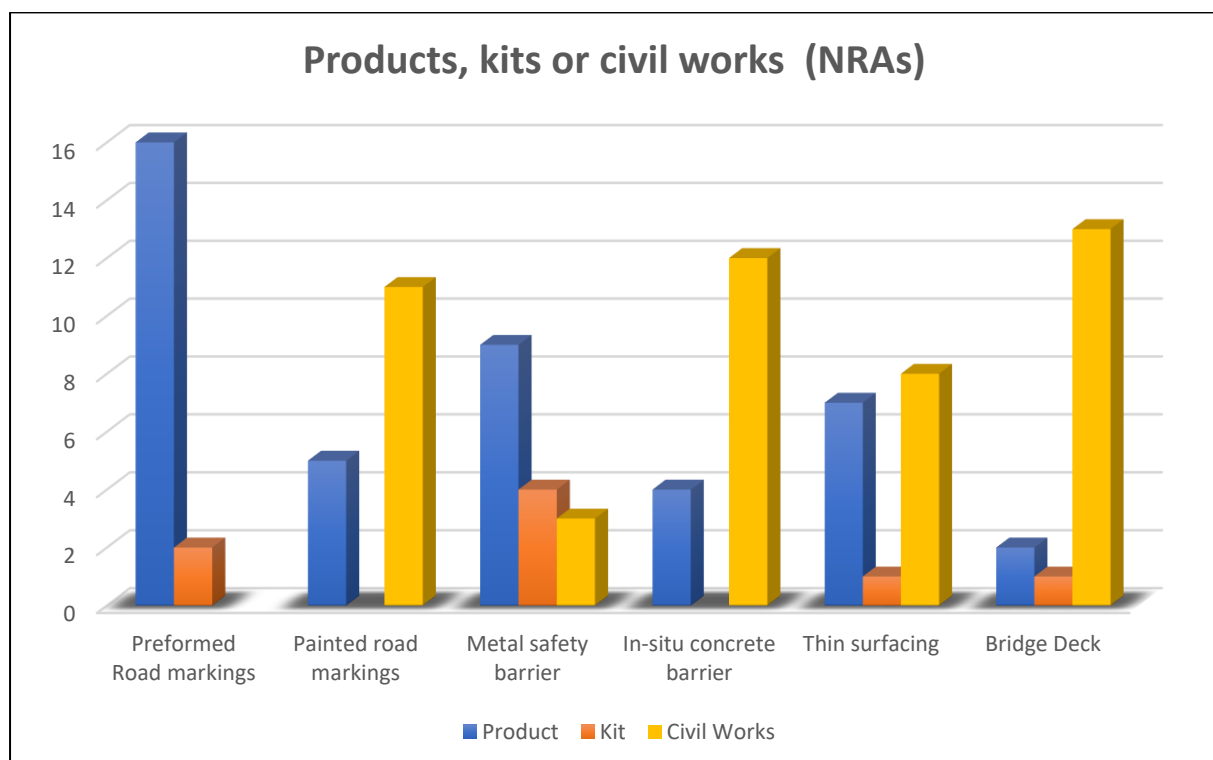
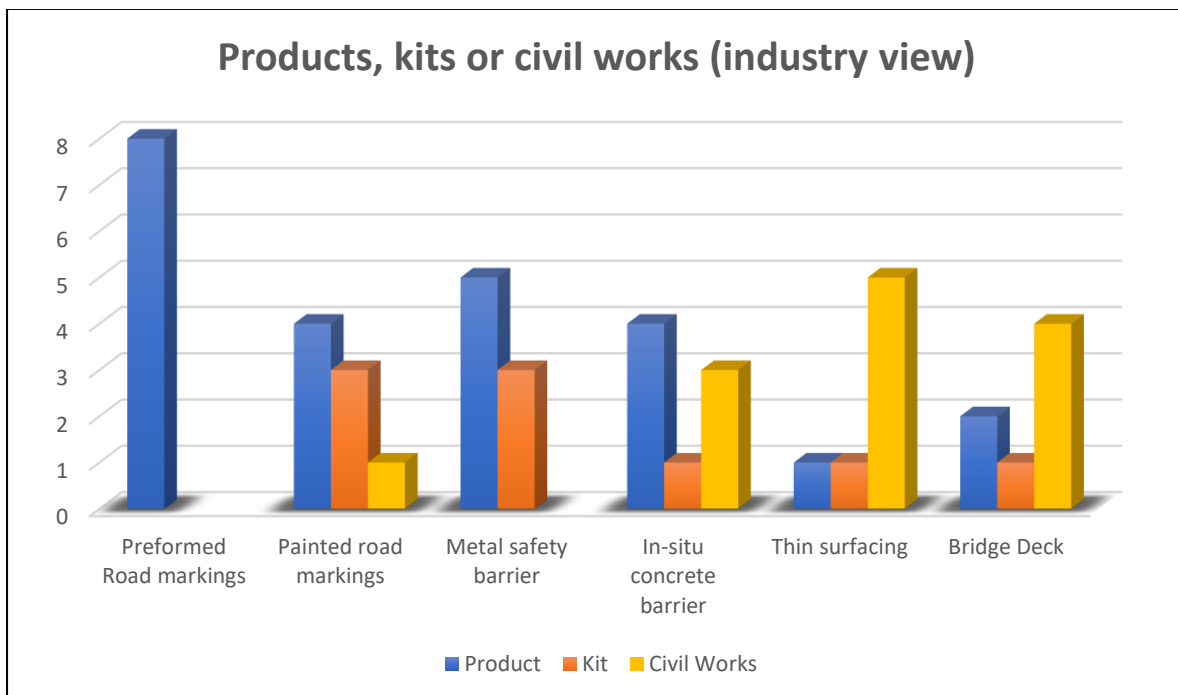


