
*A004 National Building Control
Management Project*

Guidelines for Market Surveillance Authorities

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DISCLAIMER

These guidelines were developed to assist local authorities in providing for a consistent approach to the implementation in Ireland of the market surveillance provisions of *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* and the supporting *European Union (Construction Products) Regulations 2013* (S.I. No. 225 of 2013). These guidelines should be treated as a reference guide only and are not intended to constitute anything more than guidance in this respect. Authorised officers are advised to take professional legal advice and assistance in respect of any issue, query or problem which they may have in respect of market surveillance under *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* and the *European Union (Construction Products) Regulations 2013*, in particular where corrective actions and/or other enforcement measures are under consideration. No liability whatsoever is accepted to any person or body arising out of any reliance on the contents of these guidelines.

1.0 Introduction

1.1 Purpose of the Guidelines

1.1.1 These guidelines are issued by the National Building Control Management Project-Compliance Support Working Group and are offered primarily as assistance to those working within building control to promote quality in public service delivery with the main objective of providing guidance on a consistent approach to authorised officers with respect to undertaking their functions under the European Union (Construction Products) Regulations 2013 (S.I. No. 225 of 2013).

In particular, these guidelines provide guidance in respect of: -

- (a) Roles and responsibilities;
- (b) Standardisation and co-ordination nationally;
- (c) Guidelines for dealing with serious risk and risk assessment;
- (d) Sample letters of enforcement;
- (e) Inspection Report templates; and
- (f) Examples of Declarations of Performance and CE Marking.

1.1.2 S.I. No. 225 of 2013 should be read in tandem with *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* in order to obtain a comprehensive view of the obligations on economic operators (i.e. manufacturers, importers, distributors/retailers), the requirements for the marketing of construction products (that fall within the remit of Regulation (EU) No. 305/2011), the market surveillance procedures to be followed to support compliance and the powers conferred on building control authorities for the purposes of market surveillance.

It is important to note that these guidelines do not purport to be a legal interpretation of Regulation (EU) No. 305/2011. More comprehensive information on Regulation (EU) No. 305/2011 is available on the European Commission's website at the link provided below: -

<http://ec.europa.eu/growth/sectors/construction/product-regulation/>

1.1.3 These Guidelines were developed by the Department of Housing, Planning, Community and Local Government in collaboration with Building Control Authorities from: -

- Clare County Council,

- Cork County Council,
- Dublin City Council,
- Dun Laoghaire-Rathdown County Council,
- Fingal County Council,
- Meath County Council,
- South Dublin County Council, and
- Wexford County Council.

1.2 Background and context

1.2.1 *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down*

harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (known as the Construction Products Regulation or “CPR”) came into full effect on 1 July 2013 across the territories of the European Union.

1.2.2 The primary purpose of Regulation (EU) No. 305/2011 is to break down technical barriers to trade in order to ensure the free movement of construction products across Member States within the European Union. In this regard, Regulation (EU) No. 305/2011 provides for: -

- a system of harmonised technical specifications (i.e. harmonised European product standards and European Assessment Documents),
- an agreed system of assessment and verification of constancy of performance for each product family (as set out in the harmonised technical specifications),
- a framework of notified bodies, who are third party bodies involved in the assessment of products, or their production, to varying degrees as set out in the harmonised technical specifications, and
- mandatory CE marking of construction products as a passport to the internal market, along with the requirement for Declarations of Performance to accompany such construction products.

1.2.3 Chapter VIII (Articles 56 to 59 respectively) of Regulation (EU) No. 305/2011 sets out the specific market surveillance and safeguard procedures in respect of construction products under and in accordance with the framework provisions of *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*. These provisions are supported in Ireland by the *European Union (Construction Products) Regulations 2013* (S.I. No. 225 of 2013) and, inter alia, provide for the appointment by building control authorities of authorised officers for the purpose of carrying out market surveillance activity in respect of construction products¹.

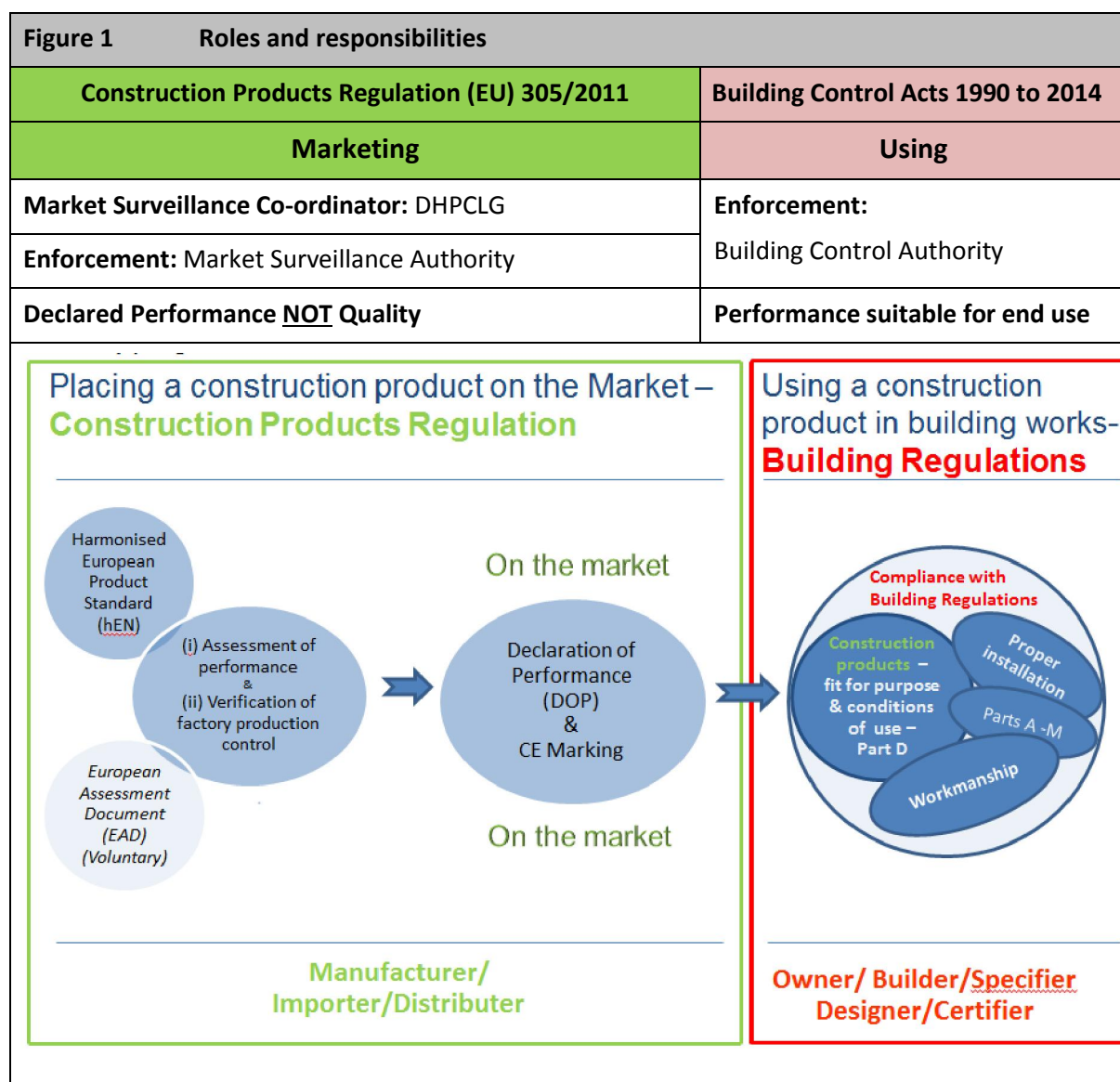
¹ See Appendix XI

2.0 Role of the Market Surveillance Authority

2.1 Key Principles

2.1.1 Regulation (EU) No. 305/2011 is a marketing instrument aimed at removing barriers to trade and concerns itself with the conditions which apply when placing a construction product on the market. As such, it creates obligations on economic operators (i.e. manufacturers, importers and distributors/retailers).

2.1.2 Regulation (EU) No. 305/2011 does not regulate the use of construction products. When a construction product is incorporated into construction works, e.g. a building, this is covered by Building Regulations. A simple way of understanding where the powers under market surveillance are likely to end and where the powers under the Building Control Acts commence is outlined in Figure 1 below.



2.2 What is market surveillance?

2.2.1 For the purpose of ensuring the equivalent and consistent enforcement of European Union harmonisation legislation, *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* introduced a European Union-wide market surveillance framework, defining minimum requirements against the background of the objectives to be achieved by Member States and a framework for administrative cooperation including the exchange of information among Member States. This instrument applied from 1 January 2010.

2.2.2 In broad terms, market surveillance in respect of construction products means any activities carried out and measures taken by a market surveillance authority (within the meaning of S.I. No. 225 of 2013) to ensure that construction products comply with the requirements set out in the relevant harmonised technical specifications and do not endanger health, safety or any other aspect of public interest protection.

2.2.3 Market surveillance activity aims to ensure that products fulfil their applicable requirements by providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, protection of consumers, protection of the environment and security while such activity ensures that the free movement of products is not restricted to any extent greater than that which is allowed under Union harmonisation legislation or any other relevant Union rule. Market surveillance activity entitles citizens to an equivalent level of protection throughout the single market, regardless of the origin of the product. Furthermore, market surveillance activity is important for the interest of economic operators in that it can help to eliminate unfair competition.

2.3 Market Surveillance Authorities

2.3.1 Member States are obliged to guarantee effective surveillance of their market. They are required to organise and carry out close monitoring of the products placed on the market. Member States have to take appropriate measures to guarantee that the provisions of *Regulation (EC) No. 765/2008, of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety* and of the other Union harmonisation legislation, as well as non-harmonised, national legislation, in force are respected in the European Union and, in particular, to prevent the placing on the market and use of non-compliant and unsafe products.

2.3.2 Market surveillance activity should enable unsafe products or products which otherwise do not conform to the applicable requirements set out in Union harmonisation legislation to be identified and kept or taken off the market with unscrupulous and/or criminal economic operators prosecuted and penalised for their actions. In this context, it is important to note that the overarching objective of a market surveillance authority is to ensure that compliant products are placed on the market. Where non-compliance is identified, market surveillance activities should be designed to encourage economic operators to take appropriate corrective actions to redress the position within a reasonable

period of time. Legal actions should only be considered as a last resort and where there is clear evidence of non-cooperation by an economic operator.

2.3.3 Chapter III (Articles 15 to 26 respectively) of Regulation (EC) No. 765/2008 sets out the European Union framework for market surveillance and the controls applicable to products entering the internal market. Specifically, Article 16(1) provides that Member States shall organise and carry out market surveillance as provided for in this Chapter while Article 16(3) elaborates that national market surveillance infrastructures and programmes shall ensure that effective measures can be taken in relation to any product category subject to Union harmonisation legislation. These provisions provide the enabling powers in Member States for the establishment of national market surveillance authorities.

2.3.4 The powers attributable to market surveillance authorities stem from the provisions of Article 18(3) of Regulation (EC) No. 765/2008 which provides that Member States shall entrust market surveillance authorities with the powers, resources and knowledge necessary for the proper performance of their tasks subject to the qualification in Article 18(4) that Member States shall ensure that market surveillance authorities exercise their powers in accordance with the principle of proportionality.

2.3.5 In the specific case of construction products, the applicable Union harmonisation legislation is *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* which came into full effect on 1 July 2013. Chapter VIII (Articles 56 to 59 respectively) of Regulation (EU) No. 305/2011 set out the specific market surveillance and safeguard procedures in respect of construction products under and in accordance with the framework provisions of Regulation (EC) No. 765/2008. These provisions are supported in Ireland by the European Union (Construction Products) Regulations 2013 (S.I. No. 225 of 2013).

2.3.6 Regulation 10(1) of the European Union (Construction Products) Regulations 2013 provides that, for the purpose of construction products that fall within the remit of Regulation (EU) No. 305/2011, a market surveillance authority shall be: -

- a building control authority in respect of construction products placed on the market, or made available on the market, within its functional area;
- a competent authority that may be appointed by the Minister for Housing, Planning, Community and Local Government in respect of specific construction products placed on the market, or made available on the market, in the State (none appointed to date);
- a competent person that may be appointed by the Minister for Housing, Planning, Community and Local Government in respect of specific construction products placed on the market, or

made available on the market, in the State (none appointed to date), and

- the Minister for Housing, Planning, Community and Local Government for the purpose of issuing a direction under and in accordance with Regulation 14(4) of the European Union (Construction Products) Regulations 2013 and for the purpose of informing the Commission and the other Member States of such a direction.

2.4 Authorised Officers

2.4.1 Regulation 11(1)(a) of the European Union (Construction Products) Regulations 2013 provides for the appointment by building control authorities of authorised officers for the purpose of carrying out market surveillance activity in respect of construction products. An authorised officer shall be furnished with a warrant of his/her appointment as an authorised officer and, when exercising any power conferred on him/her on an economic operator under the European Union (Construction Products) Regulations 2013, shall, if requested by that economic operator, produce the warrant to that economic operator.

2.4.2 Under Regulations 12 and 14 of the European Union (Construction Products) Regulations 2013, powers are vested in an authorised officer to: -

- on request, obtain access to buildings, land and vessels to undertake such evaluations, examinations, tests or inspections of a construction product,
- request technical information to ascertain if a construction product is compliant with the requirements of the Regulation (EU) No. 305/2011,
- take copies of records, or extracts from files, to facilitate the evaluation, examination or inspection of a construction product,
- require an employee or a person in charge to provide information in a legible form on a construction product,
- require explanations in relation to a construction product from an employee or a person in charge,
- take photographs of a construction product, the place of manufacture and/or the place of storage of the construction product,
- bring persons and/or equipment to the place of manufacture or storage of a construction product to assist in such evaluations, examinations, tests or inspections as are considered

necessary,

- take samples of a construction product for testing,
- issue a notice to require corrective actions to be taken by an economic operator within a specified period of time,
- in the event of a serious risk being identified, request the Minister for Housing, Planning, Community and Local Government to prohibit or restrict a construction product from being made available on the market, to withdraw it from the market or to recall it, or to make its use subject to special conditions as deemed appropriate.

2.4.3 Given the commercial sensitivities that may be involved, it is incumbent on all market surveillance authorities to take reasonable measures to guarantee the confidentiality of the technical documentation and such other information as may be supplied by an economic operator under S.I. No. 225 of 2013 in support of a product's compliance (see section 2.8 with regard to information exchange between market surveillance authorities).

2.4.4 In exercising any of the powers set out in Regulations 12 and 14 of the European Union (Construction Products) Regulations 2013, where an authorised officer has sufficient reason to believe that a construction product covered by a harmonised standard does not achieve the declared performance and presents a risk for the fulfilment of the basic requirements for construction works² covered by Regulation (EU) No. 305/2011, he/she shall carry out an evaluation in relation to the product concerned covering the respective requirements laid down by Regulation (EU) No. 305/2011 and the relevant economic operator(s) shall cooperate with the authorised officer.

2.5 Role of the Minister for Housing, Planning, Community and Local Government

2.5.1 Statutory functions are assigned to the Minister for Housing, Planning, Community and Local Government under Regulations 14(4) and 14(6) of the European Union (Construction Products) Regulations 2013 in respect of the issue of a direction to recall or withdraw a construction product from the market and for the purpose of informing the European Commission of any such directions.

2.5.2 In this context, the Minister may issue a direction to an economic operator following consideration of: -

- (a) a communication from the Commission, a Member State or a market surveillance authority of another Member State, that a construction product has been prohibited from being made

² See Appendix X

available on the market, or has been withdrawn or recalled from the market,

- (b) evidence of an imminent danger to health and safety arising from the use, or likely to arise from a prospective use, of a construction product, or
- (c) a request from a market surveillance authority pursuant to Regulations 14(2) and 14(3) of the European Union (Construction Products) Regulations 2013.

The direction shall be in writing to the economic operator and may prohibit or restrict the construction product from being made available on the market, withdraw it or recall it from the market, or make its use subject to special conditions. The serving of the direction on an economic operator should follow the procedures set out in Regulation 15(1) of the European Union (Construction Products) Regulations 2013.

2.5.3 Where a direction issues to withdraw or recall a construction product from the market, Regulation 14(6) of the European Union (Construction Products) Regulations 2013 requires the Minister for Housing, Planning, Community and Local Government to notify the European Commission and other Member States and provide the data necessary for the identification of the non-compliant construction product, the origin of the construction product, the nature of the non-compliance alleged and the risk involved, the nature and duration of national measures being taken as well as the arguments put forward by the relevant economic operator. In particular, the Minister for Housing, Planning, Community and Local Government is required to indicate whether the non-compliance is due to either: -

- (a) a failure of the product to achieve the declared performance and/or to meet the requirements related to the fulfillment of the basic requirements for construction works laid down in Annex I to Regulation (EU) No. 305/2011; or
- (b) shortcomings in the harmonised technical specification or in the specific technical documentation (as appropriate) for the affected construction product.

If no objections are received within 15 working days from the European Commission nor from other Member States, the requirements of the direction will be deemed justified.

