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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

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1. INTRODUCTION

The Construction Products Regulation[1] (CPR) replaced the former Construction Products Directive (CPD) setting up harmonised conditions for the marketing of construction products in the EU. The CPR has been applied fully since July 2013.

This report to the European Parliament and to the Council, required by Article 67(2) of the CPR, presents the state of implementation of the CPR, including the experience gained, the extent of achievements of the CPR objectives and issues that require improvement.

The factual evidence behind this report comes from Member State and stakeholder reports to the Commission, regular feedback received from Member States and the main stakeholders mainly through the Advisory Group, the Standing Committee on Construction and the market surveillance administrative cooperation group (AdCo-CPR) and an external study entitled 'Analysis of implementation of the Construction Products Regulation', completed in July 2015[2].

This report does not address issues already included in specific studies, reports produced by the Commission and reports to be produced later in the year. This includes the 2014 report on hazardous substances[3], the report on delegated powers adopted in 2015[4] and the upcoming report on financing of the European Organisation for Technical Assessment (EOTA) due 1 January 2017[5].

Similarly, the coherence of the EU legislation applicable to the construction sector, including the CPR, as well as its costs and benefits for the sector are subject to a sectoral fitness check planned for 2017. Regarding the economic impact of the CPR, a study has been launched whose results are expected by summer 2016.

[1] Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, OJ L 88, 4.4.2011, p. 5.

[2] http://bookshop.europa.eu/en/analysis-of-the-implementation-of-the-construction-products-regulation-pbET0415686/, http://bookshop.europa.eu/en/analysis-of-the-implementation-of-the-construction-products-regulation-pbET0415688/, http://bookshop.europa.eu/en/analysis-of-the-implementation-of-the-construction-products-regulation-pbET0115716/.

[3] COM(2014)511, 07.08.2014, required by Art. 67(1).

[4] COM(2015)449, 16.09.2015, required by Art. 61(1).

[5] As required by Article 34(2) of the CPR.

2. APPROACH OF THE CPR

The CPR objectives

The main objective of the CPR remains the same as in the CPD, i.e. to make the single market work better and improve the free movement of construction products in the EU, by laying down harmonised conditions for marketing construction products.

The CPR also has specific operational objectives: simplifying the existing system[6], clarifying the concepts and definitions used and increasing the credibility of the whole structure. All these objectives also contribute to EU SME policy, which aims to level the playing field for SMEs, especially micro-enterprises.

The CPR approach contributes to the European Union's 'Europe 2020' strategy[7] and to the 'Construction 2020'[8] objectives, namely the sustainable competitiveness of the construction sector and its enterprises.

The functioning of the CPR

The CPR-based system harmonises the conditions for marketing of construction products by creating a common technical language defining the essential characteristics in relation to their performance in harmonised technical specifications: harmonised standards and European Assessment Documents (EADs). They are to cover the sphere of basic requirements for construction works[9]. Where a construction product is covered by a harmonised standard[10] or a European Technical Assessment has been issued for it, the manufacturer draws up a declaration of performance (DoP) and affixes a CE-marking to such a product.

The CPR thrust towards consolidating the single market for construction products has been directed differently from the general principles originally set in the Council Resolution on the New Approach to technical harmonization and standards[11] and since revised by Decision No 768/2008/EC on a common framework for the marketing of products[12]. The main differences are:

- The division of powers between the EU and Member States*:* the EU deals with the single market access rules. The Member States are responsible for safety, environmental and energy requirements applicable to construction works.
- Harmonised marketing conditions: instead of harmonising construction products or the requirements for them, EU legislation (the CPR) limits itself to creating harmonised conditions for marketing such products. The harmonised technical specifications are intended to facilitate the free circulation of construction products and to empower economic actors to reap the full benefits of the single market.

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[6] The CPR was therefore listed in the Commission's rolling programme for update and simplification of the acquis communautaire and integrated into the REFIT (Regulatory Fitness and Performance) programme in 2014.

[7] http://ec.europa.eu/europe2020/index_en.htm.

[8] Communication from the Commission to the European Parliament and the Council, 'Strategy for the sustainable competitiveness of the construction sector and its enterprises', COM(2012) 433, 31.7.2012.