Figure 11 NRA opinion on products, kits or civil works

As can be seen there was a wide range of answers, with not one product that all agreed on, the closest being preformed markings which one said was a kit, and the remainder said was a product, and according to CPR, a kit is also a product. There was some discussion on this where painted road markings were felt to be a product for the paint and civil works when applied and the same for thin surfacings. Bridge decks were reckoned to be a product if they were pre-cast and civil works if cast in-situ for example. It is interesting that a far greater proportion of those responding to the questionnaire considered in-situ barriers were civil works rather than a product, whereas there is an EC ruling on this

clarifying when they are and are not considered to be a product. One of the industry responses around improvement to hENs was to confirm that they are a product and for all NRAs to agree to this view.



*Figure 12 Industry view on products, kits or civil works*

By means of comparison with NRAs, the industry view is that performed markings are a product, painted markings are civil works, metal barriers are a kit (more than one component part) and in-situ concrete barriers are products if they are installed as a safety product. Thin surfacings were mostly considered to be civil works, whereas bridge decks had more of a mixed response, possibly due to considerations as to whether it was pre-cast or constructed on site.

NRAs were asked whether there were any areas in which they remained uncertain as to whether items were products, kits or civil works and threequarters (12 to 4) remained uncertain, suggesting that clarification or guidelines would be useful.

## 6 Consistency and Notified Bodies

Confidence in the consistency of notified bodies is important in ensuring that the aims of the CPR regarding a level playing field for free trade, i.e. a manufacturer should be able to get a product tested at a notified body anywhere in Europe and get more or less the same answer. There have been suggestions that there is inconsistent procedures and quality across Europe.

NRAs and industry were asked whether they felt that notified bodies were harmonised in the way they act, with the results presented below. As can be seen, the results are extremely consistent, with 70% of both saying that they did not think they were consistent. One NRA reported that they weren't even consistent in his country, so they can't be consistent across Europe.