2.5.4 Article 56(1) of Regulation (EU) No. 305/2011 provides that any corrective actions proposed by a market surveillance authority should be commensurate to the level of risk associated with the non-compliant construction product. Accordingly, proposals to prohibit, withdraw or recall a construction product from the market should only be put forward where a serious risk has been identified (i.e. where the severity of harm is deemed 'serious' and the probability of occurrence is 'high') following completion of a comprehensive risk assessment. Given the economic implications of a product withdrawal or recall, it is advisable that the evaluation carried out by the market surveillance

authority and the resulting risk assessment follows the guidance provided in the RAPEX Guidelines (see section 3.7) in order to minimise the risk of a successful legal challenge from an economic operator.

2.5.5 Notwithstanding the statutory powers assigned to the Minister for Housing, Panning, Community and Local Government under Regulations 14(4) and 14(6) of the European Union (Construction Products) Regulations 2013, the Department of Housing, Panning, Community and Local Government also maintains a coordinating role in respect of the implementation in Ireland of Regulation (EU) No. 305/2011 and acts as a central point of contact for the receipt of complaints from the public, public bodies, contractors, designers, customs, police or other market surveillance authorities. Where a complaint is received in the Department in respect of a construction product, the complaint and all supporting documentation will be forwarded to the relevant market surveillance authority for information and appropriate action. The Department of Housing, Panning, Community and Local Government will provide what guidance and assistance it can in the matter to the relevant market surveillance authority.

2.6 Resource management

2.6.1 Active market surveillance typically involves a combination of planned and routine activities over the course of a defined period (i.e. annually) which would target a number of specified products for the purpose of ascertaining compliance. For active market surveillance to be efficient, resources should be concentrated where risks are likely to be higher or non-compliance more frequent, or where a particular interest can be identified. Statistics and risk assessment procedures can be used for this purpose.

2.6.2 Reactive market surveillance involves responding to an allegation of non-compliance in the market place and may include various level of investigation to establish fact. Given all current market surveillance activity will have to be performed within existing local authority budgets, which continue to remain subject to national restrictions on Government spending, market surveillance will largely be carried out on a reactive basis. Nevertheless market surveillance authorities are encouraged, subject to resources, to undertake a small number of random inspections on a variety of construction products to make economic operators aware of their presence in the marketplace.

2.6.3 Market surveillance authorities should have the competence and resources: -

- to regularly visit commercial, industrial and storage premises;
- to regularly visit, if appropriate, work places and other premises where products are put into service;

- to organise random and spot checks;
- to take samples of products, and to subject them to examination and testing; and
- to require, upon reasoned request, all necessary information.

2.6.4 The promotion of the market surveillance function of local authorities should lead to greater awareness among economic operators of their obligations under Regulation (EU) No. 305/2011 and the supporting European Union (Construction Products) Regulations 2013. In this context, a number of measures are advised in support of promoting awareness of Regulation (EU) No. 305/2011 such as:

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- incorporating material on Regulation (EU) No. 305/2011 on your website, including contact details for the authorised officers appointed under Regulation 11 of the European Union (Construction Products) Regulations 2013,
- hosting a link on your website to the *Construction Products Regulation – Information Paper*, published by the Building Regulations Advisory Body and available at <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownload%2C30649%2Cen.pdf>,
- reviewing information available locally which may be used to identify economic operators within your functional area that are likely to be affected by Regulation (EU) No. 305/2011. The identification of economic operators at local level could be used to establish a database which could assist the planning of future market surveillance activity as well as providing a means for mass communication should the need arise.

2.7 Market Surveillance Plans

2.7.1 It is expected that market surveillance authorities will undertake an appropriate level of assessment and inspection of construction products informed by risk analysis, thereby ensuring that available inspection resources are targeted towards economic operators carrying the greatest risks. The application of risk assessment enables market surveillance authorities to: -

- (a) focus resources on the higher risk construction products;
- (b) focus, in particular, on economic operators and others with a history of non-compliance; and
- (c) achieve a proportionate, transparent and consistent approach to their activities.

2.7.2 In the interests of public safety and law enforcement market surveillance plans may be

established based construction products within the scope of the CPR (See Appendix XI) which present an apparent risk for various reasons, e.g. life safety issues, legacy problems or where the market surveillance authority had experience on non-compliance etc.

2.7.3 Market surveillance authorities should identify the relevant economic operators relevant to the construction products presenting an apparent risk in their jurisdiction. The commercial rates database maintained within each local authority may be a useful starting point in this regard.

2.7.4 When market surveillance plans are being implemented, it is considered advisable that market surveillance authorities make their conclusions available to the Department of Housing, Planning, Community and Local Government on an on-going basis under the following broad headings: -

- number of inspections;
- number of inspections resulting in
 - a finding of non-compliance,
 - corrective actions being taken by the relevant economic operator (i.e. voluntary measures), and
 - restrictive measures being taken by the market surveillance authority;
- number of successful prosecutions (i.e. where sanctions/penalties were applied); and
- number of inspections where market surveillance authorities from other Member States were involved.

2.7.5 Assessment and inspection in the context of market surveillance, to the extent that such is warranted in pursuit of raising compliance among economic operators, remains the primary responsibility of individual market surveillance authorities in their own right. However, regionalisation has the potential to create a critical mass and increased capacity for lower-resourced authorities. This may be introduced and its effectiveness reviewed on an ongoing basis at the initiative of groups of authorities, when they consider it to be appropriate to their needs.

2.8 Information Sharing

2.8.1 Regulation 10(1)(a) of the European Union (Construction Products) Regulations 2013 provides that a market surveillance authority shall be a building control authority in respect of construction products placed on the market, or as the case may be, made available on the market, within its

functional area. In addition, Regulation 10(1)(d) of the Regulations further provides that the Minister for Housing, Planning, Community and Local Government shall also be a market surveillance authority under prescribed conditions (i.e. where a serious risk has been established in respect of a construction product and the Commission need to be informed of any product recalls or withdrawals from the market). Given construction products (similar to other products) may be placed on the market in multiple areas within a Member State and/or within other Member States, information exchange and effective cross-border co-operation between market surveillance authorities is considered essential in order to facilitate efficient, comprehensive and consistent market surveillance in the internal market.

2.8.2 In this context, Article 18(1) of Regulation (EC) No. 765/2008 explicitly provides that “*Member States shall establish appropriate communication and coordination mechanisms between their market surveillance authorities*”. For the purpose of giving effect to the provisions of Article 18(1) of Regulation (EC) No. 765/2008, Circular BC 05/2014 of 4th September 2014 sets out the conditions under which information collected during the course of their market surveillance activities may be shared with other market surveillance authorities in order to ensure that appropriate corrective actions (if deemed necessary) can be taken throughout the State, or in other Member States as the case may be, in the event that a non-compliant construction product is placed on the internal market. To facilitate the sharing of information, a market surveillance authority shall: -

- ensure that the information to be shared has been collected during the course of its market surveillance activities (whether by desktop study, site inspection, vehicle inspection, written request, enforcement notice or any other lawful means of obtaining information as the case may be);
- establish, or have reasonable cause to believe, that the construction product to which the information relates is not compliant with one or more requirements of the Construction Products Regulation;
- ascertain, or have reasonable cause to believe, that the construction product to which the information relates has been placed on the market in the functional area of the market surveillance authority intended as the recipient of the information (or territory of the market surveillance authority in the case of a market surveillance outside of the State);
- indicate that the information to be shared is for the purpose of assisting the market surveillance authority intended as the recipient of the information in undertaking any market surveillance activities that it may wish to consider in connection the construction product to which the information relates;
- clarify that the market surveillance authority intended as the recipient of the information shall respect the provisions of Article 19(5) of Regulation (EC) No. 765/2008 which provides that a market surveillance authority “*shall observe confidentiality where necessary in order*

to protect commercial secrets or to preserve personal data pursuant to national legislation, subject to the requirement that information be made public under this Regulation to the fullest extent necessary in order to protect the interests of users in the Community.”

2.8.3 Notwithstanding the provisions of Article 19(5) of Regulation (EC) No. 765/2008, market surveillance authorities should take cognisance of Article 23(3) of that Regulation which provides, inter alia, that the *“protection of confidentiality shall not prevent the dissemination to market surveillance authorities of information relevant to ensuring the effectiveness of market surveillance activities.”*

2.8.4 The *Information and Communication System on Market Surveillance (ICSMS)* is a European Union platform for the reliable exchange of information among market surveillance authorities. The system allows for information on non-compliant products, e.g. test results, product identification data, photographs, economic operator information, risk assessments, accident information, and information on measures taken by surveillance authorities etc., to be shared quickly and efficiently among market surveillance authorities).

2.8.5 Market surveillance authorities are encouraged to use the ICSMS system which is administered in Ireland by the Health and Safety Authority (HSA). In this regard, training and access rights to the system for authorised officers can be provided by the HSA.

3.0 Market Surveillance in Practice

3.1 Overview

3.1.1 Where market surveillance activity is being considered, an authorised officer should carry out an evaluation in relation to the economic operator and the construction product concerned covering the respective requirements laid down by Regulation (EU) No. 305/2011. The following section outlines some practical approaches to market surveillance and is broken down into 5 broad stages, as follows: -

Stage 1 Preliminary study

Stage 2 Initial site visits and inspections

Stage 3 Corrective actions

Stage 4 Final site visits and inspections

Stage 5 Risk assessment and RAPEX

3.2 Stage 1 - Preliminary Study

3.2.1 Firstly, it is important to establish whether or not the construction product falls within the scope of Regulation (EU) No. 305/2011. Information and technical documentation on the investigation of a construction product may be obtained from various sources, e.g. the economic operator's website, complaints from consumers or other users about the product. Complaints from manufacturers or distributors about unfair competition can also provide information for market surveillance purposes.

The checklist set out in Appendix I will help serve as a useful tool to establish whether or not the construction product falls within the scope of Regulation (EU) No. 305/2011.

3.2.2 Once it has been established that the construction products falls within the scope of Regulation (EU) No. 305/2011, more formal checks can be applied, for example, regarding the CE marking and its affixing, the availability of the certificate of constancy of performance / certificate of conformity of the factory production control / test reports, the information accompanying the product and the correct choice of conformity assessment procedures.

3.2.3 In addition, more profound checks may also be necessary to verify the conformity of the product, for example regarding the correct application of the conformity assessment procedure, the compliance with the applicable essential requirements, and the contents of the certificate of constancy of performance / certificate of conformity of the factory production control / test reports. When

investigating the legitimacy of a CE Mark or Declaration of Performance of a product, the NANDO website will identify the legitimacy of the third party involvement. Appendix II will help establish some basic facts in a logical manner. Appendix IX provides further guidance on the connection between the CE Marking and the Declaration of Performance.

3.2.4 As part of the preliminary study, it is advisable to establish whether the economic operator under inspection is a micro, small or medium sized enterprise. In the context of the European Union, these are taken as: –

- Micro enterprise - an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million;
- Small enterprise - an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed €10 million;
- Medium-sized enterprise - an enterprise which employs fewer than 250 persons and whose annual turnover does not exceed €50 million or whose annual balance-sheet total does not exceed €43 million.

3.2.5 In order to reduce the administrative burden on small and medium enterprises, in particular micro-enterprises, a range of simplification procedures aimed at simplifying the route to CE marking have been introduced under Articles 36 to 38 of Regulation (EU) No. 305/2011 which can be availed of where the products being placed on the market do not imply significant safety concerns. The authorised officer should be aware that the use of specific technical documentation may be used by small and medium enterprise in such circumstances.

3.3 Stage 2 – Initial site visits and inspections

3.3.1 A site visit and inspection may be carried out: -

- (a) at random where an authorised officer is in a particular locality and may decide to visit an economic operator to raise awareness of, or check compliance with, the requirements of Regulation (EU) No. 305/2011,
- (b) in accordance with the provisions of a market surveillance plan adopted by the relevant market surveillance authority setting out its priorities in respect of market surveillance over a specified period of time (e.g. an annual plan), or
- (c) on receipt of a complaint against an economic operator.

3.3.2 These guidelines provide guidance in relation to initial site visits and inspection (which are less formal and generally for the purpose of raising awareness and general fact-finding) and final site visits and inspections (which are more formal, generally undertaken under caution and are largely for the purpose of gathering evidence in the event that a legal action may be necessary). Guidance in relation to final site visits and inspections is provided at section 3.5.

3.3.3 While both an initial site visit and inspection and a final site visit and inspection may need to be carried out in certain circumstances, where there is clear evidence of a non-compliance from the very outset, e.g. from the supporting documentation received on foot of a complaint, a market surveillance authority may choose to dispense with the initial site visit and inspection and proceed to the more formal final site visit and inspection in order to save both time and resources.

3.3.4 Site inspections and fact-finding

3.3.4.1 In advance of undertaking a random site inspection for general fact-finding purposes, an authorised officer shall ensure that he/she is familiar with all relevant provisions of Regulation (EU) No. 305/2011, Chapter III of Regulation (EC) No. 765/2008 and the European Union (Construction Products) Regulations 2013, in particular, the provisions set out in Regulations 12 to 16 respectively.

3.3.4.2 In accordance with Regulation 11(2) of the European Union (Construction Products) Regulations 2013, an authorised officer shall always carry the warrant of his/her appointment as an authorised officer, as he/she may be requested to produce it by the economic operator under inspection. An authorised officer may wish to consider incorporating the formal caution provided in section 3.5.3.3 on the warrant of his/her appointment in order to provide a less formal means of informing an economic operator that any information provided during the course of an inspection can be used in evidence in the event that a non-compliance with a provision of Regulation (EU) No. 305/2011 and/or the supporting European Union (Construction Products) Regulations 2013 gives rise to legal proceedings.

3.3.4.3 The authorised officer should visit the premises or vessel, whether unannounced or by appointment, of an economic prospective after first investigating if the company is an economic operator within the meaning of Regulation (EU) No. 305/2011. At the site, the authorised officer should request to speak to an appropriate member of staff with regard to the economic operator's obligations under Regulation (EU) No. 305/2011 and the supporting European Union (Construction Products) Regulations 2013. The authorised officer should then proceed to carry out an inspection of the premises or vessel, accompanied by the appropriate staff member. During the inspection, the authorised officer should make enquires to verify the nature of the economic operator's business, and to confirm: -

- (a) the economic operator is either a manufacturer, importer or distributor within the meaning

of Regulation (EU) No. 305/2011,

- (b) the construction products targeted for inspection are either manufactured at, imported to, or distributed from, the premises or vessel under inspection,
- (c) the relevant harmonised technical specifications applicable to the construction products targeted for inspection,
- (d) that Declarations of Performance are available in respect of the construction products targeted for inspection, and
- (e) that the CE marking has been applied to the construction products targeted for inspection (or to their packaging as the case may be).

All information gathered during on the initial site inspection should be recorded on the initial site inspection report (see Appendix III).

3.3.4.4 The authorised officer should also establish whether the economic operator operates from other premises located within the market surveillance authority's functional area as well as any premises located in the functional areas of other market surveillance authorities. Identifying the location of all premises is advisable in order to establish the full extent of the economic operator's activities in the State; in particular, in the event that market surveillance activity may need to be co-ordinated with other market surveillance authorities.

3.3.4.5 The authorised officer should provide a brief overview of the requirements on the economic operator under Regulation (EU) No. 305/2011 and the supporting European Union (Construction Products) Regulations 2013. Copies of the Information Note on the Construction Products Regulation, Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013 can be provided to the appropriate staff member.

3.3.4.6 At the conclusion of the visit, the authorised officer should confirm the appropriate point of contact for the economic operator for future reference. If applicable, the authorised officer should advise, on foot of the inspection that one of the following will be sent from the market surveillance authority, which will further explain the issues involved for the economic operator under Regulation (EU) No. 305/2011 and the supporting European Union (Construction Products) Regulations 2013: -

- (a) a request requiring the furnishing technical documentation, i.e. Declaration of Performance, certificate of constancy of performance, certificate of conformity of the factory production control, test reports etc. (see Appendix IV),
- (b) a request requiring the furnishing of explanations or supplementary information in

connection with the provision of technical documentation (see Appendix IV), or

- (c) a notice in writing outlining the statutory obligations imposed on the economic operator and setting out the corrective actions that need to be taken by the economic operator and how compliance can be demonstrated (see Appendix V).

As set out in section 3.3.4.3, during the inspection, the authorised officer should fill out an initial site inspection report which should inform the appropriate course of action to be undertaken by the market surveillance authority. Where the evidence gathered from the initial site inspection would appear to suggest a non-compliance, the authorised officer should advise the staff member at the end of the site inspection that a non-compliance with Regulation (EU) No. 305/2011 and the supporting European Union (Construction Products) Regulations 2013 may result in legal action being taken by the market surveillance authority in the event that the economic operator fails to comply with any follow-up actions proposed by the market surveillance authority.

3.3.4.7 Following an inspection of an economic operator by an authorised officer, a file should be opened on the company concerned. A copy of the authorised officer's initial site visit and inspection report should be included on the file.