[9] As listed in Annex I to the CPR.

[10] As defined in Article 2 (1) of the CPR.

[11] Council Resolution of 7 May 1985, OJ C 136 of 4.8.1985.

[12] OJ L 218, 13.8.2008, p. 82.

Having a common technical language provides professionals, public authorities and users of construction products with reliable information to compare the performance of products. Other advantages include:

- products have to be tested only once according to a harmonised standard or an EAD;
- national authorities can set performance requirements using harmonised standards or EADs;
- users of construction products can better determine their performance demands;
- market surveillance can rely on one common information structure.

General implementation

As the CPR introduces new documentation, procedures and obligations, the Regulation provides for a transition period. The CPR is only fully applicable since 1 July 2013 i.e. less than three years before this report. This is one of the reasons why the implementation of some aspects of the CPR cannot be fully assessed yet, making this assessment partly preliminary.

To accompany the transition, the Commission launched information campaigns chiefly targeting economic operators, in particular SMEs, but also public authorities and users of construction products[13]. Several industry associations and public authorities also ran information campaigns targeting their respective members or territories.

Overall, all elements required by the CPR have been implemented by all those concerned: for example, notified bodies and technical assessment bodies are in place across Europe[14]; product contact points for construction are in place in Member States. However, some aspects have not yet been implemented at full scale and require further efforts, as developed in the following sections.

3. RULES ON MARKETING CONSTRUCTION PRODUCTS

To place a construction product on the EU market, the DoP and the CE marking are required. Manufacturers of products covered by the harmonised sphere must use them[15]. They are also the only means to provide information[16] on products' performance in relation to the essential characteristics[17]defined by means of the CPR.

For the product performance information system set up by the CPR to be efficient, uniform application is needed. Therefore, the rules on harmonised conditions for marketing construction products have to be set at EU level, in or by means of the CPR. If Member State public authorities were to adopt their own approaches, this would hamper consistency and contribute to the fragmentation of the single market.

[13] A June 2012 conference, a 2014 video and a 2015 brochure ('EC marking of construction products — step by step', http://ec.europa.eu/DocsRoom/documents?tags=ce-guide).

[14] Nando, at: http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=directive.notifiedbody&dir_id=33.

[15] Under Article 4(1), this sphere comprises products covered by harmonised standards and those for which European technical assessments have been issued.

[16] Following adoption of Commission Delegated Regulation (EU) No 157/2014 of 30 October 2013 on the conditions for making a declaration of performance on construction products available on a website, manufacturers can make the DoP available electronically. There is evidence that this approach is used and viewed positively by industry.

[17] Cf. Article 4(2) of the CPR.

Nevertheless, the use of national marks[18] continues in several Member States against the principles of the CPR. National *ex ante* processes or verifications covering the harmonised area[19] are not allowed. This is also the case of voluntary marks without any national connotation, as they unduly prevent the free movement of CE-marked construction products, for example when linked to a more demanding system of assessment and verification of constancy of performance (AVCP) imposed by building inspections or insurance companies or when linked to financial incentives.

This has been confirmed by the European Court of Justice judgement in case C-100/13[20], which stated that Members States were to refrain from setting additional requirements. The applicability of this judgment under the CPR and its wide reach across all harmonised standards confirm the mandatory nature of the common technical language. Since the harmonised system created in or by means of the CPR is considered exhaustive,[21] no space is left for any other systems dealing with the marketing of construction products within the harmonised sphere. The Commission has therefore asked all Member States to align their national systems with these principles and is closely following the adjustments they make.

Another key implementation issue identified by many stakeholders is the substantial overlaps between the information required in the DoP and in the CE marking, which generates additional administrative and financial burden. Under a flexible interpretation of Article 9(2), the CE mark could contain only the critical information and refer to the DoP for other information. The DoP would be either provided on paper with the product, electronically or via a website. This could alleviate the burden on manufacturers, thus fulfilling the CPR's simplification objectives. The Commission is continuing to promote such a simplified and flexible solution, also to ensure legal certainty for manufacturers, who do not want different interpretations at Member State level.

