

Legal Obligations of Distributors *under the Construction Products Regulation* *and other Associated European Legislation as from 1st July 2013*

Construction Products Regulation¹ (CPR)

The CPR imposes many legal obligations on distributors of construction products paramount amongst which is **traceability** of the product back to the manufacturer. Many distributors may not be aware of their obligations so the Association has listed below the most important issues that distributors need to be aware of.

Definition of a Distributor

Any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a construction product available on the market.

Important Points to take on board

- Construction products placed on the market under the CPD before 1 July 2013 shall be deemed to comply with the CPR
- DoPs cannot be used before 1 July 2013 and, therefore, have no legal status before this date
- The system of Assessment and Verification of Constancy of Performance (AVCP) is only relevant with a Declarations of Performance² (DoP) under the CPR and do not exist for a Declarations of Conformity³ (DoC) under the CPD
- Products manufactured before 1 July 2013 that have no need to carry the CE marking under the CPD can continue to be sold after 1 July 2013 without the CE marking as they were already on the market before this date. These same products manufacturer after 1 July 2013 may well have to carry the CE marking.

Notes:

- 1 - See publication "Guidance Note on the Construction Products Regulation" downloadable using the link:
<http://www.constructionproducts.org.uk/publications/industry-affairs/display/view/construction-products-regulation/>
- 2 - A DoP is a legal document produced by a manufacturer giving specific details of a products performance for its essential characteristics listed in the applicable harmonised European standard (hEN) or in a European Assessment Document (EAD). Other information regarding the products traceability, the system used to prove conformity with its technical specification (hEN or EAD) and identification of any third party involved in this process is also included. By drawing up a DoP, a manufacturer is assuming the legal responsibility for a construction product being in conformity with its performance as declared in the DoP. If a DoP is issued, then CE marking must take place.
- 3 - The old name for a DoP under the CPD.

Distributor Responsibilities

Responsibility	Activity	Follow up Action
<p>1. Ensure the product bears the CE marking where required.</p>	<p>Physically check to ascertain whether the CE marking appears on the product, or on a label attached to the product, or on the packaging or on the accompanying documentation.</p> <p>If part bundles are being supplied then distributors have to ensure that the CE marking also accompanies these part bundles.</p>	<p>If yes, then refer to Clause 6 in the Declaration of Performance (DoP) which will state the system of Assessment and Verification of Constancy of Performance (AVCP) used for the product. This will dictate what documentation is issued by whom – manufacture or the Notified Body.</p> <p>If no, ask the reason why and document the reply. Obtain the answer in writing - email or letter.</p>
<p>2. Ensure the CE marking is accompanied by the relevant documentation.</p>	<p>Check that the following documents have been supplied:</p> <ul style="list-style-type: none"> - Declaration of Performance (DoP) - Accompanying information 	<p>Check this is the current DoP (issued by the manufacturer and passed on by the importer, if involved).</p> <p>Validity certificate for the factory production control system (issued by the Notified Body) after their initial inspection – only for Systems 1+, 1 and 2+.</p> <p>Check date and number on this certificate and the relevant details against the DoP to ensure they match. (Some Notified Bodies (NBs) only issue a certificate following their initial inspection which has no expiry date, while others issue a new certificate annually after each surveillance check.) This will act as a strong indication that the product's performance matches the DoP.</p>