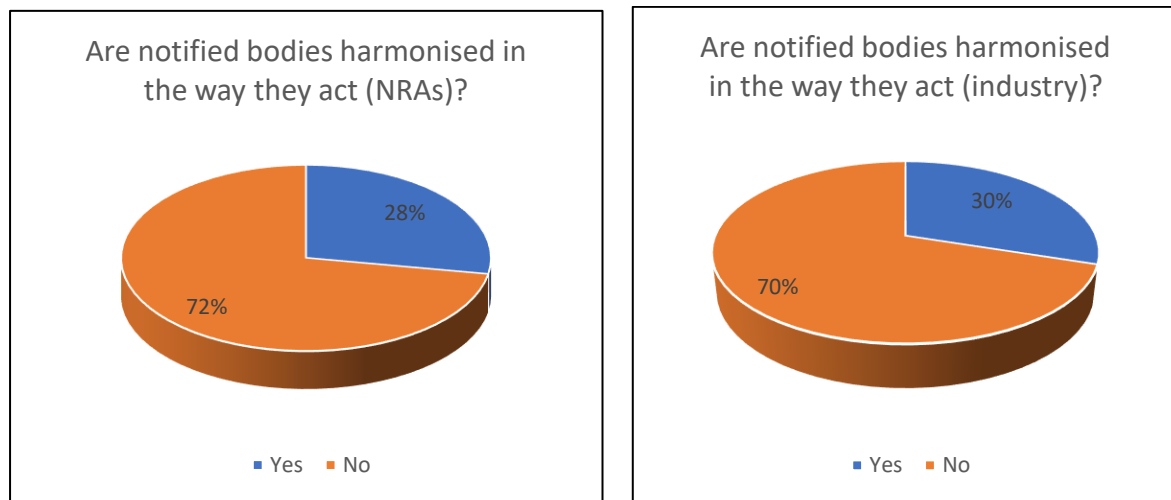


Figure 13 Opinions on whether notified bodies are harmonised in the way they act

Next, NRAs and industry were asked whether they thought the quality of notified bodies around the EU / EEA is consistent. As with the question on whether notified bodies are harmonised in the way they act, around two-thirds of NRAs do not think the quality of notified bodies is consistent, whereas the industry responses felt even more strongly, with 90% thinking there was not consistency.

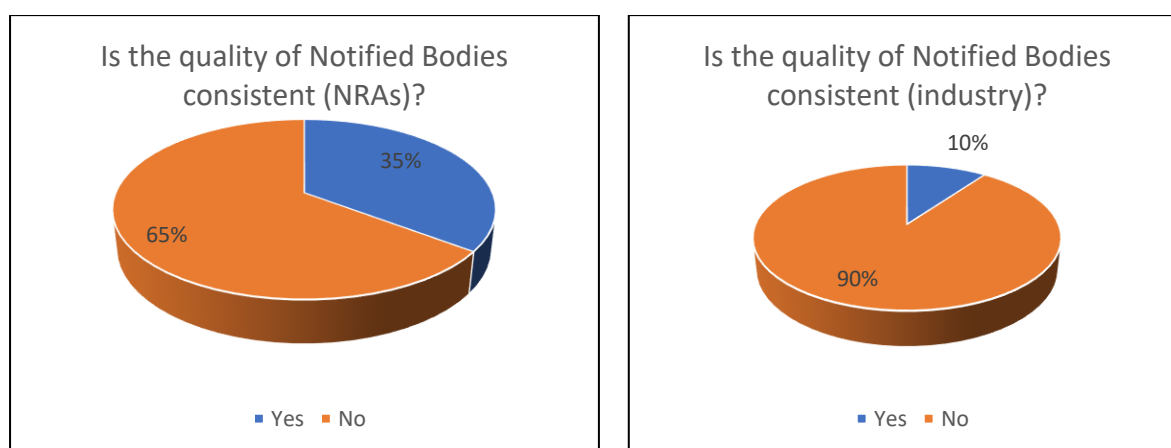


Figure 14 Opinions on whether the quality of notified bodies is consistent across the EC / EEA

The third thing asked was whether they thought there was consistency of testing in the notified bodies in the EC / EEA, with another consistent finding that they did not, with 76% of NRAs and 80% of industry interviewees having this opinion, as presented below.