4. CONSTRUCTION PRODUCT CONTACT POINTS

Product contact points for construction (PCPCs) established by all Member States to provide information on national rules are functioning and responding to requests for information from industry. The European Commission publishes a list of PCPCs and convenes regular meetings of them to ensure appropriate coordination and exchange of best practices.

However, awareness of the services offered by the PCPCs remains relatively low among industry and some questions have been raised about their response times and the quality of the information they provide.

The Commission is considering ways to improve the situation, including in the context of the Single Digital Gateway initiative which aims to streamline existing EU and national platforms providing information and services on single market rights.

In parallel to the Commission initiatives, Member States must continue to help their PCPCs to function better and make them better known to the construction sector.

[18] Marks (or, more generally, procedures creating *ex ante* requirements for manufacturers) with a national connotation.

[19] The area of basic requirements for construction works, as stated in Annex I to the CPR.

[20] http://curia.europa.eu/juris/liste.jsf?td=ALL&language=en&jur=C,T,F&num=c-100/13 %23.

[21] As in *para* 62 of the judgment in case C-100/13.

5. HARMONISED STANDARDS

Under the CPR, the 457 existing harmonised standards cited in the Official Journal of the European Union (OJEU) and their more than 2 000 supporting standards are the main source of common technical language in this field. The harmonised standards are estimated to cover around 75 to 80 % of all construction products so far. Most of these standards became applicable shortly before the CPR took full effect which partially explains some stakeholders' impression that radical changes occurred under the CPR.

Unlike harmonised standards developed under Union harmonisation legislation fully based on the New Legislative Framework[22], CPR-based harmonised standards are expected only to outline the methods and criteria for assessing the performance of construction products in relation to their essential characteristics. In general, they are not setting requirements for products' performance itself. This is due to the division of powers between the EU and Member States described above.

One of the specificities of the CPR is that it foresees that the use of harmonised standards is obligatory for manufacturers when placing their construction products on the market and for Member State authorities when setting requirements for their use[23]. This means that all stakeholders can rely on the uniform rules in place and not have to turn to other (national) instruments for these purposes[24].

As the use of harmonised standards is obligatory for construction products and these standards have a major impact on the market, there is a particular need for them to be of high quality. Their adoption procedures must be designed and applied with this goal in mind. It is particularly important that the various categories of stakeholders[25] are fairly and equitably represented and that the rules in Articles 3(3) and 27 of the CPR on establishing new classes or threshold levels of performance are complied with. There is room for improvement on these two aspects.

As most harmonised standards date back to the CPD era and all were developed based on standardisation mandates usually issued 10-20 years ago, some now require revision in line with technical and market developments. Besides, not all of the CPR's specific features have been thoroughly taken on board yet. The transition from the CPD to the CPR has required stakeholders, European standardisation organisations and Member State authorities to learn to assimilate the new features and carry them over into harmonised standards. There have been some delays in starting this process and the adaptation is ongoing.

These circumstances have required greater monitoring and surveillance by the Commission. Consequently, a significant number of candidate harmonised standards are not cited in the OJEU before appropriate adjustments or the adoption of delegated acts to incorporate classes and/or threshold levels. Continuous cooperation with European Committee for

[22] Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EE, OJ L 218, 13.8.2008, p. 82.

[23] Cf. Articles 4(2), 8(3), 8(6) and 17(5).

[24] Access to harmonised standards is an important question, as recognised by the European Court of Justice's Advocate General in his opinion (paragraph 51 in particular) delivered on 28.1.2016 on case C-613/14. This opinion also underlined the pertinence of standards as part of the EU harmonisation mechanism – Furthermore, the European Ombudsman has recently closed a query on this topic Q2/2013/EIS by her report of 11.12.2015.

[25] See Article 17(2) of the CPR.

Standardization (CEN) consultants will be essential to improving the situation before the harmonised standards are presented to the Commission for publication of their references in the OJEU.