3.3.5 Refusal of entry

3.3.5.1 If an authorised officer is refused entry by an economic operator to the place of manufacture or storage of a construction product (which may include a vehicle or vessel), he/she can either -

- (a) make an appointment to carry out the inspection at a more convenient time, or
- (b) use his/her powers as an authorised officer to gain entry under Regulation 12(1) of the European Union (Construction Products) Regulations 2013.

3.3.5.2 If entry is still refused, then he/she should advise the person refusing entry that it is an offence under Regulation 16(1)(g) of the European Union (Construction Products) Regulations 2013 not to allow an authorised person to enter any premises or to obstruct or impede an authorised person in the exercise of his or her duties. The authorised officer should refer to Regulation 13(1) of the European Union (Construction Products) Regulations 2013 if he/she is still unable to gain entry after the above steps have been taken.

3.4 Stage 3 - Corrective Actions

3.4.1 Where further action is required, a 'Company Printout' should be obtained from the Companies Registration Office (this is required in order to establish the correct company name, the company's registered address and the name of the company secretary). The Companies Registration Office can be contacted at –

Parnell House,
14 Parnell Square,
Dublin 1,
Tel: (01) 804 5200 or LoCall: 1890 220 226
Fax: (01) 804 5222
Email: info@cro.ie
Website: www.cro.ie

3.4.2 Depending on the circumstances in the case, and the recommendation contained in the authorised officer's initial site inspection report, one of the following courses of action may be required:

- (a) a request requiring the furnishing technical documentation, i.e. Declaration of Performance, certificate of constancy of performance, certificate of conformity of the factory production control, test reports etc. (see Appendix IV). Given this documentation should be readily available to the economic operator, an indicative timeframe for requiring the return of the technical documentation requested should be in the region of 2 weeks;
- (b) a request requiring the furnishing of explanations or supplementary information in connection with the provision of technical documentation (see Appendix IV). Depending on the complexities of the issues of concern to the authorised officer, an indicative timeframe for requiring the return of the explanations or supplementary information requested should be in the region of 2 weeks; or
- (c) a notice in writing outlining the statutory obligations imposed on the economic operator and setting out the corrective actions that need to be taken by the economic operator and how compliance can be demonstrated within a specified timeframe (see Appendix V). Copies of the Information Note on the Construction Products Regulation, Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013 should accompany the notice in writing.

A notice in writing under point (c) should only be issued in cases where there is clear evidence that the economic operator is not in compliance with his/her obligations under the Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013. The overarching objective of the notice in writing is to identify the corrective actions that need to be taken, provide an

opportunity for the economic operator to regularise his/her position and to warn them about the possibility of legal action being taken for non-compliance and/or in the event that the non-compliance continues. A notice in writing could issue either as a letter requesting the economic operator concerned to take specific corrective actions within a prescribed timeframe or, alternatively, it may issue in a more formal manner which may require approval by way of a Chief Executive's Order and follow the procedures set out in section 3.4.3 below.

3.4.3 A reasonable amount of time should be afforded for an economic operator to comply with his/her obligations under the Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013. All correspondence should be addressed to the company secretary and sent to the registered office of the company by registered post although the notice itself is served on the company and the language used in the notice should be phrased to reflect this distinction. These are important steps to follow, in particular, where it is anticipated that legal proceedings may have to be taken at a future point in time. By addressing all correspondence to the company secretary and sending it to the company's registered address by registered post and serving the notice on the company itself, it can be proved in court that the economic operator was formally advised of his/her responsibilities under the Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013. It is also advisable that copies of all correspondence be sent to the appropriate point of contact for the economic operator established by the authorised officer at the time of the inspection (section 3.3.4.6 or section refers).

3.4.4 Each market surveillance authority must ensure that all requests / notices issued are followed-up appropriately. While the amount of time afforded by each market surveillance authority may vary, it is considered good practice to diary the response times set out in all issued requests / notices to ensure that follow-up actions occur in a timely manner.

3.4.5 If the required technical documentation, explanations or supplementary information is not submitted by the specified timeframe, the issue of a reminder should be considered, or alternatively, a return visit could be made by the authorised officer to the premises of the economic operator.

3.4.6 Other contacts with the economic operator

3.4.6.1 Where an economic operator contacts the authorised officer, or the market surveillance authority's administrative support staff, it is advisable that a record of these contacts is maintained. Where telephone calls are made to, or received from, the economic operator, contemporaneous notes of those calls should be made.

3.5 Stage 4 - Final site visits and inspections

3.5.1 If an economic operator does not comply with the requirements of a notice in writing within the specified timeframe, it would be prudent for the authorised officer to visit the premises of the economic operator a second time and carry out a more formal inspection of the premises. A more detailed final site visit and inspection report is completed in this case (see Appendix VI).

3.5.2 Notwithstanding the above, as set out in section 3.3.3, where a complaint has been received by a market surveillance authority and the supporting documentation provides clear evidence of a non-compliance by an economic operator, the relevant market surveillance authority may opt to proceed to the more formal final site visit and inspection process from the very outset of their investigation.

3.5.3 Site inspections and evidence gathering

3.5.3.1 As set out previously in section 3.3.4.1, the authorised officer shall ensure that he/she is familiar with all relevant provisions of Regulation (EU) No. 305/2011, Chapter III of Regulation (EC) No. 765/2008 and the European Union (Construction Products) Regulations 2013, in particular, the provisions set out in Regulations 12 to 16 respectively in advance of the follow-up inspection.

3.5.3.2 Again, as set out previously in section 3.3.4.2, the authorised officer shall carry the warrant of his/her appointment as an authorised officer, as he/she may be requested to produce it by the economic operator during the final site visit and inspection.

3.5.3.3 The authorised officer shall arrange an early date with the economic operator for the final site inspection. On arrival at the premises, the authorised officer should request to speak to the appropriate point of contact for the economic operator established by the authorised officer at the time of the initial inspection (section 3.3.4.6 refers). If this person is unavailable, the authorised officer should request to meet with the person spoken to at the time of the initial site inspection. The authorised officer should explain the purpose of the visit and, in accordance with good practice, should issue the following formal caution to the officer of the company who is to accompany him/her on the inspection in order to ensure that responses to questions can be used in evidence: -

“You are not obliged to say anything but anything you do say may be taken down in writing and given in evidence.”

As an alternative to the verbal issue of the formal caution, an authorised officer may wish to draw the attention of the officer of the company who is to accompany him/her on the inspection to the formal caution printed on the warrant of his/her appointment (if the caution has been incorporated on the warrant of his/her appointment in accordance with section 3.3.4.2) when presenting the warrant to that officer of the company.

3.5.3.4 The authorised officer should proceed to ask a number of standard questions (see Appendix VI) regarding the economic operator's activities with regard to the placing / making available of construction products on the market, the application of the CE mark, the availability of Declarations of Performance and technical documentation in addition to any other explanations or information that may have been sought or required from the economic operator. The responses to the questions asked should be recorded in the final site inspection report.

3.5.3.5 During the inspection, the authorised officer should check for compliance or non-compliance with the Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013, i.e. is the CE mark displayed on the construction product under inspection, is there a Declaration of Performance, are the instructions and safety information provided in the English language (or in a diagrammatic format that is readily understandable). The authorised officer should familiarise himself/herself with the layout of the premises and the construction products being manufactured on, imported to or distributed from, the premises by the economic operator. The authorised officer may also decide to take samples of the construction product under inspection, photographs and/or take away copies of Declarations of Performance, technical documentation or instructions and safety information, if deemed necessary.

3.5.3.6 On completion of the inspection, a copy of the authorised officer's final site inspection report should be included on the file for the economic operator. If the required information sought under section 3.4.2 continues to remain outstanding, a Chief Executive's Order should be prepared for the initiation of legal proceedings against the economic operator for breaches of Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013.

3.5.4 Chief Executive's Order

3.5.4.1 Where an economic operator fails to: -

- (a) respond to a request, a notice in writing, or a reminder, issued from a market surveillance authority,
- (b) respond to a request, a notice in writing, or a reminder, issued from a market surveillance authority to the satisfaction of that authority (i.e. only provides partial or incomplete technical documentation, explanations or supplementary information as appropriate), or
- (c) comply with the corrective actions set out in a notice in writing, or a reminder, that need to be taken by the economic operator in order to bring the construction product targeted for inspection into compliance within a specified timeframe,

the market surveillance authority may be required to take legal action in order to bring the economic

operator into compliance with his/her responsibilities under the Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013.

3.5.4.2 In the event that legal action is required, the market surveillance will need to procure an original Certificate of Incorporation of the company issued by the Companies Registration Office, and a Certificate of Valuation issued by the Rates Office, in respect of each premises operated by the economic operator.

3.5.4.3 Based on the authorised officer's final site visit and inspection report, a Chief Executive's Order is prepared for managerial approval recommending the initiation of legal proceedings for breaches of Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013. It is important that the Chief Executive's Order sets out the specific non-compliances alleged to have been committed by the economic operator (see Appendix VII). The inclusion of exact name of the correct corporate body to be prosecuted is obligatory on the Chief Executive's Order.

3.5.5 Referral to the law agent

3.5.5.1 When the Chief Executive's Order is signed, the law agent acting on behalf of the market surveillance authority should be instructed to institute prosecution proceedings against the economic operator concerned as soon as possible. In due course, the law agent will prepare the case for prosecution, including the arrangement of court dates, the serving of summonses and liaising with senior counsel. At this stage, the market surveillance authority's principal function is to ensure that the law agent, and his/her legal team, is supplied with accurate information. Typically, the law agent will require copies of the following: -

- the Order delegating the duties of the Chief Executive to the Executive Manager (if applicable) in respect of his/her functions under Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013;
- the Chief Executive's Order authorising prosecution proceedings against the defendant;
- the authorised officer's inspection reports;
- details of An Post 'track and trace' used in the service of each notice in writing issued by the authorised officer;
- relevant file correspondence;
- a map of the functional area of the market surveillance authority;

- the Certificate of Incorporation of the company concerned and print-out from the Companies Registration Office; and
- Valuation Certificates in respect of premises operated by the economic operator concerned from the Rates Office; and
- the Certificate of Appointment of the authorised officer under Regulation 11(1)(a) of the European Union (Construction Products) Regulations 2013.

3.5.6 Issue of summons

3.5.6.1 In due course, the case will be listed for hearing in the District Court (or another Court as appropriate) and the summonses will be served in respect of each alleged breach of Regulation (EU) No. 305/2011 and the European Union (Construction Products) Regulations 2013 in relation to the economic operator.

3.5.7 Court proofs

3.5.7.1 Typically, the following documents will need to be made available for the attention of the Court: -

- a copy of *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* printed and published by the European Commission;
- a copy of *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* printed and published by the European Commission;
- a copy of the European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013) printed and published by the Stationary Office;
- the original Chief Executive's Order authorising prosecution proceedings against the defendant;
- duplicate of the Order delegating the duties of the Chief Executive to the Executive Manager (if applicable);

- details of An Post ‘track and trace’ used in the service of each notice in writing issued by the authorised officer;
- a map of the functional area of the market surveillance authority;
- an original Certificate of Incorporation of the defendant company issued by the Registrar at the Companies Registration Office;
- Certificates of Valuation issued by the Rates Office in respect of premises operated by the economic operator; and
- the Certificate of Appointment of the authorised officer under Regulation 11(1)(a) of the European Union (Construction Products) Regulations 2013.

3.5.8 Witnesses

3.5.8.1 The authorised officer is the principal witness in the case for the prosecution. The authorised officer will be called by the prosecution to give evidence, and can expect to be cross-examined by the defence. The principal witness must, in order to be able to give competent and credible evidence:

- know the obligations imposed on economic operators by Regulation (EU) No. 305/2011, Chapter III of Regulation (EC) No. 765/2008 and the European Union (Construction Products) Regulations 2013;
- have a good working knowledge of the meaning of manufacturer, importer, distributor, construction product, harmonised technical specifications, placing on the market and making available on the market as defined in Regulation (EU) No. 305/2011, Chapter III of Regulation (EC) No. 765/2008 and the European Union (Construction Products) Regulations 2013;
- be familiar with his/her statutory powers as an authorised officer as the defendant may contend that evidence was obtained unlawfully or unconstitutionally;
- be familiar with the nature of the defendant's business;
- be familiar with all correspondence / phone calls with the economic operator;
- be able to prove that construction products are being placed / made available on the market from premises operated by the economic operator;

- be familiar with the number of the defendant's business premises and their locations;
- be familiar with the layout of the premises e.g. the location of entrances, the location of the construction products under inspection;
- be able to describe the construction product and the associated packaging;
- have made appropriate enquires about the construction products being placed / made available on the market from the Defendant's premises during the inspection.

3.5.8.2 It should be noted that any other person (from the market surveillance authority) responsible for corresponding with the defendant company may also be called to give evidence. In addition, further to request, field and administrative statements of evidence may have to be prepared on occasion for the defendant's legal representatives.

3.5.9 Fines and costs

3.5.9.1 In the event of a successful prosecution, any fines imposed by the Court are payable to the market surveillance authority. Regulation 18(1)(a) of the European Union (Construction Products) Regulations 2013 provides that an economic operator guilty of an offence is liable on summary conviction to a class A (i.e. €5,000) fine or imprisonment for a term not exceeding 3 months or both.

3.5.9.2 Primary responsibility for meeting the costs associated with the instigation of legal proceedings will rest with the market surveillance authority (i.e. the prosecution). These costs may include the fees associated with the engagement of external solicitors, barristers and expert witnesses (if required) in respect of the investigation and prosecution of the offence(s) as well as the costs incurred by the market surveillance authority itself in respect of the investigation of the offence(s). All costs incurred by the market surveillance authority in respect of the investigation and prosecution of the offence(s) should be recorded on an itemised list and submitted to the Court on foot of a successful prosecution. The award of costs is at the discretion of the Judge and the presence of such a list may assist the Judge in his/her decision on whether to award all or part of these costs to the market surveillance authority. It should be noted that a Counsel's consultation fee is not covered by any Court and will be the responsibility of the market surveillance authority.

3.5.9.3 Alternatively, in the event of a Court deciding in favour of the economic operator (i.e. the defendant), the costs incurred by the market surveillance authority will have to be met from within its own resources. In the event that prosecution is not successful, the Court may decide to award all or part of the costs incurred by the economic operator against the market surveillance authority.

3.5.9.4 In summary, the annual cost involved for a market surveillance authority in taking legal actions,

will be directly related to the: -

- number of prosecutions taken;
- requirement for expert witnesses (if any),
- number of court appearances in any one case;
- number of successful or unsuccessful cases; and
- the level of consultation required (i.e. with Counsel).

3.6 Stage 5 – Risk Assessment and RAPEX

3.6.1 Community rapid information system (RAPEX)

3.6.1.1 Article 12 of *Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety* (known as the General Product Safety Directive or ‘GPSD’) established a rapid alert system to facilitate the rapid exchange of information between Member States and the European Commission on measures taken to prevent or restrict the marketing or use of products posing a serious risk to the health and safety of consumers with the exception of food, pharmaceutical and medical devices, which are covered by other mechanisms. The rapid alert system, which is commonly referred to as RAPEX, was extended to products that fall within the scope of Union harmonisation legislation which may pose a serious risk to the health and safety of professional users or any other aspect of public interest protection since the introduction in 2010 of the European Union’s new legislative framework (i.e. of which Regulation (EC) No. 765/2008 formed an integral part).

3.6.1.2 Member States are obliged to ensure that products which present a serious risk requiring rapid intervention, including a serious risk the effects of which are not immediate, are recalled, withdrawn or that their being made available on their market is prohibited, and that the European Commission is informed without delay through RAPEX in accordance with the provisions of Article 22 of Regulation (EC) No. 765/2008.

3.6.1.3 Notifications under the RAPEX only relate to products for which a serious risk has been identified, whether through a complaint or through the actions of a market surveillance authority. In notifying the European Commission of any restrictive measures taken in connection with the recall, withdrawal or prohibition of the marketing of products presenting a serious risk, Member States should also provide details of any measures recommended or agreed with economic operators as well as any voluntary measures taken by economic operators with respect to such products.

3.6.1.4 In the case of Ireland, the National Consumer Agency has been the single contact point for RAPEX notifications since 2004. Should a RAPEX notification be deemed necessary in respect of a construction product, the Minister for Housing, Planning, Community and Local Government will liaise with the National Consumer Agency in order to fulfil the relevant requirements of Articles 56(2), 56(4), 56(5) and 58(3) of Regulation (EU) No. 305/2011 and Regulation 14(6) of the European Union (Construction Products) Regulations 2013. However, in tandem with a request under Regulation 14(3) of the European Union (Construction Products) Regulations 2013 (see section 3.6.4.2), it will be necessary for a market surveillance authority to provide the Minister for Housing, Planning, Community and Local Government with the following: -

- a completed RAPEX notification form (see Appendix VIII),
- a photograph(s) of the affected construction product or batch of construction products,
- a copy of a test report(s) on the affected construction product or batch of construction products, and
- a copy of a risk assessment in relation to the affected construction product or batch of construction products.

3.6.1.5 Market surveillance authorities should note that, on Friday of each week, the European Commission publishes a weekly overview of the products posing a serious risk as reported by the national authorities under the RAPEX. In respect of each product, this weekly overview gives information on the product, the identified risk and the measures that were taken in the notifying country. The weekly overview may be accessed on the European Commission's website at: -

http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm

3.6.2 Risk assessment

3.6.2.1 Detailed guidelines on the operation of the RAPEX system were established by the European Commission under *Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive)*.