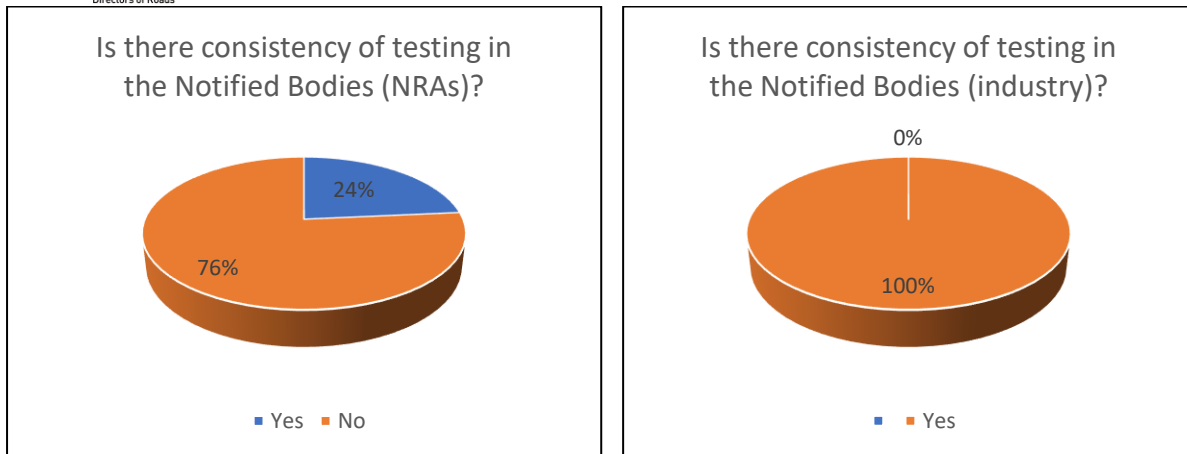


Figure 15 Opinions on whether there is consistency of testing in the notified bodies

Next, the survey asked whether the market surveillance was a) consistent and b) whether it was appropriate for road products, many of which such as asphalt and concrete in particular will only travel short distances due to the available working time, although it is accepted that some products such as signs, metal barriers and some preformed markings could theoretically at least be traded across Europe.

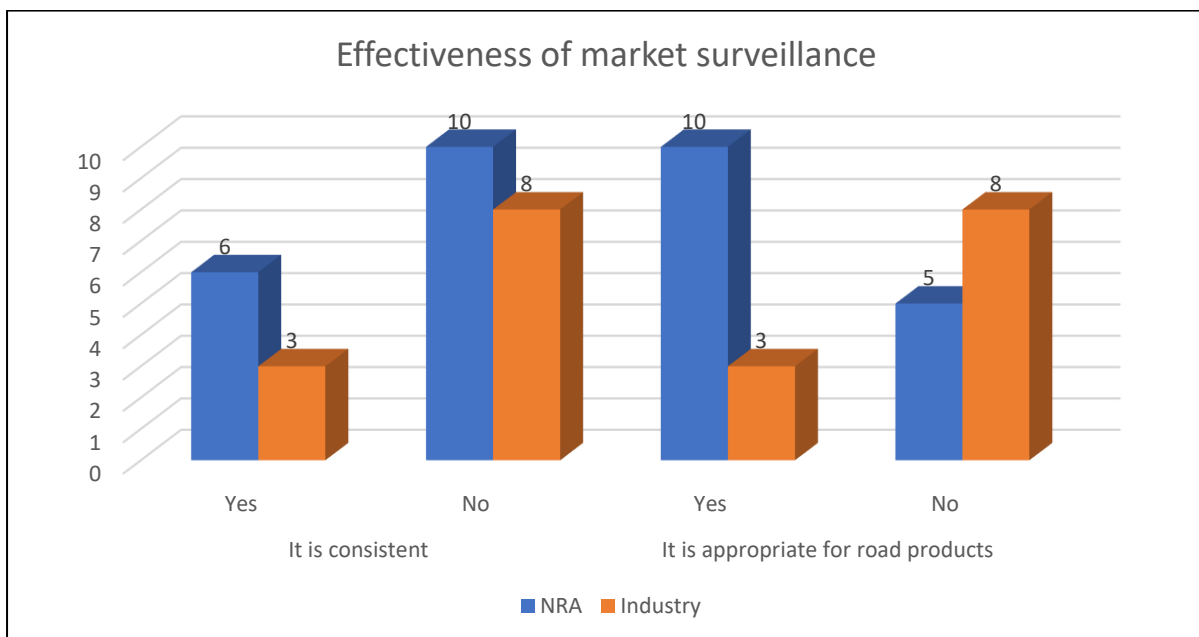


Figure 16 Opinions on the effectiveness of market surveillance

There was general agreement between industry and NRAs that market surveillance was not consistent, although the feeling was a little more strongly felt by industry. RWS reported that the Dutch market surveillance was in the same department, so had been fairly effective. Others felt they were doing a good job with the resources available.

In terms of whether CPR is appropriate for road products, this was the one area of disagreement between NRAs and industry with twice as many NRAs of the opinion that it was appropriate compared to those that felt it wasn't, whereas the situation was the opposite for the industry participants.

The previous charts clearly show that around 2/3 of those who replied do not think that the Notified Bodies are not harmonised in the way they act, nor do they have consistent testing or consistent



quality. Of those who commented on consistency, one felt they were consistent but would miss some things, and that 'cowboy' manufacturers could get their product tested in multiple labs until they got the result they wanted, either due to a difference in interpretation or sub-standard work on a day.