Although the CPR did not bring about large-scale changes to the general framework for harmonised standards in this field, stakeholders have recently demanded a quicker and better streamlined standardisation process, with standards responding better to user needs. The exhaustive nature of CPR-based harmonised standards, confirmed by the ECJ in case C-100/13 referred to above[26], still requires a number of standards to be adapted[27]. In addition, new or revised standardisation requests have to be delivered[28] and the current backlog with harmonised standards not yet cited in the OJEU cleared. All this can be achieved only through enhanced collaboration between CEN, Member States, industry, the Commission and relevant stakeholders, notably through the Joint Initiative on Standardisation[29].

6. EUROPEAN ORGANISATION FOR TECHNICAL ASSESSMENT (EOTA)

For products for which the performance cannot be entirely assessed by harmonised standards, the CPR[30] defines specific procedures involving a request for a European Technical Assessment by the manufacturers and the drawing up and adoption of EADs by EOTA, the organisation of Technical Assessment Bodies (TABs).

The policy goals for EOTA, as defined in the CPR and emanating from experiences and criticisms of the CPD, were attained: to shorten and simplify procedures, to reduce the costs for manufacturers, and to make these procedures more transparent. In order to move from issuing product approvals to merely assessing their performance, the first step was to put in place a set of principles[31], which then were turned into specific procedures for drafting and adopting EADs[32]. Compliance with these principles has been good thanks to greater participation in these procedures by the manufacturers involved and the Commission.

Since November 2011, most Member States have designated TABs using Commission electronic tools, following strict criteria set in and based on the CPR[33]. Requests for European Technical Assessments (ETAs) and therefore also the preparation of draft EADs are mainly dealt with by a limited number of TABs.

However, the transition from the CPD to the CPR is not yet complete. Close to 90 % of ETAs issued under the CPR are still based on Guidelines for European technical approvals (ETAGs) used as EADs[34]. Principles for these practices have been agreed upon with EOTA and need to be followed to pre-empt any complications, especially for the manufacturers involved. The conversion of ETAGs into EADs, starting with those most frequently used, is under way[35].

[26] See footnote 16.

[27] In particular on certain basic requirements for construction works.

[28] Since amendments to existing standards should be made using the shortened mandating procedure.

[29] Commission decision of 1.6.2016 on the approval and the signing of the Joint Initiative on Standardisation, C(2016)3211.

[30] Cf. Article 19(1) defining the scope of these activities.

[31] Cf. Article 20.

[32] Cf. Articles 19(2) & (3) and Annex II to the CPR; cf. also Article 21.

[33] Cf. Articles 29 & 30 and Table 2 of Annex IV to the CPR; the Commission guidelines under Article 29(4) have also been duly communicated to Member States. By May 2016, 50 TABs have been designated in 25 countries, including three EFTA countries. Six Member States have not designated any TAB.

[34] Cf. Article 66(3) of the CPR.

[35] The publication of reference to the first converted EAD of this kind in the OJEU took place in May 2016.

European technical approvals issued under the CPD (by 30 June 2013) can be used by manufacturers as ETAs until the end of their validity (maximum five years i.e. possibly until 30 June 2018)[36].

The paradigm change within TABs from 'product approval' to 'performance assessment' is the main challenge for correct implementation of the CPR provisions on drafting and adopting EADs. After the adoption of Commission Implementing Regulation (EU) No 1062/2013 on the format of the European Technical Assessment for construction products[37], EOTA and the Commission agreed on the principles governing the drafting of EADs and developed detailed guidance based on the experience gathered in these processes[38]. All this allowed for the first publication in the OJEU of references to EADs in July 2015[39].

The Commission has not been informed by EOTA of any need to resolve disagreements between TABs, as referred to in Article 23 of the CPR. However, this does not mean that no such disagreements exist, particularly as there have been delays in adopting EADs within EOTA[40].

In conclusion, Articles 19, 20, 21 and 24 of the CPR are functioning in line with their objectives. The practical transition from the CPD to the CPR could have been faster and the procedures in place could still be further streamlined. However, in general the improvements required for quicker and more transparent finalisation of EADs can be made without regulatory proposals[41].