3.6.2.2 The objective of the guidelines is to lay down simple and clear criteria and practical rules to facilitate the operation of the notification mechanisms first introduced under Directive 2001/95/EC and later extended to Union harmonisation legislation that falls within the scope of Regulation (EC) No. 765/2008 (including Regulation (EU) No. 305/2011). The RAPEX guidelines may be accessed on the European Commission's website at: -

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:022:0001:0064:EN:PDF>

3.6.2.3 Notwithstanding the general guidance provided in the RAPEX guidelines, market surveillance authorities should note, in particular, the information provided in Appendix 5 to the RAPEX guidelines which sets out the risk assessment method to be used by market surveillance authorities in order to assess the level of risks posed by consumer products to the health and safety of consumers and to decide whether a RAPEX notification is necessary, see link below: -

http://ec.europa.eu/consumers/ipm/risk_assesment_guidelines_non_food.pdf

3.6.2.4 Given the complexities involved in the preparation of a risk assessment and the highly specialised nature of the work, it may be advisable for a market surveillance authority to engage external expertise to assist it with the risk assessment where such expertise is not available from within the market surveillance authority's own resources.

3.6.3 Serious risk

3.6.3.1 In broad terms, risk is effectively a combination of two fundamental components, vis-à-vis, hazard and probability with hazard being a potential source of harm (i.e. injury or damage to the health of people, damage to property, damage to the environment etc.) while probability relates to the likelihood of that harm being realised. Under the European Union's new legislative framework, risk is broadly categorised as 'serious', 'high', 'medium' and 'low' with 'serious' representing the highest degree of risk which will require rapid intervention where identified following the completion of a risk assessment.

3.6.3.2 As set out in section 3.6.2.1, *Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive)* provides detailed guidance on the operation of the RAPEX system as well as on the preparation of a risk assessment. The risk assessment guidelines distinguish between four levels of injury severity as follows: -

- Level 1 - Injury or consequence that after basic treatment (first aid, normally not by a doctor) does not substantially hamper functioning or cause excessive pain; usually the consequences are completely reversible.
- Level 2 - Injury or consequence for which a visit to A&E may be necessary, but in general, hospitalisation is not required. Functioning may be affected for a limited period, not more than about 6 months, and recovery is more or less complete.

- Level 3 - Injury or consequence that normally requires hospitalisation and will affect functioning for more than 6 months or lead to a permanent loss of function.
- Level 4 - Injury or consequence that is or could be fatal, including brain death; consequences that affect reproduction or offspring; severe loss of limbs and/or function, leading to more than approximately 10% of disability.

3.6.3.3 The risk assessment guidelines proceed to combine the four levels of injury severity with the probability of occurrence as a means of developing a matrix to assist market surveillance authorities in establishing the level of risk. In the table provided below, the severity of harm is identified on the horizontal axis while the probability of the occurrence of harm is identified on the vertical axis. The intersection determines the level of risk.

Figure 2 Level of Risk Matrix					
Combination of severity and probability to risk level					
Probability of occurrence of the harm scenario (during the foreseeable lifetime of the product)		Severity of harm			
		1	2	3	4
High ▼	> 50%	High risk	Serious risk	Serious risk	Serious risk
	> 1/10	Medium risk	Serious risk	Serious risk	Serious risk
	> 1/100	Medium risk	Serious risk	Serious risk	Serious risk
	> 1/1,000	Low risk	High risk	Serious risk	Serious risk
	> 1/10,000	Low risk	Medium risk	High risk	Serious risk
	> 1/100,000	Low risk	Low risk	Medium risk	High risk
	> 1/1,000,000	Low risk	Low risk	Low risk	Medium risk
Low	< 1/1,000,000	Low risk	Low risk	Low risk	Low risk

3.6.3.4 The application of the matrix will aid transparency in illustrating a market surveillance authority’s decision making process. Where an economic operator is affected by a decision of a market surveillance authority, that operator may be better able to understand the market surveillance authority’s risk management decision if he/she is in a position to consider the methodology used by that market surveillance authority.

3.6.3.5 Proposals to prohibit, withdraw or recall a construction product from the market or to make its use subject to certain conditions are likely to have significant cost implications for the economic

operator concerned and, accordingly, such proposals may be subject to legal challenge in the absence of robust data in support of the approach being proposed by the market surveillance authority. In this context, to minimise the risk associated with a legal challenge, it is considered critical that the risk assessment carried out by the market surveillance authority (or by external expertise on behalf of the market surveillance authority) in order to establish 'serious risk' is clear, unequivocal and robust in its methodology, in the identification of the hazards arising from the construction product, in the identification of the subjects (i.e. persons, property, the environment etc.) that may be affected by such hazards, in the determination of both the injury severity and the probability of occurrence and, most importantly, in respect of the conclusions reached and actions to be taken to ensure the consumer protection principles within Regulation (EU) No. 305/2011 are upheld.

3.6.4 Directions by the Minister for Housing, Planning, Community and Local Government

3.6.4.1 Anecdotal evidence would suggest that in the overwhelmingly majority of cases where non-compliances are found in consumer and non-consumer products, the risks arising do not fall into the most severe or 'serious' category. In the majority of cases, it is envisaged that market surveillance activity undertaken by market surveillance authorities will principally comprise of actions taken in accordance with Stages 1 to 4 of these guidelines which are largely aimed at addressing non-compliances which do not give rise to serious risk. Action under Stage 5 should only be considered by a market surveillance authority where: -

- a serious risk has been identified by the market surveillance authority in relation to the use of a construction product,
- a risk assessment in respect of that construction product has been carried out by the market surveillance authority, and
- the relevant economic operator has failed to comply with a notice issued by the market surveillance authority under Regulation 14(1) of the European Union (Construction Products) Regulations 2013 requiring corrective actions to be completed within the specified period of time.

3.6.4.2 Where a serious risk has been identified in respect of a construction product on the basis of a risk assessment, a market surveillance authority may, by notice under Regulation 14(1) of the European Union (Construction Products) Regulations 2013, require an economic operator to take corrective actions within a specified period of time. Failure by an economic operator to comply with the conditions of such a notice constitutes an offence under the regulations and may result, under Regulation 14(3) of the European Union (Construction Products) Regulations 2013, in a market surveillance authority requesting the Minister for Housing, Planning, Community and Local Government to issue a direction to require the economic operator to: -

- prohibit or restrict the construction product from being made available on the market,
- withdraw it from the market if already available on the market,
- recall it from the market if already available on the market, or
- make its use subject to special conditions.

3.6.4.3 In the event that a market surveillance authority proposes to request the Minister for Housing, Panning, Community and Local Government to issue a direction to an economic operator to either prohibit, withdraw or recall a construction product from the market or to make its use subject to certain conditions, the market surveillance authority shall inform the economic operator: -

- (a) of its intention, after the expiry of the period of no greater than 14 days commencing on the date of notification, to request the Minister for Housing, Panning, Community and Local Government to issue a direction under Regulation 14(4),
- (b) of the terms of the direction it intends to request the Minister for Housing, Panning, Community and Local Government to make, including in particular the exact grounds for that direction,
- (c) that it will consider any representations on the matter made by the economic operator within the period specified in paragraph (a) above, and
- (d) of the appeal procedure under Regulation 14(12).

Any representations made by the economic operator should be considered by the market surveillance authority in advance of any decision being made to request the Minister for Housing, Panning, Community and Local Government to issue a direction under Regulation 14(4) of the European Union (Construction Products) Regulations 2013.

3.6.4.4 Where the market surveillance authority maintains its decision to request the Minister for Housing, Panning, Community and Local Government to issue a direction, a copy of the economic operator's representations and the market surveillance authority's comments thereon should be provided to the Minister for Housing, Panning, Community and Local Government.

3.6.4.5 It should be noted that in an emergency situation where rapid intervention is considered critical, the requirement on a market surveillance authority to consider representations from the economic operator may be dispensed with under Article 21(3) of Regulation (EC) No. 765/2008. However, if action has been taken without the economic operator being heard, that economic operator shall be given the opportunity to be heard as soon as possible and the action taken shall be reviewed

promptly thereafter. Both the economic operator and the Minister for Housing, Planning, Community and Local Government should be notified of the outcome as soon as possible thereafter.

3.6.4.6 In advance of issuing a request to the Minister for Housing, Planning, Community and Local Government, under Regulation 14(3) of the European Union (Construction Products) Regulations 2013, a market surveillance authority shall, as a minimum, provide the information set out in section 3.6.1.4 and shall, insofar as it is appropriate, collate the additional information required under Articles 56 or 58 of Regulation (EU) No. 305/2011 and Articles 20 to 22 of Regulation (EC) No. 765/2008 respectively.

3.6.4.7 In the event that any of the restrictive measures mentioned above are applied in respect of a construction product, the Minister for Housing, Planning, Community and Local Government is obliged under Articles 56(2), 56(4), 56(5) and 58(3) of Regulation (EU) No. 305/2011 and Regulation 14(6) of the European Union (Construction Products) Regulations 2013 to notify the European Commission and other Member States of the European Union through the RAPEX system. In this context, the European Commission have 15 days in which to consider the appropriateness of the restrictive measures being taken by the Irish authorities.

4.0 Miscellaneous

4.1 Market Surveillance Forum

4.1.1 In Ireland, responsibility for the implementation of Union harmonisation legislation is dispersed across various Government Departments and State agencies. There is no central body with overall responsibility for market surveillance and there no single piece of overarching market surveillance legislation. Typically, responsibility for the implementation of Union harmonisation legislation is allocated to Government Departments in accordance with the broad scope of their activities.

4.1.2 To fulfill the requirements of Article 18(1) of Regulation (EC) No. 765/2008 which concerns communication and coordination mechanisms between market surveillance authorities at national level, the Department of Jobs, Enterprise and Innovation established a national Market Surveillance Forum in May 2009. The Market Surveillance Forum, which meets quarterly, comprises representatives from: -

- Department of Jobs, Enterprise and Innovation,
- Department of Agriculture, Food and the Marine,
- Department of Communications, Energy and Natural Resources,
- Department of Housing, Planning, Community and Local Government,
- Department of Justice and Equality,
- Department of Transport, Tourism and Sport,
- Commission for Communications Regulation,
- Environmental Protection Agency,
- Health and Safety Authority,
- Irish Medicines Board,
- National Consumer Agency, and
- National Standards Authority of Ireland.

4.1.3 The establishment of the Market Surveillance Forum has provided a central means by which information and experience on market surveillance in Ireland can be shared by competent authorities across the sphere of Union harmonisation legislation. The Forum has provided the individual sectors within a common platform for discussion and facilitated communication between competent authorities on common issues. The Department of Jobs, Enterprise and Innovation provides a secretariat role to the Market Surveillance Forum and also communicates guidance from the European Union's Expert Group on the Internal Market for Products.

4.1.4 Article 18(5) of Regulation (EC) No. 765/2008 requires each Member State of the European Union to draw up, communicate to the European Commission and make available to the public either a general national market surveillance programme or sector specific programmes covering the sectors in which market surveillance is conducted. Ireland's *National Sector Specific Market Surveillance Programme* is available on the European Commission's website at: -

http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation_en

4.2 Administrative Cooperation Group (AdCo-CPR)

4.2.1 The Administrative Co-operation Group for the market surveillance of construction products (AdCo-CPR) is composed of representatives of Member States' market surveillance authorities and was established to pursue the following objectives: -

- the exchange of information between Member States' authorities concerning national market surveillance mechanisms and adopted solutions to enhance market surveillance activities;
- the achievement of a uniformly high level of enforcement of Regulation (EU) No. 305/2011;
- to reduce the overlapping of national surveillance operations;
- to diffuse good market surveillance practices; and
- to exchange views and solve practical problems.

4.2.2 The Department of Housing, Planning, Community and Local Government participates at AdCo-CPR meetings. Market surveillance authorities are encouraged to communicate their experiences to the Department to facilitate this upward feedback.

4.3 Statistical data and reporting

4.3.1 While there are no explicit reporting requirements on market surveillance authorities under

Regulation (EU) No. 305/2011, Article 18(6) of Regulation (EC) No. 765/2008 requires Member States to review and assess the functioning of their surveillance activities at least every four years. The results of these reviews shall be communicated to the European Commission and other Member States and shall also be made available to the public. In this context, a template has been prepared by the European Commission to facilitate Member States in reporting the outcome of their reviews.

4.3.2 While some of the information sought by the European Commission is largely descriptive in nature in that it relates to the market surveillance structures in place nationally, their organisation and powers, their human resources and budgets, statistical data is also sought in relation to market surveillance activity on the ground. Accordingly, it is strongly recommended that market surveillance authorities keep records of their market surveillance activities under the following broad headings (where applicable): -

- Total No. of construction product related complaints;
- No. of formal complaints by industry concerning unfair competition;
- Total No. of inspections and broken down by:
 - No. of reactive inspections undertaken on foot of complaint,
 - No. of self-initiated inspections, and
 - No. of inspections prompted by the Revenue Commissioners (i.e. Customs);
- Assessment of product compliance based on:
 - Tests performed in laboratories ;
 - Checks of products and/or documentation e.g. CE Mark, DoP.
- No. of inspections/ assessments resulting in:
 - A finding of non-compliance;
 - Corrective actions being taken by the relevant economic operator (i.e. voluntary measures);
 - Restrictive measures being taken by the market surveillance authority.

- No. of successful prosecutions i.e. where sanctions/penalties were applied;
- No. of inspections where market surveillance authorities from other Member States were involved.

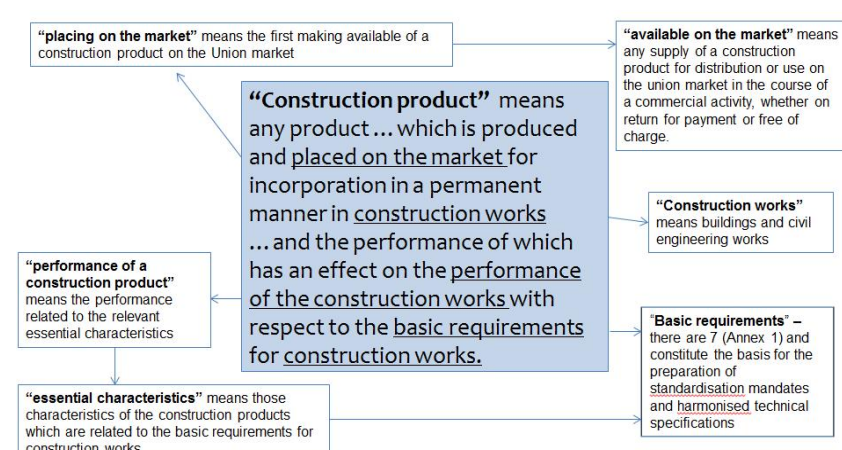
4.4 Archiving of Records

4.4.1 Arrangements should be put in place within each market surveillance authority to ensure that records relating to their market surveillance activities are retained for a minimum period of 10 years.

APPENDICES

APPENDIX I

DOES THE CONSTRUCTION PRODUCT FALL UNDER THE SCOPE OF THE CPR?