Two others were quite explicit that there was not consistency with one being particularly scathing and stating 'why, other than cost, are all our suppliers heading off to Country X to get their products CE marked?'. This is also the strong view of the industry body, and they have reported that consistency (or lack of) around industry bodies is one of their biggest issues regarding the CPR.

The European Road Federation Working Group on Vehicle Restraint Systems (VRS) issued a position statement and recommendations<sup>7</sup> raising concerns amongst relevant bodies regarding the functioning of the system of notified bodies in Europe with respect to the certification of VRS and specific practices amongst certain notified bodies that are inconsistent with the provisions of the CPR and which could undermine the internal market for VRS, but more importantly could result in unsafe or non-compliant systems being installed. The ERF listed a number of specific actions under two main Recommendations of 'Strengthening the knowledge capacity of notified bodies' and 'Strengthening market surveillance for hEN 1317-5'. Whilst this is a specific concern regarding safety critical road equipment, it serves to highlight the more general concerns raised by a number of interviewees.

Finally, the survey asked whether the NRAs and industry felt that the EC's position on the CPR was consistent. The results are stark; only 29% of NRAs and no one answering on behalf of industry feeling the EC is consistent.

There was also a comment that manufacturers are unable to CE mark construction products on latest developments as the EC is not citing the new or revised hENs, echoing comments made earlier in the survey.

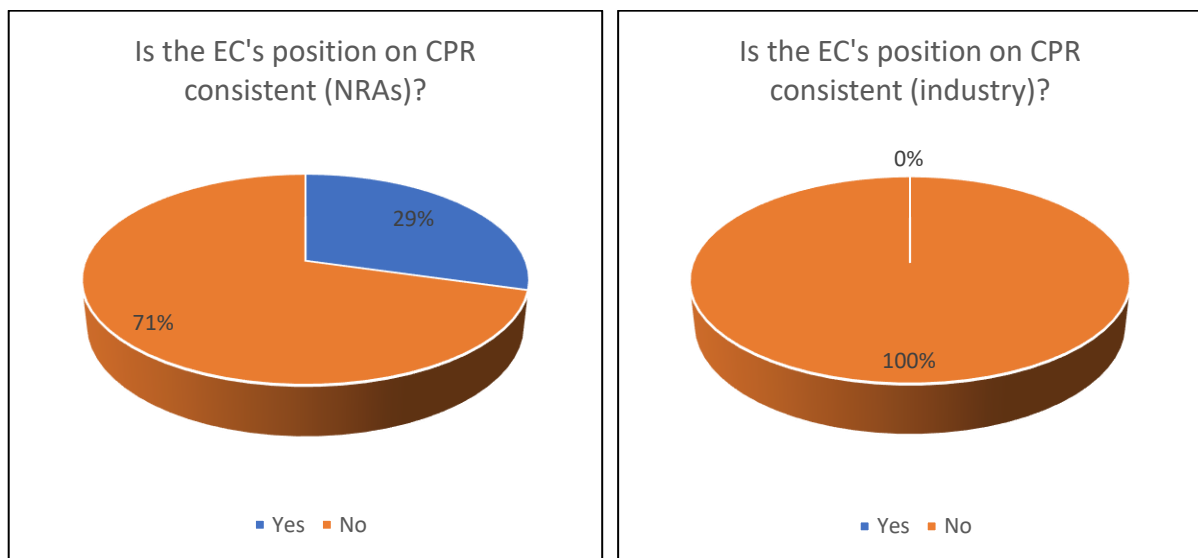


Figure 17 Opinion on whether the EC's position on CPR is consistent

<sup>7</sup> ERF Position Paper, April 2015. Improving the functioning of the system of Notified Bodies for Vehicle Restraint Systems. [http://www.erf.be/images/rrs/Paper\\_on\\_N.B/Notified\\_Bodies\\_Paper\\_final1.pdf](http://www.erf.be/images/rrs/Paper_on_N.B/Notified_Bodies_Paper_final1.pdf)

## 7 Conclusions

Twenty-nine organisations comprising seventeen NRAs and eleven industry members have either filled in the online questionnaire, been interviewed by Maple Consulting or both. Several organisations answered the questionnaire more than once, representing different areas, such as road markings and safety barriers for example.

The general findings are that most people are in favour of the CPR, or at least its aims, but feel that it is not working as well as it could, particularly with respect to harmonisation and the creation of a single market, which most people feel is its primary aim.