7. NOTIFIED BODIES AND NOTIFYING AUTHORITIES

The credibility of the system established by the CPR relies widely on the notified bodies (NBs)[42], which have to fulfil strict requirements on their technical competence, impartiality, and accountability[43]. Particular attention should be paid to their independence, a criteria emphasised during the CPR adoption process. Notifying authorities designated by Member States[44] are responsible for the national notification and monitoring procedures.

The activities of the Group of Notified Bodies and its subgroups have been enhanced by their strengthened regulatory backing in the CPR[45]. Such coordination is necessary to ensure uniform application of the rules in place, so as to avoid the occasional criticism for varying practices in this field.

Increased legal certainty and consistency were achieved when Annex V to the CPR was amended by Commission Delegated Regulation (EU) No 568/2014 of 18 February 2014[46].

[36] Cf. Article 66(4) of the CPR.
[37] OJ L 289, 31.10.2013, p. 42-43; this act is based on Article 26(3) of the CPR.
[38] Cf. Article 24 of the CPR.
[39] By May 2016, 40 EADs had been cited in the OJEU.
[40] So far, EOTA has not reported to the Commission any delays in the development of EADs either, as required in point 6 of Annex II to the CPR.
[41] The procedural rules set out in Annex II to the CPR could be streamlined using a delegated act (cf. Articles 19(3) and 60(d)).
[42] These bodies are called on to perform third-party tasks on AVCP for construction products. By May 2016, 623 NBs had been notified.
[43] The requirements for NBs are set out in Article 43 of the CPR.
[44] Cf. Article 40 of the CPR.
[45] Cf. Articles 43(11) and 55 of the CPR.
[46] OJ L 157, 27.5.2014, p. 76-79.

That Regulation clarified the degree of involvement and the role of NBs in assessing and verifying constancy of performance of construction products. As a result, NBs now better understand their responsibilities.

The transition from the CPD to the CPR has brought about a paradigm change also for NBs. Some of them still need to adapt in order to fully incorporate the progress towards targeted certification activities[47], in addition to the other clarifications of their functions. This also has a bearing on the use of accreditation standards for notification purposes.

The feedback received from the application of the CPR provisions in this field indicates that some rules could be more precise[48]. In the same vein, these provisions[49] would benefit from further examination whether they should be distanced from the New Approach principles[50].

8. MICRO-ENTERPRISES AND SIMPLIFICATION

To level the playing field for SMEs and micro-enterprises, the CPR provides derogations from the obligation to draw up a DoP[51] and simplified procedures for placing construction products on the market[52].

At the present implementation stage, experience is still limited on the practical use of most of these options, with the exception of the rules on simplified procedures concerning classification without testing, sharing and cascading[53]. These provisions are in frequent use where applicable.

However, there is so far no documentary evidence of use of the other options in question. This could mean that the expected alleviation of financial and administrative burden on companies has not materialised. Reasons cited by stakeholders for this limited uptake include:

- varying practices and interpretations in Member States;
- low awareness in industry about these options;
- uncertainty over the meaning of key terms in the CPR;
- difficulties in demonstrating 'equivalence' and/or providing alternative technical documentation;
- doubts over the actual extent of financial savings applicable;
- fear of disapproval of authorities or users if the procedures are not (correctly) applied.

In particular, these doubts have affected the potential for microenterprises to apply the simplified procedures of Article 37 as intended during the regulatory process for the CPR.

A comprehensive approach appears to be required, with further elaborations on the way forward, to better meet the expectations of SMEs, especially micro-enterprises, operating in

[47] As opposed to product certification, the CPR, and its new Annex V in particular, focus on certifying the constancy of performance.
[48] Cf. notably Articles 43, 45, 46, 52(2) and 55 of the CPR.
[49] From Decision No 768/2008/EC.
[50] Cf. notably Articles 44, 50(1), 51 and 53(2) of the CPR.
[51] Article 5.
[52] Articles 36 to 38. Of these, Article 37 concerns micro-enterprises specifically.
[53] Article 36.

the EU construction sector. The Commission is to facilitate these developments via discussions in a technical platform.