Step	Action																								
<p>Step 1</p> <p>Is the product a construction product as defined under the CPR?</p>	<p>See broad definition below:</p> 																								
<p>Step 2</p> <p>Check if a harmonised standard exists for that product</p>	<p>Follow the link below to the Europa website to check if a Harmonised European Standard (hEN) exists: http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=cp.hs&cpr=Y#hs</p> <p>If a hEN exists the product may be CE Marked from the “date of applicability” of the standard as a harmonised standard and MUST be CE Marked from the date of the end of the co-existence period.</p>																								
<p>Step 3</p> <p>Check the application date of the standard and the end of co-existence period date.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 40%;"></th> <th style="width: 15%; text-align: center; color: red;">Application date</th> <th style="width: 15%; text-align: center; color: red;">End of co-existence period</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> EN 771-2:2011</td> <td>masonry units - Part 1: Clay masonry units EN 771-2:2011 - EN 771-2:2011 Specification for masonry units - Part 2: Calcium silicate masonry units</td> <td style="text-align: center;">01/02/2012</td> <td style="text-align: center;">01/02/2013</td> </tr> <tr> <td><input type="checkbox"/> EN 771-3:2011</td> <td>EN 771-3:2011 - EN 771-3:2011 Specification for masonry units - Part 3: Aggregate concrete masonry units (Dense and lightweight aggregates)</td> <td style="text-align: center;">01/02/2012</td> <td style="text-align: center;">01/02/2013</td> </tr> <tr> <td><input type="checkbox"/> EN 771-4:2011</td> <td>EN 771-4:2011 - EN 771-4:2011 Specification for masonry units - Part 4: Autoclaved aerated concrete masonry units</td> <td style="text-align: center;">01/02/2012</td> <td style="text-align: center;">01/02/2013</td> </tr> <tr> <td><input type="checkbox"/> EN 771-5:2011</td> <td>EN 771-5:2011 - EN 771-5:2011 Specification for masonry units - Part 5: Manufactured stone masonry units</td> <td style="text-align: center;">01/02/2012</td> <td style="text-align: center;">01/02/2013</td> </tr> <tr> <td><input type="checkbox"/> EN 771-6:2011</td> <td>EN 771-6:2011 - EN 771-6:2011 Specification for</td> <td style="text-align: center;">01/02/2012</td> <td style="text-align: center;">01/02/2013</td> </tr> </tbody> </table> <p>Note: The date of the end of the co-existence period is the same as the date of withdrawal of conflicting national technical specifications, after which presumption of conformity must be based upon harmonised European specifications. When a harmonised standard is replaced with a new version, both versions of the standard can be used for the purpose of affixing CE marking until the end of the coexistence period.</p>			Application date	End of co-existence period	<input type="checkbox"/> EN 771-2:2011	masonry units - Part 1: Clay masonry units EN 771-2:2011 - EN 771-2:2011 Specification for masonry units - Part 2: Calcium silicate masonry units	01/02/2012	01/02/2013	<input type="checkbox"/> EN 771-3:2011	EN 771-3:2011 - EN 771-3:2011 Specification for masonry units - Part 3: Aggregate concrete masonry units (Dense and lightweight aggregates)	01/02/2012	01/02/2013	<input type="checkbox"/> EN 771-4:2011	EN 771-4:2011 - EN 771-4:2011 Specification for masonry units - Part 4: Autoclaved aerated concrete masonry units	01/02/2012	01/02/2013	<input type="checkbox"/> EN 771-5:2011	EN 771-5:2011 - EN 771-5:2011 Specification for masonry units - Part 5: Manufactured stone masonry units	01/02/2012	01/02/2013	<input type="checkbox"/> EN 771-6:2011	EN 771-6:2011 - EN 771-6:2011 Specification for	01/02/2012	01/02/2013
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<input type="checkbox"/> EN 771-6:2011	EN 771-6:2011 - EN 771-6:2011 Specification for	01/02/2012	01/02/2013																						

APPENDIX II

Legitimacy of the Notified Body involvement

Step	Action																															
<p>Step 1</p> <p>Identify relevant hEN using Appendix I</p>	<p>Standards are available at www.standards.ie</p>																															
<p>Step 2</p> <p>Identify the level of third party involvement from inspection of Annex ZA of the relevant hEN</p>	<p style="text-align: center;">Table ZA.2 — System(s) of attestation of conformity</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Product(s)</th> <th style="width: 30%;">Intended use(s)</th> <th style="width: 15%;">Level(s) or class(es)</th> <th style="width: 25%;">Attestation of conformity system(s)</th> </tr> </thead> <tbody> <tr> <td>Masonry Units. Category I</td> <td>In walls, columns and partitions</td> <td style="text-align: center;">—</td> <td style="text-align: center;">2+^a</td> </tr> <tr> <td>Masonry Units. Category II</td> <td>In walls, columns and partitions</td> <td style="text-align: center;">—</td> <td style="text-align: center;">4^b</td> </tr> </tbody> </table> <p>^a See CPD, annex III.2.(ii), First possibility, including certification of the factory production control by an approved body on the basis of initial inspection of factory and of factory production control as well as of continuous surveillance, assessment and approval of factory production control.</p> <p>^b See CPD, annex III.2.(ii), Third possibility.</p> <p>The attestation of conformity of the aggregate concrete masonry units in ZA.1 shall be based on the evaluation of conformity procedures indicated in Tables ZA.3a and ZA.3b resulting from application of the clauses of this or other European Standard indicated therein.</p> <p style="text-align: center;">Table ZA.3 a) — Assignment of evaluation of conformity tasks for Category I aggregate concrete masonry units (system 2+)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="width: 45%;">Tasks</th> <th style="width: 30%;">Content of the task</th> <th style="width: 25%;">Evaluation of conformity clauses to apply</th> </tr> </thead> <tbody> <tr> <td rowspan="2" style="width: 15%;">Tasks for the manufacturer</td> <td style="width: 30%;">Factory production control (F.P.C)</td> <td>Parameters related to all relevant characteristics of Table ZA.1</td> <td style="text-align: center;">8.3</td> </tr> <tr> <td>Initial type testing</td> <td>All relevant characteristics of Table ZA.1</td> <td style="text-align: center;">8.2</td> </tr> <tr> <td rowspan="2" style="width: 15%;">Tasks for the notified body</td> <td rowspan="2" style="width: 15%;">Certification of F.P.C on the basis of</td> <td style="width: 15%;">Initial inspection of factory and of F.P.C</td> <td style="width: 15%;">Parameters related to all relevant characteristics of Table ZA.1, in particular: <i>Compressive strength</i> <i>Dimensional stability</i> <i>Bond strength</i></td> <td style="text-align: center;">8.3</td> </tr> <tr> <td>Continuous surveillance, assessment and approval of F.P.C.</td> <td>Parameters related to all relevant characteristics of Table ZA.1, in particular: <i>Compressive strength</i> <i>Dimensional stability</i> <i>Bond strength</i></td> <td style="text-align: center;">8.3</td> </tr> </tbody> </table> <p>Note: The AVCP level/levels are given in Annex ZA of each hEN. Several products are assigned with more than one level of AVCP. In the example above, see EN 771-3 “Specification for Masonry units Part 3: aggregate concrete masonry units (dense and lightweight aggregates)”, the AVCP level is shown highlights the tasks required by the manufacturer and notified body under system 2+</p>	Product(s)	Intended use(s)	Level(s) or class(es)	Attestation of conformity system(s)	Masonry Units. Category I	In walls, columns and partitions	—	2+ ^a	Masonry Units. Category II	In walls, columns and partitions	—	4 ^b	Tasks		Content of the task	Evaluation of conformity clauses to apply	Tasks for the manufacturer	Factory production control (F.P.C)	Parameters related to all relevant characteristics of Table ZA.1	8.3	Initial type testing	All relevant characteristics of Table ZA.1	8.2	Tasks for the notified body	Certification of F.P.C on the basis of	Initial inspection of factory and of F.P.C	Parameters related to all relevant characteristics of Table ZA.1, in particular: <i>Compressive strength</i> <i>Dimensional stability</i> <i>Bond strength</i>	8.3	Continuous surveillance, assessment and approval of F.P.C.	Parameters related to all relevant characteristics of Table ZA.1, in particular: <i>Compressive strength</i> <i>Dimensional stability</i> <i>Bond strength</i>	8.3
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Step 3

Check the legitimate third parties associated with the relevant standard

(a) Access the NANDO database:

<http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=cp.hs&cpr=Y#hs>

(b) Find relevant standard and click to see relevant associated NBs

Click on standard to see associated Notified Bodies

Application date

End of co-existence period

Standard	Description	Application date	End of co-existence period
<input type="checkbox"/> EN 771-2:2011	EN 771-2:2011 - EN 771-2:2011 Specification for masonry units - Part 2: Calcium silicate masonry units	01/02/2012	01/02/2013
<input type="checkbox"/> EN 771-3:2011	EN 771-3:2011 - EN 771-3:2011 Specification for masonry units - Part 3: Aggregate concrete masonry units (Dense and lightweight aggregates)	01/02/2012	01/02/2013
<input type="checkbox"/> EN 771-4:2011	EN 771-4:2011 - EN 771-4:2011 Specification for masonry units - Part 4: Autoclaved aerated concrete masonry units	01/02/2012	01/02/2013
<input type="checkbox"/> EN 771-5:2011	EN 771-5:2011 - EN 771-5:2011 Specification for masonry units - Part 5: Manufactured stone masonry units	01/02/2012	01/02/2013
<input type="checkbox"/> EN 771-6:2011	EN 771-6:2011 - EN 771-6:2011 Specification for masonry units - Part 6: Manufactured stone masonry units	01/02/2012	01/02/2013

(c) Check accreditation details of NB.

Body type	Name	Country
▶ NB 0038	Lloyd's Register Verification Limited	United Kingdom
▶ NB 0050	National Standards Authority of Ireland (NSAI)	Ireland
▶ NB 0086	BSI	United Kingdom
▶ NB 0099	ASOCIACION ESPAÑOLA DE NORMALIZACION Y CERTIFICACION (AENOR)	Spain
▶ NB 0120	SGS United Kingdom Limited	United Kingdom



Click here to see full details of accreditation this NB has and to what AVCP level

(d) Ring NB if necessary to establish relationship with the Economic Operator under investigation

APPENDIX III

SITE INSPECTION REPORT³ (FACT-FINDING)

EUROPEAN UNION (CONSTRUCTION PRODUCTS) REGULATIONS 2013

S.I. No. 225 of 2013

Date of Inspection: _____

Name of economic operator: _____

Nature of the business: *Manufacturer* *Importer* *Distributor*

Today I spoke to: _____ Title: _____

Address: _____

Contact person: _____ Title: _____

Name, model and brief description of construction product:

Name of harmonised technical specification:

³ The first page of the inspection report should be printed on the official headed paper of the market surveillance authority.

CE mark applied:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Declaration of Performance available:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Instructions and safety information provided:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Manufacturer's details on product:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Importer's details on product (if applicable):	Yes <input type="checkbox"/>	No <input type="checkbox"/>

THE CHECKLISTS ATTACHED HEREUNDER (PARTS 1 TO 4) SHOULD BE COMPLETED INSOFAR AS THEY ARE APPLICABLE IN RESPECT OF EACH CONSTRUCTION PRODUCT UNDER INSPECTION.

CONCLUSION:

I have handed the above named person copies of [strike out as necessary] –

- (1) *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC,*
- (2) *the European Union (Construction Products) Regulations 2013, and*
- (3) *the Information Note on the Construction Products Regulation, published by the Building Regulations Advisory Body.*

WHERE THE EVIDENCE WOULD APPEAR TO SUGGEST A NON-COMPLIANCE, IT IS ADVISABLE THAT THE WARNING BELOW BE GIVEN TO THE POINT OF CONTACT / APPROPRIATE MEMBER OF STAFF.

WARNING GIVEN: Failure to comply with the requirements of *Regulation (EU) No. 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC* and any requirement under the *European Union (Construction Products) Regulations 2013* is an offence and the company may be liable to be prosecuted.

Name of authorised officer: _____



Title of authorised officer: _____

Date: _____

The following items should be made available by each Economic Operator

Economic Operator	Checklist Items			
	CE Marking (Part 1)	Declaration of Performance (Part 2)	Factory Production Control (Part 3)	Certificate of Constancy of Performance (Part 4)
Manufacturer	Y	Y	Y	Y
Importer	Y	Y	Y	Y
Distributor	Y	Y	-	-

CHECKLISTS – PART 1

1. CE Marking and labelling		
CE mark applied:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is the CE mark applied correct? CE marking in prescribed form and size (at least 5mm) Correct: 	Yes <input type="checkbox"/>	No <input type="checkbox"/>
False: 		
Does the CE Mark contain:	Yes	No
the last two digits of the year the CE Mark was first affixed?	<input type="checkbox"/>	<input type="checkbox"/>
the name or trademark and registered address of the manufacturer?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the unique reference to the type/ model of the product?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the reference (or web link) to the Declaration of Performance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the level or class of the performances declared?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the reference to the date and number of the harmonised technical specification?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the intended use ?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the identification number of the Notified Body (System 1, 1+, 2+ and 3)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Instructions and safety information provided:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Manufacturer's details on product:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Importer's details on product (if applicable):	Yes <input type="checkbox"/>	No <input type="checkbox"/>

CHECKLISTS – PART 2

2. Declaration of Performance (DoP)		
Is the DoP issued by the manufacturer or his authorised representative in EEA?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Is the DoP in the English language?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Does the DoP contain:		
a reference number?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
type, batch or serial number or any other element allowing identification of the construction product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the intended use(s)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name, registered trade name or registered trade mark and contact address of the manufacturer?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the, name and contact address of the authorised representative (if applicable)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name and address (or identification number) of the Notified Body (System 1+, 1, 2+ and 3)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the reference to the date and number of the harmonised technical specification?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the system or systems of assessment and verification of constancy of performance of the construction product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the declared performance(s)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Is the DoP signed for and on behalf of the Manufacturer?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the date of declaration?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
(Optional) If the manufacturer proposes to upload copy of the DoP onto a website, the link to the DoP should be included?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>

CHECKLISTS – PART 3

3. Factory Production Control (FPC)		
Has the manufacturer a documented Factory Production Control procedure in place? ⁴	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Has the manufacturer the Certificate of conformity of the factory production control (System 2+)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Note: For Systems 1 and 1+ refer to Checklist – Part 4		
Is the Certificate of conformity issued by Factory Production Control Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Does the Certificate of conformity of the FPC contain:		
the name and address of the Factory Production Control Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the Certificate number (number-CPR-number)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Name and address of the manufacturer, or his representative established in the EEA?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Description, type / model designation of product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Provisions to which the product conforms (i.e. Annex ZA of EN 771:3: 2011)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any particular conditions applicable to the use of the product (if necessary)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any conditions of validity of the certificate, where applicable?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name of and position held by the person empowered to sign the certificate?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>

⁴ For Systems 3 & 4, there are no specific tasks for a Notified Body with regards to certification of FPC. However the manufacturer must have a documented FPC in place.

CHECKLISTS – PART 4

4. Certificate of Constancy of Performance (for systems 1 & 1+)		
Has the manufacturer the Certificate of constancy of performance?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Is the Certificate of constancy of performance issued by notified Product Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Does the Certificate of constancy of performance contain:		
the name and address of the notified Product Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the Certificate number (number-CPR-number)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Name and address of the manufacturer, or his representative established in the EEA?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Description, type / model designation of product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Provisions to which the product conforms (i.e. Annex ZA of EN 771-3:2011)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any particular conditions applicable to the use of the product (if necessary)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any conditions of validity of the certificate, where applicable?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name of and position held by the person empowered to sign the certificate?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>

APPENDIX IV

The following letter template⁵ may be used for -

- (a) **REQUEST REQUIRING INFORMATION** [See paragraphs 3.3.4.6 (a) and 3.4.2 (a)]
- (b) **REQUEST REQUIRING EXPLANATIONS AND/OR SUPPLEMENTARY INFORMATION** [See paragraphs 3.3.4.6 (b) and 3.4.2 (b)]

REQUEST UNDER REGULATION 12(3) OF THE EUROPEAN UNION (CONSTRUCTION PRODUCTS) REGULATIONS 2013

TO: Mr./Ms. [name of Company Secretary],
Company Secretary,
[name of registered company],
[Registered Office: address line 1]
[Registered Office: address line 2]
[Registered Office: address line 3]

Re: [Enter title / description of request]

Dear Mr./Ms. [name of Company Secretary],

I write in connection with [provide brief description – e.g. complaint received / inspection of etc.] in the above matter by [Name of local authority] Council being the market surveillance authority for the area comprising the [County/City/City & County of name of county/city].

INFORMATION SOUGHT⁶

I, [name of authorised officer], as an authorised officer of [name of local authority] Council being the market surveillance authority for the area comprising the [County/City/City & County of name of county/city], in exercise of the powers conferred on me by Regulation 12(3) of the European Union (Construction Products) Regulations 2013 hereby request the information (add / delete as appropriate) set out below from [name of registered company]: -

- (i) a copy / photograph of the CE mark on [insert product name / description];
- (ii) the declaration of performance in respect of [insert product name / description];
- (iii) the technical documentation to support that [insert product name / description] complies with the requirements of [insert name of harmonised technical specification];

⁵ The first page of the notice should be printed on the official headed paper of the market surveillance authority.

⁶ It is advisable that the information being sought is clear and unambiguous. This will reduce the potential for any misunderstanding on behalf of the economic operator.

- (iv) the certificate of constancy of performance and details of the product certification body in respect of the product certification process (Systems 1+ and 1);
- (v) the certificate of conformity of the factory production control and details of the factory production control certification body in respect of the factory production control process (System 2+);
- (vi) the test reports and details of the notified testing laboratory in respect of type testing of the product (System 3);
- (vii) details of the factory production control in place by the manufacturer (Systems 3 and 4);
- (viii) the instructions and safety information in respect of [insert product name / description];
- (ix) the means by which [insert product name / description] placed, or made available, on the market can be identified and traced throughout the supply chain.

TIME FOR COMPLIANCE

The terms of this request for information must be complied with no later than 5:00 p.m. on [enter date for compliance].

TAKE NOTICE

You may make representations in writing to [name of local authority] Council within [enter number] days of this request for information regarding the terms of this request for information. [Name of local authority] Council may, having considered any such representations, amend the terms of this request for information or confirm or revoke the request for information.

The address for service of representations is: -

[Name of local authority] Council

Address Line 1

Address Line 2

Address Line 3

Address Line 4

TAKE FURTHER NOTICE

If you do not comply with the terms of this request for information within the period aforesaid, [name of local authority] Council may take such steps as it considers reasonable and necessary to secure compliance with this request for information, up to and including prosecution through the Courts.

WARNING

A person guilty of an offence under the European Union (Construction Products) Regulations 2013 is liable: -

- (a) on summary conviction to a fine up to €5,000 or to a term of imprisonment up to 3 months or to both; or
- (b) on conviction on indictment to a fine up to €500,000 or to a term of imprisonment up to 12 months or to both.