Responsibility	Activity	Follow up Action
2. cont...	<ul style="list-style-type: none"> - Application instructions - Safety information - List of hazardous substances 	<p>Issued by the manufacturer and passed on by the importer, if involved.</p> <p>Issued by the manufacturer and passed on by the importer, if involved.</p> <p>Issued by the manufacturer and passed on by the importer, if involved.</p>
3. The relevant accompanying documentation is provided in the language of the Member State in which the product is being marketed.	All documentation to be supplied in English for the United Kingdom.	<p>If not, insist on this being rectified.</p> <p>These must be supplied to your customers in case the competent national authority makes a reasoned request for this information.</p>
4. Must ensure that the manufacture has applied to the product a type, batch, serial number or some other mark by which the product can be identified, and their name, registered trade name or registered trade mark, or where the size or nature of the product does not allow this, that the required information be provided on the packaging or in the documents accompanying the product.	<p>Check that these identification marks and manufacturers name etc. appear on the product, or a label attached to the product, or on the packaging or the accompanying documents.</p> <p>If part bundles are being supplied then distributors have to ensure that this information also goes with the part bundle.</p>	<p>If not, ask the manufacturer or the importer, if involved, why not and document reply. Obtain reply in writing.</p> <p>Ask the manufacturer or importer, if involved for this information so that it can be supplied with the accompanying documentation.</p>

Responsibility	Activity	Follow up Action
<p>5. The importers name, registered trade name or registered trademark and contact address appear on the product or where this is not possible, on a label attached to the product, on its packaging or in a document accompanying the product.</p>	<p>Check that these details appear on the product, or an attached label, or on the packaging or the accompanying documentation.</p> <p>If part bundles are being supplied then distributors have to ensure that this information also goes with the part bundle.</p>	<p>If not, ask the importer for clarification why not. Document the reply. Obtain a reply in writing.</p> <p>Ask the importer for this information so that it can be supplied with the accompanying documentation.</p> <p>This information is required for continuation of the traceability route back to the manufacturer.</p>
<p>6. Must keep all information for 10 years, and if requested, be able to provide the market surveillance authority with:</p> <ul style="list-style-type: none"> - Name, address and contact details of the economic operator¹ who supplied you with the construction product - Name, address and contact details of the economic operator¹ to whom you supplied the product. 	<p>Keep appropriate files up to date for each inward and outward transaction.</p> <p>Ensure appropriate information is readily retrievable from your files.</p>	<p>Be careful when archiving information that this is easily retrievable.</p>

Responsibility	Activity	Follow up Action
<p>7. The construction product must maintain its conformity with the Declaration of Performance throughout its period of Storage and transportation to site.</p>	<p>Ensure 'goods inwards' check and document products are received in an undamaged state.</p> <p>Ensure product is stored such that its conformity with the DoP is maintained.</p> <p>Ensure the product's conformity to the DoP is maintained while under delivery to site.</p>	<p>Notify appropriate company personnel of these requirements and the consequences of not fulfilling these requirements e.g. the product must be withdrawn from the market if it is no longer in compliance with the DoP.</p>
<p>8. Only place on the market construction products which are compliant with the CPR².</p>	<p>Ensure products being offered for sale and physically despatched are in conformity with the DoP.</p>	<p>Check products have not been damaged, got wet etc. or suffered any other issue which will affect their stated performance.</p>
<p>9. Not to make the product available on the market if there is reason to believe that it is not in compliance with the requirements of the Declaration of Performance³.</p>	<p>If in doubt about the current conformity of a product with the DoP, do not release the product.</p>	<p>Seek assistance from the manufacturer or importer if unable to prove conformity with the DoP.</p>
<p>10. If a construction product you supplied to the market is subsequently found not to be in conformity with the DoP, the distributor shall make sure that the necessary corrective measures are taken to bring that product into conformity with the DoP, or to withdraw it or recall it from the market as appropriate³.</p>	<p>If a product is found not to be in compliance with the DoP, the product must be recalled and replaced with product which is in conformity.</p> <p>The recall of product must be notified back to the manufacturer along with the reason for its suspected non-compliance</p>	<p>Identify what is the cause of the products non-compliance e.g. a manufacturing problem, an issue caused by the actions of the distributor, an issue caused by the end user?</p>