9. MARKET SURVEILLANCE

Within the new legislative framework adopted in 2008, Regulation (EC) No 765/2008[54] established the main administrative framework for market surveillance in Member States, whereas Decision No 768/2008/EC contained reference provisions for individual market surveillance procedures: these provisions were to be used by inserting them into the sector-specific legislation. Market surveillance-related Articles 56 to 59 of the CPR thus draw largely on Articles R31 to R34 of Decision No 768/2008/EC, but have had to be adjusted for the context at hand. These adjustments could be seen as a partial cause for some of the market surveillance challenges experienced during CPR implementation[55].

The functioning of market surveillance authorities in Member States has been based on Regulation (EC) No 765/2008 since its entry into application on 1 January 2010 and all Member States have duly established them for construction products, albeit with variable availability of resources and real impact on the market. Their cooperation within the market surveillance administrative cooperation group (AdCo-CPR) Group has continuously intensified during the last few years, partially due to new financial support by the EU for the group's activities. AdCo-CPR has recently organised several joint market surveillance actions and contributed efficiently to developing the ICSMS system[56] to better serve the needs of the construction sector. The RAPEX system, established under the General Product Safety Directive 2001/95/EC, has also been used for construction products, with a view to ensuring their safety in use.

Further ongoing developments within AdCo-CPR include drafting a sector-specific approach to risk assessment for construction products. In addition, Member State authorities are tackling the current challenges in applying Articles 56 to 58 of the CPR with a view to streamlining the procedures involved[57]. These developments are highly beneficial for future decisions on improving market surveillance in Member States.

10. CONCLUSIONS, RECOMMENDATIONS AND WAY FORWARD

The CPR has been implemented for a relatively short period only, therefore not all the objectives the CPR was aiming at have been achieved yet. A significant part of the challenges reported above relate to implementation difficulties and delayed adaptation by stakeholders. Before being able to draw definite conclusions on the performance of the legislation, further work is necessary to improve implementation, particularly at national level (for example on

[54] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L 218, 13.8.2008, p. 30.

[55] On 13 February 2013, the Commission adopted a package of proposals to improve the safety of consumer products and market surveillance for industrial products (COM(2013) 75; COM(2013) 78; COM(2013) 76), currently pending for adoption in the European Parliament and the Council.

[56] General information and communication support system for market surveillance.

[57] The Commission has so far not been informed of any formal procedures initiated by Member States under these Articles; according to Article 56(2), such information would have been needed at the very beginning of such procedures.

uniform interpretation and removing obstacles to free movement) but also by other players such as CEN and EOTA. For this reason, the Commission does not consider it appropriate to propose amendments to the CPR at this stage.

However the Commission sees a clear need for continued dialogue with Member States and other stakeholders, close monitoring of the situation and enforcement of existing rules.

Building on the efforts already made in terms of clarification, in order to further support adequate and uniform implementation of the CPR, as well as focusing on the areas identified in the present report could notably include the development of additional interpretative material and of guidance, as well as communication and awareness actions.

There is potential for a quicker and a better streamlined standardisation process with standards responding better to the needs of their users through a close and efficient collaboration between CEN, Member States, the industry and the Commission.

For EOTA, the procedural rules set out in Annex II to the CPR could be streamlined for the quicker and more transparent finalisation of EADs via a delegated act.

At this stage, the Commission sees a need to further clarify certain provisions in the CPR to support uniform application, notably the following:

- Article 5 on derogations from drawing up a DoP;
- Article 6 on the content of the DoP;
- Article 9(2) on the information following the CE marking;
- Article 37 on simplified procedures for micro-enterprises;
- Article 38 on simplified procedures for individually manufactured or custom-made products;
- Articles 56-58 on procedures for market surveillance.

The Commission intends to continue following attentively the implementation of the Regulation in order to identify further potential issues that could not yet be solved at the level of interpretation.

The Commission will engage in further dialogue with relevant stakeholders on the issues identified via technical platforms to be convened by the end of 2016. Once the implementation of the CPR could be expected to have reached a more mature stage, and considering the outcomes of such dialogue and the results of upcoming related studies, sectoral assessment and reports[58], the Commission will review the performance of the CPR.

[58] E.g. the above-mentioned construction fitness check, study on economic impacts of the CPR, report on EOTA financing, initiatives on market surveillance and the Single Digital Gateway.