[Name of Authorised Officer]
Authorised Officer
[Name of local authority] Council

Date

[Appendices A to C, below may be attached to the written request for information or may be omitted if it is intended to keep the request brief and specific.]

APPENDIX A⁷

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

Market Surveillance - General

Article 16(2)

Market surveillance shall ensure that products covered by Community harmonisation legislation which, when used in accordance with their intended purpose or under conditions which can be reasonably foreseen and when properly installed and maintained, are liable to compromise the health or safety of users, or which otherwise do not conform to applicable requirements set out in Community harmonisation legislation are withdrawn or their being made available on the market is prohibited or restricted and that the public, the Commission and the other Member States are informed accordingly.

Article 19(1)

Market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory checks on the basis of adequate samples. When doing so they shall take account of established principles of risk assessment, complaints and other information.

Market surveillance authorities may require economic operators to make such documentation and information available as appear to them to be necessary for the purpose of carrying out their activities, and, where it is necessary and justified, enter the premises of economic operators and take the necessary samples of products. They may destroy or otherwise render inoperable products presenting a serious risk where they deem it necessary.

Where economic operators present test reports or certificates attesting conformity issued by an accredited conformity assessment body, market surveillance authorities shall take due account of such reports or certificates.

Article 19(2)

Market surveillance authorities shall take appropriate measures to alert users within their territories within an adequate timeframe of hazards they have identified relating to any product so as to reduce the risk of injury or other damage.

They shall cooperate with economic operators regarding actions which could prevent or reduce risks caused by products made available by those operators.

Article 19(3)

Where the market surveillance authorities of one Member State decide to withdraw a product manufactured in another Member State, they shall inform the economic operator concerned at the address indicated on the product in question or in the documentation accompanying that product.

Article 19(4)

Market surveillance authorities shall carry out their duties independently, impartially and without bias.

⁷ Appendices A to C may be attached to the written request for information or may be omitted if it is intended to keep the request brief and specific.

Article 19(5)

Market surveillance authorities shall observe confidentiality where necessary in order to protect commercial secrets or to preserve personal data pursuant to national legislation, subject to the requirement that information be made public under this Regulation to the fullest extent necessary in order to protect the interests of users in the Community.

Article 23(3)

Without prejudice to Article 19(5) or to national legislation in the area of confidentiality, the safeguarding of confidentiality with regard to the information content shall be ensured. The protection of confidentiality shall not prevent the dissemination to market surveillance authorities of information relevant to ensuring the effectiveness of market surveillance activities.

APPENDIX B⁸

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

Declarations of Performance

Article 4(1)

When a construction product is covered by a harmonised standard or conforms to a European Technical Assessment which has been issued for it, the manufacturer shall draw up a declaration of performance when such a product is placed on the market.

Article 4(3)

By drawing up the declaration of performance, the manufacturer shall assume responsibility for the conformity of the construction product with such declared performance. In the absence of objective indications to the contrary, Member States shall presume the declaration of performance drawn up by the manufacturer to be accurate and reliable.

Article 6(1)

The declaration of performance shall express the performance of construction products in relation to the essential characteristics of those products in accordance with the relevant harmonised technical specifications.

Article 7(1)

A copy of the declaration of performance of each product which is made available on the market shall be supplied either in paper form or by electronic means.

However, where a batch of the same product is supplied to a single user, it may be accompanied by a single copy of the declaration of performance either in paper form or by electronic means.

Article 7(2)

A paper copy of the declaration of performance shall be supplied if the recipient requests it.

CE Marking

Article 8(2)

The CE marking shall be affixed to those construction products for which the manufacturer has drawn up a declaration of performance in accordance with Articles 4 and 6.

If a declaration of performance has not been drawn up by the manufacturer in accordance with Articles 4 and 6, the CE marking shall not be affixed.

By affixing or having affixed the CE marking, manufacturers indicate that they take responsibility for the conformity of the construction product with the declared performance as well as the compliance with all applicable requirements laid down in this Regulation and in other relevant Union harmonisation legislation providing for its affixing.

⁸ Appendices A to C may be attached to the written request for information or may be omitted if it is intended to keep the request brief and specific.

The rules for affixing the CE marking provided for in other relevant Union harmonisation legislation shall apply without prejudice to this paragraph.

Article 9(1)

The CE marking shall be affixed visibly, legibly and indelibly to the construction product or to a label attached to it. Where this is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging or to the accompanying documents.

Article 9(2)

The CE marking shall be followed by the two last digits of the year in which it was first affixed, the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity, the unique identification code of the product-type, the reference number of the declaration of performance, the level or class of the performance declared, the reference to the harmonised technical specification applied, the identification number of the notified body, if applicable, and the intended use as laid down in the harmonised technical specification applied.

Article 9(3)

The CE marking shall be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark notably indicating a special risk or use.

Obligations on Manufacturers

Article 11(1)

Manufacturers shall draw up a declaration of performance in accordance with Articles 4 and 6, and affix the CE marking in accordance with Articles 8 and 9.

Manufacturers shall, as the basis for the declaration of performance, draw up technical documentation describing all the relevant elements related to the required system of assessment and verification of constancy of performance.

Article 11(2)

Manufacturers shall keep the technical documentation and the declaration of performance for a period of 10 years after the construction product has been placed on the market.

Article 11(6)

When making a construction product available on the market, manufacturers shall ensure that the product is accompanied by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users.

Article 11(7)

Manufacturers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, if appropriate, to withdraw or recall it. Furthermore, where the product presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States in which they made the construction product available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

Obligations on Importers

Article 13(2)

Before placing a construction product on the market, importers shall ensure that the assessment and the verification of constancy of performance has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation referred to in the second subparagraph of Article 11(1) and the declaration of performance in accordance with Articles 4 and 6. They shall also ensure that the product, where required, bears the CE marking, that the product is accompanied by the required documents and that the manufacturer has complied with the requirements set out in Article 11(4) and (5).

Where an importer considers or has reason to believe that the construction product is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, the importer shall not place the construction product on the market until it conforms to the accompanying declaration of performance and it complies with the other applicable requirements in this Regulation or until the declaration of performance is corrected. Furthermore, where the construction product presents a risk, the importer shall inform the manufacturer and the market surveillance authorities thereof.

Article 13(4)

Importers shall ensure that, when making a construction product available on the market, the product is accompanied by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users.

Article 13(7)

Importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, where appropriate, to withdraw or recall it. Furthermore, where the product presents a risk, importers shall immediately inform the competent national authorities of the Member States in which they made the construction product available thereof, giving details, in particular, of the non-compliance and of any corrective measures taken.

Article 13(8)

Importers shall, for the period referred to in Article 11(2), keep a copy of the declaration of performance at the disposal of the market surveillance authorities and ensure that the technical documentation is made available to those authorities, upon request.

Article 13(9)

Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance and compliance with other applicable requirements in this Regulation, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by construction products which they have placed on the market.

Obligations on Distributors

Article 14(2)

Before making a construction product available on the market distributors shall ensure that the product, where required, bears the CE marking and is accompanied by the documents required under this Regulation and by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users. Distributors shall also ensure that the manufacturer and the importer have complied with the requirements set out in Article 11(4) and (5) and Article 13(3) respectively.

Where a distributor considers or has reason to believe that a construction product is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, the distributor shall not make the product available on the market until it conforms to the accompanying declaration of performance and it complies with the other applicable requirements in this Regulation or until the declaration of performance is corrected. Furthermore, where the product presents a risk, the distributor shall inform the manufacturer or the importer thereof, and the market surveillance authorities.

Article 14(4)

Distributors who consider or have reason to believe that a construction product which they have made available on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in this Regulation, shall make sure that the corrective measures necessary to bring that product in conformity, to withdraw it or recall it, as appropriate, are taken. Furthermore, where the product presents a risk, distributors shall immediately inform the competent national authorities of the Member States in which they made the product available thereof, giving details, in particular, of the non-compliance and of any corrective measures taken.

Article 14(5)

Distributors shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance and compliance with other applicable requirements in this Regulation in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by construction products which they have made available on the market.

General Obligations

Article 15

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 pursuant to Article 11, where he places a product on the market under his name or trademark or modifies a construction product already placed on the market in such a way that conformity with the declaration of performance may be affected.

Article 16

For the period referred to in Article 11(2), economic operators shall, on request, identify the following to market surveillance authorities:

- (a) any economic operator who has supplied them with a product;
- (b) any economic operator to whom they have supplied a product.

Market Surveillance – Construction Products

Article 56(1)

Where a market surveillance authority has sufficient reason to believe that a construction product covered by a harmonised standard does not achieve the declared performance and presents a risk for the fulfilment of the basic requirements for construction works covered by that Regulation, they shall carry out an evaluation in relation to the product concerned covering the respective requirements laid down by that Regulation. The relevant economic operators shall cooperate as necessary with the market surveillance authority;

Where, in the course of that evaluation, the market surveillance authorities find that the construction product does not comply with the requirements laid down in this Regulation, they shall without delay require the relevant economic operator to take all appropriate corrective actions to bring the product into compliance with those requirements, notably with the declared performance, or to withdraw the product from the market, or recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

Article 56(3)

The economic operator shall ensure that all appropriate corrective action is taken in respect of all the construction products concerned which that economic operator has made available on the market throughout the Union.

Article 56(4)

Where the relevant economic operator, within the period referred to in the second subparagraph of paragraph 1, does not take adequate corrective action, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the construction product on the national market or to withdraw the construction product from that market or to recall it.

Article 58(1)

Where, having performed an evaluation pursuant to Article 56(1), a Member State finds that, although a construction product is in compliance with this Regulation, it presents a risk for the fulfilment of the basic requirements for construction works, to the health or safety of persons or to other aspects of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk, to withdraw the construction product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, which it may prescribe.

Article 58(2)

The economic operator shall ensure that any corrective action is taken in respect of all the construction products concerned which that economic operator has made available on the market throughout the Union.

APPENDIX C⁹

European Union (Construction Products) Regulations 2013

Market Surveillance Authorities

Regulation 10(1)(a)

Notwithstanding Regulation 11, for the purpose of giving further effect to the provisions of Chapter III of the Market Surveillance Regulation, a market surveillance authority shall be a building control authority in respect of construction products placed on the market, or as the case may be, made available on the market, within its functional area.

Regulation 10(2)(a)

A market surveillance authority under paragraph (1)(a), shall be responsible for the market surveillance of construction products placed on the market, or as the case may be, made available on the market, within its functional area and shall take such steps as are necessary for this purpose.

Regulation 11(1)(a)

For the purpose of giving further effect to Chapter III of the Market Surveillance Regulation a building control authority shall appoint officers to be authorised officers for the purpose of these Regulations.

Authorised Officers

Regulation 12(1)

An authorised officer shall, on request, obtain access to –

- (a) the place of manufacture or storage in the State of any construction product and to the technical documentation or information referred to in Articles 4, 5, 6, 7, 11, 12, 13, 14, 16, 36, 37 and 38 of the Construction Products Regulation and Regulations 5, 6, 7 and 8 of these Regulations,
- (b) any ship or other vessel, aircraft, railway wagon or other vehicle in the State, or the means of storage contained therein, in which he has reasonable grounds for believing that a construction product is being transported for the purpose of making it available on the market,

and there, or at any other place, make such evaluation, examination, tests or inspections as he may consider appropriate for the purpose of these Regulations.

Regulation 12(2)

(2) An authorised officer shall not, other than with the consent of the occupier, enter into a private dwelling under this Regulation unless he has obtained a warrant from the District Court under Regulation 13 authorising such entry.

Regulation 12(3)

An authorised officer may –

⁹ Appendices A to C may be attached to the written request for information or may be omitted if it is intended to keep the request brief and specific.

- (a) request the relevant economic operator to supply the technical documentation or information referred to in Articles 4, 5, 6, 7, 11, 12, 13, 14, 16, 36, 37 and 38 of the Construction Products Regulation and Regulations 5, 6, 7 and 8 of these Regulations on demand or within such period of time as may be specified by the authorised officer,
- (b) take copies of, or extracts from, or take away, if considered necessary for the purposes of evaluation, examination or inspection, any records or other technical documentation or information as the authorised officer considers appropriate for the purpose of these Regulations,
- (c) require a person in charge or an employee to produce, in a legible form, information contained in files, paper or on computer, on demand or within such period of time as may be specified by the authorised officer,
- (d) require a person in charge or an employee to provide such explanations as the authorised officer considers necessary in relation to technical documentation, information, records or files, on demand or within such period of time as may be specified by the authorised officer,
- (e) take photographs of the construction product and the place of manufacture or storage of the construction product in the State,
- (f) bring such persons and equipment as the authorised officer considers appropriate for the purpose of these Regulations,
- (g) select, without payment, such samples of the construction product as the authorised officer may reasonably require and carry out, or arrange to have carried out, on such samples, there or elsewhere, such evaluations, examinations or tests, as the authorised officer considers necessary, and
- (h) shall take reasonable measures to guarantee the confidentiality of the technical documentation and such other information as may be supplied to him under this Regulation.

Regulation 12(4)

Where a construction product is taken away for evaluation, examination and testing under and in accordance with paragraph (3)(g) and such evaluation, examination or tests confirms that the construction product does not conform with the declared performance or does not comply with other applicable requirements in the Construction Products Regulation, the costs incurred in, or in connection with, such evaluation, examination and testing may be recoverable by the market surveillance authority, as simple contract debt from any court of competent jurisdiction from the relevant economic operator.

Regulation 12(5)

Where a construction product does not conform with the declared performance or does not comply with other applicable requirements in the Construction Products Regulation, in particular with the requirements laid down in Articles 56 and 58 and the non-compliances laid down in Article 59, an authorised officer may, by notice in writing under and in accordance with Regulation 14(1), direct the relevant economic operator to take such corrective actions, within such period of time as may be specified by the authorised officer, as are necessary for the purpose of complying with all applicable requirements of the Construction Products Regulation.

Corrective Actions

Regulation 14(1)

Where a market surveillance authority finds that a construction product –

- (a) does not conform with the declared performance,
- (b) does not comply with other applicable requirements in the Construction Products Regulation, or

(c) presents a risk under and in accordance with either Article 56 or Article 58 of the Construction Products Regulation,

that authority may, by notice in writing, direct the relevant economic operator to take such corrective actions, within such period of time as may be specified by that authority, as are necessary for the purpose of complying with all applicable requirements of the Construction Products Regulation.

Regulation 14(2)

Where an economic operator fails to comply with a notice in writing under paragraph (1), the market surveillance authority shall, by notice in writing, inform the economic operator -

- (a) that it intends, after the expiry of the period of no greater than 14 days commencing on the date of notification, to request the Minister to issue a direction in writing under paragraph (4),
- (b) of the terms of the direction it intends to request the Minister to make, including in particular the exact grounds for that direction,
- (c) that it will consider any representations on the matter made by the economic operator within the period specified in sub-paragraph (a), and
- (d) of the appeal procedure under paragraph (12).

Regulation 14(3)

After considering any representations made pursuant to paragraph (2)(c), a market surveillance authority –

- (a) may request the Minister to prohibit or restrict the construction product from being made available on the market, to withdraw it from the market or to recall it, or to make its use subject to special conditions, and
- (b) shall forward to the Minister the reasons for its request, any representations received and the comments of that authority thereon.

Regulation 14(4)

Where the Minister is of the opinion, after consideration of –

- (a) a communication from the Commission, a Member State or a market surveillance authority of another Member State, that a construction product has been prohibited from being made available on the market, or has been withdrawn or recalled from the market, or
- (b) evidence of an imminent danger to health and safety arising from the use, or likely to arise from a prospective use, of a construction product, or
- (c) a request from a market surveillance authority pursuant to paragraphs (2) and (3),

he may, by direction in writing, prohibit or restrict the construction product from being made available on the market, withdraw it from the market or recall it, or make its use subject to special conditions and the economic operator shall comply with the requirements of the Minister's direction.

APPENDIX V

NOTICE IN WRITING¹⁰

NOTICE UNDER REGULATION 14(1) OF THE EUROPEAN UNION (CONSTRUCTION PRODUCTS) REGULATIONS 2013

TAKE NOTICE that -

1. under Article 19(1) of *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*, market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory checks on the basis of adequate samples. In this context, market surveillance authorities may require economic operators to make such documentation and information available as appear to them to be necessary for the purpose of carrying out their activities, and, where it is necessary and justified, enter the premises of economic operators and take the necessary samples of products;
2. under Article 56(1) 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*, where a market surveillance authority has sufficient reason to believe that a construction product covered by a harmonised standard does not achieve the declared performance and presents a risk for the fulfilment of the basic requirements for construction works covered by that Regulation, they shall carry out an evaluation in relation to the product concerned covering the respective requirements laid down by that Regulation. The relevant economic operators shall cooperate as necessary with the market surveillance authority;
- 3(a)¹¹. under Article 11(7) 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*, manufacturers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in that Regulation, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, if appropriate, to withdraw or recall it;

¹⁰ The first page of the notice should be printed on the official headed paper of the market surveillance authority. A notice in writing may issue as a letter in which case the formats set out in Appendices IV and V may be used or, alternatively, it may issue more formally (i.e. where a Chief Executive's Order is required) as set out in this Appendix.