The CPR is possibly more applicable to construction of buildings, where products for a large office building might be purchased from around Europe, than it is for transport infrastructure with many more locally produced products. As such, a pragmatic approach should be adopted by the EC, road and infrastructure owners and operators and industry to account for the more locally produced materials and road standards which are the responsibility of member states.

There remain issues with the PPD, and what can be asked for in relation to CPR. No specific guidance has been found for this, and it may be worth getting the opinion of a procurement specialist for their interpretation. To some extent, this is an issue of perceived fairness; a road authority should be able to request something like a low carbon construction option in a contract in support of national or European targets if there are a number of potential solutions and companies that can offer it. Conversely, specifying a product that is only available in that member state, or worse still, is only available from one company is unlikely to be acceptable, and potentially illegal.

Most people are in favour of hENs but there are issues regarding the number that are available to be used and the EC position in adopting them, including a lack of clarity on the use of historical test data and getting new products trialled.

There have been occasions where NRAs have asked for additional testing and information, in some cases with full support of industry. However, there are also occasions when additional testing seems to be requested as a means of protecting the industry in certain member states, or as a means of generating income for notified bodies. There are additional labels being used in certain countries, generally contrary to CPR.

There is a lack of clarity on what is a product and a kit for certain items, however there exist clear definitions which NRAs should make themselves aware of, and if there is a lack of clarity seek guidance from the EC, or be proactive and state their interpretation and put this out for discussion and confirmation.

There is a lack of consistency in the approach and quality of notified bodies, with the ERF view that manufacturers can sometimes try different test houses to get a 'better answer'. This causes a vicious circle where NRAs lack confidence in the CE mark and ask for additional testing, which can get them in trouble with the EC and penalises honest manufacturers. Market surveillance is generally not felt to be working effectively, although it is recognised that in many cases resources are limited.

The Inception Impact Report<sup>8</sup> as outlined in Section 1 outlines three options of no change; revision of CPR (of 3 different levels) and repeal of the CPR. Considering the impact of the second option, it states:

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<sup>8</sup> Ares (2017)3070078 – 19/06.2017

*“Simplification in line with the "Think Small First" principle would give rise to benefits for all economic operators, especially SMEs. Improved market surveillance and enforcement would benefit those responsible economic operators respecting the rules, by helping to ensure fairer competition. Addressing issues related to Notified Bodies and standardisation would increase legal certainty and smoothen implementation of the CPR, thus contributing to overall efficiency of the system including for economic operators. The additional economic benefits and costs of the wider and profound revision options would depend on the possible variations. Setting product requirements would lead to adjustment costs for operators, yet it should facilitate cross-border trade.”*

Such a revision, would seem to address many of the key areas of concern identified by this report. It should also be recognised that the Inception Impact Report is not specific to the road sector, and so it seems that many of the issues faced are common to numerous sectors.

## Appendix A – Organisations Contacted

### CEDR Members

Agency for roads and traffic	Belgium
Service Public de Wallonie (SPW)	Belgium (Wallonia)
Agentschap Wagon in Vergeer (Flemish Road Administration – 2 responses)	Belgium (Flanders)
Danish Road Administration	Denmark
Danish Road Directorate (Vejdirektoratet)	Denmark
Highways England	England
Estonian Road Administration	Estonia
Finnish Transport Agency	Finland
Federal Highway Research Institute (BAST), 2 responses	Germany
Ministry of Infrastructure and Transport	Greece
Transport Infrastructure Ireland	Republic of Ireland
ANAS SpA	Italy
ANAS SpA - Research and Innovation Unit (Safety Barrier)	Italy
Lithuanian Road Administration	Lithuania
Rijkswaterstaat (RWS)	Netherlands
Trafikverket	Sweden

### Industry

ENBF (European Noise Barrier Federation) <a href="http://www.enbf.org">www.enbf.org</a>	Belgium
EUPAVE, the European Concrete Paving Association	Europe
European Union Road Federation	Europe
French Road Equipment Association – Road Markings section	France
French Road Equipment Association – Traffic Signs Section	France
Scarce Limburger Lackfabrik GmbH	Germany
Self	Italy
Arcelormittal	Luxembourg
GIVASA	Spain
IECA (Instituto Español del Cemento y sus Aplicaciones) Spanish Institute of Cement and its Applications	Spain
Avery Dennison Reflectives Division	United Kingdom