Responsibility	Activity	Follow up Action
<p>11. If such a product presents a risk, the distributor shall immediately inform the competent national authority of the member State into which the non-compliant product was placed, giving details of the non-compliance and any corrective measures taken².</p>	<p>Inform the competent authority of the Member State into which the offending product was placed.</p> <p>For the United Kingdom this will be the Department of Communities and Local Government (DCLG).</p>	<p>Follow up any verbal notification in writing.</p>
<p>12. Distributors shall co-operate with a competent national authority's request for information on any construction product, demonstrate the products conformity with the Declaration of Performance.</p>	<p>Retrieve from files the requested information and forward to the competent authority (DCLG in the UK).</p>	
<p>Note:</p> <p>1 - Means the manufacturer, importer, distributor or authorised representative.</p> <p>2 – From Recital 41 in the CPR, which is not a legal requirement, however, a court of law may well use this to re-enforce the ‘spirit’ of the Regulation.</p> <p>3 – These items are also covered by the Directive on General Public Safety which defines a distributor as “<i>any professional in the supply chain who actively does not affect the safety properties of a product</i>”.</p>		

Directive on Product Liability

This covers any product manufactured or imported into the European Economic Area (EEA) which causes damage to individuals or private property. Importers placing products on the EEA market from third countries outside of the EEA are considered to be the producer under this Directive.

If a producer cannot be identified, then each supplier of the product may become liable in law for any damage to individuals or private property.

A producer is not automatically liable for damages caused by a product; the injured party must first make a claim.

Cases in which the Obligations of the Manufacturer Apply to Distributors

A distributor shall be considered a manufacturer and be subject to the legal obligations of a manufacturer if they:

- place a product on the market under their own name or trademark, or
- they modify a product that has already been placed on the market in such a way that conformity with the Declaration of Performance may be affected.

Obligations of Distributors if they assume the responsibility of a manufacturer

A major responsibility is to draw up a Declaration of Performance and affixing of the CE marking. By drawing up the Declaration of Performance, the distributor is assuming full legal responsibility for the conformity of the construction product with its declared performance. The table below shows which areas a distributor is responsible for under each of the five systems of assessment of verification and constancy of performance (AVCP) and which areas are the responsibility of a Notified Body (who is appointed by the distributor).

Other obligations for distributors classified as manufacturers are given in Article 11 of the CPR document.

Responsibilities of Distributors¹ if they place product on the market under their own name/trademark or modify a product already placed on the market in such a way its conformity with the Declaration of Performance is affected.

DEGREE OF 3 RD PARTY INVOLVEMENT IN THE SYSTEM OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE ³ (AVCP)					
None ←————→ Complete					
Task	System 4 ³	System 3 ³	System 2+ ³	System 1 ³	System 1+ ³
Factory Production Control	Manufacturer (Distributor ¹)				
Factory Sample Tests	-	-	Manufacturer (Distributor ¹)	Manufacturer (Distributor ¹)	Manufacturer (Distributor ¹)
Determination of Product Type	Manufacturer (Distributor ¹)	Notified Body	Manufacturer (Distributor ¹)	Notified Body	Notified Body
Initial FPC Inspection	-	-	Notified Body ²	Notified Body ²	Notified Body ²
On Going FPC Surveillance	-	-	Notified Body	Notified Body	Notified Body
Audit Testing	-	-	-	-	Notified Body

Notes:

- 1 – Distributors are classed as manufacturers where they make available a product on the market under their own name or trademark or modify a product that has already been placed on the market in such a way that conformity with the Declaration of Performance may be affected.
- 2 – Validity certificate for the factory production control system is issued by a Notified Body after successfully passing initial inspection. Check date and number on certificate and relevant details against Declaration of Performance information to ensure these match. Notified Bodies in the UK tend to only issue a certificate following the initial inspection which has no expiry date. However, if the product changes then the certificate automatically becomes invalid. Some Notified Bodies in mainland Europe e.g. Germany, issue a new validation certificate after each surveillance visit.
- 3 – Is the term used to define the degree of involvement of a third party i.e. a Notified Body, in assessing the conformity of the product to its technical specification by dividing the tasks between the manufacturer and the third part., if one is involved e.g. System 4 is self certification by a manufacturer with no third party involvement while System 1+ is the most onerous with the highest degree of third party involvement.