¹¹ Select either Option (a), (b) or (c) depending on whether the economic operator is a manufacturer, importer or distributor.

- 3(b)⁶. under Article 13(2) 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*, importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance, or not in compliance with other applicable requirements in that Regulation, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, where appropriate, to withdraw or recall it;
- 3(c)⁶. under Article 14(4) 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*, distributors who consider or have reason to believe that a construction product which they have made available on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in that Regulation, shall make sure that the corrective measures necessary to bring that product in conformity, to withdraw it or recall it, as appropriate, are taken;
4. I, [name of authorised officer], as an authorised officer of [name of local authority] Council being the market surveillance authority for the area comprising the [County/City/City & County of name of county/city], in exercise of the powers conferred on me by Regulation 14(1) of the European Union (Construction Products) Regulations 2013 have decided that it is expedient to serve this notice on [name of registered company];

AND HEREBY REQUIRE from [name of registered company], being a manufacturer/importer/distributor within the meaning 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, to ensure compliance with 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 and the European Union (Construction Products) Regulations 2013¹² the following corrective actions -

- (i) affix / correct the CE mark to [insert product name / description];
- (ii) prepare / correct the declaration of performance in respect of [insert product name / description];
- (iii) prepare / compile the technical documentation to support that [insert product name / description] complies with the requirements of [insert name of harmonised technical specification];
- (iv) secure a certificate of constancy of performance from a product certification body in respect of [insert product name / description] (Systems 1+ and 1);

¹² The list set out at (i) to (viii) respectively is not exhaustive and requirements may be added or deleted as required.

- (v) secure a certificate of conformity of the factory production control from a factory production control certification body in respect of [insert product name / description] (system 2+);
- (vi) secure test reports from a notified testing laboratory in respect of type testing of [insert product name / description] (System 3);
- (vii) secure a report on the factory production control in place by the manufacturer in respect of [insert product name / description] (Systems 3 and 4);
- (viii) prepare / correct the instructions and safety information in respect of [insert product name / description];
- (ix) secure a report on the means by which [insert product name / description] placed, or made available, on the market can be identified and traced throughout the supply chain;
- (x) take all necessary steps to withdraw [insert product name / description / batch identification of affected products] from the market in the State;
- (xi) take all necessary steps to recall [insert product name / description / batch identification of affected products] from the market in the State;
- (xii) take all necessary steps to prohibit in the State the sale, supply, distribution, placing on the market or making available on the market [insert product name / description / batch identification of affected products];
- (xiii) take all necessary steps to [set out conditions or restrictions on the use of the product] in respect of [insert product name / description / batch identification of affected products];
- (xix) you are advised that you are required to comply with the terms of this Notice within the period of days/ weeks/ months from the date of this Notice. You are required to furnish and satisfy in writing within the specified period [name of local authority] Council, being the market surveillance authority for the area comprising the [County/City/City & County of name of county/city], with the information necessary to confirm that the corrective actions set out at points (i) to () above have been complied with by [name of registered company].

PLEASE BE ADVISED that it is an offence to contravene in any way a provision or requirement of Articles 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 36, 37, 38, 56, 58 and 59 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 and Regulations 5, 6, 7, 8, 12, 13 and 14 of the European Union (Construction Products) Regulations 2013. You are hereby warned that you are liable to be prosecuted under the provisions of the European Union (Construction Products) Regulations 2013 if you fail to comply with the terms of this Notice.

DATED THIS DAY OF 20..

SIGNED: _____
Authorised Officer

To whom the appropriate powers were Delegated by Order of the Chief Executive Dated
.....

TO: Mr./Ms. [name of Company Secretary],
Company Secretary,
[name of registered company],
[Registered Office: address line 1]
[Registered Office: address line 2]
[Registered Office: address line 3]

APPENDIX VI

SITE INSPECTION REPORT¹³ (EVIDENCE GATHERING)

EUROPEAN UNION (CONSTRUCTION PRODUCTS) REGULATIONS 2013

S.I. No. 225 of 2013

Date of inspection: _____

Name of economic operator: _____

Nature of the business: *Manufacturer* *Importer* *Distributor*

Address: _____

Today I spoke to and cautioned: _____

Title: _____

CAUTION GIVEN: *You are not obliged to say anything but anything you do say may be taken down and used against you in a court of law.*

INSPECTION TO CHECK FOR THE FOLLOWING:

	<i>Yes</i>	<i>No</i>
(1) Does the company manufacture [insert name / description of construction product] for the purpose of being placed, or made available, on the market ¹⁴ ? If yes, provide description.	<input type="checkbox"/>	<input type="checkbox"/>

¹³ The first page of the inspection report should be printed on the official headed paper of the market surveillance authority.

¹⁴ Photos of construction product and copy of sales invoice should be sought to prove the product is being placed, or made available, on the market

- (2) Does the company import [insert name / description of construction product] for the purpose of being placed, or made available, on the market¹³? If yes, provide description.
- Yes No

- (3) Does the company distribute [insert name / description of construction product] for the purpose of being placed, or made available, on the market¹³? If yes, provide description.
- Yes No

- (4) What is the applicable harmonised technical specification? Provide name and description:

- (5) Who is the notified body for the purpose of initial type-testing, factory production control or product surveillance (where applicable)? Provide name and address:

Is the CE mark applied?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is a declaration of performance available?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is a certificate of factory production control available (if applicable)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Are instructions and safety information provided?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Are the manufacturer's details on the product?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Are the importer's details on the product (if applicable)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

THE CHECKLISTS ATTACHED HEREUNDER (PARTS 1 TO 4) SHOULD BE COMPLETED INSOFAR AS THEY ARE APPLICABLE IN RESPECT OF EACH CONSTRUCTION PRODUCT UNDER INSPECTION.

COMMENTS:

European Union (Construction Products) Regulations 2013

PHOTOS:

European Union (Construction Products) Regulations 2013

Name of company: _____ Date photos taken: _____

Address: _____ Photos taken by: _____

Photo No. 1 _____

Photo No. 2 _____

Photo No. 3 _____

Name of authorised officer: _____



Title of authorised officer: _____

Date: _____

The following items should be made available by each Economic Operator

Economic Operator	Checklist Items			
	CE Marking (Part 1)	Declaration of Performance (Part 2)	Factory Production Control (Part 3)	Certificate of Constancy of Performance (Part 4)
Manufacturer	Y	Y	Y	Y
Importer	Y	Y	Y	Y
Distributor	Y	Y	-	-

CHECKLISTS – PART 1

1. CE Marking and labelling		
CE mark applied:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is the CE mark applied correct? CE marking in prescribed form and size (at least 5mm)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Correct: 		
False: 		
Does the CE Mark contain:	Yes	No
the last two digits of the year the CE Mark was first affixed?	<input type="checkbox"/>	<input type="checkbox"/>
the name or trademark and registered address of the manufacturer?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the unique reference to the type/ model of the product?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the reference (or web link) to the Declaration of Performance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the level or class of the performances declared?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the reference to the date and number of the harmonised technical specification?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the intended use ?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the identification number of the Notified Body (System 1, 1+, 2+ and 3)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Instructions and safety information provided:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Manufacturer's details on product:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Importer's details on product (if applicable):	Yes <input type="checkbox"/>	No <input type="checkbox"/>

CHECKLISTS – PART 2

2. Declaration of Performance (DoP)		
Is the DoP issued by the manufacturer or his authorised representative in EEA?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Is the DoP in the English language?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Does the DoP contain:		
a reference number?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
type, batch or serial number or any other element allowing identification of the construction product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the intended use(s)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name, registered trade name or registered trade mark and contact address of the manufacturer?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the, name and contact address of the authorised representative (if applicable)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name and address (or identification number) of the Notified Body (System 1+, 1, 2+ and 3)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the reference to the date and number of the harmonised technical specification?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the system or systems of assessment and verification of constancy of performance of the construction product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the declared performance(s)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Is the DoP signed for and on behalf of the Manufacturer?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the date of declaration?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
(Optional) If the manufacturer proposes to upload copy of the DoP onto a website, the link to the DoP should be included?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>

CHECKLISTS – PART 3

3. Factory Production Control (FPC)		
Has the manufacturer a documented Factory Production Control procedure in place? ¹⁵	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Has the manufacturer the Certificate of conformity of the factory production control (System 2+)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Note: For Systems 1 and 1+ refer to Checklist – Part 4		
Is the Certificate of conformity issued by Factory Production Control Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Does the Certificate of conformity of the FPC contain:		
the name and address of the Factory Production Control Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the Certificate number (number-CPR-number)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Name and address of the manufacturer, or his representative established in the EEA?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Description, type / model designation of product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Provisions to which the product conforms (i.e. Annex ZA of EN 771:3: 2011)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any particular conditions applicable to the use of the product (if necessary)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any conditions of validity of the certificate, where applicable?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name of and position held by the person empowered to sign the certificate?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>

¹⁵ For Systems 3 & 4, there are no specific tasks for a Notified Body with regards to certification of FPC. However the manufacturer must have a documented FPC in place.

CHECKLISTS – PART 4

4. Certificate of Constancy of Performance (for systems 1 & 1+)		
Has the manufacturer the Certificate of constancy of performance?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Is the Certificate of constancy of performance issued by notified Product Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Does the EC Certificate of constancy of performance contain:		
the name and address of the notified Product Certification Body?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the Certificate number (number-CPR-number)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Name and address of the manufacturer, or his representative established in the EEA?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Description, type / model designation of product?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Provisions to which the product conforms (i.e. Annex ZA of EN 771-3:2011)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any particular conditions applicable to the use of the product (if necessary)?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
Any conditions of validity of the certificate, where applicable?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>
the name of and position held by the person empowered to sign the certificate?	<i>Yes</i> <input type="checkbox"/>	<i>No</i> <input type="checkbox"/>

APPENDIX VII

CHIEF EXECUTIVE'S ORDER

[INSER NAME] CITY/COUNTY/CITY & COUNTY COUNCIL

ORDER OF THE DIRECTOR OF SERVICE

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

European Union (Construction Products) Regulations 2013

Name of company: _____

Address: _____

An inspection was carried out on (insert date) on the premises of _____ located at _____, by staff of the (ENTER NAME OF RELEVANT DEPARTMENT). The following breaches 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 and the European Union (Construction Products) Regulations 2013 were found to be in existence:

- Failure to make a declaration of performance in respect of [insert product name/ description] in accordance with Article 4 of Regulation (EU) No. 305/2011;
- Failure to apply the CE mark to [insert product name/ description] in accordance with Article 8 of Regulation (EU) No. 305/2011;
- Failure to.....
- Failure to.....
- Failure to.....
- Failure to.....

I recommend that proceedings be initiated against _____ located at _____ for breaches of the European Union (Construction Products) Regulations 2013 made pursuant to the European Communities Act 1972 for the purposes of giving full effect to 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.

Head of (enter name of Department)

ORDER:

Initiation of legal proceedings in the case of _____ located at _____ for breaches of the European Union (Construction Products) Regulations 2013 made pursuant to the European Communities Act 1972 for the purposes of giving full effect to 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 approved, as recommended by the Head of (enter name of Department).

Dated: _____

Signed: _____
Director of Service

To whom the appropriate powers have been delegated by order of the Chief Executive, (enter name of local authority, dated (enter date of delegation).

APPENDIX VIII

RAPEX NOTIFICATION FORM

Form for the Notification/Reaction to Notification of Dangerous Consumer Products to the National Consumer Agency by Authorities / Producers and Distributors in accordance with Directive 2001/95/EC

1. GENERAL INFORMATION	
Name, address and contact information of authority / producer / distributor completing this information	
Date	
2. PRODUCT	
Product Category (e.g. Toy, motor vehicle, electrical appliance – for full list see Annex I)	
Product Name	
Brand	
Type / number of model	
Batch Number / Bar Code	
Photos – please attach separately in JPEG format	

Customs Code
Manufacture Period
Number of affected units
Price
Country of origin
Countries of Destination
Directives and European regulations applicable
Proof of conformity
3. PRODUCT TRACEABILITY
Name, address and contact information of the manufacturer or its representative

Name, address and contact information of the exporter
Name, address and contact information of the importer
4. DISTRIBUTOR AND RETAILER
Name, address and contact information of the distributors or their representatives
Supplier (shop, supermarket, by mail, internet)
5. DANGER
Type of risk (Please see Annex II)
Cause of risk
Summary of the results of tests / analyses and conclusions (Please attach any test reports, certificates, examinations etc. separately)

Risk Assessment and conclusions
Information on known incidents and accidents
6. MEASURES ADOPTED
Type of measures taken – i.e. withdrawal of product from market, recall from end users
Date and description and duration of all taken measures
7. OTHER INFORMATION
Additional information
Please indicate if any part of the above information or any part of an attachment is confidential

This form should be completed and returned to:

National Consumer Agency,
Product Safety Unit,
4 Harcourt Road,
Dublin 2,
by email product_safety@nca.ie or by fax to: +3531 4025 582

Risk Categories

ID	Risk Category	Description
1	Burns	Tactile injury caused by heat, including burns from hot surfaces, unexpected flame behaviour and explosions.
2	Chemical	Includes allergies, cancer, poisoning, and release of metals.
3	Choking	Closing off the flow of air as a result of internal airway obstruction (e.g. small toys/toy parts, small parts of soothers/soother holders, suction cups).
4	Cuts	
5	Damage to hearing	
6	Damage to sight	
7	Drowning	
8	Electric shock	
9	Electromagnetic disturbance	
10	Energy consumption	Impacts on the environment due to non-compliance with legislation on energy efficiency requirements and on rational use of energy (e.g. Ecodesign legislation and certain aspects dealt with by Gas Appliances Directive 2009/142/EC).
11	Environment	Impacts on the environment (except those caught under the "Energy consumption" category). The current category covers for instance: Resource depletion through consumption of energy, water and materials; Emissions to air, water or soil, such as Greenhouse Gases, Heavy Metals, NOx, CO, PM, etc.
12	Fire	Including fire from explosions.
13	Health risk / other	
14	Injuries	External and internal injuries, including irritations, skin lesion, skin irritations and injuries from explosions.
15	Incorrect measurement	Economic impacts on parties to a transaction (including related consumer protection issues) when metering is involved.
16	Microbiological	Including bacteriological, viruses, mould, etc.
17	Other	
18	Security	The internal and external aspects of security which are aimed at achieving a secure Europe in a better world (fight against: terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure, organised crime).
19	Strangulation	Lack of oxygen caused by external pressure on the trachea from items such as clothing drawstrings, crib bars, window blinds and drapery cords.

20	Suffocation	Closing off the flow of air as a result of airway obstruction external to the mouth and nose (for example, by covering the mouth and nose with objects such as plastic sheets, hemispheric shaped toys, no ventilation holes).
21	Asphyxiation	Insufficient supply of air to the airways (for example insufficient ventilation of Masks, entrapment in an unventilated confined space). Insufficient intake of oxygen due to vapour (e.g. vaporised fuel) or gas (e.g. carbon monoxide, natural gas) in the air resulting in asphyxiation or poisoning.
22	Entrapment	Catching body parts such as feet, fingers, etc. (for example entrapment of fingers in a hole).

Product Categories

ID	Product Category	Description
1	Chemical products	Detergents, lamp oil, glue, tattoo ink, cleaning and washing products, etc. Chemicals listed under REACH.
2	Childcare articles and children's equipment	Soother holders, teething rings, cots, bibs, cribs, changing mats, highchairs, pushchairs, swings, children's bicycles and scooters (unless a toy), etc. "Childcare articles" covers any product intended to facilitate sleep, relaxation, hygiene, the feeding of children, or sucking on the part of children.
3	Clothing, textiles and fashion items	Adult's and children's clothing including gloves, underwear, shoes and slippers, fashion items like wigs, handbags, curtains and bedclothes, etc.
4	Communication and media equipment	Computers and other IT equipment, printers, laptops, mobile phones, cameras, etc.
5	Construction products	
6	Cosmetics	Make-up, toothpaste, soap, lotions and creams, nail polish, cosmetics for children, bath and hygiene products, etc.
7	Decorative articles	Candles, oil lamps, ornamental garden torches, Christmas decorative articles (excluding lighting chains), etc.
8	Eco-design	This category covers products falling within the scope of Ecodesign legislation. Ecodesign is addressing energy consumption and other environmental impacts of energy-related products: Standby power consumption of household- and office equipment, Simple set-top boxes, lamps and ballasts, external power supplies, electric motors, circulators, televisions, refrigerators/freezers, washing machines, dishwashers, etc.

9	Electrical appliances and equipment	Cord extension sets, cable reels, sun beds, household electrical appliances such as washing machines, irons, water heaters, etc. Professional electrical appliances (except products considered as machinery) and equipment.
10	Explosive atmospheres equipment and pyrotechnic articles	Equipment and protective systems intended for use in potentially explosive atmospheres, fireworks, airbag gas generators, seatbelt tensioners etc.
11	Food-imitating products	Products that resemble food and are child-appealing (plastic decorative articles, bath products, candles, etc.).
12	Furniture	Mattresses, beds, chairs, etc. (including garden furniture but excluding children's equipment).
13	Gadgets	Joke items (unless a toy), fluorescent straws, CD holders, etc.
14	Gas appliances and components	Products using gas as fuel, their components and components designed to be parts of gas installations.
15	Hand tools	Saws, hammers, screwdrivers, etc. This category excludes electrical tools as they fall under "Machinery" or "Electrical appliances".
16	Hobby/sports equipment	Camping articles, sport accessories, sport air guns, roller skates, adult's bicycles, etc. This category excludes children's bicycles, which fall under the category "Childcare articles and children's equipment" or "Toys". Products with a protective function are also excluded as they fall under "Protective equipment".
17	Jewellery	Rings, earrings, necklaces, etc.
18	Kitchen/cooking accessories	Plates, thermal flasks, pressure cookers etc. This category excludes electrical accessories as they fall under "Electrical appliances".
19	Laser pointers	
20	Lifts	
21	Lighters	Novelty lighters and other lighters.
22	Lighting chains	
23	Lighting equipment	Recessed luminaries, table lamps, floor lamps, night lights, etc.
24	Machinery	Lawnmowers, chainsaws, mini motorbikes, etc. This category includes garden machines and all kinds of machine tools. Professional machinery and appliances.
25	Measuring instruments	
26	Motor vehicles	Passenger cars, vans, tractors, lorries, motorcycles, motor vehicle parts and accessories.
27	Other	Includes pet accessories, etc.

28	Pressure equipment/vessels	Pressure equipment, Aerosol dispensers, gas cylinders, simple pressure vessels etc.
29	Protective equipment	Helmets, sunglasses, protective gloves, life jackets, etc. Professional protective equipment.
30	Rail and guided transport	Including cableway installations designed to carry persons
31	Recreational crafts	Boats, inflatable life rafts, personal water crafts, outboard engines, etc.
32	Stationery	Pens, pencils, erasers, watercolours. This category excludes stationery which resembles a toy (e.g., erasers in the shape of an animal) as it falls under "Toys".
33	Toys	Products designed or intended, whether or not exclusively, for use in play by children under 14 years of age.
34	Waste	

APPENDIX IX

DECLARATION OF PERFORMANCE and CE MARKING

DECLARATION OF PERFORMANCE

Delegated Regulation (EU) No 574/2014 of 21 February 2014 amending Annex III to Regulation (EU) No 305/2011 on the model to be used for drawing up a declaration of performance on construction products was proposed by the EU Commission to adapt Annex III to the CPR in order to fulfil three main objectives:

- (a) to allow the flexibility which is necessary for the different families of construction products and manufacturers, also in view of responding to technical progress;
- (b) to simplify the declaration of performance; and
- (c) to provide instructions to manufacturers in order to help them when drawing up the declaration of performance.

See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0574&from=EN> and [FAQs on Annex III \(declaration of performance\)](#) for further details.

The following describes the minimum features of the declaration of performance and some additional explanations.

DECLARATION OF PERFORMANCE

Number of the declaration of performance	This number allows the manufacturer to classify the declaration of performance. It can be the same as the unique identification code of the product type
1. Unique identification code of the product type:	This code is linked to the declared performance of the product. It has to identify without any ambiguity the link between the product and its performance.
2. Intended use/es:	the intended uses for the product in accordance with the relevant text included in the Annex ZA of the hEN or EAD
3. Manufacturer	name of company, the registered trade name or registered trade mark and contact address of the company. The address can be anywhere in the world.
4. Authorised representative	The authorised representative has to be included in the document only if the manufacturer, has designated an authorised representative (agent).
5. System/s of AVCP	System or systems of assessment and verification of constancy of performance (AVCP system) as described in Annex ZA of the hEN or in the chapter for AVCP of the EAD. If there are multiple systems, each of them must be declared and can be included in point 7 (for example in a table).
6a. Harmonised standard	In this point you have to include the reference number of the harmonised standard including the date it was issued according to the Official Journal of the European Union.
Notified body/ies	If notified bodies have carried out AVCP tasks their identification numbers must be included here
6b. European Assessment Document	Include the reference number of the EAD including the date it was issued
European Technical Assessment	Number of the ETA issued by the TAB.

Technical Assessment Body (TAB)	Name of the TAB who issued the ETA;
Notified body/ies	If notified bodies have carried out AVCP tasks their identification numbers must be included.
7. Declared performance/s	This is the core of the document and consists of the declared performance of the product. The full list of essential characteristics as it is in the annex ZA of the hEN or the EAD for the intended uses already declared in point 2 must be included.
8. Appropriate Technical Documentation and/or Specific Technical Documentation	When the product has been developed and assessed following any simplified procedure, reference to the specific and/or appropriate technical documentation must be included. The documents have to be stored by the manufacturer, only the references to them have to be included in this point.
Link to the online copy of the declaration of performance	If the manufacturer proposes to upload a copy of the declaration of performance onto a website, the link to the DoP should be included.
Signature & date	Signed for and on behalf of the manufacturer by:

CE MARKING

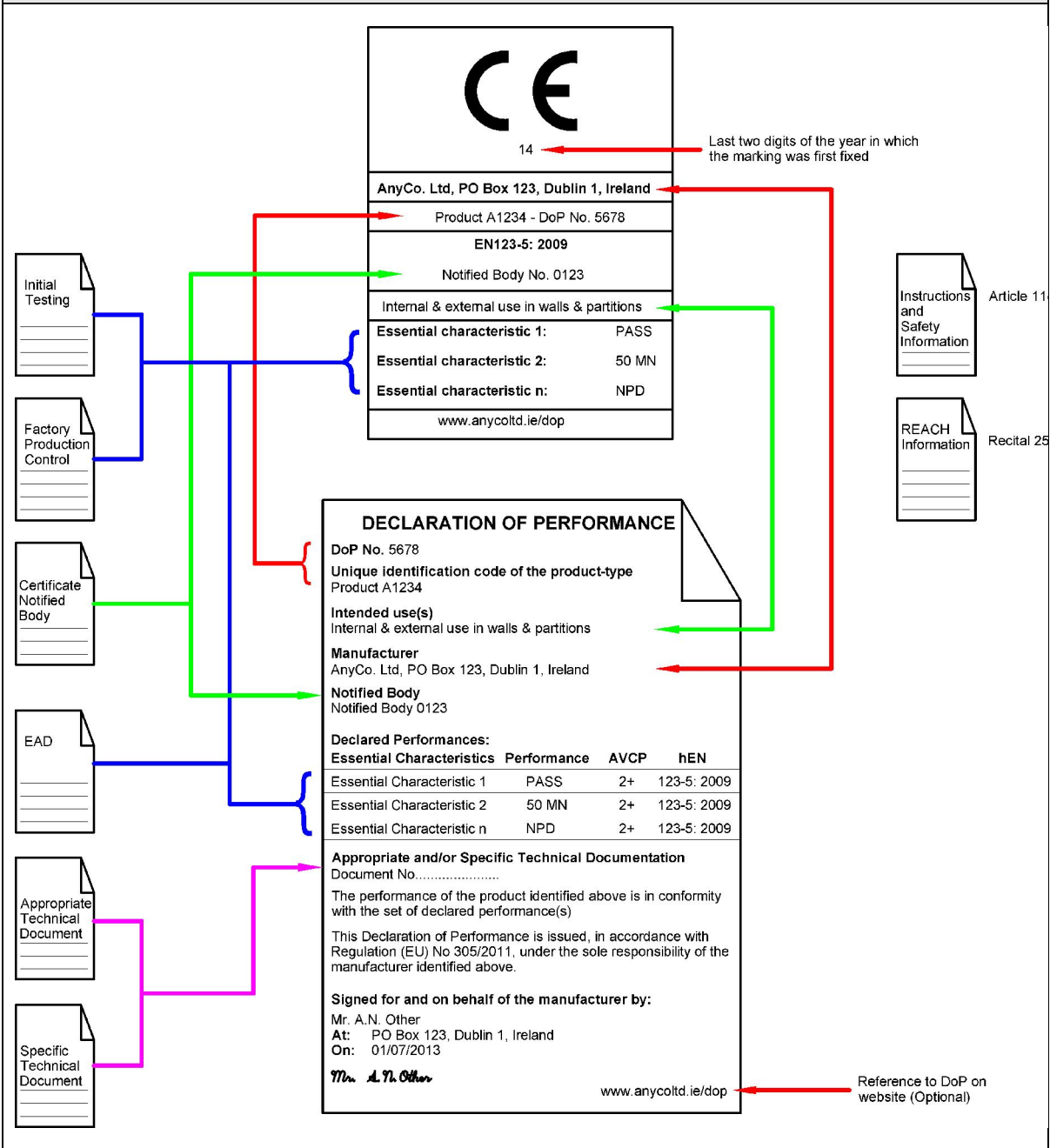
CE marking can only be applied to the product if there is a DoP available and shall be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark notably indicating a special risk or use. The CE marking symbol shall be in accordance with the general principles set out in Article 30 of Regulation (EC) No. 765/2008 and shall be affixed visibly, legibly and indelibly to the construction product or to a label attached to it.

Where this is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging or to the accompanying documents.

NOTE: In addition to the above, clause ZA.3 of Annex ZA of the standard could include provisions to be followed where it is intended to split the information accompanying the CE marking and to place them in different locations.

Figure 3 illustrates an example of the CE Marking label and Declaration of Performance and how the label and Declaration are connected.

Figure 3 Example CE Marking and Declaration of Performance



APPENDIX X

BASIC REQUIREMENTS FOR CONSTRUCTION WORKS AND ASSESSMENT OF CONFORMITY TASKS

Appendix X outlines the meaning of the basic requirements for construction works and the Assessment and Verification of Constancy of Performance (AVCP) systems, and how they influence the risk evaluation.

The drafting of technical specifications (harmonised product standards or ETAGs/TABs) is based on the so called essential requirements of the CPR.

The construction product should enable that “subject to normal maintenance construction works must satisfy these basic requirements for construction works for an economically reasonable working life. “

The basic requirements are:

1. Mechanical resistance and stability
2. Safety in case of fire
3. Hygiene, health and the environment
4. Safety and accessibility in use
5. Protection against noise
6. Energy economy and heat retention
7. Sustainable use of natural resources (new requirement in CPR)

For each of the requirements (except No. 7), the harmonised technical specifications have been elaborated, describing how the requirement relates to the construction products.

A construction product failing may lead to a non-conformity with these requirements. The CEN committee drafting a technical specification has for each construction product evaluated the effect of a product failing with respect to the essential requirements, and set the level of attestation of conformity (AVCP levels) accordingly.

This means that the AVCP levels can be used as an indicator of the severity of a product failing. When the AVCP level is set in the area of level 1, 1+ or 2+ it indicates that the product is so significant for one or more of the essential characteristics that a third party, a notified body (NB), should be involved at some level in the on-going attestation of conformity with the relevant harmonised standards.

Conversely, when the AVCP levels are determined in the area of level 2, 3 or 4, it is not required for a NB to be involved in the on-going attestation of conformity for the product.

From this, one could infer that the product is then assessed as having less impact on the essential properties of the CPR. In a sense, a risk evaluation has already been performed when assigning the AVCP levels.

Table 1 outlines the tasks required by the manufacturer and the notified bodies depending on the AVCP system of the construction product

Table 1 Assessment of conformity tasks		AVCP system	1+	1	2+	3	4
Manufacturer	Determination of product type				X		X
	Factory Production Control (FPC)	X	X	X	X	X	X
	Further testing of samples	X	X	X			
Notified Body¹	Determination of product type	X	X			X	
	Initial Inspection of the Factory Production Control (FPC)	X	X	X			
	Continuous Surveillance, assessment & evaluation of FPC	X	X	X			
	Audit testing of samples	X					
	Product and Factory Production Control Certification	X	X				
	Factory Production control Certification	X	X	X			
	EC Certificate	X	X	X			
NOTES							
1. A notified body from the official registry of notified bodies http://ec.europa.eu/growth/tools-databases/nando/ designated by Member States to perform the third party tasks, in the NANDO website must be used, where applicable.							

Certain construction products may have different levels of attestation, based on the intended use e.g. products subject to reaction to fire regulation, for which a clearly identified stage in the production process results in an improvement of the reaction to fire classification are subject to AVCP system 1, all others to system 3 or 4, i.e. no continuous surveillance. The AVCP level/levels are given in Annex ZA of each hEN.

APPENDIX XI

Product Areas within the scope of Regulation (EU) No. 305/2011

Table 1 Extract from Annex IV of Regulation (EU) No. 305/2011	
Code	Products Area
1	PRECAST NORMAL/LIGHTWEIGHT/AUTOCLAVED AERATED CONCRETE PRODUCTS.
2	DOORS, WINDOWS, SHUTTERS, GATES AND RELATED BUILDING HARDWARE.
3	MEMBRANES, INCLUDING LIQUID APPLIED AND KITS (FOR WATER AND/OR WATER VAPOUR CONTROL).
4	THERMAL INSULATION PRODUCTS. COMPOSITE INSULATING KITS/SYSTEMS.
5	STRUCTURAL BEARINGS. PINS FOR STRUCTURAL JOINTS.
6	CHIMNEYS, FLUES AND SPECIFIC PRODUCTS.
7	GYPSUM PRODUCTS.
8	GEOTEXTILES, GEOMEMBRANES, AND RELATED PRODUCTS.
9	CURTAIN WALLING/CLADDING/STRUCTURAL SEALANT GLAZING.
10	FIXED FIRE FIGHTING EQUIPMENT (FIRE ALARM/DETECTION, FIXED FIREFIGHTING, FIRE AND SMOKE CONTROL AND EXPLOSION SUPPRESSION PRODUCT).
11	SANITARY APPLIANCES.
12	CIRCULATION FIXTURES: ROAD EQUIPMENT.
13	STRUCTURAL TIMBER PRODUCTS/ELEMENTS AND ANCILLARIES.
14	WOOD BASED PANELS AND ELEMENTS.
15	CEMENT, BUILDING LIMES AND OTHER HYDRAULIC BINDERS.
16	REINFORCING AND PRESTRESSING STEEL FOR CONCRETE (AND ANCILLARIES). POST TENSIONING KITS.
17	MASONRY AND RELATED PRODUCTS. MASONRY UNITS, MORTARS, AND ANCILLARIES.
18	WASTE WATER ENGINEERING PRODUCTS.
19	FLOORINGS.
20	STRUCTURAL METALLIC PRODUCTS AND ANCILLARIES.
21	INTERNAL & EXTERNAL WALL AND CEILING FINISHES. INTERNAL PARTITION KITS.
22	ROOF COVERINGS, ROOF LIGHTS, ROOF WINDOWS, AND ANCILLARY PRODUCTS. ROOF KITS.
23	ROAD CONSTRUCTION PRODUCTS.
24	AGGREGATES.
25	CONSTRUCTION ADHESIVES.
26	PRODUCTS RELATED TO CONCRETE, MORTAR AND GROUT.
27	SPACE HEATING APPLIANCES.
28	PIPES-TANKS AND ANCILLARIES NOT IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.
29	CONSTRUCTION PRODUCTS IN CONTACT WITH WATER INTENDED FOR HUMAN CONSUMPTION.
30	FLAT GLASS, PROFILED GLASS AND GLASS BLOCK PRODUCTS.
31	POWER, CONTROL AND COMMUNICATION CABLES.
32	SEALANTS FOR JOINTS.
33	FIXINGS.
34	BUILDING KITS, UNITS, AND PREFABRICATED ELEMENTS.
35	FIRE STOPPING, FIRE SEALING AND FIRE PROTECTIVE PRODUCTS. FIRE RETARDANT PRODUCTS.

Refer to NANDO for harmonised technical specifications

<http://ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=cp.hs&cpr=Y>

APPENDIX XII

Sources of Additional Information

1. **European Commission – Enterprise and Industry**
<http://ec.europa.eu/growth/sectors/construction/product-regulation/>
2. **Frequently Asked Questions on the Construction Products Regulation**
http://ec.europa.eu/growth/sectors/construction/product-regulation/faq_en
3. **NANDO (New Approach Notified and Designated Organisations) Information System**
http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=directive.notifiedbody&dir_id=33
4. **European Commission - Health & Consumers**
<http://ec.europa.eu/consumers/safety/rapex/alerts/main/index.cfm?event=main.listNotifications&CFID=1315570&CFTOKEN=19407819&jsessionid=09009cf90e9b1776e9a7b535510416920708>
5. **Department of Housing, Planning, Community and Local Government**
<http://www.housing.gov.ie/housing/building-standards/construction-products-regulation/construction-products-regulation-cpr>
6. **S.I. No. 225/2013 - European Union (Construction Products) Regulations 2013.**
<http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0225.pdf>
7. **Circular Letter BC 06/2013 European Union (Construction Products) Regulations 2013 – S.I. 225 of 2013**
8. **Circular Letter BC 05/2014 Market surveillance of construction products – Information exchange**
9. **National Standards Authority of Ireland**
www.nsai.ie
10. **Product Contact Point for Construction**
<http://www.housing.gov.ie/housing/building-standards/construction-products-regulation/product-contact-points-construction>

